



**SCOTTISH**  
**FIRE AND RESCUE SERVICE**

Working together for a safer Scotland

# **PEOPLE AND ORGANISATIONAL DEVELOPMENT**

## **HUMAN RESOURCES**

### **CAPABILITY POLICY AND PROCEDURE**

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## HUMAN RESOURCES

### PAY PROTECTION POLICY FOR DISPLACED EMPLOYEES

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## 1. INTRODUCTION

The Scottish Fire and Rescue Service (SFRS) aims to provide each employee with the direction, development and support necessary to undertake their role effectively and efficiently. A work performance issue may arise when an employee is failing in a significant or persistent way to carry out their responsibilities or duties in a satisfactory manner due to capability (should but can't). This policy ensures that fair and effective arrangements are in place for dealing with capability matters related to performance.

Initial identification of an employee's failure to meet the required levels of performance often arises through normal performance management meetings, i.e. one-to-ones, supervisions, appraisals. It is expected that the majority of performance related issues will be resolved promptly at this level, except where there is evidence that such an approach has proved ineffective already. If this is the case, the employee will be invited to attend a formal capability meeting in accordance with the process outlined within this policy.

## 2. SCOPE

This procedure applies to **all employees** regardless of length of service.

This procedure is used to deal with poor performance over a range of issues. This may be in relation to the following (this list is not exhaustive):

- Inability to achieve the performance standards expected of the employee on work tasks or ability to fulfil their role/training requirements
- Operational fitness issues which are identified as being related to matters of capability. For reasons other than capability, this must be addressed through the procedures identified within the Fitness Standards and Assessment Procedure

It does not apply to cases involving genuine sickness absence, proposed redundancies or misconduct. In those cases, reference should be made to the appropriate SFRS policy, e.g. SFRS Managing Attendance Policy or SFRS Disciplinary Procedure.

### **3. KEY PRINCIPLES**

- 3.1 Improve and maintain the standard of work performance of an individual employee, through advice, coaching, guidance and support, with the emphasis on developing a series of performance development plans where required, which are mutually agreed (wherever practicable) to reach the required standards.
- 3.2 Ensure that employees are treated in a fair, consistent and supportive manner in relation to capability issues.
- 3.3 Ensure that the SFRS is a reasonable employer, meeting all relevant legal requirements regarding any capability related decisions it may take in relation to an employee.
- 3.4 Support managers in carrying out their responsibilities for the maintenance of high standards of work performance by all employees.
- 3.5 Contribute towards the improvement of the performance and effectiveness of the SFRS.
- 3.6 Help protect the SFRS, its employees and service users from the consequences of poor work performance.

#### 4. TIMESCALES

- 4.1 Where an employee is unable to achieve the performance standards required of their role, it is expected that this will be managed and resolved promptly and in a timescale appropriate to the individual circumstances of the case. There is no single formula for determining the point at which an employee's performance should be progressed through the formal stages of the capability process. However, as a general rule, the formal process will normally be initiated after all support mechanisms at the informal stage have been exhausted or where the situation is so serious as to warrant a direct move to the more formal stages of this policy.
- 4.2 There are 3 *formal* stages to the capability process (please refer to [section 8](#)) and progression through the stages (from Stage 1 to 3) will *normally* take a period of 12 months in total. Therefore, the normal review periods will be set at 4 months, e.g. capability hearing held in April – review period set for July. These timescales are indicative and can be shortened or increased depending on the circumstances of the case. The individual circumstances of each case are taken into consideration in conjunction with the impact that the lack of performance standards has on service delivery.
- 4.3 A possible outcome of a Capability Hearing is the issuing of what is known as **formal improvement note**. Formal improvement notes are advisory warnings to the employee that improvement is required regarding their performance in their role.

