

DURHAM CONSTABULARY



Altogether Better Policing

Capability – Discipline Policy

Application	Police Staff, excluding staff in their probationary period)
Policy Owner	Human Resources
Version	13
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Durham Constabulary Freedom of Information Act Publication Scheme	



1.0 CAPABILITY – DISCIPLINE POLICY

2.0 PURPOSE AND SCOPE

- 2.1 Durham Constabulary recognises that careful attention to recruitment, selection, induction, well managed probationary period, timely performance development review (PDR), effective and sensitive leadership style, access to adequate resources, examination of workloads, clear notification of changed standards and support/training to attain them, will help to maximise performance.
- 2.2 However, there are occasions where standards of performance/attendance are unacceptable and this procedure is designed to assist managers deal with such. It is also intended to deal with those cases where, despite management support, the employee remains lacking in some area of ability, skill, competence or knowledge and is consequently unable to carry out the required duties to an acceptable standard.
- 2.3 Employees have a contractual responsibility to conduct themselves appropriately and to perform the required duties and responsibilities as outlined in the job description, person specification and role profile. This includes the requirement for employees to adhere to policies and procedures. In addition Durham Constabulary, via appropriate Line Managers, has the responsibility of setting realistic and measurable performance standards which will be explained to employees.
- 2.4 Durham Constabulary will endeavour to ensure that all employees are adequately trained and competent to undertake their duties
- 2.5 Throughout the operation of this policy Durham Constabulary will seek to take the least intrusive action which fits within the working policy criteria and will act fairly and proportionally to achieve the proposed purpose. The application of this procedure will be open and transparent and it is expected that all will act consistently and fairly.
- 2.6 The Force recognises the contribution of its entire staff and is committed to creating a fully inclusive working environment. This will be achieved by making reasonable adjustments where appropriate, valuing the differences that a diverse workforce can bring and challenging unlawful and unfair discrimination, bullying, harassment, victimisation and other unfair treatment based on age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, ethnicity, religion or belief, sex and sexual orientation.

3.0 THE LEGAL BASIS AND LEGITIMATE AIMS

3.1 Durham Constabulary is required to comply with the requirements of the

- Employment Act 2002
- Equality Act 2010.

4.0 POLICY STATEMENT

4.1 The day to day managerial supervision and guidance of employees is a constant task and is largely outside the scope of this policy, however, there will be occasions when it is appropriate for an employees performance to be formally managed through this policy

4.2 Managers are responsible:

- a) for ensuring that required standards of performance are communicated and understood and are reasonable and realistic;
- b) for monitoring employee standards of performance;
- c) for identifying shortcomings and putting in place support mechanisms.

The above must be appropriately documented, by both the Line Manager and the employee.

4.3 Before invoking this formal procedure, managers and supervisors should make every attempt to resolve poor performance matters informally by discussing the situation with the employee to ascertain reasons for the problem and where appropriate to establish a means to resolve the problem.

4.4 It is the policy of Durham Constabulary to ensure that the fullest consideration is given to the nature of past performance, health any domestic or social factors and length of service, which may be relevant, if it is necessary to invoke this capability procedure.

5.0 PRINCIPLES

5.1 Before taking action under this procedure line managers must be able to provide evidence of:

- a) The employee's performance against any factor(s) outside of their influence.
- b) Evidence that the employee was made aware of the key accountabilities of their role, the standards of performance have been fully understood and that training has been provided

c) Past performance via PDR documentation

NB:- Any evidence to support any part of this procedure must be documented by both the Line Manager and the employee.

- 5.2 Advice should always be sought from HR
- 5.3 Support to determine the reasons for the lack of performance and an identification of ways to resolve the problems without recourse to formal procedures will always be considered.
- 5.4 Where poor performance is the result of a lack of required skills, the employee will where practicable be supported through training and development.
- 5.5 The employee will be given a reasonable period to reach the required standard usually between 3 and 6 months. This will be extended for all periods of leave excluding annual leave and public holidays.
- 5.6 All issues will be dealt with promptly, there should be no unreasonable delay in meetings, decisions or confirmation of decisions.
- 5.7 At all formal stages i.e. meetings and disciplinary hearing, the employee will have the right to be accompanied at the meeting by a recognised Trade Union/Staff Representative/ Workplace Colleague / or Support Group Representative (not acting in a legal capacity) employed by Durham Constabulary.

