



## **Student Officer Capability Procedure**

### **Introduction**

This procedure is designed to help and encourage all Full-time and Part-Time Officers to achieve and maintain standards of conduct, attendance and role performance. The aim of this procedure is to ensure consistent and fair treatment for everyone within the Organisation.

This procedure runs parallel with, but is not part of, the Student Officer Disciplinary Procedure. York St John Students' Union recognises that poor role performance and incapability should not be treated as 'disciplinary offences'.

The first stage in dealing with poor role performance is to determine whether the matter is one of capability or misconduct. Problems relating to misconduct will normally be dealt with through the Student Officer Disciplinary Procedure, problems relating to performance will normally be dealt with through the Student Officer Capability Procedure. If an officer is in any doubt as to which procedure applies to a particular circumstance, guidance should be sought from the Chief Executive.

### **Definitions**

**Capability:** An officer's skills, ability, aptitude and knowledge in relation to the role that they are employed to do.

**Conduct:** An officer's behaviour within the work environment and/or when representing the Students' Union.

**Gross Misconduct:** An act which is so serious it may justify possible dismissal.

### **Scope**

This procedure applies to all Full-time and Part-time Officers of York St John Students' Union and can only be initiated by staff members or Trustees.

### **Policy**

#### **1. Principles**

- 1.1 Where appropriate, informal action will be considered to resolve problems.
- 1.2 The officer will be advised in writing of the nature of their unsatisfactory performance and the arrangements for the meeting.

- 1.3 The officer will be given the opportunity to state their case before any decision is made.
- 1.4 At all stages of this procedure, the officer will have the right to be accompanied by a friend, work colleague or trade union representative.
- 1.5 Matters covered in the capability procedure will be dealt with without unreasonable delay and in accordance with the timescales indicated, unless there are extenuating circumstances. However, York St John Students' Union reserves the right to amend these timescales in the interests of fairness and justice, such as a further investigation being required, or the timescale for holding a meeting extended to accommodate the availability of witnesses or companions.
- 1.6 In reaching decisions on appropriate outcome of capability, decision makers under this procedure will take into account any mitigating circumstances.
- 1.7 The officer will have the right to appeal against any formal sanction imposed.

## **2. Types of Capability Issues**

- 2.1 There are a number of problems which can be dealt with through this capability procedure. Some examples have been listed below as guidance. These lists are designed to provide guidance on the types of matters that could be covered but are not intended to be exclusive or exhaustive. Misconduct examples have also been provided, to show what would be deemed as a capability issue and what would be deemed as a disciplinary issue. If the issue is one of misconduct or gross misconduct, the disciplinary procedure should be followed, please refer to the Student Officer Disciplinary Procedure.

### **2.2 Capability**

Capability is defined as a failure to achieve or maintain an acceptable level of performance in the duties of the role for reasons not directly within the officer's control. This may be due to a number of factors such as:

- poor performance due to insufficient skill or aptitude
- ill-health, including frequent short-term, or long-term sickness absences

### **2.3 Misconduct**

Examples in this category could include:

- Unauthorised absence
- Failure to follow the correct absence reporting procedure

- Persistent unsatisfactory timekeeping
- Intoxication at work
- Failure to comply with a reasonable request from the President or Chief Executive
- Careless damage, destruction or waste of Students' Union property
- Failure to follow Students' Union regulations, procedures and practices
- Misuse of Students' Union facilities (for example Internet or telephone)
- Demonstrating behaviour towards colleagues, students or other stakeholders which causes difficult relationships or damages the Students' Union's reputation

## **2.4 Gross Misconduct**

Examples in this category could include:

- Theft or misuse of funds
- Bringing York St John Students' Union into disrepute
- Maliciously divulging confidential information
- Unlawful or unethical use of the internet
- Violence or vandalism
- Harassment or bullying
- Breach of Health and Safety regulations
- Failure to adhere to the Students' Union's financial procedures
- Wilful refusal to carry out the duties of the post

## **3. External Trustee**

3.1 The Board of Trustees shall annually appoint an External Trustee to supervise this procedure, "the Supervising Trustee". This Supervising Trustee shall usually be the External Trustee elected to sit on the Staffing Committee, a sub-committee of the Trustee Board.

3.2 The Board of Trustees shall also appoint a Capability Panel to hear capability hearings. There may be a need for an Appeals Panel, which shall be made up from people who have not previously been involved in the matter under appeal or the Capability Panel. The Panels will each consist of three people including:

- One Officer Trustee
- One Student Trustee
- One External Trustee

3.3 The Panels will appoint their own Chairs from within their number.

3.4 A member of the Senior Management Team will provide administrative support for the Panels.

- 3.5 No person involved in the case or who has a conflict of interest can be on the Capability Panel or Appeals Panel.
- 3.6 No person involved in the Capability Panel can be on the Capability Appeals Panel.
- 3.7 If, due to previous involvement and/or conflicts of interest, there are no trustees who can participate in the Disciplinary Panel or Appeals Panel then trustees from another students' union can be called upon.