Stage 1 Capability Hearing – **First** Formal Improvement Note

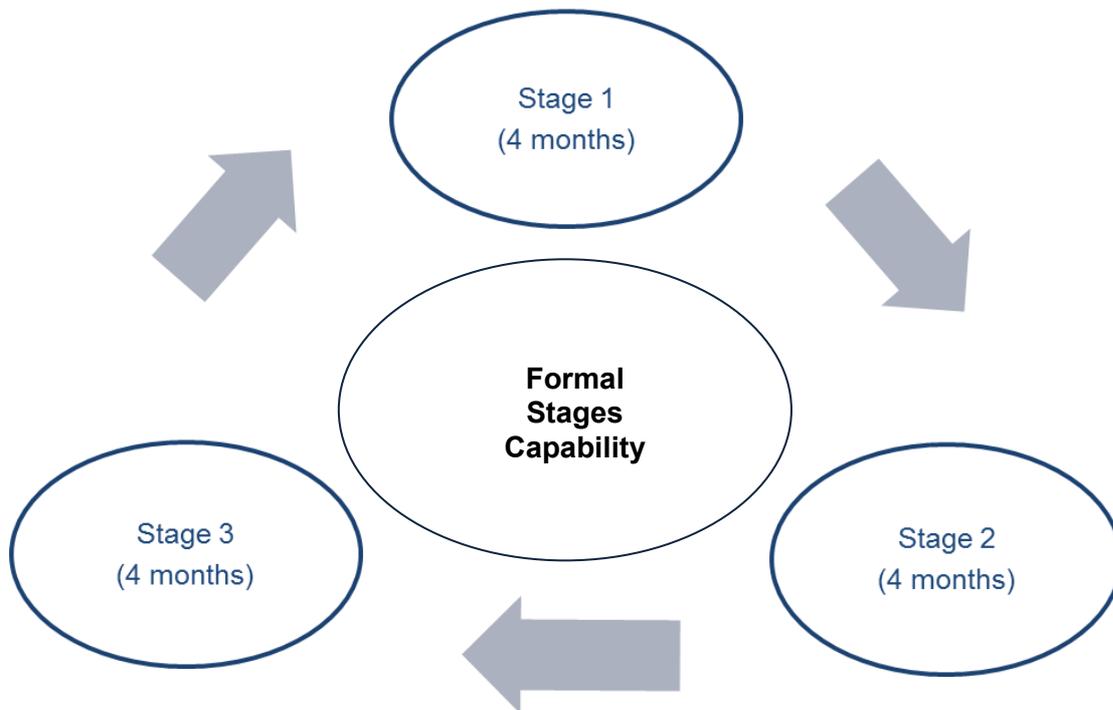
Stage 2 Capability Hearing – **Final** Formal Improvement Note

Stage 3 Capability Hearing – Extension of Final Improvement Note/Dismissal on the grounds of capability (performance).

Where an employee receives a formal improvement note at any stage of the process (Stage 1, 2 or 3), this will be considered **active** for a period of 12 months **from the date of the hearing**. Therefore, even where an employee's

review period ends after a period of 4 months, the improvement note remains 'live' for a period of 12 months. This is to ensure that, in situations where an employee's performance is satisfactory only to lapse very soon after the review period expires, the manager has the ability to extend the formal improvement note for a further period or move to the next stage of the process.

- 4.4 This process offers a structured approach for dealing with capability issues in a reasonable and fair way that affords an employee every opportunity to address the issues being brought to their attention by management.



## 5. MISCONDUCT OR CAPABILITY ISSUES

- 5.1 Where an employee fails to achieve the performance standards expected of them, it is important to ascertain whether there are issues of misconduct or capability. Where there is evidence that the employee has **wilfully** failed to achieve the performance standards expected of them, this should be

considered as 'misconduct' and dealt with via the SFRS Disciplinary Policy. Examples may include deliberate acts of failing to comply with aspects of service policies/standards.

- 5.2 Where an employee may be willing to undertake what is required of him/her but, despite his/her best efforts, the level of performance has fallen below or not reached the required standards, this will be dealt with as a matter of capability and progressed in accordance with this policy. Occasionally, there may be combined issues of capability and misconduct and so it may be that both the Disciplinary and Capability Procedures may be used separately or combined, depending on individual cases. Further advice may be sought from your HR department, if required.
- 5.3 Employees will not normally be dismissed for performance reasons without previous improvement notes. However, in cases where the employee's lack of capability has a significant, negative impact on the SFRS, this may be expedited to Stage 3 of the capability process.

