

**Date last updated: [ ] November 2017**

Note: While care has been taken in the production of these materials, no responsibility is taken by the author or the Law Society. Practitioners intending to utilise this template for their clients or in their practices should make themselves fully aware of the legal requirements, the meaning of the clauses, and where necessary take specialist advice.

## **PERFORMANCE MANAGEMENT GUIDELINE**

### **1. Performance Management**

Performance Management is a focused and strategic way of seeking to improve a business or organisation by monitoring and improving the performance of individual employees ("Performance Management"). A Performance Management process involves continual communication, monitoring and training of employees in order to achieve and maintain improved levels of performance and development.

There is no prescribed statutory process set out under Irish law to inform employers how to performance manage and deal with underperforming employees. As with all dealings with employees, the key principle of reasonableness underpins any Performance Management process. A Performance Management process should be transparent, objective, equitable, and provide for practical and achievable deadlines and targets.

It is advisable to clearly document the process in a Performance Management Policy, applicable to all employees with over 12 months' service. The policy should set out how performance is monitored, the frequency of formal Performance Reviews, the use of a (Performance Improvement Plan ("PIP") to address underperformance and the consequence of failing to make the improvements required by a PIP.

### **2. Performance Review**

Employee performance should be monitored informally on an ongoing basis in order to provide employees with positive acknowledgement, constructive feedback and training as necessary. In addition, performance should be monitored formally by way of documented Performance Reviews, carried out at fixed regular intervals (a "Performance Review").

A good Performance Management process is grounded on objective, unbiased, genuine and fair Performance Reviews. Such reviews are an integral part of Performance Management as they establish a clear and consistent pattern of discussion and evaluation of employee performance. Performance Reviews typically occur twice a year, at mid and year end and serve as a point of reference in terms of looking back to review and evaluate employee progress and looking forward to set achievable and reasonable expectations or targets which the employee can work towards.

Where performance is monitored informally on an ongoing basis, the formal Performance Review should serve to confirm and expand on the present evaluation of the employee's performance. Both the Manager conducting the review and the employee should have a common understanding of how the employee is performing.

In essence, a Performance Review should:

- Facilitate honest communication;
- Acknowledge the employee's merits and achievements;
- Give the employee feedback on his or her performance against personal commitments/goals;
- Address areas in need of improvement;
- Assist the employee to achieve his or her full potential and improve performance through training and further development;
- Motivate the employee towards delivering goals; and
- Form a basis for personnel decisions in respect of training, promotions, salary increases, bonuses etc.
- 

Note that employees are much more likely to invest and participate in Performance Reviews where such reviews are directly linked to promotion or remuneration.

## 2.1. How to conduct a Performance Review

Performance Reviews are usually based on a numerical or scalar rating system, whereby performance is rated against a number of set objectives or key performance indicators or skills. Depending on the structure of the Performance Management process, both employees and managers may complete pre-assessment forms in advance of the Performance Review meeting. This ensures that the individuals take time to reflect on performance and prepare for the Performance Review meeting.

Managers should receive some form of training or guidance as to how to evaluate performance fairly. The totality of an employee's performance must be taken into account. It is important that Performance Reviews are based on facts and tangible examples or references to the employee's achievements and shortcomings.

Ignoring elements of poor performance or being overly complimentary in assessing and grading an employee is often the easiest and quickest way to conduct a review (particularly where the employee's performance is unsatisfactory), however, it is vital that the Performance Review document is an honest and accurate record of the employee's performance at a particular point in time. An employee's history of Performance Reviews will be considered as an accurate reflection of an employee's service in the event that the employee's performance or conduct is subsequently questioned.

## 2.2. Practical steps

1. Schedule the Performance Review in advance so both individuals have sufficient time to prepare (and the employee has time to complete a pre-assessment form, if applicable).
2. Remind the employee to prepare for a discussion of their assessment of key accomplishments and areas in need of support or improvement.
3. Review the targets that were agreed at the previous Performance Review and note the key issues to be discussed.

