

The Place Capability Procedure

Introduction

The Place is committed to sustaining an environment conducive to integrity, honesty and high standards of performance. The Place will endeavour to ensure that members of staff achieve and maintain the high standards of performance expected of them at work by providing adequate training and support.

There may be time in which a member of staff does not perform at the levels required. In cases of poor performance, The Place distinguishes between the following:

1. Issues within the staff member's control, e.g. negligence, lack of application or attitudinal problems (these constitute conduct issues and will be dealt with through the disciplinary procedure)
2. Issues outside the staff member's control, e.g. where the employee's performance falls below the standard required due to changes in systems of work, or work practices, or results from a lack of ability to carry out the duties for which they are employed (these constitute capability issues and will be dealt with using the procedure outlined within this document).

The Place aims to deal with capability issues sympathetically, fairly and consistently.

This procedure applies to all employees of The Place including those on fixed-term and casual contracts.

The HR and Administration Manager is available to assist and support with all matters relating to cases of employee capability.

These policies and procedures have been developed using the recommendations of ACAS and taking into account the Employment Act 2008.

Informal Procedures

Minor performance/capability issues will be managed initially through informal discussions between the employee concerned and an appropriate Line Manager. Counselling, coaching and advice are often the most appropriate ways of dealing with minor misconduct.

This would not form part of the formal capability or disciplinary procedure. However, evidence from informal discussions may be used to assess the need to take formal action at a later date.

The HR and Administration Manager should be consulted for advice and support in this area.

Investigations

The Place aims to investigate any potential capability issues without undue delay in order to establish the facts of each case prior to deciding whether to proceed with capability action. The nature and extent of the investigation will depend on the seriousness of the matter.

When a potential capability matter arises, the employee's Line Manager or other appropriate member of staff will:

1. Contact the HR and Administration Manager and Head of Department
2. Interview the employee and other staff and witnesses involved where appropriate
3. Examine verbal and written submissions
4. Obtain relevant work-related personal details
5. Having investigated the facts, decide whether to:
 - a. drop the matter
 - b. arrange informal measures for dealing with the matter
 - c. arrange for the matter to be dealt with at a Capability Meeting
6. Keep records of the investigation for future reference for no more than 6 months after the issue has been resolved.

Where practicable a different manager should carry out the investigation and the capability hearing.

Investigatory meetings:

If a meeting is held to determine the facts of a case, it is an investigatory meeting, not a capability or disciplinary meeting.

Where an investigatory meeting is held, the member of staff will be informed in of the date, time and location of the meeting in writing, in advance.

There may be a right to be accompanied to an investigatory meeting.

Formal Capability Procedures

Right to be Accompanied:

Members of staff have the right to be accompanied by a fellow worker or trade union representative to Capability or Appeal meetings. A trade union representative who is not an employed official must have been certified as being competent to accompany a worker. They do not have a right to be accompanied to informal discussions or counselling sessions or some investigatory meetings.

At meetings, companions can address the hearing to put forward and sum up a staff member's case, can respond to any views expressed at the meeting on behalf of the staff member and can confer with them during the meeting. They cannot, however, answer questions on the staff member's behalf, address the hearing if the staff member does not wish it, or prevent The Place from explaining its case.

In order to be accompanied, the member of staff must make a reasonable request to the HR and Administration Manager. The request does not have to be in writing or within a certain timeframe but should give The Place enough notice to accommodate the companion's attendance at any Capability or Appeal meetings/hearings.

Capability Meetings

Preparation:

If it is decided that a Capability meeting is required, the staff member will be notified of this in writing and formally invited to the meeting. This invite will detail the time and venue for the meeting and the possible consequences following the meeting. In addition to this, the staff member will be provided, where appropriate, with any evidence to be relied upon in advance of the meeting.

The meeting will be held as soon as practicable, and staff members will usually be informed of the date of a Capability Meeting within five working days of the conclusion of any related investigations.

At the Meeting:

At the meeting, the purpose of the meeting, nature of the issue and supporting evidence will be put forward.

