



Capability Policy

The Office of the Police and Crime Commissioner (OPCC) is committed to the principles of equality and diversity. No member of the public, member of staff, volunteer or job applicant shall be discriminated against on the grounds of age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; or sexual orientation.

Policy Statement

1. The Capability Policy and Procedure (the “policy”) applies to all members of staff employed by the OPCC.
2. The primary aims of this procedure are to provide a framework within which managers can work with employees to maintain satisfactory performance standards and to encourage improvement where necessary and to ensure the management of sickness absence in a fair and consistent way.
3. It is our policy to ensure that concerns over capability are dealt with fairly and that steps are taken to establish the facts and to give employees the opportunity to respond at a hearing before any formal action is taken.
4. We recognise that performance may be affected by many factors, including:
 - lack of facilities and training
 - lack of aptitude, skill or experience
 - personal or family difficulties
 - poor attendance for health or other reasons; or
 - changes in the nature and allocation of work, including heavy workload

This policy is used to deal with all aspects of capability and applies in cases of poor performance and sickness absence.

5. This procedure does not form part of any employee's contract of employment and it may be amended at any time. We may also vary any parts of this procedure, including any time limits, as appropriate in any case.

Who is covered by the policy?

6. This policy applies to all employees regardless of length of service. It does not apply to agency workers or self-employed contractors.

Disabilities

7. Consideration will be given to whether poor performance or sickness absence may be related to a disability and, if so, whether there are reasonable adjustments that could be made to your working arrangements, including changing your duties or providing additional equipment or training. We may also consider making adjustments to this procedure in appropriate cases.
8. If you wish to discuss this or inform us of any medical condition you consider relevant, you should contact your line manager.

Confidentiality

9. Our aim is to deal with capability matters sensitively and with due respect for the privacy of any individuals involved. All employees must treat as confidential any information communicated to them in connection with a matter which is subject to this capability procedure.
10. You, and anyone accompanying you (including witnesses), must not make electronic recordings of any meetings or hearings conducted under this procedure.
11. You will normally be told the names of any witnesses whose evidence is relevant to your capability hearing, unless we believe that a witness's identity should remain confidential.

Informal Resolution

12. Where there are concerns regarding an individual's capabilities, supervisors/managers should initially have an informal discussion with him/her to determine reasons for the unsatisfactory performance and identify ways of resolution/improvement without recourse to the formal procedure.
13. Following the informal discussion a development plan should be drawn up with the individual taking into consideration the following areas:
 - definition of issue/problem
 - training/retraining/development actions
 - time plan for demonstrable improvement, with reference to specialist advice, e.g. Occupational Health and Safety Unit
 - mentoring/coaching where appropriate
 - actions to address attendance levels

14. Formal Capability Process – 1st Formal Capability Interview

- If improvements in performance are not achieved the formal procedure will be implemented. The individual will be invited to attend a 1st Formal Capability Interview. In such cases the individual must be given notification in writing of the interview to be held under the procedure, with a minimum of seven working days' notice. The notification should also include details of the general nature of the matter and examples of the unsatisfactory performance and the individual's right to be represented
- The Line Manager should conduct the formal interview and should address the following points:
 - Confirmation/exploration of the unsatisfactory performance with documented evidence of where unsatisfactory performance has taken place
 - Targets to be achieved
 - Timescales for improvement/review
 - Likely consequences of the shortcomings outlined
 - Guidance on remedies, together with any appropriate training/retraining support
 - A written record of the interview(s) should be taken
- Following the interview the Line Manager should prepare a further development plan with timescales of improvement and a letter confirming that the individual has been issued with 1st Stage Advice which should be sent to the individual along with a record of the interview
- Development plans should last no longer than 12 months and no less than 3 months, this is to ensure that that the individual has been given sufficient time in order for them to improve their performance

15. Review Periods

Once the Line Manager has implemented a development plan, timescales for its completion should be set along with monthly reviews. The purpose of these reviews is to assess whether the individual is on course to complete the agreed objectives or if any adjustments need to be made.

