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## Capability (Attendance and Performance) Authority/Police Staff

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## **1 Overview**

### **1.1 What is this about?**

- 1.1.1 Capability is defined in the Employment Rights Act 1996 as being able to perform the work that you were employed to do. It is '*assessed by reference to skill, aptitude, health or any other physical or mental quality, and qualifications*'.
- 1.1.2 The capability procedure aims to encourage improvement and provide a framework to address any concerns or issues in relation to attendance or performance in a fair and consistent manner.

### **1.2 Who is this for?**

- 1.2.1 This is for all authority/police staff and managers.

### **1.3 Key information**

- The Scottish Police Authority (SPA) and Police Scotland have clear standards for attendance and performance (refer to Standards).
- The focus will be to try and resolve issues through informal support, if possible.
- Details will only be shared with other people if they are involved or need to know.
- Normally there will be a reasonable chance to improve before any formal action is taken.
- The formal stages of the procedure will be used where informal support has not led to the improvement needed.
- There are three stages to the formal procedure with improvement in attendance or performance required within an agreed period. If there has been no improvement within the agreed timescale then the matter will be progressed to the next stage of the procedure.
- If attendance or performance does not improve to an acceptable standard by Stage 3 then an outcome of the capability meeting could be dismissal.

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- Where performance falls below an acceptable standard and the actual or potential consequences are, or could be, extremely serious, the issue may be progressed straight to Stage 3 of the procedure.
- The disciplinary procedure will be used where a staff member is able but unwilling to carry out duties to a satisfactory standard i.e. deliberate failure to achieve the standards expected of them.

### 1.4 Standards

1.4.1 All of us have a responsibility to achieve and maintain an acceptable level of attendance and performance. The following are examples of when standards fall below an acceptable level:

- not able to cope with a reasonable amount of work to a satisfactory standard including meeting timescales;
- poor standards of work e.g. frequent mistakes, not following a job through, unable to cope with instructions;
- lack of apparent skill in tasks/method of work required;
- poor communications skills i.e. verbal or written;
- consistently not meeting agreed and realistic targets or objectives;
- failing to achieve or maintain required qualification(s) or training; or
- unable to attend work on a regular basis which makes it difficult to perform role effectively.

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## **2 Officer/Staff**

### **2.1 What you need to do:**

- Maintain the standards of attendance or performance expected.
- Let your manager know if there are any reasons for the unsatisfactory attendance or performance.
- Work towards agreed actions where improvement is needed.
- Tell your manager if you require any additional support to help you fully participate in the procedure e.g. reasonable adjustments.
- Participate fully throughout the procedure.
- Attend meetings as requested.
- Appeal if you believe an outcome is not reasonable.

### **2.2 Informal support**

- 2.2.1 If attendance or performance issues are identified your manager will meet with you and talk over any concerns they have.
- 2.2.2 It should be a two way conversation with the focus being on finding ways to support improvement and achieve and maintain the standards expected.
- 2.2.3 If there are underlying reasons that are contributing to the unsatisfactory attendance or performance then you should make your manager aware of them e.g. disability or health related issues or personal circumstances. Your manager might suggest a referral to Occupational Health or the Employee Assistance Programme if this is the case.
- 2.2.4 Your manager will take notes at the meeting and you will be given a copy so that you understand the area(s) of concern, the standards required, expectation for improvement and plans to support this and how and when attendance or performance will be reviewed.
- 2.2.5 Your progress will be reviewed at agreed timescales and if you meet the expected standards this is likely to be the end of the matter. You will receive written notification to confirm this and a copy of the letter will be held in your personnel file for a period of six months. If your attendance or performance returns to an unacceptable standard during this six month period the matter may be progressed straight to a Stage 1 capability meeting.
- 2.2.6 If there is no improvement, or improvement is not to an acceptable standard, you will be told the matter is to be progressed to Stage 1 of the formal procedure.

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- 2.2.7 Informal support for short or long term absence is provided through Attendance Support Meetings (ASMs). Further information on ASMs can be found in the attendance management procedure.

### **2.3 Formal procedure**

- 2.3.1 You will receive a letter (or email) giving at least seven calendar days' notice of any formal capability or performance review meeting. The letter will have details of the attendance or performance issues to be considered. It will also tell you the possible outcome(s) if attendance or performance is found to be unsatisfactory.
- 2.3.2 You will get a copy of any information that has been gathered to help you prepare for the meeting.
- 2.3.3 You have the right to be accompanied at any formal meeting.
- 2.3.4 If anyone involved is repeatedly unable to attend meetings or join in the procedure without good reason, a decision may have to be made based on the information available. You will be told if this is going to happen.
- 2.3.5 Someone not involved might be asked to take notes at the meetings. You, or whoever is accompanying you, might also want to take your own notes to refer to.
- 2.3.6 A representative from People and Development may also be asked to attend any formal meetings to provide guidance on the procedure.
- 2.3.7 You have the right to appeal against any formal action resulting from the capability meeting.

