

DERBYSHIRE FIRE & RESCUE SERVICE



EMPLOYMENT POLICY

CAPABILITY PROCEDURE

**APRIL 2012
VERSION NO. 1.0**

CONTENTS

1. Reasons for incapability
2. Responsibilities
3. Principles
4. Informal Discussions Stage
5. Capability Meeting and Capability Hearing
6. Stage 1 and Stage 2 Capability Hearing arrangements
7. Improvement plan
8. Objectives setting
9. Monitoring meetings
10. Monitoring outcomes
11. Non-attendance and progressing capability cases
12. Reasonable adjustments/support measures
13. Continuous professional development payments
14. Dismissal with redeployment explored
15. Dismissal without redeployment explored
16. Right of appeal
17. Relevant documents

DOCUMENTS

Flowchart – capability procedure
Capability appeal form

INTRODUCTION

The following procedure applies to all employees of the Service, in accordance with the Service's Employee Performance Management Policy.

1. Reasons for incapability

1.1 Unsatisfactory performance and incapability may arise for various reasons, for example:

- ill-health, causing the employee to be absent and/or affecting their performance at work
- disability(ies)
- alcohol and substance misuse
- personal difficulties
- pregnancy (in such cases seek advice from HR Services)
- bullying and harassment
- misrepresentation at interview.

Examples of unsatisfactory performance:

- poor quality work
- low output
- failure to meet realistic deadlines or targets
- a physical and/or psychological inability to carry out the role
- an employee's continuing inability to change despite reasonable support and training given, (e.g. change with new working practices and technologies).

The above examples are not an exhaustive list.

1.2 **An employee managed in line with this procedure should not be made to feel they are being subjected to a discipline process.**

1.3 Information regarding capability may be fed in from external sources (that is, not necessarily through the line manager). For example, through the training instructors when an employee fails a Breathing Apparatus Course.

2. Responsibilities

2.1 Responsibilities of Line Manager

- Ensure those responsible for recruitment and selection of staff are trained and competent in applying the Services Recruitment & Selection procedures. Problems relating to performance can often be managed and addressed at an early stage.
- Arrange local induction training within a reasonable period of time from the employee starting in post. Thereafter, ensure any additional, reasonable training is provided to support the employee in their role.
- Ensure employees are clearly made aware of their role and standards of performance expected.
- Apply this procedure in a fair and timely manner, giving due consideration to the circumstances of each individual case and seeking advice from HR & Legal Services as appropriate.
- Where ill-health may be affecting the employee's performance at work the Line Manager or appropriate nominee must seek specialist advice and support from Occupational Health (OH).
- Up-to-date medical advice and information should be obtained, wherever possible, from OH prior to any meeting being held within this procedure. The Service reserves the right to refer an employee to OH at any stage during this procedure, as appropriate.
- Through informal and formal stages of these capability procedures, provide constructive, documented feedback to employees on their work performance.
- Follow the supportive spirit of this procedure and be committed to working through any capability issues.

2.2 Responsibilities of employees

- Maintain competence and the ability to do their job.
- Inform their line manager, in a timely manner, if they have any training and development needs.
- Advise their line manager of any difficulties preventing them from working to and maintaining satisfactory performance.
- Fully co-operate with the Service and be committed to working through any capability issues.

- Make every effort to attend all capability meetings. If unable to attend a meeting, inform the Chairperson beforehand of the reasons for non-attendance. The meeting shall then be re-scheduled or heard in the employee's absence as appropriate.

2.3 Responsibilities of official Trade Union Representative

At the employee's request:

- Accompany and support the employee at formal capability and monitoring meetings, except answering questions on behalf of the employee.
- Present the employee's case where they are otherwise unable or have difficulty in doing so.
- Make every effort to attend formal capability and monitoring meetings. Alternatively, send a replacement official Trade Union representative to attend the meeting.

2.4 Responsibilities of HR & Legal Services

- Provide effective and timely support and guidance to managers and employees in dealing with capability issues, including supporting the fair and consistent application of this procedure.
- Attend capability hearings to support and advise management as required.
- Liaise with OH and management to assess the option of redeployment, if appropriate, and provide any necessary advice, guidance and support.

