



JOINT HR POLICY DOCUMENT

Capability Procedure (Police Staff)

THIS IS A SUPPORTING DOCUMENT TO:

JOINT SICKNESS MANAGEMENT POLICY

JOINT PERFORMANCE MANAGEMENT OF POLICE STAFF POLICY





Capability Procedure Force Policy Document

Policy owners	DCC Norfolk / DCC Suffolk
Policy holder	Head of HR Service Delivery (Norfolk & Suffolk)
Author	HR Manager (Policy & Reward)

Policy No.	171
------------	-----

Approved by

Legal Services	3 rd September 2013
Policy owner	3 rd September 2013
JJNCC	24 th June 2013

Note: *By signing the above you are authorising the policy for publication and are accepting accountability for the policy on behalf of the Chief Constables.*

Publication date	9 th September 2013
Review date	1 st February 2016
APP Checked	N/A

Note: *Please send the original Policy with both signatures on it to the Norfolk CPU for the audit trail.*

Index

1 Structure of the formal capability procedure.....	3
2 Attendance at formal meetings/hearings.....	4
Accompaniment.....	4
3 Timing of meeting/hearing.....	5
Failure to attend	5
4 Notification	6
Documents submitted by individual	6
5 Witnesses	6
6 At the capability meeting/hearing	7
Outcome.....	7
Improvement plan.....	8
7 Written notice of outcome	8
8 Monitoring performance/attendance against an improvement plan.....	8
9 Appeals against capability meetings/hearings	9
Attendance at appeals.....	10
Timing of appeal meeting/hearing	10
Notification	11
Format of the Appeal Meeting/Hearing.....	11
Outcome.....	12
10 Retention of documents	12

1 Structure of the formal capability procedure

- 1.1 The formal performance and attendance management procedure for police staff is as follows:

Stage 1: First Formal Meeting

Where informal action has not improved the individual's performance/attendance to an acceptable standard within the agreed timescale of the action plan/targets, the individual may be progressed to a Stage 1 meeting.

Stage 2: Second Formal Meeting

If the individual's performance/attendance has not improved to an acceptable standard within the agreed timescale of the action plan/targets or within the duration of the written warning, the individual may be progressed to a Stage 2 Meeting.

Stage 3 – Final Hearing

If the individual's performance/attendance has not improved to an acceptable standard within the agreed timescale of the action plan/targets or within the duration of the final written warning, the individual may be progressed to a Stage 3 final performance/attendance hearing, or:

If medical advice becomes available that a member of police staff is either permanently incapable of performing the duties of his/her substantive post or that the individual is unlikely to be capable of performing the duties of his/her substantive post within a reasonable time frame (not exceeding 12 months) then it will be appropriate to move to a Stage 3 final hearing.

For performance issues only, where there is a serious inability or failure of an individual to perform the duties of the role he/she is currently undertaking to a satisfactory standard, to the extent that dismissal would be justified, for example where the lack of competence has a seriously detrimental effect on the service or where the individual's lack of competence could lead to serious consequences (e.g. safety considerations or severe financial implications), the Director of Human Resources may authorise the acceleration of the matter directly to Stage 3 rather than commencing at Stage 1.

2 Attendance at formal meetings/hearings

- 2.1 Stage 1 formal meetings will be chaired by the individual's 2nd line manager, and Stage 2 meetings by the next line manager, with the relevant HR Advisor in attendance to advise on procedural matters only.
- 2.2 A Stage 3 final hearing will be conducted by a panel chaired by an ACPO rank officer or member of police staff, or nominated deputy. The two other members of the panel should consist of a senior police officer or senior police staff manager, and an HR Professional.
- 2.3 The line manager will also attend the Stage 3 hearing to present the management case.
- 2.4 The individual has the right to be accompanied at meetings and hearings as outlined below.
- 2.5 The individual may raise an objection to the person(s) appointed to conduct the meeting/hearing or any person named who will advise at the meeting/hearing. Objections must be raised in writing and submitted to the Director of Human Resources within three working days commencing the first working day following receipt of the written notice of the meeting/hearing, setting out the grounds for objection. The DHR will notify the individual of their decision on the objection in writing, and where the objections are upheld the person(s) to whom the individual objects will be replaced.
- 2.6 Throughout this procedure, consideration should be given to any reasonable adjustments that may be needed if any person with a disability is involved.

