



Service Instruction Capability

“An Excellent Authority”

Document Control

Description and Purpose

To advise Managers and employees of the procedure to follow where employees are unable to meet the Authority’s expectations of them because of capability issues.

Active date	Review date	Author	Editor	Publisher
		POD	N Mernock	Sue Croker
Permanent	X	Temporary	If temporary, review date must be 3 months or less.	

Amendment History

Version	Date	Reasons for Change	Amended by
New			

Equalities Impact Assessment

Initial	Full	Date	Reviewed by	Document location
	X			

Related Documents

Doc. Type	Ref. No.	Title
Policy		Conduct and capability Policy
SI		Values Based Appraisal SI
SI		Probation SI
SI		Conduct (Discipline) SI
SI		Absence and Attendance SI
SI		Firefighter Health and Fitness
SI		Medical Discharge Procedure

Contact

Department	Email	Telephone ext.
POD		

Target audience

All MFS	X	Ops Crews	Fire safety	Community FS
Principal officers		Senior officers	Non uniformed	

Introduction

Merseyside Fire & Rescue Authority (MFRA) recognises the importance that its people, and their performance has on the continued success of the Service, as a result it places great importance on an employee's ability to undertake their role in a manner which meets the needs and expectations of the Authority.

In adopting this process the Authority will ensure that all employees understand and are appropriately supported to achieve and maintain the standards of performance and attendance expected by the Authority to meet its current and future needs.

The Authority will ensure the process is applied fairly, impartially and reasonably in order to address, any issues or concerns regarding an employee's capability in the workplace.

Terminology

In the application of this procedure;

Capability refers to an individual's skills, ability, aptitude and knowledge in relation to the job that he or she is employed to do. Capability is defined in the Employment Rights Act 1996 S.98 (3) (a) as "capability assessed by reference to skill, aptitude, health or any other physical or mental quality".

Performance is the accomplishment of a given task measured against a set of pre-determined known standards. Performance may include a number of factors and common measures of performance may relate to accuracy, adherence, completeness, cost, speed or achieving individual or organisational targets.

- A job description or role map provides an example of performance measures expected by the Authority of an individual's role and their ability to maintain a consistent level of performance.
- Objectives agreed in appraisals provide specific, measurable, achievable reviewable targets. Development activities enable these objectives to be achieved.

The measure of an individual's performance may also be compared against established work place processes and procedures where their ability to provide a standard range of skills over a period of time can be measured against required organisational expectations.

Performance is also deemed to be the fulfilment of a task, duty or responsibility, as deemed appropriate by the line manager or is an implied term under a contract of employment.

Attendance is a statutory term of the contract of employment and as such is covered by this procedure.

Absence impacts on both the performance and the ability of the individual to undertake a set of tasks and has a direct impact on the service levels and the capability of the organisation to undertake its statutory duties.

In the interests of brevity, poor attendance is not covered in detail in this procedure as it is extensively covered in the Absence and Attendance Service Instruction, the Firefighter Health and Fitness Service Instruction and the Medical Discharge Procedure; however poor attendance is linked directly to capability and should be considered in accordance with this procedure.

It may be considered unusual to consider ill health as a capability matter, however the purpose of these interventions is to be corrective and supportive to enable an employee through targeted actions and additional support to meet organisational expectations.

Responsibilities

An employee is expected to achieve and retain the skills, ability, aptitude and knowledge in relation to the role for which he/ she is employed and to work with their manager in seeking early resolutions to any issues or concerns which have been identified.

Employees have a duty to take care of themselves and those affected by their work and to co-operate and comply with Authority's policies and procedures and seek guidance and advice on any health, safety and welfare issues or concerns.

Employees are encouraged to regularly reflect on their own performance, in relation to achieving and maintaining the Authority's standards regarding their ability to fulfil the tasks, duties or responsibilities, pertinent to their role, contract of employment, job descriptions and/or via the appraisal process.

Managers are responsible for setting realistic and achievable performance and attendance targets which reflect the standards set by the Service. They are also responsible for ensuring that those are communicated to their employees so they are aware of the organisational expectations placed upon them.

Managers should broach the subject of absence, poor performance or wider capability issues with the employee directly using specific examples in order to address any issues promptly and proportionately.

Managers and employees will agree any work objectives or targets', discussing what training is available and providing appropriate advice to the employee with continual reviews.

Managers are encouraged to keep in touch with employees who are absent from work and offer opportunities of support which would assist them return to work.

Managers are encouraged to seek advice and support from the People and Organisational Development Team, Professional Standards and/or Occupational Health Team as soon as a capability issue is identified to ensure a suitable approach is taken as each case will be different and require a bespoke solution.