4. Hold the Performance Review in a private setting to encourage open communication.
5. Set aside adequate time to conduct the Performance Review.
6. Approach the Performance Review with an open-mind.
7. Use set discussion points as a script for the Performance Review.
8. Begin with an evaluation of primary responsibilities. To what extent were these areas of responsibility performed well? In what areas has performance fallen short of expectations? Whenever possible, cite examples and note key demonstrations of competencies and areas in need of improvement.
9. Review the targets which were set for the relevant performance period. To what degree were the expected results achieved? What contributed to the employee's ability to achieve targets? What acted as a barrier or a limitation to targets being met? What steps can be taken to remove any barriers that interfered with performance improvement?
10. Keep feedback about areas of underperformance as constructive as possible. Be specific and objective. Use facts to support feedback, rather than generalisations about the employee's character or attitude. Where appropriate, offer support and training to correct any problem areas.
11. Encourage the employee to voice his or her opinion, in agreement or disagreement.
12. Focus on professional development. Performance Reviews are an excellent time to discuss opportunities for an employee's growth in his or her current position and opportunities to progress.
13. Look ahead and develop targets for the next performance period which are measurable and attainable and designate timelines for each target. Where possible, encourage the employee to come up with his or her own targets. Employees are more likely to achieve targets in circumstances where they have assisted in identifying the targets.
14. Document a summary of the Performance Review, including the targets for the year ahead. Both the employer and employee should sign this summary, which then serves as a reference for the next period of review.

### **3. How to deal with under performance**

It is essential that underperformance is promptly recognised and addressed. Management training is recommended in this regard as managing underperforming employees can be challenging. Where underperformance is ignored, it is highly unlikely that the employee's performance will improve without some form of intervention or targeted performance management. Further, underperformance often leads to resentment and discontent from other employees who may feel that the underperforming employee is not pulling their weight. In circumstances where underperformance is not addressed, a clear signal is sent to employees that performance is not taken seriously which can serve to demotivate and discourage employees.

#### **3.1. Performance Improvement Plan (“PIP”)**

A PIP is a mechanism to address identified shortcomings in performance, generate performance improvement and ensure employees are treated in a fair and consistent manner by following a specific plan and guidelines in relation to performance improvement.

When placed on a PIP, employment status is unchanged but an employee is on notice that their performance is unsatisfactory and requires improvement within a specified time period.

Underperformance does not always occur in isolation. For example, an underperforming employee may also have a poor attendance record and/or misconduct issues. Also, it is common for employees to experience stress during a period of Performance Management, particularly when an employee is placed on a PIP. It is important to address any other such matters which arise by utilising appropriate policy and procedures. Generally, but dependent on the size of the firm and availability of managers/partners to separately deal with each issue, matters may be addressed in parallel with the PIP. For example, an employee may be disciplined for unauthorised absence per the Disciplinary Policy, or raise a grievance per the Grievance Policy, whilst also being monitored on a PIP per the Performance Management Policy.

An allegation of bullying should be dealt with under the Dignity at Work Policy and is more likely to require a pause in the performance process and for specialist advice to be sought. However, if the firm has sufficient personnel senior to the employee in question, it could also be addressed in parallel to the PIP.

The Performance Management Policy should clearly set out the aims of a PIP and how it is conducted. It should also contain flexibility for the employer to deal with any issues which may arise, for example the policy may state that a PIP will be put on hold during an employee's absence, to be re-activated upon the employee's return to work, to ensure that the Manager has adequate time to assess employee performance during the PIP.

#### **3.2. How to conduct a PIP**

In the event that an employee is under performing, the applicable Manager should be available to provide time and support to the employee to help him or her achieve a satisfactory level of performance.

### **Step 1: Inform Employee of Performance Issues**

- Invite employee to a meeting with their Manager.
- Outline in writing the concerns regarding the employee's performance.
- Advise the employee to consider these issues in advance of the meeting.
- Enclose a copy of the Performance Management Policy.

### **Step 2: Meeting to Discuss Performance Issues**

- The employee's Manager should detail the performance issues and clearly set out the areas in which the employee is underperforming.
- The employee should be afforded an opportunity to respond to issues raised.
- The employee should be advised that a PIP is being implemented to assist him or her to improve.
- If the reason for poor performance is due (or stated to be due) to a medical condition, there should be consideration of medical evidence and whether reasonable accommodation can and should be made e.g. it may be appropriate to adjust the performance targets to ensure that they are reasonable for the employee.

