



## **CAPABILITY POLICY AND PROCEDURE**

### **1. SCOPE OF PROCEDURE**

- 1.1 This Capability Policy and Procedure applies to all CST employees. The purpose of this procedure is to establish a structure to improve performance to the standards expected and to take appropriate action to address this where there has not been sufficient improvement.
- 1.2 Normally, matters of Capability will be managed by the Executive Officer together with the Chief Executive Officer as set out. In the event of the Executive Officer being subject to the Capability Procedure, then the Chief Executive Officer will be responsible for implementing the procedure. In the event of the Chief Executive Officer being subject to the Capability Procedure, then the Chair will implement the policy. If there is a risk of dismissal, the final capability meeting shall be conducted by a panel of three Trustees. Only Trustees who are the employers of staff, shall have the power to dismiss staff.
- 1.3 There may be some occasions where an employee's lack of capability could also be described as Misconduct. This Capability Procedure and CST's Disciplinary Policy may be used concurrently whilst CST endeavours to ascertain if the employee's lack of capability is due to Misconduct or lack of competence.
- 1.4 There may be occasions where an employee's lack of capability could relate to their health. This Capability Procedure may be used concurrently with CST's Sickness Absence Policy. In particular, if an employee is absent from work on sick leave following this Capability Procedure being invoked, CST may use its Sickness Absence Policy. The process of managing unsatisfactory performance due to capability will not necessarily cease where the employee is absent on the grounds of sickness.
- 1.5 There may be occasions when an employee attempts to use CST's Grievance Resolution Policy in connection with actions taken under this Capability Procedure. This shall not lead to any automatic delay or pause in the conduct of any matters under this Capability Procedure.

- 1.6 This Capability Policy and Procedure can be invoked at any time including during any appraisal process. Relevant information from that appraisal process, including any report, may be taken into account in this Capability Procedure and/or the Disciplinary Policy.
- 1.7 The management of unsatisfactory performance and related investigations will be treated in confidence as far as possible by all parties involved at all stages of this Capability Procedure.
- 1.8 CST will maintain records of all interviews and reviews which take place under this Capability Policy and Procedure. All data and evidence collected is to be shared between all the relevant parties, where appropriate.

## **2. INFORMAL ACTION**

- 2.1 Normally, the first approach to addressing capability issues will be through regular appraisal, support and professional development, most of which will not be within the formal setting of this procedure. However, where performance does not improve as a result of such approaches, this procedure will be invoked.
- 2.2 The Executive Officer/Chief Executive Officer may give informal warnings at any time about any performance falling short of the standard expected.
- 2.3 Informal warnings may be recorded in writing and referred to at a later stage to evidence that an informal approach was attempted and the success or failure of such an approach. Informal warnings will not normally be kept on record for longer than 12 months.

## **3 FIRST CAPABILITY MEETING**

- 3.1 Where the informal and supportive measures set out above have not resulted in the desired improvement in performance, the Executive Officer/Chief Executive Officer will write to the employee concerned inviting them to a First Capability Meeting. The employee will be given at least 5 working days' notice of such meeting. At the same time as sending the letter inviting the staff member to the First Capability Meeting, the Executive Officer/Chief Executive Officer will also send a copy of the report which they have prepared and which shall set out:
  - 3.1.1 What aspects of performance are causing concern;
  - 3.1.2 What specific and achievable performance standards are expected; and