What is capability?

Capability can include situations affecting the individual or team performance. For example, an employee reaches or passes an absence trigger point or their performance falls below a level or standard of performance reasonably expected of their role. The employee's capability may be diminished or be unsustainable and can be clearly identifiable when measured against the agreed Service standards or organisational or individual performance targets.

It can be difficult to determine initially whether an issue is one of conduct or capability. For example, an employee may have poor attendance. In one case a person may want to attend work but is medically unfit to do so, as a result this is a capability issue. Alternatively, an employee may choose not to attend work although they could or they may manage the trigger system, and this would be a conduct issue. Both cases would be handled very differently.

Levels of Management

Stage	Manager
Informal	First line manager
Formal Stage One	First/second line manager
Formal Stage Two	Second/third line manager
Formal Stage Three (Final)	Area Manager/Director

Dealing with capability issues – informal

The manager should always adopt an informal approach in the first instance of capability issues.

Early intervention by the Manager should ensure that an employee understands what is required of them; both in terms of the duties and the standards to which those duties must be performed. This approach by the Manager should proactively reduce the possibility of capability issues arising.

The manager and the employee should discuss the situation to identify the necessary activity which needs to take place to bridge the capability gap. At this point key outcomes and milestones should be agreed with realistic timescales agreed for future meetings. ([Appendix 1](#))

The Manager must create a record of the discussion, which should capture both the issues and the improvements, which have been identified and agreed.

During each review meeting, Managers should encourage the employee to compare their own attendance/performance or abilities with the requirements and standards set by the service to identify for themselves the gaps. Reasons for the poor attendance/performance should be explored, with the employee being encouraged to identify any issues which may have had an adverse effect on their ability to attend/perform.

At the end of the review period, the Manager must determine if the necessary improvement has been achieved by the employee. The employee should be made aware that the

consequences of not achieving this improvement may result in an escalation to the formal stage of the capability process.

The informal process should be no longer than six months, but there may be extenuating circumstances which extend this period. For example, this may be due to the cancellation of an important event, such as a training course or a hospital appointment and as such, the circumstances are beyond the control of the Manager and the employee.

Dealing with capability - Formal

The aim is to correct a situation and secure sustained improvement. There are three formal meeting stages in the Capability procedure.

Stage one- First formal meeting

This stage should be used where informal support and action has not resolved the issue.

Professional Standards will be responsible for organising a capability meeting as soon as possible after the review of the informal activity and any relevant information should be submitted to the Meeting Manager and employee at least 10 working days before the meeting is scheduled to take place.

Professional Standards will advise the employee, in writing, that the meeting may result in a sanction in the form of an Improvement Notice. As this is a formal meeting an employee has the right to be accompanied by a work colleague or a Trade Union representative.

If the outcome of the formal meeting is that an Improvement Notice is issued then this should formally communicate to the employee what they need to do to improve their performance or attendance, the support available, the timescales for achieving this improvement and the consequences of not doing so.

The employee will be informed of their right of appeal.

Stage two- Second Formal meeting

The Meeting Manager should review the information from the stage one meeting and determine if the necessary improvement has been achieved.

If the issues and concerns highlighted in the first formal meeting remain or have increased during the monitoring periods then the Meeting Manager will escalate through the relevant stages of the capability process.

The employee will be informed at the end of the monitoring period that the process is being escalated and this will be confirmed in writing. Each formal meeting will take the same format as detailed in the first formal meeting.

Stage three -Third and Final formal meeting (potential dismissal)

If capability is still an issue or concern after the previous two stages then Professional Standards will appoint a Capability Manager. The Service must ensure that all reasonable considerations have been made, reasonable adjustments applied and medical advice sought or applied. This should then allow the Capability Manager to convene the final meeting and consider the circumstances regarding the employee's continued employment.

At this final stage the Capability Manager may consider dismissal on the grounds of capability, or as an alternative to dismissal, redeployment or demotion to a more suitable role in which the employee can meet the required standards.

Area Managers and Directors, or above, have delegated powers to dismiss.

Consideration may only be made to dismiss on the grounds of medical incapability if guidance or advice has been sought from the Occupational Health team. Where an employee has a disability the Equality and Diversity Manager will be involved to consider if reasonable adjustments can be made.

Redeployment or demotion would be considered only if there were current vacancies or there was an Organisational need to recruit.

If redeployment or demotion was agreed then the employee would have to adopt the terms and conditions commensurate with the new role. In addition to the redeployment or demotion, there may be a need to agree upon an Improvement Plan; this may involve either, extending the existing one, or agreeing on a new Improvement Plan.

