

Kate Russell

The HR Headmistress' Guide

How to Get Top Marks in ...

Managing Poor Work Performance

First edition published in 2010

© Copyright 2010 Kate Russell

The rights of Kate Russell to be identified as the author of this work have been asserted by her in accordance with the Copyright, Designs and Patents Act 1998.

All rights reserved. No reproduction, copy or transmission of this publication may be made without express prior written permission of the author. No paragraph of this publication may be reproduced, copied or transmitted except with express prior written permission or in accordance with the provisions of the Copyright Act 1956 (as amended). Any person who commits any unauthorised act in relation to this publication may be liable to criminal prosecution and civil claims for damage.

Although every effort has been made to ensure the accuracy of the information contained in this book, as of the date of publication, nothing herein should be construed as giving advice. The opinions expressed herein are those of the author and not of Gibbons Williams Publishing.

Paperback ISBN 978-0-9546054-5-2

Published in the UK by Gibbons Williams Publishing, Priory Business Park,
Stannard Way, Bedford MK44 3RZ

Cover design by C Designs

Other books by the same author: Off the Sick List! How to Turn Employee
Absence into Attendance

About the author

After studying for a degree in business law, Kate Russell qualified as a barrister. She gained several years experience in operations, moved into human resources and later became a training specialist working in the manufacturing, distribution and service sectors.

She started Russell HR Consulting in 1998 and now divides her time between advising businesses of all sizes on HR issues and delivering a range of highly practical employment law awareness training to line managers, including a range of public workshops. Her unique combination of legal background, direct line management experience and HR skills enables Kate to present the stringent requirements of the law balanced against the realities of working life. She is a senior presenter for several companies and a popular public speaker. Kate completed an MA in strategic human resource management in 2004.

Kate is known as The HR Headmistress due to her combination of a devastating ability to cut through the mire, a certain briskness and unwillingness to tolerate absurdities and steely gaze over the reading glasses, all of which tend to make some people quiver. After a while, she stopped trying to pretend to be soft and fluffy and embraced her headmistress persona wholeheartedly. Well, 'if life hands you a lemon, make lemonade and sell it!'

She is the author of several practical employment handbooks and e-books, the highly acclaimed audio update service *Law on the Move*, as well as a monthly e-newsletter, the latter document neatly combining the useful, topical and the frivolous.

For more information about Russell HR Consulting, visit
www.russellhrconsulting.co.uk

Contents

Miscellaneous notes

Abbreviations

Introduction

Capability: what this book does not cover

The business need to manage poor work performance

About poor work performance

The legal framework

Prevention: setting and communicating standards

Prevention: regular feedback

What goes wrong?

Cure: informal management

Cure: formal process

Management of poor work performance v. harassment

Appendices

Appendix 1: Sample capability policy

Appendix 2: Checklist: giving effective feedback

Appendix 3: Checklist: carrying out an investigation

Appendix 4: Checklist: informal advice

Appendix 5: Sample letter: request to attend a formal disciplinary meeting

Appendix 6: Sample letter: first warning

Appendix 7: Right to be accompanied

Appendix 8: Example of a PIP

Miscellaneous notes

Statutory limits

Today's statutory limits have not been specified in this book as they go out of date so quickly. You can email info@russellhrconsulting.co.uk for an up-to-date copy of statutory limits.

Keep up-to-date with employment law

Sign up for Kate's free e-newsletter: subscribe@russellhrconsulting.co.uk

Disclaimer

Whilst every effort has been made to ensure that the contents of the book are accurate and up to date, no responsibility will be accepted for any inaccuracies found.

This book should not be taken as a definitive guide or as a stand-alone document on all aspects of employment law. You should therefore seek legal advice where appropriate.

The material produced here is the property of Kate Russell and may not be reproduced without permission.

Gender description

For convenience and brevity I have referred to 'he' and 'him' throughout the book. It is intended to refer to both male and female employees.

