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# INEFFICIENCY: PERFORMANCE AND ABSENCE

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## CHAPTER 6

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# INEFFICIENCY: PERFORMANCE AND ABSENCE

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## POOR PERFORMANCE

### General Principles

6000 Guidance for managers to follow in managing poor or deteriorating performance is set out in PM 12. Staff and managers should also refer to the PMS Guidance Booklet, which sets out how the Performance Management System is used.

6001 The general principles which apply to all cases of poor performance are that managers will:

- ❑ give the person time, opportunity and assistance to improve; and
- ❑ take a close and active interest in the person's work with the aim of providing help and guidance.

6002 Poor performance is defined in the Performance Management System in terms of a 'Not Full Effective' performance assessment, taking account of the individual's level of experience.

6003-6004 unallocated

### Delegated Responsibilities

6005 a. Responsibility for identifying and dealing with poor performance rests clearly with line managers.

- b. Senior Staff Group managers have delegated responsibility for taking decisions on downgrading or dismissal on grounds of inefficiency, subject to consultation with Director HR.

### Key Principles

6006 The management of poor performance includes the following:

- ❑ All staff have a contractual responsibility to achieve a fully effective level of performance. The Forward Job Plan should accurately convey the main purpose and scope of each job and the outcomes expected;
- ❑ When an employee starts work with the FC, the standards of work required, the conditions of any probationary period, and the consequences of failing to meet the necessary standards will be explained;
- ❑ As soon as it becomes apparent that a Job Holder is performing less than effectively, a Performance Review will be held to review the difficulties and look for solutions;
- ❑ An individual will be given time to improve and training where appropriate;
- ❑ Where performance does not improve after a trial period, dismissal on grounds of inefficiency will be the normal course of action.

6007 Managers will:

- ❑ Give regular, good quality, specific feedback on performance stating clearly where shortcomings lie;
- ❑ Act as a coach by giving clear guidance;

- ❑ Discuss any factors that may be contributing to the poor performance;
- ❑ Set clear time-scales for expected improvements;
- ❑ Record the elements of the FJP, including any skills or competencies, that need to be improved;
- ❑ if there is a lack of necessary skills then identify any suitable training or help from colleagues.

### **Probationers**

6008 These principles apply as much to the management of probationers as to other staff. However, the procedures for formal trial periods do not apply (since probation is itself a 'trial' period in the job). Managers will apply the guidance on managing probationers available on the HR Intranet site.

### **Monitoring Performance through the FJP**

6009 Performance is judged against the FJP which consists of Key Work Areas and Performance Targets, reflecting the job in quality and quantity terms. The system of Performance Reviews mean that poor or deteriorating performance will be quickly picked up by a manager. Guidance for line managers on managing and recording performance, giving feedback, and supporting training/development is given in the PMS Guidance Booklet. Guidance on the mentoring programme is available from HR in Silvan House. Where poor performance continues, despite additional guidance/support, a 'Not Fully Effective' assessment will be given. The action which managers are expected to take in managing cases of poor performance is set out in PM12 – Managing Poor Performance.

6010 Account will be taken of short-term dips in performance due, for example, to illness, personal problems etc. Welfare assistance will be offered and whatever support from the manager that may help and is possible, including temporary job re-design or changes to working hours to help deal with family commitments.

### **Not Fully Effective Assessment**

6011 More frequent reviews will be carried out when performance is 'not fully effective'. A reasonable time will be allowed for improvements. Poor performance that continues after problems have been identified and time allowed for improvement will attract a formal NFE rating. A formal warning will be issued by either the RO, CO or Unit Manager. The individual may make representations in writing or orally at this stage and may be helped to do this by a Trade Union Official or work colleague.

### **Timing of Trial Period**

6012 If it is clear after a minimum period of 1 month after a formal written warning has been issued that no improvement is being made, a trial period may begin at that point, subject to allowing a right of appeal.