### **2.4 Stage 1 capability meeting**

- 2.4.1 At the meeting you will be told the standards expected. Your manager will go over examples of the unsatisfactory attendance or performance and review the support already provided as part of the informal procedure.
- 2.4.2 Your manager will try to establish and address any reasons for the unsatisfactory attendance or performance.
- 2.4.3 You will be asked to talk about any concerns you may have to do with your role and any additional support or guidance you may need. This could include coaching, training, mentoring, flexible working, reasonable adjustments etc.
- 2.4.4 If there are underlying reasons that are contributing to the unsatisfactory attendance or performance then you should make your manager aware of them e.g. disability or health related issues or personal circumstances.
- 2.4.5 Your manager will complete an improvement plan and you will be given a copy so that you understand the area(s) of concern, the standards required, expectation for improvement and how and when attendance or performance will be reviewed.

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- 2.4.6 Where informal support has not led to the improvement needed, you could be issued with a written warning at this stage. The warning would be held in your personnel file for a period of 12 months from the date it was issued.

### **2.5 Improvement plan**

- 2.5.1 The improvement plan should include targets that are specific, measurable, achievable, realistic and time-bound.
- 2.5.2 Your manager will talk to you about what has to be improved and set a realistic timescale by when it must be achieved. This will not normally be any longer than eight weeks.
- 2.5.3 During that time your manager will hold weekly or fortnightly meetings with you to assess your progress against any objectives set.
- 2.5.4 Where satisfactory progress is made you will be encouraged to maintain this. If enough progress has not been made you will be advised further improvement is required and asked if there is any further support needed.
- 2.5.5 At times, there may be a need to extend the review period depending on the role you do, reason for the unsatisfactory attendance or performance and the availability or need for training or development opportunities.
- 2.5.6 A performance review meeting will be held at the end of the agreed review period to assess whether sufficient improvement has been achieved and maintained or not.

### **2.6 Performance review meeting**

- 2.6.1 If the level of improvement has been achieved, no further action will be taken. This will be confirmed in writing and you will be reminded of the need to maintain this.
- 2.6.2 If a written warning was issued at the capability meeting, the written warning will remain in your personnel file for a period of 12 months from the date it was issued. If your attendance or performance returns to an unsatisfactory level during that time, the capability procedure will resume at Stage 1 and a decision will be made on whether the issue should be progressed to a Stage 2 capability meeting.
- 2.6.3 In exceptional circumstances where there has been improvement but the standards have not been fully met, the review period may be extended by a further four weeks.
- 2.6.4 If there has not been satisfactory improvement then the matter will be progressed to Stage 2 of the capability procedure.

### **2.7 Stage 2 capability meeting**

- 2.7.1 Stage 2 will follow the same format as Stage 1:

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- look at support already provided and discuss any further support that may help improve attendance or performance e.g. training, reasonable adjustments etc.;
- set targets for improvement and a reasonable timescale of when the required standard has to be met;
- at this stage a final written warning may be issued if appropriate; and if so
- you will be advised that failure to improve attendance or performance will result in progression to a Stage 3 capability meeting, which could lead to dismissal.

### **2.8 Improvement plan**

- 2.8.1 Your manager will update the improvement plan and set a timescale for when the standards have to be met. The timescale will normally be a maximum of eight weeks.
- 2.8.2 During the review period your manager will again hold regular meetings with you, either weekly or fortnightly, to assess your progress against the objectives set.
- 2.8.3 A performance review meeting will be held at the end of the agreed review period to assess whether the required standards have been met and sustained or not.

### **2.9 Stage 2 performance review meeting**

- 2.9.1 If the required improvement has been achieved no further action will be taken. This will be confirmed in writing and you will be reminded of the need to maintain this.
- 2.9.2 If a final written warning was issued at the Stage 2 capability meeting, this will remain in your personnel file for a period of 12 months from the date it was issued. If attendance or performance returns to an unsatisfactory level during the period of the warning, the capability procedure will resume at Stage 2 and a decision will be made on whether the issue should be progressed to a Stage 3 capability meeting.
- 2.9.3 In exceptional circumstances where there has been improvement but the standards have not been fully met, the review period may be extended by a further four weeks.
- 2.9.4 If there has not been satisfactory improvement then the matter will be progressed to a Stage 3 capability meeting where you could be dismissed on grounds of capability.

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### **2.10 Stage 3 capability meeting**

- 2.10.1 Where Stage 2 has not been successful in improving attendance or performance to an acceptable standard, a Stage 3 capability meeting will be held. As there is potential for dismissal the manager appointed to chair the meeting will be at least the level of Chief Superintendent/Head of Department. The manager should have had no prior involvement in the procedure.
- 2.10.2 At the meeting your manager will present the history of your case and will include the standards required for the role and the area(s) of concern.
- 2.10.3 Your manager will outline the steps that have been taken to address and improve the unsatisfactory attendance or performance and why they consider you not to be capable of carrying out your role to an acceptable standard.
- 2.10.4 You will be able to ask your manager questions on the information presented. The chairperson may also ask questions.
- 2.10.5 You will be given the chance to present your case and offer an explanation as to why you have not been able to meet the standards required.
- 2.10.6 The chairperson and your manager may have some questions for you on any information you provide.
- 2.10.7 The chairperson will adjourn the meeting to consider the facts of the case before making a decision on the outcome.
- 2.10.8 There are a number of options available to the chairperson which include:
- a further extension to the review period. If there is not enough improvement, by the end of the review period, the procedure will resume with another Stage 3 meeting;
  - action short of dismissal. This could include transfer to another role at the same grade or lower. If transfer is to a lower grade the terms and conditions for that post will apply; or
  - dismissal on grounds of capability.
- 2.10.9 If a transfer is agreed, there will be an initial trial period of between four and eight weeks. If there are any concerns during the trial period, your manager will try to resolve them informally. If there are still concerns by the end of the trial period you will be invited to another Stage 3 capability meeting.
- 2.10.10 The outcome of the Stage 3 capability meeting will be confirmed in writing within seven calendar days of the meeting.

