



**NORTHAMPTONSHIRE OFFICE OF THE POLICE, FIRE AND CRIME COMMISSIONER**  
**CAPABILITY POLICY AND PROCEDURE**

<b>Policy Version Control</b>			
Version	Date	Summary of Changes	Author
V1	October 2019	Created	Stuart F. McCartney
V2	May 2022	Reviewed and updated	Nicci Marzec

## CAPABILITY POLICY

OPFCC seeks to provide each employee with the direction, development and support necessary to assure a productive and rewarding career.

### OBJECTIVES

The objectives of this policy are to:

- improve and maintain the standard of work performance of an individual employee, through advice, coaching, guidance and support, with the emphasis on developing a series of performance improvement plans, which are mutually agreed (wherever practicable) to reach the required standards
- ensure that all employees are treated in a fair, consistent and understanding manner in relation to capability issues
- ensure that the OPFCC is a fair employer, meeting all relevant legal requirements regarding any capability related decisions it may take in relation to any employee
- support managers in carrying out their responsibilities for the maintenance of high standards of work performance by all employees
- contribute towards the improvement of the performance and effectiveness of the OPFCC
- help protect the OPFCC, its employees and service users from the consequences of poor work performance

### KEY PRINCIPLES

This Procedure ensures that the OPFCC has fair and effective arrangements for dealing with work performance and capability matters.

Before employees can be expected to reach appropriate standards of job performance, the OPFCC accepts they should be provided with appropriate training, guidance and support.

A work performance issue may arise when an employee is failing in a significant or persistent way to carry out their responsibilities or duties in a satisfactory manner due to capability, (would but can't) or as a result of misconduct (can but won't). In cases of misconduct the Disciplinary Policy and Procedure should be used.

In exceptional cases where a performance error or defect has serious consequences (eg. if it results in the serious jeopardy of the health and safety of service users or other employees) the principles/procedure for gross misconduct as outlined in the Disciplinary Policy and Procedure should be followed.

Initial identification of an employee's failure to meet the required levels of performance, often arises, through normal performance management meetings i.e. one-to-ones, supervisions, appraisals. It is expected that the majority of performance related issues will be resolved promptly at this level, except where there is evidence that such an approach has proved ineffective already. If this is the case, the manager should invite the employee to attend an Informal Capability Meeting. The discussion should alert the employee to the concerns and give the line manager the opportunity to assess the situation, on the basis of the information provided.

During this informal stage, the manager will provide the necessary advice, coaching, guidance and support in addition to developing with the employee (and agree where practicable) a series of Performance Improvement Plans in order to support the individual in attaining the required standards.

Progress made by the employee against the Performance Improvement Plan will be reviewed on a regular basis. The outcome of these reviews will determine whether it is necessary to progress to the formal stage of the process i.e. Stage 1 – Formal Capability Meeting and Stage 2 – Formal Capability Hearing.

Where improvements in performance prove to be of a temporary nature following application of the formal stages of the Capability Procedure, the manager, in conjunction with the HR Adviser, has the option to return immediately to Stage 1 of the Formal Procedure, if the performance concerns are related. Under normal circumstances, where a new area of performance concern has been identified the process should commence at the Informal Capability Meeting.

A manager, in conjunction with their HR Adviser, has the discretion to withhold a pay increment as part of any formal action taken against the employee. Any increments withheld may subsequently be paid if the employee's performance becomes satisfactory.

Employees have the right to appeal against any formal sanction given.

Whilst parts of the capability process are under the formal stage, in order to minimise unnecessary formality and apprehension, the electronic, audio or video recording by any device of such meetings/hearings will not be permitted. Should an employee think that there are exceptional circumstances where this should be allowed (for instance, due to a disability) this should be raised in advance with the person due to conduct the meeting, the chair of the hearing or the relevant HR Adviser. Due consideration will then be given to the request and the employee will be advised of the outcome of that consideration.

Where the nominated note taker at meetings and/or hearings associated with the process feels it is necessary to make an audio recording in order to support with the preparation of the notes, the requirement to make the recording will be clarified with all present at the start of the meeting.

## **RESPONSIBILITIES**

### **Managers**

Ensuring employees are aware of OPFCC rules, practices and procedures and for applying the policy in a fair and consistent manner.

Developing a culture where employees are supported and assisted in achieving the required standards of performance.

