



NORFOLK
CONSTABULARY



SUFFOLK
CONSTABULARY

CAPABILITY (PERFORMANCE AND ATTENDANCE) – POLICE STAFF

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Legal Basis

Legislation specific to the subject of this policy document:

- Employment Rights Act 1996
- Employment Rights Act 2025

Other relevant legislation which you must check this document against (required by law)

- Human Rights Act 1998 (in particular A.14 – Prohibition of discrimination)
- Equality Act 2010
- Health and Safety at Work etc. Act 1974 and associated Regulations
- General Data Protection Regulation (UK GDPR) and Data Protection Act 2018

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- Freedom Of Information Act 2000

Other documentation which you must check this document against:

- College of Policing – Code of Ethics
- Norfolk and Suffolk Constabularies' Standards of Professional Behaviour
- College of Policing – Authorised Professional Practice

1. Policy Statement

- 1.1 This policy provides the formal procedure for dealing with performance or attendance concerns where supportive measures and informal management action have failed to result in the individual achieving or maintaining satisfactory standards. It aims to ensure that assistance to improve is provided in a structured, consistent, and supportive manner.
- 1.2 Ideally most cases addressed under this policy will be resolved through sustained improvement. However, for those cases where this is not evidenced, the policy also sets out the circumstances and procedure in which an individual may be dismissed for reason of unsatisfactory performance or attendance.
- 1.3 Norfolk and Suffolk Constabularies (together “the Constabularies”) are committed to ensuring this policy complies with relevant legislation and that consultation has been undertaken with all relevant staff groups. This policy does not form part of any contract of employment or other contract to provide services, and we may update this policy at any time following consultation with UNISON.
- 1.4 All our policies promote equality, eliminate unlawful discrimination and actively promote good relations regardless of a person’s age, disability, gender reassignment, marriage or civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation, economic or family status.
- 1.5 The Constabularies will review this policy periodically to ensure that it reflects appropriate standards, continues to meet our needs, and reflects any changes in legislation.
- 1.6 The Director of People has overall responsibility for the effective operation of this policy and for ensuring compliance with the relevant statutory framework. Day-to-day responsibility for operating the policy and ensuring its maintenance and review has been delegated to the HR Managers, HR Delivery.
- 1.7 Managers have a specific responsibility to ensure that this policy is applied fairly, and all staff are responsible for supporting their colleagues and ensuring the success of this policy.
- 1.8 Please read this policy in conjunction with the FAQs which can be clicked on throughout this document.

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2. Definitions

- 2.1 The definition of 'capability' in this policy refers to an individual's ability to perform their work to a satisfactory standard, and to maintain their attendance at work at a satisfactory level.

3. Applicability

- 3.1 This policy applies to all police staff employees. However, we may depart from this procedure where appropriate (including but not limited to during an employee's probationary period). It does not apply to agency workers, consultants, self-employed contractors, volunteers or interns.

4. Exclusions

- 4.1 Sometimes unsatisfactory performance or attendance can be directly related to conduct or behaviour rather than being an issue of capability. In these cases, the Disciplinary Policy, rather than this Policy, should be applied. Management should seek advice from their HR Advisor if they are unsure of which route to address specific cases through.

5. Roles and Responsibilities

- 5.1 Staff have a range of responsibilities depending on their role:

All staff

- 5.2 All staff are required to:

- perform and attend work to the best of their ability and strive to make any desired improvements in order to achieve and maintain required standards;
- attend any capability meetings/hearings when requested to do so and participate in reviews and discussions with their line management about their performance or attendance;
- actively engage with support offered.

Line managers

- 5.3 Line Managers are required to:

- set clear standards, discuss performance and attendance with their staff and provide regular feedback;
- monitor the performance and attendance of their staff and address any concerns in a timely way, providing appropriate support;
- record information in a timely and accurate way;
- attend meetings/hearings when required to do so and carry out reviews as necessary.

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Senior managers

5.4 Senior Managers are required to:

- support and oversee line managers to ensure adequate support is offered to improve staff members' performance and attendance where required;
- chair and/or attend formal meetings/hearings when required to do so;
- ensure this policy is applied consistently and fairly across their department/directorate.

6. Supportive informal action

6.1 In the first instance, performance and attendance issues should be dealt with informally between the individual and their line manager as part of day-to-day management. Informal discussions and any informal management action, as appropriate, must be supportive and follow the Performance Management policy or Sickness Absence Management policy as applicable.

6.2 If informal action is not sufficient to resolve the issues, managers may instigate the formal capability procedure as set out below. Before instigating the formal procedure, line managers must ensure they have:

- exhausted and evidenced supportive informal management action;
- sought advice from their HR Advisor and informed their senior management of the capability case.

