



Capability (Performance) Policy and Procedure

Policy No. 4.1

OFFICIAL – Sep 2022

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| Title: | Capability Policy and Procedure |
| Authored by: | Senior Head of People (SHP) |
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| Implementing Officer: | Head of Human Resources (HHR) |

1. POLICY

1.1 Policy Statement

- 1.1.1 Cleveland Fire Authority is committed to supporting staff throughout the course of their employment and has embedded procedures in place to ensure that we have well-skilled, well-motivated, high performing employees who are supported to maintain an acceptable standard of performance for their role.
- 1.1.2 The Authority will adopt a fair, transparent, timely and consistent approach to addressing any instances where there is a genuine lack of capability displayed in the work the employee is asked to deliver (e.g. lack of skill, aptitude, knowledge, or ability).

1.2 Policy Aim

- 1.2.1 Aligned to the ACAS Code, this Capability Policy and Procedure aims to support employees to achieve and maintain the satisfactory standards of performance required to undertake their role in Cleveland Fire Brigade. To support the achievement of this aim the Authority will:
 - act in a reasonable manner to support employees understand the expected performance standards and the possible outcomes of failing to meet these standards
 - raise and provide support at the earliest opportunity and where possible prevent escalation
 - ensure consistency of the application of the policy and procedure for all employees
 - manage the procedure in accordance with the process set out within this document
 - provide appropriate training, development, and support to those involved in the application of this policy and procedure
 - collate and report management information to the Brigade's Executive Leadership Team (ELT)

1.3 Scope

- 1.3.1 This policy and its procedure applies to all employees who are directly employed by Cleveland Fire Brigade.
- 1.3.2 For issues related to conduct related capability please refer to the Disciplinary Policy and Procedure.
- 1.3.3 For issues related to ill health related capability please refer to the Sickness Absence Management Policy and Procedure.

1.4 Definition and General Principles

1.4.1 The term performance management 'Capability', refers to an employee's ability to Perform the work expected of them to the standards required by the Brigade in accordance with the following:

- Role maps
- Role profiles
- Brigade Policies and Procedures

1.4.2 There are several reasons why capability may have become an issue. The below list is not exhaustive:

- Unable to cope with reasonable workloads, or not being able to meet identified standards / objectives
- Unable to prioritise workloads or difficulties in adapting to changes in the workplace
- Undertaking roles / tasks that they are inexperienced in
- Where there is a loss of qualification which is required for them to carry out the duties of the post

1.4.3 With reference to the Phase 1 Firefighter Trainee Course this will be expedited directly to a Formal Stage 3 Capability Hearing utilising the principles outlined in this Policy and Procedure.

1.4.4 With reference to performance issues during a probationary period for Green Book staff this is outlined in the Recruitment and Selection Policy, however again it will be managed utilising the principles of a Formal Stage 3 Capability Hearing.

1.4.5 With reference to fitness standards this will be expedited directly to a Formal Stage 3 Capability Hearing following the timeframes or improvement of fitness levels outlined in the Health and Fitness Policy and Procedure.

1.4.6 This policy does not cover the following:

Trial Period Due to Redeployment

This policy will not apply to those undertaking a trial period in a new role as a result of redeployment.

Health Related Capability

Separate procedures exist for dealing with capability due to ill health.

1.5 Policy Category

This policy is categorised as '**Corporate Authority**' within the Key Document Framework.

2 Organising

- 2.1 **Cleveland Fire Authority (CFA)** is responsible for:
- approving the Authority's Capability Policy and Procedure
- 2.2 **The Chief Fire Officer (CFO)** is responsible for:
- the management of capability concerns within Cleveland Fire Brigade in line with the Authority's Scheme of Delegation
 - reviewing monitoring reports relating to capability cases
 - overseeing all aspects of this policy and procedure
- 2.3 **The Assistant Chief Fire Officer Strategic Planning & Resources (ACFOSPR)** is responsible for:
- maintaining the framework for the practical application of the policy and procedure in line with the Authority's Scheme of Delegation.
- 2.4 **The Senior Head of People (SHoP)** is responsible for:
- monitoring capabilities through the Capability Policy and Procedure
 - monitoring arrangements within their functional area with reference to Capability Policy and Procedure.
- 2.5 **Head of Human Resources (HHR)** is responsible for:
- providing training and development to those involved in the application of this policy and procedure
 - ensuring that the policy and procedure meets and continues to meet the requirements of employment legislation
 - providing advice and guidance to managers and staff in relation to capability cases
 - effectively communicating this policy and procedure to all staff
 - managing, administering and coordinating procedures relating to capabilities
 - maintaining management information relating to capability and producing relevant reports to ELT
- 2.6 **Heads of Department/ Line Managers** are responsible for:
- ensuring awareness of the policy and procedure and the fair and consistent application
 - be responsible for the clarity of roles through the creation of specific job descriptions, person specifications and through the identification of individual and team objectives
 - create a working environment where successful performance is encouraged, facilitated, and acknowledged
 - carry out annual appraisals to ensure structured discussions about past and future performance plus development takes place and ensure that any training or support that is agreed during the discussion is provided to the employee
 - monitoring performance and ensure that any underperformance is brought to the attention of the employee in a timely manner
 - maintain full and accurate records related to the performance of an employee

- informing HR of any capability concerns
- undertaking training in the management of capability
- supporting all staff who are affected by this policy and procedure

2.7 Individuals are responsible for:

- understanding the standards required in order to fulfil the relevant job role, and the overarching obligations of the Brigade
- taking responsibility for their own performance and continued development
- taking responsibility for raising and work related or personal circumstances that may be hindering their performance in a timely manner
- to engage positively in annual appraisals
- adhering to the requirements of this policy and procedure
- adhering to and fully cooperating in the application of the procedure

2.8 Trade Unions are responsible for:

- supporting the implementation of, and adherence to, this policy and procedure

3 Planning and Implementing

- 3.1 This policy is underpinned and implemented through the Authority's Capability Procedure Appendix 1.
- 3.2 All new staff will be made aware of this policy and procedure during their induction and all documents will be available on Cleveland Fire Brigade's intranet.
- 3.3 Existing staff will be informed of this policy and procedure as per the accepted Policy Framework Procedure.