Abbreviations

ACAS	Advice, Conciliation and Arbitration Service
CA	Court of Appeal
CIPD	Chartered Institute of Personnel & Development
DDA	Disability Discrimination Act 1995
DWP	Department of Work and Pensions
EAT	Employment Appeal Tribunal
ECJ	European Court of Justice
EEA	European Economic Area
ERA	Employment Rights Act 1996
HMRC	Her Majesty's Revenue and Customs
HSE	Health and Safety Executive
LEL	Lower earnings limit
PIP	Performance improvement plan
SOSR	Some other substantial reason
SSP	Statutory Sick Pay
WTR	Working Time Regulations 1998

Introduction

The aim of How to Get Top Marks in ... Managing Poor Work Performance is to explain the legal framework, discuss the process of managing poor work performance effectively and to offer practical guidance, hints, tips, and HR Headmistress tactics (it's all about tactics).

This is not an academic treatise. There are no models, theories and writing in the passive tense here. It is essentially a tool kit for sorting out a problem, complete with checklists, templates and suggestions to make life a bit easier for you. Examples have been included to help illustrate the points made. Where I have drawn on cases from my own experience, names and some other details have been changed to protect the identities of the individuals.

I will be talking straight to you in exactly the same way as I would write an email to a client who is asking for advice. I shall be using everyday English, saying 'you' and generally writing as I would speak.

Employment law can be fun and I hope you find it useful. Enjoy the book.

**Capability:
what this book does not cover**

The Employment Rights Act 1996 (ERA) sets out the various fair reasons for dismissal. One of them is capability, or more precisely, a lack of capability. For the purposes of this book, poor performance and a lack of capability may be referred to variously as 'poor work performance', 'capability', 'competence' or 'incompetence', depending on the context.

Readers should note that under the ERA, capability has two other meanings; these are lack of capability on grounds of ill health or failure to acquire, or loss of, an essential qualification.

Performance reviews are often confused with managing poor work performance; performance review is another way of saying performance appraisal. Although a performance appraisal will formally review an employee's performance against specified targets and result in the giving and receiving of feedback, it should be an exchange and consolidation of information that is already known to both parties. You can refer to ongoing disciplinary issues during a performance appraisal, but it should never result in a disciplinary sanction.

This book deals purely with managing poor work performance. It does not deal with ill health, qualifications or performance appraisal.

The business need to manage poor work performance

Poor work performance is a subject of complaint raised far more often than misconduct. It's far less well addressed too, for all sorts of reasons.

Sometimes a manager feels rather unkind giving what he perceives as a 'telling off' to a nice, well-meaning employee who is not competent. The manager might be very busy and somehow that chat about poor performance never makes it to the top of his to-do list. Other managers fear confrontation; these days it is quite common for a manager who is giving guidance and correction for poor work performance to become the subject of a grievance, often citing bullying, harassment and victimisation. All of that makes work life incredibly stressful for managers.



HR Headmistress tip

Make sure your dignity at work procedure includes a phrase that says something like this:

'Note that managers have a right and duty to manage. A distinction must be made between the type of conduct described above (examples of genuine bullying and harassment) and a manager asking and encouraging an employee to carry out his duties to the required company standards. As part of the process, a manager will be required to monitor an employee's progress and give feedback on a regular basis. This is entirely normal. It is designed to support the employee and does not constitute bullying, harassment or victimisation.'

Being a manager means getting work done through your team. It can be tough. One thing you should remember is that you're not carrying out a manager's role to be best buddies with your employees. You're here to do a job fairly, lawfully,

ethically and efficiently. If you can establish friendly relationships along the way, so much the better, but to perform the managerial role well, you need a degree of separation from your employees.

Putting off dealing with employees who are not delivering what you need is the worst thing to do. In the short term it might be easier to work round a poor performer, but quite quickly, other employees get fed up with carrying a colleague and grumble about covering for him. If you don't manage poor performance it can cause resentment and impact negatively on those employees who are performing satisfactorily, resulting in decreased workforce productivity (a team works at the pace of the slowest member). In severe cases, poor performance could lead to an increase of workplace accidents. Alternatively, you could end up doing the work, or it may be that the work just doesn't get done. Either way, it's not satisfactory.

Managing poor work performance should be part of an overall performance-management process, which also includes carrying out regular appraisals as well as identifying and meeting learning and development needs.

The benefits of managing competence effectively are fairly obvious:

- increased financial returns, e.g. profit after tax, earnings per share, market share
- increased productivity, decreased wastage
- reduced staff turnover and levels of absence
- improved feedback from employee or customer surveys
- less quantifiable but equally important information, such as staff satisfaction and staff development.

In difficult economic times, it's important to ensure that we achieve optimum performance from our employees.