Appeals

An employee has a right of appeal against any formal Improvement Notice. Appeals should be registered within fourteen days of the decision being communicated to them.

The appeal must include the specific grounds of appeal. These will normally be one of the following:

- There was a defect in the application of the process,
- The issue is not proven on the balance of probabilities,
- The Improvement Notice was too severe
- New evidence has come to light since the meeting which will have an impact on the decision

The appeal hearing should be held within twenty eight days of its submission unless this is altered by mutual agreement.

It should be noted that the conclusion of the appeal is final and there is no further right of appeal.

Monitoring Periods

There will be a period of informal monitoring on occasions when an employee satisfies the criteria laid down in the Improvement Notice. This will be a maximum of six months for the first formal stage and a maximum of eighteen months for the second formal stage.

The monitoring period will be determined on a case by case basis to reflect the ongoing support the employee requires and to ensure that the capability issue does not return once the formal process has concluded.

If the Manager holds a reasonable belief and concern that progress is not being met they can move to the next level, if appropriate.

Mitigating circumstances

An employee's unsatisfactory performance may be subject to external or non-employment related influences. If this is the case the Meeting Manager may wish to refer the employee to appropriate internal/external support.

The following are some examples of support which may be considered:

- Alcohol, Drug and Substance Misuse pathway of care
- Fit for Work Health Plan
- Employee Assistance Programme
- Occupational health support, such as physiotherapy
- Employee Counselling Services
- NHS Stop Smoking Helpline

This type of intervention may support the employee in achieving the required performance levels as early as possible in the capability process.

If it is clear that the unsatisfactory performance was as a result of ill health or a disability, advice should be sought from the Occupational Health team who will consider whether any reasonable adjustments are required to support the employee to meet the required standards.

Where ill health or a disability has been confirmed any subsequent actions regarding capability should be considered in conjunction with the Occupational Health team and medical advisers and handled with the appropriate sensitivity relative to each individual case.

Medical Discharge

The capability procedure is managed independently of the Medical Discharge Procedure although on some occasions it may be necessary for both processes to run alongside each other based on advice from the Occupational Health team. If this is the case then the two processes should not conflict with one another, at any point in the proceedings.

Neither process should be unnecessarily delayed by the other, before appropriate action is taken or support measures are implemented. For example, medical reports and assessments may be requested from the Occupational Health team and used to support either process and at any stage in the proceedings.

The outcome of each process is considered independently from the other and will be considered through the appropriate channels. For example, an Improvement Notice may still be issued whilst an employee is awaiting the outcome of the Medical Discharge Procedure.

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Capability Guidance

This Guide does not form part of the capability procedure, and should not be regarded as such. Capability is the responsibility of line managers, and the guide has been designed to offer practical advice to managers regarding best practice in handling capability issues at work.

The aim of this procedure is to be a positive and preventative process.

The purpose of managing capability is to be corrective and supportive to enable an employee through targeted actions and additional support to meet organisational expectations. As with any process it is important to help an employee understand the consequence of what could potentially happen if the expected standards are not met or maintained. A Manager is expected to handle every capability issue in a supportive way with sensitivity especially when the underlying issue is a medical one.

The capability procedure is used where there is a genuine lack of capability. A deliberate failure on the part of the employee to meet the expected standards is a conduct issue and will be dealt with via the conduct procedure.

The law states that in determining for the purposes of the Employment Rights Act (ERA) 1996, whether the dismissal of an employee is fair or unfair, it is for the employer to show the reason (or, if more than one, the principal reason) for the dismissal, and that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held. Capability is defined in the ERA 1996 S.98 (3) (a) as “capability assessed by reference to skill, aptitude, health or any other physical or mental quality”.

Setting Standards

It is important to understand that line managers have the right to set reasonable standards of performance, attendance and ability for their employees and to manage their teams to ensure these are met.

By ensuring that an employee knows what is required of him/her; both in terms of the duties and the standards to which those duties must be performed, the manager will proactively reduce the possibility of capability issues arising.

If the standards are to be fully effective, they need to be clearly and effectively communicated to all employees, understood by them, and accepted as reasonable.

Standards of acceptable capability can be made clear in a number of different ways:

During recruitment

It is important to make prospective employees aware of the standards expected in terms of job performance, attitude, attendance as well as wider capability issues. In this way, they will understand before accepting an offer of employment what conditions they will be working under and what standards they will be expected to maintain.

Job Descriptions / Role Maps

It is important that employees have access to their job description/role map and that the contents are discussed with their line manager to clarify the expectations required.

