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September 2006
Distinguishing poor performance and misconduct

The Code of Practice on Poor Performance is used when an employee’s capability is in question. The legal definition of capability refers to the “skills, aptitude, health or any other physical or mental quality” of the employee. There would be no suggestion that the employee is deliberately or wilfully doing things wrong. The Code of Practice on Discipline, on the other hand, should be used to deal with misconduct - a wilful or deliberate breach of College rules or standards of conduct.

Thus, poor performance is a matter of capability if the employee appears:

- not to have the capacity or the ability to do the job
- unable to understand or follow broad managerial directions.

And poor performance is a matter of misconduct if the employee appears to:

- be negligent or careless
- ignore reasonable professional standards
- refuse to follow procedures or instructions
- be guilty of poor time-keeping or absenteeism
- breach the College’s, policies, procedures, rules or code of conduct.

In practice, a case may not fall neatly into one of these two categories. You need to use the “best fit” Code of Practice, but make sure that you pick up all the issues. You can take advice from HR on which Code to use and how to handle all the elements of a specific case.

Medical issues

When health or sickness absence is a factor in the employee’s underperformance, you need to decide how best to deal with the case.

Use the Codes of Practice which relate to sickness if:

- an employee’s health or sickness absence appears to be the chief cause of poor performance

Use the Code of Practice on Poor Performance if:

- the employee’s lack of capability [and not their health] is the chief issue, but there is also a medical condition which may have some effect on their ability to carry out the work.
In such cases, you will need to take the medical condition into account. The College’s Occupational Health Service can give advice on the effect of medical conditions on work, the prospect of full or partial recovery and so on.

Gross misconduct and poor performance

The Code of Practice on Poor Performance is not appropriate for dealing with cases of gross misconduct, since:
- by definition, gross misconduct would justify dismissal for a first offence; and
- the Code of Practice on Poor Performance always includes provision for training, development and supervision as a way of tackling the issues.

Gross misconduct should always, therefore, be dealt with under the Code of Practice on Discipline.

Avoiding problems of poor performance

You can minimise the need to deal with unsatisfactory performance by good practice in other activities and procedures. For example:
- accurate and focused job descriptions. These enable you to set out clearly the purpose and scope of the job.
- good quality person specifications enable you to set out the qualities, attributes, knowledge and experience necessary to perform the duties to a satisfactory level.
- the recruitment procedure is designed to ensure that you select staff capable of doing the job you describe in the job description and a person with the qualities you specify in the person specification.
- the induction procedure enables you to communicate the College’s values and standards and how you expect staff to apply them.
- the probationary period is designed to enable you to develop staff and to identify and resolve problems at an early stage.
- appraisal enables you to manage performance and train and develop staff through a structured process of dialogue.
Communicate, too, the quality of work you expect by:
- involving staff in the development of business plans and other performance standards
- regular team briefing and discussion of service delivery
- regular supervision
- personal advice guidance and encouragement
- appropriate training and support.

Keep records of times when you discuss performance or set targets since, if an employee fails to meet reasonable work standards, you have a duty to provide reasonable evidence of this. Take action to deal:
- **informally**
  - with any problems with work performance as and when they arise
- **formally**
  - with any such problems when informal action fails to produce a significant and lasting improvement in work.

**Informal action**

Always consider dealing informally with poor performance - unless, of course the matter is so serious as to make formal action a necessity. Acas has this to say about the value of informal action:

"In many cases the right word at the right time and in the right way may be all that is needed, and will often be a more satisfactory way of dealing with a breach of rules, or unsatisfactory performance, than a formal meeting. Additional training, coaching and advice may be needed, and both manager and employee should be aware that formal processes will start if there is no improvement or if any improvement fails to be maintained."

How to proceed is described in the “Informal Action” stage of the Code of Practice. However, you may wish to consider mediation in cases where performance issues are thought to reflect a weakness in the relationships between the staff concerned. More information about mediation is in the Key Concepts - Grievance section of this handbook.
Key Concepts
Poor Performance

Staff nearing the end of their contract

It is unlawful to treat people less favourably:
- because they are on a fixed-term contract, or
- because of their age\(^1\).

