

WILTSHIRE POLICE FORCE

POLICY AND PROCEDURE



Managing Performance and Capability For Wiltshire Police & OPCC Staff

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GLOSSARY OF TERMS

Term	Meaning
GDPR	The General Data Protection Regulation 2016/679
JNCC	Joint Negotiation and Consultation Committee
Centurion	Force performance and conduct system
Epdr	Electronic Annual Appraisal System
OPCC/PCC	Office of the Police Crime Commissioner/Police Crime Commissioner

RELATED POLICIES, PROCEDURES and OTHER DOCUMENTS

A tool kit and quick reference guide has been produced to accompany this procedure. Other policies, procedures and other related documents that are linked to this procedure are:

- Attendance Management Procedure
- Police Staff Disciplinary Procedure
- Police Staff Probationary Procedure
- National Investigation Exam Failures & Deferrals
- JRFT and Officer Personal Safety Policy

AUTHORISED PROFESSIONAL PRACTICE

None applicable.

LAW RELATING TO THIS DOCUMENT

Leading statutory authority

- Health & Safety Act Work Act 1974
- Equality Act 2010
- Police (Health and Safety) Act 1997
- Data Protection Act/Access to Medical Records Act 1998
- The General Data Protection Regulation 2016/679
- ACAS Code of Practice

Paragraph 1 of the "Acas code of practice on disciplinary and grievance procedures" anticipates that the same procedure is used for both conduct and capability issues. That may be a suitable approach for straightforward cases or for small employers, but larger employers or employers facing complicated performance issues that require more than just a straightforward warning are likely to benefit from a separate procedure. The code states that where a separate procedure is used, the basic principles of fairness set out in the code should still be followed (and adapted where necessary).

Capability is a potentially fair reason for dismissal under s98(2)(a) of the Employment Rights Act 1996. To comply with the requirement of reasonableness under s98(4) of the Employment Rights Act 1996, the employer must show that the employee's performance was sufficiently bad to justify dismissal and that it acted reasonably in dismissing the employee for this reason.

DATA PROTECTION

Any information relating to an identified or identifiable living individual recorded as a consequence of this procedure will be processed in accordance with the General Data Protection Regulation (GDPR).

The General Data Protection Regulation requires employers to comply with principles for processing personal data, including to protect against unauthorised access of personal data. Personal data that is inappropriately accessed or disclosed may constitute a data breach. The GDPR requires organisations to keep a record of all data breaches and, where the breach is likely to result in a risk to the rights and freedoms of individuals, the organisation must notify the Information Commissioner within 72 hours of becoming aware of the breach. If the data breach results in a high risk to the rights and freedoms of individuals, those individuals must be notified without undue delay.

FREEDOM OF INFORMATION ACT 2000

This document has been assessed as suitable for public release.

MONITORING and REVIEW

Monitoring the effectiveness of the procedure will be undertaken in conjunction with Human Resources to establish the type of queries that arise. It is the responsibility of Human Resources to ensure this procedure is updated in line with any legislative changes and will ensure it is reflective of best practice.

WHO TO CONTACT ABOUT THIS PROCEDURE

HR are responsible for this procedure. All queries should be via the People Services Centre.

PERFORMANCE AND CAPABILITY PROCEDURE

1. Introduction

- 1.1 This procedure covers all Wiltshire Police staff members. Wiltshire Police staff are deemed to be those who work under the governance of either the Chief Constable of Wiltshire Police, or the Police Crime Commissioner (PCC).
- 2.1 Wiltshire Police and the PCC are committed to ensuring all staff achieve and maintain the standards of performance and capability required in order to enable its operations and for all activities to be carried out effectively.
- 1.2 This policy and accompanying procedure enables managers and their staff to identify, discuss and address, in an objective and structured way, any perceived shortfall in required standards. The Force & the PCC recognises that poor job performance and incapability should not be treated as “disciplinary offences”. This however may run parallel with, but is not part of the Staff Disciplinary Procedure.
- 1.3 Under the Employment Rights Act 1996, capability is defined as an individual’s level of skill, aptitude, health or any other physical or mental quality required in order to carry out their work.

2. Aims, Purpose and Scope

- 2.1 The aims of this policy are to effectively manage underperformance in meeting the organisational needs of the Force by:-
 - Encouraging a culture of high performance and improving areas of underperformance in the Force
 - Identifying a framework for the Force’s requirements in respect of consistent and effective performance management in the workplace.
 - Identifying the responsibilities of individuals and managers in the process of sustaining and managing satisfactory performance.
 - Establishing a consistent approach to the management of performance across the Force.
 - Ensuring fair treatment of Police Staff.
- 2.2 The Policy is owned by the Head of People Services and Development. Implementation is the responsibility of managers and key personnel and this has been agreed in consultation with Unison and has been ratified and signed off by the Joint Negotiation and Consultation Committee (JNCC).
- 2.3 Every member of the Force has a responsibility to ensure compliance with Legal, National and local policies and associated operating procedures. This includes all staff members within the OPCC.
- 2.4 The Performance and Capability Procedure will provide managers with equitable and consistent methods of dealing with individual members of staff who are exhibiting unsatisfactory work performance for whatever reason. This includes attitude and behaviours.

- 2.5 It will provide a means for staff to be advised both informally and formally of the effects and the potential consequences of continued unsatisfactory work performance. It will also ensure that staff are provided with appropriate support, relevant information and if invited to any formal performance and capability meeting, are given the opportunity to express their view of events and are offered practical assistance appropriate to the circumstances.
- 2.6 The Organisation accepts that it has an obligation to ensure, as far as reasonably practicable, that all Staff are made aware of the expectations applying to their own behaviour. Staff also have a personal responsibility to ensure their understanding of the Organisational standards of behaviour and of the expectations in regards to their role and responsibilities as set out in their terms and conditions of employment (this includes those that are set out in their job description and as agreed with their line management).
- 2.7 These procedures do not apply where termination of employment is
- as the result of redundancy
 - the natural termination of a temporary staff member's contract of employment
 - where an staff member is still within their probationary period
 - where an staff member resigns or termination occurs by mutual consent.
- 2.8 Agency staff and volunteers are not covered by the Performance and Capability Procedure
- 2.9 In the case of multiple issues such as performance and attendance, these **should** be kept separate and it is therefore possible that an individual may be on different stages of the capability procedure for performance and attendance simultaneously.
- 2.1.0 Performance and capability concerns during the period of a staff member's probationary period, will be addressed via the Police Staff Probationary procedures.

3. Terms and Definitions

3.1 Performance

Performance within this policy is defined as a staff member's ability to achieve the required standard of performance, skills and/or aptitude. This includes the positive attitude and behaviours displayed in order to successfully perform as per the requirements of the role. Underperformance is therefore defined as a staff member's inability to perform to the required standard as a result of a lack of performance related skill and/or aptitude which includes any negative attitudes and behaviours preventing them to meet the required standards to successfully perform in their role.

