

## HR Policy

**P098 A5**

## TfL Performance improvement policy and procedure

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# 1 Policy

## 1.1 Introduction

One of the main factors which enables Transport for London (TfL) to meet its business needs is to ensure all employees perform to the required levels of performance expected in their roles.

This policy and procedure outlines the provisions available to assist the employee to reach the required levels of performance.

This policy does not cover the following situations:

- unsatisfactory level of attendance or ill-health capability – refer to the Attendance at work policy and procedure
- unsatisfactory performance that is considered to be misconduct – (e.g. negligence, deliberate or wilful unsatisfactory performance, breaches of the organisation's behaviours and values, gross incompetence which has seriously damaged or has the potential to seriously damage TfL's business interests, failure to carry out reasonable instructions and failure to follow the rules and procedures of the organisation) – refer to the Discipline at work policy and procedure
- newly appointed employees who have not yet completed their probationary period – refer to the Probation guidelines

TfL will ensure that employees are made aware of the most recent version of this policy and any subsequent amendments.

## 1.2 Scope

This document applies to employees of TfL, Docklands Light Railway Limited, Rail for London Ltd, London Bus Services Limited, London Buses Limited, Victoria Coach Station Limited who are on TfL employment contracts (Paybands 1-5 and Directors) and those staff on predecessor organisation employment contracts where the individual has transferred to the employment of TfL.

## 1.3 Statement

TfL will at all times endeavour to create an environment that will support employees to achieve and maintain a high level of performance in their work. TfL's performance review process is the primary tool for assessing the performance and supporting the development of employees.

TfL aims to ensure employees are made aware of what is expected of them and that they are encouraged and supported in delivering the objectives of their job. The use of this procedure should be seen as a way of helping and encouraging improvement amongst employees who need support to achieve at least a satisfactory level of performance. Under this process the SMART (specific, measurable, achievable, relevant and timely) objectives will be set.

In instances where an employee is deemed to be disabled as defined under the Equality Act, reasonable adjustments will be made to support them in achieving the

required level of performance, or finding alternative employment. Instructions and guidance on reasonable adjustments are available on Working at TfL.

Some examples of unsatisfactory performance are listed below, however this list is not exhaustive:

- unsatisfactory quality of work and/or low output
- repeated failure to meet realistic deadlines and or achievable targets despite support and guidance
- consistent inability to report common problems and where appropriate, suggest solutions
- continuing inability to adapt to changes in working practices despite appropriate support
- significant or frequent mistakes despite feedback and support
- a demonstrable lack of skill or knowledge or ability to learn despite appropriate training and support
- failure to meet the required competency level
- failure to perform all requirements of the job description after guidance, support and training

#### **1.4 Requirements**

Managers should give feedback that is balanced, observed, objective, structured and timely. Initial concerns on performance should be raised with the employee concerned as part of the normal management process. A brief note of the conversation should be made and shared with the employee. HR Operations is available to give help and support to managers and employees if required.

#### **1.5 Responsibilities**

Both managers and employees have a joint responsibility to ensure that at least a satisfactory level of performance is achieved.

All employees should:

- comply with the arrangements set out in this policy and procedure
- ensure they understand what is expected of them in relation to work performance and seek clarification where required
- where they encounter any problems that are affecting work performance, discuss them with their manager and where appropriate seek to resolve them
- take positive steps to improve performance where gaps are identified, request any appropriate development and follow up on agreed actions
- fully co-operate with the performance review process and this document

- be familiar with this Performance improvement policy and procedure and seek clarification if necessary

All managers and employees with a leadership or supervisory role should:

- ensure they hold regular one-to-one performance discussions with their direct reports
- when using this policy and procedure, ensure that employees are aware of it and where to find it on Working at TfL (or provide a copy if they do not have access)
- ensure that employees are aware of the level of performance required of them along with setting realistic objectives
- be prepared to communicate openly, honestly and constructively with employees regarding their performance
- ensure feedback is given to employees promptly where any shortfalls in performance occur, and provide any necessary training, coaching, support and/or guidance. A summary note of the main points of discussion and steps taken should be kept
- ensure that all cases of poor performance are treated confidentially and sensitively

## **1.6 Advice and guidance for managers**

Line managers can receive impartial advice and guidance from an appropriate HR representative. In the first instance, line managers should contact HR Operations (by calling 1729, ext. 0800 0155 071) in relation to any new cases, in order to be directed to the relevant team, depending on the nature of the matter.

