

Disciplinary Hearing- Deciding Officer's Guide

Purpose of Hearing

- The purpose of the Disciplinary Hearing is to try resolve any doubts about the facts and to give a full and fair opportunity to the employee to present their response to the allegation(s).
- On the basis of this information the panel must determine whether disciplinary action should be taken in accordance with the Scottish Government's disciplinary policy and procedure.
- You should have carefully read all the information contained in the panel pack. If you have any questions or feel there is essential information not covered in the pack then you must raise this urgently with the People Advice and Wellbeing Team member who is managing the case.
- In order to prepare for the panel hearing you should prepare questions in advance.

Chairperson – Opening Remarks

Introductions

- Introduce those present to the employee and explain why they are there.
- Introduce and explain the role of the accompanying person if present.
- Explain that the purpose of the meeting is to consider whether a disciplinary charge is well founded and, if so, what penalty is appropriate in accordance with the organisation's disciplinary procedure.
- Explain how the meeting will be conducted.
- Audio recordings are not permitted unless it considered a reasonable adjustment. You should ensure that the employee understands the rules and confirm that he/she is not making any recordings. This should be included in the note.

Statement of the charge

- State precisely what the charge is and outline the case briefly by going through the evidence that has been gathered. Ensure that the member of staff and his or her representative or accompanying person have seen the documentary evidence.
- Remember that the point of the meeting is to establish the facts and whether the charge is well founded, not catch people out. Establish whether the member of staff is prepared to accept that he/she may have contravened the discipline policy.

Role of Hearing Members

- All members of the Disciplinary Panel Hearing will have had no previous involvement in the case. A People Advice and Wellbeing Case Officer (PAWCO) or People Advice and Wellbeing Manager (PAWM): will;
 - provide advice and guidance on the procedures and/or any other information which the Chair requires;
 - ensure that the Chair focuses on the relevant facts of the case.
 - advise the Chair on precedents, and in particular, the penalties imposed (see 5th bullet below);
 - advise the Chair that if the charge is gross misconduct, the expectation is that the penalty is normally likely to be dismissal but there is a duty to consider alternatives to dismissal;

- the deciding officer will prepare the outcome letter and this should be then passed the People Advice and Wellbeing team. All decision letters **must** be cleared by our legal colleagues. This must be issued as matter of priority ideally within 5 working days from when the decision was reached (individuals must be informed if there are any delays with issuing the letter); and
- In more complex cases, another manager may be added or co-opted to the panel. This may be done where, for example, the manager would bring appropriate expertise.

Procedure during the hearing

- The case against the employee will be outlined and/or evidence presented (which may include written statements considered necessary in support of the allegations). The employee will be required to answer questions during the hearing and they may in turn ask questions and challenge the evidence.
- Any person who accompanies the employee to a Disciplinary Hearing may address the hearing and confer with the employee but may not answer questions on their behalf.
- The employee is given the opportunity to state his/her case and answer the allegations that have been made. He/she should be able to ask questions and present evidence. The accompanying person may also ask questions and should be able to confer privately with the employee.
- If a grievance is raised during the meeting that relates to the case it may, but not always, be appropriate to suspend the disciplinary procedure for a short period until the grievance can be considered. Advice should be sought from the PAWCO or PAWM.
- If the employee becomes upset or distressed allow time for composure to be regained before continuing. If the distress is too great to continue then adjourn and reconvene at a later date – however, the issues should not be avoided. During the meeting there may be some 'letting off steam', and this can be helpful in finding out what has actually happened. However, abusive language or conduct should not be tolerated and the meeting can be adjourned, with a warning about conduct, to give the individual time to reflect.

General Questioning and Discussion

- Adjourn the meeting if further investigation is necessary (for example, if new information or evidence is presented), or, if appropriate, at the request of the employee or his or her accompanying person. Adjournment also allows for any further checking of any matters raised, particularly if there is any dispute over facts. If new facts emerge, consider whether to reconvene the disciplinary hearing at a later date.
- Ask the employee if he/she has any explanation for the misconduct or failure to improve, or if there are any special circumstances to be taken into account.
- If it becomes clear during this stage that the employee has provided an adequate explanation or there is no real evidence to support the allegation, stop the proceedings.
- Keep the approach formal and polite and encourage the employee to speak freely with a view to establishing the facts. A properly conducted disciplinary meeting should be a two-way process. Use questions to clarify the issues and to check that what has been said is understood. Ask open-ended questions, for example, 'tell me what happened on', 'what happened then?' to get the broad picture. Ask precise, closed questions requiring a yes/no answer only when specific information is needed.
- Do not get involved in arguments and do not make personal or humiliating remarks. Avoid physical contact or gestures which could be misinterpreted or misconstrued as judgemental.

Summing Up at the hearing

- Summarise the main points of the discussion after questioning is completed. This allows all parties to be reminded of the nature of the charge, the arguments and evidence put forward and to ensure nothing is missed.
- Ask the employee if he/she feels that they have had a fair hearing, and whether they have anything further to say. This should help to demonstrate to the employee that they have been treated reasonably.

Decision

- The Disciplinary panel must have reasonable grounds, on the balance of probabilities and on the basis of a reasonable investigation, and a genuine belief of the employee's guilt of the allegations before they can uphold the allegations of misconduct.
- To allow time to reflect and properly consider the Panel should not make a decision on the day of the hearing.
- The employee must be informed, in writing, of the decision as matter of priority ideally within 5 working days from when the decision was reached (you must keep the individual informed if there are any delays with issuing the letter).
- Should the allegations be upheld, the notification will also include details of the disciplinary penalty to be applied and right of appeal.

Penalties

- If the Panel believes the allegations are substantiated a sanction may be imposed, depending on the judgement of the severity of the case and the penalty judged to be appropriate.
- Dismissal should only be considered for a first offence where gross misconduct is involved. However, serious misconduct can be sufficient also dependent on circumstances. Advice should be sought where there is doubt.
- When deciding whether a disciplinary penalty is appropriate and what form it should take, the Panel will keep in mind the need to act reasonably in all the circumstances.
- Relevant factors might include: the extent to which standards have been breached and the impact that has had on the business; precedent; the employees general and conduct record; length of service; and any special mitigating circumstances which might make it appropriate to adjust the severity of the penalty.
- If you are satisfied that no disciplinary action should be taken, you should advise the employee in writing and state that the matter is closed. There may be recommendations you wish to make that might help prevent consideration of disciplinary action in future.
- The employee should be informed within 5 working days. They should be told the reasons for the decision, including the results of any further investigations.
- Details of any disciplinary penalty should be given in writing to the employee as soon as the decision is made. If dismissal is the outcome, it should be explained that alternative penalties were considered and reasons given as to why those were not appropriate. A copy of the notification should be retained and sent to the PAWCO or PAWM.
- The decision letter should specify:
 - the nature of the misconduct
 - the decision and how the decision was reached and if appropriate what mitigating circumstances may have been considered
 - any period of time given for improvement and the improvement expected
 - the disciplinary penalty and, where appropriate, how long it will last and any other sanction.

– the likely consequences of further misconduct
the timescale for lodging an appeal and how it should b

Discipline Guidance for Investigating Officers

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Annexes

Annex A Investigation plan template

Annex B Template letter inviting the complainant/witness to meeting

Annex C Template witness/employee statement

Annex D Report

Your role

1.1 When issues arise in the workplace it's important to ensure that they are dealt with quickly, fairly and consistently. It is therefore sometimes necessary to establish more information about the issues through investigation. Your role as IO is to look for and gather evidence that supports an allegation and evidence that contradicts it. Given the impact on everyone involved when an investigation is required it is essential that this is treated as a priority, blocking out time to conduct and write up your investigation is therefore a must.

1.1 Your task is to establish insofar as is possible the facts of the case and report them to the People Advice and Wellbeing Case Officer (PAWCO). You must therefore:

- Create your investigation plan (**annex A**).
- **Establish the facts** in relation to the allegations of misconduct. You must initially interview the person who has raised concerns to establish the facts.
- **Gather as much detail as possible** about what is alleged to have happened, when, where, who was involved, whether there were any witnesses, what the circumstances were etc; Ascertain what evidence there is to support the allegations that the incident/event took place. **Do not make any judgements or assumptions or draw conclusions.** The information may not always be clear-cut. For instance, if there are two opposing statements, you may have to provide two conflicting versions of events. In these circumstances the decision maker(s) may have to reach a conclusion on the balance of probabilities and it is not part of your role to get involved with that. It is therefore crucial that the investigation and the report are sufficiently thorough to aid the decision maker to come to an informed decision.
- Submit your written report to the PAWCO.

All of these stages are set out in more detail in the following guidance, along with templates for you to use.

Planning the investigation

The PAWCO will meet with you to commission your investigation by discussing with you what the investigation is required to examine. This meeting will discuss the issue and the Discipline policy. Familiarise yourself with the policy

Once you have all the preliminary information from those appointing you should develop your investigation plan. (example template **annex A**). At this stage a provisional timescale will need to be established, this will be informed by the complexity of the case including for example how many witnesses will need to be interviewed – and this may change as the investigation progresses. You are expected to share your provisional plan with the PAWCO so they are aware of the timescales.

Should it not be possible to complete the investigation within the agreed timescale, you should keep the People Advice and Wellbeing Team and the individual under investigation advised and provide an alternative completion date. Any delay and the reasons for this should be recorded. Always plan the next step of the investigation and put arrangements in place (such as deadlines for agreeing minutes of meetings and invites to meetings) to ensure there are no unnecessary delays.

We suggest that you draft the report and prepare the evidence for submission throughout the period of the investigation and do not leave it all to the end.

Take care when booking meetings using the electronic calendar. Others can read the content of the email invitation! Remember to use sensitivity markings (use Private) on emails and meeting requests.

Where an individual has been accused of misconduct, the PAWCO will write to the individual advising them of the issue and confirm that you are conducting the investigation.

Gather information before meeting with the individual or witnesses

3.1 You must attempt to gather all relevant evidence and include it in your report. If any information is not available you should explain in the report why it has not been included. Evidence is likely to include witness statements but may also include other relevant information such as emails, internet activity prints, travel & subsistence claims, flexi and annual leave information etc. The investigation, and the report produced, must be sufficient, fair and even handed.

The following steps need to happen:

- In a misconduct investigation the first person you should meet is the person raising concerns, where applicable.
- You need to write to the person in advance of the interview to give them notice – usually 5 working days. **Annex B** provides a template letter which should be used when setting up a meeting. Note that all staff to be interviewed may opt to be accompanied by a colleague or trade union representative (if a member).

Where an individual elects to submit a written response before the meeting you should familiarise yourself with the contents prior to the meeting.

- You should prepare key questions in advance of the interview, ensuring the questions remain within the scope of your investigation.
- When you meet you will need to take a note of their statement, you might find it helpful make arrangements to have a note-taker present at the meeting.

Conducting the investigation meeting (a separate section is set out describing the investigation meeting with someone accused of misconduct)

An investigation meeting is simply an opportunity for an investigator to interview someone who is involved in, or has information on, the matter under investigation.

3.3 At the start of the meeting either :

- Confirm that the individual is aware that they can be accompanied and it is their choice to attend alone **OR**
- Explain that the companion is welcome to contribute to the meeting but if you ask a direct question the companion should not answer on the party's behalf.

3.4 Inform them::

- Of the purpose of the investigation
- Your role is to gather facts relating to the issue and pull together a report. Confirm you are impartial and not here to make any judgement.
- You will take a note of the meeting and send it to them and that they are required to review the note and return a copy (agree a date for issuing the note and a date for returning the signed copy). Inform them that they have the opportunity to add any comments or suggested amendments (if you don't agree the amendments they should be held alongside the original version)
- Should a disciplinary hearing be held at a later point, copies of their witness statement will be sent to the individual under investigation. A copy may also be given to a trade union representative.
- While individuals will not be forced to answer any question, as employees involved in an internal disciplinary matter, then their co-operation with the employer is expected. However, if they refuse to answer a question then their response will be noted for the record along with any reasons given.
- The meeting is being held in confidence and the content of the interview must be kept confidential.
- Witnesses are protected from being victimised for providing evidence
- Audio recordings are not permitted unless it considered a reasonable adjustment. You should ensure that the employee understands the rules and confirm that he/she is not making any recordings. This should be included in the note.

3.5 When interviewing you should, as often as possible, use open questions. We would **strongly** advise that you draw up a list of questions in advance of the meeting

to ensure that you gather all the relevant facts. Potential open questions include:

- Please take me through these events in your own words giving as much detail as possible
- Why did you do/say that?
- Did you speak to your manager about that? How did they respond?
- When you say she was aggressive what exactly do you mean by aggressive?
- Who were the witnesses to the occurrence that you are aware of, including anyone who may have heard but not seen what happened?
- What else do I need to know about what happened?

Closed questions can be useful to establish a point of fact e.g. time, date, names of witnesses

3.7 Ask follow up questions to focus in on or clarify the point you are attempting to understand. Challenge evidence/statements made to ensure you understand correctly what is being said and query inconsistencies. You may need to use closed questions at this stage (e.g. Was this the normal procedure? Did you see this clearly?)

If you have to ask a difficult question, for example the details of a verbal or physical harassment incident – tell the complainant, that you are to ask a difficult question. Explain the reason the detail is required and ask carefully and sensitively.

3.6 You should avoid leading questions. Listen carefully to what is said, you should:

- remain focused on the witness and the reasons for the meeting
- concentrate on exactly what the witness says
- be open minded to anything the witness may say
- acknowledge the witness' viewpoint
- listen for points that the interviewee avoids covering or giving details on
- allow the witness to finish their point before moving the interview on or asking a further question
- use silence where appropriate to encourage the interviewee to elaborate on point

3.8 It may be useful to use diagrams to enable the interviewee to demonstrate statements more clearly or there may be a need to gather CCTV footage (**but clear CCTV footage use with PAWCO first**) or other documents such as emails or print outs to support statements.

3.9 Finally, you should read back to the individual your understanding of their statement to ensure you have accurately noted their version of events. **Annex C** provides a template for writing up a note of the meeting.

Final statement

3.10 Remind the witness that you will write up a note of the meeting and email it to them within an agreed timeline of the meeting. They will have the opportunity to add any comments or suggest amendments (if you don't agree you may have to append

the amendments beside the original version) to the copy he/she returns . The note of the meeting should make clear whether these amendments are (1) something additional which was not mentioned at the meeting, (2) something not recorded accurately from the meeting (3) something recorded accurately from the meeting but on reflection that he/she wishes to change in the document. In the cases of 1 and 2 it should be clear that these changes were made following the meeting. Any additional note should be appended to the main notes.

3.11 They then need to email you back with the statement with any **tracked changes** or to confirm they are content with the statement.

Anonymous witness statements

3.12 If a witness has a justifiable/valid reason for not wanting to be named then it may be possible for them to provide an anonymous statement. This should be avoided whenever possible and you should speak to your PAWCO if someone requests anonymity. If agreed to, an anonymous witness statement should be taken in the normal way but the name of the witness removed from the copy of the statement which is forwarded to the individual under investigation. If the information from this witness is likely to be significant you will wish to explain to the witness why their evidence is important. When taking a statement from someone who wishes to remain anonymous you should remind the witness that while their evidence may be redacted and anonymised it will form part of the evidence under consideration and, despite best efforts, it may still be possible to ascertain their identity from the the statement.

3.13 If taking a witness statement from someone who wishes to remain anonymous always try to seek further corroborative evidence to support the statement.

External witnesses

3.14 If a witness is someone from outside the organisation who is not prepared or is unable to attend the meeting try and get a written statement from him or her and consider sending them written questions to respond to.

Interviewing the individual under investigation in a misconduct investigation

Typically you would interview the person alleged of misconduct after you have interviewed the person who raised the issue and any of the witnesses they cite.

4.1 At the start of the meeting either:

- Confirm that they are aware of the right to be accompanied and it is their choice to attend alone **OR**
- Explain that the companion is welcome to contribute to the meeting but if you ask the individual a direct question the companion should not answer on their behalf.

4.2 Inform the individual:

The reason for the meeting is that the SG has become aware of information which suggests that a possible breach of conduct may have occurred and it is your intention to put this information/questions to him/her and to allow him/her to provide an explanation.

- Your role is to gather facts relating to the allegations made and pull together a report. Confirm you are impartial and not here to make any judgement.
- You will take a note of the meeting and send it to the employee within an agreed timescale and the employee is required to review the statement and return by email within the agreed timescale (for the IO and employee to determine). They will have the opportunity to add any comments or make amendments to the returned copy and should do so in tracked changes.
- They are not obliged to say anything or answer any question but if they choose not to say anything or answer any question then you must ask why they have chosen not to answer and keep a note of what was said.
- **The meeting is being held in confidence and the content of the interview must be kept confidential. Records of such meetings are used for the purposes of the internal investigation and *may* be used in any legal process that follows. Legal advice would always be taken before any documents are released to any other relevant outside authority e.g. the Police. (Note for IO: if during the investigation you suspect there may be criminal activity you should not proceed until you have consulted your PAWCO and have permission to continue.)**
- It is your intention to complete the report and submit it to HR as quickly as possible so that HR can make a decision on whether there is a case to be answered and inform the respondent accordingly.

4.3 Once you have clarified all of the above is understood, explain precisely what the complaint is. Check that he/she understands the nature of the allegations.

4.4 Remember that it is an investigatory meeting to establish the facts, not to catch them out. Give the individual time to properly state their case and listen carefully to what is said.

4.5 Ask follow up questions to probe the explanation if necessary, ensure that you are absolutely clear what is being stated or explained.

4.6 Again, ask open questions. Use closed questions to confirm you have correctly understood what has been said or to clarify any points. Do not ask leading questions or offer a possible explanation. Repeat back an explanation and ask that the individual confirms you have correctly understood what they are saying.

4.7 Do not be afraid to repeat questions or rephrase questions if they are not answering the question.

4.8 Do not assume anything. Put all the information available to them and ask for an explanation.

4.9 Do not judge or show signs which may suggest you are making a judgement. Keep the approach formal and polite. Do not get involved in arguments and do not make personal or humiliating remarks.

4.10 Agree to adjourn the meeting if such a request is made by the individual or the companion. A break can be helpful as it will allow you time to consider the interview and establish what further information you require. This also allows the individual time to consider whether there is further information they may wish to add. Either leave the room or arrange an alternative private room for them to use.

4.11 If the individual becomes upset or distressed allow time to regain composure before continuing.

4.12 Ask whether there are any personal/domestic or health issues or other mitigating factors that they wish to be taken into consideration.

4.13 Before ending the meeting ask whether he/she has anything further to say (anything which they have not said already). Remember to summarise what has been said.

