

STAFFORDSHIRE FIRE AND RESCUE SERVICE

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TITLE: PERFORMANCE AND CAPABILITY POLICY AND PROCEDURE

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1. POLICY STATEMENT

- 1.1 The people who work for Staffordshire Fire and Rescue Service are our most valuable resource in delivering a high quality protection and emergency response service to the communities we serve. Competent, motivated and effectively developed employees, able to perform their roles to the best of their abilities, are critical to our success.
- 1.2 Managing employee attendance/performance is a vital tool in securing the effectiveness of our Service. Therefore, the emphasis for Managers at all levels is on supporting employees to attain and maintain competent standards of performance and acceptable levels of attendance whilst also achieving, where appropriate, agreed work objectives.
- 1.3 The Service also needs to be able to support employees who are identified through our normal performance management arrangements as not meeting the standards required for competent performance in their roles.

2. PURPOSE

- 2.1 This procedure and management guidance provides a fair, open, and reasonable way to respond where the capability of an employee to perform their job gives rise for concerns.
- 2.2 For the purpose of this procedure poor performance/capability refers to an employee failing to produce satisfactory work standards and/or meet performance targets/objectives where they may lack the necessary skill, aptitude or qualification to do the job for which they are employed, or due to long term sickness absence or modified duties.

- 2.3 It may also be used to address persistent or intermittent short term absence due to an underlying medical condition, whereby the employee has been unable to attend work due to genuine sickness (please refer to the [Attendance Management Policy](#)).

3. SCOPE

- 3.1 This procedure and guidelines apply to all employees of the Service. Concerns regarding the poor performance/capability of employees who are subject to a probationary period will be managed within the principles of this procedure and in particular the provisions of [Employees subject to a probationary period](#).
- 3.2 If concerns about performance/capability of a member of the Executive Team arise, this procedure will be applied, varied as necessary by the Secretary to the Authority.
- 3.3 Where poor performance arises from the employee's carelessness, negligence or apathy rather than their lack of ability to carry out their role and responsibilities adequately, this will normally be dealt with as a potential disciplinary matter in line with the Service's [Discipline Procedure Policy](#). The Disciplinary Procedure Policy will also be invoked if an employee's absence/absence pattern is identified not to be genuine.
- 3.4 If at any stage in this procedure it becomes apparent that the matter is actually one of discipline rather than capability, it is appropriate to switch to the application of the disciplinary procedure.
- 3.5 Employees with a disability should make their Manager aware of this as soon as possible, if they have not already done so. In such situation, Managers will need to consider any reasonable adjustments to the job and/or performance/attendance standards and/or adjustments to timescales for improvements that may be required in supporting the employee to improve their performance. Managers must seek advice and guidance from a member of the HR Management team and/or from the Occupational Health Unit on how best to meet the needs of the employee with a disability in this context. This approach should be followed in relation to all of the stages in this procedure.

It will not always be necessary to go through every stage of the procedure. The procedure may be implemented at any stage if the Service believes this is appropriate. Further, where performance concerns arise with a probationary employee, a modified, one stage, procedure will apply.

4. SETTING THE PERFORMANCE OR CAPABILITY STANDARD

- 4.1 The Service standards will be based on a continual process of improvement linked to:
- Clear role maps and/or job descriptions
 - Personal qualities and attributes where applicable to the role
 - The outcomes of the annual appraisal process.

