

**HR**

**Procedure**

**Capability –**

**GREY BOOK**

Introduction

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

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 jobs employees undertake. It also seeks to ensure that the Council meets its legislative responsibilities including those associated with equality and diversity, health and safety and dismissal procedures.

[Scope](http://www.intouch.ccc/elibrary/Content/Intranet/536/671/5053/6001/41410105256.doc)

This procedure applies to all employees covered by the NJC for Local Authority Fire and Rescue Services, Grey Book.

This procedure does not apply to cases involving ill health or conduct issues which are covered by the Sickness Management, Bullying and Harassment, Drugs and Alcohol or the Disciplinary procedures.

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

* a probationary period of service, where dismissal arises from unsuitability for confirmation of appointment, or
* those subject to redundancy.

Principles

The Council 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 Employee Wellbeing Service 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).

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

* negligence, lack of application or attitudinal problems, where the Disciplinary Procedure is applicable
* health, where the Sickness Management procedure is applicable
* for other reasons of poor performance or inability to meet the role requirements, the Capability Procedure will apply.

[Process](http://www.intouch.ccc/elibrary/Content/Intranet/536/671/5053/6001/41410105256.doc)

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

1. 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.

1. First formal stage

An employee’s line manager, at Watch Manager level or above, may initiate the formal capability process and investigate. Following a capability meeting, 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 warn 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 or above, full guidance on the application of the process is contained in Appendix 1.

1. 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 further investigation and Capability Meeting chaired by a Group Manager or equivalent, or above.

A final written warning must give details and an explanation of the decision. It should warn 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.

1. Third formal stage

Where employees continually fail to improve, the manager of Area Manager level or above should review the situation, looking at redeployment opportunities and hold a Capability Meeting. The sanction issued 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 told they have the right to appeal and details of the appeals process.

Any sanction up to dismissal may only be given to an employee by their Area/Brigade Manager.

Should further clarification be required at any stage of this procedure please contact People Management.



**Appendix**

**1**

# Capability Procedure Guidance – Grey Book

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1. [Introduction](http://www.intouch.ccc/elibrary/Content/Intranet/536/671/5053/6001/41410105256.doc)

The Capability Procedure is designed to assist employees to meet and maintain a satisfactory level of performance when they fail to reach the 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.

1. [Informal](http://www.intouch.ccc/elibrary/Content/Intranet/536/671/5053/6001/41410105256.doc) 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 informal approach means that minor problems can be dealt with quickly and confidentially.

The manager should consider the following actions:

1. 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.
2. Provide counselling and support where the employee’s difficulties relate to his or her personal life.
3. Provide additional support in the form of training, retraining or coaching where the poor performance is related to the lack of training or supervision.
4. Seek medical advice and referral to occupational health, as detailed in the Absence Management Procedure, if the poor performance is related to the employee’s state of health.
5. Consider the provision of reasonable adjustments in accordance with the requirements of the Disability Discrimination Act.
6. Invoke the Drugs and Alcohol Policy if the poor performance appears to be related to alcohol or drug issues.
7. 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 course of following the actions outlined in 1 to 7 above a manager realises that they have chosen the wrong procedure they must notify all concerned and adopt the correct one seeking advice from People Management where appropriate.**

If the reason for poor performance is for any of the reasons 1 to 3 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 as an action plan, which may include reference to PDR, and a copy provided to the employee and their representative (appendix A in the guidance). A copy will also be retained on the employees 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. The manager will hold review meetings as necessary through the informal process to discuss the actions and determine if the situation has improved.

If there is no significant improvement in the employee’s performance the manager will arrange a formal interview with the employee to review the situation. The manager will inform the employee, in writing, of the expected standards of performance, where these are not being met and agreed timescales for improvement.

#### First Formal Stage

**Initiate**

Where there is failure to improve in accordance with the action plan and support set in the informal stage, the employees’ line manager, at Watch Manager level or above, will investigate.

**Investigate**

The employee shall be notified in writing of the investigation.

An investigation may include:

* Previous informal action plan,
* PDR Pro record,
* Record of any support provided.

Upon completion of the investigation the manager shall decide what action to take and notify the employee of the outcome of the investigation.

