

M I L B A N K G R O U P

Capability

A Guide for Managers

How to manage performance concerns in a way that is fair, supportive, and legally sound.

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Why this guide exists

Managing performance is one of the most important things you do as a manager - and one of the most difficult to get right. Done well, it helps people improve and grow. Done badly, it damages trust, morale, and can lead to legal challenge.

This guide covers performance capability only. For sickness-related capability, use the Sickness and Capability Procedure. For conduct issues, use the Disciplinary Procedure. If you are unsure which applies, contact the People Team.

Before starting any formal process, ask yourself: have I given this person every reasonable opportunity to succeed?

Before you consider formal action

Most performance concerns should never reach a formal process if they are addressed early and honestly. Before considering a formal stage, make sure:

- The colleague knows exactly what is expected of them - the standard is clear, specific, and realistic.
- They have had the training, tools, resources, and time to meet the standard.
- You have given them honest, timely feedback - not stored it up for a formal review.
- You have considered whether there are any underlying factors - health, personal circumstances, unclear objectives, lack of support.
- You have explored whether a reasonable adjustment under the Equality Act 2010 might be appropriate.

If any of these are uncertain, address them before starting the formal process. An employment tribunal will ask these same questions.

Step 1 – Informal stage

Have a private, honest conversation. This is not a formal disciplinary step - no warning is issued - but it needs to be clear and documented.

At the informal meeting

- Explain the specific performance concern clearly. Reference examples, not generalisations.
- Give the colleague a genuine opportunity to respond. There may be reasons for the performance shortfall that you are not aware of.
- Explore whether training, support, adjusted expectations, or reasonable adjustments could help.
- Agree specific, measurable improvement actions and a timescale for review.
- Confirm the conversation and agreed actions in writing. Keep it brief and factual.

If performance improves, that is the end of the matter. If it does not, you now have a documented starting point for the formal process.

Step 2 – Formal Stage 1: Performance Improvement Plan (PIP)

If informal support has not worked, or the shortfall is significant, move to a formal PIP.

Inviting the colleague

Write to the colleague (template CAP1) giving at least 5 working days' notice. The letter must:

- Explain the specific performance concerns and the evidence you will be discussing.
- State that a formal PIP is a possible outcome.
- Confirm their right to be accompanied by a colleague or trade union representative.

Arrange a note-taker for the meeting. This must not be you.

At the Stage 1 meeting

- Explain the concern clearly and reference the evidence.
- Give the colleague a full opportunity to respond.
- Consider mitigating factors - health, personal difficulties, training gaps, unclear objectives.
- If a health condition may be contributing, consider an OH referral and reasonable adjustments. Do not issue a formal outcome until you have done so.
- Adjourn to consider the decision before announcing it.

Stage 1 outcomes

- No further action (CAP2) - the colleague has provided a satisfactory explanation.
- First written PIP notice (CAP3) - sets out the specific improvement required, timescale, support offered, review date, and right to appeal.

A PIP notice is not the same as a disciplinary warning. It runs independently.

Step 3 – The PIP review period

During the PIP, hold regular check-ins. These are supportive - not performance hearings. Keep notes of every conversation.

At the end of the review period, hold a formal review meeting. Outcomes:

- Performance has improved sufficiently - confirm in writing (CAP4). Keep monitoring for at least 3 months.
- Performance has improved but not to the required standard - extend the PIP (CAP5) with a new review date and revised targets.
- Performance has not improved - move to Stage 2.

Step 4 – Formal Stage 2: Final written notice

If performance has not improved after Stage 1, or a significant new concern has arisen, invite the colleague to a Stage 2 meeting (template CAP6) giving at least 5 working days' notice. The letter must state that a final written PIP notice is a possible outcome.

Follow the same process as Stage 1. Outcomes:

- No further action (CAP2) - if circumstances justify it.
- Final written PIP notice (CAP7) - sets out the required standard, timescale, and that dismissal is a possible outcome if improvement is not sustained.

