Capability Procedure

Updates: Updates job titles and text amendments for clarity. Clearer outline of informal process and performance management.

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Review Cycle	Four years
Lead Contact	Laura Naldrett, Head of HR
Approval by	Finance and general Purposes Committee (Via HR committee)

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 induction, 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 staff member'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.

The Capability procedure will work in conjunction with the annual appraisal process which provides an ongoing framework for monitoring performance and setting expectations.

This procedure applies to all employees of The Place including those on fixed-term and casual contracts ("staff member").

The HR Team are available to assist and support with all matters relating to capability issues.

These policies and procedures have been developed using the recommendations of ACAS and should be read alongside The Place's other policies with particular reference to the Disciplinary Policy and Equity and Inclusion Principles.

Core Principles

The procedure operates using the following principles:

- the staff member is aware of the standards of performance required
- the staff member is made aware of any shortfall as objectively and promptly as practicable
- the staff member is given reasonable assistance, training and support to enable them to meet the required standards
- the staff member is given reasonable time to meet the required standards
- the staff member is made aware of the consequences of not meeting the required standards

Timescales will be agreed with the HR team and will vary depending on individual circumstances but will be proportionate to the issues present.

The Place is committed to ensuring that staff have multiple opportunities to discuss any access needs or reasonable adjustments required to support them in their role. These discussions may take place during induction, probation meetings, appraisal discussions, or regular line management meetings.

Any capability discussions must also explicitly consider whether access needs or reasonable adjustments are relevant to the performance concerns, and whether additional support is required.

Where a staff member has an ongoing health condition or where ill health may be impacting their ability to meet the required standards of performance, the organisation may make a referral to an external Occupational Health provider. Occupational Health advice will be used to help determine appropriate adjustments, support measures, or alternative options as part of the capability process.

Informal Capability Procedures

Employee performance will be managed through the probation and appraisal processes and normal regular line management meetings. Minor performance/capability issues can be addressed in discussions between the staff member concerned and an appropriate Line Manager. Counselling, coaching, and advice are often the most appropriate ways of dealing with minor issues.

Should a significant performance issue occur, the Line Manager should instigate informal discussions under the capability procedure. The line manager should state they are addressing a staff member's performance gap in these discussions. The discussions should seek to establish what that performance gap is, what the likely causes of this are, the impact of this, and agree actions to be taken. This discussion should also look at the support needed to enable the staff member to close the performance gap and the timeline for review. Examples of support to be considered are training and development activities, reasonable adjustments, flexible working. This discussion and any actions should be fully documented and shared with both parties and the HR team.

Satisfactory improvement in performance following informal discussion and review will conclude the process but should issues recur withing 12 months, the formal process will be triggered.

Evidence from informal capability discussions will be used in the formal capability process within appropriate timelines.

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

Investigations/Documentation

The Place aims to investigate and document any potential capability issues without undue delay normally via the informal discussions detailed above or, if the situation is more significant, a separate investigation 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 significant potential capability matter arises, the staff member's Line Manager or other appropriate member of staff will:

1. Contact the HR Team and Head of Department
2. Hold informal discussions with the staff member (see above)
3. Examine verbal and written submissions
4. Obtain relevant work-related personal details
5. Having investigated the documentation, decide whether to:
    a. drop the matter
    b. arrange further informal measures for dealing with the matter
    c. proceed to the formal process and arrange a Capability Meeting
6. Keep records of the investigation for future reference for no more than 6 months after the issue has been resolved.

Investigatory meetings:

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

Where an investigatory meeting is held, the member of staff will be informed 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 Head of HR. 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 staff member'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 Leadership Team is in question, a Board Member will act as the Senior Manager. If the capability of the Chief Executive 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. Permission will be sought in the meeting for the use of any AI transcription service, if appropriate.

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 regarding the outcome 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 Outcome

After a Capability meeting, a decision will be made as to whether or not any action is justified. The staff member 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 capability meeting.

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

Sanctions/Stages

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

Written Warning (Stage 1):
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 HR file but will lapse after 6 months, subject to sustained satisfactory performance.

Final Written Warning (Stage 2):
Where there is a failure to improve conduct during the active period of a prior warning or where the severity of the issue 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 HR 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 (Stage 3):
If there is no satisfactory improvement in performance, if the nature of the capability issue is sufficiently serious, or where further capability issues occur, staff members may be dismissed, or another sanction may be imposed. This would normally be with full notice or payment in lieu of notice.

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

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

The staff member 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

Sanctions will normally follow the stages listed in this procedure sequentially.
Timescales for review will be agreed in consultation with the HR Team and will vary

depending on the circumstances of each case. They will always be reasonable and proportionate to the issues being addressed.

As a guide, review periods following sanctions would usually fall within the following ranges:

- Stage 1 (Written Warning): review after 4–8 weeks
- Stage 2 (Final Written Warning): review after 6–12 weeks

These timescales may be adjusted where appropriate, for example to allow time for training, reasonable adjustments, or other support measures to take effect.

Dismissal or other sanctions can only be authorised by a member of the Senior Leadership Team (Chief Executive, Chief Financial Officer, Chief Academic Officer, Artistic Director) following consultation with the HR Team. This would normally be the Director of the department of the staff member whose performance is unsatisfactory.

The Chief Executive will normally be informed of the facts of the case and the reasons for dismissal or the 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 Head of HR, 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 capability 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.