6013 Each case will be considered on its merits, in the light of any factors that may be affecting performance, e.g. domestic or health problems. This does not mean that trial periods would not apply in such circumstances, but that the timing may be different in order to allow personal difficulties to be resolved.

### **Right of a Member of Staff to 'Appeal' the Recommendation for the Trial Period**

6014 The local HR Manager or Unit Manager will write to the Job Holder and will invite him/her to attend an interview if he/she wishes to appeal the decision for a trial period to commence. The individual may instead choose to make all his/her representations in writing.

6015 There is a statutory right to be accompanied by a Trade Union official or work colleague at the appeal.

6016 A written summary of the main points made at the meeting will be sent to the Job Holder within 5 working days of the meeting. The individual will be informed of the outcome of the appeal in writing and, if a trial period is to commence, the arrangements for this.

6017 If it is concluded that, for example, inadequate support has been given, a trial period may be deferred at that point but procedures for monitoring and dealing with poor performance will continue with improved support.

### **Arrangements for a Trial Period**

6018 The purpose of a trial period is to give an individual a final opportunity to demonstrate that he/she can carry out his/her particular job and, by implication, the level of work required in the Pay Band. The individual will receive a letter initiating a trial period which will include:

- ❑ the commencement date;
- ❑ the length of the trial period;
- ❑ the areas where performance and skills are unsatisfactory;
- ❑ clear measures which will demonstrate that an improvement has been achieved;
- ❑ the arrangements for reviewing performance during the trial period;
- ❑ that failure to improve performance will usually result in dismissal on grounds of inefficiency.

6019 A trial period will, in most cases, last for 4 months and will normally take place in the current post unless there are clear reasons for it being elsewhere.

### **Action during a Trial Period**

6020 The action which a manager will take during a Trial Period is set out in PM 12. This includes regular and structured feedback on at least a monthly basis. At the end of the trial period a full summary Performance Assessment will be completed which will supplement the monthly reports during the trial period.

### **Sickness as a Factor**

6021 Where the RO/CO or the JH consider that poor performance may be attributable to medical causes, a referral will be made to the Medical Advisor. The trial period may continue whilst this is being done, but the JH will be told in writing that inefficiency procedures will continue if the Medical Advisor does not recommend medical retirement, with dismissal on grounds of inefficiency the likely outcome if performance does not improve. If medical retirement is recommended by the Medical Advisor during the trial period, the HR Manager will action this recommendation, subject to a right of appeal.

6022 An individual who can provide additional medical evidence supporting their case has a right of appeal against a decision to retire them on medical grounds, or a refusal to retire them on medical grounds.

### **Action at the end of a Trial Period**

6023 The outcome of a trial period will usually be one of the following:

- ❑ If the individual successfully achieves a **Fully Effective** rating for the trial period, he/she will be expected to perform at that level of performance in the same post for at least 1 year after the trial period has finished. Deterioration of performance within this period will lead to immediate re-commencement of formal procedures: either a new trial period or immediate consideration of dismissal or downgrading.
- ❑ A **Not Fully Effective** rating as the overall mark for the trial period will usually lead to dismissal on grounds of inefficiency, though downgrading or limited efficiency (LE) may be considered in some cases.

6024 The Senior Staff Manager responsible for taking a decision on dismissal or downgrading will see the individual before taking the final decision. The individual may be accompanied by a Trade Union official or work colleague at this meeting if they wish. Once a decision to dismiss or downgrade has been taken, the Job Holder has a right of appeal and a right to be accompanied at an appeal hearing by a Trade Union Official or work colleague.

### **Notification of Dismissal**

6025 Any decision to dismiss will be notified both orally and in writing by the Senior Manager. The dismissal letter will include a statement about whether compensation is to be paid (the latter decided by Director HR), and if it is, the amount that will be payable.

6026 The dismissal letter will set out the individual's rights to internal and external appeals and the timescales for exercising these rights. The effective date of dismissal will be notified in the letter. This is determined by the minimum periods of notice applicable, set out below.