- 4.2 Poor performance occurs where the quality of work deteriorates below the required standard due to lack of ability, skill or knowledge. Examples of poor performance or incapability may include (the list is not exhaustive):
- Poor quality work
 - Low output
 - Consistent/repeated failure to meet realistic deadlines or targets
 - Consistent inability to recognise common problems and/or find appropriate solutions
 - Continuing inability to change (eg changes in working practices and targets despite appropriate training and coaching)
 - A significant or frequent mistake(s) despite coaching and support
 - A demonstrable lack of skill, knowledge or ability to learn despite appropriate coaching, training and support
 - The inability to perform a part or all of their role due to a medical condition either permanently or over a prolonged period
 - Inability or difficulty in working/engaging positively with work colleagues and/or members of the public
 - Prolonged period of absence.
- 4.3 The Service will aim to ensure that:
- Employees understand what is expected of them in terms of performance
 - Performance is monitored regularly by the employee's line manager and via the annual appraisal process
 - Managers are responsible for the fair and objective assessment of employees' performance
 - Employees are given appropriate training and support to meet those standards
 - Any performance/capability issues will be dealt with promptly, with a focus on how to best support the employee to carry out their role to the required standard.
- 4.4 Whilst the appraisal process will identify areas of performance where improvement is required and will be an important part of any case it will not in itself be sufficient to substantiate a case of inadequate performance. The appraisal process should be used to clarify the standards expected and provide feedback to the employee on performance. The appraisal process may be used to indicate concerns about performance, which may have previously been raised with the employee and continue to exist.
- 4.5 Where an employee consistently fails to reach and/or maintain a satisfactory standard of performance or the performance or capability issue is sufficiently serious, they may be dismissed from their employment with the Service but this will only happen where the employee has been given an opportunity to improve with the appropriate support.
- 4.6 In the case of capability due to long term sickness absence/modified duties the Service will seek a medical opinion on the prognosis of the condition and, where appropriate, the employee will be given suitable opportunity to become well and able to return to work undertaking their full role before the sustainability of their employment is considered.

- 4.7 It may be appropriate to deal with the matter under the appropriate stage of the formal procedure (i.e. the formal procedure can be commenced at any stage). Such an approach will only be taken following discussion with the HR Management team. Similarly where the employee has been offered other employment as an alternative to dismissal in line with the provisions of this procedure the assessment of performance in the new role will be undertaken within the performance review mechanism outlined in [Offers of alternative employment \(voluntary/compulsory\) redeployment](#).
- 4.8 Advice and guidance on identifying and managing issues of poor performance or attendance and on the application of all the stages of this procedure are available from the HR Management team.

5. **EMPLOYEES SUBJECT TO A PROBATIONARY PERIOD**

- 5.1 Newly appointed employees who are subject to a contractual probationary period, will have their performance monitored during their period of probation. The individual's Line Manager will take reasonable steps to ensure that the employee completes a structured induction programme. This should include discussing and setting clear and measurable performance standards with the employee which are required to be met during the probationary period. The Line Manager will endeavour to regularly monitor the employee's performance during this period.
- 5.2 Where concerns about the employee's performance arise during the probationary period, the Line Manager will follow the approach outlined in the informal stage of this procedure in the first instance (See [Managing performance and capability issues informally](#)).
- 5.3 In line with the informal stage of this procedure a review meeting should be held and written records kept. Where the employee has failed to meet the required standards of performance the Line Manager may decide to choose one of the following courses of action:
- Provide additional time for improvement
 - Provide additional appropriate training
 - Implement any other actions to support the employee to improve their performance

Timescales for a review meeting will normally be a maximum of six weeks from the initial discussion about poor performance and state that failure to meet and sustain the required standards may result in their employment being terminated.

- 5.4 Where the employee's performance has not improved sufficiently and/or they have failed to sustain the required improvement the Line Manager, will conduct a formal hearing in line with the principles of the Third Formal Stage of this procedure. The Line Manager should seek advice from a member of the HR management team throughout this process.

6. **TRADE UNION OFFICIALS**

- 6.1 No formal action under this procedure will be taken against an employee who is an accredited representative of a Trade Union recognised by the Fire Authority, until the circumstances of the case have been discussed with a Group Manager or Head of Department, the HR Management team and the permanent Trade Union Official of the Union concerned.