Accompaniment

- 2.7 The individual concerned has the right to consult with, and be represented by a UNISON representative or a work place companion at all stages of the procedure. Any person acting as a UNISON representative or work place companion should, subject to the demands of the service, be allowed to do so during normal working hours.
- 2.8 The UNISON representative or work place companion may:
- advise and confer with the individual throughout the procedure;
 - attend any meetings with the individual which form part of the procedure;

- address the meeting or hearing to both state and sum up the individual's case;
- provide any relevant documentation to the meeting/hearing who shall give full consideration to such documents;
- respond on the individual's behalf to any views expressed at a meeting/hearing;
- during a meeting/hearing, ask questions of any witness on the individual's behalf;
- make representations to the Director of Human Resources concerning any aspect of this procedure.

2.9 It is good practice to allow the UNISON representative or work place companion to participate as fully as possible, but at a meeting or hearing the UNISON representative or work place companion is not there to answer questions on the individual's behalf. It is for the individual concerned to speak for himself or herself when asked questions.

2.10 A UNISON representative or work place companion cannot be appointed to act as such if his/her presence might cause a conflict of interest (has had some involvement in the matter or is a witness). The individual should be advised of this and offered the opportunity to find a replacement.

2.11 There is no right to legal representation at a capability meeting or hearing.

3 Timing of meeting/hearing

3.1 The capability meeting/hearing should be scheduled at a reasonable time and place, giving the individual reasonable notice to prepare for the meeting/hearing.

3.2 If the individual or their representative is unable to attend the meeting/hearing on the specified date then the individual can propose an alternative reasonable date and time which falls within five working days of the specified date. Where the alternative date is acceptable the new time and date will be confirmed in writing.

Failure to attend

3.3 If an individual fails to attend the capability or appeal meeting/hearing without good cause the meeting/hearing may proceed in their absence and a decision will be taken on the information available to the chair.

3.4 If prior to the meeting/hearing the chair is advised that the individual is unable to attend, the chair will consider whether the reason given for non-attendance is reasonable, taking into account mitigating circumstances and any medical opinion on whether the person is fit to attend the meeting/hearing. If the meeting/hearing chair considers the grounds to be reasonable, the individual will be allowed to participate by other means (for example by a conference telephone call), or the individual may still be represented by a UNISON representative or work place companion, or exceptionally the meeting/hearing may be rescheduled.

3.5 All outcomes will be advised to the individual in writing.

4 Notification

4.1 The HR Advisor will arrange for a letter giving notification of the requirement to attend the meeting/hearing at least five calendar days in advance of the meeting/hearing, to be delivered by hand or by recorded delivery to the individual, together with: a copy of the information pack; the investigative report; any documents from the individual's record which will be used by the meeting chair/hearing panel in their decision-making process; and the names of any witness(es) to be called. Copies of these documents will also be provided by HR directly to the meeting/hearing chair/panel members, and – with the individual's permission – to the UNISON representative who will accompany them at the meeting/hearing.

4.2 Individuals should confirm as soon as possible whether they will be attending the meeting/hearing and who will be accompanying them.

4.3 Consideration will be given to any reasonable adjustments that may be needed if any person with a disability is attending the meeting/hearing.

Documents submitted by individual

4.4 The individual should provide HR with any documents they wish to refer to at the meeting/hearing no less than five calendar days prior to the meeting/hearing.

5 Witnesses

5.1 Whenever it is reasonable to do so, a meeting/hearing will be conducted without live witness evidence. Where either the line manager or the individual consider that witnesses are necessary the line manager and/or the individual will submit details of proposed witnesses to the HR Advisor together with an explanation as to why their attendance is necessary. This list will be passed to the meeting/hearing chair, to determine whether the proposed witness(es) need attend. The decision as to the attendance or otherwise of witnesses shall be that of the chair and his/her decision is final. The decision outcome will be notified to the line manager and/or the individual as appropriate.

