



## Police Staff Capability Procedure

This document is part of North Yorkshire Police policy to which all Chief Constable personnel and the functions provided by the Deputy Mayor for Policing as part of the York & North Yorkshire Combined Authority are required to adhere.

### Procedure Statement

#### Policies:

Health and Safety Policy  
Equality, Diversity and Human Rights (Inclusion and Diversity) Policy

#### Procedures:

Alcohol and Substance Misuse Testing Procedure

#### Other Documents:

Supportive Plan  
Attendance Management Roles and Responsibilities  
Attendance Management Guidance  
ACAS Reasonable Adjustments for Mental Health

### Process

## 1 INTRODUCTION

- 1.1 This procedure supports the commitment made by North Yorkshire Police (NYP) to encourage individuals to maintain good attendance and to ensure that individuals perform in their role to the required standard and to deal robustly but fairly with cases where this is not the case.
- 1.2 This procedure will only be applied where supportive measures as detailed in the NYP Attendance Management Guidelines or Performance Management Framework, have been exhausted and evidenced.
- 1.3 Some cases of unsatisfactory attendance may raise the need to consider whether the individual is permanently incapable under the Local Government Pension Regulations. Such cases should be referred to People Services for specific advice and further information is available in the Police Staff Retirement Procedure.

1.4 Unsatisfactory attendance/performance could impact on a number of other processes such as redundancy, promotion and recruitment. Each case will be considered in light of individual circumstances.

## **2 DEFINITION**

2.1 Capability is defined by the Employment Rights Act 1996, as 'capability assessed by reference to skill, aptitude, health or any other physical or mental quality.' For the purposes of this procedure these will be referred to as performance and attendance.

## **3 FORMAL CAPABILITY MANAGEMENT**

3.1 Before progression to any stage of this procedure, line management should be satisfied that sufficient supportive measures or opportunity for improvement to an acceptable standard has been afforded. Reasonable adjustments should be considered and documented where applicable (see section 10). Where an improvement plan is in place, line management must ensure this is followed and timely feedback is given throughout. All measures should be documented and evidenced. Line managers are encouraged to review the case with the individual and People Services prior to progression to the formal stages detailed in this procedure.

3.2 In every case it is advised that this should be discussed with the relevant People Services team prior to progression of the case.

3.3 Formal capability management comprises of 3 stages:

- First stage – to be initiated when appropriate supportive measures as laid out in the NYP Attendance Management Guidelines and Performance Management Framework, have not brought about the required improvement or where the individual has not maintained the required level of performance/attendance in accordance with the supportive management undertaken.
- Second stage – to be initiated when performance/attendance have continued to be below the acceptable standard as defined by the outcome of Stage 1 or as a recommendation of a first stage meeting. The second stage will not be held unless the first stage has taken place.
- Third stage – to be initiated when performance/attendance have continued to be below the acceptable standard as defined by the outcome of Stage 2 or as a recommendation of a second stage meeting, or in circumstances as detailed in paragraph 3.5.

3.4 Progression to further stages of the formal procedure must be for matters similar or connected with the unsatisfactory performance/attendance referred to in improvement plans issued at the earlier stages.

3.5 Immediate progression to third stage – in some circumstances it may be appropriate to progress directly to the third stage. For example, where medical opinion states that there are no further reasonable adjustments, including redeployment, or recommendations available to improve performance/attendance, or in cases involving gross incompetence. Such cases will be decided on a case by case basis, by a senior People Services manager,

based on the information available. The individual will be given the rationale as to why the case is being progressed to the third stage.

#### **4 FIRST/SECOND STAGE**

Section 7 regarding notification and correspondence must be followed. The individual has a right to be accompanied in all cases (section 6).

##### **4.1 Attendees**

It is appropriate for the line manager or immediate supervisor to chair the first stage meeting. A People Services representative will be present to provide advice on procedural matters.

The second stage meeting will be chaired by a second line manager supported by a People Services representative present to provide advice on procedural matters. The first line manager will attend to present the case and answer questions and may be supported by a People Services representative.

In both cases the individual, and their representative, will be in attendance.

