

## **Safeguarding and Welfare Requirement: Suitable People**

**Providers must ensure that the people looking after children are suitable to fulfil the requirements of their roles**



## **Capability policy**

### **Policy statement**

This policy is designed to support employees 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 procedure policy.

### What constitutes an expectable standard of work?

The introduction of the early years foundation stage and any subsequent review documents, defines minimum standards which all child care practitioners should 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 Jigsaw Nursery accepts continuous responsibility to support, monitor and develop the performance of each member of staff.

### 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, 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 can only be made after taking steps set out in the capability policy and in compliance with the appropriate formal procedures.

## Procedures

- *Jigsaw Nursery aims to provide 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 Jigsaw Nursery depends on the effective performance of all its employees.*
- *Jigsaw Nursery is committed to providing all of its 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 Jigsaw Nursery will endeavour to support them in order for them to meet required standards.*

*It is not always appropriate to label incapacity and poor job performance as conduct warranting disciplinary action, though it may be sometimes. This is a matter for Jigsaw Nursery's discretion that 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 Jigsaw Nursery 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 Jigsaw Nursery reserves the right not to follow all or part of the procedure for employees with less than twelve months service.*

## Confidentiality

**It is important that records are kept of the employee's performance, and details of meeting held. This will all remain confidential and will be kept in accordance to the General Data Protection Regulation 2018.**

## Legal framework

- General Data Protection Act 2018
- Human Rights Act 1998

## Further guidance

- ICO – Information Commissioners Office [www.ico.org.uk](http://www.ico.org.uk)

This policy was adopted by \_\_\_\_\_ *(name of provider)*

On \_\_\_\_\_ *(date)*

Date to be reviewed \_\_\_\_\_ *(date)*

Signed on behalf of the provider \_\_\_\_\_

Name of signatory \_\_\_\_\_

Role of signatory (e.g. chair, director or owner) \_\_\_\_\_

## **Employees with less than Two years continuous service ( The Requisite service)**

**An employee with less than the requisite service will normally be informed in writing if his/her performance fails to meet Jigsaw Nursery Standards and will 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 . 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 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 Jigsaw Nursery's decision in writing.**

**If the employee has been dismissed or 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.**

### **Informal Stage – Investigation and counselling**

**If Jigsaw Nursery considers that an 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 manager 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 performance is below the required standard due to a lack of relevant skills, then he/she will where reasonably appropriate be offered help to obtain the necessary skills through training and supervision. The employee will then be given such time as Jigsaw Nursery considers reasonable to reach the required standard of performance.**

**b) Where the employee's poor performance results from acknowledged lack of support equipment or necessary facilities Jigsaw Nursery will seek to address this by providing where reasonable appropriate assistance. The employee will then be given such time as Jigsaw Nursery considers reasonable to reach required standards.**

**In the case of both the provision of training and equipment and facilities although Jigsaw Nursery will seek to address this, the responsibility lies with the employee to ensure this happens. Accordingly it is not an acceptable response for the employee just to leave it to Jigsaw Nursery to provide this . The employee**

must be pro active about ensuring that this is provided and must notify the chairperson if agreed actions have not been implemented. If the employee feels that necessary supervision or support is not forthcoming they must notify their chairperson of their concerns so that this can be addressed.

### **Formal performance management**

If no or insufficient improvement has been made following an informal discussion or if 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 areas 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 may be produced at the meeting. Employees have the right to be accompanied at all stages of the capability procedure by a colleague .

### **Stage one written warning**

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

- The performance problem
- The improvement 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 be given to any training the employee has to attend to allow them sufficient time to apply what they have learnt.
- A review date (guide 6-8 weeks).
- Any support or assistance that Jigsaw Nursery will provide to assist the employee
- That a plan represents stage one (written warning) and that failure to improve may lead to a final written warning and dismissal.
- The employees 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 and Chair will discuss the continuing issues with the employees performance and give them the opportunity to state their case and put forward 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.

## **Attendance at hearings**

**The employee must take all reasonable efforts to attend any meeting. If the employee fails to attend Jigsaw Nursery will proceed in their absence.**

**The manager must also ensure that the Chair is in attendance at all formal stages of the capability process.**

**The employee has the right to be accompanied at the hearing by a colleague .**

**The decision 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 remain entitled to statutory sick pay subject to the usual government rules of qualifying.**

## **Employees with disabilities**

**If an employee is not achieving the required standards of work due to disability, Jigsaw Nursery 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 with 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 is classed as disabled , further guidance should be sought from the manager. Jigsaw nursery should consider what reasonable adjustments it can make to accommodate the persons disability so as to allow them to meet an acceptable level of performance. The considerations must be made by the Manager and the Chair.**