It follows that you should manage the performance of all staff, even if they are nearing retirement age or an earlier end-date specified in their contract. It may be tempting simply to let the contract expire and not renew it. However, in law, the end of a fixed-term contract without renewal is a dismissal, as is retirement at [or after] age 65.

The Code of Practice on Reviewing Fixed-term Contracts recognises that poor performance may be a fair reason for dismissal, but only if:
- the employee has a current final warning on file under another Code of Practice [such as the Codes on Probation or Poor Performance]
- the employee has not achieved the standard required by the College by the end of the Contract.

Other performance management measures

The College uses a number of formal schemes to appraise its staff and manage and develop their performance. These include:
- the NHS Clinical Performance Scheme,
- Performance Standards in the scheme for the evaluation of teaching performance
- Queen Mary Performance Appraisal Scheme [QMPAS], etc.

The Code of Practice on Poor Performance is to be used separately from such schemes, since this Code makes specific provision, for example, for
- the right to be represented
- formal warnings
- dismissal to be considered by a panel
- a right of appeal.

However, records kept in the course of the College’s other performance management schemes may be used to provide background and evidence for issues raised under this Code of Practice - with the exception of the QMPAS\(^2\), which is explicit that it will not be used for such purposes.

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1. Age discrimination is unlawful with effect from 1 October 2006.
2. The prime focus of QMPAS is to identify and meet development needs.
**Issues to consider before formal action**

**Evidence**
Ask yourself:
- what shows that the employee is not meeting the requirements of the job: what facts, evidence or examples of poor work can you point to?
- how does the employee’s performance affect quality of service?

**Management responsibilities**
Be prepared to examine honestly the quality of your own work as a manager. Bearing in mind the level of the employee's post within the organisation, have you:
- given reasonable training, supervision and support?
- set targets clearly, and in such a way that they are understandable to the employee. What documents, records, notes, plans or memos would show that you have done this?
- otherwise helped the employee to enable them to meet the required standards?
- applied standards of performance consistently and fairly? Are you singling out this employee, or applying standards you do not require of others?

**Mitigation**
Ask yourself:
- are there any temporary problems that may be affecting the employee’s work [for example, personal issues outside work]?
- are there any matters outside the employee's control which affect work?
- if the performance issues are related to a disability, have you taken all reasonable steps to make adjustments to the work or the way it is done?

**Formal hearings - content**

A poor performance hearing will normally be far less formal than a disciplinary hearing and require more discussion. For example, the employee's manager will not normally have to present the findings of an investigation and interrogate witnesses to make their case.
Nonetheless, managers have a duty to be clear and specific about an employee’s lack of capability and give reasonable evidence of this. They do however, have direct access to the employee’s work, supervision notes, agreed targets, the business plan, letters and memos to staff, the job description, accepted professional standards, service level definitions, etc. The manager and employee should be in little doubt about the facts of the case.

Moreover, in cases of capability, you have already made the judgement that the employee has no deliberate intention of doing things wrong [whereas this would not be so in disciplinary cases]. An agenda for the meeting should be structured to enable:

1. A systematic discussion of the performance issues one by one with all parties able to:
   - present their view of the targets and standards required;
   - whether these are being met; and the training, support and guidance offered by the manager
   - present any relevant evidence and documents
   - question the other side.

2. Questions for clarification of the case of both parties by the manager or panel hearing the case.

3. Adjournment - to give the panel time to consider the issue.

4. The decision [which should cover] …
   - a brief discussion of the evidence
   - the decision on the course of action
   - any appropriate warning
   - any time scales for improvement
   - notification of the right of appeal.

5. Discussion with both parties of the scope for:
   - further training, support or mentoring [if any]
   - time scales for improvement [if any]
   - other options which may be available [if any].
Formal hearing - setting timescales for improvement

This will vary from case to case and depends largely on:
- the nature and complexity of the work, and
- how long it takes to complete any training or other measures agreed.

You need to make clear to the employee how long you will give them to come up to standard before you will review improvement and, if need be, move on to the next stage of the procedure. This period is different from the duration of the warning, which is set out in the Code of Practice itself.

The employee needs to understand that if they fail to keep to the required standard of work, you will not wait until the end of the warning period before taking further action.