4.14 Remind the individual that you will write up a note of the meeting and email it to them within the agreed timescale. They will have the opportunity to add any comments or make any amendments in tracked changes and return the statement. The note of the meeting should make clear whether these amendments are (1) something additional which was not mentioned at the meeting, (2) something not recorded accurately from the meeting (3) something recorded accurately from the meeting but on reflection the he/she wishes to change in the document. In the cases of 1 and 2 it should be clear that these changes were made following the meeting. Any additional note should be appended to the main notes.

4.15. Write up a note of the meeting using the template at **Annex C**.

Following the meeting with the individual under investigation

5.1 If the individual has offered an explanation which requires further investigation or clarification or can be corroborated then it is your role to investigate the matter further. This could require speaking again to witnesses or interviewing new witnesses or obtaining more information from other sources. In these circumstances, if you do gather more information you may wish to see the individual again to ask further questions or seek comments on the further information you have gathered. (Remember they can be accompanied.)

5.2 If the individual requests that you gather information or speak to witnesses the presumption is that you will see those witnesses. If you do not consider this will add anything relevant to the investigation take advice from the PAWCO but, you must ascertain why the individual thinks they are relevant witnesses and you should record this. If you decide not to interview any or all of these additional witnesses then record your reasons for not gathering the information in the report. (An example might be where a number of witnesses are given but perhaps two or three are sufficient to

provide corroboration.) *Remember that the person making a decision on the case will be hindered in their role if information has not been gathered which could support the individual.*

5.3 If the individual has raised any medical/health matters you should contact the PAWCO to discuss whether a medical report is required.

When to seek further guidance from HR

6.1 If there is any information to suggest that the individual is being unfairly singled out/victimised.

6.2 If a grievance is raised during the investigation that relates to the case it may be appropriate to suspend the disciplinary procedure for a short period until the grievance can be considered. (It might also be appropriate to continue with the disciplinary and have the grievance dealt with separately at the same time – the PAWCO will advise.)

6.3 If the individual has provided an adequate explanation or there is no real evidence to support the allegation.

6.4 It is important that you are sufficiently independent to carry out the investigation. If at any stage you are in any doubt consult HR.

6.5 Consider if you need to do further research – for example, do you need to look into a legal issue raised? Do you need some guidance on the nature of the complaint? Liaise with your PAWCO on these. For example if you consider that a complaint may be more serious than you initially thought, or has been framed, check with other policies; ACAS; advisory bodies. Your PAWCO will be able to advise.

Ill health

7.6 Contact the PAWCO if the individual being accused of misconduct is not well and unable to meet or if there is any suggestion that their alleged behaviour could be explained by a medical condition or illness. The PAWCO will consider referring the individual to Occupational Health for advice which will be taken into consideration before deciding how to proceed.

Draft Report (Annex D)

You should write the report in the third party tense – avoid “I” as this suggests it’s a personal view – use “the Investigating officer interviewed...”. 1.Be aware that you may be required in the future to speak to your report at an employment tribunal, so write it with that in mind.

8.1 Your report should be structured as follows:

- Introduction – including the issue that has been investigated, the timing and nature of alleged misconduct and the investigation methods used.
- Which SG policy the investigation has been considered under
- Index of parties involved and relationships between parties.
- Summary of allegations.

- For each point of the allegation, a summary of the factual evidence/witness statement. You should not include any personal opinion you have formed.
- How the investigation was conducted
- What evidence was collected including who you interviewed and why. You may wish to comment on the credibility of the witness but must explain why you have reached that conclusion. Also record potential witnesses and why they were not recorded.
- Whether any pieces of evidence could not be collected and why
- Summary of findings . Cross reference evidence to illustrate if is supported by other evidence e.g. witness statements or not
- What facts have been established
- Relevant background information
- Annexes –
 - full copies of allegation and statements taken in the course of the investigation, any comments/amendments submitted and any response you have made to these
 - copies of any other evidence gathered (e.g. copies of e-mails, notes, letters, video or audio tapes)

8.2 Ensure you do not make any statements that are assumptions or judgements—your report must be purely factual and must not have a conclusion or any recommendation as to whether there is a case to answer.

ANNEX A

Investigation Plan	
Investigator	
Terms of reference	
Provisional time-frame	
Policies and procedures to review and follow	
Issues that need to be explored/clarified	
Sources of evidence to be collected	
Persons to be interviewed	
Investigation meetings further arrangements (When/where/notes to be taken by)	
Persons to supply own statement	
Collection to have been completed by_____	
Further considerations	

ANNEX B INVITATION TO WITNESS/INDIVIDUAL UNDER INVESTIGATION TO ATTEND MEETING WITH IO

Dear

INVESTIGATION INTO POSSIBLE MISCONDUCT MATTER– SPECIFY NATURE OF ALLEGATION

I have been appointed as the Investigating Officer into the «nature of allegation» against «Name ».

I am writing to confirm our meeting on «date» at «time» to take place in «room and location».

The purpose of this meeting is to allow me to establish the facts of this matter and I will be questioning you about the allegation received. You may, if you wish, prepare a written statement in advance of this meeting for my consideration.

As this is a formal investigatory meeting in accordance with the SG Disciplinary procedures you have the right to be accompanied at this meeting by a colleague (i.e. a SG employee) or, if you are a member, a trade union representative. If you will be accompanied at this meeting, can you please confirm the name and position of your companion by «date». Can I also ask that any written statement and/or other documentary evidence is submitted to me for consideration by «date»

Add for witnesses: Please note that should the matter progress to a disciplinary hearing, a copy of any statement you give will be provided to the individual under investigation and possibly their union representative.

I would like to remind you that our Counselling and Welfare Service and our Employee Assistance Programme are available to offer you support during this process. You can contact your People Advice and Wellbeing Counsellor, Scott Murray 0131 244 XXXX or the EAP on XXXX. If you are a trade union member, your trade union representative may also be able to offer advice and assistance.

In the meantime, if I can be of any assistance, please do not hesitate to contact me directly.

Yours sincerely

NAME

**ANNEX C TEMPLATE FOR STATEMENT TAKEN BY
INVESTIGATING OFFICER**

**Meeting with *name of /witness/individual under investigation, date
location***

Investigation into complaint of misconduct *specify allegation*

PRESENT:

Name, (Investigating Officer)

Name, (*Individual under investigation/Witness*)

Name (Companion if appropriate)

INTRODUCTION:

1. I introduced myself and my role as the Investigating Officer (IO) into the alleged misconduct issue *specify allegation*.
2. I advised *name* that there were a number of formal issues of which I was required to advise *her/him* before I proceeded to take *her/his* statement:
 - I noted *she/he* has been accompanied by *name*. The role of the companion is to support *her/him* and seek clarification of any points. Their role is not to answer questions on *her/his* behalf. OR
I noted *she/he* has chosen not to be accompanied.
 - I said that the matter is being handled as a possible misconduct issue in accordance with the SG Disciplinary procedures and that my role is to investigate the allegations.
 - I said that for the purposes of an alleged misconduct investigation the term employee is the term applied to the person alleged to have been involved in a possible misconduct issue.
 - I said that my role is to gather the facts relating to the allegations made and pull together a report. My role was impartial and I will not draw any conclusions or express any opinion in my report. My report will be passed to *name of* People Advice and Wellbeing Case Officer (PAWCO), who will make a decision whether there is a charge for any individuals to answer under the SG's disciplinary procedures.
 - I said I hoped to complete my investigation at the earliest opportunity but this depended on the number of interviews to be undertaken and also how quickly the parties return the agreed statements to me.
 - I advised *name* that I might need to speak to *her/him* again, depending on the outcome of my other interviews. In addition, when my report is submitted, the PAWCO may ask for further clarification and this might also require me to meet *her/him* again.

- **(For the person under investigation)** I said that he/she could call witnesses and that I would meet with them to take statements.
 - I advised that I would produce a note of this meeting and I would ask *name* to sign and return a copy. The signed version would constitute *her/his* “statement”. *Name* would have the opportunity to add any comments or make amendments to the copy *she/he* returns. If I do not agree with any of these comments then I would record this and all of this documentation would be submitted with my report, including my original notes of the meeting.
 - **Add if taking statement from witness:** I advised *name* that should a disciplinary charge be made, copies of all interview statements would be copied to *name of respondent* as the respondent. The respondent would have the opportunity to comment on them and would be advised to retain them in confidence subject to taking advice about their content.
 - I said that the interview would be structured around the specific allegations that HR has received.
 - At the end of the interview I explained that *name* would have the opportunity to add anything else *she/he* considers relevant to the case.
 - I said that I am looking for the facts – what happened, when, what was said, was anyone else present. The purpose is to allow me to record the facts as fully as possible for the PAWCO.]
 - Employee: I explained that if *she/he* did not wish to answer any questions then *she/he* would not be forced to do so. *Her/his* response will, however, be noted for the record along with any reasons given for it. **Witnesses:** I explained that witnesses are expected to co-operate with the investigation (though they will not be forced to answer questions). They are expected to reply truthfully and not knowingly withhold information that is relevant to the investigation.
 - I advised that this meeting was being held in confidence and the information gathered would be used only for the purposes of the investigation or any legal process that follows. It is important that the content of this interview must be kept confidential and that *she/he* must not discuss or otherwise pass on any information relating to the investigation that *she/he* has gained during the interview. The investigation itself must not be discussed with any other party, other than one from whom advice is being taken.
3. I asked *name* if there were any further points about the procedure *she/he* would like clarified. *She/he* confirmed there were none or comment as appropriate.

BACKGROUND

4. Before I turned attention to the actual incidents I confirmed the following details:
5. *Name of witness/respondent is a grade in the location. Document relationship with respondent/witnesses.*

COMPLAINT

6. I then addressed each incident in turn:

Summarise each allegation and record response of witness/respondent.

SUMMARY

7. I asked *name* if *she/he* wished to raise any further matters in connection with the allegation to be considered as part of this investigation as any issues *she/he* raises at a later date cannot be considered as part of this investigation and will have to be raised separately. *Record*

CLOSE

8. I confirmed I would produce a note of the interview and ask *her/him* to sign it. *She/he* would have the opportunity to make any comments or additions if *she/he* did not feel that my record was a true and accurate reflection of the meeting. If this did occur and I disagreed with any of the comments/amendments I would note this in the file and *she/he* would be informed of this. In this case I would retain my notes of the original meeting. Any additional notes would be appended to the original notes. I hoped to issue the note on *date* and asked *name* to return the note with any comments by *date*.

9. I thanked *name* for *her/his* time

Name

Title

date

Signed:

NAME

Date:

ANNEX D TEMPLATE FOR INVESTIGATING OFFICER'S REPORT

RESTRICTED STAFF AND MANAGEMENT

INVESTIGATING OFFICER'S REPORT MISCONDUCT ALLEGATIONS

« Nature of allegation »

Respondent: « name, grade, job title/branch/division »

Investigating Officer: « name, grade, job title/branch/division »

Witness(es): « name, grade, job title/branch/division »

Potential witnesses: « name, grade, job title/branch/division » and why they were not interviewed.

Any observations on the credibility of witnesses and why

1. Background

Provide a brief summary of allegation, including when the allegation was received by HR, when you, as Investigating Officer, were appointed, who notified HR of the alleged misconduct issue and who the respondent is. If appropriate refer to the reporting relationships between the respondent and any witnesses.

Confirm which policy the investigation is being conducted under

Make reference to relevant documents, e.g. original allegation submitted

2. Allegations

Provide a clear list of the allegations, extracted from the relevant documents and statements.

3. Evidence gathered against each allegation

Reproduce the allegations listed above and under each one, provide a summary of the evidence gathered in the following format:

Allegation

Statements (summary of relevant evidence gathered)

- relevant witnesses
- respondent
- any additional factual evidence collected e.g. documents, CCTV video, records.

Repeat this format until you have covered all of the allegations. Cross reference to draw out where there is supporting evidence or no evidence to support. Remember - no conclusions or further summaries should be made.

4. Annexes

Attach documentary evidence of statements and any additional evidence gathered in the course of your investigation e.g. copies of emails, t&s claims etc. Show as appendices to the report i.e.

- Appendix A
- Appendix B
- Appendix C

« **Name**»

« Job title»

« Date»

HR People Advice Team - Performance management - Guidance and templates

The purpose of this document is to assist case handlers managing informal and formal performance management procedures including relevant guidance, email and letter templates, and checklists for key steps in the process.

Link to policy: [Bands A-C performance management policy](#)

Link to procedure: [Bands A-C performance management procedure](#)

Link to SCS procedure: [Senior civil servants \(SCS\) performance management procedure](#)

Please note that the guidance and templates in this pack are for bands A-C. Where a SCS case arises, this should be discussed with your C1 or C2.

Abbreviations used within this document:

AM - Appeal Manager

DO – Deciding Officer

HRPA - HR People Advice

LM – Line manager

OH – Occupational Health

PIP – Performance Improvement Plan

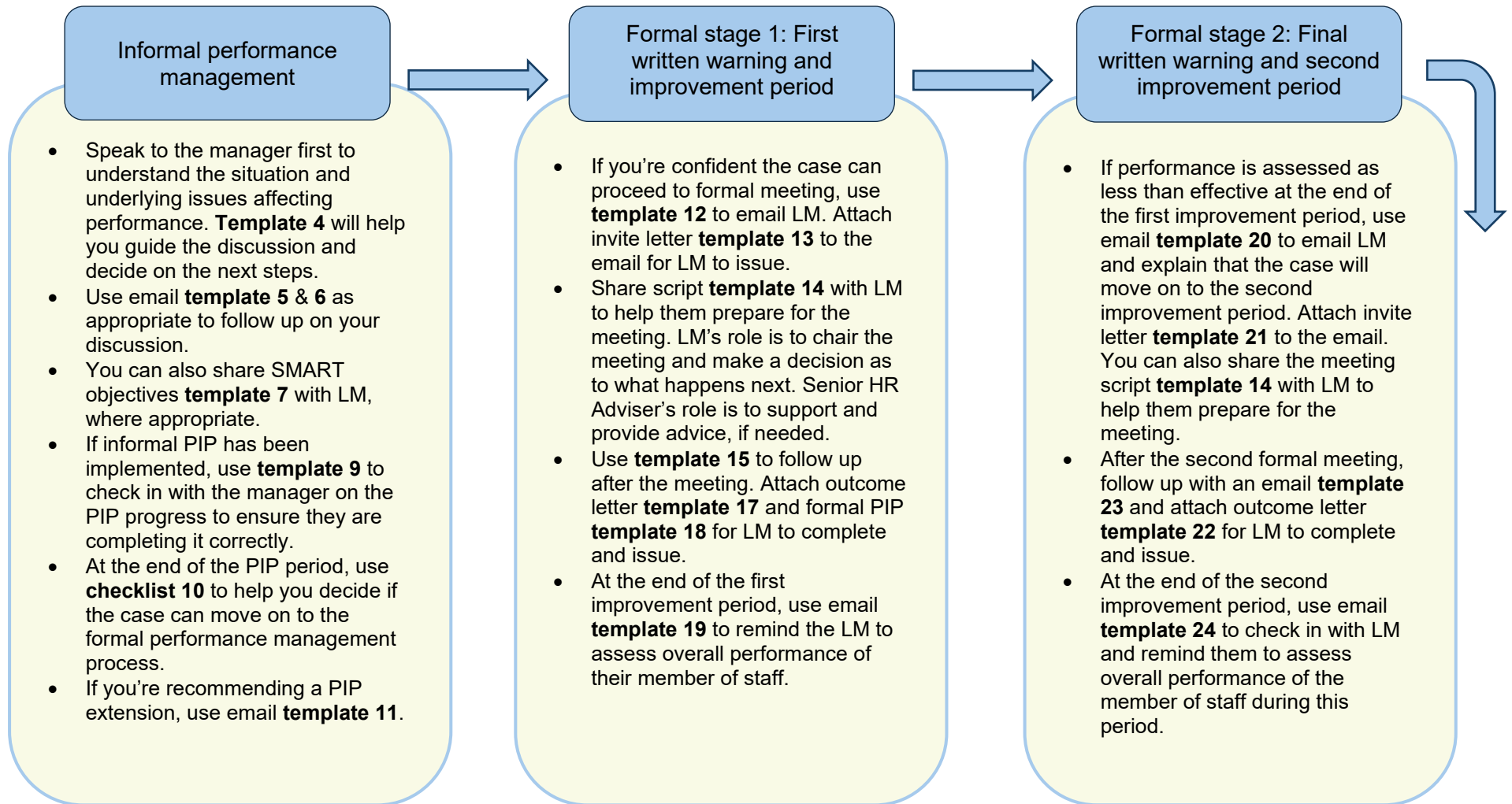
SGLD – Scottish Government Legal Directorate

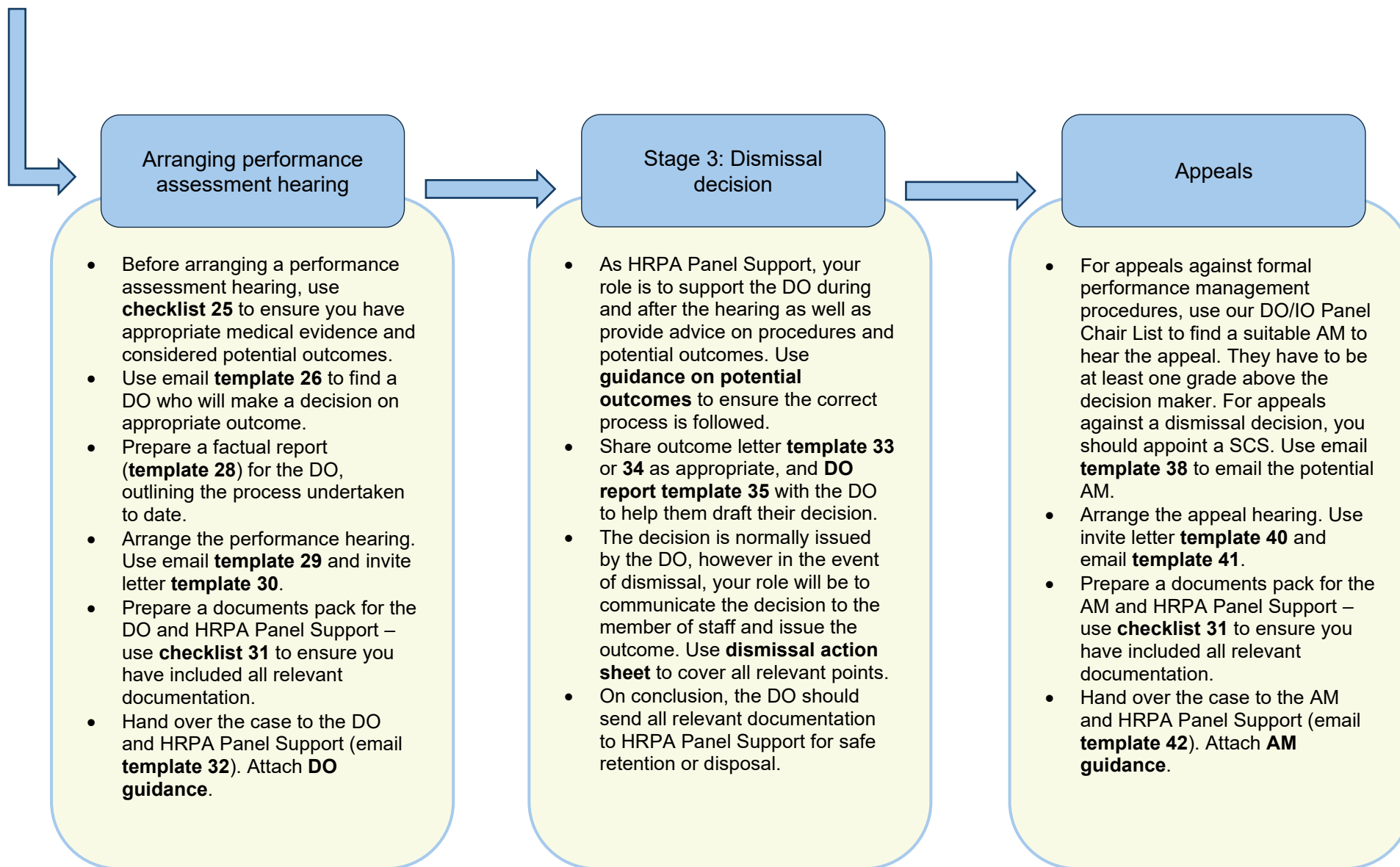
		Contents link	eRDM link
1	Flowchart	Overview of the process	
2	Checklist	Considerations throughout the process	
3	Guidance	Importance of medical advice	
Informal performance process			
4	Checklist	Discussing performance issue for the first time	
5	Email	Explaining the first steps when a member of staff isn't performing	
6	Email	Starting informal PIP	
7	Template	SMART objectives template	https://erdm.scotland.gov.uk/documents/A52534425/details
8	Template	Informal PIP	https://erdm.scotland.gov.uk/documents/A50082359/details
9	Email	Checking on PIP progress	
10	Checklist	Deciding if the case can move on to formal	