6.0 SPECIFIC INSTRUCTIONS

- 6.1 If employees are failing to perform to the required standard, this should be investigated before any action is taken for example, reasonable adjustments must be explored, for Equality Act related circumstances. Reasonable adjustments should be made where appropriate in consultation with the Health Management Unit and the HR Manager when required.
- 6.2 Where the reason for the poor performance is found to be a lack of the required skills the employee should be assisted through training/coaching. If however, the employee's performance is due to negligence or lack of application on the part of the employee, then some form of disciplinary action will normally follow.
- 6.3 Where the reason for incapability is due to unsatisfactory attendance in the workplace appropriate medical advice should be sought from Force Medical Advisor (FMA).

7.0 WHEN SHOULD FORMAL ACTION BE CONSIDERED

- 7.1 There is no single formula for determining the point at which concern regarding an employee's attendance, for both short term multiple absences and long term sickness absence or performance should lead to formal procedures being invoked. The situation will be reviewed by the appropriate Command/Department Senior Leadership Team in respect of possible further action to be taken.
- 7.2. Action can be taken either following exhaustion of the Attendance Management Policy, when the Attendance Indicator has been exceeded or as a result of staff who are not performing their full range of duties.
- 7.3 Each case should be considered on its own merits having due regard to employment legislation and other Force Policy. Advice should be sought from an appropriate HR Manager.
- 7.4 Where attendance/performance does not improve to acceptable levels or in respect of attendance there is no realistic prospect of a return to an individual's substantive role or an alternative role in the organisation in a reasonable timeframe then formal procedures may be implemented that could ultimately lead to dismissal.
- 7.5 If an individual fails to attain the necessary training required/attainment of a relevant qualification to undertake their role post- employment within a previously agreed reasonable time period, they will be subject to commencement of Stage 1 of the capability process

8.0 FORMAL PERFORMANCE/ATTENDANCE INTERVIEWS

- 8.1 If as a result of the above informal actions there has been no improvement in performance or attendance, the three stage improvement notice procedure will be implemented.

Stage 1 – First Written Improvement Notice

Stage 2 – Final Written Improvement Notice

Stage 3 – Capability Hearing

- 8.2 At every formal stage in the procedure the employee will be informed of the full details of the case and given the opportunity to state their case before any decision is made

8.3 **Stage One – Formal Performance/Attendance Meeting - First Written Improvement Notice**

A Formal Performance/Attendance meeting will be arranged by the line manager with the employee. An HR Manager will be attendance. At least 5 working days before the meeting the Line Manager will provide the individual with a letter advising of the purpose for the meeting i.e. to discuss their under performance / unsatisfactory attendance in the workplace.

8.4 **The purpose of the meeting will be:**

For the manager to explain to the employee:

- 1) the standards of performance /attendance required;
- 2) how the employee falls short of achieving these standards of performance/attendance;
- 3) the consequences of their poor standard of performance / unsatisfactory attendance in the workplace
- 4) the improvement necessary and how the employee can be helped to achieve it via the First Performance Improvement Plan/Attendance Improvement Plan.
- 5) how improvements will be monitored or assessed and over what period (to be included in the First Performance Improvement Plan/Attendance Improvement Plan). The plan will be extended for all periods of leave excluding annual leave and public holidays.
- 6) that if their performance/attendance does not improve to the required standard and is not maintained, this could lead to dismissal under disciplinary procedures

For the employee to:

- 1) achieve a clear understanding of expectations;
- 2) give any explanation or comment in relation to their standard of performance /attendance including mitigating circumstances;
- 3) comment on how they can be further supported to improve eg
 - referral to the Health Management Unit
 - any learning requirements