Bear in mind the type of job. Jobs in which errors can be easily identified would warrant a shorter period of monitoring than jobs where complex decisions or judgements are required.

If the employee maintains the improvement for the time you specify, explain to them that:
- their work is satisfactory
- that the warning will be taken off their personal file
- what will happen if the standard slips.

If the work improves for the specified period then becomes unsatisfactory, investigate carefully. It may be reasonable to treat the case as a disciplinary matter [if the employee has shown that they are capable of doing the work]. But if the matter is still an issue of capability, continue using the poor performance Code. Do not take lapsed warnings into account to escalate the stage of the Code you use - this is against natural justice. You may, though take them into account in deciding the length of the period of monitoring.
Key Concepts
Poor Performance

Formal hearings - making the decision

Make your decision taking account of:
- the notes of previous guidance interviews and oral evidence, normally from the employee’s manager
- other evidence of poor performance
- the record of information, training and supervision given to the employee
- the response of the employee [or their representative]
- the wishes of the employee
- your judgement about why any problems have arisen and what solution is appropriate.

Before dismissing, you must be satisfied that:
- the employee has failed to reach the standards required
- they have been given reasonable time to improve, and
- they have had reasonable training or other assistance, if appropriate, and
- they have already been told in writing that their job is at risk
- you have given due consideration to all alternatives to dismissal and that no other reasonable option is available.

Check list
You might find it helpful to record your answers to the following questions:
- has there been as much investigation as is reasonable?
- do I genuinely believe that the employee is not capable of reaching the standards required?
- is it reasonable to have this belief [on the balance of probabilities] given the evidence I have heard?
- are the College’s standards of performance and attendance reasonable?
- have these been made clear to the employee?
- has the employee been given reasonable time for improvement?
- has the employee been warned of the consequences of failing to meet the College’s standards?
- have they been given reasonable support or training or both?
- have I taken and taken account of medical advice - where this is appropriate?
- has the employee [and their manager] had full opportunity to present any points to consider in mitigation?
Key Concepts
Poor Performance

- have I given due consideration to mitigation?
- have I considered redeployment, adjustments to the job or other alternatives to dismissal
- has the College’s capability procedure been applied reasonably?
- is the decision reasonable in all the circumstances of the case?

Options for action - alternatives to dismissal

If the employee fails to meet and maintain the standards required, consider alternatives to dismissal. These include:
- redesigning the job [follow the College’s standards on managing change and job evaluation]
- other reasonable adjustments to the work, working environment or the way work is organised
- transfer to another post [where the employee is judged capable of carrying out another job at their current or lower grade, and where they agree]. If it is a lower grade post, salary will be protected for six months
- demotion [where the employee is not thought capable of working on the current grade. This may be appropriate where the employee has been promoted but has a history of satisfactory service at a lower grade]. Salary will not be protected
- ending the employment contract [other than by dismissal] subject to the provisions of a relevant College scheme. All the conditions of any such scheme will apply and must be met in the case of the employee concerned. Take advice from HR when considering such options.
- a review of the case at a later date, by which time the employee must meet the standard. Tell the employee in writing that their job is still at risk and reach a final decision after a further performance review meeting.

Appeals

Staff may appeal against any action taken as a result of formal hearings. If the employee is to be dismissed it makes good sense to arrange the appeal within the employee’s notice period [if this is possible].
**Key Concepts**

**Poor Performance**

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**Hearing any appeal**

The opportunity to appeal against the decision is essential to natural justice. Appeals against warnings imposed by a manager are heard by another manager. Appeals against sanctions, including dismissals imposed by a panel are heard by an appeal panel.

The manager or panel must hear any appeal where the grounds are clear and specific, even if they are not persuaded by the merit of the arguments in the appeal papers.

The hearing, where possible, should only examine the grounds of appeal that the employee raises - not re-hear the case. The appellant must therefore be clear and specific about the grounds for appeal. An appeal form is on page ??.

