

Capability Policy

1 Introduction

- 1.1 Sacriston Youth Project requires good standards of performance from all their employees. The purpose of the capability procedure is to ensure that any concerns over an employee's performance is handled in a fair, consistent and timely manner, with the intention of bringing about a sustained improvement, and to protect the proper operation of the Charity's business and to maintain a motivated workforce.
- 1.2 This Policy and Procedure is in place to give employees support and guidance needed to succeed.
- 1.3 This procedure may be reviewed and updated from time to time. Any amendments will be notified to employees in writing, following notice where appropriate.
- 1.4 Where time limits are specified in this Policy and Procedure, they may be varied by agreement between the Charity and the employee.
- 1.5 During the probationary period, the full capability procedure will not apply.
- 1.6 The Capability Policy and Procedure do not form part of the contract of employment.

2. Rules and Application

- 2.1 The following are examples of performance that will normally be addressed through implementation of the Charity's disciplinary procedure:
 - 2.1.1 Unsatisfactory work performance;
 - 2.1.2 Persistent lateness or poor timekeeping;
 - 2.1.3 Unacceptable levels of absence, especially when unauthorised;
 - 2.1.4 Failure to follow reasonable requests or instructions.
- 2.2 The difference between capability and disciplinary is a case of can't and won't. For example where an employee can't perform it is a matter of capability. Where an employee won't perform it is a matter of discipline.

3 Confidentiality

- 3.1 Capability matters will be handled with as high a degree of confidentiality as is practicable, particularly when the issue is of a sensitive nature.

3.2 Confidential records will be kept in the employee's personnel file in accordance with Data Protection legislation. Copies of meeting notes will be provided to the employee, although the Charity reserves the right to withhold certain information (e.g. to protect a witness).

3.3 Investigation

3.3.1 The employee's line manager will promptly and thoroughly investigate the reasons for capability issues. This may involve gaining access to work, clients, or information from colleagues. The employee concerned will be informed of the investigation as soon as possible and when it has been concluded.

3.3.2 In most cases there won't be a requirement for a formal investigation as discussions surrounding poor performance will have taken place during normal line management discussions.

4. Capability Procedure

4.1 Informal discussion

4.1.1 The Charity will initially try to resolve performance issues informally by way of an informal discussion and guidance with the employee concerned.

4.1.2 This is a two-way discussion where the Charity will be able to inform the employee of the issues of concern and at the same time provide them with the opportunity to provide an explanation, share any difficulties and request further training or support.

4.1.3 The main purpose of the informal talk is to find a solution to the problem that is beneficial for both the Charity and the employee.

4.1.4 Generally, unsatisfactory performance can be dealt with informally. Formal Capability meetings will usually only be undertaken where coaching, mentoring and training have failed to produce a satisfactory improvement to performance. However, if the informal action does not provide a solution to the problem or if the performance issue is too serious to be dealt with informally, then the formal disciplinary procedure will be followed.

4.2 Written notice of intended capability meeting

4.2.1 If the employee is unable to improve performance or make a sustained improvement, the Charity will write to the staff member, giving them a minimum of 2 days' notice of the meeting and advising them of their right to be accompanied to the meeting. At the same time, the Charity will provide them with written notice informing that this constitutes the start of the formal capability procedure and as such outline:

- the alleged poor performance and any possible consequences of these;
- the improvement that is required, any timescale for achieving this improvement and any support available (if appropriate);
- details as to the time and venue of the disciplinary meeting; and
- notice of the employee's statutory right to be accompanied if the meeting could result in a formal warning, the confirmation of a warning or the taking

of some other disciplinary action. (This statutory right can be exercised once the employee has made a reasonable request to be accompanied).

- 4.2.2 The chosen companion will be able to address the meeting to put or sum up the employee's case as well as confer with them during the meeting. They may not, however, answer questions on the employee's members behalf, address the meeting if they do not wish them to do so or prevent the Charity from explaining their case. The companion can be a fellow colleague, trade union representative (if applicable) or official employed by a trade union.
- 4.2.3 The meeting will be scheduled in order to give the employee reasonable time to prepare for the meeting.
- 4.2.4 The Charity will establish the facts before the meeting by collecting documents, identifying any relevant people to interview and taking statements. At least 2 days before the meeting, the employee should be provided with all relevant information, including statements, upon which the Charity intends to rely.
- 4.2.5 Where the Charity or employee intends to call relevant witnesses they should give advance notice to the other party that they intend to do this. It may also be appropriate to provide copies of written evidence including any witness statements.
- 4.2.6 If the employee is unable to attend the meeting at the agreed time, the Charity shall offer an alternative reasonable time and date. The Charity shall give at least 2 days' notice of any rearranged meeting. If the employee fails to attend the rearranged meeting the Charity, taking into consideration any reasons and concluding that such failure is without good cause, is free to decide upon the matter using the evidence available. In these circumstances, the employee will be allowed to make written submissions.