3.2 Capability

Within this policy, capability is to be defined as the level of health, physical or mental quality required of a staff member to perform their role to the standard required. Absences from the workplace due to sickness, or concerns regarding attendance, are to be managed in accordance with the Force's Attendance Management Procedure.

3.3 **Recuperative duties**

Facilitate the earliest possible return to work by making, if appropriate, short term reasonable adjustments following advice from the Force Medical Advisor or Occupational Health Nurse.

3.4 **Adjusted duties** facilitate (following advice from the Force Medical Advisor or Occupational Health Nurse) a longer period of recuperation to prevent the inappropriate early medical retirement of experienced Staff hence retaining their skills and expertise in line with the requirements of Equality Act 2010

3.5 **Medical Redeployment** facilitates the opportunity for staff to take up employment in another post when they have been deemed unfit for their current role by the Force Medical Advisor on the grounds of medical capability.

4. **The Policy**

4.1 The policy and procedure will apply to all members of Police Staff who have completed their probationary period. For new staff and for those staff members who have transferred into a new post, the probationary procedure will apply for the period of the probation. A copy of the policy can be found under “Policies and Procedures” on Firstpoint.

4.2 The Performance and Capability Procedure is designed to cover significant or persistent failure to meet required standards. It is accepted that this can be for a variety of reasons, some of which may be within the individual's ability to change or not. Occasional minor lapses of performance below acceptable standards will normally be dealt with informally in the first instance and will likely be addressed through an informal support plan, which is designed to make individuals aware of the shortfall in performance and to encourage and assist individuals in addressing that shortfall.

4.3 The Performance and Capability Procedure should be used as a guide, to be applied according to individual circumstances. For example, timescales could be shorter or longer, but they must always be reasonable in the circumstances. Should there however, be an extreme shortfall in performance, the process may be accelerated with some stages of the process being excluded. Managers will always seek guidance and advice from HR prior to taking any action as described above.

4.4 All discussions and meetings with individuals must be recorded and evidenced appropriately in order to ensure the process is as transparent as possible and to show the individual has been made aware and has had every opportunity to address performance concerns. All records should be uploaded onto Epdr.

4.5 Please note that for those individuals where the continued employment is subject to the successful completion of a qualification/accreditation (i.e.: ICIDP), specific details can be found in the National Investigators exam – Failures and Deferrals policy which can be found under “Policies and Procedures” which can be found on Firstpoint under Policies and Procedures.

5 Responsibilities

- 5.1 It is emphasised that the responsibility for managing performance lies primarily with the first line supervisor with the support and guidance provided by an HR Advisor.

It is important that individuals, managers and other key personnel have clear roles and responsibilities in relation to carrying out the Force and OPCC policy.

5.2 Police Staff

It is the responsibility of each Police Staff member to maintain a satisfactory level of performance and to demonstrate attitudes and behaviours that are aligned to the values and standards held by the organisation.

5.3 First Line Supervisors

First Line Supervisors must take responsibility and accept accountability for the effective and supportive management of staff performance, in line with the information provided in this procedure. Managers also have a personal responsibility to ensure that they carry out this duty whilst demonstrating the attitudes and behaviours that are aligned to the values and standards held by the organisation.

5.4 Second Line Supervisors

Formal Meetings will normally be heard by a second line supervisor, or an appropriate alternative manager if necessary, who can take the decision to issue an individual with any formal sanction as appropriate in the circumstances which will be considered on a case by case basis.

5.5 Senior Managers

Formal hearings will be heard by a member of senior management, who will have the full range of authority, one of which is dismissal.

5.6 Staff Association - Unison

An individual is entitled to be accompanied by Unison should they be a member, or a work place colleague at any formal capability review.

- 5.7 The role of the Unison Representative is to provide advice, guidance and support to an individual. In any case where an individual is unable to attend a formal meeting / hearing, the Unison Representative may attend and make representations on behalf of the individual with that individuals expressed consent.

6 Relationship with Issue Resolution & Dignity at Work Procedure

- 6.1 Performance / Capability proceedings will not be automatically suspended in the event of allegations or complaints being raised against their supervisors, but may be considered in line with the Issue Resolution and Dignity at Work Procedure which can be found under “Policies and Procedures” on Firstpoint.

7 Confidentiality

- 7.1 Any medical information relating to a capability case will be progressed accordingly under the Access to Medical Reports Act 2009.

8 Monitoring and Reviewing

- 8.1 With reference to the Equal Opportunities policy, this Policy will be monitored by the Policy Owner on an on-going basis for implementation issues, consistency of application and the possibility of discrimination.
- 8.2 This policy and procedure will be reviewed in line with the published review schedule, normally after 3 years. The policy will also be reviewed whenever new legislation/guidance which may have an impact is introduced.
- 8.3 In the event that an individual feels disadvantaged by the requirements of a policy or procedure or where they perceive there to be an impact which is intentionally or unintentionally unfair, the matter should be dealt with in accordance with the Appeals process. (See point 16 of this document).
- 8.4 The Issue Resolution Procedure cannot be used in addition to any appeal that has already been conducted and concluded. Consideration however should be made as to the effectiveness at any stage of utilising the Mediation scheme to assist in resolving the matters.

9 Principles of the Procedure

- 9.1 Throughout, supervisors and Line Managers will need to bear in mind the Force's obligations under the Equality Act 2010, in particular to make reasonable adjustments when dealing with members of staff with a disability. Further advice can be obtained from the Human Resources team.
- 9.2 It should be determined, as far as possible, whether a person's apparent lack of ability or competence is due to **capability** (which may be outside the staff member's control) or **personal conduct** (over which the staff member has control). It is entirely appropriate to manage both of these under the Performance and Capability procedures.
- 9.3 If the staff member fails to come up to standard through negligence, (which is within their control) this may be treated as **misconduct** and dealt with under the disciplinary procedure which can be found under "Policies and Procedures" on Firstpoint.
- 9.4 A staff member should be advised that they are entitled at all stages of the procedure, both informal and formal, to be accompanied by a colleague or a Unison representative of their choosing. This individual must be employed by Wiltshire Police, but in exceptional circumstances a regional representative may be permitted if deemed appropriate.
- 9.5 The staff member must be told why management are dissatisfied with their level of performance in their role. No formal action under this procedure will be taken against a staff member until appropriate informal counselling and discussion have taken place. This need not have necessitated an informal support plan, but may have included prior conversations and discussion during for example one to one meetings etc. In any event, the staff member should have prior knowledge of the issues or concerns.

