



Capability Policy (Police Staff)

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Capability Policy (Police Staff)

1. Policy statement

Cleveland Police and the Office of the Police and Crime Commissioner (OPCC) recognise that Individuals are the important to the Organisation, and that there is a fair process for dealing with issues relating to performance capability,

The Organisation is committed to supporting Individuals to achieve the required standards of performance, offering training and advice where appropriate.

This policy's main aim is to help and encourage Individuals to achieve and maintain, acceptable standards of capability.

It provides a method of dealing with shortfalls in capability and can help an Individual to achieve acceptable standards of performance capability.

Please note: Cleveland Police and the OPCC will be referred to as the “**Organisation**”, and police staff will be referred to as “**Individuals**” for the purposes of this policy.

2. Scope

This policy applies to all Individuals employed by Cleveland Police and within the Office of the Police and Crime Commissioner (OPCC), who have satisfied their probationary period.

This policy must be applied fairly, equally, and consistently to all Individuals irrespective of age, disability, gender reassignment, marriage or civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation, or any other unjustifiable grounds.

3. Purpose

The policy will provide information, guidance and support to Individuals involved in the capability process. This includes actions that should be taken where the required standards of performance have not been attained.

This policy does not apply to dismissals due to redundancy, unsuccessful completion of probationary period, or the non-renewal of fixed term contracts on their expiry.

Where a police staff member's attendance is not at the required standard, this will be dealt with via the Attendance Management Procedure, available on the Force Policy SharePoint page [here](#).

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4. General Information

This section provides general information on the capability process.

4.1 Definitions

Improvement action, on the grounds of capability, may be for unsatisfactory performance which can include behaviour such as:

- An inability to work as part of a team.
- An inability to behave appropriately towards colleagues in accordance with the PSC Standards of Professional Behaviour.
- An inability to perform the role, in accordance with the requirement(s) of the job description.

The above list is not exhaustive and there may be other grounds identified that fall under the definition of capability.

Where unsatisfactory performance is a symptom of possible alcohol or substance abuse, professional counselling may be considered appropriate. For further guidance, please refer to or seek advice from the Wellbeing and/or HR team.

Unsatisfactory attendance will be dealt with under the Attendance Management Procedure.

4.2 Designation of Formal Capability Powers

The Chief Constable of Cleveland Police and the Police and Crime Commissioner for Cleveland, have overall responsibility for the management and discipline of police staff within their employment.

They may delegate the responsibility for the management of staff capability to the following:

Chief Constable	Members of the Executive Team or Chief Superintendent/Police Staff Equivalent
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Police and Crime Commissioner	Chief of Staff or Deputy Chief of Staff
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Please note: In both cases this would be with advice from the Human Resources (HR) team.

4.3 Gross Incompetence

Gross incompetence is capability of such a serious and fundamental nature that it breaches the contractual relationship between the Individual and Cleveland Police.

Please note: In the event that an Individual has been dismissed following a stage three hearing for gross incompetence, then Cleveland Police will be entitled to terminate the contract of employment summarily without notice or pay in lieu of notice (PILON).

4.4 Inability to Attend Meeting or Hearing

If an Individual is on sick leave and unable to attend a capability meeting or hearing due to illness, the following guidance must be followed:

- A referral should be made to Wellbeing via the appropriate member of the HR team to ascertain fitness to attend.
- Consideration should be given to holding the meeting or hearing at a convenient neutral base.
- The meeting or hearing should be delayed once only on medical grounds for a period not exceeding one month (in the case of serious illness) but is usually less. In exceptional circumstances where additional medical reports have been sought, the delay may be longer.

The meeting or hearing will take place in the absence of the Individual if they remain unfit to attend.

The Individual should be given the opportunity to forward in writing, any information that they wish to be considered at the meeting, to a nominated trade union representative, or work colleague, who will present their views on their behalf.

4.5 Reasonable Adjustments and Accommodations

The Organisation is dedicated to supporting the wellbeing of Individuals within the workplace. In line with the Equality Act 2010, it is sometimes appropriate to review requests and implement accommodations or reasonable adjustments to support an Individual during the process, where possible.