#### **4. Officer Accountability Procedure**

Concerns regarding the political performance in the role as Full-time or Part-time Officer are primarily to be dealt with under the Student Officer Accountability Procedure by Senate. However, matters raised under the procedure that result in Motions of No Confidence will be referred to the Board of Trustees. They will consider whether the matters complained of under that procedure ought to give rise to disciplinary action.

#### **Procedure**

##### **5. Informal Stage**

- 5.1 If an officers' conduct in post is considered to be unsatisfactory, the issue should be raised with either the President or the Chief Executive in the first instance who will pass it on to the External Trustee if they feel that this is the appropriate course of action.
- 5.2 It is hoped that an informal discussion with the External Trustee will solve any problems in the first instance.
- 5.3 If informal action is taken, the External Trustee will discuss with the officer the reason for taking action, the consequences of their performance not meeting expected standards, the improvements required in the future and the expected timescale for improvement. This conversation will be confirmed in writing to the officer.
- 5.4 If informal action fails to resolve the problem, or it is of a more serious nature, formal action may be taken.

##### **6. Stage 1: Meeting with the External Trustee**

- 6.1 When there is evidence that the officer is not performing to an acceptable level, the External Trustee will investigate the circumstances without delay and explore the reasons for the unsatisfactory performance. An informal discussion with the External Trustee will be arranged.

## 6.2 At this meeting the External Trustee will:

- Clarify the areas in which the officers' performance is below expectations (explaining the grounds/evidence for this view), with the aim of identifying any problems or reasons for under-performance, which could be resolved. Solutions to the problem could include additional training, coaching or some other kind of ongoing support.
- Provide the officer with the opportunity to explain their under-performance and to raise any concerns they may have about the role, the support and guidance they have been given or any external factors which may be affecting their performance.
- Set a reasonable time frame within which improvement is expected, this will be no longer than 3 months, and arrange a further meeting at the end of that period to review the situation.

6.3 The content and outcome of this meeting will be confirmed in writing to the officer, this will outline the grounds for concern, the type of improvement required, any additional support or training that will be provided, any other actions and the timescales for improvement and review.

## **FORMAL STAGES**

### **7. Stage 2: Formal Interview**

- 7.1 If there is continued unsatisfactory performance in the previously specified area of the officer's role, and no improvement has been achieved, the External Trustee will arrange a formal interview.
- 7.2 If the decision is taken to invite the officer to a formal interview, the officer will be informed in writing. The officer will be given reasonable notice of the date and time of the hearing, which will usually be at least 48 hours, except where this is not practical due to extenuating circumstances.
- 7.3 The External Trustee will normally conduct the meeting. A member of the Senior Management Team will be present to take notes. At the interview, the External Trustee will explain the reason for the meeting, and the officer will be reminded of the earlier informal discussions and the steps taken to support an improvement in their performance. The officer will be told as precisely as possible the reasons for the continued concerns about their performance and any supporting evidence will be provided. The officer will have the opportunity to respond, discuss and explain reasons for their unsatisfactory performance.

- 7.4 Further consideration will be given to any additional training or support that could reasonably be provided to enable the officer to reach the required standard of performance. A review period will be set, which will be anytime from one month to three months, depending on the area(s) of improvement, but will be no longer than 3 months, during which time improvement is expected, and a further meeting arranged at the end of this time to review the situation.
- 7.5 At the conclusion of the meeting, if further action to rectify performance is necessary, the External Trustee will:
- Specify the areas and action required to achieve improvement
  - Identify and offer further training and guidance
  - Set a reasonable review timescale and monitor performance during this period.
- 7.6 The content and outcome of this meeting will be confirmed in writing to the officer, this will outline the grounds for concern, the type of improvement required, any additional support or training that will be provided, any other actions and the timescales for improvement and review.

## **8. Follow Up Meeting**

- 8.1 At the end of the review period determined in Stage 2, the officer will be asked to attend a review meeting. The officers' progress will be reviewed against the objectives set in Stage 2. At this follow-up meeting, the history of their case will be reviewed, including the steps that have been taken to support the officer to achieve the required level of performance. The officer will have the opportunity to respond, discuss and explain the reasons for the unsatisfactory performance and any progress made. If it is decided that progress has been satisfactory, this will be confirmed to the officer in writing, however the letter will warn that if problems recur within one year, Stage 3 of this procedure may be used.
- 8.2 If, however, it is decided that the required standard of performance has still not been met, further time may be allowed for the officer to improve, if they have demonstrated reasonable progress in tackling the objectives set to date.
- 8.3 Alternatively, if it is felt that the officer has not demonstrated sufficient progress, the procedure will move on to Stage 3.

