



Northern Ireland  
Assembly

## SECTION 6.06

# CAPABILITY POLICY

### Introduction

1. The Northern Ireland Assembly Commission ('the Assembly Commission') is committed to providing a working environment and fostering a culture which actively encourages, facilitates and recognises effective performance. The Assembly Commission values the provision of a high quality, professional service by staff to support the effective operation of the Assembly and recognises that it is essential that staff members maintain the required level of performance.
2. You are required to carry out your duties in accordance with the performance standards reflected in the Corporate Values and the Assembly Skills and Behaviours. Your performance is managed in accordance with the Assembly Commission's Guide to Managing and Developing Performance.
3. You should be aware that, as well as maintaining the performance standards expected of you, you are required to demonstrate appropriate standards of conduct and attendance. The standards of conduct required of all Assembly Commission staff members are set out in the Standards of Conduct Policy. The standards of attendance required of staff are set out in the [Managing Attendance Policy](#). The procedures for addressing unsatisfactory conduct or attendance are set out in these policies.

### Purpose

4. The purpose of this Policy is to set out the procedures which will be followed if you do not meet the standards of performance expected of you and is intended, where necessary, to help and support you in achieving those standards. It establishes a clear framework to enable managers to deal with unacceptable performance in a fair and consistent manner and without undue delay. You should not view this Policy as necessarily punitive in nature, although in some situations it may be necessary for the Assembly Commission to impose sanctions up to and including dismissal.

### Scope

5. This policy applies to all Assembly Commission staff except those who are in their probationary period and have not been confirmed in post. A separate Probation Policy exists for this group of staff.

## Definition of Performance

6. "Performance" can be described as not only *what* we do in our jobs but also *how* we do it:
  - The *what* are the activities that we undertake in order to get our work done; whereas
  - The *how* is about the skills and behaviours that we use to get our work done.
7. Your performance may be considered to have fallen below the standards expected of you if you do not demonstrate the skills, behaviours and/or ability to effectively carry out your duties. The Corporate Values of Professionalism; Respect for Others and Impartiality and Integrity are the foundation blocks to how you should perform your job and should be referred to in conjunction with the Assembly Skills and Behaviours.
8. If your performance has fallen below the standard expected of you, in some circumstances, it may be appropriate to transfer the management of your case from the procedures of the Capability Policy to those of another policy. Should this arise, you will be advised in writing which policy/procedure is to be applied. For example:
  - If your performance has fallen below the standard expected of you as a result of attendance or a medical condition, it may be appropriate to apply the Managing Attendance Policy. The circumstances and actions already taken will determine the appropriate procedural stage under the policy; or
  - If your performance falls below the standards expected of you, as a result of negligence, carelessness, laziness or wilful disregard of management instructions, and your manager has reasonable grounds to believe that you are capable of carrying out your job to a higher standard, then this may be regarded as a conduct issue and may be dealt with under the [Discipline Policy](#).

## Principles Governing Application of the Capability Policy

9. Application of this Policy is governed by the following key principles:
  - The Assembly Commission will ensure that a range of appropriate measures are in place to minimise the potential for performance issues. This includes robust recruitment and selection procedures, the application of a probation period, the provision of guidance to Managing and Developing Performance, learning and development and the implementation of reasonable adjustments where appropriate.
  - During your performance conversations with your line manager, you will discuss and agree the performance standards expected of you as well as your developmental needs. Your line manager will support effective performance in line with the Assembly Commission's approach to Managing and Developing Performance.
  - You will be advised at the earliest opportunity if there are any elements of your performance that have fallen below the standard expected of you. You will be given the opportunity to put forward reasons as to why your performance has fallen below the standard expected of you before any decision is taken to invoke this Policy.
  - As far as reasonably possible, in the first instance, your line manager will work with you to address performance issues using the informal procedures within this Policy and support will be provided to help you improve your performance. Consideration will in each case be given to administrative measures that might help to improve performance. For example, further training, closer management support and supervision, or transfer to other duties. Your line manager and the Human Resources Office will be mindful of all relevant legislation. However, the Assembly

Commission reserves the right to invoke the formal procedures immediately if it is considered appropriate in the circumstances. If this occurs, reasons will be provided to you.

