

THE UNIVERSITY OF WESTERN AUSTRALIA



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This newsletter appears on an occasional basis to raise human resource issues of interest and relevance to staff in the University with supervisory responsibilities. Please direct any feedback to Jan Stuart on jstuart@admin.uwa.edu.au

WHY IS PEOPLE MANAGEMENT SO HARD? (PART II)

Managing Unsatisfactory Performance and Misconduct

During June staff from the Employee Relations and Management Services (ERMS) section of Human Resources ran two sets of half day workshops for managers of general staff on how to best manage unsatisfactory performance and misconduct problems. The general approaches discussed are also appropriate with academic staff as well.

Both sessions were fully subscribed and a waiting list has been established for another session to be run later in the year. Obviously there is a need for staff with supervisory responsibilities to feel more confident about how they handle what can be very difficult and stressful situations.

The first day opened with a round table of questions – what questions do you have about managing poor performers. A range of issues emerged:

- How do you deal with staff who ignore performance feedback?
- What documentation do you need to keep when managing a poor performer?
- What options are there other than termination?
- How do you handle marginal performers?
- How do you prevent an employee who is in a regime of formal performance management from making accusations of bullying?
- How do you manage the impact on other staff?
- When do you call in Human Resources?
- How do you manage long standing performance issues that have not been addressed?
- What about dealing with difficult personalities?

If these are questions you may have asked yourself, read on.

Key Assumptions

There are two key assumptions about the workplace to help you put performance management problems into perspective.

Firstly, all managers and supervisors should acknowledge that there is no workplace without conflict. It is unrealistic to assume that humans will always work happily and productively with each other. The real issue is not to avoid conflict but to manage it using fair and equitable processes. Having open communication and transparent systems is an important strategy to both minimise the number of conflictual situations and to resolve those that do arise amicably.

Secondly, the best way to avoid a situation where you need to manage unsatisfactory performance is to select the right people to begin with. Remember that your selection decision could see that person in the University for thirty years or more. And, of course, once your new staff member is on board make sure that you use the probation period effectively.

The workshop was enlivened by presentations from a number of UWA staff. David Rogers, Renata Owen and Jenny Robertson of ERMS all made contributions as did Malcolm Fialho of Equity and Diversity Services and Anne Kealley, School Manager from Oil and Gas Engineering. Consultant Lyn Sherwood provided a very important segment on managing the emotions of performance with humour.

Selection, Probation and Induction

David Rogers re-iterated the importance of making the best possible decision at the point of selection. You can do this by ensuring that panel members have undergone appropriate training, that you check with referees thoroughly, questioning them on candidate behaviours and attitudes as well as skills. After all the new staff member will become an important part of your team and 'organisational fit' is important.

Then use the probation period for the purpose for which it was established. All new general staff appointed on an ongoing basis, or on a fixed term contract greater than twelve months, are subject to a probationary period of up to six months. It is important that this time be used as intended. If you have concerns prior to six months or if the job has an annual cycle and you would like to see performance across that cycle, it is possible to extend the probationary period to up to twelve months.

Where you decide to monitor a staff member on probation more closely because of concerns about their performance be very clear in your discussions with them about what you expect and where improvement is required. Make sure they understand what you are saying. Put your agreed expectations in writing to avoid misunderstandings.

Remember if you have allowed the probation period to expire without addressing your concerns you will have created a major job for yourself if you then want to dismiss that person.

An important tool to help managers in the probation period is to ensure that new staff members are properly inducted. Anne Kealley reiterated the view that there will be less work and fewer difficult situations to deal with if induction is thorough and the probation period is well used. It is easier to address future problems if the groundwork has been laid – particularly in terms of a positive trusting relationship. While this will be time consuming it should be seen as a wise investment. It will be far more time consuming to fix up things later if they are not done properly at the beginning. Anne has developed an induction template for her School that she is happy to share with others in the University. There is also a very helpful University Induction website with lots of ideas and useful checklists at http://www.induction.uwa.edu.au/for/new_staff

Malcolm Fialho emphasised the importance of managing for performance, not performance management. Look at issues holistically.