- 9.6 At the commencement of the procedure, the staff member will be advised in writing of the nature of their poor performance, the steps required to address the shortfall in performance and the associated timescales in regards to improvement expectations. The staff member will thereafter be kept informed at all stages of the procedure.
- 9.7 No decision regarding any action will be taken until the staff member has had an opportunity to respond to these concerns and having been given the opportunity to address them.
- 9.8 Where a staff member is required to attend a Formal Performance and Capability Meeting, there will be advance notice to the staff member of the grounds for that hearing and they will be given the opportunity to review the information that will be considered during this hearing.
- 9.9 An staff member is not likely to be dismissed for an initial matter of capability (unless it is considered to be gross incapability) where a lesser determination would be inappropriate (See Section 15.7).
- 9.10 An staff member has a right of appeal against any decision to impose a formal sanction including dismissal. (See Section 16)
- 9.11 There may be occasions where it is deemed more appropriate to consider the matter under the Disciplinary Procedure. Both procedures are regarded as interchangeable within the formal and informal stages and this must be discussed with the Human Resources Department.
- 9.12 Case Law distinguishes between what is seen to be:
- sheer incapability due to inability to function i.e. not the staff member's fault and
 - failure to exercise fully such talent as the staff member has which can relate to failure to reach standards through carelessness, negligence, idleness or conscious acts.

In cases where (b) applies, there is a possibility that these (dependent on circumstances) may be treated as misconduct under the Disciplinary Procedure.

- 9.13 Almost every case is different and must be considered on a case by case basis. It is difficult therefore to provide a comprehensive list of areas included within the term capability. In general terms, however, it is possible to identify two main categories:

Ability

- lack of qualification, skill or aptitude for a particular job,
- a change in the nature of the job making it more complex or heavier in terms of workload following any appropriate training
- Medical reasons

Sickness

- a change in the staff member e.g. unable to fulfil the role due to disability
- ill health (mental or physical) leading to long term absence
- level of attendance insufficient to fulfil the role

Any capability issue relating to ill health either physical or mental, should be dealt with in accordance with the Medical capability and redeployment procedure, (See sections 17-20), which forms part of this process.

All cases of capability action under these procedures will be recorded and held on the Force's Centurion system. Related documentation will be held as per the guidelines and requirements of the General Data Protection Regulations (GDPR).

- 9.14 Whilst the same standards apply to their conduct and job performance as staff members, no formal action will be taken against a Unison representative until the circumstances have been discussed with a full time official of Unison. No action will be taken against any staff member in respect of alleged incapability which arises from trade union duties or activities until the matter has been fully discussed with the Head of Human Resources.
- 9.15 Amendments to this procedure, except for those that arise consequentially from legislation or case law, shall be the subject of consultation with Unison and the Joint Negotiating and Consultation Committee (JNCC).
- 9.16 Any staff member who becomes the subject of a capability process will be offered the services of the Occupational Health Department and if agreed appropriate a referral should be submitted by their supervisor or HR representative.
- 9.17 Nothing in this procedure prevents a supervisor, Superintendent/Departmental Head from delegating to others particular tasks e.g. evidence gathering in appropriate circumstances.
- 9.18 Should the staff member have previously been subject to informal performance support plans, then consideration should be given to an increased minimum review period (6, 9, 12 months) as the objective is to sustain and maintain a satisfactory level of performance.
- 9.19 The informal stage will only be used once in any 12-month period. If there proves to be a further lapse in performance, the process will automatically escalate to the next stage of the process.

10. Informal Performance Management – Capability Review

- 10.1 The day to day supervision of staff is part of the normal management process and is outside the procedure for dealing formally with unsatisfactory job performance, sickness absence or health problems. There is likely to be less recourse to the formal procedure if shortcomings in a staff member's performance and conduct are brought to their attention at the earliest possible opportunity by the supervisor in the course of that person's normal duties. Where it becomes apparent to the Supervisor that the staff member's capability to perform the duties required is in question, then this should be dealt with initially by informal counselling through a one to one meeting and recorded on Epdr.

10.2 Unsatisfactory work performance may become apparent in a number of ways. These may include:

- Poor standards of work e.g. frequent mistakes, not following the job through, unable to cope with instructions given, failing to complete work on time
- Via the Performance Development Review system where an individual consistently fails to meet targets over a longer timescale
- Lack of apparent skill in tasks and method of work required
- Long term inability to change working practices, develop new skills or respond to changing work needs
- Where an individual's work is having an adverse affect on other staff members whose work is dependent on that staff member
- Poor behaviours and attitude that are not in line with the organisational standards of behaviour, values or the staff code of conduct.

Any concerns should be dealt with by the Supervisor as soon as possible and not 'stored' for the annual review. Where considered necessary, advice from an HR Advisor/Manager sought.

10.3 Staff members must be given a clear understanding of the standard of performance and behaviours required of them. They should be given the opportunity to outline issues that may have adversely impacted on their performance. They should be given the necessary support and guidance to achieve good performance with emphasis on finding ways in which the staff member can remedy any shortcomings identified and determine what support is necessary in the short or longer term. This discussion and agreed actions should be recorded on Epdr as an Informal Support plan.

10.4 A support plan has been designed to provide some structure in these circumstances. This includes a series of measures designed to help improve the staff member's performance. Each measure will ideally be agreed with the staff member, although the organisation reserves the right to insist on any aspect in the absence of such agreement.

Each plan will be tailored on a case by case basis according to the needs of the individual, but will contain the following elements:

Timescale

The overall timescale in which the necessary improvement must be achieved will be set out, together with the timescale for reaching individual milestones where appropriate.

Targets

The support plan will specify the particular areas in which improved performance is needed and set out how, and on what criteria, the staff member's performance will be assessed. Where appropriate, specific targets will be set that will need to be achieved either by the end of the plan or at identifiable stages within it.

Measures

The performance improvement plan will specify what measures will be taken by the organisation to support the staff member in improving their performance. Such measures may include: training; additional supervision; the reallocation of other duties; or the provision of additional support from colleagues if appropriate.

Feedback

As part of the review period, the staff member will be given regular feedback from their supervisor indicating the extent to which they are on track to deliver the improvements set out in the plan.

If, at any stage, the organisation feels that the informal support plan is not progressing in a satisfactory way, a further meeting may be held with the staff member to discuss the issue. As a result of such a meeting, the supervisor may amend or extend any part of the plan.

Review

At the end of the review period, the staff member's performance will be reviewed. If satisfactory progress has been made, the employee will be notified of this fact in writing. However, if the manager feels that progress has been insufficient, they may decide to extend and/or amend the support plan as the manager considers appropriate. Alternatively, they may reach the decision that escalation to the next stage of the process is appropriate. This decision will be made with guidance from their HR Advisor/Manager.

Ongoing review

Following the successful completion of a performance improvement plan, the employee's performance will continue to be monitored. If, at any stage during the following 12 months, the employee's performance again starts to fall short of an acceptable standard, their supervisor may decide to initiate the next stage of this procedure. It is not necessary to go back to the beginning of this process, however, in order for this to be deemed appropriate, it will be essential the supervisor has fully documented all review discussions with the staff member during this time and that this documentation can be produced to support all decision making.

Assistance with this part of the process can be provided by your HR Advisor/Manager.

- 10.5 Sometimes standards and expectations are changed because of new requirements. Where this occurs, it is essential to notify staff members of the new standards and expectations, which must be reasonable. Any appropriate training and/or closer support will be provided when introducing any new practices. It is advised that any changes to requirements are documented and confirmed to the staff member in writing.