- If your performance has fallen below the standard expected of you, the situation will be managed in a way that is sensitive to both your needs and the needs of the organisation. Information relating to the management of performance issues will be restricted to those who need to know.
- The Assembly Commission will not discriminate against any individual or group in the application of this Policy. Where appropriate, reasonable adjustments will be put in place to support staff members with a disability.
- Formal action under this Policy will only be commenced against a staff member who is a recognised TUS representative once the NIPSA Headquarters Official has been informed.
- Action under this Policy will be progressed without any unnecessary delay.
- You will have the right to appeal against any sanction imposed as a result of action under this policy.

## Procedures for Dealing with Performance Issues

10. If your performance falls below the standard expected of you, your line manager may invoke this Policy. Line managers may seek advice on dealing with performance issues from the Human Resources Office at any time. However, line managers must consult the Human Resources Office before taking any action under the **formal procedures** set out in this Policy.

## Informal Procedures

11. Your line manager will advise you at the earliest opportunity if they consider there to be any issues with your performance. This will normally happen during your performance conversations with your line manager and you will be advised that you are being managed under the informal procedures of this Policy. They will advise you of the specific areas of concern regarding your performance; advise you of the improvements required; and agree with you any supportive actions to help you achieve this, for example additional training. Using the performance management software, you will record any issues that have arisen as well as any actions that you have agreed to take forward. Your line manager will discuss with you the period of time within which the improvement must be made, which should not generally be more than three months, other than in exceptional circumstances, where for example training is required which cannot be completed within the three-month period. Under the informal procedures, a TUS or work colleague will not normally attend meetings, however, there may be occasions when, following discussion between both parties, this may occur.
12. In line with the Assembly Commission's approach to managing and developing performance, line managers should ensure that you have been given proper support, training and opportunity to improve.
13. Line managers should be alert to the fact that deterioration in performance may be as a result of medical or personal issues. If this is the case and you disclose personal issues to your line manager, your line manager should remind you of the availability of the Welfare Service and Inspire Workplace Services. If you declare a medical condition to your line manager, or your line manager considers that you may have a medical condition which is impacting on your work, your line manager will seek advice from the Human Resources Office. If appropriate, medical advice will be taken from Occupational Health Service (OHS) to ensure that your individual needs are taken into account. Your line manager should ensure that these and any other mitigating factors are considered, before deciding if to invoke the formal procedures. Any personal or medical information that you disclose to your line manager will be treated as confidential.
14. Similarly, deterioration in performance may be related to a relationship problem in work. If this is the case, mediation is a way of solving problems so that you can come to a workable agreement with someone else. The person who facilitates the mediation process will help you work through your concerns, will not take sides

or make judgments and will not tell you what to do. Their role is to help those involved come to an agreement. If you consider that mediation may assist, the Equal Opportunities Officer will be engaged to explain how the process will work and establish if the other party(ies) involved are also prepared to consider this option. Anything discussed during the mediation meetings or in connection with the mediation is confidential, however the use of mediation does not prevent you from seeking advice on the issue(s) of concern from a Harassment Contact Officer, TUS representative or a work colleague.

15. If your performance has not improved following attempts to resolve the matter through the informal procedures (for a period of at least three months), your line manager will consult with the Human Resources Office before deciding whether or not to invoke the formal procedures. When consulting the Human Resources Office, your line manager will also advise your Head of Business of the situation.
16. You will be advised by your line manager if the formal procedures are invoked and the actions and timetable set out in the following paragraphs will apply. Throughout this period, the Human Resources Office will provide specific advice to your line manager tailored to the circumstances of your case.
17. If you are subject to the formal procedures of this Policy at the 1<sup>st</sup> August, you will not be entitled to a pay increment.

