



## CAPABILITY POLICY

### Introduction

This policy is designed to support employees in trying to reach and maintain the required level of performance and an acceptable standard of work. Poor performance, which is due to negligence, lack of care or other misbehaviour, will be dealt with as a disciplinary matter under the Disciplinary Policy and Procedure.

### What constitutes an acceptable standard of work?

The introduction of the Early Years Foundation Stage and any subsequent review documents, defines minimum standards which all childcare practitioners must adhere to. Although the Ofsted inspection process seeks to measure performance against these standards, it is difficult for a one day visit to thoroughly assess the capability of all employees, so York Childcare Ltd (YCL) accepts continuous responsibility to support, monitor and develop the performance of each member of staff.

What is and is not an acceptable standard of performance is not fixed. As YCL evolves, the expectations and demands placed on employees and their roles must also evolve and develop. Performance which may once have been regarded as acceptable will not therefore always remain acceptable. Both YCL and employees are therefore subject to constantly changing demands and requirements to improve and develop, often initiated by a change in government policy or by aiming to increase the standard of care offered in accordance with a quality assurance scheme.

### We define Capability as:

The quality of being capable to do something to an acceptable standard.

### We define Incapability as:

Lack of ability to complete a task to an acceptable standard.

Where, despite employer support, an employee continues to show incapability, there are two grounds on which an employee may be dismissed.

#### 1. Poor performance or incompetence

A failure to achieve the required standards, due to the inability of the individual to prove themselves capable of performing the necessary duties and responsibilities of the job (evidenced by lack of ability or aptitude, skill, qualifications, knowledge, etc).

#### 2. Medical incapacity

Where the continued employment of an employee is no longer feasible due to illness, which has resulted in long-term absence or persistent short-term absences, which are not sustainable operationally and where the possibilities of reasonable adjustments that could be made to allow the employee to be capable of continuing to work have been carefully explored.



Dismissal on either ground may only be made after taking the steps set out in this Capability Policy and in compliance with the appropriate formal procedures.

### **Policy Statement**

York Childcare Ltd (YCL) aims to provide a formal method for handling situations where a lack of capability becomes apparent when undertaking duties and where there is no question of a deliberate failure or refusal on the employee's part to perform at the required standard.

The success of YCL depends on the effective performance of all its employees. YCL is committed to providing employees with appropriate training, supervision and support to enable them to meet the high standards expected of them. Where employees experience problems in attaining the appropriate standards YCL will endeavour to support them in order for them to reach the required standard.

It is not always appropriate to label incapability and poor job performance as misconduct warranting disciplinary action, though it may be so sometimes. This is a matter for YCL's discretion. YCL needs to be able to address performance inadequacy and deal with it effectively.

If the employee believes that poor performance is due to specific problems they have, for example, harassment or bullying then the employee must make sure that YCL is aware of their explanation so that it can be considered and (if appropriate) action taken under the relevant policy.

This policy applies equally to all employees except those subject to a review period. However, YCL reserves the right not to follow all or part of the procedure for employees with less than twelve months service.

This policy provides guidelines only and does not confer any legal rights on employees. YCL reserves the right to adapt and amend the process according to the circumstances of the capability issue.

### **Aims**

The aims of the Policy are to:

- a) Clarify how the standard of capability will be defined.
- b) Identify constructive action which may be taken to improve performance.
- c) Through such constructive action, enable employees to achieve and maintain a standard of work that is acceptable to YCL.
- d) Follow a consistent and fair procedure to bring about a positive change. If there is no improvement in the employee's performance after a period of support and training then the employee may ultimately be dismissed.



## **Employees Responsibilities**

YCL deems the responsibilities of employees to be to:

- a) Achieve a required standard of performance with commitment and motivation
- b) Seek assistance if there are difficulties in achieving the required standard
- c) Cooperate with Managers / Team Leader in attempting to achieve the required standards
- d) Participate in discussions around the problems
- e) Undertake all coaching and training agreed
- f) Take reasonable steps to maintain and improve their talents and skills

## **Records**

It is important that Managers keep records of the employee's performance, the monitoring arrangements and details of the meetings held throughout this period.

## **Confidentiality**

The contents of interviews under this procedure will remain confidential and will be kept in accordance with the Data Protection Act 1998. This allows an employee access to certain data at their request.

