

People and Talent Procedure

Version Control	Changes Made	Author
Version 1 June 2024	Reviewed and amended procedure to be applicable to all employees.	V. Barnes

Introduction

The Capability Procedure is designed to assist employees to meet and maintain a satisfactory level of performance when they fail to reach the required standard for reasons associated with competence, aptitude, fitness or physical or mental ability. The emphasis in dealing with capability issues should be on open and honest communication, backed up by support mechanisms that aim to assist the employee to reach the required standard of performance within a jointly agreed programme of support.

This procedure has been developed not only to provide assistance for employees who are unable to meet the requirements of their existing post, but also to recognise the changing nature and standards of performance required in the roles employees undertake. It also seeks to ensure that the service meets its legislative responsibilities including those associated with equality and diversity, health and safety and dismissal procedures.

Scope

This procedure applies to all employees of Cumbria Fire & Rescue Service.



This procedure does not apply to cases involving ill health or conduct issues which are covered by Absence and Wellbeing, Workplace Complaints, Substance Misuse or the Disciplinary procedures.

This procedure does not apply to employees whose employment is to end:-

- During or at the conclusion of a fixed term/temporary contract or a probationary period of service, where dismissal arises from unsuitability for confirmation of appointment, or
- those subject to redundancy.

Principles

The service seeks to achieve and maintain high standards of service delivery through its employees. In order to achieve this, it has established standards and monitors performance whilst providing employees with appropriate support to meet those standards. This may include a review of the job requirements and working arrangements, counselling, training and coaching, and, in cases of physical or mental ability, support from Occupational Health and/or service fitness advisor. The stages in the procedure would normally be followed in sequence and account should be taken of the individuals Personal Development Record (PDR) or personnel file where necessary.

In dealing with cases of poor performance the service distinguishes between:

- Negligence, lack of application or attitudinal problems, where the Disciplinary Procedure is applicable.
- Health, where the Absence and Wellbeing Procedure is applicable.
- For other reasons of poor performance or inability to meet the role requirements, the Capability Procedure will apply.

It would be expected that managers would meet with staff on a regular basis throughout the working relationship through supervision/one-to-ones/appraisals. This is an opportunity for both parties to raise issues and concerns which can be addressed at the earliest opportunity with support. It is also important that these opportunities are used to provide positive feedback to the employee.

There is an expectation that any difficulties would be addressed and resolved as part of the supervision/one-to-one/appraisal processes and that the Capability Procedure should only be used when such efforts have been undertaken and a more formal approach is deemed appropriate.

Should a concern be raised regarding the relationship between the manager and employee, advice should be sought from HR, to ascertain if any other support is appropriate. In addition, if concerns over performance are connected to management issues, the case should be escalated to a relevant senior manager.

Process

The employee may be accompanied at any stage of the process by a co-worker or trade union representative if they wish.

Informal Stage

This is an informal discussion with the line manager. The informal approach means that minor problems should be dealt with quickly and confidentially. The line manager will speak to the employee about their performance and explore together how performance can be improved, determining the support and training requirements.

At the informal stage the manager should ensure that employees are clear of the expected outcomes and the process by which they will be achieved. Once agreed the actions should be confirmed in writing to the employee along with agreed review dates.

If at this stage an alternative support manager is required then this should be another suitable manager at watch manager level, equivalent or above.

First Formal Stage

An employee's support manager, at watch manager level, equivalent or above, may initiate the formal capability process. Following a capability meeting chaired by a station manager, equivalent or above, the manager must decide whether action is justified or not. Where it is decided that a lack of capability has been demonstrated, the usual first step would be to award a sanction no greater than a warning in addition to providing details of the improvement required.

A warning must give details and an explanation of the decision. It should inform the employee that failure to improve may lead to further capability action and advise them of their right of appeal. A warning should be disregarded for capability purposes after six months.