### **2.11 Appeals**

- 2.11.1 To appeal against an outcome, up to and including a final written warning, you have to write in using the People Direct Online Portal within seven calendar days of receiving the outcome letter.

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- 2.11.2 If you need more time to prepare your appeal, a further seven calendar days are available. The additional days only apply if you let People Direct know that you plan to appeal within the original seven day period.
- 2.11.3 Grounds for appeal might include:
- you believe the outcome was not reasonable;
  - the action was inconsistent with action taken in a similar case;
  - you believe you were not given a fair hearing;
  - there is new information that was not available before; or
  - the procedure was not followed.
- 2.11.4 You have to tell us the grounds on which your appeal is based, and any other information that should be considered.
- 2.11.5 Appeals against written or final written warnings will be heard by a manager nominated by People and Development. The appeal manager should have had no prior involvement in the procedure and be at least one rank/grade above the manager who issued the warning.
- 2.11.6 The appeal meeting will be held within 14 calendar days of the appeal being received. You will receive a letter (or email) giving at least seven calendar days' notice of the meeting.
- 2.11.7 You should receive the outcome of the appeal within seven calendar days of the meeting. The decision of the appeal is final.
- 2.11.8 To appeal against dismissal you have to write to the SPA. Details of the appeal procedure will be provided in the outcome letter. Again, this should be within seven calendar days of receiving the outcome letter.
- 2.11.9 The appeal meeting will normally be heard within 28 calendar days of the appeal being received by the SPA. You will receive at least seven calendar days' notice of the meeting.
- 2.11.10 You should receive the outcome of the appeal within seven calendar days of the meeting. The decision of the appeal is final.

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### **3 Manager**

#### **3.1 What you need to do.**

- Deal with attendance or performance issues informally, where possible.
- Contact People Direct for guidance on informal support if required, and before progressing to the formal stages of the capability procedure.
- Establish the reasons for the unsatisfactory attendance or performance and deal fairly and consistently with capability matters.
- Explain standards required and set clear targets for improvement with plans to support this.
- Review progress regularly.
- Consider all the information and tell the team member what, if any, action will be taken.
- Explain the right of appeal is available.

#### **3.2 Informal support**

- 3.2.1 If you identify attendance or performance issues then arrange a meeting with the team member as early as possible. This will let you talk over any concerns you have and try to find ways to support improvement.
- 3.2.2 You should go over the standards expected and give examples of when the attendance or performance has fallen below these standards. This will help the team member know what is, and what is not, acceptable.
- 3.2.3 You need to try and find out if there are any reasons for the unsatisfactory attendance or performance.
- 3.2.4 You might be told there are underlying reasons that are contributing to the unsatisfactory attendance or performance e.g. disability or health related issues or personal circumstances. If this is the case it might be worth suggesting a referral to Occupational Health or the Employee Assistance Programme.
- 3.2.5 If there are disability or health related issues you should not progress to the formal stages of the capability procedure without first following the guidance in both the attendance management and disability in employment procedures.
- 3.2.6 To encourage improvement and help achieve and maintain the standards expected, you should talk over what support is available. This could include coaching, training, mentoring, flexible working, reasonable adjustments etc.

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- 3.2.7 Although the support at this stage is informal you still have to write down the key points of the meeting and give a copy of the notes to the team member. This will help them understand the area(s) of concern, the standards required, expectation for improvement and plans to support this and how and when attendance or performance will be reviewed. It will also let you decide at a later date whether the informal support has led to the improvement required.
- 3.2.8 You have to give the team member the chance to improve so the timescales you agree must be realistic. It should be made clear if the standards are not met within the agreed timescale(s), the matter will be progressed to the formal stages of the capability procedure. This must be reflected in the notes.
- 3.2.9 Informal support for short or long term absence is provided through Attendance Support Meetings (ASMs). You should write down the details of any informal support for attendance issues on the Attendance Support Meeting Form (060-007). Further information on ASMs can be found in the attendance management procedure.
- 3.2.10 You should write down the details of any informal support for performance issues on the Notes from Discussions / Meetings Form (037-028).
- 3.2.11 You can complete an Improvement Plan Form (037-027) at this stage, if you want a framework to note any agreed actions and timescales.
- 3.2.12 If the expected standards are met within the agreed timescales that should be the end of the matter. You have to confirm this in writing and a copy of the letter will be held in the team member's personnel file for a period of six months. If attendance or performance returns to an unacceptable standard within this six month period there is the potential to progress the issue straight to a Stage 1 capability meeting.
- 3.2.13 Where informal support has not led to the improvement needed you should tell the team member that you plan to progress the matter to the formal stages of the capability procedure.
- 3.2.14 You should ask the team member if they need any additional support to help them fully participate in the procedure.