7. **MANAGING PERFORMANCE AND CAPABILITY ISSUES INFORMALLY**

- 7.1 A Manager will need to decide whether a problem exists in relation to an employee's performance. The following questions will assist in making that initial judgement:
- What are the indications that the employee is not measuring up to the requirements of the job?
 - Have there been complaints about the employee's work from colleagues, customers, or members of the public?
 - Are there factual grounds to indicate inadequate performance, such as poor results?
 - Does the Manager's own observation of the employee at work indicate dissatisfaction with their performance?
 - Has the employee asked for help to overcome a problem?
 - Has an appropriate period of time elapsed to decide whether a problem exists in answering the above questions?
 - Has the employee hit a trigger due to their attendance levels, as indicated in the [Attendance Management \(Sickness\) Policy](#)
 - Has the employee consistently not been able to fulfil the full role or spent an extended period of time on modified duties due to an on-going condition or situation? (This will be deemed to be "performance" throughout this policy document).
- 7.2 Having established that there are concerns about an employee's performance, or attendance the individual's Line Manager should meet with the employee as part of the normal supervisory process and draw attention informally to the ways in this is deficient. The purpose of the meeting will be to:
- Constructively explain the issue and what standard is expected from the employee
 - Ascertain whether there are any underlying health problems, affecting the employee's performance, or attendance. If this is felt to be a contributing factor then the employee will be referred to an Occupational Health Practitioner, with the employees consent. If consent is not obtained or the employee does not wish to engage with Occupational Health, then this should be noted. The Service will, nevertheless, be entitled to make decisions regarding the employee's future employment without the benefit of medical advice
 - Give the employee the chance to explain or reply and to put forward their views
 - Agree appropriate remedial action such as additional on or off the job training, counselling and support
 - Agree a reasonable timescale for improvement. What is reasonable will be dependant on the complexity of the role and the nature and complexity of the areas of unsatisfactory performance

- Agree the monitoring and review arrangements including date(s) for a review meeting
 - Ensure that the employee is aware of the possible consequences of continued poor performance, or attendance, and that failure to meet the required standards within the timescales set may result in the issues being dealt with under the appropriate formal stage of the procedure.
- 7.3 The Line Manager must provide the employee with a written record of the meeting, including any agreed points and outcomes within 7 days of the meeting; this could be done by email or using the informal warning (Note for File) template. A copy should be retained on the employee's file for up to 6 months.
- 7.4 The Line Manager will hold a review meeting at the agreed date to review what was agreed at the previous meeting and to ascertain what improvements have been made, if any, and to discuss with the employee the next course of action.
- 7.5 If issues are still evident, the manager should decide whether they be resolved following a further period for improvement. If they can, the manager should detail in writing to the employee within 7 days of their meeting:
- Where the performance, or attendance is still unsatisfactory
 - The measures that will be made available to assist the employee to achieve the level of improvement or help to resolve the situation
 - The date at which a review will take place. The timescale for review will be appropriate but may be shorter than the original review period set.
- 7.6 If there has been no, or insufficient, improvement or there has been a failure to sustain improvement, the issues should be referred to the first stage of the formal procedure (See [Managing performance and capability using the formal procedure – first and second stages](#)). Advice from a representative of the HR Team must be sought in managing issues under the formal stages of the procedure.
8. **MANAGING PERFORMANCE AND CAPABILITY USING THE FORMAL PROCEDURE – FIRST AND SECOND STAGES**
- 8.1 Where a decision has been made to move to the formal stages of the procedure the HR Department will notify the employee in writing that he/she is required to attend a formal Capability Hearing to discuss issues/concerns regarding their performance or attendance at work or capability to carry out their role. Where this stage follows the informal review stage, such written notification will immediately follow the conclusion of the review stage. The letter will specifically refer to this procedure and will provide the following details:
- Time, date and venue
 - Details of who will be present
 - Full and concise details of the perceived areas of poor performance/lack of capability including any evidence the Service wishes to rely upon
 - The right to be accompanied by a trade union representative or work colleague (See [Right to be accompanied](#))
- 8.2 The employee will be given a minimum of 7 days notice of the interview. A copy of this procedure should be sent to the employee with the notification letter.