Probation

When joining the Service or upon appointment to a new role, every employee will have a structured set of probationary meetings where the expectations of the organisation and Manager are explained and a training plan put in place to ensure the employee understands how to discharge their duties in the required manner and with the expected levels of attendance.

Appraisal Meetings

It is a fundamental management duty to hold appraisal meetings with their employees. Appraisals to:

- Re-enforce expected standards, set future objectives and identify development needs.
- Recognise what has been done well, and what could be done better or differently.
- Identify problems either in work or externally that might create problems before they become major difficulties or impact adversely on work.
- Build relationships that enable difficult conversations to be had in an open, trusting manner.
- Create a culture of improvement and feedback.

Responsibilities

Employee

Employees have an implicit contractual obligation to perform to a satisfactory standard and will be given support and encouragement to do so. These responsibilities also include:

- Proactively and constructively taking part in appraisals and appraisal reviews.
- Taking part in training and other measures that help improve performance and/or attendance.
- Ensuring fitness and attendance levels are to the required standards.
- Raising any issues that could affect their performance with their manager.
- Asking if something is unclear.

Line Manager

Line managers have a responsibility to supervise and manage the allocations of work, and to monitor the ability of their employees.

Managers should,

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- Identify areas where the employee is failing to meet the standards and create plans with the employee to improve these areas;
- Identify areas where standards are met and give recognition to these.
- Agree realistic targets through appraisals and ensure the employee understands those
- Identify training, coaching or mentoring as appropriate to meet the performance gap.

Informal Action

It is normal practice for a line manager to discuss any matters of concern with their employee on a day to day basis. The aim is to offer positive advice, assistance and guidance to help the employee overcome any issue of capability.

The informal stage is a fundamental feature of the Service's approach to capability and should be implemented at the earliest opportunity. It provides a way of effectively:-

- Letting people know what standards are expected of them.
- Helping and encouraging those people who are not meeting the standards through agreeing appropriate courses of remedial action, for example via additional training.
- Providing additional support at an early stage.
- Reviewing regularly and offering praise for achievements met but also letting people know the consequences of not meeting or maintaining the standards.
- Lessening the need for formal action via the issuing of Improvement Notices, by tackling problems before they escalate.

These initial discussions may raise a number of issues:

- The employee may not be aware of the standards expected of them.
- The standards may not be reasonably attained.
- The standards may have changed and the employee may not be aware of them.
- A genuine lack of capability may have been present for some time but only recently identified.
- Capability issues may have become apparent because of, for example, changing job content, new systems, personal factors or the employee's health.

Informal discussions are essentially a two-way problem-solving exercise, where the emphasis is placed on finding ways in which any shortcomings can be remedied.

It is important for everyone involved to recognise that no formal action should be taken at this stage. Every effort should be made by both the line manager and employee at this stage to prevent the situation from progressing to the formal meeting stages.

There is no need for trade union representation at this stage, because such meetings should be an integral part of the line manager/employee relationship.

How to conduct an informal discussion

Preparation

- Prepare for the discussion by checking the facts on the required standards and have those facts and documents available (e.g. attendance records, job/role description etc.).
- Organise a mutually convenient time to see the person, ensuring that the discussion is conducted in private.
- Allow them adequate notice to prepare; three days or earlier with mutual agreement.

The discussion

- Explain the reasons for meeting.
- Encourage the employee to discuss the situation helping them to identify their shortfalls by adopting a coaching style.
- Listen to what the employee has to say.
- Focus on the facts and outcomes required. Employees may take the comments personally and it is important to therefore use specific examples to help to illustrate the points and concentrate only on the specific area (s) requiring improvement.
- Try to establish why there have been any shortcomings and explore those reasons.
- Discuss whether the job requirements or standards of capability are unclear, out of date, or unreasonable.
- Ask the employee what the organisation or line manager can do to assist them and reduce or remove the issue
- Agree an Improvement Plan and make a record of the discussion.

Improvement Plans

When it is appropriate to use an Improvement Plan careful consideration should be given to the design and implementation of it as the plan, providing opportunities for the employee to meet the standards required and to provide reasonable timescales.

The employee should be encouraged to contribute their own ideas or potential solutions and meaningful consideration should be given to these, and where practicably possible, these would be incorporated in the plan/ timescale.

The Improvement Plan must be underpinned and supported with regular reviews and/ or supervisory meetings in the subsequent monitoring period as required. If the employee is absent, the manager should keep in touch with the employee and welfare meetings should be planned and undertaken at an agreed location.

In the case of long term absence where the employee cannot return to work because of ill health, regular feedback must be provided by the line manager to ensure the employee continues to feel part of the team. Considerations must given to any reasonable adjustments and these should be discussed at agreed intervals with the employee.