The HR representative ensures that the procedure is followed and will intervene and address the hearing (the employee, their companion or chair) as appropriate to ensure appropriate conduct. The HR representative is not responsible for deciding whether the case is found or what action is to be taken and can therefore normally be involved in several stages of one case. They will advise of the range of appropriate sanctions which may be awarded to ensure they are in line with company policy and other similar cases. In exceptional cases, another HR representative may be involved in the process.

If an appeal is specifically on the grounds of a breach of procedure that occurred as a result of advice from the assigned HR representative then it will be appropriate for another HR representative to attend.

## **1.7 The role of the companion**

At the formal stages of the procedure the chosen companion can address the hearing and may:

- put the employee's case
- sum up the employee's case
- respond on the employee's behalf to views put forward at the hearing

- raise issues on matters of policy and procedure

They cannot answer questions on behalf of the employee.

Normal standards of behaviour apply to work place companions and trades union representatives. In respect of companions that are recognised trades union representatives they are entitled to carry out trade union duties as outlined within this policy and the TfL Framework for consultation and collective bargaining. Action taken against a trade union representative solely for carrying out their duties as a trades union representative will be considered as victimisation.

## 2 Procedure

This procedure sets out the specific process that is to be followed in cases of unsatisfactory performance for all employees. HR Operations is available to give help and support to managers and employees in the application of this procedure. In all stages of this procedure the line manager will respond to the employee as soon as reasonably practicable and certainly within 7 calendar days unless explicitly stated otherwise.

### 2.1 The right to be accompanied

Employees have the right to be accompanied by a trades union representative or a fellow employee (companion) at any formal hearing held in accordance with the formal procedure. It is the employee's responsibility to organise this and to inform the person conducting the formal hearing, in advance, of the person who will accompany them. Any meeting held to establish the facts of the case is not considered a formal hearing and therefore an employee does not have the right to be accompanied. Informal discussions where advice and guidance is given or coaching/training arranged, do not attract the right to be accompanied.

### 2.2 Action against recognised trade union representatives

No formal action will be taken against a recognised trades union representative until a full time trade union officer of the trade union concerned has been contacted and informed of the circumstances. Action taken against a trade union representative solely for carrying out their duties as a trades union representative will be considered as victimisation.

### 2.3 Informal approach

As part of the normal management process, feedback should be given to employees on their performance. Where there are concerns, the manager must arrange a meeting with the employee as soon as possible. In seeking to assist an employee to improve their performance the steps of this procedure are summarised below.

Stage		Possible Action
1	Unsatisfactory performance	Informal advice (see 2.3.1)
2	Further unsatisfactory performance within 52 weeks of stage 1	Written warning
3	Further unsatisfactory performance within the monitoring period or a further lapse in performance within 52 weeks of receiving a stage 2 warning	Final written warning

4	Further unsatisfactory performance within the monitoring period or a further lapse in performance within 52 weeks of receiving a stage 2 warning Further unsatisfactory performance between 53 and 104 weeks of a stage 3 warning.	Dismissal  Final written warning (by return to stage 3)
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### 2.3.1 The informal meeting (stage 1)

The purpose of the meeting is to:

- discuss the apparent shortfall between the employee's current performance and the level required
- give the employee the opportunity to respond
- ascertain if there are any circumstances to explain the apparent shortfall
- ensure the employee has a clear understanding of their role

The manager should carefully assess the situation in order to identify if the apparent shortfall is due to:

- the employee's negligence, deliberate action, attitude, failure to carry out reasonable instructions – use the Discipline at work policy and procedure
- lack of training or coaching, lack of supervision/guidance or basic incapability – use this procedure.
- a change in the organisation's requirements/working methods or where the employee has moved to a new role and feels they are not suitable to the role – use this procedure
- excessive workloads that may lead to shortfalls in performance. These should normally be addressed outside of this policy but in some cases it may be useful to use the performance improvement plan to identify priorities
- a disability – use this procedure but where required and following advice from Occupational Health, ensure that reasonable adjustments are also implemented; refer to Working at TfL for instructions and guidance on Occupational Health
- problems relating to the employee's personal/domestic life or concerns at work – although this procedure may still be used it should be used in addition to a referral to Occupational Health and any possible temporary reasonable adjustments
- external factors over which the employee has no or little control – these should normally be addressed outside of this policy but in some cases it may be useful to use the performance improvement plan to identify what steps have been taken to ensure these factors are minimised

Following this meeting the manager will make a summary note of the main points of discussion and share this with the employee. The performance improvement plan is an effective way of capturing the areas that require attention.