- 8.3 Wherever possible, the Hearing Officer will always be senior to the person whose performance or capability is in question. The Hearing Officer will be appointed following consultation with the HR Management Team.
- 8.4 The purpose of the hearing will be to:
- Consider the evidence regarding the performance, capability or attendance levels of the employee
 - Ensure that expectations and standards have been set, that they are reasonable and that the employee understands them
 - Ensure that the employee understands the areas where their attendance/performance falls short of the required standard. The employee or their representative will be given the opportunity to explain their position and to question any statements or comments made during the interview
 - Review the management action taken to support the employee in making the required improvements
 - Consider whether the remedial action already taken should be continued or changed in any way
 - Identify and agree any additional training, support or other action to achieve the required improvement in attendance/performance
 - Establish a reasonable timescale for improvement. Existing arrangements should be reviewed and confirmed as continuing or changes discussed and implemented
 - Consider issuing a formal sanction (see [Section 8.5](#)).
- 8.5 The employee will be notified of the decision, which will be confirmed in writing, usually within 7 days of the conclusion of the hearing. Where the employee's attendance/performance remains unsatisfactory the letter will confirm the following:
- The issuing of a written warning and its duration. First written warnings may be issued for up to 12 months and final written warnings for at least 12 months up to a maximum of 18 months. An extension to a live warning may be issued in minor breaches of the existing sanction
 - The standards of attendance/performance required
 - The reasons why the employee's attendance/performance is judged to be failing to meet those standards
 - The improvement in attendance/performance required
 - Details of the training and/or other support already provided
 - Any further measures that will be made available to assist the employee to achieve the level of improvement or help to resolve the situation
 - The arrangements for monitoring attendance/performance and the timescale for reviewing their performance
 - The employee's right of appeal.

The letter will remind the employee that failure to improve and/or sustain improvements in their attendance/performance may result in the matter being dealt with at the next formal stage of the procedure and that their employment may ultimately be at risk if they fail to achieve the required attendance/performance improvement or sustain such improvement.

- 8.6 The employee's Line Manager will conduct a review meeting with the employee and their representative in line with the timescale established and confirmed in writing to the employee. The purpose of this meeting will be to review what was agreed at the formal hearing, what improvements in attendance/performance have been made and to discuss with the employee the next course of action.

Information from any attendance/performance monitoring arrangements will be reviewed as part of this process. The extent of the employee's progress should not come as a surprise to any of the parties.

- 8.7 The Line Manager will advise the employee of the outcome of the review meeting and will confirm it in writing, usually within 7 days of the conclusion of the review meeting. If the Line Manager is satisfied that the employee's performance now meets the required standard, the letter will confirm this decision. Any written warning previously issued will remain on record for the period stated in the original hearing outcome letter (see [Section 8.5](#)).
- 8.8 Where the Line Manager is satisfied that the employee has failed to meet and/or sustain a satisfactory standard of attendance/performance the letter will indicate that the matter will be considered for further formal action. This review will be undertaken by a manager senior to the Line Manager of the individual.
- 8.9 If redeployment is the agreed way forward, in addition to the above information, the Line Manager must also confirm in the correspondence that a failure to meet the required attendance/performance standard in the new role may result in the employee's attendance/performance being managed within this procedure and may ultimately result in their dismissal from the Service on capability grounds.

9. **MANAGING PERFORMANCE AND CAPABILITY USING THE FORMAL PROCEDURE –THIRD STAGE**

- 9.1 Meetings at Stage 3 will be conducted by a member of the Executive Team (except in cases of an individual during their probationary period). The employee will be notified in writing that they are required to attend a formal interview to discuss issues/concerns about their attendance/performance at work as detailed in [Section 8.1](#), although it should also indicate that a failure to improve their attendance/performance to the required standard and/or sustain improved attendance/performance may ultimately result in their dismissal from the Service.
- 9.2 A copy of this procedure should be sent to the employee with the notification letter. The employee will be given 21 calendar days notice (7 calendar days if this is during a probationary period) of the hearing although this timescale may be reduced by mutual consent.
- 9.3 A member of the HR Management team will also attend the hearing and subsequent review meeting where applicable as advisor to the Hearing Officer conducting this stage of the process. A notetaker will also be present.
- 9.4 The purpose of the interview will be to:
- Explain the reasons for considering the matter at the need to move to the third formal interview stage of the procedure

- Consider the evidence regarding the attendance/performance of the employee and explore with the employee why it is regarded as unsatisfactory
- Review attendance/performance expectations and standards that have been set, ensuring that they are reasonable and that the employee understands them
- Ensure that the employee understands the areas where their attendance/performance falls short of the required standard
- Give the employee the chance to explain or reply to the Service's position.
- Determine any further review period if appropriate. The requirement for ongoing attendance/performance monitoring during the period between the initial meeting and the formal review meeting will still apply.
- Determine the future employment position of the employee.