Normally, an appeal is best raised on one or more of the following grounds:

- **the procedure**
  - a failure to follow procedure had a material effect on the decision
- **the facts of the case**
  - the evidence did not support the conclusion of the hearing officer
- **the sanction**
  - is too severe given the circumstances of the case

The employee can bring new evidence in support of the appeal, provided this was **not available at the original hearing**. The appeal should not be used to re-argue the case with different rather than new evidence. If there is new evidence, make sure that the manager or panel who made the original decision have:

- a reasonable period to consider the new evidence
- the opportunity to decide what effect the new evidence has on their original findings, and to consider changing their decision, if need be
- the opportunity to supply documents or bring witnesses of their own relevant to the new evidence.
The grounds of appeal need to be considered when deciding the extent of any appeal hearing [or investigation if there is new evidence]. When an appeal is solely about the sanction imposed, or the procedure, the appeal panel should be able to consider presentations from both sides restricted to the grounds of appeal. In some complex cases however, the panel may prefer to rehear the entire case.

Ask yourself:
- are the grounds of appeal detailed enough to form the case statement for the appeal hearing?
- is it necessary to clarify the grounds with the employee before the hearing?
- are any of the facts of the case in dispute?
- is it best to restrict the hearing to consideration of the grounds of appeal, or is natural justice best served by allowing a complete re-hearing of the case?
Section 2: Model Letters

Notice of First Formal Stage Meeting
Notice of a Panel Hearing
Decision letter - Warnings
Decision letter - Dismissal
Decision letter - Appeal Decision

September 2006
Model Letter RPP1

<table>
<thead>
<tr>
<th>Topic:</th>
<th>Notice of first formal stage meeting</th>
</tr>
</thead>
<tbody>
<tr>
<td>From:</td>
<td>A manager with authority to hear the case</td>
</tr>
<tr>
<td>To:</td>
<td>The employee whose performance is under review</td>
</tr>
<tr>
<td>When:</td>
<td>In good time following informal measures if these fail to bring about sufficient improvement; normally at least 5 working days before the meeting.</td>
</tr>
</tbody>
</table>

Private and Confidential

Dear [employee’s name],

Code of Practice on Remedying Poor Performance - Notice of formal meeting

I have decided to convene a formal meeting [or a further formal meeting] with you under the College’s Code of Practice on “Remedying Poor Performance”.

I am attaching a copy of the Code of Practice and some further information for staff about the process. [Do so.]

This meeting will give me the opportunity to discuss with you:
1. the standards of work the College requires
2. any evidence that you are falling below this standard
3. any work, welfare or domestic problems that you may be having
4. any other reasonable options such as transfer or redeployment

You will of course have the right to:
1. be represented by a trade union or another person
2. hear what your manager has to say
3. put your side of events
4. question the evidence and bring your own.

The key issues that concern me are as follows: [Set them out].

I will rely on the attached documents at the hearing. [Attach them.]
If, after hearing the evidence, I find that your work is not to the standard required, I will then consider:

1. what training, support and guidance is reasonable
2. what reasonable time limits could be set to enable you to achieve and maintain the standard of work
3. any warnings that may be necessary about future action if your work were not to improve.

[If need be]:
May I remind you that you currently have a written/final warning on file. At the meeting I will consider evidence about the quality of your work and will then decide what further action, if any, to take.

[Consult the employee about the date and time of the meeting and the availability of their representative.]

I have consulted you about an appropriate time for the meeting and have arranged it for [time and date] at [address]. It is up to you to:

1. to take advice and arrange to be represented at the hearing at the set time
2. submit to me any documents you wish to use as evidence at least [state a reasonable number of working days - normally at least 5. The Code of Practice requires at least 2 working days, but this is an absolute minimum, appropriate only where there are next to no documents to exchange.] working days before the meeting.

If you are having any difficulty in meeting your obligation to attend the hearing, please let know in good time and keep me informed.

Yours sincerely,

Copy to
Personal file
Employee’s manager
Employee’s representative [if known]
Model Letter RPP2

<table>
<thead>
<tr>
<th>Topic:</th>
<th>Notice of Panel Hearing</th>
</tr>
</thead>
<tbody>
<tr>
<td>From:</td>
<td>The secretary to the panel</td>
</tr>
<tr>
<td>To:</td>
<td>The employee whose performance is under review</td>
</tr>
<tr>
<td>When:</td>
<td>Normally at least 5 working days before the hearing</td>
</tr>
</tbody>
</table>

Private and Confidential

Dear [employee's name],

Notice of Panel Hearing - Code of Practice on Remediing Poor Performance

The College has arranged a Panel Hearing under its Code of Practice on Remediing Poor Performance. The members of the panel will be:

[Name them]

I am attaching a copy of the Code of Practice and some further information for staff about the process.