- 10.6 The informal performance discussion is outside of the formal Performance and Capability Procedure, but may be referred to at a later date. The informal one to one should not turn into a formal capability meeting, as this would deny the staff member certain legal rights. If during the discussions, the matter appears more serious than originally thought, then the informal discussion should be terminated and the staff member informed that the matter will be handled under the formal Performance and Capability Procedure.
- 10.7 If it transpires that the failure to meet standards has arisen from a conscious act on the part of the staff member, then action under the disciplinary procedure may be considered. The supervisor must seek guidance from the HR team before instigating any formal performance and capability process.
- 10.8 Where informal counselling has been ineffective over a period of time, (normally between 6 to 12 weeks dependent on the concerns or nature of the role), the matter should be escalated and an HR Advisor/Manager consulted.

11 Formal Capability Review Meeting – Stage 1

- 11.1 The staff member should be informed in writing of the reason for the Formal Capability Review Meeting and of their right to be accompanied to this meeting by a colleague or a Unison representative and given adequate time to obtain such representation. A member of the Human Resources Department should also be in attendance. Notes should be taken as a record of the discussion that took place during this formal meeting. (These will not be verbatim, but will capture the key points raised by all parties in attendance and subsequent actions identified).
- 11.2 At this meeting, the concerns in relation to the staff member's performance should be clearly outlined and the staff member given every opportunity and assistance to identify contributing factors to their continued poor performance. They should be reminded of the earlier informal discussions and the steps taken to encourage improvement. They should be informed of where their unacceptable performance exists with some specific examples to aid their understanding.
- 11.3 Dependent on the circumstances and nature of issues, should it be considered appropriate and necessary for a Manager to require accounts from other colleagues (or "witnesses"), accounts should:
- make reference to the date/time and place of the incidents(s) and performance concerned.
 - should provide accurate detail of the performance in question
 - Confirm that they experienced/observed firsthand the performance in question
 - The Manager should be aware of exploring the relationship between the witness and the individual concerned that may impact on the reliability of their account.
 - It is preferable for any accounts to be signed unless agreed as per 11.5
- 11.4 Nothing in this policy prevents a Manager or Divisional/Departmental Head from delegating particular tasks e.g. evidence gathering in appropriate circumstances.

- 11.5 When a witness is reluctant to give a written account, the supervisor should respectfully remind them of their personal responsibility to support the organisation in such circumstances, however, if a witness remains reluctant as a result of any fear of reprisals, they should be made aware of the option to anonymise their account. If uncooperative, then the evidence they could provide should be recorded with a note that they are unwilling to provide a formal account and the reasons they give for this.
- 11.6 When taking accounts during the course of this process, the Manager must ensure that all information is followed up and that all possible venues or gaps are explored in order to support all decision making.
- 11.7 At this interview, clear objectives will once again be set for the staff member. The objectives must be reasonable and achievable within an appropriate review period and must be appropriate to the issues raised. The staff member will be advised of the required objectives and the fact that continued poor work performance may lead to escalation of the formal process and a formal warning may be given. It is important that the staff member understand that the ultimate outcome of the continued formal performance management process may lead to dismissal if he required improvement is not evidenced.
- 11.8 All agreed actions and objectives set at the end of this meeting will be record in writing in a Formal Support Plan (which can be found under Forms and Templates on Firstpoint). This support plan should be provided in writing to the staff member within 5 working days of the meeting taking place.
- 11.9 It should be made clear to the staff member that at the end of the period confirmed within the Formal Support plan, a final review meeting will take place to consider to what degree they have achieved the required standard of improvement. The outcome of this final review meeting may:
- Confirm the required standards have been met
 - Extend the review period with a rationale provided as to why
 - Confirm due to unsatisfactory improvement has been achieved and Stage 2 of the formal process will now be instigated.

12 Capability Hearing – Stage 2

- 12.1 If at the end of the stage 1 formal review period, the situation remains unsatisfactory and performance has still not improved to an acceptable level, or the objectives have not been met, Stage 2 of the formal process will be instigated and the staff member will be invited to a Capability Hearing. A member of the Human Resources Department will also be present at the Hearing as Technical Adviser to the Chair of the Meeting.
- 12.2 A staff member will normally be given **10 working days notice** in writing of the date, time and place of the hearing unless an earlier date is mutually agreed. This letter should also inform the staff member of the details of the perceived incapability or performance concern and of their right to be accompanied at the hearing by a colleague or a Unison representative. There is no right to have a legally qualified representative present.

- 12.3 This notice will also include the right to submit written statements or representations, the name of the person who will chair the Hearing and copies of any documentation to be considered at the Hearing as well as a copy of the Performance and Capability Procedure.
- 12.4 No later than **5 working days** before the Hearing, the staff member shall supply, if not already known, the name and status of their representative if any, and submit any written statements or representation they wish to be considered at the Hearing, either direct or through a representative. Failure to do so may result in such statements or representations not being considered at the Hearing.
- 12.5 In the event of the employee not attending the Hearing as arranged, the Hearing may be adjourned to a later date at the discretion of the Chair of the Hearing. He/she will take into consideration the reasons for non-attendance in making their decision. A second failure to attend is likely to result in the case being heard in the staff member's absence. Hearings will only be rearranged more than once in extenuating circumstances.
- 12.6 The employee will normally be informed of the Chair's decision at the end of the actual hearing. In some circumstances, the Chair may decide to adjourn to obtain further advice and recall the parties no later than 3 working days after the hearing to give their decision. Either way, the decision will be confirmed in writing to the staff member within 5 days of the Chair's decision being given. This letter will confirm any rights of appeal (see section 16).

13 Determining Capability Hearing Outcomes at Stage 2

13.1 Case Unfounded

Having heard the evidence, if the Chair of the Hearing considers that the case against the staff member is unfounded, the staff member and their representative will be informed of this at the Hearing and it will be confirmed in writing within 5 working days of the actual Hearing. All references to the matter will be expunged from the staff member's electronic file for capability purposes.

13.2 Written Warning

If the Chair considers the Performance is of a serious nature or has been persistent over a sustained period of time, a first written warning should be given. This warning will set out the nature of the issues and concern and outline the ultimate possibility of dismissal if no improvement takes place. This will require an improvement in the staff member's performance within a stipulated time period, the failing of which is likely to result in further escalation of the process. Whilst 12 months is the normal time period for a written warning to remain live on a staff member's personal file, the Chair of the Hearing has the discretion to vary this time period dependent on the circumstances of the case. The warning therefore may remain live on the employee's personal file and on their Epdr for a period of between 12 to 18 months.

A reviewed Formal Support Plan will be produced as a result of this Written Warning and will incorporate the rationale and requirements for improvement as stipulated by the chair of the hearing. The period of review will be for the same duration as the written warning.

13.3 Final Written Warning

In the event of continued or further performance issues and following a written warning, or if the performance is considered very serious but does not amount to gross misconduct, or the performance of a staff member is so serious that it cannot be tolerated a second time, a final written warning should be issued. This warning will outline the reason for this level of warning and that immediate improvement is required.