16. Extension of the Development Plan

In some cases it may be necessary to extend the development plan beyond the agreed end date. This may be necessary where an individual has completed most of the objectives set however is outstanding on some due to circumstances beyond their control i.e. awaiting a training course. The decision to extend the development plan should be made along with the individual during a review of their performance under the plan. Extensions to the development plan should be, in most cases, no longer than a further 3 months.

17. Completion of 1st Stage Advice

Once the development plan has been completed the Line Manager should write to the individual to confirm that they have completed the required competencies within the plan and they have improved sufficiently for 1st Stage Advice to be concluded. 1st Stage Advice will remain on their personal file for a period of not less than twelve months, and will be linked to a review of any action plan(s) agreed during this period.

18. Formal Capability Process – 2nd Formal Capability Interview

Following the issue of previous advice if there has been insufficient improvement, or any improvement has not been maintained, the individual will be invited to attend a 2nd Formal Capability Interview. In such cases the individual must be given notification in writing (of the interview to be held under the procedure) with a minimum of seven working day's notice. The notification should also include details of the general nature of the matter and examples of the unsatisfactory performance and the individual's right to be represented.

The Line Manager should conduct the formal interview, addressing the points as set out in the 1st Stage Capability Interview. The Line Manager should prepare a further development plan with timescales of improvement and a letter confirming that the individual has been issued with 2nd Stage Advice which should be sent to the individual along with a record of the interview.

Review periods should be agreed as set out in paragraph fifteen.

19. Completion of 2nd Stage Advice

Once the development plan has been completed the Line Manager should write to the individual to confirm that they have completed the required competencies within the plan and they have improved sufficiently for 2nd Stage Advice to be concluded. 2nd Stage Advice will remain on their personal file for a period of not less than eighteen months, and will be linked to a review of any development plans agreed during this period.

20. Formal Capability – Final Interview

- If there has been insufficient improvement or if a more serious performance problem arises where it is thought that the individual has been grossly incompetent the individual may be dismissed with notice or pay in lieu of notice. This may also include serious health and safety concerns, or where following the issue of previous advice there has been insufficient or lack of sustained improvement.
- Where dismissal is a consideration a Final Interview will be arranged before a Panel appointed by the Chief Executive. The Panel will be chaired by a senior manager from OPCC and will comprise at least two members who have had no previous involvement in the case. Professional HR advice will be made available to the Panel. The interview will comprise of a presentation of the management case and the individual's response. A statement of case will be prepared by both sides to be heard at the interview.
- All parties should receive a minimum of seven days' notice of the time, date and location of the interview, although it is acknowledged that in complex cases, more time may be required. The details should be confirmed in writing to the individual.

The statement of case prepared by both sides should also be made available at this time

- The Panel will, on the basis of the evidence presented, review the case and determine the appropriate action from one or more of the following areas: -
 - Transfer to another pattern of work/role
 - Withholding of increments
 - Down grading
 - Dismissal
- A letter confirming the outcome of the Interview should be sent to the individual detailing any appropriate action and a copy should be reflected on the individual's personal file.

21. Appeals

- Individuals have a right of appeal against all action imposed under this procedure. The Appeal Hearing will determine whether the decision taken by the Chair at the time was fair and reasonable
- Notification of the intention to appeal against any appropriate action must be submitted in writing to the Chief Executive within seven working days of receipt of the written confirmation of the action. Within fifteen working days of their notification to appeal, the individual must submit a written statement outlining the grounds of the appeal
- Appeals against any action other than dismissal, will be heard by the Chief Executive or his appointed representative, advised by an HR or legal professional
- Appeals against dismissal will be heard by the Police and Crime Commissioner, advised by HR and legal professionals
- The case will be presented by the Chair of the final interview, supported by the HR/legal representative who advised the chair. The individual shall have a right to attend the appeal hearing, accompanied by a trade union representative or fellow worker