Through normal performance management meetings i.e. one-to-ones, supervisions, appraisals etc., address and resolve work performance issues informally and promptly as appropriate.

To record details of all meetings within the procedure with the employee including any targets, monitoring and support.

To keep a copy of the notes of meetings, letters to the employee and any ad hoc verbal feedback given during the monitoring period and place in the employee's "supervision" file where this process is used. If individual "supervision" files are not used, it should be placed in a designated confidential and secure location within the department. Only letters relating to the formal procedure should be on the employee's personal file.

If the matter progresses to a Stage 2 – Formal Capability Hearing, to present the details of

employee's failure to meet required standards, including all relevant performance statistics and the outcome of performance improvement plans to date.

### **Employees**

Employees have a contractual responsibility to perform at a satisfactory level and are therefore expected to be committed to achieving such levels of performance. Performance is routinely reviewed biannually through the OPFCC Performance Development Review (PDR) process and in regular individual reviews throughout the year.

To attend any meetings and hearings convened in accordance with the Capability Policy and Procedure.

### **Trade Union Representatives**

The same standards will apply to Trade Union Representatives as to all other employees. However, where application of formal action is being considered against a Trade Union Official or Representative, the case must first be discussed with a Senior Trade Union Representative or full time Official. This is to avoid the action being misconstrued as an attack on the union itself or on its representation and negotiating role, and is in accordance with the ACAS Code of Practice.

<b>CAPABILITY PROCESS – INFORMAL STAGE</b>	
<b>Informal Actions</b>	<p>Initial identification of an employee's failure to meet the required levels of performance, often arises, through normal performance management meetings i.e. one-to-ones, supervisions, appraisals.</p> <p>It is expected that the majority of performance related issues will be resolved promptly at this level, except where there is evidence that such an approach has proved ineffective already. If this is the case the manager should invite the employee to attend an Informal Capability Meeting.</p>

<b>CAPABILITY PROCESS – INFORMAL STAGE</b>	
<p>Informal Capability Meeting</p>	<p>The discussion should include the following:</p> <ul style="list-style-type: none"> <li>• the manager will present the evidence of the performance issue(s) to the employee and express his/her concerns being sensitive at all times to the fact that unless otherwise identified, issues of performance are not disciplinary in nature, and that the correct approach is therefore one of constructive support, guidance, coaching and encouragement</li> <li>• the employee will be given a full opportunity to respond and explain any factors affecting his/her current performance levels. If any underlying medical issues are suggested, it may be appropriate to refer the employee to Occupational Health</li> <li>• the manager will give thorough consideration to all the responses made by the employee</li> <li>• the manager should make the employee aware of the confidential CiC Employee Assistance.</li> </ul>
<p><b>Outcomes from the Meeting</b></p>	<p><b>Follow up Action:</b>            If the need for further action is identified the outcome of the Informal Capability Meeting this will be confirmed in writing to the employee, and details of the specific actions and targets included in a Performance Improvement .</p> <p>As a minimum the date(s) for the first review meeting and last review meeting at the end of the monitoring period should be notified in advance.</p>

	<p><b>Possible Outcomes of End of Review Period:</b></p> <p>At the end of the agreed monitoring period the manager will meet with the employee to discuss the progress and inform them of the outcome of the review period. The manager should then confirm the outcome to the employee in writing:</p> <ul style="list-style-type: none"><li>• where performance has reached the required standards an agreement to maintain the standard of performance should be made including how this will be measured. This should be confirmed formally in writing.</li><li>• if the performance level remains unsatisfactory; the employee should be invited in writing to a Stage 1 – Formal Capability Meeting.</li></ul>
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<b>CAPABILITY PROCESS – FORMAL STAGES</b>	
<b>Stage 1 – Formal Capability Meeting</b>	<p>The Stage 1 – Formal Capability Meeting should be held with the employee’s Manager and a Director as appropriate.</p> <p>Managers should seek advice from HR before progressing with this stage.</p>
	<p><b>Preparation before the Meeting:</b>  Manager invites employee to the Stage 1 – Formal Capability Meeting to discuss the continuing concerns, giving at least 5 working days' notice.</p> <p>The employee should be provided with a copy of the Informal Stage - Performance Improvement Plan and the notes of subsequent review meetings.</p> <p>The employee is advised that they have the right to be accompanied by an OPFCC work colleague or recognised Trade Union Representative, recognised Trade Union Officer.</p> <p>Any documentation that the employee/representative wishes to submit should be provided no later than 3 working days before the meeting. This will avoid delays at the meeting.</p> <p>A designated HR Adviser will also be in attendance to provide support to the Chair of the meeting i.e. Senior Manager.</p>
	<p><b>During the Meeting:</b>  The discussion should include the following:</p> <ul style="list-style-type: none"> <li>• a review of the monitoring period and support given the shortfall in performance</li> <li>• agreement (where practicable) of the Performance Improvement Plan and further targets</li> <li>• any further training and support that is required and can be provided</li> <li>• consideration of any extenuating circumstances that may be affecting the employee’s performance</li> <li>• consideration of withholding an increment until level of performance has reached the required standards</li> <li>• establishment of a further monitoring period (between 1 and 3 months). However, each case will need to be considered on its own merits and as such it maybe that a shorter or longer monitoring period is required and advice should be sought from your HR Adviser in all cases</li> <li>• review meetings (at least two)</li> <li>• the employee should be forewarned that the level of performance is not acceptable and that failure to improve by the end of the review period may result in progressing to Stage 2 – Formal Capability Hearing of the procedure, which could lead to dismissal on the grounds of capability</li> <li>• consideration of alternative employment. Where a suitable vacancy exists the normal recruitment and selection process will apply.</li> </ul>

