

Proposed Introduction of a Capability Policy

Report of the Chief Fire Officer

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1 Purpose of Report

This report is to inform the Human Resources (HR) Committee of the progress to date on the introduction of a Capability Policy.

2 Recommendations

The Human Resources Committee is asked to:

- a) Approve the draft Capability Policy;
- b) Agree to issue the draft Capability Policy for consultation with the executive management board and representative bodies in the usual manner; and
- c) Consider whether to request that the final version be brought to the Human Resources Committee at the next meeting on 28 May 2009.

3 Background

Shropshire Fire and Rescue Service (SFRS) currently do not have a live capability policy that managers and employees can refer to for advice and guidance. There have been previous attempts to introduce such a policy but they were unsuccessful due to the industrial relations climate at the time.

In the modern climate in 2009 however, we recognise the benefits such a policy brings in that a capability procedure enables an open and transparent process for both employees and managers to refer to in order to manage workplace performance issues.

4 Review of Policy

In mid 2008 work began on drafting a new Capability Policy, having recognised the need for this addition to our suite of policies as a result of a grievance dealt with during that year. In addition at HR Committee on 4 December 2008 an independent consultant recommended the introduction of a capability policy following a further grievance situation.

As a result of this recommendation a draft capability policy has now been completed. It has been developed in accordance with best practice guidance and suggested policy from the Chartered Institute of Personnel and Development (CIPD).

It should be noted that if agreed, introduction of this policy will require amendments to the existing policy on the management of sickness absence in order to ensure consistency. These amendments are also in draft and will be issued for consultation should the attached policy be agreed.

Members are asked to consider the draft policy, which is attached at the appendix to the report, and if acceptable, agree that it should progress through the normal consultation channels to become adopted as policy.

5 Financial Implications

There are no direct financial implications arising from this report.

6 Legal Comment

Capability is defined by the Employment Rights Act 1996, section 93(3)(a) as 'capability assessed by reference to skill, aptitude, health or any other physical or mental quality'. Section 98(2)(A) of the Act also indicates that "incapability must relate to the work or the kind of work that the employee was employed by the employer to do" and this must be determined in accordance with the current contractual obligations of the employee/

The proposed introduction of a capability policy is designed to deal with those cases where the employee is lacking in some area of knowledge, skill or ability, resulting in a failure to be able to carry out the required duties to an acceptable standard. In the instance of capability issues it is important to consider whether the employee's condition is covered under the Disability Discrimination Act 1995 (DDA)

7 Equality Impact Assessment

An Initial Equality Impact Assessment has not been completed for this report as the proposed policy is still in draft format. Once adoption of the policy has been agreed, an Equality Impact Assessment will be undertaken on it.

8 Appendix

Draft Capability Policy

9 Background Papers

There are no background papers associated with this report.

Implications of all of the following have been considered and, where they are significant (i.e. marked with an asterisk), the implications are detailed within the report itself.

Balanced Score Card		Integrated Risk Management Planning	
Business Continuity Planning		Legal	*
Capacity		Member Involvement	
Civil Contingencies Act		National Framework	
Comprehensive Performance Assessment		Operational Assurance	
Efficiency Savings		Retained	
Environmental		Risk and Insurance	
Financial	*	Staff	*
Fire Control/Fire Link		Strategic Planning	
Information Communications and Technology		West Midlands Regional Management Board	
Freedom of Information / Data Protection / Environmental Information		Equality Impact Assessment	*

Capability Policy

Policy

Shropshire Fire and Rescue Service (SFRS) will at all times endeavour to ensure that employees achieve and maintain a high standard of performance in their work. To this end the Service will establish standards and monitor performance, and provide employees with appropriate training and support to meet those standards.

There will be times when employees do not perform at the levels required by the organisation. In dealing with cases of poor performance, the organisation distinguishes between those where the reason is within the employee's control (e.g. negligence, lack of application or attitudinal problems) and those where the reason is outside the employee's control (e.g. health, a lack of training or the changing nature of the job). In the former case, the disciplinary procedure will be used (Brigade Order XX), and in the latter case, the capability procedure below will be employed.

(In cases of sickness absence, the procedure below should be read in conjunction with Brigade Order XX - Sickness Absence Policy and Procedure.)

(For contingencies related to alcohol and drugs dependency, see Brigade Order XX - Alcohol and Drugs Policy and Procedure)

Procedure

When it first becomes clear to an employee's manager that the employee's performance is so poor as to be unacceptable, the manager will hold an informal discussion with the employee to try to establish the reason or reasons. Any explanation given will, where necessary, be investigated, after which the following outcomes and actions are possible:

Managers decision on reason for poor performance (the issue)	Actions
a) The established standards are not reasonably attainable	<i>The standards will be reviewed.</i>
b) The employee's problems emanate from a change in the organisation's standards	<i>The new standards will be explained to the employee, and help and retraining will be offered, as appropriate.</i>
c) The employee's problems are related to his or her personal life	<i>The necessary counselling and support will be provided where possible.</i>
d) The employee's poor performance is related to a lack of training or supervision	<i>Additional support in the form of training or coaching will be provided.</i>

e) The employee is suffering from a medical condition which affects his or her performance, but the condition has not yet resulted in a poor attendance record	<i>Medical advice will be sought before determining a plan of action.</i>
f) The employee's performance problems are related to his or her state of health and have resulted in frequent and persistent short-term sickness absences or a longer period or periods of absence	<i>Refer to the ill-health section below.</i>
g) The employee's poor performance results from and may even constitute misconduct	<i>The disciplinary procedure will be invoked.</i>

Issues listed a) to d)

If one or more of possibilities a) to d) apply, the employee's performance will, following the informal discussion, be monitored thereafter for an appropriate period of time. Informal discussions and actions taken to support and assist should be noted by the manager. These notes are available to the employee upon request.