### **Step 3: Set Targets**

- Manager to agree and document realistic and achievable targets for employee to achieve over a reasonable time period (usually between 6 weeks to 3 months).
- Manager to confirm the training and support that will be provided to the employee throughout the PIP.
- Confirm objectives and consequences of failing to achieve targets in writing.

### **Step 4: Schedule Regular Review Meetings**

- Manager to conduct regular PIP review meetings of the employee's performance against the targets.
- If necessary the Manager and the Employee should agree on further training/support to be provided.

### **Step 5: Conclude PIP / Final Review Meeting**

- Manager to meet employee to review progress made during PIP period.
- If the employee is successful in meeting the requirements of the PIP - congratulate and encourage the employee to keep performance to the expected standard. Remind the employee that while he or she is no longer on a PIP, his or her performance will continue to be monitored in the same way as other employees per the Performance Management Policy.
- If the employee does is not successful in meeting the improvement requirements of the PIP – inform the employee that the failure to make the required improvements is a disciplinary matter which will be dealt with under the Firm's disciplinary process. A separate Manager should deal with the disciplinary process and decide on any disciplinary sanction. In parallel to the disciplinary process, an employee who has failed to make the required improvements under a PIP is usually placed on another PIP to assist improvement and the process should begin again at Step 1 above.

#### **4. Disciplinary Sanction for Poor Performance**

Performance management and the disciplinary process are two separate processes which often run in parallel. One of the objectives of a PIP is to afford an employee a reasonable opportunity to improve prior to taking any form of disciplinary action.

As noted above, an employee's failure to make the improvements required under the PIP is treated as a disciplinary matter, in accordance with the Firm's Disciplinary Policy. An individual who has had no prior involvement in the PIP process (and someone who is sufficiently senior to conduct the disciplinary hearing and implement a disciplinary sanction) should be appointed to manage the disciplinary process. Under the Disciplinary Policy, the employee may be issued with a proportionate sanction which is reasonable in the circumstances. Usually, the employee will be afforded the opportunity to appeal the sanction.

Graded disciplinary sanctions generally apply in respect of an employee's failure to make the improvements required by a PIP i.e. issuing warnings and sanctions short of dismissal before proceeding to dismiss an employee. Genuine Performance Management efforts, such as further PIP(s) should continue in parallel with any disciplinary action in order to provide the employee with sufficient opportunity to improve before a dismissal is considered.

#### **5. Dismissal for Poor Performance**

Poor performance is a permitted basis for dismissal under the Unfair Dismissals Acts 1977 to 2015 but is not easy to establish. It will require the employer to have given the employee a number of opportunities to improve and to have conducted (i) a formal PIP; and (ii) a separate disciplinary process. A performance related dismissal is a process that may take considerable time to complete, ranging from 3 to 9 months. It is also time intensive for management conducting the process.

The extent of a PIP and subsequent disciplinary process will depend on the particular circumstances of each case, including the employee's position, seniority and length of service. It is recommended that firms seek specialist legal advice prior to any performance related dismissal.

## APPENDIX A – PIP Flowchart

**[INSERT]**

## APPENDIX B - Letter to Employee re PIP

To: _____	Date: _____
From: _____	CC: _____
RE: Performance Improvement Plan ("PIP") _____	

Dear *[insert employee name]*

The purpose of this letter is to follow up on our discussion *[today/insert date]*, when we discussed concerns over your performance and the need for immediate and considerable improvement to be demonstrated. I enclose a copy of the Performance Management Policy for your review.

### **Job requirements**

As *[insert role]*, your duties include the following:-  
*[Brief summary of job responsibilities highlighting expectations in relation to job grade/experience]*

### **Performance Issue(s)**

There have been continuing issues with your job performance, as follows:

*[insert detail of all of the performance issues]*

We have discussed these issues with you informally

*[Reference past conversations/meetings].*

In order to assist you to improve your performance *[and the performance of your team]* we have *[insert any details taken to assist the employee in correcting performance issues]* but you have not made satisfactory progress towards improvement and therefore your performance has become a more serious issue.

### **The Business Impact of the Performance Problem(s)**

*[State the impact the employee's poor performance is having on the Firm. This is a key message of this document. It is important for the employee to understand how their performance impacts the Firm, the business, the service, other employees and so on.]*

### **Expectations of Satisfactory Performance during the next *[insert time frame]* weeks**

The PIP is for a *[insert time frame]* period during which your performance will be monitored closely.

