

2.3 Disciplinary Policy

Introduction

The overriding aim of the Disciplinary Policy is, where possible, to encourage improvement amongst employees whose conduct is unsatisfactory. It also seeks to promote fairness and consistency of treatment throughout Little Deers Preschool.

This document provides a procedural framework and information as to the steps to follow where suspected unsatisfactory conduct needs to be addressed, including circumstances where the employment contract may need to be terminated.

An employee can discuss any part of this policy with the Manage. They can help clarify an employee's rights as well as give guidance and support where it may be needed.

Situations covered by this policy are:

- **Misconduct:** where it is suspected that the expected standards of behaviour may have been breached.
- **Serious Misconduct:** serious breach of expected conduct which may, if proven, justify consideration of dismissal with notice (dismissal with notice is normally given in the case of repeated misconduct).
- **Gross Misconduct:** where it is suspected that there may have been a serious breach of expected standards of behaviour which may, if proven, justify consideration of summary dismissal (dismissal without notice). Misconduct so serious that the employer is entitled to dismiss for a first offence. A fundamental breach of the employment relationship.

Situations not covered by this policy are:

- Employees in probationary periods: please refer to the Performance Policy
- Termination of a fixed term or temporary contract.
- Termination by reason of redundancy or reorganisation.
- Retirement / early retirement.
- Issues relating to capability (whether health or skills related)
- Termination for some other substantial reason (SOSR).
- Termination for breach of a statutory enactment.

Little Deers Preschool Disciplinary Procedure should be used only when necessary and as a last resort. In the first instance and where appropriate, minor disciplinary issues relating to conduct may be dealt with informally. The procedure is intended to be positive rather than punitive but takes account of the fact that sanctions may have to be applied in some circumstances.

Informal Process

The advantage of this approach is that it may allow management to resolve any problem or correct any unacceptable behaviour as quickly as possible, thus reducing the risk of disruption to the team, the department and its clients, demotivation of the employee and absenteeism.

Where the manager takes the view that the informal process is likely to be appropriate, they should meet with the employee to discuss the issues. The manager should keep notes of such discussions.

There is no statutory right to be accompanied at an informal meeting. However, reasonable requests for accompaniment may be considered in the case of employees who may appear to fall within a vulnerable group or those who may, due to exceptional individual circumstances, require support.

If, at any stage of the informal process, the manager takes the view that the matter should more appropriately be dealt with under the formal process, they should terminate the informal process, instigate the formal process and explain to the employee why they are doing so.

Potential Outcomes of the Informal Process:

There are a range of possible outcomes, including the following:

- No case to answer.
- No action necessary.
- Objective setting: to improve the employee's conduct, normally including specific, measurable, achievable, relevant and time-specific objectives (SMART) set by the manager and discussed and where possible, agreed with the employee.
- Further training: training needs may be identified and a programme of learning and development may be implemented, with consultation and support from appropriate

training resources. The timescale for any training programme should depend on the individual circumstances of each case and may be extended if appropriate.

- An occupational health referral for consultation, counselling or medical assessment.
- Manager Advisory Letter should usually confirm any continuing steps he intends to take, such as monitoring and reviewing the situation, often done as part of normal supervision and performance management processes. The manager should also ensure that the employee is notified that if there is little or no improvement in his/her conduct, formal action may be taken.

This list is not exhaustive.

Informal action may not always be practical, possible or appropriate. Where the matter is potentially of a more serious nature a formal investigation may be invoked in the first instance, without prior recourse to the informal procedure.

(Manager Advisory Letter)

A Manager Advisory Letter is one of the options available to managers to offer advice & guidance in the form of a letter and may provide the stimulus for either improvement by the employee or be a final attempt to address the concerns without using the formal process of the disciplinary policy.

Below are listed examples of misconduct which may warrant a reprimand in the first instance. A reprimand is appropriate when it is necessary for the manager in charge to take action against an employee for any minor failing or minor misconduct only:

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- Lateness and poor time-keeping.
- Absence from work, including going absent during work, without valid reason, notification or authorisation.
- Smoking within unauthorised areas.
- Failure to work in accordance with prescribed procedures.
- Incompetence.
- Unreasonable standards of dress or personal hygiene.
- Failure to observe Company regulations and procedures.

A Manager's Advisory Letter should not refer to any sanction or time period that the letter will remain on file as this then becomes a formal matter and activates any statutory right of the employee to be accompanied/represented during formal disciplinary action.

Formal Process

Where management takes the view that the informal process is unsuitable or inappropriate, the matter should be dealt with under the formal process. There are three key stages to the formal procedure:

STEP 1: Investigation, recommendation and if appropriate, preparation for hearing.

STEP 2: The disciplinary hearing.

STEP 3: The right to appeal.