It is recommended that the Line Manager gains agreement from the employee regarding their improvement plan, however this is not essential in order for the plan to be issued and the timescales commenced.

For some issues the timescales may be out of the employee's/ Authority hands, and therefore the prescribed Improvement Plan and monitoring period is determined by other factors. For example, availability on an external course or a consultant appointment in a hospital or post-operative recuperation may be planned but not completed; there should still be regular contact between the employee and Manager regarding how the employee is performing in other aspects of the role or in their recovery and general wellbeing.

Formal Action

Formal meetings

The purpose of the formal meetings is to:

- Set out clear and specific details outlining the capability issue.
- To listen to the employee's view of the capability issue and what they have done in relation to meeting the required standards.
- To discuss and agree what improvements are required ensuring these are clearly explained.
- To set the time frame for improvements.
- To inform the employee of the possible consequences of not meeting and maintaining these required standards.

There are three formal meeting stages and each stage re-enforces the necessity to improve and meet the required standards.

Meeting attendees and format stages 1 and 2:

- The employee has the right to be accompanied to formal meetings by an employee representative or Trade Union Representative who may ask questions for clarifications and make statements, but should not answer on behalf of the employee.
- The employee's Line Manager will provide the facts relating to the process that has been undertaken so far and present the Improvement Plan(s) and evidence regarding the extent to which the standards have been met.
- The Meeting Manager (appointed by Professional Standards) will listen to the facts presented by the Line Manager and their responses and request contributions from the employee to examine their position and views.
- At each formal stage the Meeting Manager will discuss the effectiveness of the remedial measures with the employee and Line Manager to ascertain if they should continue or if additional measures are required.

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- The Meeting Manager may ask questions of both parties to allow for an accurate summary of the points raised.
- The Meeting Manager may adjourn the meeting to consider specific points.
- The employee will be advised of the meeting outcome

It is important that the employee is given an opportunity to respond to all the points raised and explain any issues that they may be experiencing. They must be involved in the discussion so that at the end of the meeting an agreed approach to gaining improvement is reached.

If the Meeting Manager considers sufficient improvement has been achieved and maintained, this will be confirmed in writing and the information placed on the employee's personal file. The employee should continue to be supported and reviewed on a regular basis through normal supervision and appraisal.

If the Meeting Manager determines that the capability issue remains they will issue a formal Improvement Notice. (See below) The decision will be confirmed in writing and a new or updated Improvement Plan will be devised to meet the gap. Where the improvement required is of a technical nature this may be devolved back to the line manager or their line manager if appropriate in order to develop a suitable Improvement Plan.

If after considering all the facts and views the Meeting Manager concludes that there is sufficient mitigating circumstance which prevented the standards being met in the agreed timescale, the employee will remain at the same stage and the review period may be extended for a minimum of four weeks and a maximum of twelve.

An extension time is to complete training or a development activity, or to have pre-planned medical treatment that was planned but had fallen out of the monitoring timeframe and which could potentially resolve matters and conclude the process. After the extension the formal meeting will be re-convened to determine whether the standards have been met or whether the issue requires escalation.

Stage three-Third and Final Formal meeting

If the desired improvement has not be made or maintained, a final meeting will be convened which may result in the employee being dismissed on the grounds of capability. As a result there is an additional meeting attendee as one of the HR team will attend the meeting to offer further advice and guidance.

This Manager, named the Capability Manager will decide on the evidence provided, and on the balance of probabilities whether there is any likelihood of the employee meeting the required standards.

There will be an examination of each stage of the process including:

- of all the Improvement Plans and Notices, informal and formal
- every review undertaken in the previous monitoring periods,
- of all the support offered, and whether it was utilised

- Any reasonable adjustments that have been made to date.

If it is decided that the capability issues will not be resolved the Capability Manager may decide,

- to dismiss on the grounds of capability,

Or as an alternative to dismissal

- to re-issue a Third and final Improvement Notice
- demote to a more suitable role,
- redeploy to a more suitable role

Redeployment or demotion will only occur if there is a suitable post and the employee would need to move onto the terms and conditions for those roles.

Consideration of dismissal on medical grounds on capability can only be made where advice has been sought from the Occupational Health team and all reasonable adjustments have been implemented and reviewed. Where the capability is caused by a disability the Equality and Diversity Manager's advice will be sought.

