

## 27. Disciplinary Procedure

Version number	Date produced & approved	Reason for production & revision	Author	Locations	Proposed next review date
V0.1	June 2016	First adopted	Committee	Dropbox.com Website	June 2017
V2.0	Sept 2017	Reviewed, updated & version controlled. Grievance policy separate out.	K Coupe & G Potter	Dropbox.com Website	2019/20
V3.0	Sept 2018	Update re GDPR, plus review	K Coupe	Dropbox.com Website	2020
V4.0	25 Apr 2022	Updated as follows: • review of procedure using ACAS advice as a reference; • inclusion of list of associated policies & procedures as per GSCP section 175/157 safeguarding audit 2022	K Coupe & R Burton	Dropbox.com Website	May 2024

### Introduction

These disciplinary procedures apply to all staff of North Nibley Pre-school.

The Pre-school recognises the need for a structured approach agreed by all parties should an occasion arise that warrants an alleged disciplinary action to be brought against a member of staff. As such the following procedure and appeals process shall apply.

North Nibley Pre-school acknowledges that going through a disciplinary procedure can be very stressful. We will endeavour to keep talking to both the member of staff being disciplined and any other staff affected. We will offer support to prevent:

- absence;
- mental health issues arising;
- existing mental health issues getting worse.

All personal information will be kept confidential.

### Capability issues

Capability or performance is about an employee's ability to do the job. North Nibley Pre-school will follow this procedure, if necessary, when dealing with such issues.

### Purpose of Disciplinary Procedure

The aim of this procedure is to enable alleged employee disciplinary offences to be raised, discussed and dealt with fairly and justly.

## **Minor disagreements**

Informal action will be considered, where appropriate, to resolve minor disagreements among pre-school staff or staff with Committee members. This can be achieved at a regular staff management meeting or informally by discussion.

## **Misconduct**

Misconduct is when an employee's inappropriate behaviour or action breaks workplace rules.

For example:

- bullying
- harassment
- refusing to do work ('insubordination')
- being absent without permission.

Pre-school staff could also face disciplinary action for misconduct outside work. This depends on how serious the Committee sees the misconduct and whether it could have a negative impact on the reputation of the Pre-school.

## **Gross misconduct**

Some acts count as "gross misconduct" because they are very serious or have very serious effects. If North Nibley Pre-school finds there has been gross misconduct, we will still carry out an investigation and the full disciplinary procedure.

Where gross misconduct is committed; such as verbal/physical abuse/bullying, Safeguarding or Child Protection failure, knowingly breaching individual job role, contract and/or the settings active policies and procedures and/or committing intentional damage to property/equipment (please note this is NOT an exhaustive list); and may result in

- instant dismissal;
- contract of employment terminated; and/or
- possible prosecution

Whilst the alleged gross misconduct is being investigated, the employee may be suspended. Any decision to dismiss will be taken by North Nibley Pre-school only after there has been a full investigation.

## **Informal Counselling**

When an employee is not performing satisfactorily or is misbehaving at work, the first priority will be to help the employee to improve. The appropriate line manager will have an informal discussion of the problem with the employer. The line manager will explain what the employee is doing wrong and what he/she will be required to do to come up to an appropriate standard. A performance improvement plan will be agreed; detailing objectives and timescales; if the objectives are not met within the agreed timescale then a full written warning will be issued.

## **Formal Warning**

If the issue is not resolved or the matter is more serious, the line manager will take the matter to a more formal level. The employee may be suspended on full pay while an investigation takes place. If the line manager is not satisfied with the employee's explanation, a letter will be written to the employee setting out the problem, what the employee is expected to do about it, when an improvement is expected and what the employer will do if there is no improvement. Where the employee's poor performance or misconduct is sufficiently serious, for example

because it is having a harmful effect on the business, it may be appropriate to issue a final written warning.

A final written warning will give details of and the grounds of the complaint. It will warn the employee that failure to improve or modify behaviour may lead to discipline or dismissal.

Should the situation still not improve, and the employer considers further action against the employee is necessary the standard procedure will be started.

### **Standard Disciplinary and Dismissal Procedure (3-step process):**

#### **Step 1: The written statement**

The line manager must prepare a statement setting out what the employee has done, or failed to do that may result in disciplinary action or dismissal. A copy of this statement must be sent to the employee and a meeting must be arranged to discuss the matter. The employee must be advised of their right to be accompanied. The member of staff has the right to be accompanied by a single companion, who can be another member of staff, at any Disciplinary Meeting. The companion will be permitted to confer with the member of staff and be allowed to address the meeting, but not answer on the member of staff's behalf.

#### **Step 2: The meeting**

A face to face meeting must be held between the line manager and the employee within 2 weeks from the written letter/statement. The employee must be given time to consider the facts of the complaint prior to the meeting. The employee must be informed of the decision, and their right to appeal

The member of staff must take all reasonable steps to attend this meeting. If they cannot attend, they should inform the Pre-school, in advance wherever possible, so that the meeting can be re-scheduled to another date or time.