The difference between a reasonable adjustment and an accommodation can be described below:

- **A reasonable adjustment** refers specifically to a requirement within the legislation relating to a qualifying disability under the Equality Act 2010.
- **Accommodations** may be considered and supported in a wider range of circumstances. For example, allowing a candidate with a back issue a change of a chair.

This support could be implemented for any meetings that an Individual may attend as part of the process or in the provision of additional support that may be required.

Advice and support can be sought from the Wellbeing and HR teams.

4.6 Right to Accompaniment

As part of the formal capability process, Individuals will have the right to be accompanied in formal meetings. The representatives can be:

- A representative from a recognised trade union
- A work colleague

Individuals will be advised of their rights to accompaniment at formal meetings.

Where Individuals wish to be accompanied, they should advise the relevant chair of the meeting, confirming who will be accompanying them.

4.7 Record Keeping

All records relating to both informal and formal capability procedures must be returned to the HR team to be retained in accordance with relevant timescales.

When there is a minor infringement of capability a line manager may decide that the issue can be resolved informally.

In such cases guidance, advice, positive instruction, or prohibition can be issued as appropriate. This information should be recorded in the Individual's records for a period of 12 months. In accordance with subject access procedures Individuals will have the opportunity to view what has been written and included on their record.

When there is a more serious breach of capability, and a formal improvement notice is issued the following time periods will apply:

- **First Written Improvement Notice** – valid for 12 months and then removed from their record.
- **Final Written Improvement Notice** – valid for 18 months and then removed from their record.

Records will not be taken into account for capability purposes after the above time periods have been exhausted providing that no further issues have taken place during the life of the notice period.

If the capability issue is so severe and the result is dismissal, the record will be held for a period of two years after termination of the Individual's employment. At the point of dismissal, the Directorate of Standards and Ethics (DSE) must be informed so that the necessary notifications are made to the College of Policing for the police barred list.

5. Capability Procedure

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This section provides information on the process that should be followed to manage the capability process.

5.1 Informal Process

The capability procedure will normally apply to situations in which an improvement in an Individual's ability to carry out their role has not occurred i.e. unsatisfactory performance.

If a potential capability situation arises, line managers will be responsible for the process and may seek advice from a HR representative.

Where an Individual has committed a minor infringement of unsatisfactory performance, line managers may utilise informal management actions as appropriate. This may include guidance, advice, positive instruction, or prohibition (which is an instruction to stop undertaking an action which may be seen as an act of unsatisfactory performance).

The purpose of the informal procedure is to ensure that concerns are discussed, and line managers seek to understand and to support Individuals at an early stage, with the objective of encouraging and helping Individuals to improve.

Where appropriate this could include conversations with the:

- Wellbeing team
- Equality, Diversity and Inclusion team
- HR team

If the advice, guidance, instruction, or prohibition is not observed, formal action may follow.

Timely and positive discussions with an Individual to highlight performance concerns may avoid formal action at a later date.

Line managers may, where appropriate, from time to time informally advise an Individual of matters of concern, or issue advice and guidance designed to help them meet the required standards.

Such informal advice and guidance are not part of the formal capability procedures, and the Individual should be informed that this is the case.

Whenever a line manager gives informal advice, guidance, instruction, or prohibition, the Individual should be informed that a note of this will be placed on their personal file or relevant IT systems for a period of 12 months; after which the note will be destroyed.

In accordance with subject access procedures, Individuals will have the opportunity to view what has been written and included on their personal file and IT systems.

5.2 Formal Meeting Procedure Stages and Outcomes

If, as a result of the informal course of action, there has been no improvement in performance, line managers may implement the formal capability procedure if the alleged performance warrants this.

The HR team must be notified of capability issues and will provide support and advice throughout the process.