[Do so.]

The panel will discuss with you and your manager:
1. the standards of work the College requires
2. any evidence that you are falling below this standard

You will of course have the right:
1. to be represented by a trade union or another person [but not a paid legal representative]
2. hear what your manager has to say
3. put your side of events
4. question the evidence and bring your own.

The key issues that concern your manager are as follows:

[Set them out].

Your manager will rely on the attached documents at the hearing.

[Attach them and if appropriate list them.]

May I remind you that you currently have a written/final warning on file.
The panel will consider evidence about the quality of your work and will then decide what further action, if any, to take.

[If the employee has a current final warning]:
One option open to the panel is a decision to dismiss you. The College would take into account your interests, and all the other options available, however; the chief concern of the panel will be the needs of the College and its customers.

[Consult the employee about the date and time of the meeting.]

I have consulted you about an appropriate time for the meeting and have arranged it for [time and date] at [address]. It is up to you to:
1. to take advice and arrange to be represented at the hearing at the set time
2. submit to me any documents you wish to use as evidence at least [state a reasonable number of working days - normally at least 5. The Code of Practice requires at least 2 working days, but this is an absolute minimum, appropriate only where there are next to no documents to exchange. In practice, the employee’s documents will need to be numbered, copied, distributed to panel members and the employee’s manager in good time for them to consider them before the meeting] working days before the meeting.

If you are having any difficulty in meeting your obligation to attend the hearing, please let me know in good time and keep me informed.

Yours sincerely,
Senior manager [with authority to hear the case]
Copy to
Personal file
Employee’s manager
Employee’s representative [if known]
Model Letter RPP3

<table>
<thead>
<tr>
<th>Topic:</th>
<th>Remedying poor performance: decision letter - warning</th>
</tr>
</thead>
<tbody>
<tr>
<td>From:</td>
<td>The manager hearing the case</td>
</tr>
<tr>
<td>To:</td>
<td>The employee being disciplined</td>
</tr>
<tr>
<td>When:</td>
<td>Within 5 working days of the end of the hearing</td>
</tr>
</tbody>
</table>

Private and Confidential

Dear [employee’s name],

Warning under the Code of Practice on Remediying Poor Performance

Decision

Following our meeting on [date] at which you were represented by [name and role], I found that your work was not to the standard required. I therefore decided to give you a [state the severity of the warning, first or final] warning under the College’s Code of Practice on Remediying Poor Performance.

The Hearing

At the meeting, we considered evidence about the quality of your work and I found that [Briefly describe the standard and how the employee’s work is below it.]

I outlined the following work issues:
[say what, briefly]

You and your representative explained that:
[say what, briefly]

My conclusion is that, on the balance of probabilities:
[Briefly evaluate the evidence heard on both sides.]

I asked if there were any work or welfare problems that were contributing to the problem. You said [say what].

We agreed that the following measures would be taken to assist you:
[Briefly say what]
I emphasised the value of the work that you do and described the effects of poor work. [Briefly say what]

**Warning**

I hope that as a result of the measures that we are taking, your work will in future meet our standards. However, I am giving you [State the severity of the warning [oral, written, or final] and tell the employee

1. how long you will allow for them to get up to the standard you require
2. how long the warning will last
[an oral warning lasts 12 months, a written warning lasts 18 months and a final warning lasts 2 years]

If, within that time it becomes necessary to raise this matter again, the next step would be a further hearing which would consider [say what: - either:
- giving you a final warning; or
- dismissal]

**Right of Appeal**

You may appeal against this decision and I am enclosing an appeal form. If you wish to appeal, it must be lodged within 10 working days of your receipt of this letter with [for an appeal against a decision made by a manager, give the name of the manager’s manager]

Yours sincerely,

Senior manager [who heard the case]

Copy to
Personal file
Employee’s manager
Employee’s representative [if known].
Dear [employee's name],

**Notice of dismissal under the Code of Practice on Remedying Poor Performance**

**Decision**

Following the hearing on [date] at which you were represented by [name and role], the panel found that your work was still not to the standard required. You had already been given a final warning about the quality of your work on [give date] and it is still in effect. Therefore, after careful consideration of all the circumstances, the panel decided to give you notice of dismissal for lack of capability.