8.5 The outcome of this Formal Performance/Attendance meeting will be formally recorded on the First Performance Improvement Plan/Attendance Improvement Plan which must be duly signed by all parties present and a copy an notes of the meeting provided to the employee. This First Performance Improvement Plan/Attendance Improvement Plan will include:

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- i. details of realistic measurable targets to be achieved and standards of performance/ attendance to be attained. For short term sickness absence the target for all staff is to be within the Durham Constabulary Attendance Indicator between 3 – 12 months. For long term sickness absence, a return to work date of usually within 3 months (but this should not exceed 12 months) should be achieved and attendance maintained. These will be extended for all periods of leave excluding annual leave and public holidays.
- ii. arrangements for support/training if appropriate
- iii. timescales for improvement and review period;
- iv. Advice that failure to improve to the standard of performance/ attendance required could lead to dismissal.
- v. The timescales for the First Performance Improvement Plan/Attendance Improvement Plan will be discussed and agreed at the Stage 1 meeting.
- vi. Shorter timescales within the first formal plan can be applied if any related current/recently concluded informal action plans have not been successfully achieved. Paragraph 8.6 will continue to apply regarding the monitoring period.

- 8.6 A monitoring period will be agreed at the time the First Performance Improvement Plan / Attendance Improvement Plan is initiated. The entire period should not exceed 12 months i.e. if the agreed plan is for 3 months the monitoring period will therefore be 9 months.
- 8.7 If the required improvement /attendance has been achieved during the monitoring period this will be confirmed to the employee and followed up in writing by the Line Manager.
- 8.8 The employee will be informed that if at any time during the monitoring period, performance / attendance again falls below an acceptable standard, the formal procedure will re-commence at Stage Two.
- 8.9 If the employee's performance/ attendance has not improved to the required standards set at the Stage One Formal Performance / Attendance meeting within the required timescale, a Stage Two Formal Performance/Attendance meeting will commence. The employee will be advised in writing and given at least 5 working days notice of this meeting.

9.0 Stage Two – Formal Performance/Attendance Meeting – Final Written Improvement Notice

9.1 The second line manager with the HR Manager will meet the employee and:

- review overall performance / attendance over the monitoring period under stage 1
- identify continued areas of underperformance/ unsatisfactory attendance
- review support mechanisms previously identified.

The employee will be given the opportunity to respond to any points raised in the meeting and comment on any issues affecting performance/ attendance

9.2 At the outcome of the stage 2 meeting a Final Written Improvement Notice may be issued which must be signed by all parties present and a copy and notes of the meeting provided to the employee.

9.3 If any extenuating circumstances are identified, the panel can agree up to a maximum 3 month review period of stage one, again with defined targets and support mechanisms. However, a shorter timescale can be applied at the meeting if deemed to be appropriate.

9.4 If the required improvement is then achieved during the further review period this will be confirmed in writing. A monitoring period will be agreed at the time the Final Written Improvement Notice is initiated. The entire period should not exceed 12 months i.e. if the agreed plan is for 3 months the monitoring period will therefore be 9 months.

9.5 The employee will be informed that if at any time during the 12 month monitoring period, performance/attendance falls below an acceptable standard, the formal procedure will re-commence at Stage Three. The review period will be extended for all periods of leave excluding annual leave and public holidays.

9.6 If there are no further actions/remedies available to improve the employees performance/attendance, the employee will be referred to Stage 3 which is a disciplinary hearing where all sanctions including dismissal will be available. The employee will be advised formally by the Head of People, Standards and Development Command regarding the allegations, process and potential outcomes as well as the right to representation and support available.

10.0 Stage Three – Formal Capability Hearing

- 10.1 The employee will be informed in writing of the alleged shortfall in performance/attendance.