## **6. INFORMAL STAGE**

- 6.1 Performance issues should normally be dealt with informally between an employee and their line manager as part of day-to-day management and at the earliest possible stage. Where appropriate, a note of any such informal discussions (or letters issued as a result of any such discussions) should be placed on an employee's personal file and provide a record of any support given to assist the employee to make the required improvements. The formal procedure should be used for more serious cases or in any case where an earlier informal discussion(s) has not resulted in a satisfactory improvement.
- 6.2 Informal discussions may help with the following:
- Clarify the required performance standards
  - Identify areas of concern

- Establish the likely causes of poor performance and identify any training needs and/or
- Set targets for improvement and a time-scale for review
- Completion of a Performance Development Plan to ensure that all parties understand what performance standards are expected, the methods of support the employee will receive to meet those standards and the timescales for improvement. Performance development plans may be utilised by managers both during the informal and formal stages of the process. Performance Development Plans will feature in the SFRS Appraisal Policy and Procedure and be considered as 'live' documents which can be reviewed and updated on a continuous basis.

6.3 During an informal meeting to discuss performance issues, the manager will provide the employee with evidence of the performance issue(s) and express his/her concerns. The manager must be sensitive to the fact that, unless otherwise identified, issues of performance are not disciplinary in nature and that the correct approach is of constructive support, guidance, coaching and encouragement.

6.4 The employee will be given a full opportunity to respond and explain any factors affecting his/her current performance levels. If any underlying medical or personal issues are identified which are contributing to the performance of the employee, then they should be referred to the Health, Safety and Wellbeing department or the Employee Wellbeing provider for further advice. The line manager will give thorough consideration to the responses made by the employee and make a decision based on the circumstances of the case. Please note that capability issues as a result of ill health must be dealt with under the capability process within the SFRS Managing Attendance Policy, please seek guidance from an HR representative.

6.5 If it is necessary to take further action at the informal stage of the Capability policy, then the manager may consider initiating the following:

- Continue to monitor the employee's work performance under the informal stage of the capability policy
- Develop a Performance Development plan (template in [Appendix 1](#)) specifying targets and dates. Every effort should be made where possible to agree details of the plan. The Performance Development Plan should be used both at informal/formal stages of this policy
- Meet regularly with the employee to ensure they are being fully supported to achieve the required levels of improvement
- Advise on the frequency of the review meetings to monitor progress
- As a general rule, employees will be given a timeframe of between 1 and 4 months to improve (known as the 'review period') – the manager will make a determination on timescales based on the type of development needs and the support available to assist the employee
- Initiate the first stage of the capability process, if all other support mechanisms at the informal stage are exhausted (see [section 8](#))

## **7. EMPLOYEES WITH DISABILITIES**

Consideration will be given to whether poor performance may be related to a disability and, if so, whether there are reasonable adjustments that could be made to working arrangements, including changing an employee's duties or providing additional equipment or training. If either the employee or a manager feels that a performance issue is related to a disability, the employee should be referred to the Health, Safety and Wellbeing Department to undergo assessment. SFRS may also consider making adjustments to this procedure in appropriate cases. Managers must seek early involvement from an HR representative in such circumstances.

## 8. FORMAL STAGES

### STAGE 1 - CAPABILITY HEARING

- 8.1 Where an employee fails to improve despite the action(s) taken at the informal stage of the process, the manager may decide to progress to a Stage 1 capability hearing.
- 8.2 The Stage 1 capability hearing should normally be held with the employee's line manager. Managers will seek advice from HR before progressing with this stage. The employee is entitled to be accompanied by either a work colleague or a Trade Union Representative.
- 8.3 The employee should be given advance notice of the hearing and the manager should use the standard template letter available from HR, giving at least 7 days' notice. The letter will detail the specific concerns that the manager has with the employee's performance and provide a copy of the Performance Development Plan agreed at subsequent informal meetings if applicable.
- 8.4 The purpose of a 1st stage capability hearing is to discuss the following:
- a review of the monitoring periods and support given the shortfall in performance
  - agreement (where practicable) of the Performance Development Plan and further targets
  - Any further training and support that is required and can be provided
  - Consideration of any extenuating circumstances that may be affecting the employee's performance
  - Establishment of a monitoring period (between 1 and 4 months) – however, each case will need to be considered on its own merits
  - Setting dates for further review meetings