Note - Where disciplinary action is being considered against an employee who is a trade union representative the normal disciplinary procedure should be followed. Depending on the circumstances, however, it is advisable to discuss the matter at an early stage with an official employed by the union, after obtaining the employee's agreement.

Suspension

In certain circumstances it may be necessary or desirable to suspend or temporarily redeploy an employee pending a disciplinary investigation and / or disciplinary hearing. The decision to suspend should normally be made by the Manager/Chair of committee or delegated officer in consultation with a HR Adviser.

Suspension is not a disciplinary action. There may be multiple reasons for suspension, for example, to allow time for a 'cooling down period' for both parties, for their own or others protection, to prevent them influencing or being influenced by others or to prevent possible interference with evidence.

Before taking a decision to suspend all reasonable alternatives, such as redeployment, supervision, to alternative or restricted duties, should be considered.

The decision to suspend should depend on the nature of the allegation and the specific circumstances of the case but reasons for suspending may include the following:

- The employee's continued presence in the workplace may put him or others at risk.
- The employee's continued presence in the workplace may hamper, compromise or lead to a less effective investigation.
- The employee's continued presence in the workplace may be detrimental to the interests of Little Deers preschool or relevant third parties.
- There appears to have been a breakdown in relationships.
- The allegations raise particularly serious issues and it is likely that, if proven, dismissal is a realistic option.

This list is not exhaustive

Suspension is always on normal contractual pay and is not itself a disciplinary sanction, nor does the fact of suspension give rise to any implication that the employee is guilty of the alleged misconduct.

The reasons for suspension should be stated in writing to the employee using the standard suspension letter. This letter should set out the broad nature of the alleged misconduct, the reasons for the suspension and any restrictions which apply to the employee during the period of suspension.

During any period of suspension, the employee should remain available to co-operate with any part of the formal process which requires their attendance or response.

The Right to be accompanied

Suspension Meetings: there is no statutory right to be accompanied at a suspension meeting; however the manager may permit the employee to be accompanied if their representative is available and this does not cause delay to the process.

Investigatory Meetings: there is no statutory right to be accompanied at investigatory meetings. However, the manager may permit the employee to be accompanied at such a meeting, provided it is practical and reasonable to do so in the circumstances and it does not cause undue delay to the investigation process.

Disciplinary Hearings: the employee has the statutory right to be accompanied by a companion who is either a trade union representative or a workplace colleague.

The companion can:

- Put forward the employee's case, by making representations, questioning management witnesses and calling evidence on behalf of the employee.
- Confer with the worker during the hearing
- Sum up the employee's case at the conclusion of the evidence.
- Respond on the employee's behalf to any view expressed at the hearing.

The companion is not permitted to answer questions posed directly to the employee in relation to the disciplinary allegations, address the hearing if the worker does not wish it or prevent the employer from explaining their case.

Step One – Investigation, Recommendation and Preparation

An investigation should be commissioned by a senior manager (the Commissioning Officer) who should issue the terms of reference for the investigation. The Commissioning Officer should consider the investigation report when complete and make a decision as to the next course of action.

The investigation should be conducted by an appropriate manager, often the line manager (the Investigating Officer), who is not directly involved with the incident being investigated. The Investigating Officer may involve others to assist with the investigation process. All the relevant facts should be gathered promptly as soon as is practicable after the incident. Statements should be taken from witnesses at the earliest opportunity. Any physical evidence should be preserved and/or photographed if reasonable to do so.

The purpose of the investigation is to gather evidence relating to the alleged misconduct, to compile a report which outlines the facts of the case and to enable consideration as to next steps.

Following the preparation of the investigation report, the case should be reviewed by the Commissioning Officer and a decision should be reached as to whether a disciplinary hearing is necessary.

The employee should co-operate with the investigation process. Willful refusal to do so may be regarded as a disciplinary offence in itself and may result in further disciplinary action being taken. If the employee wishes to submit any evidence during the process, he should do so during the course of the investigation so that this information can be taken into account. If the employee fails to submit such evidence at the investigation stage, it is possible that the Chair of the disciplinary hearing could refuse to accept it, unless there are extenuating circumstances which adequately explain why evidence was not submitted earlier or the Chair takes the view that because of its relevance, the evidence should be heard in any event.

If, at any stage during the investigation process, it appears that the matter is one of capability rather than conduct, the investigation should transfer to the Capability Policy.

In most circumstances where serious misconduct or gross misconduct is suspected, it should be appropriate to set up a disciplinary hearing. The employee should be notified of the specific disciplinary allegations, the potential gravity of the allegations (and specifically whether dismissal may be a consideration), the arrangements for the hearing, and provided with a copy of the investigation report and any supporting evidence no less than 48 hours (two working days) prior to hearing. If management intends to call witnesses to give evidence, the employee should be told which witnesses have been asked to attend. Similarly, the employee should notify management in advance of the hearing of any witnesses he intends to call to give evidence.