If the employee fails to attend scheduled meetings, they will be warned that the Disciplinary Meeting may go ahead without them, which could result in a decision being taken in their absence.

#### ***Written warnings***

The letter/statement will inform the employee what they are expected to do and the improvement required, how long this will remain on their personnel file and inform them of their right to appeal against the decision.

The employee will be informed that the warning will remain "live" on their employee record for a period of 12 months, after which time it will be disregarded. They will also be advised that further offences will result in the disciplinary warning being escalated, which could eventually lead to their dismissal.

Any written warning will include:

- details of the misconduct which has taken place;
- the improvements required;
- the consequences of a further offence if failure to improve;
- the effective date of the warning;
- the specified time limit;
- the right to appeal.

### **Step 3: The appeal**

If the employee wishes to appeal he/she must inform the line manager, who must then arrange a second meeting to hear the appeal. The line manager must inform the employee of the outcome of the appeal, in writing, within seven working days after the meeting. It must be made clear to the employee that this decision is final.

### **If the employee raises a grievance**

If the employee raises a grievance during the disciplinary procedure, North Nibley Pre-school may pause the disciplinary and deal with the grievance first. If the grievance and disciplinary cases are related, North Nibley Pre-school may deal with both at the same time if this is felt appropriate.

### **Modified Dismissal Procedure – Dismissal ONLY (2-step process):**

In all cases except gross misconduct, dismissal will be on the notice as specified in the relevant contract of employment.

### **Step 1: The written statement**

The line manager must send the employee a written explanation of the alleged misconduct that led to their dismissal – including the evidence for this decision and the employee's right to appeal.

### **Step 2: The appeal**

If the employee wishes to appeal, he/she must inform the line manager. The line manager will invite the employee to a meeting to discuss the appeal. The employee must be given the line manager's final decision after the meeting. The employee must be advised of their right to be accompanied.

### **What a “Companion” Person should do**

With the permission of the person raising the grievance, the companion is allowed to:

- take notes;
- set out the case of the person raising the grievance;
- speak for them;
- talk with them during the meeting.

The companion cannot:

- answer questions put to the person raising the grievance;
- prevent anyone else at the meeting from explaining their side of things.

### **After the disciplinary procedure**

#### *Talking to staff*

All disciplinary outcomes and details will remain confidential. However, where appropriate, the Pre-school may talk privately with any staff who knew the disciplinary procedure was happening. This can help avoid any negative effects on the Pre-school, eg. bad feeling; gossip; bullying; low work morale.

#### *Keeping written records*

Any meetings or discussions which take place within the confines of the disciplinary process must be recorded, available for review by the employee and placed on the employees file. The employee must be notified in writing of any outcome of the disciplinary process, whether

informal counselling or a formal warning. Any documentation relating to the disciplinary process should be removed from the file at the end of the duration of that warning:

- a copy of a verbal warning will be disregarded for disciplinary purposes after 6 months;
- a copy of a written warning will be disregarded for disciplinary purposes after 12 months;
- a copy of a final written warning will be disregarded for disciplinary purposes after 12 months.

In line with data protection law, these records will be

- confidential
- only kept for as long as necessary.

#### *Reference after disciplinary action*

By law, North Nibley Pre-school does not have to provide a reference. However, when we do we will ensure that the reference is:

- fair
- accurate
- consistent with others.

This means that we might have to give information about a member of staff's disciplinary outcome.

#### **No further action**

If at a disciplinary investigation or meeting, the outcome is for no action to be taken, this must also be communicated in writing to the employee, thereby closing the process. A copy of the letter will be kept on the employees file and disregarded after 6 months.

#### **Periods of warnings**

Except in certain cases, no form of warning will remain on an employee file indefinitely.

Provided the employee's performance and/or conduct improves and remains at an acceptable level, warnings will be disregarded as follows:

- *verbal warning*: disregarded after a 6 month period, unless the particular offence is repeated or relates to a rule, which can only be broken on isolated occasions;
- *written warning*: disregarded after a 12 month period, unless the misconduct is of a serious nature or relates to a rule, which can only be broken on isolated occasions;
- *final written warning*: disregarded after a 12 month period, unless the misconduct is of a serious nature or relates to a rule, which can only be broken on isolated occasions.

#### **Legal framework**

- Criminal Justice and Court Services Act (2000)
- Equalities Act (2010)
- General Data Protection Regulations 2018 and Data Protection Act 2018

#### **Further Guidance can be found at:**

[www.legislation.gov.uk](http://www.legislation.gov.uk) or [www.hse.gov.uk](http://www.hse.gov.uk) or other government websites. In addition, [www.acas.org.uk](http://www.acas.org.uk) offers comprehensive advice for employers and employees.

## **Associated policies and procedures**

- No 18 : Employment and staffing
- No 38 : Grievance procedure