- 3.1.3 The support that has been provided so far.
- 3.2 At this meeting the employee will have an opportunity to comment upon the report and to discuss the professional shortcomings, possible support and guidance and how performance should be monitored going forward.
- 3.3 If the Executive Officer/Chief Executive Officer concludes that performance is satisfactory the employee will no longer be subject to this Capability Procedure and shall be notified in writing.
- 3.4 If the Executive Officer/Chief Executive Officer concludes that performance is unsatisfactory a First Written Warning will be given and an improvement and support plan will be developed which will:
  - 3.4.1 Identify the professional shortcomings
  - 3.4.2 Give clear guidance on the improved sustainable standard of performance needed to exit the capability procedure
  - 3.4.3 Explain the support that will be available, and how performance will be monitored over a period of time, referred to in this Capability Procedure as the Assessment Period
  - 3.4.4 Identify the timetable for improvement and agree a date for the Second Capability Meeting
  - 3.4.5 Make it clearly understood that failure to improve may lead to dismissal.
- 3.5 The length of the Assessment Period following a First Written Warning will be at least 4 working weeks and no more than 12 working weeks.
- 3.6 If the Assessment Period is less than 12 working weeks, at any time during the Assessment Period the timeframe may be extended by the Executive Officer/Chief Executive Officer to a maximum of 12 working weeks in total, if there is sufficient evidence that the employee is progressing towards achieving the standards required.
- 3.7 The employee subject to the procedure may appeal against a First Written Warning by writing to the Executive Officer/Chief Executive Officer within 5 working days of being sent the First Written Warning.
- 3.8 The fact of the appeal does not delay the commencement of the Assessment Period.

3.9 A First Written Warning will remain live for 12 months. If within that 12 month period the employee's required standard of performance is not sustained, the Executive Officer/Chief Executive Officer will recommence the Capability Procedure at the stage it was previously concluded.

#### **4 SECOND CAPABILITY MEETING**

4.1 The Executive Officer/Chief Executive Officer will write inviting the employee to a Second Capability Meeting. At least 5 working days' notice will be given for such meeting. At the same time as sending the letter of invitation to the Second Capability Meeting, the Executive Officer/Chief Executive Officer will also send a copy of an updated report which they have prepared and which shall set out the assessments, support and evaluation of performance during the Assessment Period.

4.2 At the Second Capability Meeting the employee will have an opportunity to comment upon the updated report and to discuss the professional assessment and any continuing shortcomings, possible support and guidance and how performance should be monitored going forward.

4.3 The Executive Officer/Chief Executive Officer will confirm the outcome of the Second Capability Meeting in writing within 5 working days of the date of such meeting.

4.4 Where the Executive Officer/Chief Executive Officer concludes that the standard of performance is satisfactory the employee will no longer be subject to this Capability Policy & Procedure and shall be notified in writing. However, if the required standard of performance is not sustained during the life of the First Written Warning, the Executive Officer/Chief Executive Officer will recommence the Capability Procedure at the stage it was previously concluded.

4.5 Where the Executive Officer/Chief Executive Officer concludes that some progress has been made and that with a further period of monitoring an acceptable level of performance will be achieved, the Executive Officer/Chief Executive Officer may consider extending the Assessment Period determined in accordance with paragraph 3.6 by up to an additional 4 weeks.

4.6 Where the Executive Officer/Chief Executive Officer concludes that no, or insufficient, improvement has been made so that your performance remains unsatisfactory, a Final Written Warning will be given setting a Further Assessment Period of 4 working weeks and setting the date for the Final Capability Meeting. The employee will be informed that failure to make satisfactory sustainable improvement may result in dismissal.

- 4.7 The employee may appeal against a Final Written Warning by writing to the Executive Officer/Chief Executive Officer within 5 working days of being sent the Final Written Warning.
- 4.8 The fact of the appeal does not delay the commencement of the Further Assessment Period.
- 4.9 A Final Written Warning will remain live for 24 months and if, within that 24 months, the employee's required standard of performance is not sustained the Executive Officer/Chief Executive Officer will recommence the Capability Procedure at the stage it was previously concluded.

## **5 FINAL CAPABILITY MEETING**

- 5.1 The Executive Officer/Chief Executive Officer will write inviting the employee to a Final Capability Meeting with a Panel of Trustees. At least 5 working days' notice of such meeting will be given. At the same time as sending the letter of invitation to the Final Capability Meeting, the Executive Officer/Chief Executive Officer will also send a copy of the report which they have prepared and which shall set out the assessments, support and evaluation of performance during the Further Assessment Period.
- 5.2 At the Final Capability Meeting the employee will have an opportunity to comment upon the Final Performance Report and to discuss the continued professional shortcomings, where appropriate.
- 5.3 The Executive Officer/Chief Executive Officer will confirm the outcome of the Final Capability Meeting in writing within 5 working days of the date of such meeting.
- 5.4 Where the Panel concludes that the standard of performance is satisfactory the employee will no longer be subject to this Capability Procedure and shall be notified in writing. However, if the required standard of performance is not sustained during the life of the Final Written Warning, the Executive Officer/Chief Executive Officer will recommence the Capability Procedure at the stage where it was previously concluded.
- 5.5 Where the Panel concludes that performance remains unsatisfactory and is not capable of sustainable improvement the Panel may determine that employment is terminated in accordance with your contract of employment.