Step 5 – Formal Stage 3: Dismissal on grounds of capability

If performance does not improve to the required standard during the life of the final written PIP notice, a dismissal meeting may be necessary.

Any dismissal requires Director sign off. Please ensure your Managing Director has been spoken to.

Invite the colleague in writing (template CAP8) giving at least 5 working days' notice. The letter must state clearly that dismissal on grounds of capability is a possible outcome. The colleague has the right to be accompanied.

At the meeting, review the full history: the informal stage, the PIP, the support offered, the reviews, and the outcome of each. Give the colleague a full and genuine opportunity to respond.

If the decision is to dismiss: the colleague will receive contractual or statutory notice (whichever is longer), or pay in lieu. Any accrued untaken holiday will be paid. Confirm in writing with the right to appeal.

Appeals

The colleague may appeal any formal outcome in writing within 5 working days of the outcome letter. Appeals must be heard by a more senior manager who was not involved in the original decision. The colleague has the right to be accompanied. The appeal outcome is confirmed in writing and is final.

What to say – and what not to say

✓ Say this	✗ Never say this
<i>I want to be honest with you because I want to help you succeed.</i>	<i>You just don't seem cut out for this role.</i>
<i>The specific thing I need to see improve is... Here is what that looks like in practice.</i>	<i>Your performance generally isn't where it needs to be.</i>
<i>What support do you need from me to be able to do this?</i>	<i>I've given you feedback before. You should know this by now.</i>
<i>Let's agree some clear targets and review them together in [timescale].</i>	<i>I need this to improve, or we will have to look at your future here.</i>
<i>Is there anything going on that I should know about that might be affecting your work?</i>	<i>This is nothing personal - it's just performance.</i>

Common mistakes to avoid

These are the most common reasons capability processes fail:

- Starting the formal process without a documented informal stage.
- Setting vague or unmeasurable improvement targets in the PIP.
- Not offering genuine support during the improvement period.

- Failing to consider whether a health condition or disability is contributing before issuing a formal notice.
- Skipping stages or compressing the process when you want a quick outcome.
- Not keeping notes of informal conversations, check-ins, or support offered.
- Confusing conduct issues (covered by the Disciplinary Procedure) with capability issues.

Quick reference checklist

Before and during a capability process:

1. Check: has the colleague been clearly told what is expected? Is it realistic?
2. Check: have they had the training and support they need?
3. Check: is there a health condition or disability to consider?
4. Informal stage: honest conversation, documented, agreed actions.
5. If formal: speak to the People Team first.
6. PIP Stage 1 (CAP1): 5 working days' notice, specific targets, right to be accompanied, note-taker.
7. Review period: regular check-ins, document everything.
8. PIP Stage 2 (CAP6) if needed: same process, final written notice.
9. Stage 3 (CAP8): People Team mandatory. Dismissal possible. Full opportunity to respond.
10. All outcomes confirmed in writing with right to appeal.

Template letters

CAP1 Invitation to Stage 1 capability meeting

CAP2 Outcome – no further action

CAP3 Outcome – first written PIP notice

CAP4 Outcome – PIP review: performance improved, no further action

CAP5 Outcome – PIP review: performance partially improved, extension agreed

CAP6 Invitation to Stage 2 capability meeting

CAP7 Outcome – final written PIP notice

CAP8 Invitation to Stage 3 capability meeting (dismissal possible)

CAP9 Outcome – dismissal on grounds of capability

CAP10 Appeal acknowledgement and invitation to appeal meeting

CAP11 Appeal outcome letter

Questions

The People Team must be involved before any Stage 2 or Stage 3 meeting, and your Managing Director before any dismissal on grounds of capability.

This guide does not form part of any employee's contract of employment and may be amended from time to time.

Policies referenced: Capability Procedure / Disciplinary Procedure / Sickness and Capability Policy /