4 Resource Implications

- 4.1 There are people resources required to coordinate the procedure; most of this work is regarded as a combination of core work of the Human Resource Team and the day-to-day duties of staff with line management responsibility.

5 Equality Impact Assessment (EqIA)

- 5.1 This policy has been assessed in accordance with the Brigade's Equality Impact Assessment Procedure.
- 5.2 The findings of the EQIA are contained in the assessment in appendix 4.

6 Monitoring

- 6.1 The Senior Head of People (SHoP) will monitor activities under this policy and procedure.

7 Audit

- 7.1 This policy will be audited in accordance with the procedure detailed within the Authority's Policy Framework.

8 Review

- 8.1 The ACFOSPR will undertake a review of this policy in 2025 to ensure it is taking account of any new or emerging political, social, technological, legislative, environmental, competitive, citizen or reputational factors.

Procedure

1. Introduction

- 1.1 This is the procedure that underpins and implements Cleveland Fire Authority's Capability Policy.
- 1.2 This procedure is designed to address the issue of capability (under performance) where the employee is unable rather than unwilling to perform. Unwillingness to perform is dealt with through the Brigade's Disciplinary Policy and Procedure.
- 1.3 At every stage in the procedure the employee will be given the opportunity and support to improve as their performance is monitored and reviewed through a Performance Improvement Plan (PIP) (Appendix 2).
- 1.4 The Capability Procedure is time limited. Once the formal procedure has been invoked, only in extreme circumstances can it be stopped and reviewed at a later date. Warnings that are issued during the process lapse at the end of the specified time when issued.
- 1.5 The Service reserves the right to extend the monitoring period where there have been periods of absence during the implementation of either the informal or formal Capability Procedure. The employee will be notified of the length and reason for any extension.
- 1.6 At any time during the process, but prior to the final capability management warning, if both parties agree, discussions about an exit strategy can take place. This needs to be by mutual agreement and needs to be fully discussed with the nominated Human Resources (HR) representative.
- 1.7 In extreme circumstances, where underperformance is likely to present a health and safety risk or there are examples of gross incompetence, employees can be fast tracked to the final stage of the process where dismissal or demotion may be an outcome. This process should not be invoked without prior consultation with the nominated HR representative.
- 1.8 An employee has the right of appeal against a capability warning at every stage of the procedure. The Capability Procedure will not be suspended whilst the appeal process is ongoing.
- 1.9 Action under the Capability Procedure can be initiated by the employee's Line Manager with advice taken from the HR Department. In circumstances when the relevant Line Manager is unavailable, or where there is a conflict of interest, another manager of the same – or higher – level will be appointed to deal with the case. The procedure must be followed in accordance with the sequence detailed below.

- 1.10 An employee facing capability concerns will be provided with a copy of this policy and procedure when advised, in writing from HR, the commencement of the procedure.
- 1.11 From the outset of any capability process the individual should be asked if any reasonable adjustments are required to support with a disability, health, wellbeing or cultural requirements of individual needs. These should be explored and implemented where considered reasonable.
- 1.12 When addressing a capability issue the following principles must be applied throughout the procedure:
- There should be tangible evidence of where performance is below the required standard.
 - It should be made clear to the employee the exact nature of the concerns.
 - It should be made clear to the employee the standards that are expected.
 - Appropriate training and support should be made available to the employee.
 - The employee should be given a reasonable opportunity to improve.
 - It should be made clear to the employee, the potential consequences of failing to improve.
 - Detailed documentation should be kept at each stage, including the informal stage of the procedure, and copied to the employee and their union representative, where applicable.

2. Background

2.1 Employment Law and Best Practice

Consideration will be given to all aspects of employment law to ensure that the Authority is compliant throughout any element of the application of this policy and procedure.

2.2 Employment Rights Act 1996 (section 80F – 80I) and Employment Act 2002

The above legislation relates to the general principles afforded to individuals with employed status in an organisation.

2.3 Data Protection Act 2018 and EU General Data Protection Regulations

The Authority's records relating to capability will be kept confidential and in accordance with the above Act and its principles, regulations and associated guidance. Any documentation related to a capability will be placed on the individual's personal record file and retained for the duration of employment.

2.4 Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000 (PTW)

The PTW state that employers cannot treat part-time workers less favourably than their full-time equivalents and cannot subject them to any disadvantage (or detriment) because of their part-time status, unless objectively justified.

2.5 The Equality Act 2010

- 2.5.1 The Equality Act 2010 legally protects people from discrimination in the workplace. It is unlawful to discriminate against people because of any, or all, of the protected characteristics (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion, sex and sexual orientation).
- 2.5.2 The Authority will ensure that direct or indirect discrimination does not occur when applying the procedure for managing capability. Direct discrimination is treating someone with a protected characteristic less favourably than others, whilst indirect discrimination involves the application of rules and/or arrangements in place that apply to everyone but may put someone with a protected characteristic at an unfair advantage.
- 2.5.3 Under the Disability provisions of the Equality Act the Authority may have to make reasonable adjustments to accommodate an employee who has a disability. HR and Occupational Health, in partnership with departments, will work with managers and individuals in this regard.

3 Procedure

- 3.1 There are two stages within the capability policy and procedure, namely the informal stage and the formal stage. Both stages of the proceedings are detailed below and whilst it is expected that the informal route will precede any formal intervention, however in exceptional circumstances where underperformance is likely to present a health and safety risk or there are examples of gross incompetence, employees can be fast tracked to the final stage of the process where dismissal or demotion may be an outcome. This process should not be invoked without prior consultation with the nominated HR representative.