2.5 Responsibilities of Occupational Health

- Ensure appropriate advice, including as necessary recommending medical assessments and reports, are provided on health issues affecting the employee's performance at work, such as:
 - nature and extent of health condition(s)
 - liaising with General Practitioners (GP's) and other medical practitioners, including obtaining the employee's consent to access their medical information
 - if and when the health condition(s) are likely to be resolved, including establishing and accounting for recovery periods
 - likelihood of health condition(s) recurring and/or some other related illness emerging and likely impact on an employee's ability to satisfactorily undertake their role

- specifying in liaison with HR Services any reasonable adjustments/ support concerning the employee's health and wellbeing, including conditions which are covered by the Equality Act 2010
- consult the Service's Fitness & Wellbeing Officer, where necessary, on how the health condition(s) should be considered for rehabilitation and/or modified duties purposes
- liaising with the Health & Safety Section regarding any concerns raised by the employee about their health and the effects of these on their work environment
- other relevant medical information or impact the health condition(s) may have on an employee's ability to satisfactorily undertake their role.

3. Principles

Any informal and formal meetings, hearings and actions will follow the principles that:

- 3.1 The employee will clearly be made aware of the shortfalls in their performance and the required satisfactory standards of performance they are expected to achieve and maintain.
- 3.2 If there are concerns regarding the employee's health that may be affecting their performance at work the employee's Line Manager will discuss these with the employee, a referral made to OH and a copy of this given to the employee. Appropriate medical information from the employee's doctor or other treating medical practitioners may also be obtained with the employee's consent.
- 3.3 Wherever possible management's referral of an employee to OH, including obtaining up-to-date and relevant medical information from medical practitioners, should be made and medical information obtained prior to any meeting being held with the employee. This is to ensure health conditions are understood based on medical information and any appropriate support put in place at the initial stages of this procedure.
- 3.4 Where OH advice is that the major cause of poor performance relates to a medical condition, that due regard will be paid to the contents of the Attendance Management Policy and associated procedures. This will ensure full considerations are given to appropriate support such as reasonable adjustments, modified duties, Ill Health Retirement etc.
- 3.5 The employee is clearly made aware of the consequences of failing to meet and maintain satisfactory performance as appropriate at every stage.
- 3.6 Reasonable time and adjustments/support measures (see section 10) will always be given to assist the employee in achieving satisfactory performance.

- 3.7 Provisions of the Equality Act 2010 will be taken into account when putting in place reasonable adjustments and making decisions that affect someone who has a disability, (see making reasonable adjustments procedure). Occupational Health shall advise on appropriate reasonable adjustments/support. Examples of reasonable adjustments under the Equality Act 2010 include buying or modifying equipment, allocating some of the employee's duties to another employee(s) (but see section 11.2) or altering working hours.
- 3.8 However, an employee's failure to achieve and maintain satisfactory performance following any reasonable adjustments/support put in place will be managed in line with this and/or other appropriate policies and procedures.
- 3.9 Employees are given opportunities to improve, achieve and maintain satisfactory performance. Employees subjected to this procedure will normally go through the capability meeting and then to the capability hearings (see flowchart – capability procedure).
- 3.10 In some, often exceptional circumstances, it may not be appropriate to go through the capability meeting, monitoring meetings and each of the hearing stages. After seeking advice from HR Services, the Chairperson of the meeting will decide on the most appropriate stage or stages of this procedure to apply, having considered the individual circumstances and/or seriousness of the case.
- 3.11 Within 6 months following confirmation of satisfactory performance, if an employee's work deteriorates once more to an unsatisfactory level, a formal capability meeting will be held. It is the Services discretion to progress an employees' case to a stage in the procedure, as considered appropriate. This may mean re-entry to the next stage following the stage at which the procedure previously lapsed. It may also result in the employee being dismissed, as appropriate.
- 3.12 Discussions, outcomes and associated information following meetings, hearings and monitoring meetings will be documented and confirmed in writing to the employee within 7 calendar days of the date of the meeting/hearing or as soon as reasonably practicable.
- 3.13 Employee's have the right to be accompanied by either a work colleague or an official Trade Union Representative at capability hearings and formal monitoring meetings. It is the employee's responsibility to arrange to be accompanied at these meetings.
- 3.14 Unless in exceptional circumstances, redeployment will not be considered and put in place until the employee is at the Stage 2 Capability Hearing. The principles of this procedure are to assist the employee in achieving and maintaining satisfactory performance in their current role.