11	Email	Recommending PIP extension	
Stage 1: First written warning and first improvement period			
12	Email	Moving on to formal meeting	
13	Letter	Invite letter to the first formal meeting	https://erdm.scotland.gov.uk/documents/A52534603/details
14	Template	Meeting script/talking points for the LM	<i>This script applies to both, first and second formal meeting</i> https://erdm.scotland.gov.uk/documents/A52534677/details
15	Email	Follow up after the first formal meeting	
16	Email	Sharing the note after the meeting	<i>This template can be used after all formal meetings</i>
17	Letter	Outcome letter - first warning and first improvement period	https://erdm.scotland.gov.uk/documents/A52535257/details
18	Template	Formal PIP Template	https://erdm.scotland.gov.uk/documents/A50082344/details
19	Email	Reminding LM to assess performance at the end of first improvement period	
Stage 2: Final written warning and second improvement period			
20	Email	Moving on to the second formal meeting	
21	Letter	Invite letter to second formal meeting	https://erdm.scotland.gov.uk/documents/A52535422/details
22	Letter	Outcome letter – final warning and second improvement period	https://erdm.scotland.gov.uk/documents/A52535545/details
23	Email	Follow up after the second formal meeting	
24	Email	Reminding LM to assess performance at the end of second improvement period	
25	Checklist	Points to consider before setting up a performance assessment hearing	
Stage 3: Dismissal decision – Performance assessment hearing			
26	Email	Looking for DO	<i>Link to the IO/DO Panel Chair List:</i> https://erdm.scotland.gov.uk/documents/A10644098/details
27	Guidance	DO guidance	https://erdm.scotland.gov.uk/documents/A52548214/details
28	Template	Factual report	https://erdm.scotland.gov.uk/documents/A52548445/details
29	Email	Inviting member of staff to a meeting with DO	

30	Letter	Invite letter to a meeting with DO	https://erdm.scotland.gov.uk/documents/A52551260/details
31	Checklist	Checklist for the meeting pack	
32	Email	Handing over case information to the DO and HRPAs panel support	
33	Letter	DO outcome letter	https://erdm.scotland.gov.uk/documents/A52552927/details
34	Letter	DO outcome letter – dismissal	https://erdm.scotland.gov.uk/documents/A52552966/details
35	Template	DO report	https://erdm.scotland.gov.uk/documents/A52553278/details
36	Guidance	Guidance on potential outcomes	
37	Guidance	Dismissal Action sheet	https://erdm.scotland.gov.uk/documents/A52553377/details
Appeal process			
38	Email	Looking for AM	
39	Guidance	AM guidance	https://erdm.scotland.gov.uk/documents/A52553756/details
40	Letter	Invite letter to appeal meeting	https://erdm.scotland.gov.uk/documents/A52553837/details
41	Email	Inviting member of staff to appeal meeting	
42	Email	Handing over the case to AM and HRPAs panel support	
43	Letter	AM outcome letter	https://erdm.scotland.gov.uk/documents/A52553992/details
44	Template	AM report	https://erdm.scotland.gov.uk/documents/A52554296/details

1. Overview of the process





2. Considerations throughout the process

- ✓ **Transparency** – Does the member of staff understand the process and consequences of continued poor performance? Have they been signposted to the policy and procedure?
- ✓ **Adjustments** – Have all workplace adjustments, including reasonable adjustments been made? Consider OH/OPM referrals as well as information provided by the staff member about adjustments that have previously assisted them.
- ✓ **Records keeping** – Is the manager keeping a record and evidence of performance concerns, support, feedback and conversations? You should also keep a record of any other relevant information and support you arranged for the individual. In exceptional circumstances when a redeployment is being considered, you should also keep a copy of any emails and conversations in relation to this process. All relevant records and evidence should be saved in Sensitive Case Management. Please refer to point 3 for further information on when redeployment may be appropriate.
- ✓ **Medical advice** – Has a referral to OH/OPM been made? Is the last OH report up to date? Have you explained the importance of this to the employee? Please see guidance on importance of medical advice (point 3).

3. Importance of medical advice

Similar to attendance, performance can be impacted by the staff member's disability or a health condition and could result in an efficiency dismissal. If there is an underlying health condition, it's important that a member of staff is referred to OH for further advice on management of the case. You should explain to them that you would like to make a referral to seek medical advice on their condition, how it impacts their performance and what support can be provided to help them improve their performance. Ultimately, we can't force anyone to be referred to OH, however the member of staff should be aware that if they don't consent to OH referral any decisions will be made in the absence of medical advice.

Depending on the stage of the performance process, it may be appropriate to seek OH advice on the employee's capability for example, whether they can provide an effective level of performance or if they are a candidate for an ill health retirement (IHR). In exceptional circumstances, redeployment might have to be considered however, only as a final option if it becomes evident that the performance issues are directly impacted by the health condition, and all other reasonable adjustments have been fully explored. Please note that redeployment should not normally be used to resolve performance concerns. You should carefully consider if this is a poor performance issue or if any adjustments can be made to support the individual in the first instance, seeking advice from OH, when required.

Consider asking OH the following questions when making a referral:

- What reasonable adjustments can be made for **NAME** to help them reach an effective standard of performance?
- What is the likelihood of **NAME** providing an effective service going forward?
- Is **NAME**'s performance impacted by their health condition?
- Are there any barriers to **NAME** meeting an effective performance standard?
- Is **NAME** likely to be a candidate for an ill health retirement?
- Considering **NAME**'s role, are they fit to carry out their full duties?
- Based on your assessment, are the performance concerns specific to the current role, or are they likely to persist in a different role?

You should ensure that the member of staff is aware you will be asking OH specific questions about their condition and performance. You should also provide a copy of the staff member's job description so that OH can be specific in relation to the requirements for the role.

4. Discussing performance issue for the first time

This conversation template can help you guide the discussion with the manager

- ✓ Ask the manager to provide background information, including the job description and objectives, and explain what they have done so far to address the performance issue. This is to help you decide on the next steps.
- ✓ Check if the manager has already raised the performance concerns with the member of staff. If so, how and when? What was agreed? If not, recommend that they raise that with the member of staff as part of regular meeting or next monthly conversation (email template 5) and that they keep a record of these conversations and agreed actions.
- ✓ Check if the manager is aware of any underlying issues i.e. domestic, personal, health conditions that could have an impact on performance and ask if any adjustments have been made to support the individual. Consider if any support should be arranged at this stage, e.g. OH/OPM referral.
- ✓ If your advice is to implement informal performance procedures, explain the process and what is required. Follow up with an email (email template 6).
- ✓ If the manager thinks they have already carried out the informal performance process, ask them to email you with the evidence they gathered so you can review and advise on whether the case can move on to the formal process (point 10 in this guidance).
- ✓ Ask the line manager to make the countersigning manager aware of the performance concerns, in order that they can support, advice and coach the line manager over the coming weeks.

5. Explaining the first steps when a member of staff isn't performing

This email template will be relevant when raising concerns for the first time when prior conversations regarding performance haven't been had. If those conversations had taken place, move to point 6.

Dear **NAME**

You explained that you have a member of staff who you feel is not performing to an effective standard.

I would suggest that you raise your concerns with them during the next monthly conversation or as part of a regular meeting. During the meeting, you should be clear on what your specific concerns are and use examples to explain these, explore whether there are any underlying reasons (for example insufficient training, medical, domestic, personal circumstances). You may also wish to ask whether they feel there is anything that could be put in place to help improve performance. Together you can also explore training opportunities (ask if they feel they have had sufficient training, and if not ask what they might benefit from), mentoring (perhaps a senior colleague for help/advice) and buddying (this could be someone of the same grade who can offer support and guidance on certain tasks). At the meeting, it may be appropriate to discuss a referral to Occupational Health (OH) for further advice on adjustments that could be put in place to support the member of staff at work. I'm happy to arrange this if the member of staff feels this would be beneficial. You should also review the individual's objectives to ensure they are up to date, SMART and the member of staff is aware of what is expected of them.

You should follow up the discussion in writing by email to confirm understanding and any actions agreed going forward. If performance doesn't improve, it may be appropriate to implement informal performance process, so you could signpost the member of staff to [Bands A-C performance management procedure](#) for full transparency.

Depending on the nature of any information shared with you, please note the [wellbeing support](#) that is available to your staff member.

You may wish to access the following materials to assist you:

[SG's performance management support materials for line managers](#)
[The workplace wellbeing run by our Occupational Health provider Optima](#)

Please let me know if you have any questions.

Kind regards,

6. Starting informal PIP

Attach to the email: <https://erdm.scotland.gov.uk/documents/A50082359/details>

Dear **NAME**

Following on from our meeting, you explained that you have a member of staff who you feel is not performing to an effective standard. I recommend that you meet to discuss:

- your concerns and explore whether there are any underlying reasons (for example insufficient training, medical, domestic, personal circumstances) and if anything is raised, I'm happy to provide further advice on what support can be provided.
- the individual's objectives to ensure they are up to date, SMART and the member of staff is aware of what is expected of them.
- ask whether they feel there is anything that could be put in place to help them improve their performance. Together you could explore training opportunities (ask if they feel they have had sufficient training, and if not ask what they might benefit from), mentoring (perhaps a senior colleague for help/advice) and buddying (this could be someone of the same grade who can offer support and guidance on certain tasks).

At the meeting, it should be made clear they are not currently performing at the required standard and, therefore, informal performance [Bands A-C performance management procedure](#) will be put in place to support them to reach an effective standard. I have attached an informal performance improvement plan (PIP) template which you should use to record the concerns, support being given and the progress/lack of progress in meeting the objectives. The PIP includes further information on how to complete it. A review period should be agreed, and the duration will depend on the nature of the concerns. The timeframe should be reasonable and proportionate, and in most cases, should not exceed 12 weeks. You should also schedule regular review meetings throughout the agreed period and I would recommend that these take place weekly. You should both have access to and contribute to the document on a regular basis. It's important to collate evidence and keep record of any conversations around performance during this time, for example by summarising a meeting and sharing or through the improvement plan template (Part B in the PIP).

At the end of the 12-week period, you can review and decide if improvements have been made and no further action is required or agree a further period. It should also be clear that if no or little improvement is made after the set period, it may be appropriate to apply formal performance procedures. You should get in touch with me if that is the case, so I can review the evidence you gathered, including the completed PIP and advise on the next steps. I would recommend you follow up the conversation in writing to ensure there is a record and to confirm understanding. You should also include links to the policy on Saltire for full transparency.

Depending on the nature of any information shared with you, please note the [wellbeing support](#) that is available to your staff member.

You may wish to access the following materials to assist you:

[SG's performance management support materials for line managers](#)

[The workplace wellbeing run by our Occupational Health provider Optima](#)

Please let me know if you have any questions.

7. SMART objectives template

<https://erdm.scotland.gov.uk/documents/A52534425/details>

8. Informal PIP

<https://erdm.scotland.gov.uk/documents/A50082359/details>

9. Checking on PIP progress

Set a reminder for yourself to do this after the first 4 – 6 weeks to ensure the line manager is completing the PIP correctly.

Dear **NAME**

Following on from our previous conversations, I just wanted to check on the progress of the informal performance plan and see if you needed any support.

I would be happy to review any evidence you have gathered so far, if helpful or meet to discuss further.

Kind regards

10. Deciding if the case can move on to formal

This checklist can help you decide if the case can move on to formal proceeding or whether an extension to PIP would be more appropriate

- ✓ Has PIP been completed and are concerns outlined clearly?
- ✓ Was the individual made aware that lack of improvement may result in formal procedures being applied?
- ✓ Were SMART objectives set?
- ✓ Is there a record of regular review meetings throughout the informal process? There should be a minimum of 6 meetings in a 12-week period, unless there are extenuating circumstances
- ✓ Is there evidence of support provided to the individual from their line manager?
- ✓ Is there evidence of progress/lack of progress made against the objectives?
- ✓ Has a referral to OH/OPM been made, if appropriate? Refer to the guidance on importance of medical advice (point 3) for further details.
- ✓ Are objectives related to performance? Conduct and attendance related issues should be dealt with under separate procedures.
- ✓ Consider if extension to informal improvement period is more appropriate. Our team may delay applying the formal performance improvement procedures and agree a further informal period with the manager if:
 - it is clear that the manager has not acted on the issues agreed during the informal stage, or
 - it comes to light that there are mitigating circumstances relating to the employee's performance which are new or have not been identified previously, for example, if additional small amount of time would allow sufficient improvement or if the employee had been absent from work.

11. Recommending PIP extension

Dear **NAME**

Thank you for sending over the evidence you gathered during the informal performance process. I have now had a chance to review it, and I would suggest extending the informal process for another **X** weeks. **[Insert reasoning behind your decision]**.

I would be happy to arrange a meeting for us to discuss this further, if helpful.

Kind regards,

12. Moving on to formal meeting

Attach invite letter: <https://erdm.scotland.gov.uk/documents/A52534603/details>

Attach script: <https://erdm.scotland.gov.uk/documents/A52534677/details>

Dear **LM NAME**

Thank you for sending over the evidence you gathered during the informal performance process. I have now had a chance to review it, and I am content that we move on to the formal process.

You will see from the policy that as a next step, you will need to arrange a formal meeting with **NAME** to discuss the performance concerns, the basis of the concerns and possible causes. I will also attend the meeting for support to help you both in agreeing a formal Performance Improvement Plan (PIP) for the 1st improvement period. **[Insert details re your availability for a meeting]**.

I have attached the invite letter which you will need to complete and email to **NAME**. When emailing them, you should also attach the relevant documents i.e. PIP and any further evidence you wish to include. You should give **NAME** at least 5 working days' notice.

I have also prepared a script for the meeting to give you an understanding of what should be discussed. Please see attached. This is a starting point of the minimum that needs to be covered, but you can add further information and amend accordingly.

As a reminder you may wish to access the following materials to assist you, including handling difficult conversations:

[SG's performance management support materials for line managers](#)

[The workplace wellbeing run by our Occupational Health provider Optima](#)

Please let me know if you have any questions or would like to meet to discuss this further.

Kind regards,

13. Invite letter to the first formal meeting

<https://erdm.scotland.gov.uk/documents/A52534603/details>

14. Meeting script/talking points for the LM

<https://erdm.scotland.gov.uk/documents/A52534677/details>

15. Follow up after the first formal meeting

Attach outcome letter: <https://erdm.scotland.gov.uk/documents/A52535257/details>

Attach PIP: <https://erdm.scotland.gov.uk/documents/A50082344/details>

Dear **NAME**

Following on from the formal meeting on **DATE** with **NAME**, please see attached the template outcome letter as well as the formal PIP, which you will need to complete and issue to **NAME**. The PIP should be based on the discussion we had during the formal meeting. Please refer to the Guidance Notes within the PIP template for further instruction. When issuing the outcome letter and PIP, could you please copy me into the email so I can save it into **NAME**'s records. I'm happy to look over the letter or PIP before it is issued if you feel this would be helpful.

The improvement period timescale can vary but will not normally be less than 3 months. Throughout the period, you should also have regular meetings and record progress discussions using Part B in the PIP. I recommend that these review meetings take place weekly and the dates are recorded in the calendar.

At the end of the first improvement period, you will need to complete Part B Overall Assessment and Outcome of First Improvement Period for **NAME**, which can be found in the formal PIP template. If the marking is effective, then no further action is required. If the marking is less than effective, please forward the PIP on to me along with any supporting evidence you gathered during the first improvement period.

As a reminder you may wish to access the following materials to assist you, including handling difficult conversations:

[SG's performance management support materials for line managers](#)

[The workplace wellbeing run by our Occupational Health provider Optima](#)

Kind regards

16. Sharing the note after the meeting

Hi **NAME**,

Please see attached summary note of the meeting on **DAY**.

Please note this is not verbatim. Can you please confirm if this is an accurate reflection of the conversation by **DATE**.

If there is anything you would like to change or add, please do so using track changes and return to me by **DATE**.

Thank you,

17. Outcome letter - first warning and first improvement period

<https://erdm.scotland.gov.uk/documents/A52535257/details>

18. Formal PIP Template

<https://erdm.scotland.gov.uk/documents/A50082344/details>

19. Reminding LM to assess performance at the end of first improvement period

This email also explains the next steps if performance is assessed as less than effective. You should set yourself a reminder in the calendar to email the LM 3 weeks before the end of the first improvement period.

Dear **NAME**

I'm getting in touch as **NAME**'s first improvement period is coming to an end and I would like to remind you that as a next step, you will need to complete Part B Overall Assessment and Outcome of First Improvement Period for **NAME**, which can be found in the formal PIP template. Please refer to the Guidance Notes within the PIP template for further instruction.