Informal Stage

- 3.2 Line managers are encouraged to monitor the performance of all their staff on a regular basis by having regular one to one discussions. During these discussion meetings managers should inform the employee what level of performance and standards are expected and whether they are meeting the required standards. It is also the opportunity for employees to raise issues where they feel they need support.
- 3.3 Before the formal Capability Procedure is invoked, it should be identified that the employee has completed all the necessary training for their role. If an employee has undertaken training for additional duties and then refuses to carry out those duties, then this would be a matter of misconduct and would be dealt with under the Disciplinary Procedure.
- 3.4 When an employee's performance falls below the required standard, the manager must raise these concerns with the individual at the earliest opportunity and confirm the

concerns are being dealt with as part of the informal stage of the Capability Procedure. The informal approach is aimed at bringing management concerns to the attention of the employee, exploring causes, identifying responsibilities, and agreeing actions to be taken to assist the employee to improve to an acceptable standard of performance within a specified period, which is no less than 6-weeks and no longer than 12-weeks. The employee must be told about the concerns in relation to their performance and be given an opportunity to state their case before any action is taken. Assurance must be sought that all relevant training opportunities have been provided to the employee before any informal procedure commences.

- 3.5 During the informal meeting the manager must use the informal capability discussion document (Appendix 3) to conduct the discussion, focusing where applicable on the specific performance concerns, sharing evidence, and discussing any possible causes. It is crucial to identify the cause with the employee as it may be easily rectified, for example the need for additional training. A record of this meeting should be kept, and the employee should sign the form to confirm it is a true reflection of the discussion and agreeing to the action plans. An agreed action plan, with specified timescales and a review mechanism determined by the line manager, should be formulated, which provides the employee with objectives to meet within a defined period as outlined in section 3.3. It should set out the actions and support that the Brigade will provide / undertake to enable the employee to improve.
- 3.6 Consideration should be made to any additional support that can be provided for example:
- Provide flexible working arrangements (if appropriate and feasible)
 - Referral to Occupational Health
 - Mentoring or coaching arrangements
- 3.7 Regular review meetings should be held during the defined period in which improvements are expected and the discussions held as part of the review meetings must be recorded on the informal capability discussion document (appendix 3). This should detail the progress of the employee against each of the agreed objectives in the discussion. At the end of the monitoring period a final meeting should be held to discuss the progress of the employee against the agreed action points.
- 3.8 If the employee has achieved all the objectives and completed all the necessary action points which has resulted in the employee's performance meeting the required standards, the matter will be considered resolved. Copies of the informal capability discussion document that is completed as part of the informal process should be provided to Human Resources (HR) for retention on the employees electronic personal file in line with GDPR guidelines.
- 3.9 If at the end of the agreed timescale during the informal stage the employee's performance has not improved to the required standard. The employee should be informed that the procedure will escalate to the Formal Stage One process and detail

the possible outcomes of the Performance Management Procedure which include possible demotion without pay protection or dismissal. Timescales should also be discussed, and the outcome of the discussion meeting should be documented on the formal capability discussion document (appendix 3).

Formal Stage

- 3.10 There are three stages to the Formal Capability Procedure. There should be clear timescales outlined as part of the procedure which should be adhered too and can only be extended under exceptional circumstances. Advice should be taken from HR in such circumstances.
- 3.11 At any time during the formal stages of this procedure consideration may also be given to redeployment. An opportunity for redeployment into alternative employment can be considered, however it can only happen if a suitable vacancy exists and if the employee is suitable for that vacancy. Occupational Health must be involved if there are health and wellbeing concerns, and their advice sought if this option was to be considered. A redeployment opportunity will not necessarily be an equivalent post or earning level, current earnings will not be protected.
- 3.12 At the commencement of the formal procedure, the employee must be advised of their right to be accompanied by a Trade Union representative or a work colleague at any meetings held under the formal procedure.
- 3.13 A hearing manager will be required for each of the three stages of the procedure. As the steps of the procedure are applied, the hearing manager should be of a higher position than the previous manager who heard the previous stages as detailed below:

| Role | Stage 1 | | Stage 2 | | Stage 3 | |
|-------------------|---|--------------------|---|--------------------|---|--------------------|
| | Investigating/ Presenting Manager | Hearing Manager | Investigating/ Presenting Manager | Hearing Manager | Investigating/ Presenting Manager | Hearing Manager |
| FF A-D | WM Grade F | SM Grade G-H | SM Grade G-H | GM Grade I | GM Grade I | AM Grade J |
| CM E | WM Grade F | SM Grade G-H | SM Grade G-H | GM Grade I | GM Grade I | AM Grade J |
| WM F | SM Grade G-H | GM Grade I | GM Grade I | AM Grade J | AM Grade J | ACFO |
| SM G-H | GM Grade I | AM Grade J | AM Grade J | ACFO | ACFO | CFO |
| GM I | AM Grade J | ACFO | AM Grade J | ACFO | ACFO | CFO |

NB: as CFB has a small number of senior officers there may be occasions when the above structure is not achievable, in these circumstances the officers will be nominated by the ACFOSPR at the beginning of the process.

Where the manager who would normally deal with the issue cannot be available, or there may be a conflict of interest, another manager at the same or higher level, should be appointed to deal with the case. Where possible the Brigade will endeavour to source personnel who have had no prior involvement in the case.

- 3.14 In the cases where an Area Manager/ Grade J is subject to the Capability Procedure, the hearing manager at Stage 1 and Stage 2 will be the Assistant Chief Fire Officer depending upon who is the line manager. Stage 3 will be heard by the Chief Fire Officer.