The employee's line manager will chair the Capability meeting along with a Senior Manager present, or a Director depending on the severity of the matter.

If the capability of a member of the Senior Executive Team is in question, a Board Member will act as the Senior Manager. If the capability of the CEO is in question, two Board Members (usually including the Chair) will hold the meeting.

A member of the HR Team will act as note taker during capability meetings.

Failure to attend a Capability Meeting:

A case is unlikely to be adjourned on more than one occasion if the staff member does not attend a Capability meeting, other than where compelling evidence is presented.

Staff members should be aware that in instances where they are persistently unable or unwilling to attend a Capability meeting without good reason, The Place reserves the right to make a decision in their absence based upon the evidence available.

It should be noted that non-attendance without a valid reason may constitute an act of misconduct and may be dealt with through the disciplinary procedure.

Capability Meeting Outcomes

After a Capability meeting, a decision will be made as to whether or not any action is justified. The employee will be informed of this in writing, usually within 5 working days of the hearing. They will also be provided with the notes from the disciplinary meeting.

Any existing sanctions on a staff member's personnel file may be taken into account when considering appropriate disciplinary action. Please note that the disciplinary and capability procedures are not mutually exclusive, and sanctions issued in accordance with either procedure will be considered.

Depending on the nature and severity of performance issues, sanctions include:

Written Warning:

If performance is deemed to be below acceptable standards, a written warning will be given.

A record of the warning will be kept in the staff member's personnel file but will lapse after 6 months, subject to sustained satisfactory performance.

Final Written Warning:

Where there is a failure to improve conduct during the active period of a prior warning or where the severity of misconduct is sufficiently serious, staff members will be given a final written warning.

A copy of the final written warning will be kept on the staff member's personnel file but will normally be disregarded for disciplinary purposes after 12 months, subject to sustained satisfactory conduct.

In each case, warnings will include the following information:

- The reason for the warning
- What improvements are required
- The timeframe for improvement
- The staff member's right to appeal
- Possible consequences of a failure to improve

Dismissal or Other Sanction:

If there is no satisfactory improvement in performance, if the severity of the capability issue is sufficiently serious, or where further capability issues occur, staff members may be dismissed, or another sanction may be imposed.

Other sanctions could include, for example, a transfer or demotion.

Imposing one of these sanctions must be considered reasonable in all circumstances of the case.

The member of staff will be informed as soon as reasonably practicable of:

- The reason(s) for the dismissal or imposition of the sanction
- The date on which the contract between the parties will terminate or the sanction will begin and end
- The appropriate period of notice or pay in lieu of notice
- Information on the right to appeal

Dismissal or other sanctions can only be authorised by a member of the Senior Executive team. This would normally be the Director of the department of the staff member whose performance is unsatisfactory.

The CEO will normally be informed of the facts of the case and reasons for dismissal or imposition of a sanction before the final decision is made.

Appeals

If a staff member feels that the action taken against them is wrong or unjust, they have the right to appeal the decision.

Staff members should inform the HR and Administration Manager, in writing, within 5 working days of receiving notice of the action. The staff member must provide details of the grounds on which they feel the original decision was unjust and must provide specific evidence to support this.

Appeals will be heard within 10 working days of receipt of the written appeal. The appeal hearing will be held, if possible, by managers not involved in the initial Capability meeting. There will be two people on the appeal panel and an independent third party to act as an observer to the proceedings and as note taker during the meeting.

Staff members have the right to be accompanied to Appeal meetings by a colleague, union representative or official employed by a trade union.

Staff members will be notified of the outcome of Appeal meetings, in writing, usually within two working days of the meeting.

There is no further right to appeal following this stage of the disciplinary process.

Overlapping Grievance and Capability Cases

Where a staff member raises a grievance during a capability process, if appropriate, the capability process may be temporarily suspended in order to deal with the grievance. Where the grievance and capability cases are related, it may be appropriate to deal with them simultaneously.