4. Informal Discussions Stage

- 4.1 An informal meeting between the line manager and employee will often be a more appropriate means of resolving performance issues. Progression to the Capability Meeting and/or Capability Hearings (see section 5) will only become appropriate where this initial approach has not led to the required satisfactory improvement in performance.
- 4.2 The Line Manager will informally advise the employee of the cause for concern regarding their work performance and give the employee an opportunity to discuss this. This meeting will be to:
- i. clearly explain the shortfalls in the employee's work performance and the objectives the employee is required to meet, (see paragraphs 8.1 & 8.2), within given timescales.
 - ii. identify reasons for unsatisfactory performance and determine what remedial assistance, e.g. any training/support that can be put in place as applicable to assist the employee to achieve and maintain satisfactory performance.
 - iii. discuss, as applicable, any health issues or other mitigating circumstances, including any relevant medical information, which may be impacting on the employee's performance at work. Also, any reasonable adjustments/support to assist the employee in achieving and maintaining satisfactory performance.
 - iv. inform the employee of the effects their unsatisfactory performance may be having on the Service and other employees, as appropriate.
- 4.3 This informal discussion will be the first time any gap in performance might have been raised with the employee. There is no need to write to the employee summarising this meeting but the manager may wish to keep a brief confidential note within his/her local records. The purpose of this note is simply to remind the manager to meet with the employee again in order to give feedback on any improvement and/or consider any subsequent action/support.

5. Capability Meetings and Capability Hearings

Capability Meeting – Informal Stage

- 5.1 If informal discussions have not led to the required improvement, a Capability Meeting will be held with the line manager and employee only. As this is still an initial, informal meeting, the employee does not have the right to be accompanied by a colleague or union representative unless mutually agreed. The line manager must verbally inform the employee, ideally giving the employee a minimum of 1 working days advance notice, of the requirement to attend the Capability Meeting. The Line Manager must also inform the employee of the purpose and potential outcomes of this meeting as outlined in section 4.2.

Possible outcome of this Capability Meeting, to be confirmed in writing:

- Put in place an improvement plan clearly specifying the objectives the employee can realistically achieve (see sections 7 & 8 for detail and timescales).
- Clearly inform the employee that failure to achieve their objectives as set out in their improvement plan and following monitoring meetings may result in their case being progressed to a Stage 1 Capability Hearing and that continued unsatisfactory performance may result in the employee being dismissed.
- Arrange, hold and adjourn to make decision, and conclude monitoring meetings, (see section 9).
- Document and confirm this Capability Meeting and monitoring meetings in writing to the employee within 7 calendar days or as soon as reasonably practicable thereafter.

Hearing Stages

STAGE 1

Capability Hearing (Group Manager / Department Head Chairs) – Formal Stage

- 5.2 Where the employee has failed to achieve satisfactory performance following a Capability Meeting and Monitoring Meeting(s), a Stage 1 Capability Hearing will be held, (see section 6 to arrange).
- 5.3 This hearing will discuss and consider the employee's work performance, including:
- i. Their achievement in meeting their objectives as set out in their improvement plan, (see section 7) and will identify continued shortfalls.
 - ii. Explanations and mitigating circumstances as to the reasons for any continued shortfalls.
 - iii. Adjustments, support and assistance previously given, at the Capability Meeting, and identify if any further adjustments/support may need to be put in place, (see section 12).
 - iv. Identifying ongoing health or other issues that may be impacting on the employee's performance at work.

Possible outcome of this Stage 1 Capability Hearing to be confirmed in writing:

- The Chairperson finds in the employee's favour eg that poor performance has not been proven; that insufficient support/training has been provided to achieve satisfactory performance; procedural error etc. In such a scenario, the Chairperson must state what remedial action if any is required

- Re-specify on the employee's improvement plan the objective(s) the employee is required to achieve. See Sections 7 & 8 for detail and timescales.
- Clearly inform the employee that failure to achieve their objectives, as re-specified in their improvement plan and following monitoring meeting(s), may result in their case being progressed to a Stage 2 Capability Hearing. Stress the outcome of this hearing may result in the employee being dismissed.
- Arrange, hold and adjourn to make decisions, and conclude monitoring meeting(s), (see section 9).
- Document and confirm this Stage 1 Capability Hearing and Monitoring Meetings in writing to the employee within 7 calendar days or as soon as reasonably practicable thereafter.