Having been issued with a final written warning, should the employee's performance cause concern to the Force in the future for a similar or related issue, this may result in their dismissal following due process. Any failure on behalf of the employee to accept the requirements for improvements in their performance may result in dismissal at this stage.

This warning will remain live on the employee's personal file and on their Epdr for a period of 18 - 24 months.

A reviewed Formal Support Plan will be produced as a result of this Written Warning and will incorporate the rationale and requirements for improvement as stipulated by the chair of the hearing. The period of review will be for the same duration as the written warning.

14 Capability Hearing – Stage 3

14.1 If either during or at the end of the period of the live Written Warning the situation remains unsatisfactory and performance has either deteriorated, has not improved to an acceptable level, or the objectives have not been met, Stage 3 of the formal process will be instigated and the staff member will be invited to a further Capability Hearing.

14.2 The same steps apply during this stage 3 procedure as detailed in points 12.1 – 12.6.

15. Determining Capability Hearing Outcomes at Stage 3

15.1 Written Warning Extension

Should the Chair of stage 3 feel there has been significant efforts made by the staff member and that the levels of improvement made may just fall short of the Formal Support Plan, an extension may be considered as an alternative to a Final Written Warning. This should not exceed a 3 month period.

15.2 Final Written Warning

In the event of continued or further performance issues and following a written warning, or if the performance is considered very serious but does not amount to gross misconduct, or the performance of a staff member is so serious that it cannot be tolerated a second time, a final written warning should be issued. This warning will outline the reason for this level of warning and that immediate improvement is required.

Having been issued with a final written warning, should the staff member's performance cause concern to the organisation in the future for a similar or related issue, this may result in their dismissal following due process. Any failure on behalf of the staff member to accept the requirements for improvements in their performance may result in dismissal at this stage.

This warning will remain live on the staff member's electronic file and on their Epdr for a period of 18 - 24 months.

15.3 **Dismissal (with notice)**

If the Chair of the Hearing (W12 grade or above or Officer equivalent), determines that the performance of the individual is so poor or serious as to warrant dismissal or following a previous written warning there is no satisfactory improvement in the staff member's performance, or previous warnings issued in accordance with these procedures have been ineffective, he/she may take the decision to dismiss the staff member. The staff member should receive this information within 5 working days of the Hearing. Such a dismissal will normally be with notice or pay in lieu of notice, in accordance with contractual or legal requirements. Dismissal is not suspended pending the outcome of any appeal.

15.4 **Summary Dismissal (dismissal without notice)**

When a staff member's performance is regarded as gross incapability, it may be inappropriate to take them through an accelerated procedure. A staff member may be summarily dismissed for serious matters of underperformance but not normally for a first instance, except where the first instance is deemed to be Gross Incapability. In such cases, summary dismissal without notice or pay in lieu of notice may be appropriate. This may occur where as a result of initial matters being raised, the circumstances indicate to the Divisional/Departmental Head gross incapability in which the fundamental trust and confidence in a staff member is seriously undermined. Dismissal is not suspended pending the outcome of any appeal.

When a member of staff or police officer is dismissed for conduct, efficiency or effectiveness the organisation will add them to the Barred List (under para 88A(1) of Schedule 8 Policing and Crime Act 2017) within 5 working days from decision being given. The member of staff will not be given the opportunity to redeploy for their notice period.

- 15.5 When the warnings outlined above have expired in accordance with the time limits set out in this section and where there have been no similar or related incidents of poor performance during the life of the warning, all relevant papers removed from the staff member's electronic file, except for a cross reference to the capability records as held on the Centurion database. The employee will be notified that this has occurred. If there are further instances of poor performance during the life of the warning then a further capability hearing will consider further formal action in accordance with this procedure.

16. **Gross Incapability**

Gross incapability is regarded as performance of such a nature that it fundamentally breaches the contract between the staff member and employer and justifies management no longer accepting the continued presence of the staff member at work.

Examples of gross incapability may include:

- Where the health and safety of colleagues is placed in serious jeopardy
- Where there are serious consequences for the department or organisation
- Where there are serious consequences for the service being provided either internally or externally

This list is not exhaustive, but it is intended to give an indication of the type of offence which would be regarded as gross incapability and render a staff member liable to dismissal.

Both Wiltshire Police and the OPCC reserve the right to instigate the above procedure at any stage that it feels to be appropriate and/or if necessary, to omit any particular stage, depending on the severity of the capability matter or failure to perform.

17. Suspension

Every manager has the authority and responsibility to send a staff member home if they believe the staff member to be a risk to themselves and/or others because of their behaviour or mental/physical state. This would normally be for a period of 24 hours cooling off period. Such action is NOT regarded as suspension and it should be made clear to the staff member that this is a formal request to leave the workplace until fit to return. In such cases, the manager should consult with the Head of HR to consider whether formal suspension is appropriate.

If the staff member is not to be suspended, then they should be allowed to return to duty as normal as soon as they are able/fit to do so.

Before any individual is suspended, a suspension rationale must be completed in order to carefully consider if this is the appropriate action. The rationale will be completed in consultation with the Head of HR. It will then be forwarded to the Head of HR for sign off.

- 17.1 Where applicable, if the staff member is to be formally suspended they will be informed of this decision in the presence of a colleague or Unison Representative. Confirmation of the reasons for suspension will be provided in writing as soon as is reasonably practicable. A decision to formally suspend a staff member may only be taken by a member of Police Staff of Grade W12 or above or Police Officer of equivalent rank. If suspended, a staff member's contract of employment will be deemed to continue together with all their rights, including continuation of full contractual pay.
- 17.2 Dependent on the circumstances, the staff member may be transferred to other role or function within the Organisation (Suspended from Post) on normal contractual pay as an alternative to full suspension (Suspension from Force) and will be expected to comply with this action.

17.3 Suspension is NOT a formal sanction and should not be regarded as in any way pre-judging the outcome of the capability process. It is a step that may be taken in one or more of the following circumstances:

- Whilst an enquiry is made into matters of a serious nature and where potential dismissal could be justified.
- When the performance and behaviour of the staff member requires investigation and is of such a serious nature that it is undesirable for the staff member to remain on duty.
- When a matter of safeguarding for both the staff member and their colleagues as a result of their mental/physical state (this decision would be in consultation with Occupational Health).
- When the action complained of requires the immediate removal of the staff member from the workplace pending a decision concerning any formal action to be taken
- Alleged gross incapability will normally lead to immediate suspension with pay.

Suspension will normally be effective immediately. However, where capability procedures have commenced and the Manager becomes aware of additional information that leads them to the conclusion that the staff member should now be suspended; this will be actioned at that time by an authorised senior manager.

The suspension will be reviewed regularly by the Head of HR who will ensure that matters are dealt with without undue delay to the process.

18. Appeals

18.1 A staff member has the right of appeal against any level of warning under this Procedure. Appeals against formal warnings up to and including Final Written Warning will be heard by a senior member of Staff of grade W12 or above (or a Police Officer of equivalent rank) who has had no previous involvement in the case. All appeals against dismissal will be heard by a member of staff grade W13 and above (or a Police Officer of equivalent rank).