As a manager you will be aided by the University's new performance management system, the Professional Development Review. The PDR is a

structured way of setting goals and identifying development needs. It is expected that the roll out of the new programme will commence in August.

A Staff Member is Under Performing – What do I Do?

Firstly, remember that employers are legally entitled to evaluate the performance of their business or enterprise including the performance of those who work within it. Indeed, it is part of your job as a manager.

When moving into a process to manage poor performance ideally you should always aim to resolve the issue at the lowest level possible and not let the problem escalate.

Although misconduct is usually more clear than unsatisfactory performance they sometimes overlap. Whatever the issue you are addressing, however, make sure the roles are clear and that good communication is in place.

In these situations there are two parties, the employer who is represented by the supervisor, and the individual employee. Both have the right to a third party representative in their discussions. Note that this person is not an advocate, but an observer.

Throughout any process ERMS staff will provide advice, support and guidance. Involving Human Resources in a public way, however, when you may wish to keep things relatively informal, will escalate the issue.

In the event of any external action Human Resources will represent the University. Nonetheless, this does not preclude them from giving advice to staff when asked. If a situation then escalates to a formal level the staff is likely to be referred elsewhere.

The University prefers that cases do not end up in the Industrial Commission where they can become protracted for both parties. It would rather see them resolved internally and informally where possible. To support this, internal or external mediators are sometimes used. Even in those cases that are referred to the Industrial Commission, the preference would be to resolve it at a Conciliation Conference rather than going to arbitration.

Throughout the performance management process it is essential to be fair. The concept of natural justice is comprised of substantive and procedural fairness. Thus, even if the evidence was overwhelming and the process would not change the outcome, it is important to operate in accordance with natural justice. Procedural fairness requires that you are able to demonstrate you were fair in your actions. If a case were to fail in the

Industrial Commission it is likely to be on the issue of procedural fairness.

The principles of procedural fairness also require that the employee be informed of all the allegations about their behaviour and have a full opportunity to present their case (the right of reply). All parties to the complaint must have the right to be heard and all relevant submissions and evidence considered. Matters that are not relevant must not be taken into account. And the person making the allegation must not determine the charge. The decision must be fair and just.

Managing the Unsatisfactory Performance Process

Jenny Robertson and Renata Owen of ERMS illustrated many of the issues through handy checklists for managing unsatisfactory performance or behaviour provided to all participants. These are summarised below.

Stage 1: The Informal Process

Talk to your ERMS contact at any time for advice. This decision will depend on your experience in managing these situations and/or the complexity of the matter.

As soon as problems or concerns about a staff member's performance or behaviour appear raise them with the staff member. This is much easier if you have already developed a positive trusting relationship.

- ❑ Find a private place for this conversation.
- ❑ Be specific. Give examples.
- ❑ Get their views. Explore the possibility of a personal issue that may impinge on their work. If this is the case suggest attending EAP or taking leave.
- ❑ Set/reiterate your expectations of their priorities and behaviours. This should flow naturally from the induction and regular performance reviews.
- ❑ Meet with the staff member regularly. Invite them to bring a support person if they wish.
- ❑ Document what you do but, at this stage, do not place in an official file. Take notes or have a third party take notes. Give the staff member a copy and ask them to sign it as an accurate record of what has occurred.
- ❑ If, after a reasonable period has passed, and the concerns have not been adequately addressed move to the formal process. "Reasonable" is a judgment call.

Stage 2: The Formal Process

- ❑ Discuss the case with your contact in ERMS.
- ❑ Meet with the staff member and explain your purpose. Invite them to bring a support person. This may be a union representative. Where a

union official is present there should also be an ERMS representative.