If after informal discussion the employee fails to show a significant improvement, the manager must set down in writing the nature of the employee's capability that may result in dismissal or disciplinary action, and send a copy of this statement to the employee and pass a copy to HR for the personnel file. The manager must inform the employee of the basis of the complaint and a formal interview will be arranged between the employee and his or her immediate manager. At this meeting the employee will have the right to be accompanied by a colleague or a trade union representative. The aims of the interview will be to:

1. Identify the cause or causes of the poor performance and to determine what, if any, remedial treatment (e.g. training, retraining, support) can be given.
2. Explain clearly the shortfall between the employee's performance and the required standard.
3. Obtain the employee's commitment to reaching that standard, by setting realistic targets.
4. Set a reasonable period for the employee to reach the standard, and to agree on the operation of a monitoring system during that period.
5. Tell the employee what will happen if that standard is not met.

The outcome of this interview will be recorded in writing and a copy will be given to the employee and passed to HR for the file.

Issue e)

If e) applies, the employee's manager will advise him or her to seek proper medical attention. A medical report from the employee's GP will be requested through occupational health, if appropriate, and the employee may be required to attend an examination by the occupational health physician to seek a further medical opinion.

A refusal to consent to or pass on the GP's report, or to attend a medical examination, may lead to disciplinary action against the employee, up to and including dismissal. Once it has been established that the employee is receiving appropriate medical treatment, the employee's performance will be reviewed over a reasonable period of time.

For all cases a) to e)

At the end of the review period a further formal interview will be held between the employee, his or her manager and his or her companion or representative, at which time:

- If the required improvement has been made, the employee will be told that that is the case and be encouraged to maintain the improvement. Further formal review meetings will be arranged, as appropriate.
- If some improvement has been made but the standard has not yet been met, the review period will be extended. During the review period, a further formal interview will be arranged (and will not normally be longer than the original review period).
- If there has been no discernible improvement, the employee's manager will explain to him or her that he or she has failed to improve. SFRS will consider whether there are alternative vacancies the employee would be competent to fill. If there are, the employee will be given the option of accepting such a vacancy or being dismissed.
- If such vacancies are available, the employee will be given full details, in writing, before being required to make a decision.
- In the absence of suitable alternative work, the employee will be told that the organisation has no alternative but to dismiss. The employee will be invited to give his or her views on this before the final decision is taken. This decision will be confirmed to the employee in writing.
- If the main cause of the poor performance is the fact that the job has changed over time, the organisation will consider whether a redundancy situation has occurred.
- If the main cause of the poor performance is a medical one, SFRS will consider whether the employee is disabled within the meaning of the Disability Discrimination Act 1995, and will take appropriate action.

III-Health Issue f)

The following procedure will be operated where an employee's immediate manager establishes that:

- the employee's attendance record is significantly worse than those of comparable employees or creates a particular operational difficulty (refer to *Short-term absences*)
- the employee's absence due to sickness has gone on for a considerable length of time (refer to *Long-term absences*).

Short-Term Absences

Short term absence will be managed in accordance with Brigade Order Human Resources no.7 part 1.

In all short-term absence cases where the formal interview process is applied the employee will be advised to seek proper medical attention and if appropriate, a medical report from the employee's GP will be requested via occupational health. The employee may also be required to attend an examination by the occupational health physician to seek a further medical opinion.

A refusal to consent to or pass on the GP's report, or to attend a medical examination, may affect entitlement to occupational sick pay and may also lead to disciplinary action against the employee, up to and including dismissal.

In some circumstances the Service may require the employee to provide private medical certificates for all absences from work due to sickness, regardless of their duration. The organisation will reimburse the employee fully for the cost of obtaining these certificates.

At any stage in this procedure, following investigation, should the employee's manager feel that the employee's absences are not due to an underlying medical condition but are casual in nature, the disciplinary procedure will be invoked.

Long-Term Absences

Long term absence will be managed in accordance with Brigade Order Human Resources no.7 part 1.

In all long-term absence cases where the formal interview process is applied the employee will be advised to seek proper medical attention and if appropriate, a medical report from the employee's GP will be requested via occupational health. The employee may also be required to attend an examination by the occupational health physician to seek a further medical opinion.

A refusal to consent to or pass on the GP's report, or to attend a medical examination, may affect entitlement to occupational sick pay and may also lead to disciplinary action against the employee, up to and including dismissal.

Appeals

In the event of a dismissal on capability grounds, the employee may appeal in writing (a written appeal is requested to assist the effective handling of the appeal) to the HR Manager, stating the reasons for the appeal, within XX working days of the receipt of the dismissal letter. The appeal will be heard in accordance with the organisation's disciplinary appeals procedure.

Points to Note

- Employees will be invited to all formal meetings by letter. The letter will set out the reason for the meeting and the arrangements for attendance.
- Outcomes of formal meetings will be confirmed to the employee in writing.
- A second management representative from another station/function may be invited to attend formal capability meetings in order to act as a witness and note taker.
- The Service reserves the right to seek assistance from external facilitators (arbitrators, conciliators, mediators) at any stage in the capability procedure, in the interests of seeking a satisfactory outcome for all concerned.
- For employees during their first year of employment, the Service reserves the right to speed up the decision making process and therefore may choose to follow a truncated version of the above procedure.
- The Service will throughout take all the individual circumstances of every case into account, particularly in relation to the timing of decisions (including a decision to dismiss) although other factors that are time-dependent (e.g. the exhausting of the statutory sick pay entitlement) may or may not be regarded as influential.