A warning may only be given to an employee by their station manager, equivalent or above, full guidance on the application of the process can be found in the guidance section below.

Second Formal Stage

Where there is a failure to sufficiently improve in the timescale set at the first formal stage, the employee may be issued a sanction no greater than a final written warning. This sanction may only be issued after a review of the support and actions issued at the previous stages and a capability meeting chaired by a group manager, equivalent, or above.

A final written warning must give details and an explanation of the decision. It should inform the employee that failure to improve may lead to dismissal or to some other sanction and advise them of their right of appeal. A final written warning should be disregarded for capability purposes after eighteen months.

Third Formal Stage

Where employees continually fail to improve, the manager at area manager level, equivalent or above should review the situation, looking at redeployment opportunities and hold a capability meeting. The sanction issued as an outcome of this review and meeting may include dismissal. Alternatively, the outcome may be a sanction less than or as an alternative to dismissal (see guidance for details). Employees must be advised they have the right to appeal and given details of the appeal process.

Any sanction up to dismissal may only be given to an employee by an area manager, equivalent or above.

Should further clarification be required at any stage of this procedure please contact the HR team.

Capability Procedure Guidance – All Staff

Guidance

Introduction

The Capability Procedure is designed to assist employees to meet and maintain a satisfactory level of performance when they fail to reach the required standard for reasons associated with competence, aptitude, fitness or physical or mental ability. By following the process there should be:

- A means of monitoring performance and establishing performance criteria.
- A degree of consistency and fairness in how employees with widely differing responsibilities and duties are given the opportunity to attain a satisfactory level of performance.
- Assistance in identifying the appropriate forms of support and providing that support.

Responsibilities

It is everyone's duty to ensure that acceptable levels of performance are achieved and maintained and to take steps to rectify any shortfall.

Employees are expected to:

- Notify their manager if they are unsure of what is expected of them or having difficulty in meeting the required standards of performance.
- Undertake any training, coaching, counselling, or other support offered to, or requested by them, to enable them to reach the required standard.
- Attend meetings, hearings or appeals as required.
- Engage with the Alternative Employment Programme should this be an agreed outcome of the formal interview stages. Employees will be supported via the AEP, recognising that this is a joint responsibility between employer and employee.

Managers are expected to:

- Provide appropriate support to enable employees to achieve the required standard.
- Set appropriate and achievable standards of performance based on the requirements of the role.
- Provide regular supervisions and appraisals.

- Notify employees when they do not meet the required standard and investigate the causes.
- Review the requirements of the post and consider whether more flexible working arrangements could be applied without detriment to the service level required.
- Arrange meetings, hearings and appeals as required under the procedure.
- Ensure that accurate records are maintained and secured in the employee's file.
- Maintain confidentiality.
- Notify the employee of their right to be accompanied and encourage this.
- Liaise with HR to support the employee in exploring redeployment via the AEP at the appropriate stage.
- Provide suitable learning and development opportunities to enable employees to perform their duties to the required standard.
- Inform the employee that the Capability Procedure may result in dismissal.

HR are expected to:

- Advise managers on all aspects of this procedure.
- Support managers in dealing with individual cases.
- Monitor the application of the procedure to ensure that it is compliant with the Equality and Diversity Procedure and associated legislative requirements.
- HR will review the procedure to meet the requirements of new legislation and operational needs.

Wellbeing

Going through a capability process can be very stressful; it is important that employers consider the wellbeing and mental health of their employees.

Looking out for the employee's wellbeing and offering support can help prevent:

- Absence.
- Mental health issues arising/getting worse.

The manager may also signpost the employee to the employee support pages if required. This includes information and resources on the following:

- Health and Wellbeing Helpline
- Mental Health Support
- Self-referral for counselling (should employees not wish their manager to make the referral for them)
- Alcohol and Substance Misuse
- Bereavement support

Managers are encouraged to contact HR or occupational health for further information or relevant support when required.