**CAPABILITY PROCESS – FORMAL STAGES**

**Follow up Action:**  
The outcome of the Stage 1 – Formal Capability Meeting will be confirmed in writing to the employee including the possible outcome if performance continues not to be acceptable. A copy of the Performance Improvement Plan will also need to be enclosed with the letter.

Review meetings should take place between the employee and their Manager during the agreed period to monitor progress, which should be documented in the 'Progress' column of the Performance Improvement Plan. Any targets that need amending during this period should also be made on the Performance Improvement Plan. Furthermore, regular feedback may also be given to the employee during the review period, this may be done verbally (ad hoc meetings, one to ones, supervisions etc) but a written record should be kept.

As a minimum the date for the first review meeting and final review meeting at the end of the monitoring period should be set and included in the letter.

**Possible Outcomes of Review Period:**

At the end of the agreed monitoring period the employee's Manager and Director will meet with the individual to discuss the progress and inform them of the outcome of the review period.

The Senior Manager should then confirm the outcome to the employee in writing.

The employee has now reached, or is shortly expected to reach, the specified levels of performance, and that no further formal action is necessary. However, the decision will remain 'live' for 12 months and therefore if satisfactory improvement proves only to be of a temporary nature then the manager has the option of returning immediately to this point in the procedure, if the performance concerns are related.

Under normal circumstances, where a new area of performance concern has been identified the process should commence at the Informal Capability Meeting.

Any increments withheld may subsequently be paid if the employee's performance becomes satisfactory, or

- The employee has made substantial improvements, but his/her performance is still below acceptable standards. A further review period of between 1 to 3 months will therefore be required, or
- The employee has made little or no improvement, and has shown few signs that he/she will be capable of meeting the required standard. In

<b>CAPABILITY PROCESS – FORMAL STAGES</b>	
	such circumstances, a Stage 2 – Formal Capability Hearing will be arranged.
<b>Stage 2 – Formal Capability Hearing</b>	<p>Following notification from the manager, the designated HR will convene the Stage 2 - Capability Hearing and confirm the arrangements in writing to the employee (with copies to Panel Members and Representative (if appropriate)), giving at least 10 working days' notice. This notice will include:</p> <ul style="list-style-type: none"> <li>• a clear statement of the employee's failure to meet the required standards of performance and the Performance Improvement Plan</li> <li>• record of monitoring/progress to date (including a copy of all correspondence from the Informal stage and Stage 1 – Formal Capability Meeting including Performance Improvement Plan, notes of subsequent review meetings, advice from Occupational Health (if appropriate))</li> <li>• the date, time, location of the hearing</li> <li>• names of the panel members</li> <li>• the name of the person who will present the management position</li> <li>• whether the manager intends on calling any witnesses</li> <li>• the employee's entitlement to call witnesses</li> <li>• the employee's right to be accompanied by a OPFCC work colleague or a recognised Trade Union Officer or recognised Trade Union Representative</li> <li>• a decision may be taken to dismiss on the grounds of capability</li> <li>• the right of appeal against formal sanctions i.e. dismissal on the grounds of capability and/or withholding the pay increment.</li> </ul>
	<p><b>Preparation before the Hearing:</b> Any documentation from the employee should be submitted 5 working days prior to the hearing including advance notification to the HR Adviser of the number of witnesses (if any) that they plan to call.</p> <p>The additional information will be distributed to all parties by the HR Adviser 3 working days prior to the Hearing.</p> <p>If the employee wishes to attend the hearing but is absent due to sickness or some other reason or their representative is unable to attend, the meeting may be postponed and will be rearranged within 5 working days or as soon as is practicable. The employee should be notified of the date in writing and informed that if they are not able to attend on the revised date the hearing will proceed on this occasion in their absence. If the employee cannot attend personally they will be invited to put their case either through their representative or if that person is not available, an alternative representative, or submit their case in writing in advance by no later than (3 working days in advance of reconvened hearing).</p>