Formal Stage 1

- 3.15 An initial formal stage 1 meeting should be arranged by the employee's immediate line manager following the review meeting at the informal stage of the procedure. A HR representative will provide advice and guidance at the meeting. The employee must receive a written invitation, giving at least seven calendar days' notice and informing them they are to be monitored under formal stage one of the Capability Procedure. The employee should also be sent a copy of the Capability Policy and Procedure as well as documentary evidence completed at the informal stage of the procedure if they do not already have a copy. The employee should also be informed within the letter of their right to be accompanied by a Trade Union representative or a work colleague.
- 3.16 The purpose of the formal stage 1 meeting is to discuss the evidence of where performance is not at the expected level, provide clarity with regards to the concerns and further the development of a formal Performance Improvement Plan PIP (appendix 4). The meeting should also explore any further avenues of support the employee feels would benefit them at that stage to enable them to succeed. The employee should be informed that a 2-month monitoring period will apply with regards to completing the PIP at which point a First Capability Hearing will be held to review their progress against the PIP and for assurance there have been improvements to the performance concerns. The employee should sign a copy of the PIP to confirm their agreement and understanding of what needs to be undertaken in the 2-month monitoring period and the expected levels of performance.
- 3.17 Regular meetings to review the progress of the employee against the PIP should be held during the 2-month monitoring period (a minimum of one review meeting) A record of the discussion held during any review meeting should be made and the employee should sign updated PIP.
- 3.18 A First Capability Hearing should be held at the end of the 2-month monitoring period. The employee should be invited to the hearing giving not less than seven calendar days' notice of the hearing. A report should be drafted in preparation for the First Capability Hearing by the line manager who held the first formal capability meeting. The report should outline how the concerns relating to the employee's performance came to light, accompanying evidence, including a copy of the documentation completed at the informal stage of the Capability Procedure and the PIP agreed at the initial formal stage one meeting and subsequent discussions during the 2-month monitoring plan. All documentation must accompany the invite letter.

- 3.19 At the First Capability Hearing a member of the Human Resources Department will be present to provide advice and guidance to the Hearing Manager.
- 3.20 At the hearing the Presenting Manager will outline their concerns in report format and the progress made in line with the agreed objectives within the PIP.
- 3.21 The employee will be given the opportunity to present their own report / views during the hearing with support from their chosen representative or colleague.
- 3.22 The Hearing Manager will consider all the information presented during the hearing to make a decision.

Possible Outcomes of the Hearing

- 3.23 Once a decision has been reached, the Hearing Manager should advise the employee of the outcome of the hearing. There are two possible outcomes:
- If performance has improved to a satisfactory standard, then the employee will be informed that the Capability Procedure will stop and that monitoring of the employee's performance will continue in line with the normal one to one meeting. If later, there are further concerns relating to the employee's performance advice should be sought from a HR representative. This outcome should be confirmed in writing no later than 7-calendar days after the date of the hearing.
 - If the employees' performance has not improved during the 2-months monitoring period or there has been some improvement, but not to the standard required, then a First Capability Warning should be issued which will remain live for 12-months. This should be in the form of a letter sent to the employee no later than 7-calendar days after the date of the hearing.
- 3.24 The letter should include: (a) The precise performance issues which have continued to be identified. (b) The improvements required and how this will be assessed. (c) The support to be provided during the monitoring period. (d) There will be a further two-months monitoring in which it is expected the improvements will be achieved. (e) Confirmation of the date of the Stage Two Capability Hearing. (f) The potential consequences of continuing failure to meet the agreed performance level. (g) The right of appeal of the decision of the Stage One Capability Hearing.
- 3.25 Any appeal submitted must be done within seven-calendar days of the date of the letter confirming the outcome of the First Stage Capability Hearing. The letter should outline the grounds on which the appeal is being submitted.

Stage 2

- 3.26 After the Stage One Capability Hearing a further meeting should be arranged as soon as possible to review the outcome of the Stage One Hearing, further review the continued performance issues identified, agree the improvements to be made and to agree any

support or training required. The details of this discussion should be documented in a further PIP. The employee should be invited to the meeting by way of letter advising that they are to be monitored under Stage Two and confirming that they have the right to be accompanied by a Trade Union representative or a work colleague. The employee should be provided a minimum of ten calendar days' notice of the meeting.

- 3.27 At the meeting the employee should be informed that a 2-month monitoring period will apply at which point a Stage Two Performance Management Hearing will be held to review their progress against the PIP and for assurance there have been improvements to the performance concerns. The employee should sign a copy of the PIP to confirm their agreement and understanding of what needs to be undertaken in the 2-month monitoring period and the expected levels of performance at the end.
- 3.28 Regular meetings to review the progress of the employee against the PIP should be held during the 2-month monitoring period (a minimum of one review meeting). A record of the discussion held during any review meeting should be made and the employee should sign the updated PIP.
- 3.29 If during the 2-month monitoring period, the employee shows no sign of improvement or there is further deterioration in performance against the objectives within the PIP, the Stage Two Capability Hearing can be brought forward. This can only happen if there are clear indications that the employee has not, or will not, make any improvement during the monitoring period. Advice should be sought from the HR representative before making this decision. The employee should be met with to confirm this decision and a rationale provided to them in writing.
- 3.30 A Stage Two Capability Hearing should be held at the end of the 2- month monitoring period. The employee should be invited to the Second Capability Hearing giving not less than ten calendars days' notice of the hearing. A report should be drafted in preparation for the Stage Two Capability Hearing and all documentation must accompany the invite letter. The report should contain the information from the informal monitoring period, the Stage One Capability Hearing including a copy of the outcome letter, the subsequent PIP, discussions held during the 2-month monitoring period of the second formal PIP.
- 3.31 At the Stage Two Capability Hearing a member of Human Resources will be present to provide advice and guidance to the Hearing Manager.
- 3.32 At the hearing the Presenting Manager will present their report outlining the concerns and the progress made in line with the agreed objectives within the PIP.
- 3.33 The employee will be given the opportunity to present their own report/views during the hearing with support from their representative or colleague.
- 3.34 The Hearing Manager will consider all the information presented during the hearing to make a decision.