### 3.3 Formal procedure

- 3.3.1 You should contact People Direct through the Online Portal or on **[REDACTED]** for advice on how best to progress a case, before you take any formal action.
- 3.3.2 You have to send a letter (or email) to the team member giving at least seven calendar days' notice of any formal capability or performance review meeting.
- 3.3.3 The letter must have details of the attendance or performance issues to be considered and the possible outcome(s) if attendance or performance is found to be unsatisfactory.

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- 3.3.4 A copy of any information that may be referred to at the meeting must be sent out at the same time as the letter.
- 3.3.5 The team member has the right to be accompanied at any formal meetings and a right to appeal against any formal action taken as a result of the capability meeting.
- 3.3.6 You might want to arrange for someone not involved in the capability procedure to take notes at any meetings. The key points of the meeting should be recorded on the Notes from Discussions / Meetings Form (037-028).
- 3.3.7 If someone is repeatedly unable or unwilling to attend meetings, without good reason, you might have to make a decision based on the information you have. You have to tell the person who is subject to the capability procedure if this is going to happen.
- 3.3.8 All documentation should be sent to People Direct at the end of the procedure.

### **3.4 Stage 1 capability meeting**

- 3.4.1 The purpose of the meeting is to remind the team member of the standards expected and encourage improvement to achieve the standards required.
- 3.4.2 You have to provide examples of when the standards have not been met and try to establish any reasons for their unsatisfactory attendance or performance.
- 3.4.3 You should ask the team member to tell you about any concerns they have to do with their role and whether they need any additional support to help them achieve the standards expected. The support that you offer could include coaching, training, mentoring, flexible working, reasonable adjustments etc.
- 3.4.4 You have to complete an improvement plan so that the team member is clear about the area(s) of concern, the standards required, your expectation for improvement, and how and when their attendance or performance will be reviewed.
- 3.4.5 There may be underlying reasons for the unsatisfactory attendance or performance e.g. disability or health related issues or personal circumstances.
- 3.4.6 If you are told there are underlying reasons, then it may be appropriate to talk about a referral to Occupational Health or the Employee Assistance Programme.
- 3.4.7 Where disability or health related issues are identified you need to contact People Direct for guidance on how best to progress the case. It might be more appropriate to consider reasonable adjustments, medical re-deployment or ill-health retirement rather than formal action.

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- 3.4.8 You should consider all of the information presented at the meeting, along with any mitigating factors. If you have all the information that you need to make a decision, you can give the team member the outcome at the meeting.
- 3.4.9 If you have already given the team member a reasonable chance to improve and the informal support has not been successful, you may decide to issue a written warning. The warning would be held on file for a period of 12 months.
- 3.4.10 You have to confirm the outcome in writing within seven calendar days of the meeting.

### **3.5 Improvement plan**

- 3.5.1 The aim of the capability procedure is to encourage improvement. You need to discuss and agree with the team member what improvement needs to be made and provide a framework on how this can be achieved on the Improvement Plan Form (037-027).
- 3.5.2 The improvement plan should include targets that are specific, measurable, achievable, realistic and time-bound.
- 3.5.3 When writing the improvement plan you have to be clear about the standards expected, what needs to be improved, the support identified and by when the improvement has to be achieved. You should not normally make the review period any longer than eight weeks.
- 3.5.4 During the review period you need to hold weekly or fortnightly meetings with the team member to assess their progress against any objectives set.
- 3.5.5 You should update the improvement plan each time you assess progress. Where progress is satisfactory you should encourage the team member to maintain the improvement. Where progress remains unsatisfactory you need to tell the team member this and ask if any additional support is needed.
- 3.5.6 At times you may have to extend the review period depending on the role, reason for the unsatisfactory attendance or performance and the availability or need for training or development opportunities.

### **3.6 Performance review meeting**

- 3.6.1 You should arrange a performance review meeting for a date just after the end of the review period.
- 3.6.2 The invite letter (or email) should provide information about the unsatisfactory attendance or performance and the possible outcome(s). You should send a copy of any notes that have been gathered relating to the capability procedure at the same time. This will allow the team member to prepare for the meeting.

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- 3.6.3 If the required improvement has been achieved there is no need for you to take any further action. You should remind the team member that the improvement has to be maintained.
- 3.6.4 If you issued a written warning at the capability meeting, you should remind the team member that this will remain on file for a period of 12 months, from the date it was issued.
- 3.6.5 You need to make the team member aware that if their attendance or performance returns to an unsatisfactory level during the period of the warning, the capability procedure will resume at Stage 1 and you will have to make a decision on whether the issue should be progressed to a Stage 2 capability meeting.
- 3.6.6 In exceptional circumstances where you have seen there has been improvement but the standards have not been fully met, you may decide to extend the review period by a further four weeks. There should not be a further extension beyond this.
- 3.6.7 If there has not been satisfactory improvement then you should tell the team member you plan to progress the matter to Stage 2 of the capability procedure.