6027-6032 unallocated

## **Appeals**

### **Rights of Appeal: Internal**

6033 A right of appeal in dismissal cases is made to the **Director General**, coupled with any appeal on compensation. Downgrading appeals are made to the **Country Directors**, unless that manager has taken the decision to downgrade, in which case the appeal is to the Director General.

6034 An internal appeal must be submitted to the appropriate senior manager within 14 days from the date of notification of downgrading or dismissal. An individual has the right to supplement his/her written appeal with an oral presentation and has the right to be assisted in this by a Trade Union representative or colleague.

6035 The individual must indicate in their appeal to the DG against dismissal whether he/she intends to appeal the decision on compensation if their appeal against dismissal is unsuccessful.

6036 If the DG decides to uphold a dismissal, the individual may make additional written representations on the issue of compensation within 14 days of the Director General's notification. If the individual wishes, this may instead be made during the oral presentation.

### **External Appeal: Civil Service Appeal Board (CSAB)**

6037 An appeal against dismissal on inefficiency grounds may be made to the CSAB provided that the individual has been continuously employed for at least 1 year and is below the minimum pensionable age. Appellants must:

- send notice to the Board of their intention to appeal either before their effective date of termination or so that it is received within 3 months of that date; and
- send their full written case to the Board within 21 days of giving notice of their intention to appeal.

6038 Staff who have a right of appeal to the CSAB against dismissal on inefficiency grounds may appeal separately and subsequently to the Board against the Commission's decision on compensation. In such cases, the appellant must tell the Board of their intention to appeal

- either within 21 days of the Board's report that the dismissal was fair; or

if not contesting the dismissal:

- within 21 days of the effective date of termination; or
- if the appointment was terminated without notice, the date on which employment ceased.

An appeal against dismissal may not follow an appeal on compensation.

Appellants must send their full written case on compensation to the Board within 21 days of giving notice of their intention to appeal.

6039 Information about CSAB procedures is available in the Civil Service Management Code and can be provided on request by HR, Silvan House or by local HR staff.

### **Employment Tribunal**

6040 An individual who has at least 1 year's continuous employment in the Forestry Commission may also have a statutory right to an Employment Tribunal if he/she believes that he/she has been unfairly dismissed. A claim must be presented to a Tribunal before the end of three calendar months beginning with the date of termination.

### **Periods of Notice**

6041 The appropriate periods of notice in the event of dismissal on inefficiency grounds are:

Continuous service for

- up to 4 years: 5 weeks' notice;
- over 4 years: 1 week plus 1 week for every year of continuous service up to a maximum of 13 weeks' notice.

### **Determination of Compensation for Dismissal on Performance Inefficiency Grounds**

6042 When Director HR agrees with a decision to dismiss and before that decision is notified to the Job Holder, he will also reach a decision on whether the person is eligible for any compensation. The issue of whether any compensation will be appropriate, or the level of compensation paid, will be determined using guidance that is provided by the Cabinet Office, in the light of all the information available about the case. The payment of compensation is not automatic and the key factor is the degree of individual culpability.

6043 If the judgement is made that some compensation is appropriate, Departments have delegated authority to decide the level of compensation to be paid, up to the maximum of what is allowed under the Forestry Commission Compensation Scheme. In other words, a sum from nil up to the maximum compensation possible may be awarded. The types of factors which may be considered in reaching a decision include:

