

General Welfare Requirement: Suitable People

Providers must ensure that adults looking after children, or having unsupervised access to them, are suitable to do so.

Employment

2.1.7 Capability procedure

Statement of Intent for St Joseph's Pre-school

Sometimes an employee's ability to perform their duties becomes affected, by all manner of factors, which might include the fact that the employee's health deteriorates (temporarily or permanently), or perhaps the employee's job has essentially changed over a period of time and the employee is not able to keep pace with those changes and starts to struggle.

This policy covers what happens when an employee starts to perform poorly and applies to all employees and workers. It is not part of an employee's employment contract, and St Joseph's Pre-school may amend this policy at any time.

It does not cover sickness or sickness absence or issues with performance that relate to employee misconduct, and in these instances you should refer to St Joseph's Pre-school's Sickness and Absence Policy and Disciplinary Policy¹ for more information. Employees have a contractual responsibility to perform their duties to a satisfactory level. Where substandard performance is found due to the negligence or lack of application on the part of the employee, then the disciplinary procedure will normally be appropriate

On occasion, St Joseph's Pre-school may need to consider issues affecting employee performance by reference to more than one of the Pre-school's employment policies at the same time. This might happen, for example, where we start to consider performance issues under this policy, and it transpires on investigation that this is in fact a performance problem caused by employee misconduct. Should this happen, we will not repeat any steps already taken unnecessarily, and we will consider any action taken under the other policy instead of, or as well as, this one.

We understand that it can be difficult to have discussions about performance management. We aim to deal with any performance issues sensitively, constructively and, where possible, in confidence.

However, it is important for our setting that our employees perform to a satisfactory standard and we have a responsibility to all our employees and pre-schoolers, that each of them performs to an acceptable level that does not negatively impact on their colleagues or the children.

Ultimately, if we cannot achieve a position where the performance of the employee in question has improved, to the required standard and in the time frame set, we may need to consider dismissal of the employee for poor performance/capability.

It should be noted from the outset that a capability issue is not necessarily a disciplinary issue (and should not be treated as such). However, as with any meeting which could result in a formal warning or some other action, the employee will have the right to be accompanied. At each review stage the employee will be advised of the consequences of

¹ Policies 2.1.3 and 2.1.1 respectively

failure to reach the required level of performance, or necessary improvement required, or of not being able to return to work or maintain a satisfactory level of performance through capability.

Procedures

Stage One – Informal Process

When an employee's performance becomes a matter of concern, their Line Manager will keep informal notes of the way in which their performance falls below acceptable standards, and the occasions on which this is noted.

The Line Manager will consider whether cultural, disability or other equal opportunity issues might be a factor in managing a capability issue. The Line Manager can monitor this for up to three months, at which stage they need to decide whether further action is required.

The Line Manager will meet with the member of staff informally and explain how their performance falls short of the expected standards of someone in their position. Staff development or training opportunities will be considered which may enable the employee to meet the required standard of performance. Job training or a formal training course will be considered too, if applicable. The employee will be set clear, written performance targets and a realistic timescale for improvement, ie. a performance improvement plan will be created (PIP). These will be jointly agreed in writing. The employee's performance will be regularly reviewed until the performance targets are met.

Two copies of the PIP will be made and signed by both the Line Manager and the employee to demonstrate they seek to agree the targets for improvement. One copy will be kept in the employee's personnel file, and the other given to the employee

Where an informal process has been followed and there continues to be a significant performance issue, considered to be concerned with capability, the Line Manager will move onto the next stage.

Stage Two – Formal Process

▪ *Meeting with the Line Manager*

The Line Manager will meet the employee to discuss the employee's performance in the job. The employee has the right to be accompanied. The meeting will be structured, examining the cause of the problem, the job requirements and the employee's knowledge, skill and ability, and any shortfall.

The Line Manager will consider what might be done to improve the situation and help the employee. This could include further training or development needs, changing the employee's duties which might improve performance, or assistance from other colleagues, or extending the timeline.

A revised PIP will be agreed at this meeting. However, if it cannot be agreed, then the Line Manager and employee will reconvene to agree the plan, clarify any questions and to ensure that the employee is comfortable with the proposed solutions. This will be documented by the Line Manager, confirming the areas and level of improvement required, the timescales and an appropriate review date. The employee will be advised that, should the necessary improvements not be achieved, their continuing employment may, in due course, be at risk.

Two copies of the revised PIP will be made and signed by both the Line Manager and the employee to demonstrate they seek to agree the targets for improvement. One copy will be kept in the employee's personnel file, and the other given to the employee.

- *Review meeting with Line Manager*

On the date set for the review, the Line Manager will meet with the employee, review progress and evaluate any improvements in performance.

- If the performance is in line with the targets, and no further action is required, then this will be acknowledged and noted in writing by the Line Manager.
- If there has been a marked improvement, but the employee's performance has still not reached the required level, then the period of improvement will be extended with a new review date set.

The normal expectation is that targets and timescales will be set and reviewed twice before moving onto the next stage. Then, if no adequate improvement has been made, the Line Manager will progress to the next stage of the process.

Stage Three – Formal Process

Review meeting with Line Manager

At this stage, any meeting should involve the Line Manager, the employee and their accompanied person (if they wish one).