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

**Hearing**

The manager at Watch Manager level or above will invite the employee in writing, to a Capability Meeting which at Stage 1 will be chaired by a manager of Station Manager level or above. The employee shall be given a minimum of seven days’ notice of a Capability Meeting. The letter should contain enough information for the employee to fully understand the case against them with all relevant details and the reasons why this is unacceptable. The notification should also include copies of all the evidence/information relevant to the hearing. The employee will be advised of their right to be accompanied at the hearing.

The management case will be presented, normally by the investigating officer although they may seek input from Operational Training and/or Service Fitness Adviser.

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

The hearing manager (Station Manager level 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 at appendix A.

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 interview 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 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

1. **Second Formal Stage**

**Initiate**

Where there is failure to improve in accordance with the action plan and support set in the first formal stage a manager, at Station Manager level or above, will investigate.

**Investigate**

The employee shall be notified in writing of the investigation detailing the nature of the case.

An investigation may include:

* Previous informal and/or formal action plan,
* PDR Pro record,
* Record of any support provided.

Upon completion of the investigation the manager shall decide what action to take and notify the employee of the outcome of the investigation.

Possible action may include:

* No further action
* Deal with the matter on an informal basis
* Refer to a Stage 1 Capability Meeting
* Proceed to a Stage 2 Capability Meeting
* Proceed with a Stage 3 Capability Meeting

**Hearing**

The manager at Station Manager level or above will invite the employee in writing to a Capability Meeting which at Stage 2 will be chaired by a manager of Group Manager level or above. The employee shall be given a minimum of seven days’ notice of a Capability Meeting. The letter should contain enough information for the employee to fully understand the case against them with all relevant details and the reasons why this is unacceptable. The notification should also include copies of all the evidence/information relevant to the hearing. The employee will be advised of their right to be accompanied at the hearing.

The management case will be presented, normally by the investigating officer although they may seek input from Operational Training and/or Service Fitness Adviser.

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

The hearing manager (Group Manager level 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 at appendix A.

If after considering all the evidence/information presented it is decided that a lack of capability has been demonstrated then he/she may:

* Issue the employee with a sanction no greater than a final written warning (to remain on the employee personal records 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 interview 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 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

1. **Third Formal Stage**

**Initiate**

Where there is failure to improve in accordance with the action plan and support set in the first formal stage a manager, at Group Manager level or above, will investigate.

**Investigate**

The employee shall be notified in writing of the investigation detailing the nature of the case.

An investigation may include:

* Previous informal and/or formal action plans,
* PDR Pro record,
* Record of any support provided.

Upon completion of the investigation the manager shall decide what action to take and notify the employee of the outcome of the investigation.

Possible action may include:

* No further action
* Deal with the matter on an informal basis
* Refer to a Stage 1 or 2 Capability Meeting
* Proceed with a Stage 3 Capability Meeting

**Hearing**

The manager at Group Manager level or above will invite the employee in writing to a Capability Meeting which at Stage 2 will be chaired by a manager of Area Manager level or above. The employee shall be given a minimum of seven days’ notice of a Capability Meeting. The letter should contain enough information for the employee to fully understand the case against them with all relevant details and the reasons why this is unacceptable. The notification should also include copies of all the evidence/information relevant to the hearing. The employee will be advised of their right to be accompanied at the hearing.

The management case will be presented, normally by the investigating officer although they may seek input from Operational Training and/or Service Fitness Adviser/Occupational Health.

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

If after considering all the evidence/information presented it is decided that a lack of capability has 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 no more than one role.);
    - Disciplinary Transfer (which should involve no loss of remuneration and unless the employee agrees otherwise should be within the same duty system.).
* 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 his/her 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

1. 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 against them they must put their grounds of appeal in writing no later than seven 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 disciplinary 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. 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**

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Employee Details** | | | | | | | |
| **Employee’s**  **Name** |  | | **Manager’s name** |  | | | |
| **Post** |  | | **Manager’s post** |  | | | |
|  | | | | | | | |
| **Date** | **Task / Concern** | **Standard expected** | **Training/**  **Support / Resources required**  **Target** | | **Review date** | **Review Outcome** | **Improvement**  **Requirements Met Y/N** |
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