18.2 Any staff member wishing to register an appeal, must submit their specific grounds for appeal within **7 working days** of receipt of the written confirmation of the level of capability action to the Chair of the original hearing. The appeal will normally be heard and considered within **21 working days** of receipt of the paperwork by the relevant Manager.

The staff member's written notice of appeal should include full and specific details of the grounds for appeal and whether the appeal is against the finding and/or the level of action taken.

18.3 The Human Resources Department will arrange the Appeal Hearing ensuring that a minimum of **5 working days** notice of the date, time and location of the Appeal Hearing is given to the staff member.

Within a reasonable timescale before the appeal hearing (ideally no less than 5 working days), Human Resources will circulate/confirm the documents to be considered at the hearing. Timescales will be confirmed within the invite letter to the hearing. This documentation will include the staff member's written notice of appeal, a statement from the Chair of the original hearing outlining the

circumstances of the case, the action taken to date and any other relevant correspondence during the intervening period. It will also include any appropriate witness statements.

Any staff member pursuing their right of appeal has the right to be represented by a colleague or a member of Unison.

18.4 The Chair of the Appeal Hearing will make a decision having due regard to the following:

- Whether the capability action was fair and reasonable in light of the information known to management at the time of the original hearing
- Whether the prescribed procedures were correctly and fairly implemented

18.5 The Chair of the Appeal Hearing can make the following decisions based on the above:

- To dismiss the appeal and endorse the formal action taken at the original Hearing
- To uphold the appeal and have the formal sanction removed from the staff member's personal file and re-instate the staff member if the staff member has been dismissed
- To dismiss the appeal as to the finding, but substitute a less serious sanction
- To dismiss the appeal as to the finding, but substitute a more serious sanction

18.6 The staff member will normally be informed of the Chair's decision at the end of the actual Hearing. In some circumstances the Chair may decide to adjourn to obtain further guidance and recall the parties no later than 3 working days (or as reasonably as practicable) after the appeal hearing to give their decision should they feel this is appropriate. Either way, the decision will be confirmed in writing to the staff member within 5 working days of the Chair's decision being given.

18.7 If, in exceptional circumstances, evidence is introduced during an appeal that is considered to be **new** and significant, the Chair of the original hearing may be called to hear that evidence and consider whether it would have altered their original judgement. If subsequently the staff member still wishes to appeal, the appeal hearing will continue.

There is no further right of appeal. The Chair's decision is final.

19 Capability and Sickness/Attendance Record

19.1 If an issue of capability appears connected to a medical condition, then what happens will depend entirely on the nature and severity of the condition. Serious or chronic illness is likely to be regarded differently than persistent absence for minor ailments. In either case, if a staff member's difficulties appear to be as a result of medical causes, then the Occupational Health Department must be consulted with to ensure appropriate management of the case.

- 19.2 Informal counselling will take place to highlight areas of concern regarding attendance, but should no improvement be seen then formal methods will be used after consultation with both Human Resources and Occupational Health.
- 19.3 Some medical conditions may amount to a disability under the Equality Act 2010. The Equality Act 2010 sets out when someone is considered to be disabled and protected from discrimination. The definition is quite wide so always seek guidance from Human Resources should you believe a disability could be a contributing factor with a staff members ability to carry out the full requirement of their role or perform at the required level. For example, it is highly likely that a staff member would be covered if they had a learning difficulty, dyslexia or autism. It is important to highlight that only a professionally qualified expert would be able to confirm if this was indeed the case and therefore appropriate and sensitive handling is essential.

The definition is set out in section 6 of the Equality Act 2010, it states you are disabled if:

- you have a physical or mental impairment
- that impairment has a substantial and long-term adverse effect on your ability to carry out normal day-to-day activities

- 19.4 An impairment will affect day to day activities only if it can be shown to reduce one of the following:

- mobility
- manual dexterity
- physical co-ordination
- speech, hearing or eyesight
- the ability to lift, carry or otherwise move everyday objects
- memory or the ability to concentrate, learn or understand
- a perception of the risk of physical danger

- 19.5 The impairment must last or be likely to last for at least 12 months. Under the Act, the Organisation on being made aware of the staff member's disability, has a duty to make reasonable adjustments to workplace arrangements to avoid placing a disabled staff member at a disadvantage.

- 19.6 Some impairments are automatically treated as a disability. You'll be covered if you have:

- cancer, including skin growths that need removing before they become cancerous
- a visual impairment - this means you're certified as blind, severely sight impaired, sight impaired or partially sighted
- multiple sclerosis
- an HIV infection - even if you don't have any symptoms
- a severe, long-term disfigurement - for example severe facial scarring or a skin disease

These are covered in Schedule 1, Part 1 of the Equality Act 2010 and in Regulation 7 of the Equality Act 2010 (Disability) Regulations 2010.

- 19.7 Our Organisational duty is to ensure we are making all reasonable adjustments during the performance management process in order to support the staff member to reach the desired level of performance, but this may include reducing the level if appropriate. The Organisation's obligations may extend to making reasonable adjustments to any alternative positions that may be offered to the staff member as an alternative to the termination of contract. Supervisors should ensure that they are aware of any permanent disability amongst their staff and bring such matters to the attention of their Human Resources Advisor/Manager.

20. Reasonable Adjustments

- 20.1 Where an existing staff member becomes disabled, either gradually as a result of the onset of an illness or suddenly as a result of an accident, the Organisation must address the issue of what reasonable adjustments could be made to accommodate the staff member's needs and facilitate their retention in employment. The key objective will be to take all reasonable steps to enable the staff member to continue working, or, where there has been a period of absence from work, to resume working, without being at a disadvantage.
- 20.2 It is important to note that the duty to make reasonable adjustments places the responsibility firmly on Wiltshire Police as the employer to identify and initiate any adjustments. The supervisor with the support and guidance of Human Resources and Occupational Health, should work with the staff member in regards to what these adjustments could look like. Further information in regards to reasonable adjustments can be found within the "Attendance Management Procedure" that can be found under "Policies and Procedures" on Firstpoint.

21. Long Term Absences/Chronic Illnesses

- 21.1 Where incapability due to long term ill health occurs, it is important that Occupational Health have been fully engaged in supporting the management of the case up to this point, the staff member's illness is discussed with them and the effect their continued absence from work could have on their employment is raised periodically with them. When consulting with the staff member it is important that the staff member's own opinion on their condition is sought, and a discussion is held as to a likely return to work and/or alternative positions.
- 21.2 A thorough investigation on the medical condition/s as part of the Absence Management Process should take place. It is important that the medical position is investigated to allow the Organisation to make an informed decision about the future employment of the staff member (i.e. the likelihood of a return to work either immediately or at some point in the future). The investigation will involve seeking, with the staff member's consent, a medical opinion from the Force Medical Advisor (FMA), the staff member's own GP if appropriate together with any Specialist's reports where necessary.
- 21.3 Having obtained the necessary medical advice, the Organisation will then seek to ascertain whether there are any further reasonable adjustments that can be made within the role the staff member currently holds. At the point this is deemed to no longer be an option, the Medical Redeployment process will be followed:

22 Medical Redeployment

Temporary Medical Redeployment – Recuperative Duties

- 22.1 There may be circumstances where temporary redeployment on medical grounds is required in order to facilitate an individual's rehabilitation to work following a period of sickness. The purpose is to assist a return to work following a period of sickness absence where the problem is directly related to the individual's substantive role, but the long term prognosis is unknown. It may also provide assistance in a return where the individual has difficulties in carrying out their normal duties and no long-term prognosis is known.