There are **three stages** to the capability process, and each has a separate meeting composition and potential outcome. The table below shows what the potential outcomes are at each stage of the process:

	Stage One Meeting	Stage Two Meeting	Stage Three Hearing (non-gross incompetence)
Possible outcomes	<ul style="list-style-type: none"> • No Action • First Improvement Notice and Action Plan 	<ul style="list-style-type: none"> • No Action • Final Improvement Notice and Action Plan 	<ul style="list-style-type: none"> • Redeployment (alternative to dismissal) • Dismissal • Extension of the Final Improvement Notice

A checklist (**PSCa001** Formal Capability Meeting/Hearing Checklist) for managers undertaking a capability meeting or hearing is contained within the accompanying documents [here](#).

At all stages within the formal capability procedure, the Individual shall:

- Have the right to be accompanied by a trade union representative, or a work colleague;
- Have no formal action taken against them until the case has been fully investigated;
- Be advised of the nature of the performance issue and will be given the opportunity to state their case i.e. respond to the allegations before any decision is made as to what action will be appropriate;
- Be provided with written copies of evidence and relevant documents in advance of a formal meeting or hearing;
- Have the right to appeal the outcome against any formal capability action.

Please note: The Organisation's Disciplinary Procedure (Police Staff) may be activated in cases where the Individual displays unsatisfactory performance, by action or omission, which has such serious adverse consequences for the Organisation that it amounts to gross misconduct.

The Organisation reserves the right to move an Individual at any stage of the capability procedure to the appropriate stage of the disciplinary procedure where this is appropriate.

5.3 Formal Meetings and Hearings

Capability meetings or hearings will be chaired by an officer or manager of an appropriate level of seniority normally as below:

Cleveland Police

Stage One - First Written Improvement Notice	Stage Two - Final Written Improvement Notice	Stage Three - Potential Dismissal
First line manager or above	Head of Business Area	Member of Executive Management team Chief Superintendent or Police Staff Equivalent

Office of the Police and Crime Commissioner

The **Deputy Chief of Staff** or an appropriate manager can issue up to and including a final written warning, with appropriate advice from the HR team.

Only the Deputy Chief of Staff has the authority to carry out the dismissal stage of the capability procedure.

Any subsequent appeal would be heard by either an equivalent or higher member of the Office.

5.4 Stage One Meeting - First Written Improvement Notice

If capability does not meet acceptable standards, and informal guidance has failed to improve performance, then the Individual will be invited to attend a Stage One formal capability meeting.

The outcome could result in the issuing with a First Written Improvement Notice by the manager. A written record will be kept of the capability meeting. The Individual will be advised of the reason for issuing the First Written Improvement Notice in writing.

The written improvement notice will include the following detail:

- The reason for the notice.
- An agreed action plan consisting of expected performance standards, training, or assistance to be given, time limits for improvement, assessment methods and review dates.
- Details of action to be taken if performance standards are not met.

A copy of the written improvement notice should be sent to the Individual within **ten working days** of the review meeting taking place.

The notice will remain live on the Individual's record for a period of **twelve months**. Once spent, the notice will be removed from the record and the Individual should be notified when this has taken place.

5.5 First Written Improvement Notice Action Plan Review

Following the issue of a First Written Improvement Notice and action plan, a meeting **must** be held on a monthly basis between the line manager and the Individual to discuss progress made against the agreed action plan.

In the case of performance capability, the period of review following a first written improvement notice will be agreed when the action plan is formulated. This can range from **minimum of 3 months** up to a **maximum of 6 months**, depending on the nature of the performance issues and the improvements required.

Subject to achieving the action plan there will then be a further monitoring period for which the entire period will not exceed **12 months** i.e. if the agreed action plan is for 3 months, the monitoring period will therefore be 9 months.

If performance improves and is maintained at a satisfactory level in line with the action plan there will be no need to commence to the next stage of the capability procedure.

Should a further occasion of unsatisfactory performance take place during the monitoring period, there may be a return to the process at the appropriate level, which may include progression to stage two of the formal process.

5.6 Stage Two Meeting - Final Written Improvement Notice

If unsatisfactory performance persists, following a First Written Improvement Notice and subsequent capability action plan review(s), then a stage two meeting will take place which could result in the issuing of a Final Written Improvement Notice.

