



## **33. Staffing and Employment Policy**

### **Disciplinary Procedure**

Please note that this policy complements our 'Safeguarding Children' policies (Policies 22 to 30) and should be referred to in conjunction with each other where appropriate.

#### **Aims of Policy**

This disciplinary policy is in place to ensure the safe and effective running of the Pre-School. The following procedure will be applied fairly in all instances where disciplinary action is regarded as necessary.

The Pre-School reserves the right to implement the procedure at any stage as set out below taking into account the alleged misconduct of an employee. Employees will not ordinarily be dismissed for a first disciplinary offence.

Where time limits are referred to in the course of this procedure they may be varied by agreement between the employee and the Pre-School.

Employees have the right to be accompanied at a formal disciplinary hearing by a fellow worker or trade union official of their choice.

Matters that the Pre-School views as amounting to disciplinary offences include (but are not limited to):

- persistent bad timekeeping;
- unauthorised absence;
- minor damage to Pre-School property;
- failure to observe Pre-School procedures;
- a breach of Pre-School policies and procedures, including the key ones such as confidentiality, as attested to each year by staff;
- abusive behaviour;
- unreasonable refusal to follow an instruction issued by a manager or supervisor;
- poor attendance; and
- smoking or vaping in non-designated areas of the Pre-School's premises.

#### **Investigation**

Any matter that is reasonably suspected or believed to contravene any of the Pre-School's policies or rules, will be promptly and thoroughly investigated. The employee will be informed as soon as possible as to the fact of an investigation and when it has been concluded.

There may be instances where suspension with pay is necessary while investigations are carried out. The Pre-School has the right to suspend with pay where there are reasonable grounds for concern that evidence may be tampered with, destroyed or witnesses pressurised before the disciplinary hearing, or if there is a potential risk to the business or other employees or third parties in allowing the employee to remain at work.

Depending on the circumstances of the case, the employee may be invited to attend an investigatory interview. If such an interview is held prior to a disciplinary hearing, the employee will be informed at the outset that the interview is an investigatory interview. There is no right for employees to be accompanied at a formal investigatory interview. The Pre-School reserves the right to dispense with an investigatory interview and to proceed directly to a formal disciplinary hearing.

## **Procedure**

Where, upon completion of an investigation, there are reasonable grounds to believe that an employee has committed an act of misconduct, the employee will be invited to attend a disciplinary hearing before the Committee Chairperson. Any matters relating to poor performance will be dealt with under the 'Staffing and Employment Policy - Staff Capability Procedure' (Policy 35).

In the event of a disciplinary hearing taking place the Pre-School will:

- give the employee a minimum of 48 hours advance notice of the hearing;
- tell the employee the purpose of the hearing and that it will be held under the Pre-School's disciplinary procedure;
- explain the employee's right to be accompanied at the hearing by a fellow worker or trade union official;
- give the employee written details of the nature of his/her alleged misconduct; and
- provide to the employee all relevant information (which should include statements taken from any fellow employees or other persons that the Pre-School intends to rely upon against the employee) not less than 48 hours in advance of the hearing.

Where the employee is unable to attend a disciplinary hearing and provides a good reason for failing to attend, the hearing will be adjourned to another day. The Pre-School will comply with the timeframes above in respect of giving notice of the rearranged hearing. Unless there are special circumstances mitigating against it, if the employee is unable to attend the rearranged hearing, the rearranged hearing will take place in the employee's absence. The employee's fellow worker or trade union official may attend in such circumstances and will be allowed the opportunity to present the employee's case. The employee will also be allowed to make written submissions in such a situation.

Where the chosen companion is unavailable on the day scheduled for the meeting, it will be rescheduled, provided that the employee proposes an alternative time within five working days of the scheduled date.

## **Employee Representation**

The employee's chosen companion has the right to address the hearing to put the employee's case, sum up the case and respond on the employee's behalf to any view expressed at the hearing. The companion may also confer with the employee during the hearing. However, there is no requirement for the employer to permit the companion to answer questions on behalf of the employee, or to address the hearing where the employee indicates that he/she does not wish this.

## **The disciplinary meeting**

A disciplinary hearing will normally be conducted by the Committee Chairperson together with another suitable employee or committee member to witness the meeting and take notes. Any member of management, usually the Pre-School Manager, responsible for the investigation of the disciplinary offence(s) shall not be a member of the panel, although may present any supporting facts and material to the disciplinary hearing. The employee will be entitled to be given a full explanation of the case against him/her and be informed of the content of any statements provided by witnesses. The employee will be able to call his/her own witnesses. He/she will be permitted to set out his/her case and answer any allegations. The employee will be given a reasonable opportunity to ask questions, present evidence and call relevant witnesses. He/she will also be given the opportunity to raise points about any information provided by witnesses. Where the Pre-School intends to call relevant witnesses it will give the employee advance notice of this. The employee must also give advance notice if he/she intends to call relevant witnesses.