## CAPABILITY PROCESS – FORMAL STAGES

### **During the Hearing:**

#### **Hearing Procedure:**

The Hearing Panel will consist of the following three officers, who should not have played any previous part in any aspect of the case:

#### **Chairperson**

A Director Area who has the authority to implement all of the possible outcomes of the Hearing.

#### **A Second (Independent) Manager/ Director**

Another senior manager, wherever practicable of at least equivalent status to the chairperson.

#### **An (Independent) HR Adviser**

A HR Adviser's prime role will be to contribute specialist knowledge of procedural issues, relevant policies and employment law matters. They will participate fully in the hearing and any discussions about the case, but will not be a party to the final decision.

#### **A Notetaker**

As dismissal is a possible outcome of a Stage 2 – Formal Capability Hearing, the notetaker will be provided by the Chair of the Panel.

#### **Management Position**

This will normally be presented by the employee's manager/ Director and will be required to demonstrate what action, support, training, and discussions have taken place with the employee throughout the Informal stage and Formal Stage 1 of the procedure.

#### **Employee/Employee Representative**

The employee/employee representative will be required to give an explanation as to why they have not met the required standards of performance.

#### **The Decision**

All three panel members discuss the employee's performance history, all related evidence and any relevant OPFCC policies, procedures and practices. The Chairperson and Independent Manager make the final decision on the outcome.

Immediately after the Hearing, the Chairperson (assisted by the HR Adviser) will prepare a detailed Record of the Outcome.

	<p><b>Outcomes of Hearing:</b></p>
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No further action. However, the decision will remain 'live' for 12 months and therefore if satisfactory improvement proves only to be of a temporary nature then the manager has the option, of returning immediately to the Formal Stage 1 of the procedure, if the performance concerns are related. Under normal circumstances, where a new area of performance concern has been identified the process should commence at the Informal Capability Meeting.

**CAPABILITY PROCESS – FORMAL STAGES**

	<p>Extension of previous monitoring period (1 to 3 months). However, each case will need to be considered on its own merits and as such it may be that a shorter or longer monitoring period is required and advice should be sought from your HR Adviser in all cases. Should the employee not have made satisfactory progress at the end of this period, the Capability Hearing will be reconvened with the same panel following the same procedure. Where it has been decided that an increment has been withheld until level of performance has reached the required standards, the Manager will need to email to advise payroll of this.</p> <p>Dismissal with contractual notice. In exceptional circumstances, the employee will not be required to attend work during their notice period.</p>
	<p><b>Follow up Action:</b> The outcome of the Stage 2 – Formal Capability Hearing should be confirmed to the employee in writing by the Chair of the Capability Hearing.</p> <p>Where an employee is dismissed on the grounds of capability:</p> <ul style="list-style-type: none"><li>• the letter should include their right of appeal</li><li>• the manager should complete a OPFCC Leavers Form and return to MFSS.</li></ul> <p>Any increments withheld may subsequently be paid if the employee’s performance becomes satisfactory, the Manager will need to consider this in conjunction with their HR Adviser before emailing MFSS to advise of this.</p>
<b>Stage 3 – Appeal</b>	<p>An employee has the right to submit an appeal against formal sanctions i.e. dismissal on the grounds of capability and/or withholding the pay increment using the Appeals Policy.</p> <p>If the employee wishes to appeal they must do so in writing, outlining the reasons for this, within 10 working days of the date on which the decision is confirmed in writing.</p>

**ADVICE AND SUPPORT**

Please contact OPFCC HR Lead.