### **3.7 Stage 2 capability meeting**

- 3.7.1 Stage 2 will follow the same format as Stage 1:
- look at the support already provided and discuss any further support that may help improve attendance or performance e.g. training, reasonable adjustments etc.;
  - set targets for improvement and a reasonable timescale of when the required standard has to be met;
  - you may decide to issue a final written warning if appropriate, and if so
  - tell the team member that failure to improve will result in the case being progressed to a Stage 3 capability meeting, which could ultimately lead to them being dismissed.
- 3.7.2 There may be a need to get updates where medical information or specialist advice has been considered at the previous stage.

### **3.8 Improvement plan**

- 3.8.1 You need to update the improvement plan and set a new timescale for when the standards have to be met. The timescale should normally be a maximum of eight weeks.
- 3.8.2 You should schedule weekly or fortnightly meetings so that you can assess the team member's progress against the objectives you have set.

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### **3.9 Stage 2 performance review meeting**

- 3.9.1 You should arrange a performance review meeting for a date just after the end of the review period to assess whether the required standards have been met and maintained or not.
- 3.9.2 If the required improvement has been achieved there is no need for you to take any further action. You should remind the team member that the improvement has to be maintained.
- 3.9.3 If a final written warning was issued at the Stage 2 capability meeting you should remind the team member that this will remain on file for a period of 12 months from the date it was issued.
- 3.9.4 You need to make the team member aware that if their attendance or performance returns to an unsatisfactory level during the period of the warning, the capability procedure will resume at Stage 2 and you will have to make a decision on whether the issue should be progressed to a Stage 3 capability meeting.
- 3.9.5 You have to make sure the team member knows how serious it would be if they do not maintain the standards expected i.e. they could be dismissed on grounds of capability.
- 3.9.6 In exceptional circumstances where you have seen there has been improvement but the standards have not been fully met, you may decide to extend the review period by a further four weeks. There should not be a further extension beyond this.
- 3.9.7 If there has not been satisfactory improvement then you should tell the team member you plan to progress the matter to Stage 3 of the capability procedure.
- 3.9.8 You need to send all documentation to People Direct at the end of Stage 2.

### **3.10 Stage 3 capability meeting**

- 3.10.1 Where the previous stages have not been successful in improving attendance or performance to an acceptable standard, a Stage 3 capability meeting will be arranged. As there is potential for dismissal the manager appointed by People and Development to chair the meeting must be at least the level of Chief Superintendent/Head of Department. The manager should have had no prior involvement in the procedure.
- 3.10.2 If you are the line manager you will be asked to attend the meeting so that you can present the history of the case. This will include the standards required for the role and the area(s) of concern.
- 3.10.3 You will be asked to outline the steps that have been taken to address and improve the unsatisfactory attendance or performance and why you consider the team member not to be capable of carrying out their role to an acceptable standard.

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- 3.10.4 The team member will get the chance to ask you questions on the information you have presented. The chairperson may also have some questions for you.
- 3.10.5 If you are appointed as the chairperson you must give the staff member the chance to present their case and offer an explanation as to why they have not been able to meet the standards required.
- 3.10.6 You and the line manager may have some questions for the staff member on the information they provide.
- 3.10.7 When all the information has been presented by the line manager and the staff member you should adjourn the meeting to consider the facts of the case before making a decision on the outcome.
- 3.10.8 There are a number of options available to you and these include:
- a further extension to the review period. You will have to tell the staff member if there is not enough improvement, by the end of the review period, the procedure will resume again with another Stage 3 meeting;
  - action short of dismissal. This could be a transfer to another role at the same grade or lower. If transfer is to a lower grade you would have to tell the staff member the terms and conditions for that post will apply; or
  - dismissal on grounds of capability.
- 3.10.9 If a transfer is agreed, there will be an initial trial period of between four and eight weeks. If there are any concerns during the trial period, the line manager will try to resolve them informally. If there are still concerns by the end of the trial period the staff member will be invited to another Stage 3 capability meeting.
- 3.10.10 If you are the chairperson you have to confirm the outcome in writing within seven calendar days of the Stage 3 meeting.

### **3.11 Appeals**

- 3.11.1 To appeal the staff member has to send in their written appeal to People Direct within seven calendar days of receiving the outcome letter. If they need more time to prepare their appeal, a further seven calendar days are available. The additional days only apply if the staff member has told People Direct of their intention to appeal within the original seven day period.
- 3.11.2 Grounds for appeal might include:
- the staff member does not believe the outcome was reasonable;
  - the action was inconsistent with action taken in a similar case;
  - the staff member does not believe they were given a fair hearing;
  - there is new information that was not available before; or
  - the procedure was not followed.

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- 3.11.3 The staff member has to provide their reasons for appealing the decision and any other information that should be considered.
- 3.11.4 Appeals against written or final written warnings will be heard by a manager nominated by People and Development normally within 14 calendar days of the written appeal being received. The appeal manager should have had no prior involvement in the procedure and will be at least one rank/grade above the manager who issued the warning.
- 3.11.5 Appeals against dismissal will be heard by the Scottish Police Authority. The appeal meeting will normally be heard within 28 calendar days of the appeal being received.