A written record will be kept of the capability meeting (same details and procedure as a first written improvement notice).

A copy of the improvement notice letter should be sent to the Individual within **ten working days** of the review taking place.

The notice will remain live on the Individual's record for a period of eighteen months.

Once spent, the notice will be removed from the Individual's records and the Individual should be notified when this has taken place.

5.7 Final Written Improvement Notice Action Plan Review

Following the issue of a Final Written Improvement Notice, a meeting **must** be held on a monthly basis between the line manager and the Individual to discuss progress made against the agreed action plan.

In the case of performance capability, the period of review following a final written improvement notice will be agreed when the action plan is formulated. This can range from a **minimum of three months** up to a **maximum of six months** depending on the nature of the performance issues and the improvements required.

Subject to achieving the action plan there will then be a further monitoring period for which the entire period will not exceed **18 months**, i.e., if the agreed action plan is for 3 months the monitoring period will therefore be 15 months.

If performance improves and is maintained at a satisfactory level in line with the action plan, there will be no need to commence to the next stage of the capability procedure.

Should a further occasion of unsatisfactory performance take place during the monitoring period, there may be a return to the process at the appropriate level.

Failure to continue not to meet the required standards of performance in an action plan will result in a stage three hearing, which could lead to dismissal on capability grounds.

5.8 Stage Three Formal Capability Hearing

A Stage Three Formal Capability Hearing is appropriate where there has been a first and final written notice, and performance remains unsatisfactory, unless it is a case of gross incompetence.

Only a manager with the required authority level, (see [section 5.3](#)) can terminate an Individual's contract of employment at the Stage Three Formal Capability Hearing.

Consideration should be given to redeployment as an alternative to dismissal where there is clear indication(s) that capability is linked to a specific role.

Following the formal capability hearing, the Individual will be provided, within **10 working days**, written confirmation of the outcome of the meeting and confirmation of the right to appeal.

Where an Individual has been dismissed, they will be provided with written reason(s) for termination of employment, the date on which employment will terminate, and the right of appeal.

5.9 Formal Capability Procedure Guidelines

In investigating an Individual's alleged unsatisfactory performance, the chair will:

- Be able to speak with the HR team for advice as appropriate;
- Examine all relevant written records;
- Analyse all relevant computerised systems data;
- Where necessary consult any other managers with whom the Individual has come into contact in order to establish relevant facts;
- Organise a formal capability meeting or hearing with the Individual offering them the option to be accompanied by a union representative or a work colleague;
- Conduct the formal capability meeting or hearing with the Individual making sure that they know prior to attendance at the meeting or hearing, the purpose of the formal capability meeting or hearing and the available outcomes as a result of the meeting or hearing;
- Take an objective and balanced view of any information that comes to light, and avoid allowing personal views, opinions, likes and dislikes, to influence the assessment of the Individual's capability.

5.9.1 Formal capability meeting or hearing

The Individual will be invited to attend a formal capability meeting or hearing with the case being heard by the appropriate manager (chair) and will be advised that they can be accompanied by a trade union representative or a work colleague prior to the meeting or hearing.

To aid with effective note taking the meeting or hearing will be recorded.

A transcript will be provided to the Individual, within **14 calendar days** of the meeting being held.

The Individual will be required to advise the HR team within **seven calendar days** of receiving the transcript, whether it accurately reflects the meeting or hearing.

5.9.2 Formal capability meeting or hearing process

The purpose of the meeting or hearing will be to establish facts and determine on conclusion of the meeting or hearing, whether there are proper grounds to take formal action against the Individual.

The chair will introduce and explain its purpose of the meeting or hearing and how it will be conducted. The chair will also confirm if both parties have received all relevant documents.

In addition:

- A HR representative will be present at the meeting or hearing to provide advice to the chair. A Senior HR representative will be present at Stage Three hearings to provide advice to the chair.