**Notice**

You are entitled to [a number of] weeks' notice. During this period, the College will attempt to redeploy you to another suitable job within your capabilities. If the College cannot find a suitable job for you, your last day of service will be [give date].

**The Hearing**

At the meeting, the panel considered the evidence that [Briefly give the standard and how the employee's work is below it.]

The panel took the that there is reasonable evidence that: [Briefly evaluate the evidence heard on both sides.]

This is despite the measures that we have taken to assist you to meet the standard which are: [Briefly say what]

The panel asked if there were any work or welfare problems contributing to the problem. You said [say what].
We then discussed options as an alternative to dismissal. [Briefly say what, eg redesigning the job, reasonable adjustments, transfer demotion, etc., and say why each was not feasible.]

In the meantime, the effect of the poor work is as follows: [Say what]

The panel therefore decided to give you notice of dismissal. You should arrange to take any outstanding leave in this notice period. You will also need to return your library ID card, keys and security cards, and any other College property that may be in your possession.

**Right of Appeal**

You may appeal against this decision and I am enclosing an appeal form. If you wish to appeal, it must be lodged with [Director of HR] setting out the grounds of appeal, within 10 working days of your receipt of this letter.

Yours sincerely,

Chair of Panel

Copy to
Personal file
Employee’s manager
Employee’s representative
Each panel member
Model Letter 5

<table>
<thead>
<tr>
<th>Topic:</th>
<th>Decision of an Appeal Panel</th>
</tr>
</thead>
<tbody>
<tr>
<td>From:</td>
<td>The Principal [but drafted by the secretary to the panel]</td>
</tr>
<tr>
<td>To:</td>
<td>The employee being dismissed</td>
</tr>
<tr>
<td>When:</td>
<td>Within 5 working days of the end of the hearing</td>
</tr>
</tbody>
</table>

*Private and Confidential*

Dear [employee's name],

*Appeal Panel Decision*

Following careful consideration of the matters presented at the appeal hearing on [date] at which you were represented by [name and role], the panel that heard the case has decided to

[Either: reject your appeal]

[Or change the decision of the original panel, and substitute another decision.]

*Findings on the grounds of appeal*

On [date] you set out your grounds of appeal:

[Briefly set out the grounds.]

At the hearing, you explained that

[Set out the evidence, briefly.]

At the hearing, your managers' response was that:

[Set out the evidence, briefly.]

The panel's conclusion is that:

[Briefly say what you have decided about the grounds of appeal]
Effect of Decision

The panel decision means that
[State the effect of the decision on the employee, eg, still dismissed, reinstated, a
final warning substituted, etc.]

There is no further right of appeal against the panel's decision.

Yours sincerely,

The Principal

Copy to
Personal file
Employee's manager
Employee's representative
Each panel member
Section 3: Forms & Documents

Remedying Poor Performance- Employee Guide
Poor Performance - Appeal Form
This guidance note is designed for staff who are the subject of formal action under the Code of Practice on Remedying Poor Performance. Your manager will normally give you a copy when you are notified of a formal hearing under the Code.

You can get the full Code of Practice from your manager or trade union, or from the HR web-site. This note gives a brief summary of the procedure and some notes on how it is applied.

Aim of the procedure

The College has agreed the Code of Practice on Poor Performance with its unions. It is designed to enable managers to:
- remedy problems of poor work performance effectively and in good time;
- warn staff if they fail to meet standards; set targets for improvement; offer reasonable support; and if their job is at risk, keep them informed;
- deal with these matters fairly and with justice.

Can I be dismissed?

The College does not normally dismiss staff for poor performance unless they have already been warned, formally, that their job is at risk.

Serious matters that amount to gross misconduct and which may result in dismissal for a first offence are normally dealt with under the Code of Practice on Discipline. In contrast, the Code of Practice on Remedying Poor Performance makes provision for staff to:
- be told clearly what standards are expected,
- be offered reasonable training support and guidance
- be given reasonable time to improve
- be warned about the next step if they fail to meet and maintain the standards required of them.