5.2 The chair may of their own volition direct that witnesses attend the meeting/hearing if they think this is necessary to dispose of the matter fairly.

5.3 There is an organisational expectation that police officers and staff will attend the meeting/hearing as witnesses as required by the chair.

5.4 The chair, the management side and the individual (and/or their representative) will wherever possible be invited to ask questions of any attending witness. In capability meetings/hearings the HR Advisor is present in an advisory capacity only and therefore would not normally ask questions in their own right but they may advise the chair to ask specific questions if the HR Advisor considers that this would assist the process. Each witness will leave the meeting/hearing after

giving evidence, and the chair may recall a witness to clarify any points in question.

6 At the capability meeting/hearing

6.1 Prior to the capability meeting/hearing, the line manager supported by HR/Performance Improvement Unit (PIU) must put together an information pack which outlines the facts and events that have led to the meeting/hearing taking place.

6.2 The format of most capability meetings/hearings will be as follows:

- The manager/panel chair makes introductions, explains the format and confirms that the individual is aware of the reason for and purpose of the meeting/hearing.
- If a Stage 1 or 2 meeting, the chair will outline the case from the Information Pack, supported by any witnesses, witness statements and other relevant documentation. If a Stage 3 hearing, the line manager will attend to present the management case.
- The chair invites the individual to respond, pose questions in response to the information pack, present their case with reference to any documents provided prior to the meeting/hearing or pre-announced witnesses. The individual and his/her representative will be given the opportunity to make representations on the question of the most appropriate outcome of the case.
- The chair will adjourn the meeting/hearing in order to consider and record a decision (see below).
- The chair reconvenes the meeting/hearing with the individual and the individual's representative and informs them of the outcome and their right to appeal. Only in exceptional circumstances will the individual be told the outcome at a later time. In the event that it is not possible to provide an outcome on the day the individual will be asked whether he/she would like the outcome delivered personally or in writing and advised of the anticipated date that the outcome will be available.

6.3 Either party may request an adjournment of the meeting/hearing at any stage. Such a request will be considered and decided by the chair.

Outcome

6.4 If the poor performance/attendance is substantiated, the following sanction will be imposed, as appropriate, upon the individual:

- Stage 1 meeting: Written warning and an improvement plan.
- Stage 2 meeting: Final written warning and an improvement plan.
- Stage 3 hearing: Dismissal with notice (and where appropriate redeployment during notice period as a reasonable adjustment, in liaison with an HR professional).

6.5 A written warning will remain live for one year, and a final written warning will remain live for 18 months.

Improvement plan

6.6 The improvement plan will clearly indicate the performance/attendance required to be achieved and also will contain a warning that if the performance issues do not improve within the specified improvement period and/or is not maintained for the duration of the formal warning, the individual will be progressed to the next stage of the capability procedure. When explaining the outcome of the Stage 1 or 2 meeting to the individual, the manager/chair should:

- explain how the improvement plan will work;
- endeavour to gain commitment from the individual to the course of action;
- explain that failure to improve to the required standard of performance/attendance will lead to further formal action and ultimately dismissal;
- set formal review dates.

7 Written notice of outcome

7.1 The individual will receive a written notice of the outcome as soon as practicable after the conclusion of the meeting/hearing and in any case within three working days. The written notice shall set out the finding of the chair/panel, any sanction imposed and the right to appeal.

7.2 A record will be made of the meeting/hearing and this may include by means of digital recording. Any recording of the meeting must be pre-announced by all parties. All documents and recordings will be retained by the HR department in line with this document, and all attendance/performance action will be recorded by the Professional Standards and HR departments.

8 Monitoring performance/attendance against an improvement plan

8.1 Following the Stage 1 and 2 meetings the line manager will review progress against the improvement plan. This will involve discussion with the individual (and their representative if they wish to be accompanied). If the required standard is met within the timescales of the improvement plan the individual should be advised formally in writing, although the improvement plan remains valid for the duration of the written warning and acceptable levels of performance/attendance must be maintained during this period. If performance/attendance does not improve within the specified improvement period or poor performance/attendance arises again whilst the written warning is still live, the next stage of the capability procedure will be implemented.