The meeting will cover the Line Manager's concerns about the review period and what has taken place, and the employee's point of view of the situation.

Following the meeting, the current plan for improvement will be maintained with an extended timescale. Alternatively, a new PIP may be issued, taking into account the employee's response.

The Line Manager will, again, make it clear to the employee that their job is now seriously at risk if the required level of improvement is not achieved and sustained.

Stage Four – Formal Process

Final review with the Line Manager

This final stage should be conducted as per Stage Three, with the additional possible outcome of dismissal on the grounds of capability, advising the employee of their contractual period of notice of termination of employment, and the right to appeal against the decision.

Dismissal

Dismissal is a last resort. We will provide 'adequate resources' for an employee to do their job. However, in some cases, it might be clear that an employee is unlikely to reach the standard needed for the job. Or they might not improve even after receiving support and training. If this happens, St Joseph's Pre-school will try to:

- change the employee's current duties, if possible;
- find a different role for them, if there is one.

We will discuss and agree any changes to the employee's role with them.

However, if there is no other suitable role, then the employee may be dismissed based on evidence, ie. the employee's poor performance and any steps taken to support them to improve.

St Joseph's Pre-school will follow a fair procedure to dismiss an employee. This will be via the Pre-school's disciplinary procedure.

In certain situation, the Pre-school might be able to dismiss someone who cannot do their job because of a disability. However, we will make sure that we have done all that we reasonably can to support the person first.

St Joseph's Pre-school acknowledges that by law (Equality Act 2010), an employer must not dismiss or discipline someone just because they are disabled. To this end, should it be necessary to dismiss someone because of their disability, we will follow ACAS guidance and may also seek further advice before taking making this decision.

If an employee is absent or sick

If sickness prevents an employee from doing their job, St Joseph's Pre-school will take steps to support them back to work. This might include:

- making changes to their role;
- using a phased return to work.

If the employee's illness is classed as a disability, St Joseph's Pre-school will do everything they reasonably can to support them. However, even if an employee is ill, they should co-operate as much as they can with any investigation as part of a capability procedure.

Appeals

An employee who wishes to appeal against a capability decision, other than dismissal, should inform the Line Manager within ten working days. An appropriate non-biased third party, such as a Committee Member, will hear any appeal and their decision is final. At the appeal, any capability target agreed will be reviewed but it cannot be decreased.

Appeal against dismissal

Any employee who is dismissed shall receive a formal letter of dismissal stating the reasons for the dismissal. If the employee wishes to appeal against their dismissal, they should write to their Line Manager within fourteen days of the date of the dismissal letter, indicating the reasons for the appeal.

An appeal will be heard, wherever possible, within fourteen days of the Line Manager's receipt of the appeal letter. The appeal may confirm, alter or reject the original decision.

Additional Information

- *What a "companion" person should do*
With the permission of the person raising the grievance, the companion is allowed to:
 - take notes;
 - set out the case of the person raising the grievance;
 - speak for them;
 - talk with them during the meeting.

The companion cannot:

- answer questions put to the person raising the grievance;
 - prevent anyone else at the meeting from explaining their side of things.
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- *Confidentiality*
Any parties affected by, or involved in the application of this policy will be expected to maintain an appropriate level of confidentiality. Breaches of confidentiality will be taken

seriously, especially if they hinder the application of the policy. Failure to maintain confidentiality may result in action being taken under the Disciplinary Policy. Disclosure of information may also be a breach of the Data Protection Act (1998) and may lead to action being taken under the provisions of that Act, in addition to actions being taken under the Disciplinary Policy.

- **Documenting and Recording of Information**

A written record will be made of all meetings held during the application of this policy. Those involved in each meeting will be provided with a copy of any records made. The Line Manager will ensure there is a record of the process which should include all statements, records and evidence. All records will be retained confidentially, securely and in accordance with the Data Protection Act (2018) and GDPR (2018) legislation.

- **Employment References**

Where an Early Years employee leaves employment within two years of being managed under this policy, the Line Manager providing references to prospective employers must communicate the duration in which the Early Years employee was managed under formal capability and the outcome.

Further Guidance

- www.acas.org.uk : Conduct and capability procedures when managing performance

Associated policies and procedures

- No 2.1.1 Disciplinary
- No 2.1.3 Sickness Absence

Version Number	Author	Purpose of change	Date
1.0	K Coupe	<ul style="list-style-type: none"> • New Policy. Good practice to deal with underperformance and ill health separately from disciplinary or conduct issues • Inclusion of “Associated policies and procedures” section as per Section 175/157 safeguarding audit 2022 	18 May 2022 Committee Member (M Montgomery)
2.0	K Coupe	Reviewed and updated <ul style="list-style-type: none"> • new section if an “employee is absent or sick” • inclusion of new “Further Guidance” section with hyperlink 	7 June 2024 Committee Member (G Ind)
3.0	K Coupe	Reviewed and updated in line with ACAS guidance: <ul style="list-style-type: none"> • reference to Personal Improvement Plans (PIP); • more information concerning dismissal; • more information concerning an employee who is absent due to sickness 	15 April 2026 Committee Member (B Wheeler)