Informal Stage

When the employee's manager recognises that the employee's performance is unsatisfactory, they will hold an informal discussion with the employee to try to establish the reason(s). A quiet word is often all that is required. The employee may be accompanied at this meeting by a co-worker or trade union representative and given 7 days' notice of this meeting. This does not apply to situations where a manager feels it appropriate to provide necessary guidance to an employee or initiate a discussion in the workplace during the usual course of their work. The informal approach means that minor problems can be dealt with quickly and confidentially.

The manager should consider the following actions:

1. Ascertain if there are any specific reasons/problems behind the poor performance.
2. Explain the expected standards and provide help and retraining if the employee's problems arise from a change in the role or standards required in the post.
3. Review the standards of the post if they are not reasonably attainable.
4. Provide access to counselling and support where the employee's difficulties relate to his or her personal life.
5. Provide additional support in the form of training, retraining or coaching where the poor performance is related to the lack of training or supervision.
6. Seek medical advice and referral to Occupational Health, as detailed in the Absence and Wellbeing Procedure, if the poor performance is related to the employee's state of health.
7. Consider the provision of reasonable adjustments in accordance with the requirements of the Equality Act 2010 and discuss this with the employee.
8. Invoke the Substance Misuse Policy if the poor performance appears to be related to alcohol or drug issues.
9. Invoke the Disciplinary Procedure if the employee's poor performance appears to be for reasons of conduct.

As a result of this meeting the manager may need to undertake an assessment to determine which procedure is appropriate. **If, during the actions outlined above a manager realises that they have chosen the wrong procedure they must notify all concerned and adopt the correct one whilst seeking advice from HR.**

If the reason for poor performance is for any of the reasons 1 to 4 above, the employee will be provided with relevant support and their performance will be monitored by the manager for an appropriate period of time. Details of this will be recorded in writing on an action plan, which may include reference to their PDR, and a copy provided to the employee and their representative (appendix A in the guidance). A copy will also be retained on the employee's

personnel file. The employee must be supported for a period of time which is reasonable considering the post and the nature of the shortcoming(s). This would normally be between four and twelve weeks.

All employees should be issued with an action plan (appendix A) containing details of the levels of performance required. This must be evidential and linked to specific required outcomes that can be measured in relation to the employees' job specification and role profile. The plan must also detail the support that will be provided to assist them in achieving this in the required timescales, for example training/support/mentoring.

This should form part of the above discussion and the employee should be given the opportunity to provide input into the action plan, including any support they feel may assist them. The action plan must be agreed and any support employees feel may assist them must be recorded, considered and if not provided, an explanation must be given.

The targets set should be SMART – Specific, Measurable, Achievable, Realistic, Time constrained. If the manager requires any further guidance on appropriate targets/measures they should contact HR for further guidance.

The above should be summarised in an outcome letter and a copy of the agreed action plan sent to the employee.

The manager will hold review meetings as necessary through the informal process to discuss the actions and determine if the situation has improved. Should the action plan need updating throughout the review period then this should be done where appropriate with the agreement of both the employee and manager.

If there is no significant improvement in the employee's performance the manager will continue with the procedure and move to the first formal stage. The manager will inform the employee of this and advise of next steps.

Formal Stages

Where the employee has been unable to improve their standards throughout the informal stage then the process must move to the formal stages.

Each formal stage will be initiated where the employee has been unable to meet the level of standard stated in their action plan. All stages in the process should be communicated clearly to the employee and any wellbeing support needed should be made available.

Formal capability meetings

At all formal capability meetings the employee has a right to:

- Be accompanied by either a trade union representative or work colleague
- Be given enough information on how they have not met the standards expected.

