



## **35. Staffing and Employment Policy**

### **Staff Capability Procedure**

#### **Aims of Policy**

This policy is designed to provide a consistent and fair framework for dealing with issues of poor work performance or capability, where members of staff do not appear to be fulfilling their duties and responsibilities to the required standard. Where it is apparent the employee is not coping adequately with issues such as the pressures of the job, or the volume of work, the policy can also apply.

The first stage in dealing with poor job performance is to determine whether the matter is one of capability or misconduct. This can normally be ascertained by investigation. Incapability is where the employee has received all necessary training but still cannot achieve a satisfactory level of performance. If, on the other hand, the employee fails to reach the required standard of performance as a result of carelessness, negligence or lack of effort, this will be treated under the disciplinary procedure as misconduct.

#### **Principles**

All employees have a contractual responsibility to perform their duties to an acceptable standard and they should be given all reasonable support and encouragement to do so.

This policy also provides a framework for situations where an employee's lack of capability is due to ill health (either long term or persistent short term).

#### **Informal Performance Management**

The Pre-School Leader will investigate the cause of the employee's poor performance. Causes could include lack of skills, inadequate training, lack of support staff, tools or other resources, lack of communication or problematic working relationships. The Pre-School Leader will carry out initial counselling giving the employee factual examples of his/her unsatisfactory performance and the employee will be asked for his/her explanation, which will subsequently be followed up and checked where appropriate.

Where the reason for unsatisfactory performance is lack of the required skills, the employee will, where practicable, be assisted through training and be given reasonable time to reach the required standard of performance. If it is a question of lack of support staff, tools or other resources or facilities, attention should be paid to this and assistance provided if appropriate.

Where the Pre-School Leader is concerned that an employee is not performing at the required standards, they should arrange a meeting to discuss this. At the meeting, the standards expected will be outlined and the shortfall in performance explained. The Pre-School Leader should:

1. identify the cause(s) of the poor performance and to determine what if any remedial treatment (eg training, retraining, support, etc) can be given
2. clearly explain the shortfall between the employee's performance and the required standard, giving examples where appropriate

3. obtain the employee's commitment to reaching that standard
4. set a reasonable period for the employee to reach the standard and agree on a monitoring system during that period, and
5. tell the employee what will happen if that standard is not met. The outcome of this meeting will be recorded in writing and a copy will be given to the employee.

If at any stage the Pre-School Leader has reason to believe that the employee's poor performance or lack of capability is due to poor conduct or lack of effort on the part of the member of staff, any further meetings will be held under the disciplinary procedure in accordance with that procedure.

If at any stage it becomes apparent that the poor performance constitutes *misconduct*, the Pre-School Leader should invoke the disciplinary procedure.

Should performance or capability not reach the expected standards within a reasonable time frame, the Pre-School Leader can schedule a Stage One Formal review meeting. Formal Capability meetings will be held with the Pre-School Committee Chairperson, or an equivalent person if they are unable.

## **Formal Performance Management**

There will be a formal procedure consisting of three stages. **All outcomes will be recorded in writing.**

After the relevant period of time, the Pre-School will disregard the warning for disciplinary purposes; however, it will be retained on the employee's file. In each case, the Pre-School will specify the length of time that the warning will remain "live" (see below), but reserves the right to extend the time period in appropriate circumstances.

## **Right to be Accompanied at Formal Meetings**

Employees may be accompanied by a colleague or trade union official at any formal meetings that are held to discuss a failure to meet the required standard of performance.

Any trade union representative invited to attend a capability meeting (who is not an employee of the Pre-School) must produce evidence that he/she is employed by an independent trade union, or a written document from his/her trade union certifying their competence to act as a companion at such a hearing.

Where an employee is accompanied, the companion may speak on behalf of the employee but may not answer questions put to the employee.

Where the representative is a colleague, the colleague may request a reasonable amount of time to prepare for the meeting

### ***Stage One - Recorded verbal warning***

The employee will be fully informed of the precise nature of the poor performance, the level of improvement required and the time limit for achieving that improvement, review periods during the currency of the warning, the consequences of failure to achieve or maintain the improvement and the length of time the warning will remain "live" on the employee's file.