## **9. Stage 3: Formal Hearing**

- 9.1 At this stage, the External Trustee will appoint a Capability Panel.

- 9.2 The officer will be informed in writing and given reasonable notice of the date and time of the hearing, which will usually be at least 48 hours, except where this is not practical due to extenuating circumstances.
- 9.3 The hearing may be postponed if the officer, or another key person, are unexpectedly unable to attend with good reason. Should a second meeting be arranged, and the officer fails to attend without good reason and a third date is arranged, the Students' Union reserves the right to proceed with the meeting on the third occasion in the officer's absence and to reach a decision on the evidence available. Special circumstances will be taken into account, such as serious illness.
- 9.4 At the hearing the history of the case will be reviewed, including the steps that have been taken to support the officer to achieve the required level of performance. The officer's explanation will be heard and considered plus any supporting evidence. The Capability Panel may decide either:
- That their performance is satisfactory
  - To allow further time for the officer to improve
  - That their performance is still unsatisfactory and dismiss the officer from their role in the Students' Union.

## **10. Right to appeal**

- 10.1 The officer has the right to appeal at any stage of the Student Officer Capability Procedure. Should the officer wish to appeal they should do so in writing to the designated External Trustee, within five working days of the issue of any warning, dismissal or other formal sanction being taken. The officer should clearly set out the grounds for their appeal, which should include one or more of the following:
- Why they feel the decision taken was not a reasonable response to the facts of the case
  - Why they find the decision unfair
  - Additional evidence or information which has come to light since the hearing which the officer feels should affect the original decision (the officer should include details of this new evidence/information)
- 10.2 A meeting of the Capability Appeal Panel will be convened at which the appeal will be heard. This meeting will normally be held within five working days of the written appeal being received.
- 10.3 At this meeting, the officer will be given the opportunity to state the case for their appeal, and present any new evidence or information. The facts of the case will be considered again and a final decision made.

- 10.4 The decision of the Appeal Panel shall be final and will be confirmed to the officer in writing. There is no further right of appeal.

## **11. Right to be Accompanied**

- 11.1 At all stages of this procedure, the officer will have the right to be accompanied by either a friend, work colleague or trade union representative.
- 11.2 'Trade union representative' means any employee who is also a trade union official, or an official of a trade union who is not an employee of York St John Students' Union, but who has been certified by their union as being competent to accompany an employee.
- 11.3 The companion has the right to confer with the officer before and during the meeting and address the hearing but not to answer any questions on behalf of the officer.
- 11.4 Any Students' Union employee, or officer, who is required to act in the capacity of a companion at a capability meeting will be entitled to a reasonable period of paid time off from work duties to complete this role. This will include a reasonable period of time off to familiarise themselves with the case and confer with the employee.

## **12. Rescheduling Capability Meetings**

- 12.1 Any meetings arranged in accordance with these procedures may be postponed if the officer, or another key person, are unexpectedly unable to attend with good reason. Should a second meeting be arranged, and the officer fail to attend without good reason and a third date is arranged, the Students' Union reserves the right to proceed with the meeting on the third occasion in the officer's absence and to reach a decision on the evidence available. Special circumstances will be taken into account, such as serious illness.

## **13. Confidentiality**

- 13.1 Capability proceedings, and records will, as far as is practicable be kept confidential.

## **14. Ill-Health/ Poor Attendance**

- 14.1 An officer's capability to carry out their role to the expected standard may be affected by their health and their attendance record. The Chief Executive and External Trustee must bear in mind the provisions of the Disability Discrimination Act, in particular the obligation to make reasonable adjustments when dealing officers who have a disability.

- 14.3 York St John Students' Union will adopt a 'case management' approach when dealing with officers who are incapable of working due to ill health. This means regularly reviewing an officer's absence and state of health or fitness to see whether or not there is any improvement and if the Students' Union can do anything to facilitate the officer's recovery and return to work. This review will involve the officer, the Chief Executive, another member of the Senior Management Team, and Occupational Health (externally sourced).
- 14.4 Part of the case management will be for the Students' Union to keep in touch with the officer. The officer will be consulted about how contact will be maintained, for example by telephone, email and/or visits to the officer's home at agreed times. The officer's views on how contact should be made will be sought and respected.
- 14.5 Please refer to the sickness Students' Union Staff Handbook for more details about managing long-term absences and return to work after a long term absence.

## **15. Miscellaneous**

- 15.1 No officer, staff member or trustee should comment publicly on any matter that is being dealt with under the procedure. Failure to observe this requirement may result in disciplinary action.
- 15.2 The President or the Chief Executive will deal with any media enquiries relating to the outcomes of this procedure.
- 15.2 It should be noted that disqualification and removal as a Trustee is a matter for the Trustee Board and will fall to be decided in accordance with Article 37 of the Students' Union's Articles of Association.