



Capability Procedure

1. When to use the Capability Policy and procedure

- 1.1 The Capability Policy and procedure should be used where there are concerns about an employee's work performance, conduct and/or their attendance. Each are likely to impact on the employee's capability to achieve the standards expected by the College.

The Capability Policy and procedure runs alongside, but is not dependent on, the Performance Development Review System (PDRS). PDRS is a structured process for reviewing and monitoring performance, whereas the Capability Policy and procedure sets out the formal steps to be followed if performance or attendance falls below the standard required.

1.2 Performance

Performance concerns should be addressed with the individual promptly, as they occur. Management under the Capability Policy and Procedure can be commenced, if performance warrants it, irrespective of the rating previously awarded under the PDRS review.

1.3 Attendance

Jesus College continues to view sickness absence as genuine incapacity and staff will be supported, where possible, if sickness absence occurs. However, high levels of sick absence will impact on the individual's ability to perform to their full capacity and will impact on colleagues and on business performance. For this reason, high levels of sick absence are not sustainable. Therefore, where an employee's sickness absence reaches an unacceptable level, the Capability Policy and procedure should be used.

2. Capability procedure

- 2.1 Advice must be sought from the Human Resources Director where the manager wishes to follow the formal stages of the Capability Policy and procedure.

2.2 Informal Stage

- 2.2.1 Managers are expected, wherever possible, to address performance and/or attendance issues informally with the employee before they develop into major problems. The majority of capability issues should be able to be resolved promptly and informally through discussion advice, coaching and counselling.

- 2.2.2 When a performance/attendance concern becomes apparent the manager should meet with the employee to discuss the issue. The purpose of this discussion is to ensure that the employee understands:

- in what way their performance/attendance is not currently at the standard required;
- what needs to be consistently achieved;
- the general expectation for the role; and
- the action that will be taken if there is no sustained improvement.

- 2.2.3 Although this is the informal stage, notes of the discussion must be provided to the employee, which should detail the required performance/attendance and indicate when they will meet

again in order to review progress. The manager should meet with the employee regularly before that date to provide feedback. At the end of the review period the manager must decide whether it is necessary to proceed to the formal stage.

2.3 **Formal Stages**

2.3.1 Formal capability management should be initiated where informal management has either not worked or is not appropriate. All formal actions under this policy should be discussed in advance with the Director of Human Resources.

The formal stages begin with a meeting between the employee and the manager. Human Resources will be present to give procedural advice and guidance.

In advance of this meeting the manager should collate any paperwork to illustrate the performance/attendance concerns. Any documentation that the manager or the employee plan to refer to during the meeting must be shared with the other party in advance of the meeting.

2.3.2 Meeting

At this formal meeting the manager should:

- state the performance/attendance concerns that exist;
- invite the employee to respond/comment on the concerns raised and provide any mitigation they would like taken into account before a decision is reached;
- discuss what support has been provided, including training and any reasonable adjustments for employees with disabilities, check that these remain appropriate and whether further reasonable adjustments are necessary;
- invite the employee to suggest any other support they wish the line manager to consider.

2.3.3 Decision

Action taken at the formal stages follow the warning stages of the Disciplinary Policy.

Before reaching a decision the line manager should adjourn in order to consider what they have heard, read and seen including evidence and mitigation presented by the employee. The potential outcomes the meeting are:

OFFENCE	FIRST LEVEL	SECOND LEVEL	THIRD LEVEL
Unsatisfactory Performance/Attendance	First Formal Warning	Final Formal Warning	Dismissal

2.3.4 Following the meeting

The manager should summarise their decision in a letter which they then give to the employee. The employee has the right of appeal against the issue of one of the above formal warnings.

It is important that the employee clearly understands what they need to do and by when in order to improve their performance/attendance. This may be set out in the decision letter or in an improvement plan. A review date must be identified.