Dismissal

If the Capability Manager decides to dismiss on the grounds of capability, the employee shall be provided within 5 working days, with notice in writing stating:

- The date of termination
- The full and specific reasons for termination under the grounds of capability
- The last day of service (including any contractual notice period or Pay in lieu of Notice which may be granted at the Authority's discretion)
- The employee's right of appeal, how she/he may exercise that right, the time limit for lodging an appeal and the right to representation.

Appeals

An appeal may be made in writing after the formal stages of the capability process. The reasons for the Appeal must be stated clearly in the written submission from the employee

Any Appeal should be made in fourteen days of receipt of the outcome.

The Appeal hearing will be convened and heard as soon as reasonably possible after the written Appeal has been received.

Examples of an appeal lodged by the employee may be in relation to:

- The issue of the standards required of the individual being considered as reasonable
- The severity of a the decision implemented
- The validity of the supportive measures i.e. relevance of Improvement Plans put in place, the timescales to achieve standards being appropriate.

- Finally whether capability processes have been followed.

Improvement Notices

The Improvement Notice is the formal notification to the employee that they have not met the required standards and what they need to do to reach and maintain those standards over a monitored period of time. Although they are not called disciplinary sanctions as the focus is on improvement; they do carry the weight and importance of a warning as they advise the employee what the consequences of insufficient improvement may be.

The Improvement Notice has a date by which the expected standards of performance or attendance should be reached. These will be tailored to meet the specific needs of the employee but will be clear regarding the default position and minimum standards expected within a specific time frame.

For example, an employee who has had eight working days from work due to absence will be offered support and help to ensure they attend work in line with their contractual obligation and their attendance should improve with immediate affect; in addition however they will also be expected to have no further absences during the monitoring period and this will be reviewed by the line manager as detailed in the Improvement Notice.

Consideration will be given to:

- Evidence that the employee had been informed and understood what the issues were.
- Whether the organisational or line manager's expectations or standards were reasonable and achievable.
- Whether the time scales for improvement were realistic,
- Whether there was consideration of the employee's circumstances and their ability to meet the standards.
- If the improvements had been previously discussed and understood by the employee.
- What support measures were considered and their implementation.
- Whether the employee utilised the opportunities which were made available to them
- The regularity of reviews with the line manager and whether the employee received written confirmation of the outcome of those reviews.
- Whether Occupational Health guidance regarding any potential adjustments were implemented.
- Any other mitigating circumstances.
- Whether it was clear to the employee what the consequences of no improvement would be.
- The employee's explanations in line with their right to reply.

At each stage of the process the employee should be informed verbally and in writing of their position in the process, with a clear indication of the consequences of no/ sustained improvement. Each Improvement Notice will act as a formal stage in the process thus warning the employee of the potential next stage if sustained improvement is not maintained, and this could potentially lead to their contract being terminated on the grounds of capability.

Monitoring progress and review

Having agreed on the plan, it is extremely important that the Manager monitors and reviews to ascertain whether the improvement has been achieved and sustained. Managers must make it clear that they want the employee to succeed and that the employee will be given appropriate help and encouragement during this monitoring period. At the end of each meeting the next review date should be agreed in advance:

- The monitoring period for the informal action is for a maximum of six months
- For Stage 1 the monitoring window will last for a maximum of six months
- For Stage 2 the monitoring window will last for a maximum of eighteen months.

Managers should be aware that the monitoring period should be appropriate to the individual's particular circumstances and therefore each case may have a different length of monitoring and review.

The only exception to these timescales will be on the professional advice of Occupational Health.

At the end of the monitoring period there are three potential outcomes to be considered

- The improvements have been achieved and the process does not need escalating to the next stage. In this case recognise the improvement, and confirm the expectation that those improvements will be maintained.
- The improvements have not been achieved and the process needs to be escalated.
- That the employee is on course for achieving the standards but a short extension may be appropriate (for example a course was postponed by the supplier)

If the desired improvement has been achieved and maintained at the end of the monitoring period, this will be confirmed in writing and the information sent to Professional Standards. The employee should continue to be supported and reviewed on a regular basis through normal supervision and appraisal.

Line Managers do not have to wait until the end of the monitoring period before moving the employee to the next stage of the procedure however if there is sufficient cause for concern.

Recording

All notes and copies of the formal Improvement Notices and Improvement Plans will be held by Professional Standards and may be referenced if the process is escalated. The line manager should therefore be accurate in recording the content of meetings and agreements made. Once the monitoring period has been completed the documentation will be expunged.

The line manager will clarify in writing any or all of the points below where relevant to the employee.

- The reason for conducting the informal or formal discussion.

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- A summary of the discussion.
- The agreed Improvement plan including the assistance offered with clear measurable targets to be achieved and the desired outcome.
- The length of the monitoring period and review dates.
- The consequences of a failure to improve.