- ❑ Health problems which, while not serious or incapacitating enough to make medical retirement appropriate, have an adverse effect on performance or where domestic difficulties or responsibilities impinge upon work performance to the extent that the job is not carried out satisfactorily. (In the case of the latter, management will first consider what measures can be taken to solve the difficulties, in line with Civil Service policy on equal opportunities and the reconciliation of employment with domestic and caring responsibilities.) Compensation may be appropriate unless it can be shown that the individual has not sought to alleviate the problem by all or some available means;
- ❑ The introduction of new work practices may mean that a formerly competent individual produces measurably lower performance. The amount of any compensation will depend on the extent to which the individual has co-operated with any training schemes offered and made every effort to master the new techniques;
- ❑ Where an individual has been promoted beyond their capabilities, or where there has been a degree of management tolerance of poor performance over a number of years which can no longer be supported, the amount of compensation payable will again depend on the extent to which it can be demonstrated that the individual has co-operated in measures to improve performance;

- ❑ In cases where, after consideration of all the relevant circumstances, an individual's general approach to work is unsatisfactory, although stopping short of a breach of the conduct rules, compensation is unlikely to be paid. Examples include laziness, negligence or carelessness, attitudinal problems, and difficulties in working relationships with other staff;
- ❑ In cases involving problem drinking where the individual's health or mental capacity is reduced to a level at which inefficiency dismissal, as opposed to medical retirement, is considered appropriate, the decision as to whether to award some compensation will usually be tempered by the degree to which the individual has been prepared to co-operate in measures to resolve the problem, including the departmental alcohol programme.

### Limited Efficiency

6044 Staff may, in exceptional circumstances, be retired on limited efficiency grounds on either compulsory or flexible terms. This denotes performance that is not sufficiently poor to be considered inefficient but:

- ❑ no longer measures up to the requirements of the post; or
  - ❑ where the individual fails to carry out his/her full duties satisfactorily;
- and
- ❑ does not improve after management action; and
  - ❑ where management assess that improvement is unlikely.

6045 Limited efficiency retirement is not used as an alternative to dismissal on inefficiency grounds, where this is appropriate. Compulsory retirement on grounds of limited efficiency applies principally to members of the Senior Staff Group. In all cases, downgrading may be considered as an alternative to early retirement.

6046 Managers will first make efforts to help the individual improve their performance in a limited efficiency situation. This will involve making clear where performance is not up to standard and giving time, opportunity and encouragement to put matters right in line with the guidelines in this chapter.

6047 The approval of a Retirement Board is required for compulsory retirement on grounds of limited efficiency. An individual has the right to make representations to the Board, with a TU representative or colleague being present. The Board may consider options to retain the person in his/her grade, downgrade, or be compulsorily retired. A right of appeal to the Director General exists in the event of downgrading or compulsory retirement being recommended, and a right of appeal to the CSAB if he/she has not reached the minimum pensionable age. The normal periods of notice relating to retirement (not dismissal) apply.

6048 The Cabinet Office is consulted about any proposal to retire staff at former Grade 3 level or above on compulsory or flexible terms.

6049-6059 unallocated

## UNSATISFACTORY ATTENDANCE DUE TO SICKNESS ABSENCE

### Unsatisfactory Attendance

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6060 The FC's aim is to help people with a poor attendance record improve to the standard required. A number of forms of support may be available, depending on how appropriate the FC believes these to be in each case.

6061 The policies and procedures used in the FC for managing sickness absence can be viewed on the HR eConnect site. These are:

- Managing Attendance: Full Guidance;
- PM 5: Managing Attendance (key principles);
- Staff Notice101: Management of Sickness in the FC and Civil Service.

Underlying these is the commitment by the Forestry Commission to promote the well being of its people through the provision of a safe and healthy working environment. By monitoring sickness absence levels, we are also aiming to identify whether different management policies in the workplace might alleviate ill health or absence.

6062 The FC will take action if your level of sickness absence gives cause for doubts about your capability to do your job, in particular, the basic requirement that you should give regular and reliable attendance. We will therefore consider the impact of your absence record on the business. Dismissal on inefficiency grounds will be the usual outcome where there is no longer a realistic prospect of the required level of attendance, and medical retirement is not appropriate.

6063 Unsatisfactory attendance is usually:

- frequent self-certificated absences, mainly for minor ailments; and/or
- similar patterns of absence that cause concern or suspicion; or
- longer continuous sickness absence.