11.0 Process for Stage 3 Hearings

- 11.1 If the employee or their representative is unable to attend on the given date, another hearing will be arranged.
- 11.2 All relevant and material documentation will be disclosed to the employee at least 14 days before the hearing. It is the employees' responsibility to provide their representative with copies of the documentation. Any documents that the employee wishes to refer to along with the names of any witnesses they wish to call should be forwarded to the Head of People, Standards and Development Command at least 7 days before the discipline hearing.
- 11.3 At the hearing the employee will be further advised of the case against them and the evidence gathered during the investigation will be discussed. The employee will be granted the opportunity to respond, ask questions via the Chairperson, present their evidence and call and question relevant witnesses.
- 11.4 At the end of the hearing, the Hearing Officer will determine the appropriate sanction and communicate this to the employee along with the rationale for the decision. This decision will be followed up in writing within 5 working days.

The employee will have the right to appeal against any formal decision made.

- 11.5 The investigation may be required to be conducted in accordance with The Police Reform Act 2002 if criminal activity is also alleged. If such an investigation is required it will be carried out by Professional Standards and Legal Services Department at the end of which, if misconduct has been proven the above procedures will apply.
- 11.6 Where an employee fails on two occasions to attend a disciplinary hearing without good cause the employer may proceed in their absence.

12.0 DISCIPLINARY MEASURES AND PROCEDURES

12.1 Disciplinary action will take one of the following forms:-

- First Written Warning
- Final Written Warning
- Dismissal:-
 - a) with notice
 - b) without notice (summary dismissal)

12.2 First Written Warning

12.2.1 Where under performance/unsatisfactory attendance is confirmed a written warning will be given by the Chief Constable or his representative. This will give details of the under performance/ unsatisfactory attendance, the improvement required and any time scale specified during which that improvement must be achieved. It will also inform the employee that if satisfactory improvement is not achieved and maintained, further disciplinary action will be taken which may ultimately result in their dismissal. The letter will advise the employee of the right of appeal.

12.2.2 Under normal circumstances a written warning will be disregarded for disciplinary purposes after 12 months, subject to satisfactory performance. If this period is to be varied in exceptional circumstances the employee will be informed of this in the disciplinary letter. This warning will be extended for any absence other than annual leave and public holidays.

12.3 Final Written Warning

12.3.1 If performance/attendance is still unsatisfactory OR if the under performance/attendance is sufficiently serious to warrant only a final written warning but not sufficiently serious to justify dismissal then a final written warning will be issued. This will give details of the under performance/ unsatisfactory attendance and the required change in behaviour or improvement in performance/attendance. This will warn that dismissal will result if there is no satisfactory improvement and will advise of the right of appeal.

12.3.2 Under normal circumstances a final written warning will be disregarded for disciplinary purposes after 18 months, subject to satisfactory performance/attendance. If this period is to be varied in exceptional circumstances, the employee will be informed of this in the disciplinary letter. This warning will be extended for any absence other than annual leave and public holidays

12.4 Dismissal (With Notice) or other sanction -

12.4.1 If there is no improvement in performance/attendance and the employee still fails to reach the required standards, OR if the performance/ unsatisfactory attendance is sufficiently serious to warrant only a dismissal the final step may be dismissal with notice. The employee will be provided with written details of the reasons for dismissal, the date on which employment will terminate and advised of the right of appeal to the Chief Constable.

12.4.3 Other sanctions that may be considered at this stage are disciplinary transfer, demotion or loss of responsibilities which could result in a lower grade being afforded via job evaluation.

12.4.4 It is the responsibility of an employee to divulge the fact that they are subject to a 'live' disciplinary sanction if they are required to submit a statement or appear at any Court or Tribunal to give evidence. Failure to do so will result in disciplinary action being taken.

13.0 Administration

13.1 If a sanction is issued this will be confirmed in writing without unreasonable delay after the hearing. The employee will be advised of the reason for the sanction and of his/her right to appeal. A record will be made of the sanction. The record will be held on the employee's personal file for the period required.