Where an employee's performance has a significant impact on the delivery of their team and/or external relationships then it may be appropriate to enter the formal stage immediately and/or reduce the monitoring periods.

### **2.3.2 Follow up meeting**

After giving the employee the opportunity to improve their performance, which may have included providing additional support/training, a meeting to review the performance will be arranged. The outcome of the meeting will be one of the following:

#### Required improvement achieved

The employee will be encouraged to maintain the improvement through the normal one to one performance discussions.

#### Regular monitoring

The required improvement has been achieved but it is considered necessary to establish more regular monitoring to enable the improvement to be sustained. The frequency of monitoring will be agreed with the employee.

#### Further time to improve

Some improvement has been achieved, but the level of performance required has not yet been fully attained. The manager will consider whether to give the employee further time to improve or discuss whether any alternative solution may be appropriate. Consideration could be given, for example, to retraining or assisting the employee to look for another more suitable post through the normal application process. Alternatively the employee may suggest another option, which should be considered.

#### No discernable improvement

If there has been no discernable improvement and no alternative solution has been agreed, the manager will explain to the employee that they have failed to improve to the required performance level and will now be referred to the formal procedure.

## **2.4 Formal procedure**

The manager should inform a HR representative that it is intended to hold a formal hearing, so that they can offer any advice or assistance to either party as required.

### **2.4.1 Formal hearing – stage 2**

Prior to holding a formal hearing the manager will need to ensure that they have all the required information. This may include notes of one-to-one meetings, details of poor performance, and/or the performance improvement plan. At this stage the manager should verbally inform the employee that they are entering the formal process in case the employee wants to make them aware of any new facts.

The manager will then write to the employee to inform them that they are required to attend a formal hearing, which may result in formal action being taken, ensuring that:



- 7 calendar days notice is given of the hearing, confirming the date, time and location
- a copy of the summary note of the informal meeting(s) and any other documents to be used at the meeting are attached
- the reason for the formal hearing is stated, e.g. Unsatisfactory performance in that ..... over the time period of .....
- the employee is advised of their right to be accompanied by a trade union representative or a workplace colleague
- the employee informs the manager, at least 3 calendar days prior to the hearing, who their companion will be. Where the employee has confirmed the name of their companion they will be copied into any correspondence and provided with an additional copy of the above information.

If the employee cannot attend due to circumstances outside their control and unforeseeable at the time the hearing was arranged, or the companion cannot attend on the proposed date, the employee can suggest an alternative time and date, so long as it is reasonable and it is not more than 7 calendar days after the original date. The chair will seek to take all reasonable steps to arrange a suitable date within 7 calendar days of the original hearing. Should it be that the chosen companion is not available then an alternative companion should be sought. This is to ensure the matter is dealt with in a timely fashion. The 7 calendar days may be extended by mutual agreement.

The employee will normally be required to attend work prior to and/or after attending the hearing and will suffer no loss of pay for attending the hearing.

#### **2.4.2 Present**

- The hearing will normally be chaired by the employee's line manager
- Although it is not expected to be common practice, an HR representative may attend if requested by the employee and agreed by the chair, or if the chair requires their attendance.
- A summary note of the meeting will be captured to include key points and any follow up actions will be given to the employee within 3 working days. If they want to note any differences in the summary note, these must be provided within 3 working days of receipt.

#### **2.4.3 Conduct of the hearing**

- The manager will open the hearing by introducing those present, explaining the reason for the hearing, and outlining the perceived failure to reach the required level of performance
- The employee will then be given the opportunity to respond
- The employee's response will then be discussed and the manager can ask questions to ensure that they have a full understanding of the employee's position



- Once all the information has been considered the hearing will then be adjourned whilst the manager decides what action is appropriate
- The manager can only take action under this procedure if they believe after considering all the information, that the reason for the shortfall in the performance is one which can fairly be held to be the responsibility of the employee
- The employee will be informed as to what sanction, if any, is to be awarded and the appeal procedure will be explained

#### **2.4.4 Potential sanctions**

Should it be deemed that performance is still unsatisfactory then a written warning would normally be issued. However, in some cases it may be appropriate to take no action, or extend the monitoring period where exceptional extenuating circumstances have prevented the employee meeting the required performance level.