##### **4.2 At the meeting:**

- The reasons why the performance/attendance of the individual is unsatisfactory will be outlined
- The individual, or their representative, will have the opportunity to make representations in response
- The reasons behind the shortcomings will be explored
- Ways of bringing performance/attendance up to standard will be identified, where appropriate
- After consideration of all available information including mitigating factors, the chair will inform the individual of the outcome (section 4.3) verbally and that they will receive a written record of the meeting including outcome as per section 7.5

##### **4.3 Outcomes**

- Further action considered unnecessary; or
- Further action is necessary
  - In which case the options available to the chair are:
    - Return to supportive action, which may include management advice
    - Issuing of a formal improvement plan (First Stage) or final improvement plan (Second Stage) (see section 12)
    - Recommendation of withholding of incremental progression
    - Progression to the next stage

In every case where further action is necessary, the meeting chair will:

- Inform the member of staff in what respect their performance/attendance is considered unsatisfactory
- Inform them of the improvement that is required in their performance/attendance

- Inform them that, if a sufficient improvement is not made within the improvement period specified by the manager, they may be required to attend the next stage meeting
- If applicable, inform them that they will receive an improvement plan which will be drafted in accordance with section 12 of this procedure.

## 5 THIRD STAGE

Section 7 regarding notification and correspondence must be followed. The individual has a right to be accompanied in all cases (section 6).

### 5.1 Composition of panel

A Third Stage meeting is heard by a panel. The panel will be chaired by an appropriate Head of Department who has no previous involvement with the case plus two other individuals, both of whom will be of a higher equivalent rank or grade than the individual. The panel will be advised by a senior People Services professional (at least PO grade) who has the relevant experience, knowledge and skills for the case.

### 5.2 Other attendees

In addition to the panel, individual and representative, the line manager should be in attendance to summarise their concerns and answer questions of the panel. The line manager may be supported by a People Services representative.

#### Witnesses

Witnesses will not normally give evidence at a Third Stage meeting unless the panel chair reasonably believes that it is necessary.

The individual or panel may propose relevant witnesses to attend a Third Stage meeting. The details of the relevant witnesses must be submitted to and agreed by the panel chair prior to the meeting.

There is no inherent right for the individual, or the representative, to cross examine witnesses and in all cases, individuals should submit any questions to the panel chair in advance of the meeting based on the information provided.

### 5.3 At the meeting

The chair will:

- Request that the line manager explains to the attendees the reasons why the performance/attendance of the individual is considered unsatisfactory
- Provide the individual, or their representative, with the opportunity to make representations in response
- Explore the reasons behind the shortcomings
- After consideration of all available information including mitigating factors, inform the individual of the outcome verbally and that they will receive a written record of the

meeting including outcome within 5 working days of the meeting. Details of possible outcomes are found below.

#### 5.4 Outcomes

- Further action considered unnecessary; or
- Further action is necessary

In which case options available to the chair are:

- Issuing of, or extension of, a final improvement plan (see section 12)
- Redeployment to an alternative available post (if circumstances are appropriate or where considered a reasonable adjustment) (see section 10 & 11)
- Any other alternative option that may be appropriate in the circumstances. For example, support for a request for early retirement.
- Dismissal (with appropriate notice)

In every case where further action is necessary, the meeting chair will inform the individual in what respect their performance/attendance is considered unsatisfactory

As soon as is reasonably practicable after the conclusion of the meeting and normally within 5 working days of that meeting, unless otherwise agreed, the panel chair will write to the member of staff and the line manager confirming the decision and the right of appeal. A written record of the meeting will also be supplied.

## 6 RIGHT TO BE ACCOMPANIED

- 6.1 At all formal stages the individual has the right to be accompanied and represented by a UNISON/staff association representative or a work colleague who is not acting in a legal capacity. Where a representative has been identified, they will be included in all correspondence.

## 7 NOTIFICATION, CORRESPONDENCE AND DOCUMENTATION

- 7.1 At all stages, where a line manager considers that an individual's performance/attendance remains unsatisfactory following supportive measures, they will notify the individual in writing, giving at least 10 working days' notice, of the time, date and location of a meeting to discuss these issues.
- 7.2 The notification should include the following details:
- The purpose of the meeting which is to hear evidence of the unsatisfactory performance/attendance and to give the individual or their representative the opportunity to put forward their views
  - All evidence and details of the reasons why the line manager considers the member of staff's performance or attendance to be unsatisfactory
  - The possible outcomes of the relevant stage meeting
  - The meeting attendees including who is chairing the meeting and that an appropriate HR advisor will attend to advise the chair on proceedings (please see section 5 for details of Third Stage meeting attendees)
  - That prior to the meeting the individual must provide the line manager with any documentation they intend to rely on at the meeting
  - The individual's rights, i.e. their right to be accompanied in accordance with section 6.1.