STAGE 2

Capability Hearing (Area Manager chairs) – Formal Stage

- 5.4 Where the employee has failed to achieve satisfactory performance following a Stage 1 Capability Hearing, a Stage 2 Capability Hearing will be arranged and held, (see section 5).
- 5.5 The employee must be given a minimum of 21 calendar days notice in writing of the requirement to attend a Stage 2 Capability Hearing.
- 5.6 This hearing will discuss and consider:
 - i. Reasons for continued shortfalls in the employee's performance at work, including any mitigating circumstances and any other appropriate issues that may be affecting the employee's ability to fulfil their role.
 - ii. Previous support including meetings, adjustments, measures that have been put in place to assist the employee to achieve and maintain satisfactory performance.
 - iii. The likelihood of the employee achieving and maintaining satisfactory performance if a final period of monitoring and any other appropriate support measures were to be put in place.

Following an adjournment and on concluding this hearing, the possible outcome to be confirmed in writing, are as follows:

- The Chairperson **finds in the employee's favour** eg that poor performance has not been proven; that insufficient support/training has been provided to achieve satisfactory performance; procedural error etc. In such a scenario, the Chairperson must state what remedial action if any is required.

- **Re-specify objective(s)** - on the employee's improvement plan that the employee is required to achieve (see Sections 6 & 7 for detail and timescales). This gives the employee a final opportunity to satisfactorily perform at work.

For a final time, clearly inform the employee that should they fail to achieve their objectives following this final period of monitoring, the only remaining outcomes are either dismissal and redeployment explored or dismissal without redeployment.

Arrange, hold, adjourn to make decision, and conclude final monitoring meetings, (see section 8).

- **Dismissal with redeployment explored;** (see section 14), if deemed appropriate by the Chairperson, the employee would be dismissed from their current role.

Redeployment to a suitable alternative role may also be explored, with the agreement of the employee. In these circumstances, pay protection will not apply (see Redeployment Policy and section 13 of this policy). The Chairperson must give the employee the right of appeal against dismissal (see section 16).

- **Dismissal without redeployment explored;** (see section 15), in that dismissal from the employee's current role is deemed by the Chairperson as the most appropriate course of action.

For example, it is clear that the employee is incapable of carrying out their role and any other role(s), or the employee may not wish to be redeployed or medical advice may recommend that redeployment in any capacity is not appropriate for health reasons.

The Chairperson must give the employee the right of appeal against dismissal, (see section 16).

6. Stage 1 and Stage 2 Capability Hearing arrangements

6.1 Employees must receive a minimum of 14 calendar days notice in writing of the requirement to attend a Stage 1 Capability Hearing. Where an employee is required to attend a Stage 2 Capability Hearing they must be given a minimum of 21 calendar days' notice in writing.

6.2 The letter shall clearly state and include:

- date, time and venue of meeting.
- attendees at the meeting.
- right to be accompanied by either an official Trade Union Representative

or a work colleague. Also, that it is the employee's responsibility to arrange to be accompanied at these formal meetings.

- the shortfall(s) in the employee's performance.
- supporting documentation to be referred to e.g. improvement plan, job description, performance development review(s), examples of unsatisfactory performance.
- details of actions previously taken, e.g. notes from meetings held, adjustments and or support measures put in place.
- other current and relevant information regarding the employee's unsatisfactory performance.

6.3 The employee will submit all documentation in support of their case, to all attendees, at least 4 calendar days in advance of any capability hearing. Documentation not received within these timescales may not be considered and acceptance will be at the discretion of the Chairperson.

6.4 Attendees at a Stage 1 Capability Hearing shall be a Group Manager or Head of Department as the Chairperson*, supported by an appropriate HR Representative as required. The employee's line manager will present the relevant information. Also in attendance will be the employee and an official Trade Union Representative or work colleague, should the employee arrange to be accompanied.