Possible Outcomes of the Hearing

- 3.35 Once a decision is reached, the Hearing Manager should advise the employee of the outcome of the hearing. There are two possible outcomes:
- If it is found that performance has improved to a satisfactory standard, then the employee will be informed that the Capability Procedure will stop and that monitoring of the employee's performance will continue in line with the normal one to one meeting. If later, there are further concerns relating to the employee's performance advice should be sought from a HR representative and consideration of any live sanctions under the Capability Procedure. The outcome should be confirmed in writing no later than 7-calendar days after the date of the hearing.
 - If the employee's performance has not improved during the 2-months monitoring period or there has been some improvement, but not to the standard required, then a Final Warning should be issued which will be live for a period of 18-months and that the performance concerns will be escalated to Stage Three of the procedure. This should be in the form of a letter sent to the employee no later than 7-calendar days after the date of the hearing.
- 3.36 The letter should include: (a) The precise performance issues which have continued to be identified. (b) The improvements required and how this will be assessed. (c) The support to be provided during the monitoring period. (d) There will be a further two-months monitoring in which it is expected the improvements will be achieved. (e) Confirmation of the date of the Stage Three Capability Hearing. (f) The potential consequences of continuing failure to meet the agreed performance level. (g) The right of appeal of the decision of the Stage Two Capability Hearing.
- 3.37 Any appeal submitted must be done within seven-calendar days of the date of the letter confirming the outcome of the Second Capability Hearing. The letter should outline the grounds on which the appeal is being submitted.
- 3.38 The employee needs to be informed that as they will move to the third and final stage of the Capability Procedure if their performance does not improve in the two-month review period of the PIP then the potential outcomes could include demotion without pay protection or dismissal on grounds of capability.

Stage 3 - Final Stage

- 3.39 A further meeting needs to be held as soon as possible after the Stage Two Capability Hearing to agree the PIP. The employee should be invited to the meeting by way of letter advising that they are to be monitored under Stage Three, the potential outcomes of the procedure and confirming that they have the right to be accompanied by a Trade Union representative or a work colleague.
- 3.40 At the meeting the employee should be informed that a 2-month monitoring period will apply with regards to completing the PIP at which point a Stage Three Capability

Hearing will be held to review their progress against the PIP and for assurance there have been improvements to the highlighted concerns. The employee should sign a copy of the PIP to confirm their agreement and understanding of what needs to be undertaken in the 2-month monitoring period and the expected levels of performance at the end.

- 3.41 Regular meetings to review the progress of the employee against the PIP should be held during the 2-month monitoring period (a minimum of one review). A record of the discussion held during any review meeting should be made and the employee should sign the updated PIP.
- 3.42 If during the 2-month monitoring period, the employees show no sign of improvement or there is further deterioration in performance against the objectives within the PIP, the Stage Three Capability Hearing can be brought forward. This can only happen if there are clear indications that the employee has not, or will not, make any improvement during the monitoring period. Advice should be sought from the HR representative before making this decision. The employee should be met to confirm this decision and a rationale provided to them in writing.
- 3.43 A Stage Three Capability Hearing should be held at the end of the 2-month monitoring period. The employee should be invited to the Stage Three Capability Hearing giving not less than twenty-one calendars days' notice of the hearing. A report should be drafted in preparation for the Stage Three Capability Hearing and all documentation must accompany the invite letter. The report should contain the information from the informal monitoring stage, the Stage One Capability Hearing, Stage Two Capability Hearing which includes copies of the outcome letter, the subsequent PIP, discussions held during the 2-month monitoring period of the third formal PIP.
- 3.44 At the Stage Three Capability Hearing a member of the HR Department will be present to provide advice and guidance to the Hearing Manager.
- 3.45 At the hearing the Presenting Manager will present their report outlining the concerns and the progress made in line with the agreed objectives within the PIP.
- 3.46 The employee will be given the opportunity to present their own report/views during the hearing with support from their representative or colleague
- 3.47 The Hearing Manager will consider all the information presented during the hearing to make a decision.

Final Stage Outcomes

- 3.48 Once a decision has been reached, the Hearing Manager should advise the employee of the outcome of the hearing. There are two possible outcomes:
 - If the performance concerns have been resolved through completion of the Capability Procedure the employee should be informed that no further action will be taken however the sanction applied at the Stage Two Capability Hearing will

remain and will be considered if there are any further performance concerns raised during the period of the sanction is live. The outcome should be confirmed in writing no later than 7calendar days after the date of the hearing.

- If the employee's performance has not improved during the 2-months monitoring period or there has been some improvement, but not to the standard required at stage three of the procedure. The Hearing Manager could consider demotion, with no pay protection, but only if a suitable vacant post exists within the Brigade. If redeployment is not available and where it is clear that there has been limited or no improvement in performance throughout the performance management process without any clear reason an appropriate outcome is dismissal on the grounds of capability. Any dismissal is sanctioned by the Chief Fire Officer under the Scheme of Delegation. This should be in the form of a letter sent to the employee no later than 7-calendar days after the date of the hearing.

- 3.49 The letter confirming the decision of the Hearing Manager should include: (a) The precise deficiencies which have continued to be identified in the employee's performance. (b) The reason why continuation in the current post cannot be sustained. (c) The support which had been provided. (d) The details of the vacant post the employee is to be demoted into, or (e) If there is no suitable vacancy and dismissal is the only option, then confirmation that after consideration of all alternatives the decision was made to dismiss the employee on grounds of capability. Including any notice period and outstanding annual leave. (f) Their right of appeal. Appeals must be submitted within seven-calendar days of the date of the letter confirming the outcome of the Final / Third Capability Hearing. The letter should outline the grounds on which the appeal is being submitted.

Escalation Through the Procedure

- 3.50 Escalation straight to either Stage Two or Stage Three can be considered if an employee's performance has already been addressed through this procedure or if a warning is still live. In extreme circumstances, where underperformance is likely to present a health and safety risk or there are examples of gross incompetence, employees can be fast tracked to the final stage of the process where dismissal or demotion may be an outcome. This process should not be invoked without prior consultation with the nominated HR representative.