- 7.3 Documentary evidence may be submitted by the individual and this must be forwarded to the relevant named People Services representative at least 5 working days before the meeting. Documents submitted outside of this timeframe will only be considered at the discretion of the chair of the formal meeting.
- 7.4 A written record will be kept of all stages of this procedure.
- 7.5 At all stages the individual will be informed of the outcome in writing within 5 working days of the meeting. Any notification must also inform the individual of their right to appeal, as per section 9.

## **8 POSTPONEMENT AND ADJOURNMENT OF MEETING**

- 8.1 Capability issues should be dealt with without any unreasonable delay in order to ensure that evidence is fresh and before recollections fade.
- 8.2 If the individual informs the chair of the meeting in advance that they are unable to attend a meeting on grounds which are considered reasonable, or in cases where the member is absent, a short delay may be reasonable to allow them to attend.
- 8.3 Where delays are on medical grounds Health & Wellbeing may be consulted for advice. Delays on medical grounds should normally be for no longer than one month (in the case of serious illness) but usually less. Supporting medical reports may be required.
- 8.4 In the event that the chair of the meeting needs to postpone, they should notify all attendees and the People Services representative of the reasons and the revised time and place for the meeting.
- 8.5 In the event of the individual's representative being unable to attend, the individual must suggest an alternative meeting which is suitable, and which occurs within 10 working days of the original meeting and at a reasonable time. It is the individual's responsibility to seek and secure representation and, where the individual has been unable to gain representation, the process will occur without further delay.
- 8.6 Where the individual is unable to attend and reasonable allowances have been made, the proceedings can take place in the individual's absence. The individual will be extended the opportunity to arrange for suitable representation and/or submit any written evidence in their absence.

## **9 APPEALS**

- 9.1 An individual has the right of appeal against the finding and the outcome imposed at any stage of this procedure. Any finding/outcome of the relevant meeting will continue to apply up to the date that the appeal is determined.
- 9.2 The individual must clearly set out the grounds and evidence for the appeal within 10 working days of receipt of the written outcome of the meeting. All details of who the appeal should be addressed to will be included within the outcome letter.

9.3 The written appeal will be acknowledged within 5 working days of receipt of the appeal and the acknowledgement letter will provide at least 10 working days' notice of the appeal meeting.

9.4 Appeals following First Stage, Second Stage and non-dismissal Third Stage meetings will be heard by a relevant senior manager, that being defined as a manager more senior to the chair of the meeting.

In the case of dismissal outcomes from Third Stage, appeals will be heard by:

- for Chief Constable's Staff: the Chief Constable.
- for the Deputy Mayor for Policing as part of the York & North Yorkshire Combined Authority Staff: A Senior Member.

9.5 In each case the individual and their representative (if applicable) will be present and an appropriate People Services advisor will provide advice as required.

9.6 At the appeal meeting the individual or their UNISON representative will have the opportunity to make representations.

9.7 The appeal may:

- confirm or reverse the finding of unsatisfactory performance/attendance
- endorse or vary the terms of the outcome

9.8 The outcome of the appeal will be confirmed in writing within 5 working days of the appeal meeting. This will include a written summary of the reasons for the decision.

## **10 REASONABLE ADJUSTMENTS**

10.1 In all cases involving ill health, especially those involving disability, line managers and panel chairs should consider and record reasonable adjustments at every stage of this procedure. Guidance on reasonable adjustments can be provided by the People Services representative advising on the case.

## **11 REDEPLOYMENT**

11.1 Ill health redeployment only

Redeployment may constitute a reasonable adjustment in certain cases involving ill health which is impacting significantly on performance/attendance and as such may be considered by line managers and panel chairs at every stage of this procedure. Where redeployment is being considered by a line manager, all relevant information (including medical advice supporting the case for redeployment) must be presented to an appropriate People Services representative (in this case PO grade) who will authorise the commencement of the redeployment process.

11.2 Redeployment can only be considered where there is a reasonable expectation of success and where the individual can be usefully deployed for the duration of the redeployment period.