Warnings under the Code are normally progressive. For example, a written warning would be followed by final warning. Any warning (oral, written or final) may be issued by the head of department, following a hearing. More serious sanctions, up to and including dismissal will be considered by an appropriate panel.
Code of Practice on Remedying Poor Performance:
Guidance for Employees

Of course, the sanction given depends on what the head of department or panel decides. They will take into account the facts of the case and how serious the matter is.

What to expect at a hearing

Always expect the College to:
- notify you in writing of:
  - the time and place of the hearing; and
  - how your performance is below that required.

You have the right to:
- be accompanied by another person;
- hear and question any evidence against you;
- explain your side of the matter.

Poor performance is different from deliberate misconduct and the hearing will normally be less formal than a disciplinary hearing. You and your manager should both have direct access to your work, supervision notes, agreed targets, the business plan, letters and memos to staff, the job description, accepted professional standards, service level definitions, etc. Thus there is generally less scope for disagreement about the facts of the case.

An agenda for the meeting will normally be structured to enable:

1 A systematic discussion of the performance issues one by one with all parties able to:
   - present their view of the targets and standards required; whether these are being met; and the training, support and guidance offered by the manager
   - present any relevant evidence and documents
   - question the other side.

2 Questions for clarification of the case of both parties by the manager or panel hearing the case.

3 Adjournment - to give the panel time to consider the issue.
Code of Practice on Remedying Poor Performance: Guidance for Employees

4 The decision [which should cover] ...
   - a brief discussion of the evidence
   - the decision on the course of action
   - any appropriate warning
   - any time scales for improvement
   - notification of the right of appeal.

5 Discussion with both parties of the scope for:
   - further training, support or mentoring [if any]
   - time scales for improvement [if any]
   - other options which may be available [if any].

If you disagree with the decision

You have the right to appeal. You must do so within 10 working days of the date you receive the written decision and the reasons for it. Who you lodge your appeal with depends on who took the original decision.

<table>
<thead>
<tr>
<th>Original decision taken by:</th>
<th>Appeal lodged with:</th>
</tr>
</thead>
<tbody>
<tr>
<td>A manager</td>
<td>The manager’s manager</td>
</tr>
<tr>
<td>A panel</td>
<td>The Director of HR</td>
</tr>
</tbody>
</table>

The College has a Remedying Poor Performance Appeal Form. It sets out the grounds on which staff may appeal and gives more information about the appeal process. If the form is not included with the letter giving you the decision, it is available from your manager, the HR web-site or from the HR department.
Employee Assistance Programme

The College recognises the need to care for the well-being of staff and has introduced an Employee Assistance Programme. Any employee may use the service, but it is also available to your family, your partner and those close to you. The service can provide information, advice and counselling on a range of issues, including those that arise at work. For assistance, call:
- (Daytime) 01895 237071
- (24 Hour) 0800 243458.
**About your appeal**

You may use this form to appeal against any sanction imposed under the Code of Practice on Remedying Poor Performance. The form is designed to be helpful to staff who wish to appeal, but you do not have to use it. However, your appeal must:
- be in writing; and
- set out in full the grounds of your appeal; and
- be lodged with the appropriate manager within 10 working days of the date that you receive the written decision that you wish to appeal against.

Most valid appeals fall within the following grounds:
1. the procedure was applied incorrectly
2. the findings at the first hearing were unfair
3. the sanction or action taken was too severe
4. new facts or evidence have come to light.

This form is designed to enable you to structure your appeal to address these issues. Remember, the appeal hearing is not normally a rehearing of the whole case. The panel or manager hearing the case will, instead concentrate on the grounds of your appeal.

Thus, if you raise a matter at the appeal hearing that you do not raise now, the person(s) hearing the appeal may decide to exclude or disregard it. Your grounds of appeal must therefore be detailed enough to form the agenda and case statement at the appeal hearing. If you are in a trade union or are being advised by another person, we suggest that you consult them before you complete the form.

When you have completed the form, please don’t forget to sign and date it on page 7.