- All individuals present, will introduce themselves, and confirm their respective roles in the meeting or hearing. The Individual will be entitled to be accompanied, if they wish, by a trade union representative or a work colleague of their choice.
- The chair will state that the meeting or hearing is being conducted as part of the capability procedure and confirm that a record of the meeting or hearing will be made.
- The management case will be set out by an appropriate manager. All the relevant facts and documentation relating to the issue(s) of capability, including specific examples where possible, will be provided to the meeting or hearing.
- The Individual or their representative will be allowed a full opportunity to question the manager on the management case and to raise any relevant points about any information provided.
- The chair will also be allowed an opportunity to question the manager on the management case and to raise any points about any information provided.
- The Individual will be allowed a full and fair opportunity to state their side of events, explain their position and state any mitigating factors. They may do this personally, or the Individual's representative (if they have elected to be represented) may do this on their behalf.
- The chair will then have the opportunity to question the Individual on their evidence. Although the Individual may confer with their representative at any time during the meeting or hearing on request, the chair has the right to require the Individual to answer any questions put to them personally.
- The manager will sum up the key points of the evidence.
- The Individual will sum up their key points of the evidence.
- The chair will then adjourn the meeting or hearing before making a decision.

When making a decision the chair will take account of any mitigating factors put forward, by or on behalf of the Individual and also any capability action, that was current at the time of the alleged or suspected unsatisfactory performance.

The chair will reconvene the meeting or hearing and will inform the Individual of their decision. The Individual will be notified that the decision will be confirmed in writing.

The chair will inform the Individual that they will have the right to appeal against the decision. The chair will close the meeting.

At any point during the meeting or hearing the chair may adjourn the proceedings to enable the Individual to confer with their representative if it appears necessary or desirable to do so, or if either the Individual or chair require time to gather further information.

5.9.3 Following the capability meeting or hearing

At the conclusion of the formal capability meeting or hearing, the chair will make a decision based on the possible outcomes (see [section 5.2](#)).

The Individual will receive written confirmation of the outcome of the meeting or hearing, along with the full transcript, within **14 calendar days** of the meeting. This will also include confirmation of the right to appeal.

6. Appeal Process

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Individuals have the right of appeal against the outcome from any stage of the formal capability meeting or hearing, which may include a written improvement notice or dismissal.

This will help to ensure a fair and consistent process is being adhered to and is in line with both Organisation and ACAS capability procedures and guidance.

6.1 Submitting an Appeal

If an Individual wishes to appeal an improvement notice, they must do so in line with the improvement notice letter.

Appeals against dismissal will need to be directed to the appropriate level of the Organisation.

Appeals must be submitted in writing within **14 calendar days** of receipt of the written notification of the capability finding and should be based on one or more of the following grounds:

- The perceived unfairness of the decision
- The severity of the decision
- New evidence coming to light
- Procedural irregularities

The appeal should be heard within **one month** of receipt of the notice of appeal but in exceptional circumstances this may be extended to **two months**.

6.2 Preparing for the Appeal Hearing

Stage One or Stage Two Appeals

The chair hearing the appeal against a Stage One First Written Improvement Notice, or a Stage Two Final Written Improvement Notice, should consult with a member of the HR team.

Stage Three Appeals

The Executive team member chairing the Stage Three Appeals will consult with the Head of Human Resources.

Dismissal appeals will be considered by the Executive team within **one month** of receipt of notice of the appeal.

6.2.1 Timescales for Appeal Hearings

The Individual will be given at least **14 calendar days'** notice of the date of appeal.

Exchange of papers will take place no later than **seven calendar days** of the meeting date, on both sides.

The chair hearing any appeal will have the authority to either, confirm the original decision appealed against, or overturn that decision and replace it with an appropriate alternative.

The appeal hearing decision will be final and there is no further right of appeal.

Please note: The sanction at an appeal cannot be increased.

6.3 The Appeal Hearing Overview

The chair will not re-hear the whole case. They will listen to the Individual or their representative setting out the reason for the capability action and the appellant's reason for appeal based on their previous written submission.

If new evidence, which could not have been reasonably known at the time of the formal meeting or hearing, is introduced prior to, or during the appeal, the matter should be referred back to the chair who made the original decision.