The employer will set a mutually convenient date for the hearing. If this date is not suitable a second and final date will be offered, usually not more than five working days after the original date. No other date will be made available unless there are extenuating circumstances.

You may also arrange another hearing if an employee fails to attend through circumstances outside their control, such as serious illness.

Notice of start of a formal disciplinary investigation and invite letter to investigation interview can be found at

A letter of invitation to hearing detailing the above should be sent by special delivery giving at least two working days' notice.

Step 2 – The Hearing

The purpose of the hearing is to:

- Consider the evidence and representations put forward by all parties and establish the facts.
- Consider any mitigating circumstances.
- Consider whether any disciplinary action is necessary and if so, select the appropriate sanction, taking into account all the circumstances, including:
 - The seriousness of the proven allegations
 - The impact this had or may have on Little Deers Preschool, the individual, the team, work colleagues, the client and any relevant third parties
 - The steps already taken to support the employee and whether additional support is appropriate
 - Whether there were any unexpired disciplinary warnings or sanctions in place in relation to the employee.

Hearing Outcomes

There are a number of potential outcomes, as set out below.

The hearing should be chaired by the Commissioning Officer, who could be accompanied by another senior member of staff, governor or manager of another setting to form a panel to consider findings. The Investigating Officer would be asked to present his/her findings in the presence of the employee. Witnesses should be called at this stage, and the employee (or their representative) allowed to question these witnesses.

Following the full presentation of the facts, and the opportunity afforded to the employee to state his side of the case, the hearing should be adjourned, and everyone should leave the room except the Chair of the hearing and their accompanying person. This panel may be supported by a HR Adviser. They should discuss the case and decide which of the following options are appropriate.

Summary dismissal should only be used in cases of proven gross misconduct, and can be used even if no previous warnings have been given.

The Chairperson should usually select one of the following outcomes:

- **No case to answer:** the allegations have been shown to be without foundation. No further action is necessary and any reference to the disciplinary proceedings may be removed from the employee's personal file.
- **Allegations not proven:** No further action is necessary and any reference to the disciplinary proceedings may be removed from the employee's personal file.
- **No formal disciplinary action to be taken:** however written advice should be given providing guidance as to the standards expected.
- **Written warning:** this should usually remain live on the employee's file for 12 months, expiring after this time period if no further conduct issues arise. A longer

period may be appropriate, depending on the facts of the case. Advice should be taken from a HR advisor if this is a consideration.

- **Final written warning:** this should usually remain live on the employee's file for 12 months, expiring after this time period if no further conduct issues arise. A longer period may be appropriate depending on the facts of the case and particularly where dismissal was a potential alternative. In a case of serious misconduct, the employee may be issued with a final written warning even in the absence of a written warning having previously been given.
- **Dismissal (with notice):** this is normally used where the employee has been issued with one or more warnings previously and there has been further misconduct
- **Summary dismissal (without notice):** this sanction should be only be administered in a case of proven gross misconduct (refer to examples of potential gross misconduct at the end of this document).

The standard of proof required when considering disciplinary allegations is the balance of probabilities (is it more likely than not that the employee is guilty of the alleged misconduct)

Safeguarding

Where the subject matter of the disciplinary process relates to safeguarding standards, the information relating to this should be retained indefinitely on the employee's personal file, irrespective of whether or not the allegations were upheld.

Criminal offences

If an employee is charged with, or convicted of a criminal offence this is not necessarily in itself reason for disciplinary action. Consideration needs to be given to what effect the charge or conviction has on the employee's suitability to do the job and their relationship with their employer, work colleagues and customers.

Consideration also needs to be given to whether the individual becomes disqualified from working with children as a result of any criminal offence. This may include the criminal offences of anyone living in the same household as the employee.

The regulations relating to disqualification are outlined in the EYFS 2014 (Suitable people). Dependent on the nature of the offence, Ofsted, the Local Authority Designated Officer and the Early Years Safeguarding and Welfare Officer must be notified of such within 14 days of the employer being made aware of the information

Other Remedies

In addition to the above sanctions, a number of other remedies may also be considered by the Chair or appeal panel in consultation with HR, for example:

- Demotion of the employee to an appropriate role with no protection of wages
- Repayment of fraudulent claims
- Mediation

This list is not exhaustive and these options can be used in conjunction with each other or with the hearing outcomes.

Notification to Professional Bodies

In certain circumstances, where relevant misconduct may have occurred, it may be necessary for referrals to be made to relevant organisations or professional bodies. Examples include the [Disclosure and Barring Service \(DBS\)](#); This is not an exhaustive list.