In line with the policy, if the marking is effective, you should write to the member of staff recognising the improvement, confirming no further action will be taken and making clear that the improved performance must be maintained. If the marking is less than effective, please let the member of staff know that as a next step, we will need to arrange a second formal meeting and a second improvement period will begin. If that is the case, please forward the formal PIP on to me along with any supporting evidence you gathered during the first improvement period.

Many thanks,

20. Moving on to the second formal meeting

Attach invite letter: <https://erdm.scotland.gov.uk/documents/A52535422/details>

Dear **NAME**

Thank you for sending over the completed PIP. Further to our email exchange, you will see from the policy that as a next step, you will need to arrange a second formal meeting with **NAME** to discuss the continued performance concerns. I will also attend the meeting for support to help you both agree a further PIP for the 2nd improvement period. **[Insert details re your availability for a meeting]**.

I have attached the invite letter which you will need to complete and email to **NAME**. When emailing them, you should also attach the relevant documents i.e. formal PIP from the 1st improvement period and any further evidence you wish to include. You should give **NAME** at least 5 working days' notice.

Please let me know if you have any questions or would like to meet to discuss this further.

Kind regards,

21. Invite letter to second formal meeting

<https://erdm.scotland.gov.uk/documents/A52535422/details>

22. Outcome letter – final warning and second improvement period

<https://erdm.scotland.gov.uk/documents/A52535545/details>

23. Follow up after the second formal meeting

Attach outcome letter: <https://erdm.scotland.gov.uk/documents/A52535545/details>

Attach formal PIP: <https://erdm.scotland.gov.uk/documents/A50082344/details>

Dear **NAME**

Following on from the formal meeting on **DATE** with **NAME**, please see attached the template outcome letter as well as the formal PIP, which you will need to complete and issue to **NAME**. The PIP should be based on the discussion we had during the formal meeting. Please refer to the Guidance Notes within the PIP template for further instruction. When issuing the outcome letter and PIP, could you please copy me into the email so I can save it into **NAME**'s records. I'm happy to look over the letter or PIP before it is issued if you feel this would be helpful.

Throughout the period, you should also have regular meetings and record progress discussions using Part C in the PIP. I recommend that these review meeting take place weekly and the dates are recorded in the calendar.

At the end of the second improvement period, you will need to complete Part C Overall Assessment and Outcome of Second Improvement Period for **NAME**, which can be found in the formal PIP template. If the marking is less than effective, a Deciding Officer will be appointed to review all evidence gathered throughout the process and decide on appropriate outcome.

Kind regards,

24. Reminding LM to assess performance at the end of second improvement period

This email also explains the next steps if performance is assessed as less than effective. You should set yourself a reminder in the calendar to email the LM 3 weeks before the end of the first improvement period

Dear **NAME**

I'm getting in touch as **NAME**'s second improvement period is coming to an end and I would like to remind you that as a next step, you will need to complete Part C Overall Assessment and Outcome of Second Improvement Period for **NAME**, which can be found within the PIP template.

In line with the policy, if the marking is effective, you should write the member of staff recognising the improvement, confirming no further action will be taken and making clear that the improved performance must be maintained. If the marking is less than effective, please forward the PIP on to me along with any supporting evidence you gathered during the second improvement period. Please let the member of staff know the outcome of the second improvement period and that a Deciding Officer will be appointed to review all evidence gathered throughout the performance process and decide on appropriate outcome. They would also meet with **NAME** to give them an opportunity to provide any further information they feel is relevant and clarify any outstanding issues.

Many thanks,

25. Points to consider before setting up a performance assessment hearing

- ✓ Have you obtained up to date medical advice? Refer to point 3 for further guidance.
- ✓ Is this likely to be a case for an efficiency dismissal? One of the possible outcomes for the Deciding Officer to consider is dismissal, so if there is an underlying health condition it may be appropriate to request an efficiency dismissal estimate to avoid delays at a later stage.

26. Looking for DO

Hi **NAME**

I'm looking to appoint a Deciding Officer (DO) for a performance case within DG **FAMILY NAME**. The role of a DO is to meet with the individual concerned, review all the evidence gathered throughout the performance process and decide on appropriate outcome which may include dismissal, downgrading or an alternative course of action.

Please let me know if you feel you have capacity to take this on. I am happy to have a chat if you have any questions or would like further information.

Kind regards

FOLLOW UP:

Hi **NAME,**

Thank you for confirming you have capacity to assist. Before I provide any further detailed information, can I please check you have had no prior involvement with the matter and there are no conflicts of interest with those involved. The performance process relates to **PROVIDE BRIEF DETAILS** and involves **NAMES**.

Many thanks

27. DO guidance

<https://erdm.scotland.gov.uk/documents/A52548214/details>

28. Factual report

<https://erdm.scotland.gov.uk/documents/A52548445/details>

29. Inviting member of staff to a meeting with DO

Line manager is copied into this email, so send documents pack separately. The pack should be sent as soon as the invite letter is issued, ideally on the same day.

Hi **NAME**,

CC **LINE MANAGER**

I am writing to you following the end of your second improvement period. In accordance with the procedures for managing less than effective performance I am referring your case to a Deciding Officer (DO) for their consideration and appropriate action. Please see the attached invite to the meeting on **DATE** at **TIME** via **Microsoft Teams/LOCATION**. A calendar invite will be issued shortly.

As detailed within the invitation, I will be providing the DO with a report and relevant papers setting out the circumstances of the case. I will email you separately with the documents pack and the factual summary report, which I will also share with the DO. Considering this, could you please let me know if you're happy for me to share your **OPM/OH** report with the DO? It's so they can better understand your condition and consider it when making their decision **[delete as appropriate]**.

I appreciate that this situation can be an upsetting or uncertain time and would take this opportunity to remind you of the support available from the Wellbeing Team Services via [iFix Portal - Wellbeing Services](#) or wellbeingservices@gov.scot. The Employee Assistance Service can be contacted on 0800 587 5670.

Please note, you are required to acknowledge receipt of this letter by confirming by e-mail. If you have any questions regarding the letter or the process, please let me know. I'm happy to chat via teams, if easier.

Kind regards,

30. Invite letter to a meeting with DO

<https://erdm.scotland.gov.uk/documents/A52551260/details>

31. Checklist for the meeting pack

The documents pack should be sent as soon as the invite letter is issued, ideally on the same day.

A meeting pack should be prepared by the original case holder and shared with the DO, HRP Panel Support and member of staff. It should include the following:

- ✓ Informal process documentation:
 - Informal PIP, records of performance review meetings, further evidence if applicable.
- ✓ Formal first improvement period documentation:
 - Outcome letter of the first formal meeting, note of the meeting, formal PIP, records of performance review meetings, further evidence if applicable.
- ✓ Formal second improvement period documentation:
 - Outcome letter of the second formal meeting, the note of meeting, formal PIP, records of performance review meetings, further evidence if applicable.
- ✓ Part C of the formal PIP completed by manager
- ✓ OH and OPM reports, if applicable. OH report should be robust and contain medical advice to help the DO make an informed decision.
- ✓ Factual report summarising the process
- ✓ Invite to performance assessment hearing letter
- ✓ If this is an appeal hearing, include the outcome of the performance assessment hearing in the pack as well.

32. Handing over case information to the DO and HRP panel support

Attach DO guidance: <https://erdm.scotland.gov.uk/documents/A52548214/details>

Dear **NAME**

CC **PANEL SUPPORT**

Thank you for agreeing to act as the Deciding Officer for the performance case relating to **NAME**. Please see the attached document pack relevant to the case including a factual report which provides a summary of the process and DO guidance. Below I have also included the links to the performance policy.

[Bands A-C performance management procedure](#)
[A-C Perf Appraisal procedure - Word.docx](#)

The meeting has been arranged for **DATE** and **TIME**. **NAME OF PANEL SUPPORT** will attend to support you during the meeting and provide procedural advice. I will let you both arrange a suitable pre-meet.

If you need any further information, or have any questions, please let me know.

Many thanks

33. DO outcome letter

<https://erdm.scotland.gov.uk/documents/A52552927/details>

34. DO outcome letter – dismissal

<https://erdm.scotland.gov.uk/documents/A52552966/details>

35. DO report

<https://erdm.scotland.gov.uk/documents/A52553278/details>

36. Guidance on potential outcomes

Downgrading:

1. **The DO** will issue the outcome letter and decision report to the member of staff. The outcome letter will include details of when the downgrading will take effect and what the new salary will be. Normally this is with immediate effect and pay information can be obtained from the pay team (e.g. <redacted>). The member of staff will move to the equivalent pay step they occupy at the current grade. For example, if the member of staff is downgraded from max B3, they will resort to max B2.
2. Once the letter is issued, **HRPA Panel Support** should notify the Pay Admin team of the downgrading in order to amend salary details.
3. **The HRPA case holder** should extract and share the relevant parts of the outcome letter and/or report with the manager and discuss the next steps.
4. **The member of staff** will be required to undertake work to reflect the change of grade until a permanent post at that grade has been identified within the Division, Directorate or wider SG. This responsibility lies with the business area, HR PA Manager and HRBP. The business area should manage the member of staff until such post is identified.
5. If no such post is found, the **HRPA Manager** will contact **HRBP** and **Resourcing** to add the member of staff to the Priority Movers process. The full details of the process can be found on slide 5-7 in priority movers process map, which has been saved to eRDM - <https://erdm.scotland.gov.uk/documents/A52564654/details>.

Dismissal:

1. **The DO** will draft the report and covering outcome letter. Template outcome letter 34 can be shared with the DO, however **HRPA Panel Support** should be available to advise on different aspects of the letter and review it before seeking legal advice.
2. If there is medical evidence showing that the performance is impacted by an underlying condition or a disability, the **DO** and **HRPA Panel Support** should consider efficiency dismissal and awarding compensation as per the [Civil Service efficiency compensation guidance](#). The decision on the level of the compensation ultimately lies with the HRPA Panel Support.
3. If this is a case for efficiency dismissal, **HRPA Panel Support** should also contact the **HRPA Case Holder** and ask them to start drafting a business case for an efficiency dismissal. The **HRPA Panel Support** might have to update the business case at its final stage to ensure it explains the DO's decision and reasoning behind the level of

the compensation. The business case should then be passed on to the C1 Deputy Head of the PA team for approval in the first instance. Deputy Head will be able to advise on any further approvals that may be required.

4. Once the draft report and outcome letter is finalised, **HRPA Panel Support** will contact **SGLD** for further advice on the case. HRPA Panel Support should then meet with the DO to discuss the advice provided by SGLD. The **DO** should consider any legal advice carefully and incorporate it into the letter, where appropriate. This can be completed alongside the business case approval process (if applicable) to avoid any delays in issuing the outcome.
5. Once the outcome is ready to issue and business case approved (if applicable), the **HRPA Panel Support** should, in the first instance, notify the HRPA Case Holder and LM of the decision. This ensures they are prepared to support the member of staff once they receive the outcome. The LM should only be made aware of the decision that was made and effective date of dismissal. The outcome letter is confidential and should not be shared with the LM unless the letter states otherwise or there is some pertinent information they need to be aware of. HRPA Panel Support should then set up a call with the member of staff to notify them of the decision that was made. HRPA Panel Support should refer to dismissal action sheet (point 37) when conducting the call. Following the call, they should also email the member of staff with the outcome.
6. **HRPA Panel Support** should arrange for the SCOTS access to be removed on the same day. There isn't a relevant iFix for this. You may wish to log the call under [iFix Portal - SCOTS IT Fault \(systems.gov.scot\)](#) and contact a colleague in IT (e.g. <redacted>) to action the call as soon as possible. PA Panel Support should also email opsec@gov.scot to disable the security pass and Pay Admin colleagues <redacted> at <redacted> and <redacted> at <redacted> to ensure that the member of staff is processed as a leaver and paid any money (e.g. Pay in lieu of notice and compensation, if applicable) and annual leave they are due.
7. **Line manager** should complete the leaver's journey in Oracle. The line manager should also arrange for the equipment to be returned following the appeal period.

Alternative actions:

Not defined under the policy, but from past cases it may include a **further improvement period:**

1. The **DO** must specify in the letter when the improvement period should commence i.e. with immediate effect or from a certain date/point e.g. when all adjustments have been identified and put in place.

2. The **DO** must explain the next steps and what will happen at the end of the additional improvement period i.e. that at the end of that period the performance must be reassessed. If performance is marked as effective, then no further action would be required. If performance remains less than effective, then another assessment performance hearing will be required. The DO must specify if the same panel will reconvene or if a new panel should be arranged.
3. The **DO** should issue the outcome letter to the member of staff.
4. The **HRPA Case Holder** should share the relevant parts of the outcome with the manager and consider any recommendations made by the DO.

37. Dismissal Action sheet

<https://erdm.scotland.gov.uk/documents/A52553377/details>

38. Looking for AM

Hi **NAME**

I'm looking to appoint an Appeal Manager for a performance case within DG **FAMILY NAME**.

Please let me know if you feel you have capacity to take this on. I am happy to have a chat if you have any questions or would like further information.

Kind regards

FOLLOW UP:

Hi **NAME**,

Thank you for confirming you have capacity to assist. Before I provide any further detailed information, can I please check you have had no prior involvement with the matter and there are no conflicts of interest with those involved. The performance process relates to **PROVIDE BRIEF DETAILS** and involves **NAMES**.

Many thanks

39. AM guidance

<https://erdm.scotland.gov.uk/documents/A52553756/details>

40. Invite letter to appeal meeting

<https://erdm.scotland.gov.uk/documents/A52553837/details>

41. Inviting member of staff to appeal meeting

Hi **NAME**,

CC **LINE MANAGER**

Following on from your appeal submitted on **DATE** against the DO's decision to **INSERT DETAILS**, I have appointed an Appeal Manager to consider your appeal. Please see the attached invite to the meeting on **DATE** at **TIME** via **Microsoft Teams/LOCATION**. A calendar invite will be issued shortly.

As detailed within the invitation, I will be providing the Appeal Manager with relevant papers setting out the circumstances of the case, including the DO's outcome letter and report. I will email you separately with the documents pack, which I will also share with the Appeal Manager. Considering this, could you please let me know if you're happy for me to share your **OPM/OH** report with them? It's so they can consider the information contained in the report when making their decision **[delete as appropriate]**.

I appreciate that this situation can be an upsetting or uncertain time and would take this opportunity to remind you of the support available from the Wellbeing Team Services via [iFix Portal - Wellbeing Services](#) or wellbeingservices@gov.scot, and the Employee Assistance Service on 0800 587 5670.

Please note, you are required to acknowledge receipt of this letter by confirming by e-mail. If you have any questions regarding the letter or the process, please let me know. I'm happy to chat via teams, if easier.

Kind regards,

42. Handing over the case to AM and HRP panel support

Attach AM guidance: <https://erdm.scotland.gov.uk/documents/A52553756/details>

Dear **NAME**

CC **PANEL SUPPORT**

Thank you for agreeing to act as the Appeal Manager (AM) for the performance case relating to **NAME**. Please see attached documents pack relevant to the case and the AM guidance. Below I have also included the links to the performance policy.

[Bands A-C performance management procedure](#)
[A-C Perf Appraisal procedure - Word.docx](#)

The meeting has been arranged for **DATE** and **TIME**. **NAME OF PANEL SUPPORT** will attend to support you during the meeting and provide procedural advice. I will let you both arrange a suitable pre-meet.

If you need any further information, or have any questions, please let me know.

Many thanks

43. AM outcome letter

<https://erdm.scotland.gov.uk/documents/A52553992/details>

44. AM report

<https://erdm.scotland.gov.uk/documents/A52554296/details>

Scottish Government Performance Management Guidance

Deciding Officer Guide

The purpose of this guide is to support Deciding Officers carrying out their role under the SG Performance management policy and procedures.

Appointment of a Deciding Officer

Under the SG's [Bands A-C performance management procedure \(sharepoint.com\)](#), a Deciding Officer (DO) is appointed by the HR People Advice (PA) team to review the evidence gathered throughout the performance process, including any written or oral representation from the member of staff subject to performance process and decide on appropriate outcome, which may include downgrading, dismissal or other alternatives.

When approached by the PA team, the DO should consider their availability, such as unavoidable deadlines, leave, etc. The DO should only accept the assignment if they are confident of having the time and capacity to make the case a priority and have the agreement of their manager. The DO will be asked to confirm that they have had no prior involvement with any aspect of the matter, and no close association with the member of staff who is managed under the performance procedure. For example, this includes confirming that the DO is not a relation of, or in a relationship with, either of the parties.

When appointed the DO, will be asked to declare any actual or potential conflict of interest ideally at the outset or as soon as they become aware. This helps ensure all parties can trust that fair and appropriate decisions will be made. The PA Senior HR Adviser/Manager can provide further advice to the DO on this, if required.

When appointed, the DO should act in line with the Scottish Government values throughout the process, being sensitive to the feelings of the member of staff who is subject to formal performance process. The process can be stressful and emotional, so planning, empathy and sensitivity will help keep the process on track and avoid any undue stress.

All parties involved in the process are required to always maintain confidentiality – including when the process has concluded. Any breaches in confidentiality by any of the parties involved will be treated seriously and where appropriate, considered under the Discipline Policy and Procedure. If the DO is unsure of what information they can share and who they can talk to, they should ask the PA Senior HR Adviser/manager to advise them on this.

Preparing for the meeting

Following the appointment of the DO, the PA Senior HR Adviser/Manager will arrange a meeting for the DO and the member of staff. The purpose of the meeting is to give the individual an opportunity to state their case and for the DO to clarify any outstanding issues and decide on appropriate outcome.

Ahead of the meeting, all parties will be provided with relevant documentation pertaining to the case. The documents pack should include the following:

- informal process documentation, including an informal Personal Improvement Plan (PIP) used to record performance concerns, progress and support provided to the individual
- formal first and second improvement period documentation, including formal PIP(s)
- factual report summarising events prepared by the Senior HR Adviser
- occupational health/OPM report(s) (if applicable)
- further evidence gathered throughout the process including outcome letters and notes of the meetings

The DO should read and analyse the information contained in the pack and any further statements provided by the member of staff. If the DO has any questions or feel there is essential information not covered in the pack, then they must raise this urgently with the Senior HR Adviser who is managing the case. When assessing the evidence, the DO should consider the following criteria:

- have the formal Scottish Government procedures for performance management been followed correctly?
- has the member of staff been made aware of the process and consequences of not improving?
- have support and adjustments been put in place?
- were the objectives set appropriate and realistic i.e. SMART?
- is the evidence of performance concerns provided sufficient to make a judgement?
- have all mitigating circumstances been factored in, where appropriate?