13.2 A formal register will also record the name of the employee, the nature of the sanction, the date of the sanction and the date the sanction will expire subject to satisfactory performance. The note will record or refer to any action plan that has been agreed for the employee's PDR. Any action plan will be constructed in accordance with the practices governing the PDR but will identify the improvement(s) required. This period of review will be influenced by work requirements and individual circumstances, and is intended to provide a reasonable time for the improvement to be achieved, sustained and monitored.

13.3 At the end of the specified period of review, the Manager will, if the required improvement(s) is achieved, inform the employee accordingly. The record of the sanction will be regarded as spent after the specified time. This period will be extended to include any absence other than annual leave and public holidays during this period

If the required improvement has not been achieved further disciplinary action will commence.

14.0 NORMAL AUTHORITY LEVELS FOR DISCIPLINARY ACTION

TYPE OF ACTION	DISCIPLINARY PANEL
First Written Warning (12 months) Final Written Warning (18 months) Dismissal with notice Summary dismissal – without notice	<p><u>Chairperson:-</u> Superintendent or above</p> <p><u>Second Member:-</u> Head of People, Standards and Development Command (or HR Manager if Head of People, Standards and Development Command not available)</p> <p><u>Independent Member:-</u> Chief Inspector or above/Principal Officer or above</p>

15.0 Dismissal and Pay

- 15.1 An employee who is dismissed but is reinstated on appeal is entitled to receive the salary he/she would have received had the dismissal not taken place. However, an employee who obtains alternative employment during the period of dismissal prior to the appeal being heard is required to disclose to the Chief Constable all earnings from such employment. Such earnings will be deducted from any arrears of salary due to the employees so that the employee is in no worse financial position.

16.0 Restriction or Change of Duty

- 16.1 A temporary move to an alternative location or role will be considered if required during the investigation.

A decision to deploy the employee to other duties will be made by an Executive Officer following discussion with Head of Professional Standards and Legal Service; Head of People, Standards and Development Command and Head of Command/Department to ensure that he/she is fully aware of the circumstances. The relevant Trade Union Representative (if applicable) will be advised of the intention to temporary re-deploy the employee.

- 16.2 An employee cannot be deployed to other duties, or to another location without their express consent. If the employee refuses the option of a temporary move then suspension from duty may be required.

17.0 Support

- 17.1 It is acknowledged that during formal proceedings for incapability, individuals may require support. Line Managers still have a responsibility for their staff's health and wellbeing during these proceedings but additional/alternative support will be available via the Health Management Unit as well as from their own Trade Union.

18.0 APPEALS PROCEDURE

If an individual wishes to appeal against any decision made in connection with this policy, they should write to or email, the Deputy Chief Constable at the below address within 14 days of receiving a decision. The appeal will be considered and consultation will take place with appropriate individuals to establish all facts before a decision with regard to the appeal is made. A response to the appeal will be provided in writing within 10 working days of receipt of the appeal. Should this period not be achievable the individual will be notified in writing when a decision will be communicated.

The Deputy Chief Constable
c/o Human Resources
Police Headquarters
Aykley Heads
Durham
DH1 5TT
Email human.resources@durham.pnn.police.uk

DURHAM CONSTABULARY – POLICIES AND PROCEDURES EQUALITY IMPACT ASSESSMENT (EIA)

As per the Equality Commitment and Workplace Conduct Policy, this form **MUST** be completed by the Policy/Function lead when developing or reviewing policies or procedures which may impact on the way the Force conducts its business (both internally and externally) around one or more of the **NINE 'Protected Groups'** as defined by the Equality Act 2010 i.e. **Age, Gender, Transgender, Disability, Ethnicity, Religion/Faith, Sexuality, Marriage/Civil Partnership and Maternity/Pregnancy.**

As a Public Sector organisation, the Force **MUST** show that when making decisions of a strategic nature we:-

- Give due regard to the impact it will have on protected groups
- Undertake an assessment **prior to** any decisions around policies/procedures being ratified to identify what potential impact has been found and subsequent action taken, and
- Provide an audit trail of the assessment undertaken which identifies how the policy or procedure is likely to affect protected groups.