7. Formal Capability Procedure

7.1 The formal capability procedure comprises **three stages** and is summarised below:

Stage 1

7.2 Where informal management action has not brought about the required improvement in performance and/or attendance, the next step is a First Formal Capability Meeting. This marks the start of the formal procedure and will proceed when management, with the advice of HR, agree that formal action is the appropriate next step.

Stage 2

7.3 Where the performance and/or attendance has not improved to an acceptable standard within the agreed timescales of an improvement plan, or relapses within the duration of a written warning, where issued as the outcome of Stage 1, the matter may be progressed to Stage 2. The individual will then be requested to attend a Second Formal Capability Meeting. Stage 2 will not be instigated unless Stage 1 has taken place.

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Stage 3

- 7.4 Where the performance and/or attendance has not improved to an acceptable standard within the agreed timescales of a final improvement plan or the individual has relapsed within the duration of a final written warning, where issued as the outcome at Stage 2, they may be progressed to Stage 3. The individual will be required to attend a Final Capability Hearing.
- 7.5 Progression to subsequent stages of the formal procedure must be for matters similar to, or connected with, the unsatisfactory performance/attendance referred to in improvement plans issued at the earlier stages.
- 7.6 In some circumstances however it may be appropriate to proceed straight to Stage 3. For example:
- with unsatisfactory attendance, where medical opinion states there are no further adjustments, including medical redeployment, which can reasonably be considered, or where a redeployment search has already taken place but no suitable role found.
 - where an individual's inadequate performance could lead to serious safety or financial consequences such as a level of supervision from others that cannot be absorbed by the organisation.
 - in serious cases of gross negligence.
- 7.7 All such cases will be considered with advice from HR on a case-by-case basis. Line management will make the final decision. The individual will be given the rationale as to why their case is being progressed immediately to Stage 3 where this has been determined.

8. Right to be Accompanied

- 8.1 Individuals have the right to be accompanied to any formal capability meeting or hearing, including appeals. Individuals can also request to be accompanied at any informal stage of performance or attendance management and no request will be unreasonably refused. The companion can be either a colleague or a UNISON representative if they are a member, or a representative of an alternative union if the individual belongs to a professional body that represents (e.g., RCN) at formal stage.

See FAQ: What is the role of my companion?

- 8.2 The individual should notify the person who is chairing the meeting or hearing at least three working days in advance of the meeting if they intend to bring a companion to the meeting or hearing. They should also inform the chairperson of the companion's name at the same time.
- 8.3 A companion is allowed reasonable time off from duties without loss of pay, but no-one is obliged to act as a companion if they do not wish to do so.

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- 8.4 If the companion is unavailable at the time a meeting or hearing is scheduled and will not be available for more than five working days, the individual may be required to choose someone else.
- 8.5 An individual may, at the Constabularies' discretion, be able to bring a companion who is not a colleague or union representative (for example, a family member) where this will help overcome a particular difficulty caused by a disability.

9. Stage 1 and Stage 2 Capability Meetings

- 9.1 Section 14 regarding notification and documentation must be followed.

Attendees

- 9.2 The First Formal Capability Meeting will usually be chaired by the individual's second line manager. An HR Advisor will attend to provide procedural advice. The first line manager will also attend to present the management case and answer any questions.
- 9.3 The Second Formal Capability Meeting will be chaired by a more senior manager than the first of at least Chief Inspector rank or police staff equivalent, supported by an HR Advisor to provide procedural advice. The first line manager will also attend to present the management case and answer any questions.
- 9.4 The individual is required to attend the capability meetings and they have the right to be accompanied as per section 8, should they choose.

The Meeting

- 9.5 At the meeting:
- the reasons why the performance/attendance is considered unsatisfactory will be explained;
 - the individual and/or their companion will be given the opportunity to ask questions and make representations in response, including any mitigating factors;
 - the reasons behind the unsatisfactory performance/attendance will be explored, including consideration of the likely causes, to help to determine if there are any underlying problems (either with the individual and/or within the team) that could be addressed (e.g. with further training);
 - ways of bringing the individual's performance/attendance up to standard, including any additional support, will be discussed and agreed.
- 9.6 After consideration of all available information, including any mitigating factors, the chair will determine the outcome and inform the individual.

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Stage 1 and Stage 2 Outcomes

9.7 This will be either:

1. the unsatisfactory performance/attendance is not substantiated, and no further formal action is considered necessary;

or:

2. the unsatisfactory performance/attendance is substantiated, in which case the individual will be issued with an Improvement Plan and First Written Warning at Stage 1, or a Final Improvement Plan and Final Written Warning at Stage 2.