At all formal capability meetings the hearing manager will seek to:

1. Identify clearly the shortfall between the employee's performance and the required standard.
2. Identify the cause or causes of the poor performance and to determine what, if any, remedial action e.g. training, support, can be given.
3. Obtain the employee's commitment to reaching the standard by setting realistic targets.
4. Set out the timetable for improvement and explain how performance will be monitored and reviewed. The timetable will depend on the circumstances of the individual case but in straightforward cases must not be less than 4 weeks. It should be reasonable and proportionate, but not excessively long, and should provide sufficient opportunity for an improvement to take place). Action plan template can be found in appendix A.

The role of the support manager

The support manager will be responsible for providing any necessary support and wellbeing for the employee. This may be the employees line manager (watch manager, equivalent or above) or another suitable manager should this be necessary. It is the responsibility of the support manager to attend formal meetings and conduct review meetings throughout the process.

Stage 1 capability meeting

A manager at station manager level, equivalent or above will invite the employee to a stage 1 capability meeting. This meeting will be chaired by the station manager, equivalent or above. The employee shall be given a minimum of 7 days' notice of a capability meeting. The letter should contain enough information for the employee to fully understand where they have not met the standards required along with any other relevant details. The notification should also include copies of all the evidence/information relevant to the meeting. The employee will be advised of their right to be accompanied.

The case will be presented, normally by the employee's support manager although they may seek input from Learning and Development and/or service fitness advisor, if applicable for operational staff.

The employee has a right to be accompanied and present their case in response to management.

If it is decided at the first formal capability meeting that a lack of capability has been demonstrated then the manager may:

- Issue the employee with a first written warning to remain on the employee personal records for no longer than 6 months.
- If the individual is in receipt of competent rates of pay, this may be adjusted back to development rates of pay until such time that the individual demonstrates acceptable improvements in performance over the agreed timescales.
- Any Continuous Professional Development (CPD) enhancement may be terminated; if that is the selected action, the employee would need to apply again in the future and in accordance with the CPD process.
- It will also be made clear to the employee over what periods and in what respects performance will be monitored and that failure to meet the required standards may lead to the issue of a final written warning and ultimately dismissal. Consideration should be given to what help and assistance, including further training, the employee could be given to improve performance. It may also be appropriate to consider whether the employee might be redeployed.

The outcome of this meeting will be recorded in writing and a copy will be given to the employee and their representative if appropriate. If a warning has been issued then this letter will clearly state:

- the performance problem;
- the improvement that is required;
- the timescale for achieving this improvement;
- a formal review date;
- The support the employer will provide to assist the employee;
- The length of time the warning will remain on the employees record;
- The right of the employee to appeal.

Role of the support manager

The support manager will be responsible for ensuring the employee has the right level of support and is given every opportunity to work on the areas requiring improvement over the specified duration. The support manager should arrange regular reviews to monitor and support the employee, keeping them as up to date as possible on their progress.

Formal review

Once the formal review date has been reached then the employees support manager should arrange a formal review meeting with the employee to advise of the next steps, taking into account any progress towards the action plan and expected standards of the role. Possible action may include:

- No further action
- Deal with the matter on an informal basis
- Proceed to a Stage 1 capability meeting
- Proceed to a Stage 2 capability meeting
- Proceed to a Stage 3 capability meeting

Stage 2 capability meeting

A manager at group manager level, equivalent or above will invite the employee to a stage 2 capability meeting. This meeting will be chaired by the group manager or suitable equivalent or above. The employee shall be given a minimum of 7 days' notice of a capability meeting. The letter should contain enough information for the employee to fully understand where they have not met the standards required along with any other relevant details. The notification should also include copies of all the evidence/information relevant to the meeting. The employee will be advised of their right to be accompanied at the meeting.

The management case will be presented, normally by the employee's support manager although they may seek input from Learning and Development and/or service fitness advisor, if applicable for operational staff.

The employee has a right to be accompanied and present their case in response to management.