They will be asked to reconsider their decision in the light of the new evidence.

If, subsequently, the Individual still wishes to appeal against any further decision based on the new and additional evidence, or the original decision, where this has not changed, the appeal hearing will be reconvened.

6.4 Appeal Hearing Procedure Guidelines

A HR representative will attend the formal capability meetings and hearings to provide advice for the chair. In Stage Three hearings this will be a Senior HR representative (as the outcome could result in dismissal).

The chair will also explain the level of authority and decision making they have in respect of the potential outcome of the appeal procedure.

The person leading the appeal (the chair) will introduce the appeal hearing and explain its purpose and how it will be conducted.

In addition:

- The parties present at the appeal hearing will introduce themselves and confirm their respective roles in the hearing. The Individual will be entitled to be accompanied, if they wish, by a fellow work colleague or a trade union official of their choice.
- If any new evidence is to be introduced prior to or during the appeal, it should be referred back to the chair who made the original decision for them to reconsider this in light of the fresh evidence.
- The chair of the appeal hearing will then ask the Individual to confirm why they are appealing to ensure they have the opportunity to then state their case and comment on it.
- The chair of the appeal panel may ask questions of the Individual and/or their representative.
- The Individual and/or their representative will have the opportunity to sum up their case if they so wish.
- The chair will then adjourn the appeal hearing before making a decision.
- The chair will reconvene the appeal hearing and will inform the Individual whether they confirm the original decision appealed against or overturn the original decision and replace it with an appropriate alternative outcome.

Any decision made will be final and this decision will be confirmed in writing within **seven calendar days**.

7. Related Policies and Procedures

The following policies and procedures related to this procedure can be located on the Force Policy SharePoint site [here](#)

Policies

- Equality, Diversity & Inclusion Policy
- Information Management and Data Protection Policy
- Disciplinary Policy Police Staff
- Police Staff Council Handbook (National and Local)

Procedures

- Attendance Management Procedure
- Redeployment Procedure Guidance (Police Staff)
- Leavers Procedure
- Menopause Guidance

8. Appendices

There are no appendices associated with this policy.

9. Compliance and monitoring

The Head of HR is responsible for the accuracy and integrity of this document. This policy will be continuously monitored, and updated when appropriate, to ensure full compliance with legislation.

The Head of HR will review this process to ensure that all aspects are being adhered to in accordance with the framework of this policy.

10. Version control

This policy will be reviewed and updated at least every three years by the owner, and more frequently if necessary.

The Corporate Services Department will ensure this document is available on the intranet, including any interim updates.

The following identifies all version changes.

Version	Date	Reason for update	Author
1.0	June 2011	Published policy	████████
1.1	Nov 2012	Policy amended to reflect introduction of PCC, statement only	████████
1.2	19.11.12	Policy amendment as a result in the changes to delegation of authority	████████

		as a result of the election of the Police and Crime Commissioner (PCC)	
1.3	01.04.14	Policy amendment to incorporate Office of Police and Crime Commissioner for Cleveland	████████
1.4	22.06.15	Policy amendment to include delegation of dismissal now to include substantive Chief Superintendents (Police Staff) equivalent and appendix documents now in body of policy.	████████
1.5	01.02.17	Policy checked for updating and for e-form introduction, also addition of need to refer to intranet for any supporting documents	████████
1.6	30.09.18	Policy Review	████████
1.7	21.2.19	Policy Review	████████
1.8	17.11.19	Amendment to clarify who has the authority to dismiss section 3.3	████████
1.9	Feb 2020	Change of owner dept. name	████████
2.0	Apr 2020	Addition of COVID 19 message	████████
2.1	Mar 2021	Review completed; still compliant with PSC, no changes required	████████
2.2	April 2023	Section 3.3.1 added table to make easier to read. Removed reference to attendance management added link and reference to new procedure.	████████
2.3	May 2024	Review and update. Changed order in line with procedure. Formatted for ease of use and added contents page.	████████ ████████