9.8 A First Written Warning will remain live for 12 months.

9.9 A Final Written Warning will remain live for 12 months.

9.10 Where the unsatisfactory performance/attendance is substantiated, the chair will inform the individual:

- in what respect their performance/attendance is unsatisfactory;
- that an Improvement Plan will be provided by their line manager and discussed in detail with them within five working days of the outcome;
- that if sufficient improvement is not made within the timescales in the Improvement Plan or is not sustained for the duration of the written warning (i.e. 12 months) they may be progressed to the next stage of the formal procedure.

See FAQ: What will be included in an Improvement Plan?

10. Monitoring progress against an Improvement Plan

10.1 The line manager is responsible for reviewing the individual's progress against the Improvement Plan with them.

10.2 If the required standard is met within the timescales stated in the Improvement Plan, the individual will be advised and this will be confirmed in writing. The written warning however will remain valid for the whole 12 months.

10.3 If the individual does not make satisfactory improvement within the stated timescales or unsatisfactory performance/attendance arises again whilst the written warning is still valid, the next stage of the procedure will be instigated.

11. Stage 3 Final Capability Hearing

11.1 Section 14 regarding notification and documentation must be followed.

Attendees

11.2 The Stage 3 Final Capability Hearing will be heard by a panel. The panel will consist of the chair, who will be an appropriate Head of Department who has had no previous involvement with the case, another senior manager (a police

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staff manager wherever possible), and a senior member of HR to advise on procedural matters.

11.3 The individual is required to attend the hearing and they have the right to be accompanied as per section 8, should they choose. The line manager will also attend to present the management case.

The hearing

11.4 At the hearing:

- the reasons why the performance/attendance is unsatisfactory will be explained;
- the individual, and/or their companion, will have the opportunity to respond giving any further information or explanation, and ask questions;
- underlying reasons behind the continuing, or relapsed, unsatisfactory performance/attendance will be further explored.

11.5 After consideration of all available information including any mitigating factors, the chair will inform the individual of the outcome.

Stage 3 Outcome

11.6 This will be either:

1. The unsatisfactory performance/attendance is not substantiated, and further formal action is not considered necessary (informal monitoring may continue).

or:

2. The unsatisfactory performance/attendance is substantiated, in which case options available to the chair are:
 - extension of a Final Improvement Plan (this will only be in exceptional cases e.g. where there are mitigating circumstances);
 - in performance cases only, where it is concluded there is no further possibility of improvement for the individual in their existing role, the usual requirement of satisfactory performance for applying for other roles may be removed, where appropriate and authorised by HR;
 - dismissal (with appropriate notice, unless the individual's performance has been so negligent as to amount to gross misconduct, in which case they may be dismissed without notice);
 - in exceptional cases which have progressed directly to Stage 3 in line with section 7.6, and where dismissal is not proportionate at this point, the issue of a final written warning and Final Improvement Plan.

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12. Redeployment – Performance Cases

- 12.1 The decision on whether to remove the usual requirement of satisfactory performance to enable the individual to apply for alternative employment will be made on a case-by-case basis, assessed on the individual's potential to satisfactorily perform an alternative role.
- 12.2 This may include roles of a lower pay band/lesser terms and conditions. There will be no pay protection offered. A trial period of four weeks will apply and a trial period pro-forma will be provided to the new line manager.
- 12.3 If an offer of alternative employment is declined or the new manager or individual following the trial period concludes the role is not suitable, a report will be submitted to the Stage 3 hearing panel chair, who will confirm the next steps to be taken.

13. Redeployment – Attendance Cases

- 13.1 For attendance cases, medical redeployment, where authorised by HR, may be pursued by the individual prior to instigating the formal capability procedure. There will usually be a window of three months for the individual to seek and apply for redeployment opportunities and support will be provided by HR. There is no requirement for a trial period with medical redeployment.
- 13.2 If redeployment is not secured during the three-month period and considerations for all other reasonable adjustments have been exhausted, a Stage 3 capability hearing will be convened. This may result in notice of dismissal. In these circumstances, the individual may continue to seek redeployment during their notice period.
- 13.3 For further information on the medical redeployment process please refer to Appendix C 'Medical Redeployment' in the Sickness Absence Management Policy.

14. Notification and Documentation

- 14.1 The individual will be notified in writing by HR of the requirement to attend a formal capability meeting or hearing, arranged on a date suitable for all attendees, with at least 15 calendar days' notice.

See FAQ: What will the notification include?