Permanent Medical Redeployment

- 22.2 Where a staff member can no longer undertake the full range of duties relating to their substantive post as a result of a medical condition which involves a disability as defined in accordance with the Disability Discrimination Act, (as amended by the Equality Act 2010) then the manager should consider making a reasonable adjustment.
- 22.3 Reasonable adjustments may include: -
- An examination of the duties of the role with a view to excluding the duties, which are no longer possible.
 - A redistribution of such duties to colleagues
 - A transfer to alternative duties within the existing Area or Department
 - Medical Redeployment upon the recommendations of the Force Occupational Health Physician
 - Variation of hours
 - Additional training
- 22.4 In identifying a reasonable adjustment, a work place assessment, may be agreed and carried out at the individuals request by the Access to Work Scheme. They will consider reasonable adjustments to the post and/or workstation, and work place that may be required. This will be arranged with local line management with advice and guidance from both HR and OHU as required. In all such cases a risk assessment of the workplace/personal risk assessment must be undertaken.
- 22.5 When the FMA forms the view, based on their medical prognosis, that a member of staff can no longer carry out the duties of their substantive post, the FMA will be asked to consider the appropriateness of medical redeployment. Should it prove impracticable to redeploy an individual to a suitable alternative post, then ill health retirement or termination of employment on the grounds of incapability, will be considered.
- 22.6 Medical redeployment will require a medical assessment report from the FMA to the staff member's line manager, recommending redeployment on the grounds of ill health / medical problems. The medical assessment will detail the individual's capabilities, together with details of the duties and/or work environments which would be either suitable or unsuitable for the employee, including details of any special or particular needs which should be met for the individual. The relevant HR Advisor/Manager will arrange a case conference to discuss the contents and

recommendations within this report and will confirm that as a result, the staff member will now be placed in the redeployment pool. This will be confirmed to the staff member in writing and the timescales will commence from the date of this letter.

- 22.7 The staff member will be placed in the redeployment pool for a period of 6 weeks. On a case by case basis and dependent on the circumstances, this period may be reviewed and extended if deemed appropriate.

The HR Advisor/Manager who has been involved in supporting their case will be their single point of contact and will liaise with the recruitment team on their behalf for the duration of redeployment. They may also liaise directly with the employing department/line managers both leading up to and post interview.

- 22.8 At the point of confirming the staff member is now placed in the redeployment pool, a list of all current staff vacancies will be given to them for their consideration. The staff member should be given details of all new vacancies as and when they are known by the recruitment team. The staff member should then liaise directly with the HR Advisor/Manager in regards to appropriate progression.

- 22.9 The HRA should gather details of the employees experience, qualifications and skills through completion of the Redeployment form which can be found on Firstpoint under Forms and Templates and this will be passed to the recruitment team.

- 22.10 For new vacancies, the staff member placed in the redeployment pool will be given priority consideration for these posts. This means that if a staff member meets the essential job criteria, or would do so with appropriate and reasonable training and wherever possible they will be interviewed before other applicants, if there is more than one redeployment candidate, appointment to the job may be by competitive interview between those candidates.

- 22.11 They will confirm to the HR Advisor which posts they would like to be considered for and a guaranteed interview agreement will be in place during this 6 week period to ensure that the staff member is given every opportunity to succeed in finding an alternative post.

- 22.12 If the job will mean promotion, the staff member will not receive priority consideration but will be supported to enter into a competitive process along with all other candidates. However, should the staff member meet the essential criteria, or would do so with appropriate reasonable training, they should be appointed, even if they have not scored as highly as the other candidates. Any resulting promotion would be contained by the progression available at one grade higher than their substantive grade.

- 22.13 The HRA will arrange for the staff member to be given such support necessary, throughout this process such as:

- Counselling
- Welfare
- Application form preparation
- Interview skills
- Advice on policy and procedure

The recruitment process will consider such reasonable adjustments as necessary, which may include:

- reduced evidence requirement on application form
- fewer interview questions
- time to meet with managers about vacancies
- bumping straight into an appropriate vacancy (this can be at a lesser grade than the current substantive post) with a trial period

- 22.14 A staff member has the right to be accompanied by Unison or a colleague to any meeting connected with the redeployment process.
- 22.15 If the staff member meets the essential criteria, or would do so with appropriate and reasonable training, they should be appointed.
- 22.16 This redeployment procedure provides for trial periods for between 4-12 weeks. The length of the trial period should take into account the requirements of the job, training needs of the staff member, or the time given to the department to properly assess the staff member's suitability.

There must be regular recorded reviewed during the trial period between the staff member and the supervisor. If any problems are identified, a meeting will be arranged with the staff member, the supervisor, the HR Advisor/Manager and Unison. This meeting will be to try and identify how to best resolve the problems to ensure a successful redeployment. All reasonable assistance and support will be given to the staff member to reach the required standard of performance.

- 22.17 During this trial period, the substantive department retains the payroll responsibility for the staff member. This will transfer to the employing department on successful completion of the trial period.
- 22.18 Where a medical redeployment is successful, and the individual concerned has a disability in accordance with DDA, (as amended by the Equality Act 2010), the individual will be strongly encouraged to seek a work-place assessment by the Access to Work Scheme. They will advise on any further or additional reasonable adjustments to the new post and/ or workstation that may be required. This will be arranged with local line management with advice and guidance from the relevant HR Employee Relations Advisor as required. In all such cases a risk assessment of the workplace must be undertaken and recorded, this will be arranged by the Line Manager.
- 22.19 If the staff member is not to be appointed to a job under the priority consideration, the chair of the recruiting panel must give the reasons in writing to the HR Advisor/Manager. The reasons must clearly highlight where the staff member fails to demonstrate meeting the essential criteria of the job and must be fair, valid, reasonable and justified. The chair of the recruiting panel is responsible for feeding this information back to the staff member.
- 22.20 If within the 6 weeks redeployment period a staff member has been unsuccessful following a selection process, they will remain in the pool to continue applying and attending further selection processes to secure a suitable alternative role.

- 22.21 In the event of a permanent staff member taking a fixed term contract opportunity, they will move onto the terms and conditions of that fixed term contract and should that opportunity not be extended or converted into a permanent role, the normal procedure for ending a fixed term contract will be followed.
- 22.22 Confirm that if no position found, and if the FMA has confirmed unsuitability for Ill Health Retirement consideration, then the individual is likely to be referred straight to the final stage of the Formal Capability Process and invited to a hearing. Consideration will then be given to dismissing on the grounds of medical capability.
- 22.23 The employee has a right of appeal against their dismissal should redeployment not be achieved.