This formal stage should only be invoked once the informal management process as outline above has been followed.

A stage one warning will remain on the employees file for six months.

### ***Stage Two - First Written Warning***

If there is no improvement or insufficient improvement after a stage one warning, within the timeframes agreed, or if improvement is not maintained for the period stated in the stage one warning,

the employee will be given a first written warning setting out the details as outlined above in the recorded verbal warning.

A stage two warning will remain on the employees file for twelve months.

### ***Stage Three –Final Written Warning***

If there is no improvement or insufficient improvement after a stage two warning, within the timeframes agreed, or if improvement is not maintained for the period stated in the stage two warning, the employee will be given a final written warning setting out the details as outlined above. The stage three warning will include a statement that a failure to improve to the required standard may result in dismissal.

A stage three warning will remain on the employees file for twelve months.

### ***Stage Four - Dismissal***

If there is still no improvement or insufficient improvement after a stage three warning, within the timeframes agreed, or if improvement has not been maintained for the period stated above, the employee will normally be dismissed with notice. In some instances the employee may not be required to work their notice period.

## **Record of Formal Meetings**

The employee must be invited to all formal meetings in writing. Outcomes of all formal meetings should also be confirmed in writing.

## **Appeal**

An employee may appeal against any formal warning. The appeal will be heard by the Pre-School Committee Secretary who has not been involved in the decision. The Committee Secretary is obliged to consider any representations made by the employee, the employee's colleague or trade union official and those of the Committee Chairperson who conducted the formal meeting. The Committee Secretary hearing the appeal must decide on the basis of both sets of representations, together with any subsequent facts that may have come to light, whether or not to uphold the sanction.

The employee should state the grounds of their appeal in writing within five working days of being informed of the warning.

Appeal hearings will normally take place within 10 days of receipt of the employee's written notice of appeal.

Upon completion of the appeal, the Committee Secretary conducting the hearing will convey his/her decision to the employee. The decision will be confirmed in writing within 7 days. The Committee Secretary's decision at the appeal is final.

Where an appeal lies against a dismissal, the decision to dismiss will have had immediate effect and, therefore, if the dismissal is by notice, the period of notice will already have commenced on the date that the decision was given. If the decision was to dismiss the employee summarily without notice, the Pre-School will be under no obligation to reinstate or pay the employee for any period between the date of the original dismissal and the appeal decision and the original date of termination will stand. In the event that the decision to dismiss is overturned, the employee will be reinstated with immediate effect and he/she will be paid for any period between the date of the original dismissal and the successful appeal decision. His/her continuous service will not be affected.

## **Incapability due to ill health**

### ***Short-Term Absence***

The Pre-School aims to encourage all its employees to maximise their attendance at work whilst recognising that employees will, from time to time, be unable to come to work for short periods due to sickness. Short-term sickness absences are defined as those lasting up to one working week.

Whilst the Pre-School understands that there will inevitably be some short-term sickness absence amongst employees, it must also pay due regard to its business needs. If an employee is frequently and persistently absent from work, this can damage efficiency and productivity, and place an additional burden of work on the employee's colleagues. By implementing this policy, the Pre-School aims to strike a reasonable balance between the pursuit of its business needs and the genuine needs of employees to take occasional short periods of time off work because of sickness. Persistent short-term illness may lead to the Capability Procedure, as described above, being invoked.

### ***Long-Term Absence***

The Pre-School aims to encourage all its employees to maximise their attendance at work. It is recognised, however, that a certain level of sickness absence is inevitable. It is the Pre-School's policy to support employees who are genuinely sick and unable to come to work.

As part of this policy, employees will (subject to a limited number of exceptions) continue to be paid full or part salary for defined periods of time whilst absent, provided that they comply with the Pre-School's rules on notification and the provision of on-going medical evidence. Full details of entitlements are shown above.

Employees may be requested to consent to allow the doctor to provide a medical report to the Pre-School.