### Frequent, Self-Certificated Absences

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6064 Line managers, with HR guidance, and will review your record where your sick absence (certificated or self-certificated) has reached or is approaching 'trigger' points, which indicate that an attendance problem is developing. You are likely to receive a 'warning letter' notifying that your absences are giving cause for concern when you have had:

- 10 days self-certified absence in the preceding 12 months;
- 20 days absence in preceding 2 years;
- 30 days absence in preceding 3 years;
- Spells of absence totalling 7 or more in the previous 12 months.

The FC may change these 'triggers' in the light of developing approaches in the management of sickness absence.

6065 You will be given an early opportunity by your line manager to explain why you have been absent, during a return to work discussion following any absence. Your manager will discuss what improvements are needed and explore any support that the Commission is able to give to help you to resolve any problems that you have.

6066 Managers may decide to set a monitoring period or a formal trial period over a fixed period. You will be invited to a meeting to discuss any formal action, such as a trial period, that is proposed and have the right to be accompanied to this meeting by a Trade Union official or work colleague.

You will also be encouraged to use the services of People Support if you have a personal or domestic problem that is affecting your ability to attend work. The FC will obtain a report from its Occupational Health Advisor to establish whether there is any medical reason for a high absence record.

6067 If your poor attendance continues, after warnings or a trial period, management will have to consider whether you should be dismissed. If dismissal is being actively considered, you will be invited to attend a meeting, can be accompanied to this by a Trade Union representative or work colleague and will be given every opportunity to state your case and ask/answer questions. Further information on the process is contained in 'Managing Attendance: Guidance', which is on the HR Intranet site.

## **Long Term Absence**

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6068 If you are off sick for a longer period, you and your line manager should keep in touch by telephone or letter. The FC will obtain a medical report from its Occupational Health Advisor and the aim will be to support your return to work as soon as you are well enough to do so. You may be asked to attend an assessment with the FC's Occupational Health Advisor and management may also ask for a report from People Support.

6069 Rehabilitation measures, such as temporary part time work, or re-deployment, may be offered, depending on the medical advice. Sick Pay at Pension Rate will only be paid where the medical evidence suggests that you have a good prospect of returning to work in the near future.

6070 If your absence continues and there is no indication that you are likely to return to work in the near future, management action will be taken, which will lead to either dismissal on inefficiency grounds or medical retirement.

6071 Guidance on the inefficiency dismissal process that will be taken is provided in 'Managing Attendance: Guidance' which is on the HR Intranet site. This process includes an invitation to a meeting to discuss the action, such as dismissal, that is proposed by management, at which you will be given every opportunity to state your case and ask/answer questions. You can be accompanied to this by a Trade Union representative or work colleague.

## **Dismissal Appeal**

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6072 You can appeal to the Director General against dismissal and will be invited to an appeal meeting, at which you can be accompanied by a TU official or workplace colleague.

## **Appealing Against Decisions on Medical Retirement**

6073 If you are to be medically retired against your wishes, or think that you should be medically retired but this has been refused, you will need to have additional medical evidence supporting your case. If you have this, you can appeal to the Medical Services Advisor appointed for provisions relating to the PCSPS and then to an independent Medical Appeal Board convened by the Advisor. HR Services can provide further information on how to do this.

## **Compensation for Inefficiency Dismissals**

6074 Under the PCSPS, the FC has discretion to award compensation for dismissal on grounds of inefficiency arising from unsatisfactory attendance. The decision whether to grant compensation, and the amount, will be taken by Director HR using guidance provided by the Cabinet Office.

## **Civil Service Appeal Board (CSAB)**

6075 Employees with one year's continuous employment may appeal to the CSAB against dismissal and/or the level of compensation awarded. The address of the Board is 7 St James's Square, London, SW1Y 4JH. For further information, you can contact HR, Silvan House, or your Trade Union representative.