Support and Assistance

Throughout the process the line manager and employee should identify and discuss support, training or development. The line manager must give careful consideration to any reasonable requests for training adjustments or suggestions made by the employee, which relate to the role and the opportunity to achieve the required standards and discuss how support or guidance may best be delivered and by who.

Any initial support coaching or training undertaken should be documented on the action plan.

Options to consider at any stage in the process include:

- Counselling the individual with regard to the difficulties being experienced.
- Providing for, or making arrangements for refresher or other forms of training;
- Providing closer supervision and support for an appropriate period of time;
- Regular reviews at appropriate intervals; if an employee is absent regular contact is essential
- Arranging an assessment of capability (for example literacy testing or testing for dyslexia)
- Providing other sources of support for example a buddy, coach or mentor
- Arranging a change in duties for the employee, modifying or re-designing some of their work activities either permanently or for a temporary period
- Modifying work patterns or location
- Seeking Occupational Health Advice and guidance
- Individual Assistance Programmes or Pathway interventions
- Considering reasonable adjustments within a specific area of the role and set time scales
- Considering external self help and support groups, for example smoking/dietary advice/ Fire Fighters Charity provision such as Jubilee House, or the Citizens Advice Bureaux

The examples above are not exhaustive.

Management support

A HR Advisor will be available to provide guidance to the manager at both the informal and formal stages. The following areas should be discussed to ensure;

- That the unsatisfactory areas were clearly explained to the individual verbally and in writing.
- Whether the organisational or line manager's expectations or standards are reasonable and achievable.
- Whether the timescales for improvement are reasonable.

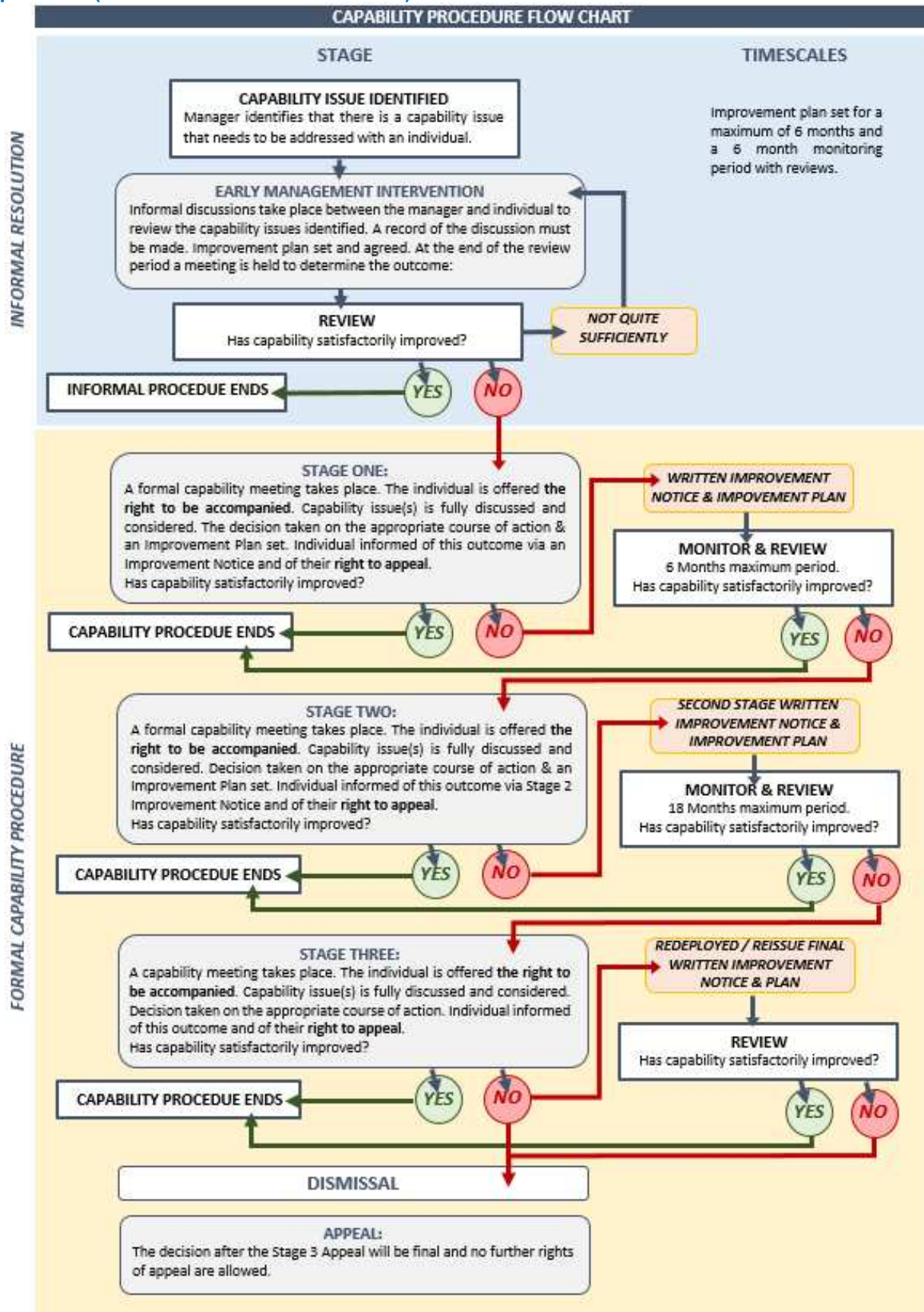
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- A fair and consistent approach is taken considering the individual's circumstances and their abilities to meet the standards.
- Whether the support measures were implemented as agreed.
- Whether the individual made use of the opportunities available to them
- Frequency of the reviews
- Occupational Health guidance and any potential adjustments are implemented.
- Any other mitigating circumstances.
- The employee understands the consequences of no improvement or no sustained improvement.