**Lodging your appeal**

Who you lodge your appeal with depends on who took the original decision. See the table below.

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**The next step**

You should expect the College to reject any appeal that is out of time. For appeals lodged in time, the College will appoint an appropriate manager or panel to hear the case within 20 working days.

**What to expect at an appeal hearing**

The person or panel hearing the appeal will:
1. consider any valid grounds of appeal;
2. establish the relevant facts, ensuring good order and natural justice;
3. decide any disputes about procedure;
4. reject any ground of appeal that is not valid and explain the reason for the rejection;
5. allow all the parties to
   - put their side of the matter
   - hear the case put by the other side
   - ask questions, bring evidence and call witnesses;
6. reconsider the original decision and, if need be, change the findings or reduce the severity of any sanction (or both)
7. confirm their decision and the reasons for it, in writing to the employee and the relevant managers, within 5 working days.
Typically, the "running order" for the hearing will be as follows:

1. Introduction - the Chair/panel introduces those present and outlines the procedure.

2. Employee’s presentation - The employee’s side sets out the grounds of appeal. Chair/Panel invites the manager to ask relevant questions to enable the panel to come to a considered view. Chair/Panel seek clarification.

3. Employee’s Witnesses - the employee asks witnesses to give their evidence. Chair/Panel invites the manager to ask relevant questions to enable the panel to come to a considered view. Chair/Panel seek clarification.

4. Manager’s presentation - the manager addresses the issues raised in the grounds of appeal. Chair/Panel invite the employee to ask relevant questions to enable the chair/panel to come to a considered view. Chair/Panel seeks any further clarification.

5. Manager’s witnesses - the manager asks witnesses to give their evidence. Chair/Panel invites the employee to ask relevant questions to enable the panel to come to a considered view. Chair/Panel seeks clarification.

6. Summaries - after an adjournment (if needed) each side (management first) takes turns to summarise the case without introducing new evidence.

7. Decision - after an adjournment to consider the case, the chair/panel gives the decision.

About you and your employment

1. Your name

2. Your job-title

3. Your workplace address

4. Your e-mail address
Grounds of appeal

Breach of procedure

5. I am appealing on the grounds that the procedure was applied incorrectly.
   - Yes
   - No

6. If you ticked “yes”, please explain:
   - how the procedure was breached
   - what effect this had on the outcome of the disciplinary process
   - any evidence not available at the original hearing that supports this aspect of your appeal, and what prevented you from presenting it then
Grounds of appeal

The facts of the case

7. I am appealing on the grounds that the findings of fact (the decision about what happened, rather than the decision about what action to take) at the hearing was unfair.

☐ Yes
☐ No

8. If you ticked “yes”, please explain:
   - the parts of the evidence you dispute
   - the evidence that you believe was given too much or too little weight
   - how the conclusion of the chair/panel runs counter to the evidence heard
   - how the finding on the facts of the case is unfair
   - any evidence not available at the original hearing that supports this aspect of your appeal; its relevance to the finding of fact at the original hearing; and what prevented you from presenting it then
Grounds of appeal

The action taken was too severe

9. I am appealing on the grounds that the action taken was too severe in the circumstances of the case:
   - [ ] Yes
   - [ ] No

10. If you ticked yes, please explain:
    - the sanction or warning that was applied
    - the aspect of the sanction or warning that you believe is too severe
    - the reason you believe it is too severe
    - the sanction or warning that you believe would be fair
    - any evidence not available at the original hearing that supports this aspect of your appeal; and what prevented you from presenting it then.
Grounds of appeal

Any other substantial grounds of appeal

11. I am appealing for another substantial reason:
   - [ ] Yes
   - [ ] No

12. If you ticked yes, please explain:
   - the grounds on which you are appealing
   - its effect on the procedure followed
   - its effect on the findings of fact at the original hearing
   - its effect on the severity of the warning or sanction applied
   - any evidence not available at the original hearing that supports this aspect of your appeal; and
   - what prevented you from presenting it then.
Signature of appellant

1. Your signature

2. Date of signature

Administration

[This section to be completed by (or for) the person with whom the appeal is lodged]

3. Date the appeal was lodged

4. Was the appeal lodged in time?

☐ Yes
☐ No