- The employee should be forewarned that the level of performance is not acceptable and that failure to improve by the end of the review period may result in progressing to a Stage 2 capability H=hearing of the procedure
- 8.5 The outcome of the Stage 1 capability hearing will be confirmed in writing using the template letter. A copy of the updated Performance Development Plan (if applicable) will be issued alongside this letter. Review meetings should take place between the employee and their line manager during the agreed period to monitor progress, which should be documented on the Performance Improvement Plan. Furthermore, regular feedback should also be given to the employee which may be done verbally (ad hoc meetings, one to ones, supervisions, etc.) with a written record kept simultaneously.
- 8.6 At the end of the review period, the manager and employee will meet and discuss the progress made. This will also be confirmed to the employee in writing.
- 8.7 Managers will be responsible for confirming in writing the outcome to the employee which will either be that the employee has now reached, or is shortly expected to reach, the required standards of performance and that no further formal action is necessary.
- 8.8 If an employee's performance remains unsatisfactory, the employee may be issued with a **first formal improvement note**, setting out the information in [section 8.4](#). This improvement note will remain active for a period of 12 months from the date of the hearing.
- 8.9 Managers should refer to [Appendix 2](#) for further guidance on the issues to consider regarding the structure and procedural matters relating to capability hearings.

## 9. STAGE 2 - CAPABILITY HEARING

- 9.1 If an employee's performance does not improve within the review period set at the Stage 1 capability hearing, the manager will progress to a Stage 2 capability hearing. A stage 2 hearing must be taken by the next most senior manager.
- 9.2 The employee will be advised of the hearing at the earliest stage and will receive written notification, as set out in in the template letter from HR, which provides the employee with at least 7 days' notice. The employee is entitled to be accompanied by either a work colleague or a Trade Union Representative.
- 9.3 Following a Stage 2 capability hearing, if it is found that an employee's performance is unsatisfactory, the employee may be issued with a **final formal improvement note**, setting out:
- the areas in which the employee has continued not to meet the required performance standards
  - targets for improvement
  - any measures, such as additional training or supervision, which will be taken with a view to improving performance
  - a period for review; and
  - the consequences of failing to improve within the review period or of further unsatisfactory performance
- 9.4 A final formal improvement notice will remain active for 12 months from date of the hearing.
- 9.5 The employee's performance will be monitored during the review period and, at the end of this period, the manager will meet with the employee to formally confirm the relevant outcome/s:

- If the manager is satisfied with the improvement in performance, no further action will be taken
- If the manager feels that there has been a substantial but insufficient improvement, the review period may be extended
- If there has been no sustained improvement and the manager is not satisfied, the matter may be progressed to a Stage 3 capability hearing

## 10. STAGE 3 – CAPABILITY HEARING (UP TO DISMISSAL)

10.1 A Stage 3 capability hearing may be held if there is evidence that:

- An employee's performance has not improved sufficiently within the review period set out in a final formal improvement note (from a Stage 2 capability hearing)
- An employee's performance has been grossly negligent such as to warrant dismissal without the need for a final improvement note. Please refer to [section 10.5](#) for further information

10.2 Employees will be advised of the decision to progress to a Stage 3 capability hearing and this will be confirmed in writing using the template letter from HR. The employee is entitled to be accompanied by either a work colleague or a Trade Union Representative.