9.5 The employee or their representative will explain their position and will be entitled to question any statements and/or other information presented and/or comment generally. Equally the Hearing Officer will have the same opportunity to question statements made by or information presented by or on behalf of the employee.

9.6 Immediately after the interview the Hearing Officer will consider the range of options available. These include:

- The employee has reached the required standards
- Further time should be allowed to enable the employee to reach the required standard or be able to return to work on full duties with no additional sanction. Normally this outcome and the one below will only be appropriate where sufficient improvement has now been achieved in the employee's level of attendance/performance and there are reasonable grounds for believing that the employee will reach a satisfactory standard within a short timescale
- Extension of the existing warning with further time allowed for improvement. The extension of the existing warning may be for a further period up to a maximum of six months or the total term permitted by the type of warning whichever is the greater. Consideration of other action short of dismissal should be considered such as:
 - Redeployment to another role which may be at a lower level on the terms and conditions applicable to the new role
 - With holding of a salary increment
 - Dismissal with notice or pay in lieu of notice.

9.7 The Hearing Officer will notify the employee of the outcome of the hearing and confirm that outcome in writing. This will also include rights of appeal. The Hearing Officer will usually do so within 7 working days of the conclusion of the hearing. Where the decision is to dismiss the letter will include notice arrangements.

9.8 Where the decision is to offer the individual alternative employment i.e. redeploy him/her into another role, the letter will include the following:

- Details of any trial periods applicable

- Arrangements to identify and provide training and/or other activities required to support competent performance in the new role
- The performance monitoring arrangements to provide regular feedback to the employee
- Timescales for a review period. Review timescale must take account of the requirements of the new role and allow sufficient time for an informed judgement to be made about the employee's attendance/performance in the new role and for any identified training to be undertaken and applied in the new role
- The duration of any formal sanction issued or reaffirmation that any live sanction continues
- The consequences of failing to meet the required standards in the new role that is to say that their employment may be terminated if acceptable levels of performance are not achieved in the new role
- The requirement for the employee to provide written agreement to the alternative role, within a specified period of time (usually 7 calendar days), in the absence of which, other outcomes may be decided, including dismissal
- The right of appeal.

- 9.9 Where the decision is to extend the period of time for improvement the letter will include details of the standards of attendance/performance required, the on-going attendance/performance gap, a summary of the information on which the decision was made, any additional training or other actions identified to support improvement in performance, the consequences of failing to meet the required standards i.e. potential dismissal and the review period.
- 9.10 Where the decision is to extend the period of the final written warning the letter will confirm the period by which the final written warning will be extended. The maximum period of extension will be up to 18 months in total.
- 9.11 Where the employee was not dismissed and remained in the same role, the Line Manager will conduct a review meeting with the employee and their representatives within the timescale agreed at the hearing. The purpose of the meeting will be to review what was agreed at the hearing, where the employee was offered redeployment as an alternative to dismissal the Line Manager will hold a review meeting at the agreed date and time with the employee and their trade union representative or work colleague. The purpose of the meeting will be to outline the new role and the required performance, review the training and support provided to support them in this role.
- 9.12 The Line Manager will record the discussion at the meeting and forward a copy to the employee for clarity. In all cases where dismissal is not the outcome, the employee's performance will continue to be reviewed as agreed.

10. **OFFERS OF ALTERNATIVE EMPLOYMENT (VOLUNTARY/COMPULSORY REDEPLOYMENT)**

- 10.1 Management will have to judge how suitable it is for the employee concerned to be offered alternative employment, and if necessary any training required.

