



## Capability Policy

### Introduction

York St John Students' Union (YSJSU) is committed to ensuring that employees are given the necessary support and guidance to encourage and enable them to perform effectively and to the best of their ability. Through the YSJSU recruitment process every effort is made to ensure that new staff have the appropriate skills and abilities or a clear, demonstrated potential to achieve these, for the roles they are recruited to fulfil.

At the start of their employment staff should be clearly informed of their responsibilities and the standards of work performance required. This should be reinforced through appropriate induction, training and effective, regular feedback, both positive feedback and constructive criticism, relating to work performance.

YSJSU appraisal system provides a mechanism for managers to discuss an employee's role and contribution and to set objectives for the forthcoming year. Managers are responsible for ensuring that performance issues are addressed promptly and fairly and that staff receives appropriate training.

YSJSU accepts that it has a responsibility, to make clear to its staff what is required of them and to provide guidance and/or training. Equally a member of staff who feels uncertain at any stage about the standard of work required has a responsibility to bring this uncertainty to the attention of their line manager. Where practicable, informal advice and guidance should be given and sought with the objective of identifying the nature of any problem and taking appropriate action to resolve the problem.

### Scope of Policy

The Capability Policy applies to all staff and should be applied in accordance with the YSJSU Equality Policy. The procedure will be the same for members of the YSJSU Senior Management and the Chief Executive.

This policy addresses the ability to carry out a job to the required standard (I can't) as opposed to issues of wilful inadequacy or misconduct (I won't), which are handled through the YSJSU Disciplinary Policy.

This policy should only be instigated when the appraisal process and normal management monitoring are considered insufficient or inappropriate to deal with the level of concern regarding capability and informal guidance and encouragement has not resulted in improved performance. The procedure is intended to ensure that YSJSU can act to uphold high standards of work and services.

The policy is designed to assist and encourage all employees to achieve and maintain acceptable standards of job performance. The aim is to ensure consistent and fair treatment for all and to assist any employee who is considered to be experiencing difficulties in satisfactorily performing the duties required of their post. It is designed to provide managers and employees with an opportunity to work effectively to maximise their contribution to YSJSU's activities, to enjoy job satisfaction and to achieve their full potential.

Concerns about capability may arise from a number of factors, including:

- Lack of proficiency and poor overall organisation
- Inability to deal with changes in the nature of the work or allocation inability to deal with changes in technology
- Lack of aptitude, skill or experience
- Personal/family difficulties which are impacting on work performance
- Short-term health problems which are impacting on work performance
- Poor attendance at work, related to genuine ill health, disability or persistent and repetitive short-term absence
- Inability to work co-operatively with colleagues and students
- Inability to demonstrate behaviours which align with YSJSU competency framework

In exceptional circumstances and where possible, it may be necessary to temporarily redeploy an employee immediately from their normal job, e.g. employees against whom serious complaints of lack of capability and/or lack of competence have been made by students or workplace colleagues.

Where performance has improved satisfactorily, the capability process will be concluded and the employee will be informed accordingly. If further concerns relating to performance arise within 12 months, the procedure can be re-opened at the same stage at which it was previously concluded. If more than 12 months have passed then the procedure must be started again and any review of performance regarded as a new process.

Employees with disabilities are not exempt from this procedure. However, in line with the requirements of the Equality Act 2010, managers should ensure that every attempt has been made to make reasonable adjustments that will retain the employee in their job or redeploy them to a suitable alternative post before the Capability Procedure is invoked.

## Principles

The procedure is based on the following principles:

- No formal action will be taken until reasonable support and guidance has been given and the informal procedure exhausted.
- At every stage in the procedure the employee will be advised in writing of the performance/capability concerns and will be given the opportunity to respond before any decision is made.
- Assertions relating to poor performance will be supported by evidence.
- At all formal stages the employee will have the right to be accompanied by a work colleague or union representative during the capability interview.
- Except where the potential consequences of poor performance are, or could be serious, the procedure will be taken sequentially through the stages set out below. In circumstances where the actual or potential consequences of poor performance are, or could be serious then the procedure may be implemented at any stage.

- The focus of the manager when using the procedure will be on securing improved and sustained satisfactory performance, thus allowing the formal monitoring process to be brought to an end at the earliest possible opportunity.
- In individual cases, by mutual consent (such consent shall not be unreasonably withheld) the parties to a capability matter may agree to vary the time limits referred to in this procedure.
- Realistic and measurable standards of performance will be identified
- Support mechanisms will be set up to ensure that employees are helped and encouraged to perform satisfactorily.
- No employee shall be dismissed without a prior warning and/or guidance and support being given.
- Employees will be dealt with fairly and with the minimum of delay so concerns regarding capability will be dealt with by the employee's line manager as soon as the concern is identified and at the lowest appropriate level in the procedure.
- Confidentiality will be observed throughout all stages of the procedure.