4.3 **Capability meeting**

- 4.3.1 A capability meeting will normally be conducted by the employee's Line Manager.
- 4.3.2 The Charity will explain the performance issues the employee and go through any relevant evidence.
- 4.3.3 The employee will then be given the opportunity to present their own evidence, answer put forward a response or mitigating factors, ask questions and call relevant witnesses.
- 4.3.4 If someone within the Charity is unable to attend the meeting, such a delay should be conveyed to the employee at the earliest opportunity and a reasonable alternative should be provided to the employee.
- 4.3.5 Where possible, a manager or trustee who did not carry out the investigation will attend the meeting.

4.4 **Outcome of meeting**

- 4.4.1 As soon as possible after the conclusion of the meeting, the employee's Line Manager will inform them what action, if any, will be taken. If the Charity finds there in favour of mitigating circumstances or development requirements, the employee will be

informed of this in writing, with a support plan covering:

- a) Area for improvement
- b) Support package agreed
- c) A description of satisfactory improvement and expected outcomes
- d) Key Milestones and Time scales for improvement.

- 4.4.2 Where a capability issue has been identified, a recorded verbal notice to improve may be given. The notice to improve will include a performance improvement plan as detailed in 3.4.1, state that continued poor performance will render the employee liable to further, capability proceedings. The employee shall be informed of the period in which the notice to improve will remain 'live' 6 Months.
- 4.4.3 *First Written Warning* - If more serious capability issues or continued poor performance are confirmed, the Charity will issue a written warning setting out the poor performance, required performance and timescales for improvement. The First Written Warning will be stating that further performance issues or a failure to improve performance may result in progression to the final stage of the Capability Procedure. This letter will include details as to the improvement required, time-scales for such improvement and details of any help that will be made available e.g. training or mentoring. The employee shall be informed of the period in which the warning will remain 'live' 6 months and advised of their right to appeal against the warning.
- 4.4.4 *Final Written Warning* - If the performance issue is sufficiently serious to constitute negligence, damage to reputation or loss to the Charity, or there has been a failure to improve since a previous written warning the Charity may issue a final written warning. This will give details of the complaint and nature of the performance issue(s), the improvement required, the time-scale for such improvement and details of any help available. It will also warn that failure to improve may lead to dismissal or some other contractual penalty e.g. demotion. The employee shall be informed of the period in which the warning will remain 'live' 12 months and advised of their right to appeal against the warning.
- 4.4.5 *Dismissal / Other Penalty* – If the in capability of an employee constitutes gross misconduct due to negligence, causing serious loss to the Charity or serious damage to the reputation, or failure to improve since a final written warning the Charity may dismiss the employee or take some other action short of dismissal such as demotion. The employee will be provided with a written statement of the reasons for dismissal/or other action, the date on which the employment will terminate (if dismissed), and their right to appeal, as soon as reasonably practicable. The dismissal decision should only be taken by a manager who has the authority to do so.
- 4.4.6 *Dismissal without Notice* - If the Charity establishes that there has been gross misconduct the employee may be summarily dismissed i.e. dismissed without notice. The Charity will follow a fair disciplinary procedure before taking any decision to dismiss without notice and this will be confirmed in writing (see Gross Misconduct section below).

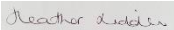
5. Appeal

- 5.1 The employee has the right to appeal against any formal capability action. An appeal cannot be made against an informal notice to improve. The appeal should be made in writing within 5 working days of the disciplinary decision.
- 5.2 The employee must inform the Charity as to the grounds for appeal in writing and may be accompanied to the appeal meeting. In making an appeal, the employee should state if they are appealing against the finding of poor performance and/or against the level of sanction imposed.
- 5.3 The Charity will hear the appeal without unreasonable delay and where possible the appeal will be dealt with by another manager, or trustee, not previously involved in the case. However, where this is not practicable, the same manager may handle both the capability and the appeal meetings, and they will act as impartially as possible.
- 5.4 The outcome of the appeal will be confirmed in writing within 5 working days of the meeting. Decisions made at this stage will be final and there is no further right of internal appeal.

6. Data Protection

- 6.1 The Charity shall process personal data collected during the investigation process and any subsequent disciplinary action in accordance with its Data Protection Policy. Data collected during the investigation process and subsequent action will be held securely and accessed by, and disclosed to, individuals only for the purposes of completing the capability procedure.

This policy has been approved & authorised by:

Name: Heather Liddle
Position: Trustee – Sacriston Youth Project
Date: April 2021
Signature: 

Date of Review	Reviewed By	Changes Made	Date of Next Review
April 2021	Jo Cameron - Trustee		April 2022