##### **Written warning**

A written warning will be valid for 52 weeks from the date of the hearing. The warning must contain details of what improvement is required plus a statement that failure to reach the required level of performance within the new monitoring period, or a further lapse in performance within 52 weeks, may result in further action, where a more serious view may be taken, which may ultimately lead to dismissal.

Changes to, or the preparation of, a performance improvement plan will need to be made to support the sanction. The monitoring period will normally be between 4 and 12 weeks as appropriate. It may be more appropriate to go into the detail of the performance improvement plan at the next one-to-one meeting with the employee. If performance further deteriorates during the period specified at stage two, a stage three hearing may be invoked earlier.

The manager is required to confirm their decision and the reasons for it in writing. Wherever possible this should be done at the end of the hearing, following the necessary adjournment. If it is not possible to confirm the decision in writing on the day, then it should be done as soon as possible. The employee will have 7 calendar days to appeal from the date of the letter. In cases where the letter is posted and there is a delay in receipt of the letter, the appeal period may be reasonably extended by mutual agreement.

#### **2.5 Formal hearing – stage 3**

If at the end of the monitoring period specified at the stage 2 hearing, performance has not improved to an acceptable level, the employee will be informed in writing to attend a stage 3 hearing attaching a copy of the previous warning and the performance improvement plan.

The other arrangements for the hearing, conduct at the hearing and right to be accompanied, are the same as stage 2.

### 2.5.1 Potential sanctions

Should it be deemed that performance is still unsatisfactory then a final written warning would normally be issued. However, in some cases it may be appropriate to take no action, or extend the monitoring period where exceptional extenuating circumstances have prevented the employee meeting the required performance level.

#### Final written warning

A final written warning will be valid for 104 weeks from the date of the hearing. The warning must contain details of what improvement is required plus a statement that failure to reach the required level of performance within the new monitoring period, or a further lapse within 104 weeks, may result in further action, where a more serious view may be taken, which may ultimately lead to dismissal. If during the first 52 weeks of the final warning there are further performance issues, employees will be referred to stage 4 of the procedure. If however, the performance issues arise between weeks 53 and 104 weeks of the warning they will be referred to stage 3.

Changes to, or the preparation of, a performance improvement plan will need to be made at this hearing to support the sanction. Should it not be possible to complete the performance improvement plan on the day of the hearing, a further meeting will need to be rearranged with the employee, and if requested, their companion also being present. The monitoring period will normally be between 4 and 12 weeks. If performance deteriorates further during the period specified at the hearing, a stage 4 hearing may be invoked earlier.

The manager is required to confirm their decision and the reasons for it in writing. Wherever possible this should be done at the end of the hearing following the necessary adjournment. If it is not possible to confirm the decision in writing on the day, then it should be done as soon as possible. The employee will have 7 calendar days to appeal from the date of the letter. In cases where the letter is posted and there is a delay in receipt of the letter, the appeal period may be reasonably extended by mutual agreement.

### 2.6 Formal hearing - stage four

When the required improvement in performance stated at stage 3 has not been made in the specified time scales, a stage 4 hearing will be arranged to discuss their continued unsatisfactory performance since the final warning given at stage 3.

The manager will invite the employee, in writing, to a stage 4 hearing attaching a copy of the final written warning. The other arrangements for the hearing, procedure at the hearing and right to be accompanied are the same as at stages 2 and 3 above. At this stage an assigned HR representative will be in attendance at the hearing. A summary note of the meeting will be captured to include key points and any follow up actions and these will be given to the employee within 3 working days. If they want to note any differences in the summary note, these must be provided within 3 working days of receipt.

The letter instructing the employee to attend the hearing must point out that the result of the hearing could be dismissal.

## 2.6.1 Potential sanctions

Should it be deemed that performance is still unsatisfactory, then dismissal is the likely outcome. However, in some cases it may be appropriate to take no action, or extend the monitoring period where exceptional extenuating circumstances have prevented the employee meeting the required performance level.

### Dismissal

Dismissal will normally be with notice or be paid in lieu of notice (which will be subject to the appropriate tax rules at that point in time). When, despite previous warnings and support, dismissal would be the likely outcome, the manager should consider whether the alternative step of demotion to a suitable post (within the terms/conditions and salary of the alternative post) which is within the employees competence level, would be appropriate in the circumstances. This is subject to whether there are any suitable alternative posts vacant and dependent on whether the grade allows scope for demotion.