9 Appeals against capability meetings/hearings

9.1 An appeal is not a repeat of the original meeting/hearing. It is to challenge a particular finding or rationale for a finding from the capability outcome.

9.2 If the poor performance/attendance is acknowledged by the individual, he/she may only appeal against the sanction applied at a Stage 3 hearing. If the poor performance/attendance is not acknowledged, the individual may appeal against the finding (and the sanction applied if a Stage 3 hearing).

9.3 The individual must give written notice of appeal, as directed in their outcome letter, within seven working days commencing the first working day following service of this letter (this period may be extended with the agreement of the Head of HR Service Delivery (Norfolk & Suffolk) in exceptional circumstances).

9.4 The individual can appeal on the following grounds, and must provide in their written appeal an explanation of how this applies to their case:

- The finding was unreasonable;
- The sanction imposed (Stage 3 hearing only) was unreasonable or too severe;
- There is evidence that was not available at the capability meeting/hearing which may materially affect the finding (or sanction if Stage 3 hearing) applied;
- That there was a serious breach of procedures;
- That there was other unfairness which could have materially affected the finding (or sanction if Stage 3 hearing) applied.

9.5 Depending on the nature of the appeal, the appeal meeting/hearing will take one of two forms:

- a) Rehearing – will consider again all of the evidence presented at the original hearing/meeting. At a re-hearing, the individual can make any submissions in relation to the allegation(s) of poor performance/attendance and whether the sanction applied was appropriate.
- b) Review – Used in appeals against a Stage 3 hearing, where the individual accepts poor performance/attendance but is unsatisfied with the sanction applied. Rather than a full rehearing, the review will examine the decision-making process and decide whether the sanction applied was a reasonable one. As part of the review the appeal chair/panel will consider all of the original evidence.

9.6 The HR Advisor will decide whether the appeal meeting/hearing should be by way of a rehearing or a review. The individual and the original meeting/hearing chair will be invited to make representations as to whether the appeal meeting/hearing should be a rehearing or a review. The HR Advisor will advise the individual and line manager of their decision in writing.

Attendance at appeals

- 9.7 An appeal against a formal capability meeting will be heard by an appropriately ranked police officer or manager (see below) who has had no prejudicial involvement in investigation of the case or in the original meeting. In addition, an HR Advisor who has had no previous direct involvement with the case will also attend, to advise the person conducting the appeal on procedural matters only.
- 9.8 The appeal will be heard by a panel chaired by an ACPO rank officer or member of police staff, or nominated deputy. Where the appeal is against dismissal, the chair will be the Chief Constable or nominated deputy in their absence. The two other members of the panel should consist of a senior police officer or senior police staff manager, and a senior HR professional (for appeals against dismissal this should be the Director of Human Resources or nominated deputy in their absence). The appeals panel will have had no prejudicial involvement in the investigation of the case or in the original meeting/hearing which preceded the appeal.
- 9.9 The individual has the right to be accompanied at the appeal meeting/hearing in line with section 1 of this supporting document.
- 9.10 The 'management representative' will present the management case at the appeal meeting/hearing. At appeals against capability meetings, the management representative will be the chair of the original meeting; at appeals against capability hearings, this will be a member of the original panel. The management representative will prepare an appeal report setting out the basis for the decision of the original meeting/hearing. This report will be provided to the appeal meeting/hearing chair and the individual prior to the appeal meeting/hearing. The HR Advisor must arrange for a copy of the report and all other relevant documentation to be sent to the individual at least five calendar days prior to the appeal meeting/hearing, to be delivered by hand or by recorded delivery.
- 9.11 The individual may raise an objection to the person(s) appointed to conduct the appeal meeting/hearing or any person named who will advise at the appeal meeting/hearing. Objections must be raised in writing and submitted to the DHR within three working days commencing the first working day following receipt of the written notice of the appeal meeting/hearing, setting out the grounds for objection. The DHR will notify the individual of their decision on the objection, and where the objections are upheld the person(s) to whom the individual objects will be replaced.