6.5 A Stage 2 Capability Hearing will be heard by an appropriate Area Manager, as Chairperson* supported by an appropriate HR Representative. Also in attendance will be the Manager who chaired the Stage 1 Capability Hearing who will present the management case, supported by an appropriate HR Representative, the employee and their official Trade Union Representative or a work colleague should they arrange to be accompanied. The employee's line manager will also be in attendance as a witness. The format adopted will be a full rehearing rather than simply a review of the decisions taken at the Stage 1 Capability Hearing.

** The managerial levels of the Chairperson as described in paragraphs 6.4 and 6.5 are minimum levels. If the employee being managed for poor performance is Group Manager/Head of Department or above, then the Chairperson will always be in an equal or more senior role than the employee's line manager.*

6.6 In certain circumstances, for instance due to the specialist nature of the offence or the seniority of the employee being managed for poor performance, it may be appropriate for management to seek a Technical Expert to support the Chairperson and/or HR Adviser(s) to be sourced externally. This decision will be made by an appropriate level of manager when allocating the case. Where management deem this approach appropriate, the employee's side may also be allowed the same discretion.

- 6.7 Other relevant witnesses may also be requested to attend a Stage 2 Capability Hearing by the Chairperson, management or employee. Requests for witnesses to attend this Stage 2 Capability Hearing must be made to the Chairperson ideally 7 calendar days prior to the Hearing or as soon as possible thereafter. Arrangements for witnesses to attend will be made by the employee and the line manager for their respective witnesses.
- 6.8 The format of a Stage 2 Capability Hearing shall be management presenting their case, supported by an appropriate HR Representative. The employee will also be given an opportunity to present their case and any relevant information and/or mitigation. All parties will be given the opportunity to ask questions of each other's cases, including questioning witnesses in attendance, as applicable.

7. Improvement plan

- 7.1 An employee's improvement plan must clearly state and include, for example:
- shortfalls in their work performance.
 - **S.M.A.R.T** objectives (see section 8), within maximum timescales, to demonstrate satisfactory performance.
 - any reasonable adjustments/support put in place, as appropriate, to assist the employee in achieving and maintaining satisfactory performance.
 - any modifications made to the improvement plan following monitoring meetings held and any constructive feedback on the employee's progress in achieving their objectives within timescales set.

8. Objective setting

- 8.1 Objectives set should specifically address the given performance issue(s) in order to bring the employee up to the satisfactory standards of performance required of their role.
- 8.2 Objectives must be **S.M.A.R.T** i.e. **Specific** – to address the given performance issues; **Measurable** – in quantifying the employee has achieved the objective(s); **Achievable** – in being reasonable to reach; **Realistic** – in being fair/practical to achieve; and **Timely** – in being achievable in a fair and reasonable period of time.
- 8.3 Timescales set to achieve objectives will depend on the nature of the role and nature and complexity of area of unsatisfactory performance. Unless in exceptional circumstances, for instance where reasonable training cannot be provided within this timescale, the maximum timescale set for any objective to be achieved should be no longer than 2 calendar months from the date of the respective Capability meeting or Capability Hearing is held.

9. Monitoring meetings

- 9.1 Following objectives set or re-specified at the Capability Meeting or Capability Hearings, regular monitoring meetings must be arranged to ascertain the employee's progress in achieving their objective(s), as clearly documented in their improvement plan.
- 9.2 Unless in exceptional circumstances, for instance where reasonable training cannot be provided within this timescale, the overall period of monitoring, in which these monitoring meetings are held, should be no longer than a maximum of 2 calendar months from the date the respective Capability Meeting or Capability Hearing is held.
- 9.3 There is no set number of monitoring meetings to be held within this maximum 2 calendar month period. However, in determining these, consideration should be given to the nature and complexity of the employee's performance issue(s), and adjustments/support put in place.
- 9.4 The purpose of monitoring meetings is to ascertain the employee's progress in achieving the objective(s) set. The Chairperson must also ensure appropriate adjustments/support have been put in place and, as far as reasonably practicable, these are assisting the employee to address their specific shortfall(s) in performance. The Chairperson, in discussion with the employee, must also identify and put in place any modifications to the adjustments/support given.
- 9.5 Given any adjustments/support will have been discussed by the Chairperson with the employee, it is not expected that any major changes would need to be made to the employee's improvement plan.
- 9.6 Monitoring meetings following a Capability Meeting will be held between the line manager and employee only. Monitoring meetings following a Stage 1 or a Stage 2 Capability Hearing will be undertaken by the line manager, supported by the Chairperson where appropriate. The employee will have the right to be accompanied by an official Trade Union Representative or work colleague at the capability hearings and formal monitoring meetings.