23 Repeated Short Term Absences

- 23.1 In cases where a staff member takes unacceptable intermittent periods of absences, the Attendance Management Procedure should be followed, looking at each case on its own merits.
Having sought regular counsel and direction from the Human Resources team and having followed all appropriate steps under this guidance, including the consideration of suitable measures and reasonable adjustments, should the attendance continue to prove unsatisfactory or problematic, the formal stages of the performance and capability procedure should be instigated.
- 23.2 In cases where a staff member takes unacceptable intermittent periods of absences a process should be followed in line with Attendance Management procedure, looking at each case on its own merits. The following factors should be taken into consideration.
- Length of the absences
 - Frequency of the absences
 - The nature of the job and nature of the illnesses
 - Any matters arising from Return to Work meetings
 - Impact of the absences on the service and colleagues
 - Cost implications of alternative ways to undertake the work
- 23.3 The Supervisor will carry out a review of the staff member's attendance record and reasons for their absence.
- 23.4 All informal steps should be taken to support the staff member as detailed within the Sickness Absence Procedure which is aligned to the same stages as the Performance and Capability Procedure.
- 23.5 If informal methods fail, a formal capability meeting (as detailed in Section 11) will be convened by the Manager with the staff member to discuss the situation. The difficulties caused by the sickness absence should be discussed e.g. effects on the service and work colleagues. The staff member should be given the opportunity to identify any problems that might be contributing to the sickness absence.

- 23.6 The staff member should be advised of the requirement for a specific improvement in their attendance record with appropriate and achievable targets and the consequences of failing that target i.e. that their level of sickness may lead to the eventual termination of their employment.
- 23.7 A further meeting will then be held with the staff member at the end of the review period, along with their representative to review the situation.
- 23.8 If the problems continue to exist it may be necessary to progress the matter with a capability hearing (Refer to Section 12). The staff member will be advised at this hearing that the level of absence is unacceptable. The difficulties caused by the absence and targets for achievement should be covered and failure to improve covered in detail. As part of this Hearing process the staff member will be asked to supply any factors in mitigation. The continuing approach will follow as for performance utilizing sections 10 to 15 of this procedure.

24 Other Considerations

24.1 Welfare / Domestic Reasons

In circumstances where a member of staff can no longer remain in their substantive post as a result of significant changes to their personal circumstances, consideration will be given to affording them the opportunity for redeployment to a suitable alternative post.

These matters should be raised in the first instance with the individual's Line Manager, with advice from HR. However, there is no specific entitlement to such redeployment, which will be entirely at the discretion of the organisation on a case by case basis.

24.2 Personal Safety Training

All staff members who hold a position in the organisation that requires them to attend the Personal Safety Training have an obligation to ensure they are PST compliant.

Failure to pass this training or refusal and non-attendance may be dealt with under this performance and capability procedure.

Further information can be provided by the L&D department.

24.3 Mandatory Accreditation and Qualifications

There are a number of roles that require a specific accreditation or qualification in order to be "licenced to practice".

Where it is a mandatory requirement, full support will be given to every staff member to prepare and successfully achieve this qualification. In the eventuality of deferral, withdrawal or failure, the supervisor and HR will meet to discuss the circumstances and to understand the reasons behind the situation.

The capability procedure may be used to support the management of this situation and to clarify requirements, expectations and potential implications of not achieving the qualification or accreditation.

It is key to highlight that the capability process is not meant to be punitive, but is to provide a structured approach to supporting progress with performance. The support plans, whether informal or formal, are there to provide the member of staff with clarity on expectations of what and how. The managers will work closely with the member of staff to support them achieving the requirements of their role. For staff members who's roles require the ICIDP accreditation, please refer to the Force National Investigators Exam (NIE) policy which can be found on Firstpoint.

- 24.4 If a staff member refuses to take part in the Performance and Capability Procedure, they will be advised that it will be in their best interests to provide some justification or account of their actions. However, if they still refuse, having attempted to convince them of the benefits of participating in the investigation, appearing and presenting their case at any capability hearing that may be convened, they will then be written to formally explaining that any formal action will be taken based on the information the organisation has to hand. This action will be taken in their absence if necessary.
- 24.5 When a situation occurs, in which there are several separate allegations of incapability, all the issues will be dealt with in one hearing. A full enquiry into all the issues will take place and each issue will be considered separately at any capability hearing that may be convened. The level of warning issued will reflect the totality of the severity and the impact of all the issues taken together.
- 24.6 It is key to highlight that as a result of a public complaint made against a member of Wiltshire Police staff, the Independent Office for Police Conduct (IOPC) can direct the Organisation to take further action, including performance and capability and disciplinary action against the staff member.
- This is however a direction (recommendation) and therefore any such action will be taken in accordance with this procedure.
- 24.7 The Human Resources Department is responsible for monitoring the Performance and Capability Procedure and promoting consistency in its application. This will ensure allegations of incapability are dealt with in a similar manner and if found to be substantiated, that similar and appropriate sanctions are applied.

DOCUMENT ADMINISTRATION

Ownership

Department Responsible: People Services
Procedure Owner/Author: Head of People Services and Development
Technical Author: Natalie Strong
Senior Officer/Manager Sponsor: Director of People and Change

Revision History

Revision Date	Version	Summary of Changes
December 2019	2.0	Covers all staff that are employed by the Chief, but also all those that sit under the jurisdiction of the OPCC. Hearings to be chaired by W12 upwards and Officer equivalent. Includes Probationers Appeals to be chaired by W13 upwards and Officer equivalent Included – PST and Mandatory Accreditation requirements Full medical redeployment process incorporated Other considerations an additional section
17.08..2021	2.0	15.4: gross incompetency - clarification that dismissal will result in adding to the Barred List and that member of staff will not be entitled to redeployment during notice period.

Approvals

This document requires the following approvals:

Name & Title	Date of Approval	Version
Force Policy Office	December 2019	2.0
Head of People Services & Diversity	December 2019	2.0
JNCC	December 2019	2.0

Distribution

This document has been distributed via:

Name & Title	Date of Issue	Version
E-Brief	January 2020	2.0
Email to relevant affected Staff/Officers	January 2020	2.0

Diversity Impact Assessment

Has a DIA been completed? If no, please indicate the date by which it will be completed. If yes, please send a copy of the DIA with the procedure.	☒ Yes ☐ No Date: January 2020
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Consultation

List below who you have consulted with on this policy (incl. committees, groups, etc.):

Name & Title	Date Consulted	Version
Unison	November 2019	2.0
OPCC	December 2019	2.0
JNCC	November 2019	5.0

Implications of the Procedure

5. Training Requirements

Supervisors at all levels to be fully briefed including provision of detailed process flow provided.

6. IT Infrastructure

There is no input from ICT required to implement this procedure.