- ❑ Advise the staff member that the performance review is moving into a formal process and explain why. Be upfront about the potential consequences for them.
- ❑ Clearly outline your concerns about their performance. Be specific and give examples. Summarise what has occurred to date (the informal process) to address this. *Note: Where poor behaviour is involved it may be helpful to talk to all your staff as a group about your expectations for behaviour in your workplace.*
- ❑ Seek to ascertain any underlying cause of the problems.
- ❑ Invite the staff member to comment on the matters raised. They may choose to do this at the meeting or to respond to the notes of the meeting in writing.
- ❑ Outline the task/duties which the staff member will be expected to complete during the next week or fortnight and detail the expectations of how those task/duties will be completed.
- ❑ Determine how often you will meet with the staff member to review their performance or behaviour. This may be weekly or fortnightly depending on the cycle of work to be performed.
- ❑ In discussion with the staff member determine any professional development or assistance the staff member may require in order to meet the expectations of the position. Determine who is to follow up on arrangements.
- ❑ Following each review meeting, and preferably within three working days, provide the staff member with a written account of the matters discussed and have them sign a copy to indicate that it is a true and accurate record. If the staff member disagreed with the content or wishes to make additional comments they provide a written response.
- ❑ Where it appears that, after a 'reasonable' period the staff member is still not performing or behaving as expected, conduct a final meeting and issue a final warning. Specify a period of time in which the staff member needs to improve and the consequences (potentially termination) of failing to perform/behave satisfactorily.
- ❑ If there has not been sufficient improvement and the staff member cannot provide a reason why, inform them that you are contemplating termination or some other form of disciplinary action. This must be discussed with ERMS.
- ❑ Invite them to offer any mitigating circumstances.
- ❑ If there is a decision to terminate prepare a report for the Director Human Resources within three working days. The report should contain:

- The specifics of the alleged poor performance/behaviour;
 - The process that has been followed; and
 - The reason for proposing termination or other disciplinary action.
- Give the staff member a copy of the report and inform them that they should provide a written response to the Director within three working days.
 - The Director will normally meet with the staff member and make a decision based on the report and his meeting.

The Legislative Context

The employee may take recourse to the courts utilising unfair dismissal provisions. If so, ERMS will prepare a response. The matter would first go to a Conciliation Conference. You, as supervisor, may be required to attend conciliation and/or provide evidence if the matter goes to a hearing.

Managing Yourself

Lyn Sherwood spoke with participants about the need to manage themselves as well as the poor performer.

Involvement in a difficult performance problem is very stressful. It is likely to raise strong emotions in both parties. Treat these emotions as facts – you need to read them. Be aware of the non-verbal communication as well as the words spoken. Remember that your role is as message giver and you need to ensure that the staff member hears and understands the message. When he/she leaves a meeting with you they should be in no doubt about what is considered unsatisfactory. This message must be delivered regardless of the denial that may be expressed, avoidance behaviours, tears and/or anger.

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It is important to remember that both of you are vulnerable in this situation. Feedback is always personal and it would not be unusual if you had your own avoidance tendencies and felt fear at some level. But it is important to stay on task – all big problems used to be small ones and early intervention will save time and energy later on.

Be gentle and encouraging initially. Offer a plan of support. It is very important to mirror back a person's feelings to them. But don't let tears put you off as they can be manipulative. Stay on message. Because anxiety and anger will block learning and perception it is important to defuse the anger. Your objective is to provide feedback in the most positive way possible. Remember, too, you need to make a judgment about your safety. If you believe there is any possibility that the staff member will become violent take protective measures.

Look after yourself – before and after a difficult interview.

- *Preparation* – Be sure of your facts and be specific. Be clear on what you want changed.
- *Execution* – Follow the Golden Rule. How would I like to hear this news myself?
- *Debrief* – Engage in some stress-reducing activities such as exercise, music or journal writing.

Finally confirm the outcomes in writing.

For further information about the management of unsatisfactory performance and misconduct or to enrol in the next workshop contact a member of the ERMS team.

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