This form is a Tool to document the assessment and should be completed, attached to the relevant policy/procedure document and submitted to the HR User Group or other strategic group for ratification (See Section 5) NB – use extra sheets if necessary.

PLEASE CONTACT AN HR MANAGER SHOULD YOU NEED ANY ASSISTANCE IN COMPLETING THIS FORM.


SECTION 1 - OVERVIEW OF POLICY /PROCEDURE	
POLICY/PROCEDURE TITLE	CAPABILITY POLICY
PERSON COMPLETING THE EIA	Sylvia Horsfield
Purpose of the Policy? Why do we need it, what will it achieve?	If standards of performance/attendance are unacceptable this procedure is designed to assist managers deal with such. It is also intended to deal with those cases where, despite management support, the employee remains lacking in some area of ability, skill, competence or knowledge and is consequently unable to carry out the required duties to an acceptable standard.
Explain briefly why the Policy/Procedure is being developed or reviewed?	This policy has been updated to reflect a Support Group Representative can accompany a member of staff at meetings providing appropriate support
SECTION 2	WHAT IS THE POTENTIAL IMPACT ON PROTECTED CHARACTERISTIC GROUPS
<ul style="list-style-type: none"> • A Positive Impact – will actively promote equality of opportunity or improve relations between one or more groups 	

- An **Adverse impact** – will cause some form of disadvantage or exclusion.
- ☐☐ **Neutral impact** is when there are no notable consequences for any diversity group

What impact will the policy/procedure have on one or more of the following groups of people to access/adhere to it either because of an action or the wording included within i.e.

Protected Characteristic Group	Positive, Negative or Neutral	Comment if Positive or Negative Impact identified.
Age	Positive	Support Group Representative can accompany a member of staff at meetings providing appropriate support
Disability	Positive	Support Group Representative can accompany a member of staff at meetings providing appropriate support
Gender	Positive	Support Group Representative can accompany a member of staff at meetings providing appropriate support
Transitioning from one sex to another (either thinking of, in the process of or have)	Positive	Support Group Representative can accompany a member of staff at meetings providing appropriate support
Sexuality i.e. Gay, Lesbian or Bi-Sexual	Positive	Support Group Representative can accompany a member of staff at meetings providing appropriate support
Ethnic Minority	Positive	Support Group Representative can accompany a member of staff at meetings providing appropriate support
Married/In a civil partnership/ single or divorced	Positive	Support Group Representative can accompany a member of staff at meetings providing appropriate support
Religion or Faith	Positive	Support Group Representative can accompany a member of staff at meetings providing appropriate support
Expecting a child or subject of Maternity Legislation (either heterosexual or same sex couple)	Positive	Support Group Representative can accompany a member of staff at meetings providing appropriate support
If such an impact is identified the EIA must ensure that as far as possible it is either justified, eliminated, minimised or counter balanced by other measures		
SECTION 3 – CONSULTATION & RESEARCH		
Who has been consulted and what Research has been	All support networks. Force Executive (AC0)	

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done around the potential impact during the development/amendment of the policy/procedure?	HR Staff Independent Advisory Groups (IAG's) Staff associations Legal Services Heads of Command
SECTION 4 – WHAT ACTIONS HAVE BEEN PUT INTO PLACE TO ADDRESS THE FINDINGS OF SECTION 2	
Determine what, if any actions need to be undertaken as a Result of the evidence/research found. <i>Identify who is responsible for the actions and timescales to achieve the required result.</i>	
Confirm the above Actions have been incorporated and the EIA is now ready for submission to PUG or other Strategic Group.	Signature...  Name Sylvia Horsfield Date 12th June 2020
SECTION 5 - RATIFY THE POLICY/PROCEDURE AT HR PUG /OTHER STRATEGIC GROUP	
Meeting/Group:-	HR PUG
Chair of Meeting/Group:-	T/C/Supt Curtis

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