## **Formal Procedures**

### ***Management of Meetings under the Formal Procedures***

18. You will be provided with all necessary documentation in advance of any meetings, including the purpose of the meeting.
19. You will be given 5 working days' notice of the date of the meeting. If the proposed date and time of the meeting are not suitable, you should contact your line manager to arrange an alternative date/time.
20. You will have the right to be accompanied by a Trade Union Representative (TUS) or work colleague.
21. A minute of the meeting will be prepared and copied to you within 5 working days of the date of the meeting. You will be given a further 5 working days to agree the minute or suggest factual amendments. While every effort will be made to agree the minute of the meeting, should there remain disagreement over the factual contents of the minute, your comments will be appended to the minute of the meeting.
22. Once the minute of the meeting has been agreed or your comments appended (in the event of a disagreement), your line manager will decide on next steps.

### ***Commencement of Stage 1 of the Formal Capability Procedures***

23. Your line manager will complete the Notification of Performance Issues form clearly setting out the areas of performance that have fallen below the expected standard, highlighting the specific performance issue(s) as well as providing examples to support their view. The form will be signed by your line manager.
24. Your line manager will write to you, providing a copy of the Notification of Performance Issues form, and invite you to a meeting to discuss the matter. In the letter, your line manager will advise you of the purpose of the meeting which is to discuss the areas of your performance that have fallen below the standards expected of you and to provide you with an opportunity to present any mitigation factors that you consider may have led to a decline in your performance. The letter will also advise you that your line manager is considering issuing you with a Stage 1 Performance Warning.
25. Following the meeting, your line manager will decide whether to issue you with a Stage 1 Performance Warning.

#### **Stage 1 Performance Warning not issued**

26. A performance warning may not be issued if, for example, your performance has fallen below the expected standard as a result of medical reasons, lack of full training etc. If a warning is not issued, your line manager

will have the option of continuing to review your performance under the informal procedures of this Policy; transferring the management of your case to another policy; or alternatively, no longer using this Policy and instead managing your performance under the normal performance management arrangements.

#### Stage 1 Performance Warning issued

27. If a warning is issued, you will be required to agree a Performance Improvement Plan (PIP) with your line manager. The PIP will clearly outline the improvements required and any support or administrative measures that will be put in place in order to help you achieve the required standards of performance. The review period of a PIP will normally be 3 months but this may vary depending on the nature of the performance issue(s) and the individual circumstances of your case.
28. Your line manager will write to you confirming the following:
- You are in Stage 1 of the Formal Capability Procedure;
  - You are subject to a Stage 1 Performance Warning and that the Warning is for a period of 6 months;
  - You are required to meet with the requirements as outlined in the PIP;
  - If you fail to improve your performance to the standards expected of you within the review period of your PIP, it could result in you moving to Stage 2 of the Formal Capability Procedures and possible dismissal; and
  - Your right to appeal against the Stage 1 Performance Warning.
29. During the review period of your PIP, your line manager will meet with you on at least a fortnightly basis to review progress in line with your PIP.
30. Your line manager will review your performance at the end of the review period, taking into consideration the PIP and the information from your meetings during the review period. Your line manager will then decide whether or not your performance has improved to the standards expected of you, based on the evidence collected and record their decision including rationale.

#### Performance has improved

31. Your line manager will write to you confirming that your performance has improved to the standards expected of you and invite you to meet with them to discuss your progress. In advance of this meeting, your line manager will complete the relevant sections of the PIP confirming that your performance has met the required standards and any steps you should take to maintain your performance.
32. At the meeting, your line manager will confirm to you that the formal procedure ends at this stage and that your performance will now be managed under the normal performance management arrangements.
33. Your Stage 1 Performance Warning will remain on your personal file for a total of 6 months (inclusive of the review period that has already taken place). Should your performance deteriorate during this period, action will be taken under Stage 2 of the Formal Capability Procedures.

#### Performance has not improved

34. Where your performance has not improved to the standards expected of you, action will be taken under Stage 2 of the Formal Capability Procedures.

### ***Commencement of Stage 2 of the Formal Capability Procedures***

35. Your line manager will write to you confirming that your performance has not improved to the standards expected of you and invite you to a meeting to discuss the matter.