### **3.12 The appeal meeting**

- 3.12.1 If asked to chair an appeal meeting you might want to arrange for someone not involved in the capability procedure to take notes. The key points of the meeting should be recorded on the Notes from Discussions / Meetings Form (037-028).
- 3.12.2 You should have the notes and any other information from the previous stage(s) of the procedure at hand as you might have to refer to them
- 3.12.3 The staff member has to be given the chance to explain the grounds of their appeal in person at the meeting.
- 3.12.4 You should only consider the specific area(s) that the appeal is based on e.g. procedure was not followed. You should not go over all the matters raised in the previous stage(s) of the procedure.
- 3.12.5 You should confirm the outcome in writing within seven calendar days of the meeting. The decision of the appeal is final.
- 3.12.6 All documentation should be sent to People Direct at the end of the procedure.

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## **4 Resources**

### **Forms**

- Improvement Plan Form (037-027)
- Notes from Discussions / Meetings Form (037-028)
- Notes from Discussions / Meetings Continuation Sheet Form (037-028A)

### **How to Guides**

- How to Conduct a Formal Capability or Appeal Meeting

### **Reference Documents**

- Frequently Asked Questions
- Process Map
- The Right to Be Accompanied

### **Related Procedures**

- Attendance Management
- Business Interests and Secondary Employment
- Disability in Employment
- Disciplinary
- Flexible Working
- Ill Health Retirement
- International Training Deployment
- Leavers

### **Useful Links**

- Acas
- Employee Assistance Programme



## Frequently Asked Questions

### **What happens if there are concerns about my attendance or performance?**

Your manager will meet with you to talk over their concerns and try to provide informal support that will help you meet the standards required.

### **What kind of informal support will be provided?**

Your manager will try to find out if there are any specific reasons for you not being able to meet the standards required and work out the best way to support improvement. The support could include coaching, mentoring, training, flexible working, reasonable adjustments etc.

### **What if my attendance or performance does not improve?**

Your manager will give you a reasonable chance to improve before formal action is taken. If the required standards are not met within an agreed timescale you will be invited to a capability meeting. You should tell your manager if you require any additional support to help you fully participate in the procedure e.g. reasonable adjustments.

### **What is the purpose of the capability meeting?**

Your manager will go over their concerns and remind you of the standards expected. The focus of the meeting is to look at any reasons for the unsatisfactory attendance or performance and agree an improvement plan that will support and help you reach the standards required.

### **What happens at the capability meeting?**

Your manager will provide examples of where the required standards have not been met. They will ask you if there are any specific reasons why you have not been able to meet the standards expected and if you need any additional support to help you achieve and maintain these. An improvement plan will be agreed with realistic objectives and by when they have to be achieved. You will be told how and when your attendance or performance will be reviewed. You might also be issued with a formal warning.

### **What happens next?**

Your manager will meet with you on a weekly or fortnightly basis to review progress. A performance review meeting will be scheduled at the end of the agreed review period to formally assess whether you have met the required standards. If there has not been satisfactory improvement the matter will be progressed to the next stage of the capability procedure (or you could be dismissed at Stage 3).

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### **Can I bring someone to the meeting?**

You can bring a work colleague or representative of a Staff Association or Trade Union to any formal capability or performance review meetings.

### **What is the role of my work colleague or representative at the meeting?**

They can address the meeting to: put your case forward; sum up the case; respond on your behalf to any views expressed at the meeting; and confer with you. They cannot answer questions on your behalf.

### **Who else will be at the meeting?**

In addition to you and your manager, there could also be a representative from People and Development and possibly someone not involved in the procedure to take notes.

### **When will I hear about the outcome?**

After the meeting you will be told by your manager what, if any, action they have decided to take. The outcome will be confirmed in writing within seven calendar days of the capability meeting.

### **What should I do if I am unhappy with the outcome?**

You can appeal the outcome by writing in using the People Direct Online Portal within seven calendar days of receiving the outcome letter. You must state the grounds that the appeal are based on and any other information that should be considered. The decision of the appeal is final.

### **What paperwork will I be provided with?**

Your manager will send you copies of any notes from meetings, where appropriate.

### **What support is available?**

People Direct can be contacted on **[REDACTED]** or using the People Direct Online Portal for advice or guidance. The Employee Assistance programme offers confidential support. You can also get support from: your manager; Trade Union(s); Staff Associations etc.

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## Appendix B

### How to Conduct a Formal Capability or Appeal Meeting

The following information is for guidance only, as you will need to decide how best to progress the capability procedure depending on the specific circumstances of the case. As a manager unsatisfactory attendance or performance might be one of the most challenging and time consuming things that you have to deal with. It can also be really stressful for staff being taken through the formal procedure so please remind them of what support is available e.g. Employee Assistance Programme, Trade Unions etc.

#### Things to consider .....

- It is hard to defend a claim for unfair dismissal if proper guidance or support is not given, or unrealistic targets are set or there is too short a period to improve therefore it is important that the procedure is followed accurately.
- If training and support has been provided but the staff member still cannot meet the standards required, dismissal on grounds of capability is likely to be fair.
- There is a legal duty to act reasonably so it is important that accurate notes and other supporting information are gathered throughout the procedure to justify any actions.
- Referrals can be made to Occupational Health or the Employee Assistance Programme at any stage in the procedure.
- You need to consider any medical or specialist advice before making decisions.
- Make sure all relevant information is up to date.
- Think about if other procedures might be more appropriate e.g. ill health retirement, medical redeployment etc.