Meeting

DO will have support from the PA Senior HR Adviser/Manager at the meeting, who had no previous involvement in the case. They will:

- provide advice and guidance on procedures and/or any other information which the DO requires
- ensure the DO focuses on the relevant evidence and facts of the case
- discuss the potential outcomes with the DO and recommendations which may be appropriate referring to precedents

A full written record of the meetings must be kept and stored in line with Scottish Government records management policy in case required for evidence in an appeal or ultimately an employment tribunal. The PA Senior HR Adviser/Manager will discuss arrangements for note taking with the DO. The DO should advise the member of staff they are meeting with that a record of the meeting will be kept and that this will be shared with them. The DO should share a copy of the record with the member of staff to check that it is accurate and allow them to propose amendments within 5 working days unless there are extenuating circumstances (e.g., a period of annual leave). Any agreed amendments should be noted on the record. If there is disagreement about the content of the record, the DO should note this and include with their decision letter.

The guidance on conducting formal meetings can be found in Annex A.

Decision

Following the meeting, the DO will assess the evidence put forward and decide on appropriate outcome which may be a dismissal, downgrading or alternative action.

If there is medical evidence to show that the individual's unsatisfactory performance is caused by an underlying medical condition, the DO should also consider efficiency dismissal as an outcome. If the DO believes that a downgrading or dismissal is not appropriate, they can consider taking alternative action instead. This outcome is not defined under the policy so it is for the DO to consider what action would be most appropriate. For example, if the DO feels that there is not enough evidence to make a decision, or insufficient support had been provided to the individual, they could recommend a further improvement period under formal performance procedure. Redeployment is not normally recommended as an outcome and it should have been explored at earlier stages in the process if it became apparent that the performance issues are directly impacted by the health condition, and all other reasonable adjustments have been fully explored. Senior HR Adviser/Manager supporting the panel will be able to provide further guidance on potential outcomes, including efficiency dismissal, if applicable.

Factors to consider when deciding on the outcome might include:

- whether the performance management procedure was followed correctly
- quality of evidence gathered
- any mitigating circumstances and whether support had been provided to remove any barriers to effective performance, where reasonable to do so
- the extent to which the employee has engaged with the process and support offered
- any evidence and prospects of performance improving if the individual was to be downgraded or when proposing alternative action
- the impact on the business
- medical advice
- legal advice, if applicable

The DO will then draft a report (template at Annex C) setting out how they reached their decision, clearly setting out the reasons for their decision. In the report, the DO should also explain that alternative outcomes were considered and reasons as to why those were not appropriate. They should discuss their report with the PA Senior HR Adviser/Manager before finalising for advice and to agree timings about when the decision should be issued, considering sensitivities that may be relevant (e.g., availability of individuals and support that may be required). The DO should give the line manager and senior management advanced notice of when the decision will be issued so they can support their staff member, liaising with the HR PA Team as appropriate. In the event of dismissal, the decision is communicated and issued to the individual by the Senior HR Adviser/Manager.

The PA Senior HR Adviser/Manager will provide the DO with a template letter and report (Annex B and C) to be sent to the member of staff to set out the basis for their decision. This will inform them of their right of appeal. When issuing their decision letters, these should be copied to the PA Senior HR Adviser/Manager.

Depending on the outcome, the DO can make recommendations for the business area or the member of staff, however this will be limited due to the nature of the process. If the DO is making any recommendations, they should discuss it with the PA Senior HR Adviser/Manager in the first instance to ensure they are workable. If any recommendations are made, The Senior HR Adviser/Manager will take them forward and share with appropriate parties. This will be limited to sharing the recommendations that are relevant. The DO will not be expected or required to follow up the implementation progress of any recommendations directly. The PA Senior HR Adviser/Manager will monitor progress. On conclusion of the decision-making process, the DO should pass all related documentation to the PA team for safe retention or disposal.

Annexes:

Annex A – Guidance on conducting formal meetings

Annex B – DO report template

Annex C – Outcome letter template

Annex A

Guidance for chairing formal DO meetings

1. Purpose

This guidance has been designed to support DO and Appeal Manager's in chairing the formal meeting to best effect.

2. Overview of performance assessment meeting

The purpose of the performance assessment meeting is to resolve any doubts about the evidence gathered throughout the performance process and decide on appropriate outcome in accordance with the SG Performance procedures.

The main task for the DO chairing the meeting is to gain a clear understanding of the evidence gathered by listening to the staff member and asking questions to clarify the facts and understand their perspective but not asking them to repeat information which is already contained in the Performance Improvement Plans, if it's not necessary to do so.

When conducting the meeting, the DO should:

- state what the purpose of the meeting is and ask the staff member to confirm their understanding
- make sure to give the member of staff opportunity to state their case
- actively listen, asking relevant questions and reflecting on any evidence gathered during the performance process and clarify any information that is unclear
- check, at the end of the meeting whether there are any issues that are unclear or have not been covered

3. Pre-requirements to conduct meeting

The DO chair should:

- confirm to the PA Senior HR Adviser/Manager that they can carry out their role with no unreasonable delays, have no actual or potential conflict of interest; have no prior involvement with any aspect of the matter being raised and no close association with the member of staff involved in the meeting.
- have received the relevant training to carry out their role.
- ensure that they have read the relevant SG Policy and procedure as well as any paperwork and supporting evidence for the case so that they are familiar with both the issue and the procedure including the informal and formal PIP.

4. Preparing for a formal meeting

Before holding a meeting, the DO should ensure that:

- the meeting has been scheduled without unreasonable delay and be prepared to discuss the reasons for any delay.
- PA Senior HR Adviser/manager is available to provide support and advice on policy and procedures and note-taking arrangements.
- if meeting in person in the office, the meeting is being held in a private room away from any interruption; if meeting virtually via teams that both they and the staff member are in a safe private space with no-one else present in the room and they can't be overheard and/or seen by others.

The DO should also check that the staff member has been:

- invited to the formal meeting using the appropriate template provided by the PA Senior HR Adviser/Manager; a formal record of the invitation must be kept.
- been given at least 5 working days' notice in line with the relevant procedure to prepare for the meeting and clearly informed why they are being asked to attend the meeting.
- advised of their right to be accompanied by a companion such as a trade union representative or colleague if they wish to and, if staff member has confirmed they will be accompanied the name of the companion.
- asked if they require any workplace adjustments to be considered for them to fully participate in the meeting or if they wish consideration to be given to appointing an interpreter if necessary to help overcome any language barriers.

5. Conduct during the meeting

Opening the meeting:

It is the DO's role to ensure that the meeting follows a logical and clear procedure, starting with the facts, opening into discussion and concluding with a summary. This will facilitate their decision making based on facts and evidence.

The DO should introduce start with introduction, explain their role and provide all parties with the opportunity to introduce themselves to the meeting and their reasons for attendance or alternatively ask if they would prefer the DO to do it, in which case the DO should introduce to the staff member:

- themselves and any PA Senior HR Adviser/Manager and note taker explaining the roles
- confirm any companion, if present and ensure they are clear on their role before the meeting commences (to support the member of staff, to ask questions, address the meeting and confer with the member of staff, but not to answer questions on their behalf or prevent questions being asked); if there is no companion, ask the staff member to confirm that they have understood their rights and have chosen not to be accompanied.

The DO should then:

- explain the purpose of the meeting under the relevant procedure; confirm what documents (if any) will be referred to and ensure those present have copies of these documents, if appropriate.
- confirm that they and any PA Senior HR Adviser/Manager and note-taker have no conflict of interest.
- ask the staff member if they have had the opportunity to request any workplace adjustments and if so, check that these have been addressed.
- remind and seek confirmation from both the staff member and accompanying person of confidentiality requirements, retaining their responses to add to the note of the meeting including:
 - if they are meeting virtually via MS Teams, they are both in a safe private space, ask them to wear headphones and to confirm in the Teams 'chat' function that there is no-one else present and they cannot be overheard or seen.
 - that they are not recording the interview and confirm in the Teams 'chat' function as audio or visual recording of the meeting is not permitted unless it has been expressly agreed by the PA Senior HR Adviser/Manager; ensure the staff member

During and closing the meeting:

The DO should:

- ask the staff member if they accept their performance marking
- invite and allow the staff member/companion to present their case/provide evidence/ask pertinent questions if they wish to seek clarity, as appropriate under the relevant procedure; however, bear in mind it is important that the DO has read the relevant documentation fully to have a good understanding of the key issues and concerns
- summarise the main points of the discussion after questioning is completed which allows all parties to be reminded of the performance concerns being considered, the staff members position, and all the evidence available to ensure nothing relevant is missed
- ask the staff member if they have any final issues they wish to raise
- confirm the possible outcomes of the meetings are dismissal, downgrading or other alternatives
- ask the staff member what their preferred method of communication is for receiving the outcome letter i.e., by e-mail or by recorded delivery mail along with rights of appeal
- at the end of the meeting ask the staff member to confirm whether they consider they have had a fair hearing
- bring the meeting to a close by thanking those present for participating and advising them of how and when they will be advised of the decision in line with the relevant procedure
- Explain that in the event of a delay they will be informed and provided with a revised timescale.

After the meeting:

The DO should:

- ensure they follow the relevant procedure and are clear about the options open to them, taking further advice as required
- work with the PA Senior HR Adviser/Manager to agree the notes of the meeting and ensure a written note is shared with the staff member to check that it is accurate and allow them to propose amendments within 5 working days unless there are extenuating circumstances (e.g., a period of annual leave); any agreed amendments should be noted on the record and there is disagreement about the content of the record, the DO should note this and include with their decision letter
- make their decision based on the facts and evidence provided in the documents pack and matters raised and evidence given during the meeting
- ensure that the outcome of the meeting and decision is confirmed in writing, along with the details of how the decision was reached and the reason for the decision, and issued in accordance with the method of communication previously agreed at the meeting by the individuals and DO i.e., by e-mail or by recorded delivery mail along with rights of appeal
- ensure that appropriate confidential records are kept of the meeting in line with General Data Protection Regulation requirements.

6. General Pointers

Do	Don't
<p>Keep the approach formal and polite, demonstrating patience and putting the staff member at ease to encourage the staff member to speak freely with a view to establishing the facts.</p> <p>A properly conducted meeting should be a two-way process.</p>	<p>Ask the staff member to repeat the information contained in the documents (unless beneficial to do so).</p> <p>Forget to summarise the issues raised to confirm your understanding of the situation.</p>
<p>Remain impartial, fair and unbiased.</p> <p>Be objective and patient – this is a sensitive matter and try not to take criticism personally or respond to likes/dislikes or views that may not accord with your own.</p> <p>Ensure that there are no unplanned interruptions.</p>	<p>React negatively or get involved in arguments or make personal or humiliating remarks.</p> <p>Avoid physical contact or gestures which could be misinterpreted or misconstrued as judgemental.</p> <p>Interrupt when the staff member is speaking unless this is necessary to keep the discussion focussed and on track.</p>

<p>Use good verbal communication skills including active listening. Ask questions to gain clarity and check your understanding. Through inexperience or nerves, the staff member may only present some facts from their own perspective.</p> <p>Take care to distinguish between facts and opinions.</p> <p>Ask open-ended questions, for example, 'tell me more about...' 'tell me about the support you received', 'is there anything else you feel could have been done to support you?' to get the broad picture.</p> <p>Ask precise, closed questions requiring a yes/no answer only when specific information is needed.</p>	<p>Get bogged down on peripheral matters to the issue and give adequate time to explore key issues – pace the hearing.</p> <p>Make any quick decisions – take care in deciding on any actions and considering all evidence.</p> <p>Pre-judge the outcome of a meeting before hearing the staff member's perspective.</p>
<p>Remind participants that there may be adjournments as appropriate or requested if;</p> <ul style="list-style-type: none"> • further investigation/checking is needed by the DO; • there is a request to confer • the meeting becomes heated, people become upset or need to 'let off steam' to an extent. • the DO needs to give people a comfort break or space to reflect to ensure that issues are not avoided. 	<p>Forget to remind participants that adjournments can be requested and considered</p> <p>Accept abusive language or conduct and, if required, adjourn the meeting with a warning about conduct, to give the individual time to reflect.</p>

7. Meetings checklist

Individual:	
Date of discussion:	
Preparation undertaken:	Including reading the appropriate SG policy and procedure, relevant paperwork, any additional statement provided by the individual

Conduct of the meeting

Step	To be completed and used as aide memoir by DO as required
Open the meeting with introductions	Who will be present at the meeting and what is their role?
Role of companion and Declaration of any conflict	<p>Explain the role. If there is no companion remind the staff member to confirm and record that they have understood their rights and have chosen not to be accompanied.</p> <p>Record that you, the PA Senior HR Adviser/manager and note taker have no actual or potential conflict of interest; have no prior involvement with any aspect of the matter being raised and no close association with the member of staff subject to performance procedures or any other parties involved in the process. Record that the companion has no conflict of interest.</p>
Purpose of meeting	Explain the purpose, the procedure being followed, the documents being used and seek confirmation that those present have received these if appropriate.
Conduct of meeting	Seek confirmation that any workplace adjustments have been offered and record if these have been permitted or not. Confirm that the meeting is taking place in a private, safe place and audio recording is not permitted, unless as a workplace adjustment. If meeting is virtual, ask the individual to record in the MS Teams' chat 'this confirmation and keep a record of this.
Confirm main issues	Capture your understanding of the performance issues and pertaining to the meeting and do not ask the staff member to repeat information (unless they wish to or is beneficial to do so) that is contained in the PIP and other documents.
Questions	Having read the paperwork and procedure, pre-plan and record some key questions.
Summing up	Sum up throughout the meeting and at the end.
Next steps	Explain what the possible outcomes are available to you to consider. Provide the timeline for decision making, how the staff member will be notified of the decision and confirm that a written record will be kept and shared with them.
Close the meeting	Thank all participants for attending

Annex B

Directorate for
DSF:



Scottish Government
Riaghaltas na h-Alba
gov.scot

E:

PERSONAL

NAME (by email)

Your ref: EMPLOYEE NUMBER

DATE

Dear NAME

STAGE 3: FORMAL PERFORMANCE PROCEDURES: OUTCOME OF PERFORMANCE ASSESSMENT HEARING

Further to the assessment hearing that you attended on DATE, I am writing to advise you of my decision. NAME OF PANEL SUPPORT, ROLE also attended for support and to provide procedural advice. A note of the meeting is attached for your information.

As you are aware, there were 3 options open to me, as set out in the Scottish Government's (SG) Performance Management procedure: downgrading, dismissal or other alternatives.

Summary of my decision

After careful consideration of all the available information and evidence, I have decided that SPECIFY THE OUTCOME AND SUMMARISE THE DECISION. The reasons for my decision are explained within the attached performance assessment report.

You have the right to appeal against this decision. If you wish to exercise your right of appeal, it will be heard by an individual at least one substantive grade higher than me, who has not been party to the decision and who is from outside of your DG Family. To submit an appeal, you must e-mail NAME OF ORIGINAL CASE HOLDER (email address) within 10 working days of this letter setting out the grounds on which your appeal is based and any other factors you wish to have considered.

I would like to take this opportunity to remind you of the support that is available to you at this time:

- **the SG Help Employee Assistance Service (EAS).** The EAS is a free, confidential service to Scottish Government employees and their families. The service is available 24 hours a day and offers access to specialist health and information consultants, counsellors and an interactive online lifestyle programme. You can contact the EAS on 0800 587 5670 or via their website www.sg.help.eap.com.
- **The SG Wellbeing Services team.** Our internal wellbeing services team offer a workplace safe space for confidential wellbeing conversations on health, caring, emotional, relationship, and work-related welfare issues. The team can be contacted via [iFix Portal - Wellbeing Services](#) or email: wellbeingservices@gov.scot.
- **The Charity for Civil Servants.** The Charity's Wellbeing advisors offer a telephone service to provide advice and support to civil servants, past and present and their financial dependents. You can contact the Charity on 0800 056 2424, Monday to Friday 09:00 to 16:00 or via their website <https://foryoubyyou.org.uk/our-services>.
- If you are a member of a **Trade Union**, you can get confidential support and advice from your local TU rep.

Please acknowledge the receipt of this letter to **NAME OF ORIGINAL CASE HOLDER** (email address).

Yours sincerely

**NAME OF DECIDING OFFICER
ROLE**

Annex C

STAGE 3: FORMAL PERFORMANCE PROCEDURES: PERFORMANCE ASSESSMENT HEARING – Deciding Officer report

1. Introduction

Insert brief introduction including your name and role.

2. Background

Insert details of performance process undertaken to date

3. Performance assessment hearing

The role of the Deciding Officer is to consider all documentation relating to the case and any written/oral representations made before deciding on appropriate action. In doing so I considered the following questions:

- have the formal Scottish Government procedures for performance management been followed correctly?
- were the objectives set appropriate and realistic i.e SMART?
- were appropriate arrangements for training and support in place?
- is the evidence of performance concerns provided sufficient to make a judgement?
- have all mitigating circumstances been factored in, where appropriate?

4. Performance management procedures

The performance management procedure for less than effective performance is set out in [Bands A-C performance management procedure \(sharepoint.com\)](#)

Insert details regarding whether procedures were followed correctly

5. Objective setting process and objectives

Insert details regarding objectives

6. Training, support and adjustments

Insert details regarding any support provided to the individual

7. Evidence of performance concerns

Insert details regarding evidence gathered and performance concerns, including any progress or lack of it

8. Mitigating circumstances

Insert details regarding any mitigating circumstances, including any health conditions or other factors impacting on performance

9. General Observations/Reflections

Insert details regarding any observation you have

10. Decision

I have taken into account all of the available evidence, including the oral/written representation made by **NAME**, and considered it all fully in coming to my decision.

Specify the outcome and insert reasons for your decision

Recommendations:

Recommendations are optional - please discuss with HRPA support

NAME
ROLE
DATE

Scottish Government Performance Management Guidance

Appeal Manager Guide

The purpose of this guide is to support those carrying out an Appeal Manager role under the SG Performance management policy and procedures.

Appointment of an Appeal Manager

Under the SG's [Bands A-C performance management procedure \(sharepoint.com\)](#), an Appeal Manager (AM) is appointed by the HR People Advice (PA) team when an appeal against a formal warning at stage 1 or 2 (i.e. first or second improvement period), or dismissal (or other) decision at stage 3 is received in writing within 10 working days of receipt of decision letter.

When approached by the PA team, the AM should consider their availability, such as unavoidable deadlines, leave, etc. The AM should only accept the assignment if they are confident of having the time and capacity to make the case a priority and have the agreement of their manager. The AM will be asked to confirm that they have had no prior involvement with any aspect of the matter, and no close association with the member of staff who is managed under the performance procedure. For example, this includes confirming that the AM is not a relation of, or in a relationship with, either of the parties.

When appointed, the AM will be asked to declare any actual or potential conflict of interest ideally at the outset or as soon as they become aware. This helps ensure all parties can trust that fair and appropriate decisions will be made. The PA Senior HR Adviser/Manager can provide further advice to the AM on this, if required.