Right to be Accompanied/ Represented

- 3.51 No formal action (i.e., formal capability meetings or hearings) should be taken without ensuring that they are aware of their rights in respect of accompaniment. Employees have a statutory right to be accompanied by a fellow worker, a Trade Union representative or an official employed by the Trade Union where formal action could result in: (a) A formal warning being issued; or (b) The taking of some other formal action; (such as demotion or dismissal); or (c) The confirmation of a warning or some other action (appeal hearings). It would not normally be reasonable for employees to insist on being accompanied by a companion whose presence would prejudice their case or hearing or have a conflict of interest. A fellow worker should be one who has had no prior involvement in the management of their performance. Before a hearing

take place, the employee must inform the Hearing Manager who they have chosen to represent them at least 5 working days prior to the Hearing.

- 3.52 When accompanying an employee at a formal capability meeting, the companion cannot answer for the employee; they are only there to ensure that the meeting is conducted fairly. However with the employee's consent the individuals representative will be able to support by a) Put the employee's case. b) Sum up the employee's case. c) Confer with the employee during the Hearing.

Appeal

- 3.53 Employees may appeal against any formal capability sanction. Appeals must be submitted, in writing, to the Head of Human Resources within 7 calendar days of the date of the letter confirming the outcome of the formal hearings. The deadline date for receipt of appeals will be detailed in the initial correspondence from the Hearing Manager.
- 3.54 Where an employee appeals against formal action taken against them, they must provide sufficient evidence of the grounds for appeal in writing.
- 3.55 The formal monitoring using the PIP will not be suspended whilst the appeal process is ongoing. In the case of an appeal against a Capability Warning, the appeal hearing should take place as soon as practically possible and, in any event, prior to the date of the next Capability Hearing.
- 3.56 With the exception of dismissals, where possible, all appeals should be heard by a higher-level manager who should have had no prior involvement in the original decision.
- 3.57 Arrangements in respect of the appeal will be the responsibility of the original Hearing Manager who will send out the appropriate invite with support from the designated HR representative. Any documentation that both parties wish to rely on, together with any witness statements, should be forwarded to the Appeal Manager by no later than 10 calendar days prior to the date of the Appeal Hearing. The original Hearing Manager will also be responsible for ensuring that the Appeal Manager and the employee have copies of all documentation to be used at the Appeal Hearing.
- 3.58 The Appeal Manager will conduct the Appeal Hearing as a rehearing (in full or part), where required. Otherwise, the Appeal Hearing will be conducted as a review of previous paperwork from the original formal hearings and any subsequent hearings.
- 3.59 In the case of appeals against dismissal, the appeal will be heard by the Fire Authority. Once a date and time has been established both parties will be informed via letter from the Head of Human Resources. Following the invite the original Hearing Manager (in liaison with a HR) and the employee must each submit the following documents to Head of Human Resources at least 10-calendar days prior to the Hearing: (a) A full written statement of the case including the grounds upon which the appeal is presented (or resisted, as appropriate). (b) Copies of any documents the party concerned intends to use in evidence and identities of any witnesses the party concerned intends to call.

- 3.60 Every effort will be made to conclude any appeal process within the contractual notice period following the notice of dismissal. If the employee has been dismissed and their appeal is upheld, the employee will be reinstated to the date in which their employment ceased to ensure continuity of service.
- 3.61 The employee is advised of the outcome of the appeal and the reasons for the decision in writing within 7 calendar days of the Appeal Hearing or review. This decision of the Appeal Hearing is final.

APPENDIX B

Appendix 2

Performance Improvement Plan (PIP)

Please indicate the stage of Capability Process:

Informal ☐ Formal Stage 1 ☐ Formal Stage 2 ☐ Formal Stage 3 ☐

| | | | | |
|---|---|---|---|---|
| Name & Brigade No | | | | |
| Role | | | | |
| Date of initial meeting | | | | |
| Names of any other attendees | | | | |
| Area of concern | | | | |
| | | | | |
| Improvement Objectives | Success Criteria | Support & Dependencies | Review Date | Outcome |
| <i>What specifically must the individual do to improve their performance to meet expected standards</i> | <i>How will you know when the expected standards of performance have been met</i> | <i>What additional development or support does the individual require in order that they are able to achieve the expected standards</i> | <i>When will progress against the improvement objective be reviewed, how will evidence of progress be collected, who will review progress</i> | <i>Has progress been achieved, what is the final outcome, what action needs to be taken</i> |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| Employee signature & date | | | | |
| Line Manager signature & date | | | | |

During the period of the PIP the employee will be monitored to assess if appropriate improvement is being made. If the expected outcomes are not achieved/improvements attained this will be dealt with the Brigade's Capability Procedure.

APPENDIX B

Guidance for Managers

Step 1

- Development need / area for improvement is identified

Step 2

- Conduct 1-1 with individual
- Discuss area/s of concern
- Remember to ask 'why?' (e.g. why they behaved that way, why they made the mistake) so you can understand and take action to remove any barriers they may have to improving
- Outline the specific improvement required and timescales involved, remember to ensure that improvement objectives are SMART



- Complete Performance Improvement Plan (PIP) signed by both parties

Step 3

- Monitor progress throughout
- If further instances occur during review period consult HR for advice on initiating further action through the Capability Procedure

Step 4

- Revisit plan after review dates and determine final outcome
- Positive outcome – complete PIP, no further action
- Negative outcome – consult HR for advice on further action through the Capability Procedure
- In all cases PIP records should be maintained on the individuals personnel file once complete and in line with GDPR

Appendix C

Capability Discussion Document

Please indicate the stage of Capability Process:

Informal ☐ Formal Stage 1 ☐ Formal Stage 2 ☐ Formal Stage 3 ☐

Please confirm that the individual has completed all necessary training for their role: ☐

| | |
|-------------------------|--|
| Name and Brigade Number | |
| Role | |
| Date of Meeting | |
| Name of other attendees | |
| Area of concern | |

I advised [INSERT EMPLOYEE'S NAME] that the purpose of this meeting was to discuss [INSERT DETAILS OF CONDUCT]

[DETAILS OF THE CONVERSATION]

[illegible]

I advised [INSERT EMPLOYEE'S NAME] that the above performance is not acceptable.