36. In the letter, your line manager will advise you that the purpose of the meeting is to discuss the areas of your performance that continue to fall below the standards expected of you, and to provide you with an opportunity to present any mitigation factors that you consider may have led to the continued decline in your performance. The letter will also advise you that your line manager is considering issuing you with a Stage 2 Performance Warning.
37. In advance of this meeting, your line manager will update the relevant sections of the PIP confirming that your performance has not met the required standards and provide you with a copy of this document.
38. Following the meeting, your line manager will decide whether to issue you with a Stage 2 Performance Warning.

#### Stage 2 Performance Warning not issued

39. If your line manager decides that a Stage 2 Performance Warning is not appropriate but they continue to have concerns about your performance, then they have the option of extending the Stage 1 Performance Warning and your PIP review period for up to a further 3 months. Failure to improve your performance to the standards expected of you during this additional period of either the PIP review period or Performance Warning period will lead to a Stage 2 Performance Warning being issued.

#### Stage 2 Performance Warning issued

40. If a warning is issued, a further meeting will be held in which your PIP will be reviewed and any necessary changes made, for example additional support mechanisms. At that meeting, a final review period for your PIP will be set within which your performance must improve. The final review period will normally be for 3 months but this may vary depending on the nature of the performance issue(s) and the individual circumstances of your case. For example, if significant training/coaching has been identified for you, the final review period for your PIP may be extended to facilitate this (up to a total period of 6 months). Similarly, if you are not demonstrating any improvement and your performance continues to have a serious impact on delivery of the business, the final review period for your PIP may be reduced (minimum total period of 2 months).
41. Your line manager will write to you confirming the following:
  - You are in Stage 2 of the Formal Capability Procedure;
  - You are subject to a Stage 2 Performance Warning and that the Warning is for a period of 12 months;
  - You are required to meet with the requirements as outlined in the PIP;
  - If you fail to improve your performance to the standards expected of you within the final review period of your PIP, it could result in you moving to Stage 3 of the Formal Capability Procedures and possible dismissal; and
  - Your right to appeal against the Stage 2 Performance Warning.
42. During the final review period of your PIP, your line manager will meet with you on at least a fortnightly basis to review progress in line with your PIP.
43. Your line manager will review your performance at the end of the review period, taking into consideration the PIP and the information from your meetings during the review period. Your line manager will then decide whether or not your performance has improved to the standards expected of you, based on the evidence collected and record their decision including rationale.

#### Performance has improved

44. Your line manager will write to you confirming that your performance has improved to the standards expected of you and invite you to meet with them to discuss your progress. In advance of this meeting, your line manager will complete the relevant sections of the PIP confirming that your performance has met the required standards and any steps you should take to maintain your performance.
45. At the meeting, your line manager will confirm to you that the formal procedure ends at this stage and that your performance will now be managed under the normal performance management arrangements.
46. Your Stage 2 Performance Warning will remain on your personal file for a total of 12 months (inclusive of the final review period that has already taken place). Should your performance deteriorate during this period, action will be taken under Stage 3 of the Formal Capability Procedures.

#### Performance has not improved

47. Where your performance has not improved to the standards expected of you, action will be taken under Stage 3 of the Formal Capability Procedures.