The policy does not apply to and should be distinguished from:

- **Probationary employees** - this procedure does not apply to capability concerns when an employee is in their probationary period.
- **Cases of misconduct** - these should be handled under the YSJSU Disciplinary Procedure.
- **Restructuring Exercises** - where a re-structuring results in an individual's role being changed and new responsibilities allocated, or an individual being transferred to a new post, a period of support and development will be provided to ensure the individual can perform the role to the standard expected. The capability procedure will only be instigated where performance concerns exist after a reasonable time has been allowed for the individual to settle into their new role with support provided.

## Capability Procedures

### Informal procedure

1. It is important to recognise that many issues of capability can be, and should be resolved without recourse to the formal capability procedure. In the vast majority of cases poor performance is temporary.
2. As soon as a capability concern is identified, the issue should be discussed between the line manager and the employee. In these circumstances, both parties will have every opportunity to contribute to discussions and to make notes if desired. The employee will be given an opportunity to express their opinion and for the line manager to determine whether there are any external factors which may be contributing to the poor performance.
3. Expected levels of performance and a monitoring period will be agreed.
4. It is anticipated that in the vast majority of cases no further action, other than normal follow-up, will be necessary. At the end of the monitoring period a formal meeting will be held between the employee and their line manager and if progress has been satisfactory the employee will be so informed and the monitoring period will end.
5. Where insufficient progress or no improvement is apparent, then the line manager should refer the matter to the formal stages of this procedure.

### First formal interview

1. Where the agreed levels of improvement set out during informal discussions are not met and then a formal meeting should take place to discuss performance. This meeting constitutes the date of entry into the formal procedure and should be conducted following structured information gathering.
2. The member of staff will be provided with at least 5 working days written notice of the meeting and be advised of their right to be accompanied by a trade union representative or workplace colleague. The notice will include details of why performance is unsatisfactory and action taken to date.
3. If the chosen representative of the employee is unavailable on the date of the meeting, the employee may delay it once by up to 10 working days to enable the chosen representative to attend.
4. The meeting will be led by the line manager.
5. At the first formal meeting the employee should be reminded of the previous informal discussions and advised of the shortfall in performance. The employee should be given an opportunity to give their interpretation before deciding what action should be taken. It is possible that circumstances outside the individual's control have caused, or at least contributed to, the reduced effectiveness of their performance over the period monitored. Should evidence emerge at this stage that the employee is disabled and that reasonable adjustments have not yet been considered then the capability procedure should be put on hold to allow for consideration and implementation of reasonable adjustments.
6. An action plan will be formalised following the discussion at the meeting and should include:

- A summary of the improvements required
  - Targets
  - Training, development and support, specifically directed to facilitate improvement
  - Methods of monitoring of standards of performance and a timescale over which improvements are expected.
7. The plan will be agreed with the employee. All targets should be SMART (I.e. Specific, Measurable, Achievable, Realistic and Time bound). The timescale over which improvements are expected will depend on the performance concerns being addressed. However, it should be no less than one month and no more than six months.
8. The nature of the under-performance will determine the type and range of help to be provided but it could include:
- Monitoring, review and variance of workload and responsibilities
  - Monitoring standards of performance against agreed objectives and the requirements of the job
  - Review of the availability of suitable resources or materials
  - The identification of a mentor
  - Training or coaching specifically aimed at achieving an improvement in performance.
9. The employee should be issued with a written warning that makes it clear that their job is at risk if improvement is not achieved. Monitoring and assessment needs to continue for a period of between one and six months, depending on the individual situation and in proportion to the level of seriousness of the performance difficulty.
10. The line manager should ensure that any staffs involved in the process are appropriately briefed.
11. It is hoped that in the majority of cases improvement in the review period will be demonstrated satisfactorily and there will be no need to take further formal steps in the Capability Procedure. Where improvement has been demonstrated and performance is satisfactory, the employee will be so informed in writing and the monitoring period will end. Where improvement has occurred but is limited then the monitoring period may be extended by between one and six months.
12. Where insufficient progress or no improvement is apparent, then the line manager should refer the matter to the second stage of the formal procedure.

### **Second formal interview**

1. Failure to improve after the review period (as referred above) should be followed by a second formal interview led by a senior manager. The line manager will also attend to present the management case. The procedure for such an interview and follow up should be the same as with the first formal interview.
2. At this meeting, the employee should be reminded of the previous warning under stage 1 of the procedure and advised of the continuing shortfall in performance and outline the support already provided. The employee should be given an opportunity to give their interpretation before adjourning the meeting to decide what action should be taken.