- 10.2 Alternative employment does not have to be equivalent in terms and conditions to the current post and protection of wages/salary will not apply. If appropriate, and depending on the circumstances as presented at the time, alternative employment could be mutually agreed at any stage in the procedure.
- 10.3 Where alternative employment is offered as an alternative to dismissal and the post offered is at a lower level, the employee may wish to reject such an offer and, in this circumstance, the Service will have no alternative but to consider dismissal as an appropriate sanction.
- 10.4 The employee must be made aware that any failure to perform to required performance standards in the new role may result in their dismissal from employment and that this decision will be made following a final review meeting held under stage 3 of the formal procedure (See [Managing performance and capability using the formal procedure – third stage](#)).
11. **RIGHT TO BE ACCOMPANIED**
- 11.1 At all formal stages of this procedure the employee will have the right to be accompanied by a trade union representative or work colleague. Employees in the probationary period may request to be accompanied by a trade union representative or work colleague at any meeting where their continued employment is to be discussed.
- 11.2 The Accompanying Person may:
- Fully participate in the meetings in order to sum up the employees' case
 - Respond on behalf of the employee to any view expressed during this process
 - Confer with the employee during the meeting/interview.
- 11.3 The Accompanying Person may not:
- Answer questions on the employee's behalf
 - Participate in any meeting/interview if the employee does not wish it
 - Prevent the relevant Manager from exploring their case.
- 11.4 Employees have the right to postpone a formal meeting for up to 7 days if the trade union representative or work colleague is not available to accompany them at a meeting. Every effort will be made to accommodate the availability of the accompanying person, however, where this might cause the process undue delay the employee will be requested to seek someone else to accompany them.
12. **RIGHT OF APPEAL AGAINST DECISIONS UNDER THE FORMAL STAGES OF THE PROCEDURE**
- 12.1 An individual has the right to appeal against any formal action taken against them in line with this policy (i.e. written warning, final written warning, dismissal or other action short of dismissal) and must do so by writing to the HR Manager within 7 days of receipt of written confirmation of the sanction following the formal interview meeting, stating their grounds of appeal. These would normally include one of the following:
- There was a defect in the procedure

- The case of poor performance/capability was not established and there are reasons for believing that the decision maker could not reasonably have reached the decision on this matter that they did
- The sanction is too severe
- New information has come to light which has an impact on the decision.

(**NB** There is no right of appeal against voluntary redeployment agreed under any stage of this procedure as such action is agreed with the employee).

- 12.2 Appeal hearings will be conducted at a level of management higher than the initial hearing at which the decision was made. Appeals against dismissal will be heard by a member of the Executive Team.

On receipt of an appeal, the employee will be asked to attend an appeal hearing and will be given written notice of the date, time and place. If the employee is unable to or does not attend on the appointed day, the hearing will be rearranged. Failure to attend a rearranged hearing may result in the meeting going ahead and a decision made in the employee's absence, based on the evidence available.

- 12.3 The Hearing Officer, hearing the appeal will have available all the documents/information considered at the original hearing, as well as the letter confirming the outcome, the letter of appeal, and the written statement of the grounds of the appeal.
- 12.4 The employee will put their case by explaining the grounds of the appeal and presenting any relevant evidence. Relevant witnesses may be brought by either side, and questioned by all parties.
- 12.5 The employee has the right to attend the appeal hearing, accompanied by a trade union representative or work colleague.
- 12.6 The outcome of the appeal will be either:
- The case against the employee is not upheld
 - The case against the employee is upheld (in whole or in part). The sanction will then be the same or a lesser sanction applied and support and/or training identified to support attendance/performance improvement.
- 12.7 The outcome of the appeal will be confirmed in writing as soon as possible, but in any case within 7 days of the decision.
- 12.8 In cases of dismissal, if the dismissal is not upheld on appeal, the employee will be re-instated and pay will be backdated to the date of dismissal.

13. **CONFIDENTIALITY**

- 13.1 Confidentiality should be maintained at all stages of the poor performance/capability process by ensuring that only those people involved have access to the details. All employees involved in a poor performance/capability matter, including the Manager, employee and their representative should ensure that confidentiality is maintained at all times.

- 13.2 Other employees should not normally be informed that a poor performance/capability issue is being dealt with unless there is an effect on day to day working relationships.
- 13.3 All papers relating to capability matters should be treated in the strictest confidence and with the utmost security.
- 13.4 Failure to observe the requirement of confidentiality may result in disciplinary action being taken.

Please see [Manager's Guidance Notes – Performance and Capability Procedure](#)

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14/03/2017	Performance & Capability Policy & Procedure	846	Sue Wilkinson	HR	Tim Hyde 10/03/2017			
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