DRAFT

IMPROVEMENT PLAN				
 "An Excellent Authority"				
NAME: <input type="text"/>	DATE: <input type="text"/>	REVIEWER: <input type="text"/>		
ACTIVITY	EXPECTED STANDARD	TIMESCALE	ADDITIONAL SUPPORT	ACHIEVEMENT ATTAINED

Appendix 2 (this is a standalone flowchart)



[Sender's name]
[Sender's address]
[Sender's town]
[Sender's postcode]
[Date]

[Recipient's name]
[Recipient's address]
[Recipient's town]
[Recipient's postcode]

Dear []

I refer to our informal discussion on [] during which we discussed *[summary of the unsatisfactory capability]*.

We agreed at the meeting that you would strive to improve your *performance/ attendance/ attitude* in the workplace in order to reach the standards expected of you. In particular, as we discussed, you now need to improve your *performance etc* in the following ways: [set out details].

[It was also agreed that you would receive further [external/internal] *[coaching/training/ support]* from [name].

If you think that there are additional ways in which we can help you to improve your *absence/ performance*, please speak to me.]

I will continue to monitor your *performance/ attendance/ attitude* on an ongoing basis and I will review your progress in [] [weeks' time and, at *similar intervals* thereafter.

Please note that our discussion was intended informally to assist you in improving your *performance* and does not form part of the Company's formal capability procedure. Nevertheless, I must advise you that a failure sufficiently to improve your *performance* is likely to lead to formal capability action being instituted against you

I do hope that our discussions [and the additional measures that we are putting in place to assist you] will lead to a sufficient sustained improvement in your *performance* so that such action will not be necessary.

If you wish to discuss any aspect of this letter, please do not hesitate to contact me.

Yours sincerely

Appendix 4 Example of a formal letter

[Sender's name]
[Sender's address]
[Sender's town]
[Sender's postcode]
[Date]

[Recipient's name]
[Recipient's address]
[Recipient's town]
[Recipient's postcode]

Dear []

Following the formal capability meetings held on [] at [], this letter is to confirm that the outcome of the formal proceeding is that you have been given a *second* stage Improvement Notice.

The circumstances giving rise to the issue of this Improvement Notice were [*summary of the unsatisfactory capability*].

We discussed the matter fully at the hearing and, after considering your explanation, have concluded that your *performance/ attendance* justifies a Stage Two Improvement Notice. This is in accordance with the Authority's capability procedure.

It was agreed at the hearing that you would [improve your *performance/ attendance/attitude etc.* by completing the attached Improvement Plan]

We have also agreed to implement the following reasonable adjustments (detail as *appropriate*) which I hope will enable you to meet and maintain the expected standards.

I will continue to monitor your *performance/ attendance/ attitude* on an ongoing basis and I will review your progress in [] [weeks' time and, *at similar intervals* thereafter.

You were also informed that a failure to improve or maintain the expected standards within *4-18 months* is likely to lead to the next stage in the procedure, i.e. a third and final stage formal hearing and this may result in the termination of your contract on the grounds of capability.

I do hope that our discussions [and the additional measures that we are putting in place to assist you] will lead to a sufficient sustained improvement in your *performance etc* so that such action will not be necessary

This Improvement Notice will remain active on your file for a period of *weeks* from the date of this letter, after which it will lapse.

Yours sincerely