10. Monitoring outcomes

- 10.1 Following reasonable timescales in which to achieve the objectives set and a period(s) of monitoring, a decision will be made by the Chairperson with respect to the employee's progress in achieving their objectives (see flowchart – capability procedure).
- 10.2 Following a period of monitoring, normally at each of the Stages, the Chairperson will adjourn the concluding monitoring meeting to consider the facts on how the employee is progressing prior to making their decision as to whether the employee has satisfactorily achieved their objectives or not, within timescales, and the appropriate course of action to take.
- 10.3 If following monitoring meetings the employee is judged by the Chairperson to have

fully and satisfactorily achieved their objectives the Chairperson will inform the employee of their satisfactory performance, and confirm this in writing. Following confirmation of satisfactory performance the line manager must continue to review the employee's performance as part of the normal and regular process of managing employee's at work.

- 10.4 Following monitoring meeting(s) if the employee is judged by the Chairperson to have made significant progress in achieving their objectives and with a short extension to monitoring is expected to have fully and satisfactorily achieved their objectives, this short extension to monitoring can be put in place. This extension should be no longer than one month (taking into account working pattern and any pre-planned leave). Any short extension to monitoring must be documented on the employee's improvement plan.
- 10.5 If the employee has failed to achieve their objectives and following monitoring meetings, the Chairperson must inform the employee of the stage their case may be progressed to e.g. Stage 1 or Stage 2 Capability Hearing. Should the employees' case progress to a Stage 2 Capability Hearing, the Chairperson must inform the employee that an outcome of this hearing may result in the employee being dismissed.
- 10.6 Where an employee has failed to achieve their objectives following a Stage 2 Capability Hearing and Monitoring Meetings, the only remaining options are either dismissal from current post and redeployment explored, if applicable and available. Alternatively the employee is dismissed without redeployment on the grounds of capability.

11. Non-attendance and progressing capability cases

- 11.1 An employee and/or their representative who cannot attend a capability meeting or capability hearing must inform the Chairperson as soon as possible in advance of the meeting or hearing.
- 11.2 The Chairperson will set another date, within 5 working days of the date originally proposed or as soon as reasonably practicable.
- 11.3 An employee subject to this procedure who is absent due to sickness and/or other exceptional circumstances, and where appropriate following a management referral to OH, will normally have their case suspended until deemed fit by OH to attend the capability meeting or hearing.
- 11.4 Within reason, the time period the employee has been absent will be added onto the period of monitoring.
- 11.5 This is also subject to the employee's availability to attend a capability meeting or hearing being within a reasonable time period and based on their individual case.

- 11.6 If deemed fit within a reasonable time period, the employee's case will normally reconvene at the stage and meeting they were at prior to their absence, (see flowchart – capability procedure).
- 11.7 In considering the above provisions, it should be noted that management reserve the right to hold and progress any capability hearings in the absence of the employee, where otherwise a final outcome would be unnecessarily delayed. Management will endeavour to hold meetings in the presence of the employee and will only consider this based on the individual merits of the reasons for non-attendance and when other options are unviable. This decision may be made at any stage of the procedure including a Stage 2 Capability Hearing being held ultimately resulting in the employee being dismissed.
- 11.8 In some, often complex, cases involving performance and health issues and for judgements and decisions to be made on an individual case basis, it may be more appropriate to manage and conclude the employee's case in line with the attendance management policy and procedures instead. Alternatively, a number of policies may need to be followed concurrently in managing such cases.

For example, it may be more appropriate to apply the attendance management policy where the employee has performance and health capability issues and is unable to return to work in any capacity, including being redeployed. Such cases may result in the employee being dismissed on the grounds of health capability as opposed to performance capability.