*[The timeframe must be reasonable to demonstrate and measure improvement and to allow for the realisation of targets.]*

You must establish and maintain improved performance by completing (or demonstrating sustained improvement in) the following target areas:

*[Based on the issues listed above, list the targets to be achieved during the time period.]*

**Manager/Firm Support**

We are committed to helping you succeed and we are prepared to give you every assistance in helping you to meet your performance and development needs.

As your manager, I will meet with you on a regular basis to discuss your performance and answer any questions. I expect you to seek clarification or guidance if questions arise regarding the targets of your PIP. Should you require more frequent feedback, or if you require any additional training to achieve your targets, please let me know and we will consider your request.

*[State the support that you have been and/or are willing to provide to help the employee meet the targets. You should note any suggestions put forward by the employee as to what measures might assist him/her to improve his/her performance. You should be aware of the different types of support that you can recommend (e.g. encourage employee to solicit coaching/guidance from other team members).*

**Consequences**

Failure to successfully achieve the standards of improvement required by the PIP (or failure to maintain the standards after the PIP is completed) may lead to corrective action in accordance with the Disciplinary Policy. No disciplinary action will be taken in respect of poor performance until your performance has been measured against your targets. If your performance does not improve to a satisfactory level during the time frame set out above, a disciplinary sanction may be imposed in accordance with the Disciplinary Procedure.

Yours sincerely  
*[insert name of manager]*

I have received and read this PIP, and I understand what I need to do in order to successfully complete this plan. I understand the consequences should I fail to meet the targets of the PIP.

Signature of Employee

Date

\_\_\_\_\_

\_\_\_\_\_

**APPENDIX C - Letter to Employee re PIP outcome**

To: _____	Date: _____
From: _____	CC: _____
RE: Outcome of Performance Improvement Plan ("PIP") _____	

Dear *[insert employee name]*

The purpose of this letter is to follow up on our discussion *[today/insert date]*. As you know, due to a number of performance concerns that arose in relation to your performance, you were placed on a performance improvement plan (PIP) on *[insert date]* for a *[insert time period]* (a copy of this letter is enclosed). The purpose of the PIP was to assist you make the necessary improvements to bring your performance up to a standard acceptable to the Firm and commensurate to your role as *[insert*

role]. Over the course of your PIP you received regular feedback from me every [insert frequency] on your performance relative to your PIP.

As we have reached the end of the PIP period, we met [today/insert date] to review your performance across [insert time frame] and to assess whether you achieved the targets that were set for you in the PIP.

### **Performance Targets**

The set targets for Q1, as detailed in your PIP, were as follows:

[set out all targets which were to be achieved during the time period]

### **The Results**

As we discussed today, having assessed your performance in Q1 against the targets set for you in your PIP, we have reached the following conclusions:-

[Insert result of each target i.e. was the target achieved]

During the meeting you also had the chance to share your views on the above results.

### **Next Steps**

*Option A – use where employee has failed to make the improvements required by the PIP*

While you have successfully achieved [insert number] of the targets, you failed to fully meet [list targets the employee did not meet] / you failed to meet any targets set out in the PIP. Accordingly, you have failed to successfully achieve the standards of improvement required by the PIP.

As explained to you in our meeting on [insert date PIP was set], a failure to achieve the standards of improvement required by the PIP could result in the matter being considered under the Firm's disciplinary policy. In light of your failure to achieve the standards of improvement required by the PIP, this matter is being considered under the Firm's disciplinary policy. Over the next day or so, you will be invited to attend a formal disciplinary hearing to discuss and respond to these issues. The person appointed to hear the disciplinary hearing will be independent and impartial and will not have been involved in your PIP.

While I will now step out of this process, do please feel free to contact me if you have any queries in respect of this letter.

**OR**

*Option B – use where employee has reached the required standards of performance under the PIP*

You have successfully achieved [insert number]/ [all] of the targets and accordingly, you have demonstrated sufficient improvement.

We congratulate you on achieving this improvement and encourage you to maintain this level of performance and to continue to achieve your targets. Please note that

your performance will continue to be monitored in the same way as other employees, per the Performance Management Policy and any subsequent incidents of poor performance will be addressed by way of a further PIP.

Please feel free to contact me if you have any queries on this letter.

Yours sincerely  
*[insert name of manager]*