The Pre-School will continue to review periods of long-term absence from work due to sickness or injury with the employee. The Pre-School may adopt any of the following to assist with such a review:

- review the employee's absence record;
- consult with the employee;
- obtain up-to-date medical advice;
- meet with the employee to discuss the options and consider the employee's views on continuing employment with the Pre-School;
- consider any reasonable adjustments that could be made to facilitate a return to work;
- review whether there are any alternative jobs that the employee could do to assist with a return to work; and
- act reasonably towards the employee at all times.

The Capability procedures as described above may be invoked where it is deemed appropriate

## **Incapability due to Ill Health**

It is the Pre-School's policy to support employees who are genuinely sick and unable to come to work and to actively to manage his/her absence and subsequent return to work.

The Pre-School will adopt a "case management" approach when dealing with employees who are incapable of working due to ill health. This means regularly reviewing an employee's absence and state of health or fitness to see whether or not there is any improvement and if the Pre-School can do anything to facilitate the employee's recovery and return to work. Case reviews will normally be held monthly, and these will involve the Pre-School Leader and Committee Chairperson.

When an absent employee is well enough to return to work, the Pre-School Leader will meet with the employee to discuss the terms of his/her return. The discussions will include:

- the employee's opinion about his/her capabilities, for example whether the employee is confident that he/she are capable of full job performance or only partial performance;

- whether the employee's return should be to full-time duties or whether a phased return would be beneficial;
- whether the employee will be taking any medication after his/her return to work that might have side effects, for example tiredness;
- any special arrangements, additional support or adjustments to the employee's duties, working conditions or environment that would help the employee to reintegrate into the workplace; and
- whether or not an induction programme is desirable or necessary, for example if the employee's absence has been lengthy and if a number of organisational or procedural changes have taken place.

After the employee's return, the Pre-School will:

- monitor the employee's progress over the first few weeks to ensure that he/she is coping with the work and the day-to-day pressures of working life;
- make sure that the employee is not "thrown in the deep end", for example is not required to deal with a huge backlog of work caused by the period of absence; and
- take all reasonable steps to facilitate the employee's reintegration into the workplace.

From time to time, it may become necessary from a business perspective to consider termination of employment. In these circumstances, the Pre-School will:

- follow the capability procedures as detailed above;
- review the employee's absence record to assess whether or not it is sufficient to justify dismissal;
- consult the employee;
- obtain up-to-date medical advice;
- advise the employee in writing as soon as it is established that termination of employment has become a possibility;
- meet with the employee to discuss the options and consider the employee's views on continuing employment;
- review if there are any other jobs that the employee could do prior to taking any decision on whether or not to dismiss;
- allow a right of appeal against any decision to dismiss the employee on grounds of long-term ill health;
- act reasonably towards the employee at all times.

## **Return to Work Discussions**

Where at all possible, within 24 hours of the employees return to work, the Pre-School Leader will arrange to see the employee for a return to work discussion

This discussion provides an opportunity for the Pre-School Leader to:

- Welcome the employee back to work;
- Enquire after the employee's health;
- Give the employee an opportunity to draw the Pre-School Leader's attention to any particular problems of either a work or domestic nature, which may affect their attendance;
- Offer appropriate help and support e.g. access to counselling, workload adjustments etc
- Update the employee on any developments of work during their absence;
- Receive any self or medical certificates as appropriate;
- Advise the employee where they are within the procedure

## **Sickness Payment**

The Pre-School pay sickness pay to salaried employees in line with statutory requirements.

As with all the policies for Seer Green Pre-School, the Operational Plan should be referred to for the specific details of day to day operations of the Pre-School. In addition, any issues which arise in the course of a child's time with the Pre-School and that are related to a child's health and wellbeing, parent's or staff's concern, or the overall care and safety of our children, staff, parents and equipment will be dealt with in a professional and confidential manner in order to arrive at an appropriate outcome.

This policy was adopted on (date) \_\_\_\_\_

Signed on behalf of Seer Green Pre-School (Committee Chairperson) \_\_\_\_\_

This policy was reviewed as indicated below:

*2015 created*

*2016 reviewed and updated as required*

*July-Nov 2017 reviewed and updated*

*June-July 2018 reviewed and updated*