Where there are exceptional mitigating circumstances the manager may consider extending the review period given at stage 3.

The manager is required to confirm the decision and the reasons for it in writing. Wherever possible this should be done at the end of the hearing following the necessary adjournment. If it is not possible to confirm the decision in writing on the day, then it should be done as soon as possible. The employee will have 7 calendar days to appeal from the date of the letter. In cases where the letter is posted and there is a delay in receipt of the letter, the appeal period may be reasonably extended by mutual agreement.

## 2.7 Appeal procedure formal stages 2 to 4

An employee who wishes to appeal against the outcome of any formal stage of the procedure may appeal to the person specified in the letter within 7 calendar days of the letter. The appeal must be made in writing and clearly state the basis on which the appeal is made. One appeal will be allowed at each formal stage of this procedure

- The appeal hearing should be arranged within 7 calendar days of the appeal being received. The same right to be accompanied and rights where the companion cannot attend on the proposed date applies
- The appeal hearing will be chaired by an individual who is more senior than the manager who chaired the original hearing, or an individual who has the authority to, where appropriate, override the original decision. A HR representative may attend dependant on the stage as outlined above
- Whereby an employee is appealing a dismissal then a manager who has not been involved in the process so far will be used. They would however normally be within the same directorate.

### Appeal hearing

- At the hearing the appeal manager will listen to the employee's grounds of appeal and review the formal action taken.

- The appeal manager may ask questions to clarify matters and having heard the appeal, will adjourn the hearing to consider the decision
- The appeal manager can:
  - uphold the decision made at the performance improvement hearing and any sanction awarded
  - reduce the sanction
  - remove the sanction
- Should the appeal manager consider that further investigation is required before a decision can be made, they must inform the employee, including time scales, which would normally not be longer than 7 calendar days.
- The hearing would be reconvened to deliver the decision unless the employee confirms they want the decision in writing only
- The appeal manager is required to confirm the decision and the reasons for it in writing. Wherever possible this should be done at the end of the hearing following the necessary adjournment. If it is not possible to confirm the decision in writing on the day, then it should be done as soon as possible
- The decision made by the appeal manager is final and ends the procedure at each stage
- In the circumstances where a dismissal is overturned on appeal this will normally be valid from the date of the stage 4 performance hearing.

If not already done so the summary notes of any earlier stage hearing will be provided to the employee at the appeal.

## 2.8 Privacy and data protection

TfL will comply with privacy and data protection legislation relating to the processing of your personal data.

TfL will process your data primarily to enable us to perform our contract with you (including to perform this policy), and to enable TfL to comply with our legal obligations.

### Disclosure of records

Any reports and summary notes will be disclosed as outlined within the policy above. To protect the legal rights of all individuals involved in the investigation and fulfil TfL's duty of care as an employer, and comply with data protection and privacy legislation, TfL may need to remove information that may lead to the identification of employees and/or members of the public.

### Retention periods

Any letters, reports and summary notes will be retained for seven years from the date the matter was formally closed. When deciding upon any appropriate sanction, only warnings that are live will be disclosed or considered.

For further details, please refer to the [TfL website](#).

### 3 Support and advice

Support and advice can be obtained by speaking to your manager or online via Working at TfL.

### 4 Person accountable for this document

Name	Job title
Martin Boots	Head of Employee Relations

### 5 References

Document no.	Title or URL
P078	<a href="#">TfL Code of conduct</a>
P085	<a href="#">Attendance at work policy and procedure</a>
P090	<a href="#">Discipline at work policy and procedure</a>
G2171	<a href="#">TfL Guidelines for managing probation</a>
	<a href="#">TfL Framework for consultation and collective bargaining</a>
	<a href="#">Performance improvement plan</a>
Working at TfL	<a href="#">Reasonable adjustments</a>
Working at TfL	<a href="#">Managing my team's health</a>
Working at TfL	<a href="#">My health</a>

### 6 Document history

Issue no.	Date	Changes	Author
A4	April 2018	CR-10515 - re-templated, reference to Disability Discrimination Act updated, links updated. CR-10320 – updated to reflect GDPR requirements.	Jo Page
A5	May 2019	Updated to reflect changes in ER's operating model following Transformation CR-11453	Rob Woolf