## **Questions and Answers**

### **In what circumstances is it appropriate to use the Capability Policy rather than the Disciplinary Policy?**

The policy is designed to be used for employees who are not performing to the required standards of the company for their particular role. The reasons for the poor performance may be due to lack of appropriate skills, poor working habits, inadequate training or failure to cope with the demands of the job. If poor performance is due to a "bad attitude" or deliberate actions then the Disciplinary Policy is more appropriate. If other factors are causing the poor performance, e.g. harassment or bullying, then other policies may be more appropriate in tackling the problem at the first instance.

### **Could I lose my job due to poor performance?**

The policy is aimed at assisting employees to improve their performance so that they can contribute to the success of YCL. It is designed to ensure that employees receive appropriate encouragement and support so that they meet acceptable standards of performance. Managers should tackle capability performance on an informal basis first. If this is unsuccessful then the formal procedure is used in order to provide a programme of constructive action. This is done in consultation with the employee. In total there are two



potential formal action stages. It is only if there is no improvement after both stages have been exhausted that an employee will be given notice of dismissal. There is a right of appeal against the decision.

**What kind of support can I expect as I go through the Capability Procedure?**

Apart from the constructive support of your Manager in tackling your performance issues, you are encouraged to seek the support of a colleague. If you are disabled, the company will attempt to make reasonable adjustments in consultation with yourself, and any other appropriate body or person.

**The Policy doesn't specify any time limits for improvements. Why is this?**

No time limits are specified because each individual case will be treated on its merits. The time needed to achieve an acceptable level of performance will depend on a number of factors including job type, resources, availability of specific training, the individual's current skill level, how long performance has been deemed to be unsatisfactory, length of service and so on. Managers will be expected to specify a reasonable time limit in consultation with the employee.

**Does the Policy take into account that some employees may have a disability which impacts on their performance?**

YCL has a duty to make reasonable adjustments for disabled employees. YCL encourages employees with disabilities to suggest ways in which their needs can reasonably be accommodated. However, on commercial grounds it may not always be possible to offer the most effective solution.

**Employees with Disabilities**

If an employee is not achieving the required standards of work due to poor performance/ lack of capability because of a disability, YCL must identify any reasonable adjustments that can be made. This should be done in full consultation with the employee and any other appropriate bodies.

A disabled person is someone who has a long term physical or mental impairment, which has a substantial adverse impact on their ability to carry out normal day to day activities. If there is doubt as to whether an employee potentially is classed as disabled, further guidance should be sought from the General Manager.

YCL should consider what reasonable adjustments it can make to accommodate the person's disability so as to allow them to meet an acceptable level of performance.

The considerations must be made by a senior manager and a representative from the Management Board appointed to this task.

Below are examples of adjustments that may be considered for the employee:

- adjustments to premises and modifications to equipment
- allocating some of the disabled person's duties to another person
- transferring him/her to an existing vacancy or an alternative workplace
- altering his/her working hours
- allowing him/her to be absent during work hours for rehabilitation, assessment or treatment
- giving or arranging training for him/her and providing additional supervision



- providing a reader or interpreter for specific situations

Below are examples of reasons why YCL may reject the proposed adjustments:

- interference with the smooth running of the setting
- the extent to which the adjustment would prevent the effect in question
- the extent to which it is practicable to take the step
- the financial and other costs which would be incurred in taking the step and the extent to which taking it would disrupt any of its activities
- the extent of YCL's financial and other resources
- the availability to YCL of financial or other assistance with respect to the adjustment

**Employees with less than 12 months' continuous service (if employed prior to 6 April 2012) and employees with less than 2 years' continuous service (if employed on or after 6 April 2012) (the "Requisite Service")**

An employee with less than the Requisite Service will normally be informed in writing if his/her performance fails to meet YCL's required standards and normally be invited to attend a meeting to discuss the reasons for his/her poor performance.

The employee must take all reasonable steps to attend the meeting and may be accompanied by a colleague or trade union representative if desired. At the meeting he/she will be given a full opportunity to comment on the reasons for his/her poor performance and to put forward any defence or arguments to explain it.

After the hearing, the employee may be dismissed or some lesser sanction imposed, including demotion.

The employee will receive notification of YCL's decision in writing.

If the employee has been dismissed or has been demoted, he/she has the right to appeal in accordance with the procedures set out below.

The employee is entitled to be accompanied at any hearing or appeal hearing in accordance with the provisions below.

**Employees With Over 12 Months' Continuous Service (if employed prior to 6 April 2012) and employees With Over 2 years' continuous service (if employed on or after 6 April 2012)**

**Informal Stage - Investigation and Counselling**

If YCL considers that the employee's performance is below the required standard, the employee will be notified in writing of the concerns/complaints and invited to attend an initial meeting with his/her Team Leader to try to establish the reason. The employee will be given the opportunity to respond to the complaints or concerns about his/her performance.