### ***Commencement of Stage 3 of the Formal Capability Procedures***

48. Your line manager will provide the Head of Business at AG4 or above (depending on your grade, this may be another nominated manager at the appropriate grade, ie a Director or the Clerk/Chief Executive) with a full report outlining action taken to date under the formal procedures, the latest version of the PIP and any other supporting information or documents.
49. The Head of Business or nominated manager will invite you to a meeting called a Performance Hearing ('the Hearing') to discuss your continued performance issue(s). The letter will confirm to you that an outcome of the meeting may be your dismissal on the grounds of capability.
50. At the Hearing, you will be invited to put forward your case and outline any mitigating factors that you feel should be considered. Should you wish, you may also provide a written submission at the Hearing for consideration.
51. Following the Hearing, the Head of Business or nominated manager will consider all of the information available. They will write their report outlining their conclusions and will take a decision on the appropriate sanction, which will be:
  - That you should be dismissed (with or without notice) on the grounds of capability; or
  - That a further short period for improvement should be allowed (not exceeding 3 months) but that if your performance does not improve during this period, you will be dismissed as above.
52. If your performance improves during this further period, the outcome of the action taken under Stage 3 of this Policy will remain on your file for a further 12 months. A decline in your performance during this period may result in your dismissal on the grounds of capability.
53. All decisions to dismiss will be sanctioned at Director level (or by the Clerk/Chief Executive in cases of performance issues relating to a Director). If the actual decision to dismiss has been taken by a Director (paragraph 51 refers), it is not necessary to have their decision sanctioned.
54. The Human Resources Office will advise you in writing of the outcome of the Hearing within 5 working days, including the sanction imposed. The letter will also inform you of the right to appeal against the decision and the procedures for doing so.

## Appeals

55. You are entitled to appeal sanctions imposed at any stage of the formal procedures. An Appeal Officer will be appointed from an appropriate management grade who has had no involvement in the matter and will be from a different Directorate.
56. You must submit your appeal in writing, setting out your grounds for appeal, within 10 working days of the date of written confirmation of the decision. You will then be invited to a meeting called an 'Appeal Hearing'.
57. The Appeal Officer will consider all of the information available before deciding if your appeal is/is not upheld. The Appeal Officer will advise you of their decision, in writing, within 5 working days of the minute of the Appeal Hearing being agreed or your comments appended (in the event of a disagreement).
58. If your appeal is not upheld, you have a further right of appeal and the Appeal Officer will advise you in their letter to whom your further appeal should be made (the Further Appeal Officer). In all cases of dismissal, this further right of appeal is to the Clerk /Chief Executive.
59. If your appeal is upheld, then your line manager will be required to review their decision and consider an alternative course of action at the relevant stage of the procedures.
60. In cases where dismissal is not involved, the decision of the Further Appeal Officer is final. In cases involving dismissal, if your appeal to the Clerk /Chief Executive is not upheld, you may request that the matter be referred to the Labour Relations Agency as a final right of appeal. Such requests should be made to the Head of Human Resources who will make the necessary arrangements. The Labour Relations Agency will establish an independent panel to make a finding on the matter.

## Compensation

61. The Assembly Commission has discretion to pay compensation in cases of dismissal on the grounds of capability ([inefficiency](#)) and this will be considered in line with eligibility criteria set out in the Northern Ireland Civil Service Compensation Scheme. The Head of Human Resources will consider whether it may be appropriate to pay compensation and, if so, how much. Their recommendation shall be referred to the Director of Corporate Services for consideration and approval as appropriate. Eligibility for compensation depends on how far poor performance is caused by factors outside your control and the efforts you have made to remedy the situation. You will be informed of the amount of compensation payable (if any) when notice of dismissal is given.
62. In the event that you are dismissed on grounds of capability ([inefficiency](#)) and are not paid compensation or are paid less than the maximum, you may appeal the decision of the Director of Corporate Services to the Clerk/Chief Executive. Any appeal should be made in writing within 10 working days. You will have the right to be accompanied at the appeal by a TUS representative or work colleague.

## Records

63. A record of any action or sanction applied under the formal procedures will be kept on your personnel file within the Human Resources Office and will be removed as appropriate after the specified time has elapsed.

## General Information

64. This version of the Capability Policy is effective from 29 October 2019. Enquiries in relation to the Policy should be referred to the Human Resources Office.



## Further Policies, Guidance and Forms

- [Annex A – Notification of Performance Issues](#)
- [Annex B – Performance Improvement Plan](#)
- Assembly's Corporate Values
- Assembly Skills and Behaviours
- Guidance to Managing and Developing Performance in the Assembly
- Discipline Policy
- Standards of Conduct Policy
- Managing Attendance Policy
- Probation Policy