[INSERT EMPLOYEE'S NAME] said in response that [INSERT DETAILS OF WHAT THE EMPLOYEE SAID/ADVISED/EXPLAINED].

[illegible]

At the end of the meeting I confirmed that a PIP will be completed and they will be monitored in line with the Capability Procedure at the following stage:

Informal ☐ Formal Stage 1 ☐ Formal Stage 2 ☐ Formal Stage 3 ☐

The monitoring period will end on: [INSERT DATE]

Signed by employee: _____ Date: ____ / ____ / ____

Print name:

Signed by manager: _____ Date: ____ / ____ / ____

Print name:

Outcome of Monitoring Against PIP

All objectives met - No further action ☐

Escalate to Formal Stage 1 Capability ☐

Escalate to Formal Stage 2 Capability ☐

Escalate to Formal Stage 3 Capability ☐

Date employee informed of outcome: [INSERT]

Date letter sent to employee: [INSERT]

Date copy of form sent to HR: [INSERT]

Signed by employee: _____ Date: ____ / ____ / ____

Print name:

Signed by manager: _____ Date: ____ / ____ / ____

Print name:

EQUALITY IMPACT ASSESSMENT – INITIAL SCREENING

EqlAs enable us to consider all the information about a service, policy, practice or activity from an equalities perspective and then put an action plan in place to achieve the best outcome for our employees and service users. EqlAs analyse how the work that we undertake can impact different groups. This will help us to make better decisions and evidence how we have reached these decisions.

SECTION 1 – INITIAL SCREENING

| | |
|---|---------------------------------|
| | |
| Directorate: | Strategic Planning & Resources |
| Department/Section: | Human Resources |
| Title of EqlA – Name of Service or Policy Conducted on: | Capability Policy and Procedure |
| Date Of Assessment: | 11 th August 2022 |
| Assessment carried out by: | Emma Doubooni |

Is this Policy/Service/Project:

Existing ☐

New/Proposed ☒

Changing ☐

Other ☐

Applicable to: Our staff ☒

Our Communities ☐

Other ☐

| PURPOSE AND OBJECTIVES | |
|--|---|
| What are the aims of the service / policy? | This Capability Policy and Procedure aims to support employees to achieve and maintain the satisfactory standards of performance required to undertake their role in Cleveland Fire Brigade. |
| Who is responsible for the service / policy? Who is responsible for the assessment? | Policy – ACO SPR Assessment – HR |
| Who implements the policy? Are external contractors involved? | Head of Human Resources |
| Are there any related policies or processes that will need to be changed associated to this one? | Capability with reference to ill health Disciplinary Policy and Procedure This will be reviewed with any changes made to the Disciplinary Procedure where required and vice versa. |
| To what extent does the service / policy have an impact on people? Who is affected by it and how? | This policy and procedure is available for all employees to access if required. The impact is on the employee where their performance is a concern and the managers supporting the employee/ undertaking the process. |
| What analysis has been done to identify if the service / policy is meeting the needs of all of these groups of people? | Review of the cases to which this policy has been utilised. Also feedback and observations from cases that have been undertaken recently taken into account. A debrief of cases will also inform any changes that are required to meet any changing needs. Benchmarking against other FRS's/ NHS/ LGA policies. |

ESTABLISHING RELEVANCE

In this section you should review the data and evidence above and consider the actual and potential impact of the policy, service, activity or practice on employees, residents, groups and other service users. Findings should be noted in the table below. You should also consider whether the decision will, or is likely to, influence CFB's ability to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act and other relevant legislation.
- Advance equality of opportunity between different groups of people
- Foster good relations between people who share a protected characteristic and those who do not.

Using the information available, identify the impact of this service / policy in relation to people across the Protected Characteristics:

| Protected characteristics groups from the Equality Act 2010 | Negative Impact | Neutral Impact | Positive Impact | Explain your answer |
|---|-----------------|----------------|-----------------|---|
| Age | | X | | This policy is applied equally to all staff regardless of age |
| Disability | X | | | <p>This policy is applied equally to all staff regardless of disability</p> <p>Depending on the needs of an individual we may need to make reasonable adjustments to the process and adapt our timeframes or how we share information on a case by case basis and working in conjunction with the individual.</p> <p>Positive considerations for reasonable adjustments relating to disability. i.e. the presence of a family member at formal hearings in exceptional circumstances. Consideration into conditions</p> |

| | | | | |
|--------------------------------|--|---|--|---|
| | | | | impacting an individual's performance. Extended notification for hearings may be required for those, for example, with visual or hearing impairments in order to prepare any evidence or find support (ie interpreters). |
| Gender Reassignment | | X | | The policy is applied equally to all staff regardless of gender reassignment |
| Pregnancy and Maternity | | X | | The policy is applied equally to all staff regardless of pregnancy and maternity. Positive considerations for reasonable adjustments. However, managers and all involved in the process should be mindful of any pregnancy related illness and how that might impact the individual attending meetings |
| Race | | X | | The policy is applied equally to all staff regardless of race Positive considerations for reasonable adjustments. Consideration to be given to language barriers eg, if English is not their first language a translator might be required during the hearing. Reasonable adjustments to be considered for colleagues who need to present their case during hearings for example extra time to gather the evidence or additional support during the process. |
| Religion and Belief | | X | | The policy is applied equally to all staff regardless of religion or belief. During the process colleagues should be mindful of religions occasions/festivals. |
| Gender | | X | | The policy is applied equally to all staff regardless of gender. Managers should consider appropriate language and pronouns of colleagues before meetings begin. |
| Sexual Orientation | | X | | The policy is applied equally to all staff regardless of sexual orientation. Managers should consider appropriate language and pronouns of colleagues before meetings begin. |