#### Before the meeting

- Arrange for the capability meeting to be at a suitable time, date and location.
- Book a suitable room where there will be no interruptions.
- Arrange for someone not involved in the case to take notes at the meeting.
- Consider if an interpreter or facilitator is needed, if there are understanding or language difficulties.
- Think about reasonable adjustments to accommodate the needs of a person with a disability or any other requirements.
- Send invite letter (hard copy or by email) confirming the details of the meeting and the right of the staff member to be accompanied.
- The letter should contain sufficient information about the attendance or performance issues to be considered and possible outcomes. A copy of any information that will be referred to at the meeting, including notes from informal

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meetings should be enclosed. This will allow the staff member to prepare for the meeting.

- Think about the structure of the meeting and make a list of the points you want to discuss. Remember the focus is on supporting improvement and finding a way to do this.
- Make sure all the relevant facts and information are available and that you have examples to highlight the unsatisfactory attendance or performance.

### Capability meeting

- Introduce those present and explain their roles.
- Remind all those present that the focus of the meeting is to look at the attendance or performance issues and find ways to support improvement to meet the standards required i.e. an improvement plan.
- If the staff member is not accompanied, explain that they have the right to be, and confirm they have chosen to attend unaccompanied (formally record in notes).
- If accompanied you should confirm the role of the work colleague or representative i.e. they can address the meeting to: sum up the case; respond to any views discussed at the meeting; confer with the staff member during the meeting or ask for a short break. However, the representative will not be able to answer questions on behalf of the staff member.
- Confirm with the staff member that they received the letter notifying them of the meeting and, where applicable, any associated documentation.
- Make sure the staff member understands that it is a formal capability meeting and the purpose of it is to go over the standards expected and look at ways to support improvement.
- You also need to make them aware of the possible outcomes. This could be no formal action, other than an agreed improvement plan or they could be issued with a written warning or final written warning or be dismissed (depending on what stage the formal procedure is at).

### Procedural considerations

- Explain the format of the meeting, i.e.
  - you will fully explain the attendance or performance issues and outline the case by going through the information that has been gathered;
  - the staff member will have the chance to respond and provide an update to do with the information that has been presented;
  - the staff member will be asked questions to do with the attendance or performance issues and possibly for clarification on any other information provided during the meeting;
  - it may be necessary to make further enquiries into background facts or into any issues raised by the staff member – if new information is presented at the meeting;
  - you will summarise the key points of the discussion at the end of the meeting and ask whether any further information should be considered;

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- you will explain any anticipated actions following the meeting and the likely timescales;
- the staff member will be advised of the outcome as soon as the matter has been fully considered and the outcome will be provided in writing; and
- there is a right to appeal any formal action.
- Explain that a break may be requested throughout the meeting, by either party, and identify any rooms available to provide the staff member (and their representative) with private space during any breaks.
- Notes will be taken throughout the meeting to highlight the key points from the discussion. The staff member (or their representative) may wish to take their own notes for reference. A summary of the notes will be provided to the staff member.
- Respond to any procedural concerns or queries that may arise.

### Explore the attendance or performance issue

- Provide sufficient detail of the attendance or performance issue and of any information that has been gathered.
- Seek to gain a full understanding of the case by asking questions. Clarify any points to do with the information gathered (or gained through further fact finding), if applicable.
- Let the staff member (or their representative) state their case and respond to any of the information that has been presented.
- You need to find out if there are any reasons for the unsatisfactory attendance or performance.
- The staff member (or their representative) should be provided with the chance to sum up their case at the end of the meeting, to make sure they have put forward the full details of information that they would like to have considered.
- After considering what has been said you have to agree an improvement plan to help meet the standards required.
- You also need to tell the team member what will happen if they are not able to meet the standards within an agreed timescale.

### Conclude meeting and confirm decision

- After the capability issue has been discussed and the questioning completed, consider whether to have a short break. This will give everybody the chance to review what has been said and consider whether there is anything they wish to clarify or to add in their closing remarks.
- Review what has been said and seek clarification on any issues before bringing the meeting to a close.
- If unable to make a decision as further information, or further time to consider the information, is required, tell the staff member when they can expect to hear the outcome (or if further action is necessary what this would involve).
- When closing the meeting, make sure that everyone understands what is going to happen next, e.g. is a follow up meeting required?

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- Depending on whether you have been able to make a decision at the meeting, tell the staff member they will receive confirmation of the outcome in writing within seven calendar days of the meeting.
- Tell the staff member of their right to appeal and the procedure to follow if they believe the outcome is not reasonable.
- Draft the outcome letter summarising the capability issue, the information gathered (where applicable), and the decision, including reasons for this, and any recommendations.

### **Record keeping**

- Record the name of the staff member being spoken to and a summary of the discussion(s) on the relevant form (including any key points, agreed actions, outcomes and recommendations).
- Make sure that the notes are factual, clear and constructive.
- Write to the staff member, summarising the outcome of meeting and any proposed actions.
- A summary of the meeting notes have to be provided to the staff member.
- Submit all original records to People Direct at the end of the capability procedure.