- 14.2 If there are reasons for conducting any hearing remotely (for example, by Microsoft Teams), HR will provide these reasons and confirm the relevant arrangements and instructions for joining the hearing. If the individual has any questions regarding how to join the hearing remotely, they must let us know before the hearing date. The Constabularies recognise that, in some cases, remote hearings may not be appropriate, in which case the meeting or hearing will take place in person where possible.

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- 14.3 A copy of the information pack to be used throughout the meeting or hearing will be provided to the individual (and their companion where applicable) at least 15 calendar days before the meeting/hearing date.
- 14.4 Individuals may submit any documentary evidence which they wish to rely on at the meeting/hearing at least five calendar days before the meeting/hearing date.
- 14.5 The individual will receive written notification of the outcome of the meeting or hearing (after being notified verbally) within five calendar days. The outcome letter will also inform the individual of their right to appeal.

15. Witnesses

- 15.1 Capability meetings and hearings will be conducted without any witnesses in attendance, whenever it is reasonable to do so.
- 15.2 If either the individual or their line management consider witness attendance necessary, they can submit details of their proposed witnesses to the meeting chair with an explanation of why their attendance is necessary. This should be provided at least ten days before the meeting/hearing date.
- 15.3 The chair's decision on witness attendance is final and will be explained in writing. Any witness attendance will be notified in advance to all parties attending the meeting or hearing at least five days before the meeting/hearing date. Where a request for a witness to attend in person is declined, written witness evidence can still be provided.

16. Postponements and Adjournments

- 16.1 Capability meetings and hearings will be held without any unreasonable delay in order to ensure that evidence is current and recollection fresh.
- 16.2 If the individual or their companion is unable to attend on the date/time arranged, a short delay will be acceptable to reschedule to an alternative date convenient to them. If they are subsequently unable to attend on the rescheduled date, and all allowances have been made, the meeting or hearing may proceed in their absence in order to avoid further delay, and consequently a decision will be made in their absence. In circumstances where an individual cannot attend, they will be given the opportunity to submit written evidence. The individual's UNISON representative may still attend and represent them in their absence. Failure to attend without good reason may be treated as misconduct.
- 16.3 Where delays are on medical grounds, Workplace Health may be consulted for advice. Supporting medical evidence may be required if there is to be a significant delay.
- 16.4 If during the course of the meeting or hearing further information is required, the chair may call an adjournment. The individual will be given reasonable opportunity to consider and respond to any new information obtained before

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the meeting or hearing is reconvened. The individual or their companion may also request an adjournment at any time.

17. Appeals

17.1 If the individual believes that the outcome of a formal capability meeting or hearing, or any term of the Improvement Plan, or sanction imposed, is wrong or unfair they can appeal.

17.2 Appeals must be submitted in writing as directed in the individual's outcome letter within seven calendar days of receipt. In their appeal letter the individual must clearly set out the grounds and evidence for their appeal.

17.3 The appeal hearing may be a review of the fairness of the decision in the light of the procedure that was followed. It may also include new information that has come to light since the original hearing, although this will be at the discretion of the chair of the hearing, having taken advice from HR.

See FAQ: On what grounds can I appeal?

17.4 The original outcome, terms of the Improvement Plan and sanction of the relevant meeting/hearing will remain in place pending the outcome of the appeal.

17.5 If an individual is appealing 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 individual will be reinstated with no loss of continuity or pay.

17.6 If new matters are raised in an appeal, further investigation may be required. If any new information comes to light, the individual will be provided with a summary including, where appropriate, copies of additional relevant documents and witness statements. The individual will have a reasonable opportunity to consider this information before the appeal hearing.

17.7 The individual will be notified of the date, time and place of the appeal hearing. Appeal hearings will be held without unreasonable delay, but with sufficient notice given to prepare. As detailed in paragraph 14.2, there may be circumstances in which it is appropriate for a hearing to be conducted remotely.

17.8 Appeal hearings will be conducted by an impartial and usually more senior manager who has not had any previous involvement in the case, assisted by an HR Advisor who also has had no previous direct involvement, to give procedural advice only.

17.9 The individual is required to attend the appeal hearing and they have the right to be accompanied as per section 8, should they choose.

17.10 A hearing may be adjourned if additional information is required, or further consideration of matters discussed at the hearing is necessary. The individual

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will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.

17.11 The outcome of the appeal may:

- confirm or reverse the finding of unsatisfactory performance/attendance;
- substitute an alternative outcome;
- endorse or vary the terms of the Improvement Plan and written warning or other sanction as issued;
- remove any written warning and/or revoke and overturn any dismissal or redeployment.