If there has been or there may be a risk of harm to children or vulnerable adults, or the individual has received a caution or conviction for a relevant offence, a referral to the Disclosure & Barring Service should be made in accordance with the [Safeguarding Vulnerable Groups Act 2006](#).

In such circumstances, advice should be sought from the Local Authority Designated Officer and/or the Early Years Safeguarding and Welfare Officer. Ofsted must also be notified of the referral

Resignation during the course of Disciplinary Process

Should anyone who is subject to disciplinary action resign during the course of the process, the action should cease unless there are extenuating circumstances which require its continuance i.e. safeguarding issues. The subject of the discipline may also request that the disciplinary action continue. Further, any future reference would reflect resignation during a disciplinary process.

Appeals

Every employee has the right to appeal against the outcome of a disciplinary hearing. The basis of an appeal should normally relate to one of the following areas:

An appeal should be put in writing to Little Deers Preschool. The letter of appeal may be constructed by the employee or their representative. The letter should contain the grounds for appeal and should be lodged within 5 days of receipt of the warning / dismissal letter.

- That the Company's Procedure had not been followed correctly.
- That the resulting disciplinary action was inappropriate.
- That the need for disciplinary action was not warranted.
- That new information regarding disciplinary action has arisen

An appeal should be arranged within 20 working days of receipt of the appeal letter.

Employees have a statutory right to be accompanied at appeal hearings.

Documents to be referred to at the appeal hearing should be with the employee a minimum of two working days prior to the hearing.

Employees should be informed in writing of the results of the appeal hearing as soon as possible

Appeals against Final Warnings and Dismissal

The appeal should be dealt with impartially and wherever possible, by a manager who has not previously been involved in the case.

When dealing with an appeal against a Final Warning or Dismissal written statements of case may be submitted no later than two working days prior to the date of Appeal Hearing. Any additional written evidence submitted to the Appeal Committee on the date of the Hearing will only be admitted at the Committee's discretion.

Witnesses may be called by either party at an appeal hearing, dependent upon the circumstances and nature of the case. However, there is no specific obligation on either party to produce a witness. Either party should give two working days prior notice that they intend to call specific persons involved or associated with the case under consideration.

It is the responsibility of the management representative and for the appellant to each arrange for the availability and attendance of any witness they wish to call.

Examples of Gross Misconduct

Listed below are examples of misconduct which may be considered to be Gross Misconduct and may warrant a Final Warning, Demotion or Dismissal. It is stressed however that this list is not exhaustive and that on all occasions a full and proper investigation should take place prior to the issuing of a Final Warning, Demotion or Dismissal.

- Theft, fraud, deception or dishonesty, misuse of Little Deers Preschool property, or the deliberate falsification of records
- Breaches of confidentiality, prejudicial to the interest of the Company
- Being unfit for duty because of the misuse/consumption of drugs or alcohol.
- Refusal to carry out a management instruction which is within the individual's capabilities and which would be seen to be in the interests of the Company.
- Breach of confidentiality / security procedures.
- False declaration of qualifications or professional registration.
- Failure to observe Little Deers preschool rules, regulations or procedures.
- Incompetence or failure to apply sound professional judgement.
- Assault of any kind on any person.
- Serious breach of ICT, information policies and guidelines.
- Publication and / or distribution of offensive material.
- Harassment, intimidation or bullying of any kind, including, but not limited to, serious breaches of the Equality Act 2010.
- Failure to report actual or suspected physical or sexual abuse of, or other inappropriate behaviour towards, a child or other vulnerable person by any another person.
- Serious breach of any applicable professional code of practice or professional standards.
- Serious breach of safeguarding measures.

- Serious negligence which caused or had the potential to cause loss, damage or injury to any person, including serious breach of Health and Safety policies or standards.
- Serious insubordination.
- Deliberate or malicious damage to company property.
- Knowing disclosure of matters of a confidential nature, or a serious breach of trust owed to Little Deers Preschool, service users, the client or any relevant third party (but subject to any confidential reporting procedures which are in place to permit employees to raise concerns in good faith).
- Bringing false allegations against employees or other third parties in bad faith.
- Serious misconduct or criminal acts (whether during or outside the course of employment) which brought the employer into disrepute or had the potential to do so.
- Bringing Little Deers Preschool, into serious disrepute.

This policy was adopted at a meeting of	<u>Little Deers Pre-school</u>	name of setting
Held on	<u>13th June 2016</u>	(date)
Date to be reviewed	<u>June 2017</u>	(date)
Signed on behalf of the management committee	<hr/>	
Name of signatory	<u>Adele Gibson</u>	
Role of signatory (e.g. chair/owner)	<u>Managing Director</u>	