When appointed, the AM should act in line with the Scottish Government values throughout the process, being sensitive to the feelings of the member of staff who is subject to formal performance process. The process can be stressful and emotional, so planning, empathy and sensitivity will help keep the process on track and avoid any undue stress.

All parties involved in the process are required to always maintain confidentiality – including when the process has concluded. Any breaches in confidentiality by any of the parties involved will be treated seriously and where appropriate, considered under the Discipline Policy and Procedure. If the AM is unsure of what information they can share and who they can talk to, they should ask the PA Senior HR Adviser/ manager to advise them on this.

The role of the Appeal Manager

Once the AM has accepted the case, the HR PA team will provide them with a copy of the relevant documentation pertaining to the case and the appeal statement submitted by the member of staff. The AM role is to decide whether there is evidence to indicate that the original decision should be fully or partially upheld or overturned and confirm any further action required, based on the considerations as set out in the performance management procedure. Meeting with the member of staff who raised the appeal also gives the AM the opportunity to hear why they have appealed, discuss any new evidence and to review the original decision. The AM will keep in contact with the member of staff raising the appeal throughout the appeal stage to inform them of progress and let them know of any potential delays.

If this is an appeal against a formal written warning at stage 1: first written warning and improvement period or stage 2: final written warning and second improvement period, the documents pack should include the following:

- appeal statement submitted by the member of staff.
- Personal Improvement Plan (PIP) relevant to the appeal. PIP is used to record performance concerns, support provided to the individual and any progress made during the agreed period of time.
- other relevant evidence gathered by line manager, if applicable.
- specialist medical reports, if applicable.

If this is an appeal against downgrading, dismissal or some alternative outcome at stage 3: dismissal decision, the documents pack should include the following:

- informal process documentation, including an informal PIP.
- formal first and second improvement period documentation, including formal PIPs.
- factual report summarising the process undertaken prepared by the Senior HR Adviser
- Occupational Health/OPM report(s), if applicable.
- further evidence gathered throughout the process including outcome letters and notes of the meetings.
- Deciding Officer's decision letter and report.
- appeal statement submitted by the member of staff.

The Senior HR Adviser/Manager will have also informed the relevant parties of the appeal and the support available to them.

Meeting

The Senior HR Adviser/Manager will arrange the meeting and issue invite letter to the member of staff. The meeting will be scheduled without unreasonable delay, with at least 5 working days' notice and informing them of the right to be accompanied. The member of staff will also be given an opportunity to submit a written statement ahead of the meeting.

The AM should read and analyse the relevant information to ensure they have a good understanding of the case and can proceed with the appeal meeting. The purpose of the appeal meeting is to review the original decision made. It also gives the AM an opportunity to clarify any outstanding issues and hear from the member of staff as to why they have appealed. This will be done by discussing the grounds for the employee's appeal with them and allowing them to make representations about the appropriateness of the decision. There is separate guidance the AM should refer to on conducting formal meetings at Annex A.

A full written record of the meetings must be kept and stored in line with Scottish Government records management policy in case required for evidence in an appeal. The PA Senior HR Adviser/Manager will discuss arrangements for note taking with the AM. The AM should advise the member of staff they are meeting with that a record of the meeting will be kept and that this will be shared with them. The AM should share a copy of the record with the member of staff to check that it is accurate and allow them to propose amendments within 5 working days unless there are extenuating circumstances (e.g., a period of annual leave). Any agreed amendments should be noted on the record. If there is disagreement about the content of the record, the AM should note this and include with their decision letter.

Decision

Following the meeting, the AM will consider whether there is evidence to indicate that the original decision should be upheld in full, partly upheld or overturned. The AM should consider whether, based on the evidence presented, the original decision was soundly based. It is not the AM's role to focus on whether they would have made the same decision.

The PA Senior HR Adviser/Manager will provide the AM with a template outcome letter (annex B) and report (annex C) to write to the member of staff to inform them of their decision, detailing how they reached their decision, that the decision is final, and including the written notes of the meeting. The PA Senior HR Adviser/Manager can also provide the AM with advice around appropriate language and standard of wording. The AM should also agree timings with the PA Senior HR Adviser/Manager about when the decision should be issued within 5 working days where possible, considering sensitivities that may be relevant (e.g., availability of individuals and support that may be required). When the AM has issued the letter, the PA Senior HR Adviser will inform the line manager and any appropriate senior management that the decision on the appeal has been issued.

On conclusion of the appeal process, the AM should pass all related documentation to the HR PA Team for safe retention or disposal.

Annexes:

Annex A – Guidance on conducting appeal meetings

Annex B – AM outcome letter template

Annex C – AM report template

Annex A

Guidance for chairing formal Appeal Manager meetings

1. Purpose

This guidance has been designed to support Appeal Manager's in chairing the formal meeting to best effect.

2. Overview of appeal meeting

The purpose of the appeal meeting will be to consider the grounds for appeal, hear from the staff member and conduct a review of the original decision to consider whether:

- the procedure was applied correctly and fairly
- there were reasonable grounds for the decision
- the decision was fair and appropriate

Where an appeal is raised because of new evidence relating to the performance issue that has come to light, the Appeal Managers role will be to assess the impact this new evidence may have on the original decision. They will consider whether there are elements which, had they been available to the line manager/Deciding Officer, could have, in the Appeal Manager's view materially changed the decision. It is not the Appeal Manager's role to focus on whether they would have made the same original decision.

When conducting the meeting, the Appeal Manager should:

- state what the original decision was and what the grounds of appeal are and outline the case briefly
- invite the staff member or their companion a full and fair opportunity to state their reasons for appealing
- listen actively, seek clarity on any issues/matters that are unclear, ask relevant questions and reflect on any factors put forward by the staff member

3. Pre-requirements to conduct meeting

The Appeal Manager chair should:

- confirm to the PA Senior HR Adviser/Manager that they can carry out their role with no unreasonable delays, have no actual or potential conflict of interest; have no prior involvement with any aspect of the matter being raised and no close association with the member of staff involved in the meeting.
- have received the relevant training to carry out their role.
- ensure that they have read the relevant SG Policy and procedure as well as any paperwork and supporting evidence for the case so that they are familiar

with both the issue and the procedure including the contents of informal and formal PIP.

4. Preparing for a formal meeting

Before holding a meeting, the Appeal Manager should ensure that:

- the meeting has been scheduled without unreasonable delay and be prepared to discuss the reasons for any delay.
- PA Senior HR Adviser/Manager is available to provide support and advice on policy and procedures and note-taking arrangements.
- if meeting in person in the office, the meeting is being held in a private room away from any interruption; if meeting virtually via teams that both they and the staff member are in a safe private space with no-one else present in the room and they can't be overheard and/or seen by others.

The Appeal Manager should also check that the staff member has been:

- invited to the formal meeting using the appropriate template provided by the PA Senior HR Adviser/Manager; a formal record of the invitation must be kept.
- been given at least 5 working days' notice in line with the relevant procedure to prepare for the meeting and clearly informed why they are being asked to attend the meeting.
- advised of their right to be accompanied by a companion such as a trade union representative or colleague if they wish to and, if staff member has confirmed they will be accompanied the name of the companion.
- asked if they require any workplace adjustments to be considered for them to fully participate in the meeting or if they wish consideration to be given to appointing an interpreter if necessary to help overcome any language barriers.

5. Conduct during the meeting

Opening the meeting

It is the Appeal Manager's role to ensure that the meeting follows a logical and clear procedure, starting with the facts, opening into discussion and concluding with a summary. This will facilitate their decision making based on facts and evidence.

The Appeal Manager should introduce start with introduction, explain their role and provide all parties with the opportunity to introduce themselves to the meeting and their reasons for attendance or alternatively ask if they would prefer the Appeal Manager to do it, in which case the Appeal Manager should introduce to the staff member:

- themselves and any PA Senior HR Adviser/Manager and note taker explaining the roles

- confirm any companion, if present and ensure they are clear on their role before the meeting commences (to support the member of staff, to ask questions, address the meeting and confer with the member of staff, but not to answer questions on their behalf or prevent questions being asked); if there is no companion, ask the staff member to confirm that they have understood their rights and have chosen not to be accompanied.

The Appeal Manager should then:

- explain the purpose of the meeting under the relevant procedure; confirm what documents (if any) will be referred to and ensure those present have copies of these documents, if appropriate.
- confirm that they and any PA Senior HR Adviser/Manager and note-taker have no conflict of interest.
- ask the staff member if they have had the opportunity to request any workplace adjustments and if so, check that these have been addressed.
- remind and seek confirmation from both the staff member and accompanying person of confidentiality requirements, retaining their responses to add to the note of the meeting including:
 - if they are meeting virtually via MS Teams, they are both in a safe private space, ask them to wear headphones and to confirm in the Teams 'chat' function that there is no-one else present and they cannot be overheard or seen.
 - that they are not recording the interview and confirm in the Teams 'chat' function as audio or visual recording of the meeting is not permitted unless it has been expressly agreed by the PA Senior HR Adviser/Manager; ensure the staff member

During and closing the meeting

The Appeal Manager should:

- briefly summarise the process followed to date, including the steps that have been taken to assist the employee in improving their performance and the reasons for the original decision
- ask the staff member if they accept their performance marking and agree with the assessment of their performance
- invite and allow the staff member/companion to present their case/provide evidence/ ask pertinent questions if they wish to seek clarity, as appropriate under the relevant procedure; however, bear in mind it is important that the Appeal Manager has read the relevant documentation fully to have a good understanding of the key issues and concerns
- summarise the main points of the discussion after questioning is completed which allows all parties to be reminded of the ground of appeal being considered, the staff members position, and all the evidence available to ensure nothing relevant is missed
- ask the staff member if they have any final issues they wish to raise

- ask the staff member what their preferred method of communication is for receiving the outcome letter i.e., by e-mail or by recorded delivery mail along with rights of appeal
- at the end of the meeting ask the staff member to confirm whether they consider they have had a fair hearing
- explain the possible outcomes of the meeting which are either upholding the original decision or overturning it.
- bring the meeting to a close by thanking those present for participating and advising them of how and when they will be advised of the decision in line with the relevant procedure
- explain that in the event of a delay they will be informed and provided with a revised timescale.

After the meeting

The Appeal Manager should:

- ensure they follow the relevant procedure and are clear about the options open to them, taking further advice as required
- work with the PA Senior HR Adviser/Manager to agree the notes of the meeting and ensure a written note is shared with the staff member to check that it is accurate and allow them to propose amendments within 5 working days unless there are extenuating circumstances (e.g., a period of annual leave); any agreed amendments should be noted on the record and there is disagreement about the content of the record, the Appeal Manager should note this and include with their decision letter
- make their decision based on the facts and evidence provided in the documents pack and matters raised and evidence given during the meeting
- ensure that the outcome of the meeting and decision is confirmed in writing, along with the details of how the decision was reached and the reason for the decision, and issued in accordance with the method of communication previously agreed at the meeting by the individuals and Appeal Manager i.e., by e-mail or by recorded delivery mail along with rights of appeal
- ensure that appropriate confidential records are kept of the meeting in line with General Data Protection Regulation requirements.

6. General Pointers

Do	Don't
<p>Keep the approach formal and polite, demonstrating patience and putting the staff member at ease to encourage the staff member to speak freely with a view to establishing the facts.</p> <p>A properly conducted meeting should be a two-way process.</p>	<p>Ask the staff member to repeat the information contained in the documents (unless beneficial to do so).</p> <p>Forget to summarise the issues raised to confirm your understanding of the situation.</p>

<p>Remain impartial, fair and unbiased.</p> <p>Be objective and patient – this is a sensitive matter and try not to take criticism personally or respond to likes/dislikes or views that may not accord with your own.</p> <p>Ensure that there are no unplanned interruptions.</p>	<p>React negatively or get involved in arguments or make personal or humiliating remarks.</p> <p>Avoid physical contact or gestures which could be misinterpreted or misconstrued as judgemental.</p> <p>Interrupt when the staff member is speaking unless this is necessary to keep the discussion focussed and on track.</p>
<p>Use good verbal communication skills including active listening. Ask questions to gain clarity and check your understanding. Through inexperience or nerves, the staff member may only present some facts from their own perspective.</p> <p>Take care to distinguish between facts and opinions.</p> <p>Ask open-ended questions, for example, 'tell me more about ...', 'what happened then?' to get the broad picture.</p> <p>Ask precise, closed questions requiring a yes/no answer only when specific information is needed.</p>	<p>Get bogged down on peripheral matters to the issue and give adequate time to explore key issues – pace the hearing.</p> <p>Make any quick decisions – take care in deciding on any actions and considering all evidence.</p> <p>Pre-judge the outcome of a meeting before hearing the staff member's perspective.</p>
<p>Remind participants that there may be adjournments as appropriate or requested if;</p> <ul style="list-style-type: none"> • further investigation/checking is needed by the Appeal Manager • there is a request to confer • the meeting becomes heated, people become upset or need to 'let off steam' to an extent. • the Appeal Manager needs to give people a comfort break or space to reflect to ensure that issues are not avoided. 	<p>Forget to remind participants that adjournments can be requested and considered</p> <p>Accept abusive language or conduct and, if required, adjourn the meeting with a warning about conduct, to give the individual time to reflect.</p>

7. Meetings checklist

Individual:	
Date of discussion:	
Preparation undertaken:	Including reading the appropriate SG policy and procedure, relevant paperwork, any additional statement provided by the individual

Conduct of the meeting

Step	To be completed and used as aide memoir by Appeal Manager as required
Open the meeting with introductions	Who will be present at the meeting and what is their role?
Role of companion and Declaration of any conflict	<p>Explain the role. If there is no companion remind the staff member to confirm and record that they have understood their rights and have chosen not to be accompanied.</p> <p>Record that you, the PA Senior HR Adviser/manager and note taker have no actual or potential conflict of interest; have no prior involvement with any aspect of the matter being raised and no close association with the member of staff subject to performance procedures or any other parties involved in the process. Record that the companion has no conflict of interest.</p>
Purpose of meeting	Explain the purpose, the procedure being followed, the documents being used and seek confirmation that those present have received these if appropriate.
Conduct of meeting	Seek confirmation that any workplace adjustments have been offered and record if these have been permitted or not. Confirm that the meeting is taking place in a private, safe place and audio recording is not permitted, unless as a workplace adjustment. If meeting is virtual, ask the individual to record in the MS Teams' chat 'this confirmation and keep a record of this.
Confirm main issues	Capture your understanding of the issues outlined in the grounds for appeal and pertaining to the meeting and do not ask the staff member to repeat information (unless they wish to or is beneficial to do so) that is contained in the PIP and other documents.
Questions	Having read the paperwork and procedure, pre-plan and record some key questions.

Summing up	Sum up throughout the meeting and at the end.
Next steps	Explain what the possible outcomes are available to you to consider. Provide the timeline for decision making, how the staff member will be notified of the decision and confirm that a written record will be kept and shared with them.
Close the meeting	Thank all participants for attending.

Annex B

[Chair Directorate]
[Chair Division]
E: [chair email]



Scottish Government
Riaghaltas na h-Alba
gov.scot

PERSONAL

COLLEAGUE NAME (by email)

DATE

Ref: EMPLOYEE NO.

Dear COLLEAGUE NAME

FORMAL PERFORMANCE PROCEDURE – APPEAL HEARING OUTCOME

Further to our meeting on DATE, I am writing to confirm the outcome of your appeal against the decision made to [EXPLAIN THE ORIGINAL DECISION]. A note of the appeal hearing is also attached for your information.

I was appointed as an Appeal Manager to consider your appeal and can confirm I had no previous involvement in your case. My role was to review the original decision, and I had the authority to uphold or overturn the decision and/or recommend a lesser penalty. I carefully considered your written appeal and listened to both what you [and your trade union representative/companion] said at the appeal hearing. After careful consideration of all the evidence before me, I have decided to [UPHELD/OVERTURN] the decision. In reaching my decision I have taken into account the following:

[EXPLAIN YOUR DECISION/INSERT INFORMATION AS APPROPRIATE]

Finally, I should advise you that you have now exhausted the appeal process and my decision on your appeal is final. I would like to take this opportunity to remind you of the support that is available to you at this time:

- **The SG Help Employee Assistance Service (EAS).** The EAS is a free, confidential service to Scottish Government employees and their families. The service is available 24 hours a day and offers access to specialist health and information consultants, counsellors and an interactive online lifestyle programme. You can contact the EAS on 0800 587 5670 or via their website www.sg.help.eap.com.

- **The SG Wellbeing Services team.** Our internal wellbeing services team offer a workplace safe space for confidential wellbeing conversations on health, caring, emotional, relationship, and work-related welfare issues. The team can be contacted via [iFix Portal - Wellbeing Services](#) or by email WellbeingServices@gov.scot.

- **The Charity for Civil Servants.** The Charity's Wellbeing advisors offer a telephone service to provide advice and support to civil servants, past and present and their financial dependents. You can contact the Charity on 0800 056 2424, Monday to Friday 9am to 4pm or via their website <https://foryoubyyou.org.uk/our-services>.

- If you are a member of a **trade union**, you can get confidential support and advice from your local TU rep.

Please acknowledge receipt of this letter to **NAME**, **EMAIL** by **DATE**.

Yours sincerely

**NAME OF THE APPEAL MANAGER
ROLE**

CC **NAME OF HR PANEL SUPPORT**

Annex C

FORMAL PERFORMANCE PROCEDURE - HEARING APPEAL - DECISION REPORT

1. Introduction

This could include:

- Who the initial decision maker was i.e. line manager or Deciding Officer and their decision.
- Who you are, when you were appointed and what your role is as AM.
- Insert any other information you feel is relevant

2. Background

[Insert background]

3. Formal performance procedure

The role of the Appeal Officer is to review the appeal related to the decision made as part of formal performance procedure to ensure fairness and transparency. They conduct a hearing and make the final decisions based on the evidence presented.

In doing so I have considered several factors, including: [the below acts as an example and can be amended accordingly]

1. **Evidence Presented:** Reviewing all the documents, testimonials, and any other evidence submitted by both the member of staff and the original decision maker
2. **Procedural Fairness:** Ensuring that the hearing process is fair, unbiased, and adheres to the established procedures and policies.
3. **Arguments from Both Sides:** Listening to and evaluating the arguments presented by both the member of staff and the decision maker.
4. **Assessment Criteria:** Reviewing the original assessment criteria to determine if they were applied correctly and consistently.
5. **Mitigating Circumstances:** Considering any additional information or mitigating circumstances that may have affected the member of staff performance.

4. Analysis of Appeal Decision

[insert appeal reasons and provide a response accordingly]

5. Mitigating circumstances

[insert any mitigating circumstances considered, if applicable]

6. General Observations or Reflections

[insert observations or reflections, if applicable]

7. Decision

I have scrutinised all the available evidence, including [name] oral and written representations, when coming to my decision.