12. Reasonable adjustments/support measures

- 12.1 Capability procedures concentrate on identifying the precise nature and cause of incapability problems as well as offering and putting in place reasonable adjustments/support measures, as appropriate. These aim to assist the employee in achieving and maintaining satisfactory performance at work.
- 12.2 Central to the procedure is drawing up an improvement plan; (see section 7), with reasonable and appropriate support where necessary. Listed below are examples of adjustments/support measures. Not all are appropriate in every case.
- **Shadowing** – arrangements are made for the employee to shadow and observe another employee who is competent in the area where the employee has performance difficulties; to demonstrate and work through with the employee how the task(s) is performed to satisfactory standards.
 - **Training** – ensuring the training is appropriate to the role. This may include in-house or external courses, reading and/or on-the-job training.
 - **Technology** – where deemed appropriate the employee should receive training or retraining in the use of either new or existing technology. Managers will carefully consider whether the introduction of new technology is reasonable and likely to assist an employee in the performance of their role. If so, then the appropriate training will be given.

- **Resources** – consideration may need to be given to the range and cost of resources e.g. equipment available to the employee and to whether these are appropriate and adequate to their role, and/or whether additional resources may need to be put in place.
- **Reasonable adjustments/support** – consideration may be given to making agreed temporary or permanent adjustments/support, minor modifications to the employee's role so as to maintain a level of competence equivalent to their salary grade, in line with Service needs. Examples may include revised or reduced hours of work, flexible working – refer to the Flexible Employment Policy.

12.3 The employee is encouraged to identify any area in which they consider reasonable adjustments/support is required and identify how this adjustment/ support may be delivered. The Chairperson of the hearing will give careful consideration to any such suggestions.

13. Continuous professional development payments

13.1 Employees managed formally as part of this procedure will have their Continuous Professional Development (CPD) payment stopped. This will be until their performance is confirmed as satisfactory.

13.2 It is the Chairperson's responsibility to inform the employee and HR Services of the dates the employee's CPD payment is due to cease. CPD payments will not be backdated for the period they have ceased. It is the line manager's responsibility in conjunction with the employee to re-instate CPD payments and this will be subject to meeting all other CPD criteria.

14. Dismissal with redeployment explored

14.1 If dismissal is the appropriate course of action, the Chairperson will inform the employee they are being dismissed from their current role and confirm the reasons for their dismissal e.g. on the grounds of capability due to lack of ability to fulfil their role and contract of employment. The Chairperson will also inform the employee of their right of appeal against dismissal, (see section 16).

14.2 In dismissing the employee from their current role the Chairperson will serve the employee their notice, either contractual or statutory - whichever is the greater, and up to a maximum of 12 weeks. The Chairperson will also inform the employee of the date their contract of employment will terminate i.e. last day of employment with the Service should the employee be unsuccessful in securing suitable alternative employment with the Service during their notice period.

14.3 On serving the employee their notice, the Chairperson must inform the employee that they will be placed on leave at full pay during this period of notice. Also, that the employee will not be required to attend work unless related to seeking redeployment opportunities during their notice period.

- 14.4 The Chairperson will inform the employee that they will be placed on the Service's redeployment register, commencing the same date as the notice of dismissal from their current role. They will also inform the employee that the period the employee is on the redeployment register runs concurrently with the employee's notice period.
- 14.5 The employee has the length of their notice period to secure suitable alternative employment with the Service in line with the Redeployment Policy and Procedure. If the employee has been unsuccessful in securing another suitable role in the Service by the end of their notice period, their contract will automatically be terminated.
- 14.6 The employee's line manager will provide information about the redeployment procedure to the employee and complete the redeployment skills audit form.
- 14.7 Where the employee has secured suitable alternative employment within their contractual or statutory notice period, the letter will include the following:
- Details of the 4 week trial period, including the start and end date of the trial period.
 - Any trial period would be on the basis of existing terms and conditions the employee is currently on remaining unchanged. Only following a successful trial period will the employee be offered new terms and conditions of those pertaining to the role.
 - The performance monitoring arrangements to provide regular feedback during this trial period. This would be based on SMART objectives as outlined in Sections 6 & 7 albeit for a condensed timescale.
 - The consequences of failing to achieve and maintain satisfactory performance in the new role and within the trial period. That is to say that his/her employment will be terminated if a satisfactory performance is not achieved and maintained in this trial period.
- 14.8 Pay protection arrangements in cases for example, of incapability due to a lack of ability/unsatisfactory performance, including eligibility for excess travel, will not apply to employees subsequently and successfully redeployed to either the same/lower graded role and at the same/different place of work.
- 14.9 If the trial period is unsuccessful the employee must be informed of the reasons in writing. They will therefore be dismissed on the grounds of capability in relation to their original post.
- 14.10 The employee will not revert back to being managed in line with this procedure if the trial period has been unsuccessful.
- 14.11 The Service is not obliged to create any redeployment opportunities for employees. During the notice period, whilst the employee is on the redeployment