10.3 Stage 3 capability hearings may only be chaired by a Local Senior Officer or Head of Function and above.

10.4 The possible outcomes of a 3rd stage capability hearing may include the following:

- A further period over which the required improvements can be achieved. The employee should be reminded of: the expected standards of performance to be achieved; the policies, procedures, guidance and competencies against which these standards are measured; any support or assistance to be

provided; the specified timescale for achievement and the potential consequences should the employee fail to achieve the required standards

- Consideration of redeployment to another post (where appropriate and subject to availability), in which case, the meeting should be adjourned and redeployment options explored. The employee should be advised at this stage that, if no suitable alternative employment is secured during the redeployment period, their contract of employment could be terminated on the grounds of capability. The employee's trade union representative (where applicable) will be consulted and kept up to date regarding progress on this matter
- Dismissal on the grounds of capability (performance) is deemed to be appropriate where it is agreed the standards of performance are unlikely to be met by the employee within a reasonable period of time and redeployment is not an option

10.5 Any decision to dismiss an employee on the grounds of capability will only be taken as a last resort and when:

- The employee has been formally advised that failure to achieve a satisfactory performance in their role could lead to dismissal
- The employee and Trade Union representative (if applicable) have had an opportunity to explain the reasons why the employee is underperforming and any extenuating circumstances are considered fully by management
- Management has explained the requirement for the employee to achieve a satisfactory performance and provided all reasonable support/assistance to help them improve
- Where applicable, reasonable adjustments to the post have been considered, as required under the Equality Act
- The option of suitable alternative employment, where appropriate and subject to availability, has been fully considered/explored

10.6 Dismissal will normally be with full notice or payment in lieu of notice, unless the employee's performance has been so negligent as to amount to gross misconduct, in which case and employee may be dismissed without notice or any pay in lieu.

## 11. APPEALS PROCESS

11.1 If an employee feels that a decision taken under Stage 3 of this procedure is unfair, then they may appeal in writing, stating the grounds of appeal, to the Head of HR/OD within 7 days of the date on which they were informed in writing of the decision. Grounds of appeal include the following:

- New evidence has come to light since the hearing which may have an impact on the decision
- Procedural defect
- The decision to dismiss was too severe in the circumstances

11.2 Appellants will have the right to appear before a Director (or other suitable Senior Officer), accompanied by their trade union representative or a work colleague. However, any appeal against dismissal shall be heard by members of the Staff Governance Committee of the Scottish Fire and Rescue Service Board, with the exception of employees who are dismissed during their probationary period and have less than 2 years' continuous service with the SFRS. In such circumstances, employees will **not** have the right of appeal. All parties will be able to call witnesses and produce relevant information.

11.3 Documentary evidence produced by either party will be made available for the other party as soon as is reasonably practicable in the circumstances and at least 10 days in advance of the appeal hearing.

11.4 Appellants will be given in writing at least 10 days' notice in advance of the time and place of the appeal hearing.

- 11.5 If an employee chooses to appeal against dismissal, the date on which dismissal takes effect will not be delayed pending the outcome of the appeal. However, if the appeal is successful, the employee will be reinstated with no loss of continuity of service or pay.
- 11.6 If an employee raises any new matters during the appeal, SFRS may need to carry out further investigation. If any new information comes to light, the employee will be provided with a summary including, where appropriate, copies of additional relevant documents and witness statements. The employee will have a reasonable opportunity to consider this information before the appeal hearing.
- 11.7 Following the appeal hearing the following outcomes may be confirmed:
- Uphold the original decision
  - revoke the original decision entirely; or
  - substitute a different outcome, e.g. extend an active final improvement note
- 11.8 The employee will be informed in writing of the final decision as soon as possible, usually within seven days of the appeal hearing. There will be no further right of appeal.

## **12. PROBATIONARY PERIODS**

An employee who is within a role, which is subject to a probationary period, will have their performance carefully monitored throughout the probationary period timescale. The Capability Policy will apply in circumstances where the employee is not performing to the required standards. Whilst the focus will be in supporting the employee, where despite this, the employee fails to reach a satisfactory standard, the employee may be dismissed at the end of their probationary period. To facilitate this, timescales for managing the employee's performance through the capability process must be altered to reflect the probationary timescales set out within the employee's contract of employment which, for probationary employees, is normally set at 6

months. In such circumstances, further advice should be sought from a local HR Advisor.