A further action plan should be drawn up to include:

- (a) A summary of the improvements required;
- (b) Targets

- (c) Training, development and support, specifically directed to facilitate improvement;
- (d) Methods of monitoring of standards of performance
- (e) A Timescale over which improvements are expected.

After the meeting, the employee may be issued with a final written warning that makes it clear that their job is at risk if improvement is not achieved.

3. Monitoring and assessment needs to continue for a further period of between one and six months, depending on the individual situation and in proportion to the level of seriousness of the performance difficulty.
4. It is hoped that improvement in the review period will be demonstrated satisfactorily and there will be no need to take further formal steps in the Capability Procedure. Where improvement has been demonstrated and performance is satisfactory, the employee will be so informed and the monitoring period will end. Where improvement has occurred but is limited then the monitoring period may be extended by between one and six months.
5. If improvement is insufficient following the review period, the manager should consider whether redeployment with agreement could be considered within the YSJSU employment. The post does not have to be on the same scale. If it can be considered then an offer should be made in writing, explaining why it is being made and the consequences of refusing it. The employee should be given time to consider the offer and be advised to discuss it with their representative.

### **Third formal/dismissal interview process**

1. Where insufficient improvement has been made and if no offer of voluntary redeployment is made, or accepted, a final formal interview should be arranged with the employee and his/her representative. The employee will be given 10 working days' notice of the meeting. Notification will be given in writing and the employee advised of their right to be accompanied by a trade union representative or workplace colleague.
2. If the chosen representative of the employee is unavailable on the date of the initial dismissal hearing, the employee may delay the date of that hearing once by up to 10 working days to enable the chosen representative to attend.
3. The meeting will be led by a senior manager (where possible they will not have had previous involvement in the case). A member of the University Human Resources team may also be present at the meeting to provide procedural advice. The Line Manager will also attend to provide evidence of the performance issues, and any support measures put in place.
4. After hearing the evidence and any explanations, the meeting will be adjourned and a decision will be taken as to whether to dismiss. Consideration should be given to:
  - (a) The level of under-performance
  - (b) The consequences of the under-performance on the quality of service and effect on colleagues
  - (c) Whether the capability procedure has been followed
  - (d) Whether the support set out in the action plan has been provided in full
5. The meeting should be reconvened and the individual informed of the decision. This will be either:

- (a) To dismiss
  - (b) To extend the monitoring period which should include a further action plan with specified outcomes and developmental support, as appropriate. This may also include re-visiting the possibility of re-deployment.
6. The decision should be confirmed in writing within 5 working days. The written confirmation will detail the cause of the concern, the reason for the decision and the date of the dismissal (where applicable). Where the employee has been dismissed, the letter will include the notice period which may be paid in lieu. The employee should also be informed of their right to appeal against the decision.

## APPEALS

1. There is no right of appeal against the outcome of the informal stage of this procedure. A member of staff may appeal against outcomes of the formal stages on the grounds of:
  - (a) Perceived unfairness of the outcome
  - (b) Severity of the outcomes
  - (c) Procedural irregularities
2. The employee should put their appeal in writing detailing the reason for appeal together with the relevant supporting papers. This should be submitted to the manager responsible for the outcome within 10 working days of the written confirmation of the outcome.
3. The manager will prepare a written response setting out the action that has been taken to date, enclosing all supporting documentation.
4. The papers should be passed promptly to the Appeal Manager, who will normally be the line manager of the manager responsible for the outcome.
5. For appeals against dismissal, the Appeal Panel will consist of the Chief Executive and a Sabbatical Officer. If possible, none of the members of the Appeal Panel should have had any previous involvement in the case.
6. The meeting should be scheduled as soon as reasonably practical. The employee shall be given 5 working days' notice of the meeting, along with any additional papers which will be presented. The employee should be reminded of their right to be accompanied by a trade union or work colleague at the meeting.
7. The meeting will be supported by a member of the Human Resources team who will be in attendance to provide procedural advice. The manager responsible for the decision will also be in attendance to provide evidence to the Appeal Manager/Panel.
8. The employee should inform the Appeal Manager/Panel at least five working days before the hearing of any witnesses they want to call. The panel may also wish to call witnesses, for example, the employee's line manager to clarify the areas of concern and actions taken to date.
9. At the meeting, the employee will be invited to outline their reasons for appeal, and the Appeal Manager/Panel may ask questions of all parties.
10. Having considered the information presented, the meeting will then be adjourned and the Appeal Manager/Panel will decide whether to:
  - Uphold the appeal and draw the capability procedure to a close
  - Uphold the appeal, in part and extend the review period
  - Dismiss the appeal
11. The meeting will be reconvened and the individual will be informed of the decision. Where the dismissal has been overturned, the employee will be re-instated with effect from the original dismissal date.
12. The outcome of the appeal meeting will be final and confirmed in writing within 5 working days.