- 11.3 The redeployment period will last for up to 6 months. If no suitable alternative employment is identified during this period or where the individual fails to accept up to three posts offered, a third stage panel may be convened or reconvened in accordance with section 5 above. The panel will consider any other options available at this stage, which may, if consideration of all reasonable adjustments has been exhausted, include the option of dismissal.
- 11.4 An appropriate People Services representative will monitor all vacancies during the redeployment period and an assessment of suitability of the individual against any suitable vacancies will be undertaken. Further assessments, for example a knowledge test or trial assessment, may be conducted prior to any formal offer of alternative employment being made. Decisions over this process will be made on a case by case basis.
- 11.5 Where an individual is redeployed, on ill health grounds, to a lower graded post in the above circumstances, they will be entitled to a period of salary protection; constituting the following:
- basic salary only (not including additional allowances) will be frozen for a period of 12 months or until the new basic salary reaches the same level as the frozen salary, whichever is the sooner
  - if the new post has a different working pattern which does not attract allowances, such as, for example, shift, weekend etc. then there will be no protection of such allowances
  - upon the expiry of 12 months following the date of appointment to the new post, salary will revert to the salary appropriate to that post and all salary protection will cease.
- 11.6 Redeployment as an outcome of third stage hearing
- The redeployment process can be instigated by a third stage panel where they conclude there is no further possibility of improvement in performance for the individual in their existing role. Redeployment may only be considered where there is a reasonable expectation of success and where the individual can usefully be deployed for the duration of the redeployment period.
- 11.7 The redeployment period will usually last for up to 3 months. If no suitable alternative employment is identified during this period or where the individual fails to accept up to three posts offered, the third stage panel will be reconvened. The panel will consider any other options available at this stage, which may include dismissal.
- 11.8 An appropriate People Services representative will monitor all vacancies during the redeployment period and an assessment of suitability of the individual against any suitable vacancies will be undertaken. Further assessments, for example a knowledge test or trial assessment, may be conducted prior to any formal offer being made. Decisions over this process will be made on a case by case basis.
- 11.9 Where an individual's post changes in these circumstances, the individual will be paid the salary and allowances appropriate to the post to which they have been redeployed, from the date of the new contract.

## **12 IMPROVEMENT PLANS**



- 12.1 An improvement plan is a formal written plan that facilitates the improvement of an individual's performance/attendance. The plan needs to include the following details:
- In what respect the person's performance/attendance is considered unsatisfactory and the improvement required to achieve an acceptable standard
  - The actions the individual needs to take to help them achieve and maintain the improvement required
  - Identify any factors which may be the cause of the unsatisfactory performance or attendance and how these can be addressed
  - An improvement period (normally 3 months) within which the improvement is expected
  - The maintenance period – 12 months from the date of the improvement plan, or 18 months for a final improvement plan.
  - Support mechanisms available from the organisation
  - Dates for review and consequences should improvement not be made or maintained.
- 12.2 The line manager is responsible for formulating the improvement plan in discussion with the individual. Approval for the content of the plan should be sought from the chair of the formal meeting where this is not the line manager. The Improvement plan will be effective from the date of the formal meeting.
- 12.3 The line manager is responsible for the final review of the improvement plan/final improvement plan. In the case of an improvement plan set at a First Stage meeting, the line manager can decide to progress the case to the Second Stage, in consultation with the appropriate People Services representative. In the case of an improvement plan set at a Second or Third Stage meeting, the line manager should report their conclusions to the chair of the panel who will decide where to progress to the next stage of the process. In the case of a final improvement plan, if sufficient progress has not been made the chair of the Third Stage meeting can ask for the panel to be reconvened in order to consider further available sanctions in accordance with section 5.
- 12.4 If during the maintenance period, attendance or performance falls below the required standard, the case can be progressed immediately (with the approval of the Chair of the formal meeting where appropriate).
- 12.5 The individual should be informed in writing of the outcome of the improvement plan. If a decision to progress the case to the next stage of the procedure is taken, the individual should be informed in accordance with section 7 of this procedure.

## **Responsibilities**

**Individual** – will adhere to the procedure by:

- providing timely, accurate and up to date information
- participating in discussions with line management

**Line manager** – will adhere to the procedure by:

- recording in a timely and accurate way, up to date information provided and ascertained.
- ensuring the procedure is applied consistently and fairly across their work area.
- monitoring levels of absence and performance concerns, including the identification of trends, within their work area and discussing with their People Services representative.

- using the Absence Management Guidelines and Performance Management Framework to support their actions and decision making.

**People Services** – will adhere to the procedure by:

- ensuring the procedure is applied consistently and fairly across NYP.
- providing advice and guidance to line managers.
- conducting periodic checks of attendance records to confirm that line managers are taking appropriate action and by keeping senior management teams informed.
- providing advice to senior stakeholders regarding absence and performance cases within their work area.
- advising and supporting line managers in determining whether or not it is appropriate to use the formal procedure.

**Health & Wellbeing** – will:

- provide advice and guidance in relation to ill health and injury and how that may impact on performance/attendance.
- will liaise with other relevant parties in the development of recuperative plans, improvement plans & notices and action plans, as appropriate.

**Definition of Special Terms**

Gross incompetence – where there is no realistic hope of improvement in performance or where serious consequences follow the incompetence.