For the reasons outlined above, I've decided [insert and explain your decision]

Recommendations

[insert recommendations if applicable – discuss these with HRP Panel Support first]

[AM name]

[Job title]

[Business area]

[Date]

Scottish Government: Managers Guidance: Bands A-C Probation

1. Building working relationships

Starting a new job can be stressful and managers have an important role to play with the probationer, helping them to fully settle in their role, whether working remotely, in workplaces, [working from home](#) or on a [hybrid](#) working pattern. The general principles and rules on [probation](#) should continue wherever the probationer is based.

Managers should take time to build a relationship with the probationer by, for example:

- ensuring they have everything they need to carry out their job including access to equipment and systems, any reasonable adjustments in relation to disabilities and/or health concerns and considering any workplace adjustments requested
- asking them if they need any training and support etc to improve the way they work
- being visible and regularly communicating outwith monthly conversations
- building trust by helping them to solve any challenges that they may have and being responsive to their requests
- putting in place team communications to allow colleagues to get to know each other, be supportive of each other and build positive relationships

It is the manager's responsibility to greet a probationer who is going into a Scottish Government building for the first time and show them around. If managers are unable to do this, they should identify and seek the agreement of another appropriate manager to fulfil this role. If working from home or on a hybrid working pattern, managers should look to meet face to face with the probationer at appropriate points during the probation period, including interim and final probation reviews.

2. Objective setting and support

The standard performance appraisal policy and procedure in relation to preparation, objective setting, development needs and performance can be read in conjunction with this specific probation policy and procedure.

Managers should:

- hold conversations about any circumstances, disabilities and/or health conditions that may impact during probation, considering and putting in place any agreed workplace adjustments, including those which relate to the SG's duty to make reasonable adjustments; adjustments could be requested by the probationer, perhaps by completing the [voluntary employee passport](#) or recommended by the HR PA team
- discuss and set [SMART objectives](#) including mandatory objectives to be achieved throughout the probation period, complete Section 1 of the [probation form bands A-C](#) or [probation form SCS](#) and save this to documents of record, when the Oracle Cloud system becomes available and OneDrive for any updates throughout the probation period
- consider and facilitate any learning and development the probationer may need in order to deliver the objectives set during the probation period and update these on a learning plan
- follow the [monthly conversations](#) guidance, supporting new colleagues by being clear about objectives and discussing any reprioritisation of objectives
- hold interim and final probation review meetings, completing sections 2 and 3 of the Probation form and upload to Oracle, when the system becomes available

3. Probation reviews and probation recommendation

The probation review meetings (interim and final) held with probationers allows managers to:

- review achievements, highlighting major strengths or successes in performance and, where relevant, potential areas for development or improvement
- discuss whether agreed workplace and reasonable adjustments have been implemented and are effective
- capture if any initial objectives set may have changed or planned developments may not have happened resulting in a change in priorities
- discuss wellbeing and resilience and any improvements, for example helping colleagues stay connected with their manager /team particularly if there have been changes in work priorities and / or practices and agreeing any relevant action or support
- review the learning plan, discussing the impact of development activities undertaken and those activities that might not have happened as a result of changing circumstances; discuss where managers might coach or further support the probationer in relation to their performance and development
- review [attendance](#) and [conduct](#) over the first four months and subsequent five months of the probation period
- discuss the interim and final probation performance marking awarded from [five performance markings](#); bearing in mind that:
 - the standard marking for any grade is 'effective;'
 - working long hours or coping well with routine pressures does not equate to 'exceptional' performance
 - a colleague's disability should not prevent them from achieving an exceptional marking (where their performance on agreed objectives warrants this)
 - colleagues should have completed their diversity and inclusion objective and, as a minimum, mandatory Inclusive Culture learning unless their manager considers there's a legitimate reason for non completion

At the end of the nine months, managers will make an assessment, based on evidence, as to whether the probationer is suitable for continued employment or if a recommendation should be made to extend the probation, or dismiss the probationer.

Concerns about performance, attendance or conduct requirements

Different procedures apply in relation to managing performance, attendance or conduct requirements and if managers have concerns in any of these areas, they should consult their countersigning manager and ask the HR people advice (PA) team advisor for advice before discussing this with the probationer.

4. Concerns about performance

If, after giving feedback, advice, support and assistance, managers are concerned at any time during the probation period that performance of a probationer is less than effective, they should consult the countersigning manager and the HR PA team advisor for advice on next steps.

Partly effective marking

If managers award a **partly effective** marking at the **interim** probation appraisal stage, they should discuss this fully with the HR PA team advisor and provide evidence as to the reasons for the marking.

The HR PA team advisor will meet with the probationer to discuss the:

- performance issue, including understanding whether there are any underlying reasons affecting performance, for example insufficient training and development, unclear objectives
- improvement required
- possible outcome (including extension or dismissal) if the performance doesn't reach an effective standard by the end of the probation period, or performance deteriorates

If, based on evidence, managers award a **partly effective** marking at the **final** probation appraisal review, they should discuss this fully with the HR PA team advisor and confirm their recommendation on section 3 of the probation form, with reasons, as to whether an extension or dismissal should be considered.

Managers should immediately upload the completed probation form and confirm the final marking and recommendation onto Oracle Cloud, when the system becomes available. Managers should also forward the completed probation form to the HR PA team advisor who will then formally meet with the probationer. The HR PA team advisor will make the decision whether to extend probation or consider dismissal taking into account managers recommendations, evidence produced and details on the probation form.

Not effective performance or marking

If, based on evidence, managers have concerns that performance is **not effective** either **during** the probation period or at the **interim** or **final** probation appraisal meetings, they should discuss this fully with the HR PA team advisor and confirm their recommendation on the probation form, with reasons, as to whether an extension or dismissal should be considered.

Managers should immediately upload the probation form to Oracle Cloud when the system becomes available, along with the probation performance marking and/or recommendation depending on what stage the probation is at (interim or final).

Managers should also forward the completed probation form to the HR PA team advisor who will then meet formally with the probationer. The HR PA team advisor will make the decision whether to extend probation or consider dismissal taking into account managers recommendations, evidence produced and detail on the probation form.

5. Concerns about attendance

If managers have concerns about a probationer's attendance due to them either breaching the seven-day trigger within the nine-month probation period, or recognising a pattern of absence, they should discuss this with the HR PA team advisor and agree what action should be taken. This may include seeking advice from Occupational Health Services (OHS) and considering any reasonable adjustments to the probationer's duties or hours if they have a condition which comes within the scope of the Equality Act (2010). The HR PA team advisor will discuss the concerns with the probationer.

There may have been exceptional circumstances where the new start has been unable to meet the probation standards due to a prolonged, continuous period of illness during the probation period of, for example, four weeks or more. In this situation and to ensure colleagues are supported, the HR PA team advisor in consultation with managers will consider whether the period or length of probation requires to be reassessed.

The remaining probation period that had not been completed would restart when the probationer returns to work and has received appropriate support to fulfil their duties and complete the probation period. In some cases, the probation period might be extended

beyond the length of the period of absence if, for example, the work has changed or team members have moved on during their absence and the colleagues need additional time or support to start fulfilling their duties.

If, an extension is agreed:

- conduct and attendance probation rules will still apply
- an action plan will be agreed between managers and the probationer which should include realistic timeframes that support the probationer to fulfil their duties and complete the probation period

Where a return to work within a reasonable period or maintaining an acceptable attendance standard is unlikely, employment may be terminated.

6. Concerns about conduct

Managers will discuss and support probationers to meet SG general principles on conduct and our [standards of behaviour](#) advising them of any misconduct concerns, the standards required, any subsequent action that could be taken including that further breaches may result in the probationer being dismissed.

If misconduct is repeated or more serious, managers should discuss this with the HR PA team who will inform the probationer of the concerns, enable them to state their case orally and will inform them of their decision.

7. Probation recommendation

Managers should complete section 3 of the probation form detailing, with reasons, if their recommendation is to confirm the appointment or recommend to the HR People Advice team an extension or dismissal. If the recommendation is extension or dismissal, managers should clearly detail the concerns, reasons and action taken where the probationer is failing to meet the required standards in relation to performance, attendance, and/or conduct.

Managers will share and discuss their recommendation and reasons with the countersigning manager. Where countersigning managers agree with the recommendation, they will complete and endorse the recommendation decision in section 3 of the probation form. If an HR PA team advisor has already been involved in giving advice on performance/conduct/attendance issues up to this point, managers should confirm in section 3 the name of the HR PA team advisor and keep them up to date on what the recommendation is likely to be at this stage.

Once the probation recommendation is agreed between the manager and countersigning manager, the manager will discuss and share the probation form and the recommendation with the probationer. If the recommendation is to extend probation or dismiss the probationer, managers should confirm that this is not a final decision and will now be referred to the HR PA team for decision. This recommendation should not come as a surprise to the probationer.

The probationer will have the opportunity to provide their own comments on section 3 of the probation form. Once the probation form has been completed, managers should without delay, upload the form to Oracle Cloud, when the system becomes available. Managers will also be prompted to confirm the final probation performance marking and probation recommendation/outcome on the Oracle Cloud system.

If there are serious concerns relating to performance, attendance, and/or conduct at any time during the probation or if the probation period has already been extended and further

extension or dismissal is being recommended, managers should complete section 3 of the form and follow the same process as above.

7.1 Probation successfully completed and appointment confirmed

If the recommendation is to confirm the appointment, managers should share the completed probation form with the probationer and upload the [probation form](#) to Oracle Cloud, when the system becomes available. The appointment will be confirmed in writing to the probationer and the final probation confirmation letter will be uploaded to Oracle.

The probationer will move into the annual performance cycle dependant on when the probation period ends and either a standard appraisal mid-year or end year review may also be required.

For example:

- 1 April and 30 September inclusive - If the probation ends during this period further objectives should be agreed for the period up to 31 March, so that a performance appraisal for the full appraisal year can take place
- 1 October and 31 March inclusive - If the probation ends during this period, then no further formal performance appraisal is required for that appraisal year. However, managers should agree with the colleague objectives for the remainder of that appraisal year and continue to give feedback through monthly conversations.

7.2 Probation completed and extension or dismissal recommended

Following countersigning manager endorsement and discussion with the HR PA team advisor, managers should upload the completed probation form to Oracle Cloud, when the system becomes available and send to the HR PA team advisor for further consideration and decision. The completed probation form should include what actions/support have been taken to resolve concerns and support the probationer.

Managers should advise the probationer that they are referring the recommendation to an HR PA team advisor who will contact them directly to explain the next steps.

If, based on the evidence, the HR PA team advisor agrees there are grounds to consider extension or dismissal, they will formally meet with the probationer to discuss the concerns and take the decision to:

- extend the probation period;
- dismiss the probationer; or
- take no further action and confirm the probationer's appointment.

The HR PA team advisor will formally advise the probationer in writing of the decision and rights of appeal.

If the decision is taken to extend a probation, the extension will normally be for three months in the first instance. Thereafter, this will be reviewed and, depending on the evidence, the HR PA team advisor will take a further decision as to:

- whether the appointment should be confirmed;
- the probation will normally be extended for a further 3 months; or
- dismissal should be considered.

Help

The [HR People Advice team](#) (or [other agency and body HR team](#)) can provide advice and support, including:

- access to HR for staff who may prefer to discuss personal and health problems with someone other than their manager
- guidance for managers on how to support individuals in the workplace, for example making reasonable adjustments, considering alternative working patterns
- advice to both managers and probationer on development and training support
- advice for managers on addressing performance issues, for example objective setting, coaching, giving effective feedback and handling difficult conversations

The [Employee Assistance Service](#) also offers a managerial support service.

Dismissal Action Sheet

When carrying out a dismissal, the HRP Panel Support should arrange to meet with the colleague at the earliest opportunity to verbally communicate the decision on behalf of the Deciding Officer. This doesn't have to be a formal meeting with a note taker present and can be arranged informally via MS Teams chat or Outlook calendar.

Ahead of the meeting, the HRP Panel Support should notify the line manager of the decision and the timing of this being communicated so that they can make themselves available to meet with the colleague afterwards. The Wellbeing Services team should also be notified so they are aware of the case, in the event the colleague wishes to seek support from them. This is also important to ensure the HRP Panel Support has support themselves during this difficult process.

The HRP Panel Support should be mindful that the news will be disappointing and should be prepared to tailor their communication accordingly, delivering it clearly and compassionately. It is likely that the colleague will be upset and therefore may wish to turn off their camera for the duration which should be respected.

Points to cover at the meeting include:

- Thank the colleague for their patience whilst the Deciding Officer considered all of the available evidence and came to their decision.
- Inform them that, unfortunately, the decision is dismissal which means their employment will be terminated effective from the same day.
- Explain that they will not go into detail about the decision on the call as the Deciding Officer has included all of their reasoning in the outcome letter and the colleague will receive a copy of this shortly after.
- Confirm their personal email address that can be used to issue a copy of the outcome letter following the call.
- Highlight that the colleague has the right to appeal the decision and the details of this are included in the outcome letter.
- Explain that they are required to return any Scottish Government equipment and this will be arranged once the outcome of the appeal process is known (or after the appeal deadline date, if no appeal is received).
- Confirm that the line manager is aware of the decision and is available to meet with the colleague after the call, if they wish to do so.
- Confirm that their SCOTS access will be removed and security pass disabled effective from the same day.
- Highlight that the support from the Wellbeing Services team and the Employee Assistance Service is available to them now and for up to three months after the dismissal.

SUMMARY OF MAIN REFRESH CHANGES – A-C Performance Management

Area	Current	New
Policy name/Forms/system	Currently referred to as Performance Management Covid related shortened form and uploading of end year markings	Referred to as Performance Appraisal as part of the broader Performance Management approach. Single form capturing objectives, mid-year and end year review. Uploading of appraisal form at objective, mid-year and end year points to Oracle Cloud and uploading of indicative and end year markings.
	Monthly conversation form	To include reference to reflecting/forward planning around vision/values
Performance markings – less than effective	At the end of an improvement period, where performance remains below an effective standard managers should immediately complete a performance appraisal and award a partly effective or not effective performance marking	Currently if staff are on a PIP, they are ‘taken out’ of the performance process and given a “below effective” marking at the end of the improvement period. However, Oracle requires marking to be given at mid and end-year so if someone is (or about to go on) a ‘partly’ or ‘not effective’, marking can only be given then. Changed to read: If you are currently subject to performance improvement procedures or your manager assesses your performance as less than effective as at mid-year and end-year review, a ‘partly effective’ or ‘non effective’ marking will be awarded.
	Performance marking is only required at end-year review	Performance marking will now be required against every objective at end year review stage with an overall performance marking at mid-year and end year.
	Where a ‘not effective’ performance marking is given the individual will still receive a pay award however will not be entitled to pay progression.	Change from ER&R to read If you receive a not effective performance appraisal marking, this may affect your pay and you should refer to the terms of the relevant pay award as to how this will be treated.
In year review	Currently refer to in-year review.	Change to refer to ‘mid-year’ review
	Currently if staff move post after 30 June, their in-year review should be carried out by their former manager, who will discuss and agree the written report with their current manager before it is shared with the colleague	Removed wording about the former manager having to agree the mid-year with the current manager as this is the former managers assessment. Now reads ‘If the move is after 30 June, the former manager will complete the mid-year appraisal and forward to the new manager for uploading the performance marking to Oracle’.
	Currently managers should have had their own in-year review before holding them with staff.	Deleted this section as this does not happen in practice.
Appeals	Currently refers to an ‘arbiter’	Changed reference from arbiter to Appeal Manager
	Currently says ‘If you are unhappy about any aspect of the appraisal process’, you can raise an appeal	This is very broad, and an ‘appeal’ would normally be in response to a formal management outcome with any other concerns raised as a grievance. SCS can only appeal against a performance marking. Changed to ‘If you do not agree with your final performance marking, you can raise an appeal’
	Unclear in current process when appraisal marking should be finalised if there is an ‘informal meeting with the countersigning officer;	Procedure clarified to indicate that marking should be uploaded after this ‘informal’ discussion to give the opportunity for any change and this should not wait until outcome of a formal appeal.
	Currently says ‘You should make your appeal in writing to your deputy director, director, chief professional officer or agency equivalent as appropriate ‘	Changing submission from line chain to HR. Also requiring a formal appeal notification form to be completed (so HR get the information we need) and not just a letter

	Currently says cases can be presented orally	Amended to read that staff will be invited to present their case orally or in writing' (in line with SCS)
Long term absence or leave	Staff who are, or have been, on long-term sick absence, maternity, adoption or shared parental leave, special leave or a career break, and who do not have three months consecutive attendance, will not qualify for a mid-year or end-year performance appraisal (recorded as 'Appraisal not due')	Agreed with ER&R that attendance over the year did not need to be consecutive given the different scenarios that could apply. Amended to read 'Staff who are, or have been, on long-term sick absence, maternity, adoption or shared parental leave, special leave or a career break, and who do not have three months attendance, will not qualify for a mid-year or end-year performance appraisal. This should be recorded as 'Appraisal not due' when the manager submits the Performance Appraisal

ADDITIONS TO CURRENT POLICY/PROCEDURE	
Area	New
Role	Added role of trade unions to 'provide professional support, advice, and representation during any formal performance improvement processes, encouraging members to fully engage.'
Specific Objectives	Added new reference to a specific objective being agreed if staff have an overall responsibility across the DG/function e.g. <i>Information Asset Owners with specific responsibilities in relation to information governance assurance and risk management</i>
Changes during the new year	Addition to reflect different working arrangements/matrix management Staff may report to different managers as part of their normal working arrangements, such as working to a "delivery/ work" manager, being professionally accountable to another manager and/or being line managed by a "line/people" manager. In this situation, the 'line/people' manager with responsibility for updating the HR system and will conduct the appraisal, seeking feedback from other managers involved to inform the mid-year and end-year discussions and review.
Professional expectations	Added new references to professional expectations/requirements e.g., building in any professional expectations at objective setting and performance reviews considering any relevant feedback in relation to adhering to professional standards.
Register of Interests	Added in new requirement to discuss and confirm at end year review that the <u>register of interests</u> process has been followed and that nil returns or entries, where appropriate have been completed and records are up to date (including closing down any expired entries)
Changes in year	Addition Mid-year review If staff move between 1 April and 30 June, their current/new manager will carry out the mid-review. If the move is after 30 June, the former manager will complete the mid-year appraisal and forward to the new manager for uploading the performance marking to Oracle.
	Addition If staff move after 31 December, the former manager should carry out an appraisal based on performance from 1 April until the date of transfer. If staff are moving to a different role in a new Division this will be completed as a 'transfer report' using the transfer report form [link]. No end-year review will be required for the reporting year.

1. Probation policy

2. Probation procedure
 3. Attendance requirements when on probation
 4. Probation and performance
 5. Conduct and behaviour during probation
 6. Managing probation during hybrid working
 7. Probation and promotion
-

1. Probation policy

The purpose of probation is to provide a period during which we can determine whether a new colleague meets conditions for continued employment. It's a time for managers to build a positive, trusting relationship with their new colleague to understand their needs and support them to meet their objectives and achieve effective performance.