| | | | | |
|---|---|---|--|---|
| Marriage and civil Partnerships | | X | | The policy is applied equally to all staff regardless of marriage and civil partnership |
| Is a full People Impact Assessment required? Yes or No If not why? | <p>If you have identified a negative potential impact for group, then you must complete a full People Impact Assessment. If you have identified a neutral or positive impact on any groups then no further action is required.</p> <p>Yes - We have identified that with regards to some disabilities (for example a Neurodiverse condition), we may need to make reasonable adjustments and adapt our timeframes or how we share information on a case-by-case basis, working in conjunction with the individual.</p> <p>With regards to race consideration needs to be given to language barriers- information might need to be provided in a different language or an interpreter provided to enable the employee to participate fully within the proceedings.</p> | | | |

| MONITORING AND REVIEW | |
|---|--|
| What procedures are in place to monitor the impacts outlined in the analysis? | Human Resources will monitor the application of this policy, monitor the equality data and will have responsibility to ensure issues outlined in the policy are met and that any issues identified with the equality of application are addressed. |
| How often will this take place? | Annually |
| Date of next planned review? | August 2025 |

| | |
|---|-----------------------------|
| Proceed to Full EqIA Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
|---|-----------------------------|

SIGNATURE OF PERSON COMPLETING THIS SCREENING

| | |
|------------|---------------|
| Name: | Emma Doubooni |
| Job Title: | Head of HR |
| Date: | 11/08/2022 |

SIGNATURE OF LINE MANAGER – MINIMUM HEAD OF DEPARTMENT

| | |
|------------|-----------------------|
| Name: | Chris Chisholm |
| Job Title: | Senior Head of People |
| Date: | |

SIGNATURE OF EQUALITY AND DIVERSITY OFFICER – HR DEPARTMENT

| | |
|----------------------------|---------------|
| Name: | Ruth Anderson |
| Date published to internet | |
| Date published to fish | |

FULL PEOPLE IMPACT ASSESSMENT

EqlAs enable us to consider all the information about a service, policy or strategy from an equalities perspective and then put an action plan in place to achieve the best outcome for our employees and service users. EqlAs analyse how the work that we undertake can impact different groups. This will help us to make better decisions and evidence how we have reached these decisions.

SECTION 2 – FULL IMPACT ASSESSMENT

| | |
|---|---------------------------------|
| | |
| Directorate: | Strategic Planning & Resources |
| Department/Section: | Human Resources |
| Title of EqlA – Name of Service or Policy Conducted on: | Capability Policy and Procedure |
| Date Of Assessment: | 11/08/22 |
| Assessment carried out by: | Emma Doubooni |

Is this Policy/Service/Project:

Existing ☐

New/Proposed ☒

Changing ☐

Other ☐

Applicable to: Our staff ☒

Our Communities ☐

Other ☐

1. In step 1 (initial screening) which groups were identified as being disadvantaged by the policy or service?

Disability
Race

2. Summarise the impacts for each group identified

Disability - We have identified through feedback that with regards to some disabilities (for example a Neurodiverse condition, visual or hearing impairment) that we may need to make reasonable adjustments by adapting our timeframes or how we share information on a case by case basis, working in conjunction with the individual.

For example, an individual may need a greater timeframe to consider evidence or may require the recordings of meetings or hearings to allow them the opportunity to consider the discussion.

Race - Consideration to be given to language barriers eg, if English is not their first language a translator might be required during the hearing.

3. What data, research or results of consultation exercises are available to use in your assessment?

We utilised the research and development of our Neurodiversity Guidance to inform our assessment and also feedback from individuals who have been through some of our processes.

Discussion with the Cultural Diversity Staff Network/ Disability Staff Network

4. What consultation has taken place with each group, either externally or internally and what were the consultation outcomes?

If there are any gaps in your previous or planned consultation and research, are there any experts / relevant groups that can be contacted to get further views or evidence on the issues? Please list them and explain how you will obtain their views.

Consultation to develop our Neurodiversity Guidance that informed this assessment was through our Disability Network Group, individuals employed by the Brigade who provided feedback and Daisy chain (Local Charity for Autism).

5. What equality monitoring and review systems will be set up to carry out regular checks on the effects of the policy / service

Regular debriefs on cases

Regular review of data on cases with reference to protected characteristics

Regular review of policy and procedure

Ensure this policy is easily accessible and available in different formats (ie braille, other languages)

SECTION 3 - PEOPLE IMPACT ASSESSMENT ACTION PLAN

Please use this section to develop an Action Plan to implement the key recommendations of the people impact assessment.

| Recommendations | Actions Required | Timeframe | Resources required / Costs | Lead Officer Responsible | Relevant Outcome / Performance Indicator |
|---|---|-------------|----------------------------|--------------------------|--|
| Insert 'reasonable adjustment' information into all letters regarding Capability Hearings | Draft letter | Immediately | HR Time | Head of HR | |
| Ensure Policy is available in different formats i.e Braille/ Other languages | Make policy accessible in different formats and different languages | | | | |

SIGNATURE OF PERSON COMPLETING THIS SCREENING

| | |
|------------|---------------|
| Name: | Emma Doubooni |
| Job Title: | Head of HR |
| Date: | 11/08/22 |

SIGNATURE OF LINE MANAGER - MINIMUM HEAD OF DEPARTMENT

| | |
|------------|-----------------------|
| Name: | Chris Chisholm |
| Job Title: | Senior Head of People |
| Date: | |

SIGNATURE OF EQUALITY AND DIVERSITY OFFICER – HR DEPARTMENT

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| Name: | Ruth Anderson |
| Date published to internet | |
| Date published to fish | |