- (a) Should the interview establish that the employee's poor performance is due to a lack of relevant skills then he/she will, where reasonable and appropriate, be offered help to obtain the necessary skills through training and supervision. The employee will then be given such time as YCL considers reasonable to reach the required standard of performance;
- (b) Where the employee's poor performance results from an acknowledged lack of support, equipment or necessary facilities YCL will seek to address this by providing, where reasonable, appropriate assistance. The employee will then be given such time as YCL considers reasonable to reach the required standard of performance.

In the case of both the provision of training and equipment and facilities, although YCL will seek to address this, the responsibility lies with the employee to ensure that this happens. Accordingly it is not an acceptable response for the employee just to leave it to YCL to provide this. The employee must be proactive about ensuring that this is provided and must notify their Manager if agreed actions have not been implemented.

If the employee feels that necessary supervision or support is not forthcoming, they must notify their Manager of their concerns so that this can be addressed.

### **Formal Performance Management Procedure**

If no or insufficient improvement has been made following an informal discussion or if the unsatisfactory performance is considered to be too serious to have informal discussions, the employee should be invited to attend initially a stage one formal meeting. This must be done in writing, stating the areas of performance which are unacceptable so that the employee has time to prepare for the meeting. The employee should be given copies of any documents that maybe produced at the meeting. Employees have the right to be accompanied at all stages of the Capability Procedure by a colleague or trade union representative.

### **Stage One – Written Warning**

Following the meeting the employee will be issued with an improvement plan stating:

- The performance problems
- The improvements required and applicable targets. These must be reasonable and acceptable and where possible drawn up and agreed with the employee
- The timescale for achieving this improvement. This will largely depend on the extent of the performance problem, however, 4-6 weeks is to be used as a guide. Due regard should also be given to any training the employee is to attend to allow them sufficient time to apply what they have learnt
- A review date (guideline of 4 –6 weeks)
- Any support or assistance that YCL will provide to assist the employee



- That the plan represents stage one (written warning) and that failure to improve may lead to a final written warning and ultimately dismissal
- The employee's right to appeal against the decision

### **Stage Two – Final Written Warning**

If, following the first review period the employee fails to show sufficient improvement, the employee will be invited in writing to attend a stage two meeting. The Manager will discuss the continuing issues with the employee's performance and give them opportunity to state their case and put forward any mitigating factors. The improvement plan should be reviewed or re-issued to indicate amendments to the plan and that a final written warning has been issued.

### **Stage Three – Dismissal / Other penalty**

If, following the second review period, the employee still fails to show sufficient improvement in their performance, the employee will be invited in writing to attend a further and final meeting. If, after the employee has presented their case, the Manager has the opinion that a further review period would not assist the employee to improve, it is likely that the employee will be dismissed on the grounds of capability.

The employee may be offered redeployment as an alternative to dismissal for example demotion with the appropriate adjustment to salary and benefits. The employee must be given all information prior to making their decision to accept redeployment. They must agree to any such change in writing and this will act as a permanent change to their contract of employment.

### **Attendance at hearings**

The employee must make all reasonable efforts to attend any meeting. If the employee fails to attend, the Company may proceed with the meeting in his/her absence.

The Manager must also ensure that another Team Leader/Manager is in attendance at all formal stages of the capability process.

### **Appeals**

On being informed of the decision to issue a warning or to dismiss, the employee will be given the opportunity to appeal in writing. This must be done in writing within 5 working days following notification of the action and should state the reasons for their appeal.

A Manager not previously involved in the process will carry out the appeal along with a Trustee from the YCL Management Board. (This could be a manager from another York Childcare nursery or Out of School Service Manager).

The employee has the right to be accompanied at the hearing by a colleague or trade union representative.

The decision of the Trustee conducting the appeal hearing will be final. The employee will be informed of the decision and reasons for this as soon as possible. This decision will be confirmed in writing.



### **Sickness During Capability Procedure**

If an employee goes off sick at any time whilst they are subject to the application of the Capability process, then the employee is not entitled to receive Company sick pay. They may remain entitled to Statutory Sick Pay subject to the usual government rules for qualifying. YCL may in the circumstances withhold Company sick pay in its absolute discretion until the capability process is completed and the employee has reached the required standard of performance.

This section of the capability policy and procedure forms part of the employees' terms and conditions of employment.