### **Appeal procedure**

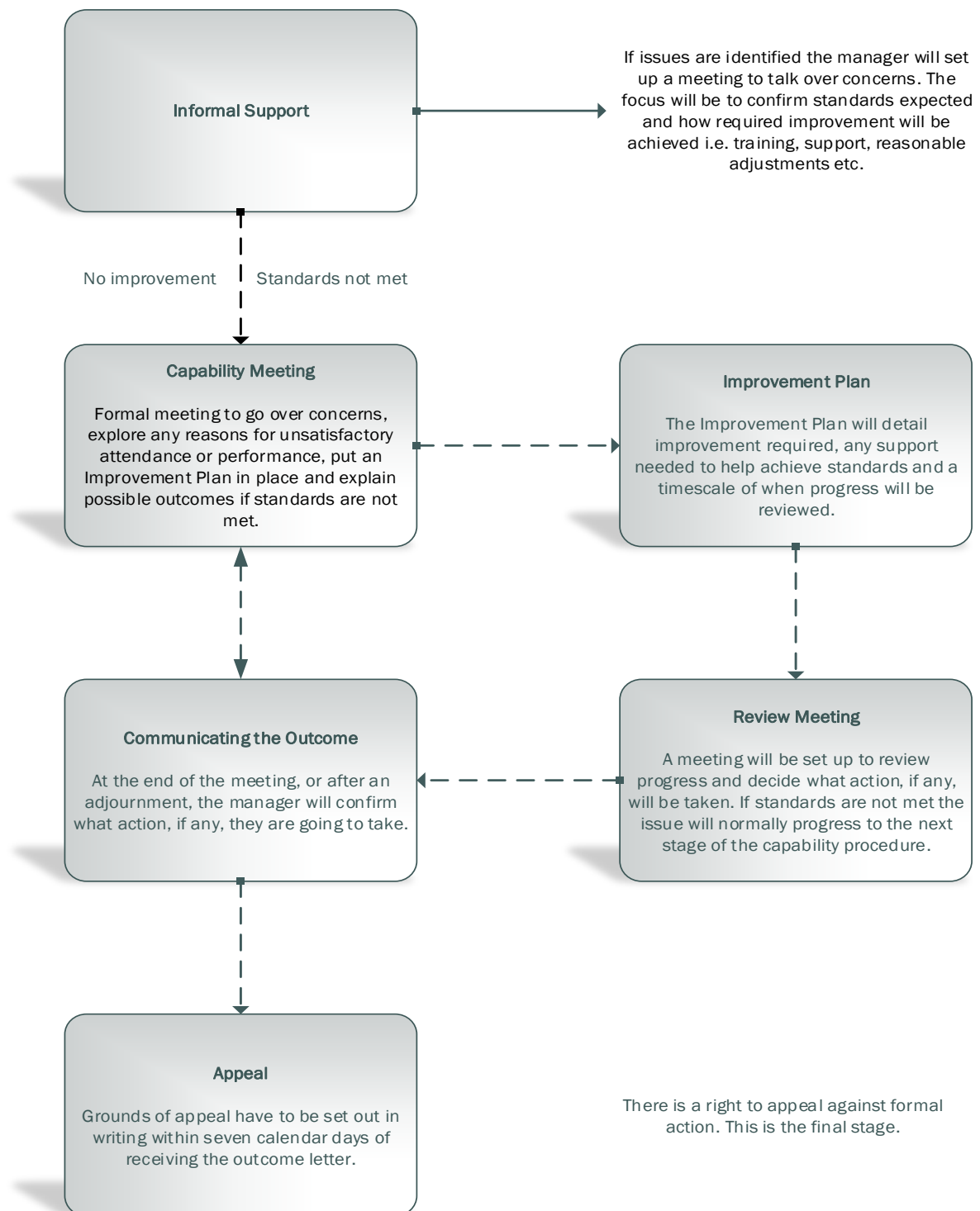
- The same guidance should be followed for any appeal. The staff member should be advised this is the final stage and there is no further right of appeal.

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## Appendix C

### Process Map



**SCOTTISH POLICE  
AUTHORITY**



**POLICE  
SCOTLAND**  
**POILEAS ALBA**

## **Appendix D**

### **The Right to be Accompanied**

You have the right to bring someone with you to any formal meetings e.g. disciplinary, grievance, capability etc. This could be a work colleague or a representative of: a Trade Union, Staff Association, Scottish Police Federation or Association of Scottish Police Superintendents. You have to make your own arrangements if you want to bring someone with you.

You have to tell us the name of the person at least 24 hours before the meeting.

The work colleague or representative is entitled to take a reasonable amount of paid time off to attend the meeting. They should also be allowed time off to get to know the case and discuss any related matters before and after the meeting.

The work colleague or representative can address the meeting to: sum up the case; respond to any views discussed at the meeting; confer with you during the meeting or ask for a break. They cannot answer questions on your behalf.

Sometimes, you might be able to bring a work colleague or representative to an informal meeting. You have to be careful when asking or agreeing to this though, as it could make the meeting seem more formal than it has to be. You would have to talk this over with your manager before any arrangements are made.

At times, you might be able to bring a non work colleague. This could be if you need additional support because of a disability or you might need an interpreter if there are difficulties with understanding or language. You would have to talk this over with your manager before any arrangements are made.

If the work colleague or representative is unable to attend, the meeting can be rearranged. This will normally be within five working days of the original date.

If they are unable to attend the re-arranged meeting you might have to ask someone else.