The hearing manager (group manager level, equivalent or above) will seek to:

1. Identify clearly the shortfall between the employee's performance and the required standard.
2. Identify the cause or causes of the poor performance and to determine what, if any, remedial action e.g. training, support, can be given.
3. Obtain the employee's commitment to reaching the standard by setting realistic targets
4. Set out the timetable for improvement and explain how performance will be monitored and reviewed. The timetable will depend on the circumstances of the individual case but in straightforward cases must not be less than 4 weeks. It should be reasonable and proportionate, but not excessively long, and should provide sufficient opportunity for an improvement to take place). Action plan template can be found in the guidance section appendix A.

If after considering all the evidence/information presented it is decided that the required improvement has not been demonstrated then they may:

- Issue the employee with a sanction no greater than a final written warning (to remain on the employee's personal file for no longer than 18 months)

- If the individual is in receipt of competent rates of pay, this may be adjusted back to development rates of pay until such time that the individual demonstrates acceptable improvements in performance over the agreed timescales.
- Any Continuous Professional Development (CPD) enhancement may be terminated; if that is the selected action, the employee would need to apply again in the future and in accordance with the CPD process.

It will also be made clear to the employee over what periods and in what respects performance will be monitored and that failure to meet the required standards may lead ultimately to dismissal. Consideration should be given to what help and assistance, including further training, the employee could be given to improve performance. It may also be appropriate to consider whether the employee might be redeployed.

The outcome of this meeting will be recorded in writing and a copy will be given to the employee and his/her representative if appropriate. If a warning has been issued then this letter will clearly state:

- the performance problem;
- the improvement that is required;
- the timescale for achieving this improvement;
- a formal review date;
- The support the employer will provide to assist the employee.
- The length of time the warning will remain on the employee's record
- The right of the employee to appeal

Role of the support manager

The support manager will be responsible for ensuring the employee has the right level of support and is given every opportunity to work on the areas requiring improvement over the specified duration. The support manager should arrange regular reviews to monitor and support the employee, keeping them as up to date as possible on their progress.

Formal review

Once the formal review date has been reached then the employees support manager should arrange a formal review meeting with the employee to advise of the next steps, taking into account any progress towards the action plan and expected standards of the role.

Possible action may include:

- No further action
- Deal with the matter on an informal basis
- Proceed to a Stage 1 capability meeting
- Proceed to a Stage 2 capability meeting
- Proceed to a Stage 3 capability meeting

Stage 3 capability meeting

A manager at area manager level, equivalent or above will invite the employee to a stage 3 capability meeting. This meeting will be chaired by the area manager or suitable equivalent or above. The employee shall be given a minimum of 21 days' notice of a capability meeting. The invite letter should include a detailed report of all the steps taken to support the individual and any details that may be relevant. The employee will be advised of their right to be accompanied at the meeting.

The management case will be presented, normally by the employee's support manager although they may seek input from Learning and Development and/or service fitness adviser if applicable for operational staff.

The employee has a right to be accompanied and present their case in response to management.

If after considering all the evidence/information presented it is decided that the required improvement has not been demonstrated then the hearing manager may:

- Take appropriate action, which may include:
 - Dismissal
 - Other action as an alternative to dismissal. These sanctions are:
 - A warning;
 - Demotion (either within role or of no more than one role);
 - Transfer (which should involve no loss of remuneration and, unless the employee agrees otherwise, should be within the same duty system).
 - Continuation of monitoring period
- If the manager decides that capability dismissal is the appropriate outcome, the employee should be given their contractual notice.
- If the individual is in receipt of competent rates of pay, this may be adjusted back to development rates of pay until such time that the individual demonstrates acceptable improvements in performance over the agreed timescales.
- Any Continuous Professional Development (CPD) enhancement may be terminated; if that is the selected action, the employee would need to apply again in the future and in accordance with the CPD process.

It will also be made clear to the employee over what periods and in what respects performance will be monitored and that failure to meet the required standards may lead ultimately to dismissal. Consideration should be given to what help and assistance, including further training, the employee could be given to improve performance. It may also be appropriate to consider whether the employee might be redeployed.