- 5.6 The employee may appeal against a dismissal with notice by writing to the Executive Officer/Chief Executive Officer within 10 working days of being sent the notice of termination.

The fact of the appeal does not delay the commencement of the notice period.

- 5.7 In the event that the employment is terminated in accordance with Paragraph 5.5 above:
- (a) The contract of employment contains a garden leave clause and the Chief Executive Officer/Chair may exercise that clause so that the employee is not required to attend work during the notice period but remain employed and so bound by the terms of the contract of employment until the expiry of the notice period; or
  - (b) The Chief Executive Officer/Chair may authorise payment in lieu of notice to bring the contract to an end with immediate effect.

## **6 APPEALS**

- 6.1 An appeal against a decision of the Executive Officer/Chief Executive Officer can be made at each stage of the procedure set out at Paragraphs 3, 4, and 5 above.
- 6.2 In all cases the appeal letter must set out the grounds of the appeal in detail.
- 6.3 Any appeal against a warning should normally be heard by a Trustee appointed to do so within 20 working days of the Executive Officer/Chief Executive Officer receiving an appeal letter. An appeal against dismissal will be heard by a new Panel of three Trustees within the same timescale.
- 6.5 The Panel is not required to hear oral evidence and may rely on written evidence.
- 6.6 If the Panel does decide to hear oral evidence, the employee will be given an opportunity to comment on it either by attending the meeting or by reviewing the notes of that oral evidence after the meeting (if they were not present at the meeting where such oral evidence was given).
- 6.7 The Executive Officer/Chief Executive Officer will confirm the outcome of the Appeal Meeting in writing to the employee within 5 working days of the date of the Appeal Meeting. The decision of the Panel is final and there will be no further right of appeal.

6.8 The outcomes of the Appeal Meeting are that:

- The Panel may uphold the decision of the Executive Officer/Chief Executive Officer
- The Panel may uphold the employee's appeal, overturn the decision of the Executive Officer/Chief Executive Officer and refer the matter back for reconsideration and further monitoring and support as appropriate.

## **7 REPRESENTATION**

7.5 If an employee is the subject of a meeting within this policy, they may be accompanied at such interview or meeting by a Trade Union representative, friend or companion.

7.6 The employee must let the Executive Officer/Chief Executive Officer know who the representative will be at least one working day before any interview or meeting.

7.7 If the employee has any particular reasonable need, for example, because a disability, they can also be accompanied by a suitable helper.

7.8 The representative can address the relevant interview or meeting in order to:

- (a) put the case on behalf of the employee
- (b) sum up the case
- (c) respond on behalf of the employee to any view expressed at the relevant interview or meeting; and
- (d) ask questions on behalf of the employee.

7.9 The representative can also confer with the employee during the relevant interview or meeting.

7.10 The representative has no right to:

- (a) answer questions on behalf of the employee;
- (b) address the relevant interview or meeting if the employee does not wish it; or
- (c) prevent the employee from explaining their case

7.11 Where the employee has identified their representative and they have confirmed in writing to the Executive Officer/Chief Executive Officer that they cannot attend the date or time set for the relevant interview or meeting, it will be postponed for no more than five working days from the date set to a date or time agreed with the representative provided that it is reasonable in all the circumstances. Should the representative subsequently be unable to attend the rearranged date, the meeting may be held in their absence or written representations will be accepted.

7.12 Such meetings will not normally be arranged for days when you are not in work.

## **8 REVIEW**

This procedure may from time to time be reviewed and amended or updated in the light of working experience, employment law and case law and the circumstances of the Charity. An up-to-date copy will be retained in the workplace for staff perusal.

**Authorised signatory**

A handwritten signature in black ink, appearing to be 'A. J. L.', written in a cursive style.

**Date** 21 September 2018; revised 29 October 2018

**Date of review** July 2019