The Pre-School may adjourn the disciplinary proceedings if it appears necessary or desirable to do so (including for the purpose of gathering further information). The employee will be informed of the period of any adjournment. If further information is gathered, the employee will be allowed a reasonable period of time, together with his/her fellow worker or trade union official, to consider the new information prior to the reconvening of the disciplinary proceedings.

As soon as possible after the conclusion of the disciplinary proceedings, the employee's manager will convey the decision of the panel to the employee and will also inform the employee what disciplinary action, if any, is to be taken. The decision will be confirmed in writing. The employee will be notified of his/her right of appeal under this procedure.

## **Disciplinary Action**

Where, following a disciplinary hearing, the Pre-School establishes that the employee has committed a disciplinary offence, the following disciplinary action may be taken:

- Where a minor offence or offences have been committed, a recorded verbal warning may be given. The warning will ordinarily state that any further misconduct will render the employee liable to further, more severe disciplinary action. The employee should be informed that the warning will remain on file for 6 months. During this period, the Pre-School may rely on such a warning in the event of further misconduct on the part of the employee.
- Where either a more serious disciplinary offence has been committed, or, further minor offences have been committed following a recorded verbal warning that remains "live", the employee will receive a first written warning. The warning will:
  1. set out the nature of the offence committed;
  2. inform the employee that further misconduct is liable to result in further disciplinary action under this procedure;
  3. the warning will remain on file for 12 months where after the warning will automatically lapse; and
  4. state that the employee may appeal against the warning.
- Where a serious disciplinary offence amounting to gross misconduct has been committed, thereby justifying summary dismissal, but the Pre-School decides, after taking into account all appropriate circumstances, that a lesser penalty is appropriate, or, where an employee commits further disciplinary offences after a first written warning has been issued and remains "live", a final written warning may be given. Such a warning will:
  1. set out the nature of the offence committed;
  2. inform the employee that further misconduct is likely to result in his/her dismissal; and
  3. state that the employee may appeal against the warning.
- Where the employee has committed further acts of misconduct (these being acts of misconduct other than gross misconduct) following a final written warning, the employee may be dismissed with notice.
- Where the Pre-School establishes that an employee has committed an act of gross misconduct, the employee may be summarily dismissed.
- Where dismissal is a possible outcome, but on reflection of the circumstances, the Pre-School has decided not to dismiss, action short of dismissal can be taken. This may be the issuing of a final written warning and/or demotion.

The above sanctions may be imposed in conjunction with other forms of disciplinary action, or as an alternative to dismissal.

## **Appeal**

An employee may appeal against any disciplinary sanction imposed against him/her, with the exception of an informal verbal warning. The appeal will be heard by the Committee Secretary, who has not been involved in the decision to impose the disciplinary sanction on the employee. The Committee Secretary is obliged to consider any representations made by the employee, the employee's fellow employee or trade union official and those of the individual who conducted the investigation and the manager who conducted the disciplinary hearing and imposed the disciplinary sanction. 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 disciplinary sanction. In the event that the Committee Secretary finds for the employee, he/she shall allow the appeal and shall remove all records of the disciplinary sanction from the employee's record. In the event that the Committee Secretary does not accept the representations made by or on behalf of the employee, he/she must uphold the disciplinary sanction. When lodging an appeal, the employee should state;

- the grounds of appeal; and
- whether he/she is appealing against the finding that he/she has committed the alleged act or acts of misconduct, or against the level of disciplinary sanction imposed.

The employee must provide written notice of the appeal within 5 working days of being informed of the disciplinary sanction being imposed against him/her.

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 Pre-School'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 original 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 panel's 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.

## **Gross misconduct**

Gross misconduct is misconduct of such a serious and fundamental nature that it breaches the contractual relationship between the employee and the Pre-School. In the event that an employee commits an act of gross misconduct, the Pre-School will be entitled to terminate summarily the employee's contract of employment without notice.

Matters that the Pre-School views as amounting to gross misconduct include (but are not limited to):

- stealing from the Pre-School, members of staff, parents and children or the public;
- other offences of dishonesty;
- falsification of a qualification that is a stated requirement of the employee's employment or results in financial gain to the employee;
- falsification of records, reports, official documentation, whether or not for personal gain;
- sexual misconduct at work;
- fighting with or physical assault on members of staff or the public;
- deliberate damage to or misuse of the Pre-School's property;
- serious damage to the Pre-School's property;
- drunkenness or being under the influence of illegal drugs while at work;
- possession, custody or control of illegal drugs on the Pre-School's premises;
- serious breach of the Pre-School's rules, including, but not restricted to, health and safety rules and rules on computer use;
- gross negligence;
- conviction of a criminal offence that is relevant to the employee's employment;
- conduct that brings the Pre-School's name into disrepute; and
- discrimination or harassment of a fellow worker on the grounds of sex, sexual orientation, race, disability, age or religion or belief.

Other acts of misconduct may come within the general definition of gross misconduct.

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:

*2010 created*

*2011, 2012, 2013, 2014, 2015, 2016 reviewed and updated as required*

*July-Nov 2017 reviewed and updated*

*June-July 2018 reviewed and updated*

*May 2019 reviewed and updated*

*June 2020 reviewed*

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