17.12 Decisions on appeal will be final and the individual will be informed of the outcome in writing within five calendar days of the hearing. Wherever possible the decision will also be explained in person. There will be no further right of appeal.

17.13 If the individual raises a grievance about the capability process, or an appeal within this process, this will be dealt with as part of the capability procedure.

18. Mitigating Factors

18.1 When a case is being considered, it may become apparent that there are mitigating circumstances such as personal or welfare problems that are contributing to the unsatisfactory performance or attendance record.

18.2 Where this is the case, it does not mean that the formal capability procedure cannot be followed, but that the impact of such circumstances on the individual must be fully assessed and considered as part of the process. Any action that the individual is taking to address the circumstances should also be considered.

19. Reasonable Adjustments

19.1 In all cases of unsatisfactory performance or attendance involving ill health, especially those involving disability, consideration must be given to whether there are any adjustments that could reasonably be made to an individual's working arrangements, including changing duties or providing additional equipment or training. The Constabularies may also consider making adjustments to this policy in appropriate cases.

19.2 Guidance on reasonable adjustments can be provided by the member of HR advising on the case.

19.3 If an individual wishes to discuss any disability that may be affecting their attendance or performance at work or provide notification of any medical /health/ neuro-diverse condition they consider relevant, the individual should contact their line manager or HR Advisor.

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20. Confidentiality and Record Keeping

- 20.1 All capability discussions, meetings, hearings and reviews will be treated confidentially. This means that the individual and anyone they bring to accompany them must treat any information communicated to them in connection with these matters as confidential.
- 20.2 A formal record of all meetings and hearings will be made and only circulated to those directly involved. Subject to the individual's consent, meetings and hearings may be digitally recorded, a copy of which will be made available to the individual upon their request. If the individual does not consent to a digital recording being made, a written record will be made instead.
- 20.3 Individuals are prohibited from making their own electronic recordings of capability meetings or hearings, or any informal meetings, unless there are exceptional circumstances for doing so, in which case the individual must discuss this and seek consent from their line manager or the manager chairing the meeting/hearing.
- 20.4 At the end of the meeting/hearing all individuals will be asked to return to HR or the panel chair any hard copies of documentation circulated and to delete any electronic/email documentation.
- 20.5 All data and information collated under this policy will be held and processed in line with the Data Protection Act 2018, the UK General Data Protection Regulation (UK GDPR) and the Constabularies' Personal Records policy. Any inappropriate or unjustified access to or disclosure of personal data or information by any member of staff or officer involved in a capability procedure in any capacity, may result in disciplinary action.

21. Police Barred and Advisory List

- 21.1 If an individual is dismissed on the grounds of unsatisfactory performance or attendance, they will be placed on the College of Policing 'Barred List', with effect from the date their employment with the Constabulary ends. This will act as a bar on the individual working within policing and certain law enforcement bodies. These details will not be publicly available.
- 21.2 Any individual dismissed for unsatisfactory performance (not amounting to gross incompetence), or unsatisfactory attendance will automatically be removed from the Barred List after a period of 12 months.
- 21.3 A member of staff who successfully appeals against their dismissal will be removed from the Barred List.
- 21.4 Any individual who suffers ill health and leaves the force by mutual agreement or ill health retirement will not be included on the Barred List.
- 21.5 Any individual who leaves the Constabulary before their performance capability case is concluded will not be included on the Barred List.

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Application review process for removal from the list

21.6 If you have been dismissed for gross incompetence you can apply to be removed from the barred list after a minimum of three years.

21.7 To request a review read the application guidance and complete an application form, both of which are held on the College of Policing website. You will need to provide clear evidence as to why you are now suitable to re-join policing. Submit your application to the College of Policing by email at barredlistreviews@college.police.uk.

21.8 The College will carry out checks and liaise with the force from which you were dismissed. The force will consider the application and make a recommendation to the College, taking into account:

- whether you have demonstrated suitability to return to policing
- the circumstances that led to the original decision or finding
- the impact that removing your barred status might have on public confidence in the police

21.9 The College of Policing makes the final decision about whether it is appropriate for your details to be removed from the barred list and allow a possible return to policing, or if the application should be rejected.

21.10 This process does not review the reasons for the original dismissal. It only considers whether it is proportionate for you to remain on the barred list.

21.11 If your application is rejected, you will be notified of the earliest date that you can request a further review.

22. Support

22.1 First line support should be provided by the individual's line manager throughout the capability procedure. It is recognised that individuals may require additional support. The following sources of support are available:

Employee Assistance Programme

UNISON

Staff support networks

Chaplaincy - Suffolk

Chaplaincy - Norfolk

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