If a new colleague fails to satisfactorily complete the probation period this may lead to the appointment being terminated.

Who the probation policy applies to

The policy applies to everyone who's recruited as a new entrant through fair and open competition in Bands A to C and senior civil servants.

Colleagues recruited not through fair and open competition, including special advisers, and fixed term appointees don't serve a probationary period.

Anyone transferring internally or from another government department should have completed probation. Provided they have done so, they shouldn't need to serve probation again.

Senior civil servants should refer to specific probation guidance.

Separate probation guidance is also available if you're a modern apprentice or on the graduate development programme.

Probation key requirements

The probation period lasts for nine months (unless extended) and this is confirmed in the letter of appointment. All new staff should remain in their initial appointed post for at least the duration of the full probation period.

New colleagues should receive both a local and corporate induction. A wellbeing conversation between the manager and colleague should be held shortly after joining the team to establish if any workplace adjustments, an employee passport or other support is required. It may be that some workplace adjustments are already known prior to the start date if the new start has already told the workplace adjustments team.

Managers should explain the requirements that need to be met during the probation period and agree performance objectives at the outset. They should also regularly monitor performance, attendance and conduct during the probationary period.

Colleagues must meet the requirements set out and comply with the standards of conduct and behaviour.

2. Probation procedure

Our probation procedure has the following guiding principles which must be followed:

- managers are expected to support staff members through the probationary period including holding conversations about any circumstances, disabilities and/or health conditions that may impact during their probation. They should consider any workplace adjustments, use of the voluntary employee passport or contacting the workplace adjustments team, as required
- procedures for managing conduct, performance management and absence management on probation are different from those that apply to colleagues who have passed the probation period
- an overall assessment of the staff member's suitability for continued employment can be made at any time during the probation period, to monitor whether the individual is judged to be capable of giving regular and effective service
- colleagues should take personal responsibility for familiarising themselves and adhering to expected standards of conduct, behaviour, attendance and working toward agreed performance objectives

If you're a new colleague, the probation procedure you will follow is:

1. When you arrive in post, you'll follow an induction process and agree performance objectives. You'll be provided with information on attendance requirements, conduct and behaviour standards and the specific rules that apply during probation in relation to unsatisfactory attendance, long term sick absence and less than effective performance.
2. Your attendance and performance will be kept under review to ensure you are properly supported during these early months. If you fail to meet any of the required standards in relation to conduct, attendance management or less than effective performance, procedures to address this will apply.
3. You'll have monthly conversations with your manager to ensure you have regular discussions about performance and receive feedback on this. You'll also have appraisal meetings with your manager, who'll complete an interim and final probation report during your probationary period. You should not wait for appraisal meetings to raise any issues of concern or if you're unclear about what is expected of you. You should raise these at any appropriate time or during a monthly conversation.
4. HR will confirm your appointment once you have successfully completed your probationary period.

3. Attendance requirements when on probation

As a probationer, you must adhere to the attendance management policy and demonstrate that you can meet an acceptable standard of attendance.

We use a 'trigger point' system to help identify situations where absence requires investigation and possible action. The trigger point for probationers is when there have been seven working days in the nine month probationary period - this is different to permanent and fixed term contract colleagues. Further information can be found in sick absence attendance requirements.

If you have a concern about any issue which could impact on your attendance, you should speak to your manager as soon as possible. This will allow support and/or adjustments to be put in place to help you.

Where your attendance gives cause for concern, your probation may be extended and you'll be told the standard of attendance expected during that period.

4. Probation and performance

When a colleague takes up a post, they should agree objectives with their manager for the next four and nine month periods. They should meet together on a monthly basis to discuss performance and, where relevant, attendance, conduct and wellbeing including any difficulties in meeting objectives.

An interim probation performance appraisal is required four months after the start date and a final probation performance appraisal at nine months. The manager should download and use the streamlined interim probation report or final probation report templates for these appraisals.

Find out more about performance appraisal during probation.

5. Conduct and behaviour during probation

Our general principles and rules on conduct and behaviour apply equally to colleagues on probation.

The purpose of the probationary period is to provide an opportunity to ensure you're likely to meet our standards of conduct. How we manage cases of misconduct when you're on probation is different. Find out more about disciplinary procedures when on probation.

6. Managing probation during hybrid working

Starting a new job can be stressful and managers have an important role to play when new colleagues start, whether working remotely, in workplaces or on a hybrid working pattern.

It is the manager's responsibility to greet a new colleague who is going into a Scottish Government building for the first time and show them around. If the manager is unable to do this, they should identify and seek the agreement of another appropriate manager to fulfil this role.

Managers need to support staff working at home as part of the hybrid working model to ensure they:

- have access to equipment and systems and can access the systems they need to do their work
- are aware of the need to take appropriate breaks
- don't exceed their maximum working hours
- have agreed objectives and tasks that reflect the time spent working at home and business critical priorities

Read more about working from home and health and safety when working at home.

7. Probation and promotion

You must successfully complete the full nine month probation period to be able to apply for promotion or temporary promotion opportunities.



Scottish Government
Riaghaltas na h-Alba

Probation Policy

Bands A-C

Published: July 2024

1. The Purpose

The purpose of probation is to provide a period during which the Scottish Government (SG) can determine whether a new staff member meets conditions for continued employment. It is a time for managers to build a positive, trusting relationship with the probationer to understand their needs and support them to achieve effective performance, attendance, and conduct.

If a probationer fails to satisfactorily complete the probation period, this may lead to dismissal.

2. The Scope

The policy applies to everyone who is recruited as a new entrant through fair and open competition in Bands A-C and work in SG core and marine, executive agencies and Non-Ministerial Offices (NMOs) that are part of the [SG Main and Marine Bargaining Units](#).

The probation policy and procedure for Senior Civil Servants (SCS) can be found here. [\[link\]](#)

While this policy applies across the SG main and marine bargaining units, executive agencies and NMOs may have local procedures in place to reflect local contact points and, for NMOs, their status as a direct employer. References to Scottish Government (SG) and HR teams in this policy should therefore be read as references to individual bodies and [local HR teams](#) where appropriate.

If a probationer, whether SG staff or from another government department (OGD) are successful in applying for an SG vacancy externally, the expectation is that they will complete a new nine-month probation period. This will enable full support and assessment to confirm whether the probationer meets the conditions for continued employment in the new role.

Fixed term appointees not recruited through fair and open competition, agency workers, consultants and inward secondees do not serve a probation period.

Separate arrangements apply in relation to modern apprentices, specialist advisers (SpAd), legal trainees, or individuals on the [graduate development programme](#).

The expectation is that this policy should be applied as written and read in conjunction with the Probation Procedure (Bands A-C) [\[link\]](#). Any exceptions to the application of the policy must be approved by the [HR policy team](#).

3. Policy Principles

- The probation period lasts for nine months (unless extended, or paused);
- Probationers:
 - should remain in their initial appointed post for at least the duration of the full nine-month probation period;
 - may have to start a new nine-month probation period if, in exceptional circumstances a new post is taken up;
 - are not eligible to apply for temporary promotion or internal vacancies

- Probationers must meet all performance, attendance and conduct standards and requirements in order to satisfactorily complete their probation;
- Concerns about performance, attendance and conduct are handled differently and should be managed as soon as they occur with advice sought, as required, from the [HR people advice team](#) or [other agency and body HR team](#);
- [Monthly conversations](#) should take place to review and adjust performance, priorities, development and wellbeing as well as identifying any support required;
- Interim and final probation reviews must take place, within the appropriate timeframe, to review attendance, conduct and performance against objectives, recognise success, give constructive feedback and review learning and development activities;
- Probation performance markings determine entitlement to a pay award and may affect pay; staff should refer to the relevant [pay award](#) applying at the time to establish how their marking may affect pay;
- Employment can be brought to an end at any point during the nine-month probation period if the probationer is assessed as not suitable for continued employment on the basis of (but not limited to) performance, attendance, or conduct [\[link\]](#);
- Probationers have the right to appeal [\[link\]](#) the outcome of formal probation procedures such as warnings, extensions or dismissal.

4. Roles and Responsibilities

Probationers should:

- take personal responsibility for familiarising themselves with and meeting performance, attendance and conduct standards and requirements;
- contribute actively to monthly conversations, probation reviews and development discussions;
- raise any concerns about their performance, development and wellbeing with their manager as soon as they arise;
- ensure they understand the probation policy, procedure and relevant guidance if working remotely, in workplaces or on a hybrid working pattern.

Managers should:

- familiarise themselves with and guide the probationer to read the probation policy and procedure;
- organise both a local and corporate induction for probationers, spending sufficient time with the individual in the office/workplace environment, given that they may not have previously worked in a government or business setting;
- explain the requirements that need to be met during the probation period and set [SMART](#) objectives at the outset which ensure that work is manageable, meaningful and meets the agreed requirements;
- consider any workplace adjustments, including those which relate to the SG duty to make reasonable adjustments for [disabled staff](#), seeking advice from the [Workplace Adjustments team](#) as required;
- regularly monitor performance, attendance and conduct during the probation period, raising any concerns about performance, development, and wellbeing as soon as they arise, taking advice as required;
- conduct monthly conversations, interim and final probation reviews on time; documenting evidence and probation performance markings;



- make a recommendation to the countersigning manager as to whether the appointment should be confirmed, probation extended, or the probationer dismissed; where the agreed recommendation is extension or dismissal, provide evidence supporting the recommendation for the HR PA team to consider.

Managers/countersigning managers on probation can:

- hold monthly conversations and provide feedback to the countersigning manager about staff that directly report to them but are not eligible to set objectives, complete interim and/or final probation reviews;
- regularly monitor performance, attendance and conduct during the probation period, raising any concerns about performance, development, and wellbeing as soon as they arise, taking advice as required.

Managers on temporary promotion (TP) can:

- set objectives, hold monthly conversations and provide feedback to the countersigning manager about probationers that directly report to them;
- conduct interim and final probation reviews for probationers, if in post for three months as manager and are at a substantive higher grade. If not, these roles should be carried out by the more senior manager.

Countersigning managers should:

- support managers by confidentially discussing their people management role at monthly conversations and probation reviews, providing advice and coaching on managing probation issues as required;
- consider the evidence in the completed probation form [\[link\]](#), discussing the assessment with the manager in order to reach agreement about the probation recommendation;
- set objectives, conduct the interim and final probation review if the manager has not been in post for three consecutive months, is on probation, is a temporary worker (except in exceptional circumstances), is on temporary promotion (unless at a substantively higher grade and manager for at least three months) or is absent long term;
- where requested, meet with the probationer to discuss any concerns about the management of their probation, working with both manager and probationer to resolve issues, taking advice, as necessary.

Senior management teams and leaders should:

- ensure that the probation policy and procedure is fully understood and that managers understand their role;
- consider, with the support of HR Business Partners, data and any emerging trends on probation performance markings and outcomes within their area as part of their DG family corporate governance processes.

Trade union officials should:

- provide professional support, advice, and representation during any formal probation processes, encouraging members to fully engage.

The HR people advice team should:

- provide confidential advice, support and coaching on performance issues to managers and probationers;
- take decisions about probation outcomes based on evidence-based recommendations from managers;
- declare any actual or potential conflict of interest and ensure that those involved in decision making have no close association with the probationer.

Other People Directorate roles:

- The [Workplace Adjustments team](#) will discuss, in confidence, any support requested by members of staff in relation to workplace adjustments, including those which relate to the SG duty to make reasonable adjustments for disabled staff;
- The [HR Policy team](#) will provide advice on the Probation policy and procedure;
- The [Employee Assistance Service](#) can provide support for managers by registering or logging in to the site and searching for 'manager support'.
- The [HR Business Partner team](#) will provide support and advice to senior management on regular assurance activity



SCS performance management – Effective to performance year 2023/2024

1. SCS performance management overview

2. SCS Objectives
 3. SCS performance appraisal
 4. Appealing a performance marking
 5. 9 box grid
 6. Conflict of interest
-

1. SCS performance management overview

These pages set out the process for setting objectives, assessing and recording performance for senior civil servants including those on temporary promotion to the Senior Civil Service (SCS).

Performance should be informally assessed on a continuous basis, through monthly conversations, a mid-year performance review and quarterly objectives reviews. There should be no surprises at your end-year discussion.

You are also expected to have in place a [personal learning plan](#). This must include mandatory training on [inclusive culture](#) (if not already completed).

The following pages cover how to:

- set and agree objectives
- assess performance
- carry out moderation
- use the 9 box grid
- access the 360 degree feedback tool
- record conflicts of interest

Read a guide to [performance management](#).

Download the [performance agreement form](#).

Help

For queries relating to SCS performance management please use the [Performance Management tile in HR Online](#).

2. SCS Objectives

Everyone must have clear objectives for the year ahead.

Senior civil servant's (including those on temporary promotion to the Senior Civil Service (SCS)) objectives should be linked to business priorities and risks, with a clear connection to the directorate plan. They should clarify your contribution, encompassing how you will:

- bring the people strategy to life across your team
- build capacity and capability through effective [workforce and succession planning](#)
- contribute to the implementation of In the service of Scotland
- improve business delivery

Setting objectives

You must have at least one objective from each of the following five categories:

1. Business delivery: These should be business objectives for which you are personally accountable.
2. Finance/efficiency: These objectives should capture what you will do to ensure costs are minimised and budgets are managed to ensure maximum value to the taxpayer.
3. People and improvement: These objectives should cover what you will do in terms of people development and increasing the capability of your teams to nurture improvement; deliver a high-performing workplace now and for the future, and support each other and build resilience.
4. Corporate contribution: This objective is mandatory for all senior civil servants and should capture your contribution to corporate initiatives outside your existing job role.
5. Diversity and inclusion: You must agree with your manager a [specific and relevant diversity and inclusion objective](#).

You should also record your development objectives, which should focus on professional development.

Record and share objectives

You should record your objectives on the [SCS performance agreement form](#) (document will download), along with information on budgets you are responsible for and the relevant People Survey engagement scores.

Share your completed form with at least the next level of management below you. This increases the quality of objective setting and facilitates effective [360 degree feedback](#).

Help

For queries relating to SCS performance management please use the [Performance Management tile in HR Online](#).

3. SCS performance appraisal

Performance should be informally assessed on a continuous basis through monthly conversations, a mid-year performance appraisal and quarterly reviews of your objectives. There should be no surprises at your end-year discussion.

Changing objectives

If objectives require changing during the year, the original objectives should not be amended. Revised objectives should be added and also recorded on the [SCS performance agreement form](#) (document will download).

To support your performance appraisal, senior civil servants (including those on temporary promotion to the Senior Civil Service) should:

- ensure you have clear objectives for the year
- carry out 360 degree feedback to inform your end-year appraisals
- seek informal feedback on your performance from your manager, peers and ministers (if applicable)
- build up a portfolio of evidence over the year
- carry out a self-assessment of your 9 box grid placement before your mid-year and end-year appraisals (temporary promotion deputy directors are not part of the 9 box grid process)

End-year appraisal

The end-year performance conversation will focus on your performance, potential and [9 box grid placing](#).

You and your manager should discuss:

- your objectives
- your development and an exploration of career aspirations
- an assessment of your end-year performance and development

- your objectives for the year ahead

If you move post before 1 January (with 3 months or more of the reporting year to run) your new manager will complete your end-year review informed by discussion with your previous manager.

Managers should make a judgment over whether performance has been 'low' or 'achieving or better' by taking account of both:

'what' you have achieved, considering the degree of difficulty or ease of meeting the objectives in light of actual events

- 'how' you have achieved it, taking into account the impact on others and quality of team engagement during the year

A 'low' marking is not a trigger for [poor performance procedures](#), but an opportunity to consider intensive support, training and coaching.

Record your performance appraisal

You should record your mid-year and end-year performance appraisal conversation using the [SCS performance agreement form](#) (document will download). You must also record your People Survey engagement scores.

Performance marking is only required at end-year review, and is indicative until after moderation has been completed.

End-year discussions should be completed by the end of May (apart from Directors General where the completion date remains the end of April). The form should be retained by the line manager for 5 years, and then deleted.

eHR is not used to record or save SCS appraisals.

Help

For queries relating to SCS performance management please use the [Performance Management tile in HR Online](#).

4. Appealing a performance marking

If you are unhappy with your performance marking once it has been confirmed along with your revised pay, you should discuss it with your countersigning officer. If you remain unsatisfied with the outcome of this discussion, you can appeal.

The appeal should be made in writing to the senior staff team within 10 working days of you receiving confirmation of your performance group marking. A copy should be sent to your:

- manager and the countersigning officer
- trade union representative if you wish, and if you are a member

The appeal should contain full details of the grounds for appeal - and evidence - and a copy of your completed performance management form.

The appeal hearing will be held within 15 working days of receiving the appeal. The outcome of the appeal hearing will be issued within five working days.

The senior staff team will select an arbiter from outwith an individual's Director General area or agency to ensure objective arbitration. Appeals by:

- deputy directors will be considered by a director supported by a member of the senior staff team
- directors will be considered by a director general supported by a member of the senior staff team
- director generals will be considered by a non-executive director or independent person appointed as necessary

Colleagues are given the opportunity to make written and oral representations. They may also be accompanied at the appeal proceedings by a colleague or trade union representative (if they are a member of one).

The arbiter's decision on an appeal is final.

5. 9 box grid

The 9 box grid supports discussion on your potential, career aspirations and development as part of your mid-year and end-year performance appraisals. It is an annual process that is used to support succession planning within the Scottish Government (deputy directors who are on temporary promotion are not part of the 9 box grid process).

- you should complete a self-assessment before your performance appraisals
- you will receive a provisional placing as part of your end-year review performance discussion

Director general and director 9 box grid placings are moderated and submitted to the Cabinet Office before they are finalised.

Deputy director 9 box grid placings are moderated and finalised by their DG and Directors. Grid placings are feedback to the Deputy Director by their Director.

Guidance is available on the [9 box grid principles and definitions](#) (document will download) along with [development interventions](#).

Moderation timeline

August/September: provisional placings for directors are moderated by the Executive Team.

September:

- provisional placings for directors are submitted to the Cabinet Office for moderation across the wider Civil Service director cadre

By year end: provisional placings for directors are confirmed and feedback by directors general.

Help

Contact [Lynn Taylor](#) in the talent learning and leadership team if you have any questions

6. Conflict of interest

Senior civil servants, including those on temporary promotion to the Senior Civil Service, must discuss and record any conflict of interest issues as part of their mid-year and end-year performance appraisals.

You must tick the box on your performance management form to confirm this discussion has taken place.

Find out more about [conflicts of interest](#).

Help

For queries relating to SCS conflict of interest, please use the [conduct tile in HR online](#).