register, it is the employee's responsibility to seek and secure suitable alternative employment.

- 14.12 If unsuccessful in being redeployed during the notice period the employee's contract will be automatically terminated at the end of the notice period, without the need for a further meeting with the Chairperson of the hearing.

15. Dismissal without redeployment explored

- 15.1 If dismissal is the appropriate course of action and redeployment not appropriate, the Chairperson must inform the employee that they are dismissed from their current role and state the reasons for their dismissal e.g. on the grounds of capability due to lack of ability to fulfil their role and contract of employment.

Chairperson must also inform the employee of their right of appeal against dismissal (see section 16).

- 15.2 In dismissing the employee from their current role the Chairperson will serve the employee their notice, either contractual or statutory whichever is the greater, and up to a maximum of 12 weeks' notice. The Chairperson must inform the employee that they will be placed on leave at full pay during this period of notice and that the employee will not be required to attend work.
- 15.3 The Chairperson will also inform the employee of the date their contract of employment will terminate i.e. last day of employment with the Service and that their contract will automatically end on this date.

16. Right of appeal

- 16.1 Only where the employee is dismissed on the grounds of capability will the employee have the right of appeal.
- 16.2 An employee wanting to exercise their right of appeal must complete an appeals form. The employee must clearly state the grounds on which they are appealing and return this completed form no later than 10 calendar days from the date of the letter confirming the employee's dismissal.
- 16.3 The grounds of appeal may be one or more of the following:
- There was a defect in the procedure.
 - Dismissal was too severe.
 - New relevant evidence is available that will have an impact on the decision.
- 16.4 The Service will arrange for an appeal to be held, normally within 14 calendar days or as soon as practicable thereafter, on receipt of the employee's appeal form.
- 16.5 Appeals against dismissal will be heard by an appropriate Principal Officer, supported by an HR Representative or nominee.

- 16.6 At an appeal hearing, the employee has the right to be accompanied by either an official Trade Union Representative or Service work colleague. It is the responsibility of the employee to arrange to be accompanied.
- 16.7 During the appeal hearing, management and the employee will have the opportunity to state their case, including providing relevant documentary evidence in support of their case. Wherever possible the appeal Chairperson will communicate their decision at the appeal hearing and confirm the outcome of the appeal hearing in writing to the employee within 7 calendar days of holding the appeal or as soon as reasonably practicable.
- 16.8 The decision of the appeal Chairperson is final. There is no further right of internal appeal or to raise a grievance.

RELEVANT DOCUMENTS

Policies, procedures and relevant documents in connection with this Capability Procedure are as follows:

Policies and procedures

- Attendance Management
- Learning & Development Discipline Process for Trainees
- Fitness Policy
- Dignity at Work
- Performance and Development Review
- Discipline
- Alcohol and Substance Misuse
- Recruitment and Selection
- Redeployment
- Flexible Employment
- Equality Act 2010 making reasonable adjustments

Documents

- Performance Development Review (PDR)
- Job Description (JD)
- OH reports

DOCUMENT HISTORY	
Version no.	1.0
Replaces	N/A
Summary of changes	New Employment Procedure
Author	Sean Connor, Senior HR Partner
Department	Human Resources Services
Approved by	Louise Taylor, Head of HR & Legal Services

Revision history

Version	Date	Author	Changes

Review Period

This Employment Policy will be reviewed April 2014.

Distribution

Employment Policies are published on the intranet in the month of issue. No hard copies are distributed.

Index

Keywords: Capability, Performance, Inability.

FLOWCHART – CAPABILITY PROCEDURE