### **13. ASSOCIATED DOCUMENTS/REFERENCES**

[SFRS Appraisal Policy and Procedure](#)

[SFRS Disciplinary Policy and Procedure](#)

[SFRS Fitness Standards and Assessment Procedure](#)

[SFRS Managing Attendance Policy](#)

[SFRS Redeployment Policy](#)

[SFRS Performance Development Plan](#)

**APPENDIX 1 (example only)**  
**PERFORMANCE DEVELOPMENT PLAN**



*This is a template form only and can be changed as necessary to reflect the circumstances/needs of the individual case.*

During the period of the Performance Development Plan, the employee should be monitored to assess if appropriate improvement is being made. If the expected outcomes are not achieved/improvements attained, more formal action may be initiated under the SFRS Capability Policy.

Name of employee	
Job title	
Department	
Date	
Name(s) of other attendee(s)	

	<b>Duties &amp; Improvement Required</b>	<b>Expected Outcome/ Measurement</b>	<b>Support Mechanisms</b>	<b>Timescale</b>
<b>1</b>	<i>e.g. Collection and collation of data to allow contract and performance monitoring and data returns.</i>  <i><b>Time Management:</b> better maintenance of contract spreadsheet.</i>	<i><b>Weekly:</b> Contract Spreadsheet to be updated weekly by Friday</i>	<i>Excel training</i>	<i>2 months i.e. by 1 April</i>
<b>2</b>	<i>Next issue in need of addressing</i>			

## **APPENDIX 2 - PROCEDURE AT CAPABILITY HEARINGS**

### **Arranging the Hearing**

If the proposed time and date of the hearing is unsuitable, the employee must inform the relevant manager immediately and management will usually arrange an alternative time.

Employees must make every effort to attend the hearing and repeated failure to attend without good reason may be treated as misconduct. If an employee fails to attend without good reason or is persistently unable to do so (for example, for health reasons), management may have to take a decision in the absence of the employee based on the available evidence.

For a 1st, 2nd and 3rd stage capability hearing, employees will be given 7 days' notice in writing, using the template letters available from HR. Employees should be issued with any documentation relating to their case, e.g. previous letters in relation to their performance, copies of their Performance Development Plan, examples of poor work performance.

### **Attendance at the Hearing**

A 1st stage capability hearing will normally be held by the line manager or a more senior manager, where appropriate and will normally be attended by a member of the Human Resources Department to ensure that procedural protocols are adhered to.

A 2nd stage capability hearing will be held by a more Senior Manager than the manager who chaired the 1st stage hearing. A member of the Human Resources Department will be in attendance.

A 3rd stage capability hearing must be chaired by an LSO/Head of Function or above with a member of the Human Resources Department in attendance.

Employees may choose to be accompanied at the hearing by a Trade Union representative or a work colleague. The companion may make representations, ask questions and sum up the employee's case but will not be allowed to answer questions on the employee's behalf. The employee may ask for an adjournment at any time during a hearing, in order to allow private discussion with their chosen representative/work colleague.

## **Witnesses**

An employee may ask relevant witnesses to appear at the hearing and should ensure that sufficient advance notice of this is provided to the manager chairing the hearing. The employee will be given the opportunity to respond to any information given by a witness.

## **Structure of a Capability Hearing**

The Chair of a Capability Hearing is responsible for ensuring that the following is covered:

- Setting out the required standards that management believe the employee has been unable to meet and going through any relevant evidence that has been gathered thus far
- Encouraging the employee to ask questions, present evidence, call witnesses, respond to evidence and make representations
- Trying to establish the likely causes of poor performance, including any reasons why any measures taken so far have not led to the required improvement
- Identifying whether there are further measures, such as additional training or supervision, which may improve performance
- Where appropriate, discussing targets for improvement and a timescale for review
- If dismissal is a possibility, establishing whether there is any likelihood of a significant improvement being made within a reasonable time and whether there is any practical alternative to dismissal, such as redeployment

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- A hearing may be adjourned, if it is necessary to gather any further information or give further consideration to matters discussed at the hearing. Employees will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened
- The manager will confirm any outcomes or decisions made and the reasons for these to the employee in writing, usually within seven days of the hearing taking place
- If appropriate, the manager will explain the appeals process to the employee