Timing of appeal meeting/hearing

- 9.12 The appeal meeting/hearing should be scheduled at a reasonable time and place, giving the individual reasonable notice to prepare for the appeal meeting/hearing.
- 9.13 If the individual or their representative is unable to attend the meeting/hearing on the specified date then the individual can propose an alternative reasonable

date and time which is within five working days of the specified date. Where the alternative date is acceptable the new time and date will be confirmed in writing.

Notification

- 9.14 The HR Advisor will arrange for a letter giving notification of the requirement to attend the appeal meeting/hearing to be sent within five calendar days of the appeal meeting/hearing, to be delivered by hand or by recorded delivery to the individual, together with a copy of the appeal report and all related documents, and any documents from the individual's record which will be used in the decision-making process. The individual will also be notified of any witnesses which will be called at the appeal meeting/hearing.
- 9.15 Consideration will be given to any reasonable adjustments that may be needed if any person with a disability is attending the appeal meeting/hearing.
- 9.16 Individuals should confirm as soon as possible whether they will be attending the appeal meeting/hearing and who will be accompanying them.
- 9.17 Prior to the appeal meeting/hearing, the appeal meeting/hearing chair/panel will be provided with the following documents:
- The notice of appeal from the individual concerned setting out the grounds of appeal;
 - The record of the original capability meeting/hearing;
 - The documents that were given to the person who held the original capability meeting/hearing;
 - Any evidence that the individual concerned wishes to submit in support of his or her appeal that was not considered at the capability meeting/hearing;
 - Names of any proposed witnesses.

Format of the Appeal Meeting/Hearing

- 9.18 After the appeal meeting/hearing is opened by the chair with general introductions, the individual will usually be asked to present their case for appeal first, to include any documents provided prior to the appeal meeting/hearing and pre-announced witnesses. The management representative will then respond, supported by any pre-announced witnesses and/or other relevant documentation. In the case of a full re-hearing, however, the management representative may be asked to outline the appeal report first, with the individual then being invited to respond. The HR Advisor will advise the chair on the best format in the circumstances.
- 9.19 The chair will then adjourn the appeal meeting/hearing in order to consider and record a decision (see below). The manager/panel chair will reconvene the meeting/hearing with the individual and the individual's representative and inform them of the outcome. Only in exceptional circumstances will the individual be told the outcome of the meeting/hearing at a later time.

Outcome

9.20 The chair/panel will consider:

- whether the finding of the original capability meeting/hearing was unreasonable having regard to all the evidence considered or if the finding is unsound due to evidence which has emerged since the meeting/hearing, and/or
- if an appeal against a Stage 3 hearing, whether the sanction imposed by the hearing may be considered as too severe having regard to all the circumstances of the case, and
- whether the finding (and/or sanction applied if an appeal against a Stage 3 hearing) could be unsound due to procedural unfairness and prejudice to the individual (although the persons conducting the appeal must also take into account whether the unfairness or prejudice could have materially influenced the outcome).

9.21 The person determining the appeal may confirm or amend the decision appealed against, however the original sanction cannot be increased upon appeal, except in exceptional circumstances where new evidence has come to light between the original meeting/hearing and the appeal meeting/hearing. Advice must be obtained from the Director of Human Resources before proceeding in such circumstances.

9.22 The individual concerned shall be notified in writing of the outcome of the appeal within three working days of the conclusion of the appeal meeting/hearing to be delivered by hand or by recorded delivery.

9.23 A record will be made of the meeting/hearing and this may include by means of digital recording. All documents and recordings will be retained by the HR department in line with this document.

10 Retention of documents

10.1 All records and reports relating to informal and formal action will be retained within the appropriate confidential files in HR, even where formal warnings have expired. Line managers must ensure that any records of management action are forwarded via their HR Advisor for inclusion on these files. Performance/attendance management files will only be accessed by appropriate HR staff for the purpose of making assessments, for monitoring purposes and where this information is required for legal proceedings.