The outcome of this meeting will be recorded in writing and a copy will be given to the employee and their representative if appropriate. This letter should inform the employee of their right of appeal to a principal officer.

If a warning has been issued, then this letter will clearly state:

- the performance problem;
- the improvement that is required;
- the timescale for achieving this improvement;
- a review date;
- The support the employer will provide to assist the employee.
- The length of time the warning will remain on the employees record
- The right of the employee to appeal

Continuous Monitoring

Where the employee has not been dismissed and it has been agreed that continuous monitoring remains in place, expected standards and timeframes should be closely monitored and regular reviews scheduled with the line/support manager and the employee. The employee should be made fully aware of the potential outcome should the required standards are not met.

Appeals Process

Employees who have any formal action taken against them will be given the opportunity to appeal. Depending on the outcome of the capability meeting the appeal will be to:-

- For first and second formal stage - a higher level of manager
- For third formal stage – a principal officer

Where an employee appeals against formal action taken, they must put their grounds of appeal in writing no later than 7 calendar days after they have been informed of the decision. The grounds of appeal will normally be one or more of the following:-

- There was a defect in the procedure;
- The sanction was too severe;
- New evidence has come to light since the hearing which will have an impact on the decision.

Normally the appeal manager will conduct the appeal hearing as a review where this is required. Otherwise the appeal hearing will be conducted as a rehearing (either in full or part). A rehearing would normally be required in the following instances (this is not necessarily an exhaustive list):

- There was a procedural defect at the original hearing such that the hearing was unfair;
- New evidence has come to light which needs to be heard in full;
- There is a dispute about evidence given by one or more witnesses at the original hearing. (In these cases it may be necessary to rehear the witness evidence at the appeal.)

Where the appeal hearing is conducted as a review, the appeal manager will have available all the documents presented to the original hearing. They will also have a copy of the record of the hearing, the letter confirming the outcome of the original capability meeting, the letter of appeal and all other relevant information.

The appeal manager will reach findings based on the documentation and the submissions at the appeal hearing from the parties.

At the appeal hearing the employee and/or their representative will first put their case by explaining the grounds of appeal and presenting any relevant evidence.

The management case will then be put, responding to the grounds of appeal, normally by the manager who conducted the original hearing, but this could be a manager with the most relevant knowledge of the process so far e.g. line manager or support manager. Relevant witnesses may be brought by either side and be questioned by all parties.

The outcome of the appeal will be either:-

- The case against the employee is upheld (in whole or part); the sanction will then be the same or a lesser penalty;
- The case against the employee is not upheld.

In other cases of dismissal, employees shall be given contractual notice of dismissal following the hearing. Every effort will be made to conclude any appeal process within the notice period. Where it has not been possible to conclude the appeal process within the notice period, notice may be extended for a reasonable period with a view to concluding the appeal process within the notice period. If the dismissal is not upheld on appeal, the employee will be reinstated.

In cases of sanctions other than dismissal, the sanctions should not be implemented until any appeal process has been concluded.

Appendix A

Capability Action Plan

Name:				Role:			
Supporting Manager:				Location/Department:			
Plan Start Date:				Plan End Date:			
Specific <i>(Be specific on what you intend to address here)</i>	Measurable <i>(How will success be measured, target set etc)</i>	Achievable <i>(How do you plan to achieve it / support in place to assist)</i>	Relevant <i>(Why / how is it relevant to your development)</i>	Timescale <i>(min of 4 weeks, max of 12 weeks: include specific end date)</i>	Review Dates <i>(Dates reviewed and completed)</i>	Review Outcome <i>(What was the outcome of the review)</i>	Improvement Requirements Met Y/N <i>(Have the required improvements been met. Please state your reasons)</i>
Completed by:	Employee				Manager		
	Signature				Signature		
	Date				Date		