The manager should meet with the employee on or around the review date to discuss performance/attendance. If there has been sufficient improvement, this should be confirmed with the employee and informal monitoring can continue. In such circumstances there is no need to hold a further formal meeting.

However, if performance/attendance is not satisfactory then the manager should notify the employee of this and a further formal meeting should be convened. As with the previous formal meeting this should only occur following discussion with the Director of Human Resources.

2.3.5 Third Level – Dismissal

If a Final Formal Warning has been issued and performance/conduct/attendance remains of concern the employee must be made aware that dismissal is a potential outcome for the next formal meeting.

When an employee is dismissed on grounds of capability, the notice period is paid and the period of notice is in line with the employee's contract and service. Payment may be made in lieu of notice. Pay will cease from the date employment terminates. Pay will not be reinstated during the appeal period. However, should any appeal be successful and the employee reinstated, the employee will be restored to payroll with effect from the date pay ceased and will be paid any back pay owing.

3. **Redeployment**

3.1 If performance/attendance remains unacceptable in the current position, one outcome of the formal Capability Hearing may be the consideration of an alternative role, where the skills required are different to those of the current role. Capability procedures for **poor attendance** will **not** usually lead to redeployment opportunities, unless the absence is disability related, and a move may be a potential reasonable adjustment.

Redeployment is only possible if a suitable position exists and will normally be to a lower grade with the terms and conditions applicable for that position. Protection of salary does not apply if an employee is redeployed due to capability issues.

If the employee has a disability, it is expected that reasonable adjustments should be/have been provided to assist the employee in performing at the required level in their existing role. However, where reasonable adjustments are not possible for the role or have not been successful, redeployment will be considered as a reasonable adjustment.

4. **Appeal**

4.1 The employee has a right of appeal following a formal decision, lodging an appeal must be done in writing within 10 working days of the decision. The appeal letter should set out the full grounds for appeal as this will be the basis on which the appeal is considered. All documentary evidence which the employee considers relevant to the appeal should accompany the appeal letter or be submitted within 5 working days of the appeal being lodged.

The Appeal Manager must not have been involved in the original decision. They will hear the grounds of appeal and, if necessary, adjourn to collect and consider further evidence which will also be shared with the employee. This may include interviewing the manager who made the original decision and/or other employees. Human Resources will be present to provide procedural advice.

4.2 Appeal Decision

The Appeal Manager will set out their decision in writing. Decisions at appeal should be made, where possible, within 10 working days of the appeal hearing. The outcome letter should include:

- the appeal decision and the reasons for that decision;
- any actions agreed to resolve the situation if the appeal is upheld;
- a reminder that there is no further appeal.

5. **Long Term Sickness Absence or Repeated Short Term Absence**

5.1 When capability concerns are absence related and the employee's absence is long term, a case management approach involving the manager and Human Resources will be taken. The main purpose of this will be to facilitate a return to work, wherever possible.

5.2 Case management meetings will be informal until it becomes clear that the absence has become, or will become, unsustainable, at which point the employee will be invited to a formal meeting in accordance with the Capability procedure.

6. **Right of Accompaniment**

6.1 Managers arranging formal meetings should advise employees that they may be accompanied by either a workplace colleague or trade union representative. Every effort will be made to accommodate the availability of the colleague/trade union representative accompanying the employee. However, where this causes the process to be unduly delayed, the employee may be requested to seek an alternative. The accompanying person may:

- address the meeting but not answer questions on behalf of the employee;
- confer with the employee during the meeting;
- request an adjournment where necessary.

7. **Keeping records**

7.1 Managers dealing with performance issues should keep written records of meetings held with the employee at all stages, including the informal stage. These will provide evidence of discussions and the actions agreed. The length and format of the notes will depend on the nature of the performance issue and the circumstances around each case. Particularly in formal meetings the notes should be copied to the employee for their records and managers should be aware that any records kept are likely to fall within the Data Protection Act.