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**3.4 Staff Disciplinary**

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# Purpose

* 1. We aim to ensure that employees achieve and maintain a high standard of performance, attendance and conduct whilst at work. It is expected that employees treat their colleagues, children and others with respect and behave in a way that does not conflict with our activities or business dealings or which may adversely affect or undermine our reputation.
  2. Whilst we recognise that most of our employees conduct themselves in an adult and responsible manner, it is important that any breaches of our rules, or failure to achieve and maintain satisfactory standards of conduct, attendance or job performance, are dealt with effectively, fairly and consistently.
  3. We will treat all matters as confidential between the employee and any individuals directly involved in the process. Witness statements and decisions will be kept confidentially and in accordance with data protection legislation.
  4. Minor issues concerning performance, attendance or behaviour will normally be dealt with as they arise on a day to day basis, without the need to resort to the formal disciplinary procedure. However, where more difficult or serious situations arise, or where the informal route does not result in the required improvement, the formal procedure may be deemed to be appropriate.
  5. This policy is non-contractual and does not form part of any employee’s terms and conditions of employment. It sets out the procedure that will normally be followed, although we reserve the right, at our discretion, to vary, replace or terminate the procedure at any stage.

# Scope

* 1. This policy and procedure applies to all employees including managers and supervisors and is designed to ensure that anyone whose performance, attendance or conduct falls below the required standards is aware of the procedure that we will follow.
  2. Whilst this policy is most frequently used for conduct issues, it will also be used where there are concerns regarding performance that are unrelated to conduct, with the aim of supporting the individual to achieve the most positive outcome. Employees with a pattern of persistent absence may also be subject to this policy.
  3. It will also apply to any incidents of misconduct that occur whilst working on or off our premises, including working at another location or attending off-site training, or whilst attending work organised social events, both during and outside of working hours unless otherwise stated.
  4. However, there are a limited number of exceptions as listed below.

### **Employees on probationary periods:** the formal disciplinary procedure will not apply to a probationary employee who fails to meet the required standards of performance, attendance or behaviour. However, the employee will normally be informed of any shortfalls in performance, attendance or behaviour and given the opportunity to address the issues and thereafter, if no satisfactory improvement is made, the individual's contract may be terminated.

* + 1. **Employees with less than two years’ service:** we also reserve the right not to follow this procedure where the employee has less than two years’ service.
    2. **Long-term ill-health, redundancy and fixed-term contracts:** this procedure does not apply to dismissals due to long-term ill-health, redundancy or the non-renewal of a fixed-term contract on its expiry.

# General misconduct

3.4.1 It is not practical to list all types of misconduct, therefore the following list serves as a guide, however it is not exhaustive:

* absence from place of work without permission
* bad behaviour
* breach of our policies or procedures
* failure to adhere to our rules including failure to follow our absence notification procedures and failure to provide medical certificates when absent through illness or injury
* failure to notify us promptly of any endorsements to the driving licence or any diagnosis of a health condition that may affect the employee’s ability to drive safely (if he/she drives on business)
* using a hand-held mobile whilst driving or in control of a company vehicle at any time, or whilst driving or in control of any vehicle whilst on our business
* minor breach of our cash handling procedure (including cash discrepancies and breaching till/safe operation rules)
* minor damage to our property, or that belonging to our customers or other employees
* persistent extended breaks
* persistent poor timekeeping and/or attendance
* poor work performance, capability or effort
* wilful failure to carry out a reasonable request from a manager including refusing to undertake a task for which the employee is accountable (insubordination)
* undertaking unauthorised external employment.

# Gross misconduct

* 1. Whilst this list is quite comprehensive, it is not practical to list all types of gross misconduct, therefore the following serves as a guide, and is not exhaustive:

**General:**

* failure, neglect, refusal or otherwise to perform any normal duties or to comply with a reasonable management instruction
* wilful breach of any of our rules, policies or expected standards
* any action in serious breach of legislative requirements which may affect our business
* bringing, or anything that may bring, our business or any individuals into disrepute - this includes taking part in activities which result in adverse publicity to ourselves, or which cause us to lose faith in the employee's integrity
* conviction of a criminal offence that is relevant to the employee’s employment with us and renders them unsuitable for their work
* working in competition with us or contacting any of our past, current or prospective suppliers or customers for any purpose other than for legitimate business interests
* any other misconduct which, in the circumstances, is considered serious enough to warrant summary dismissal.

**Conduct:**

* dishonesty
* false declarations regarding work completed by computer, manual records or any other means
* falsification of time sheets, attendance/sickness claims, expense claims, shared parental leave declarations or other documents for personal or another’s gain
* serious breach of our cash handling procedures (including cash discrepancies and breaching till/safe operation rules)
* fraudulent behaviour
* the inclusion of incorrect or misleading information on the employee’s job application documents (including cv, letter of application or our application form) or the provision of false references
* frivolous or vexatious claims made under the grievance procedure
* use of foul language or any act that violates commonly accepted standards of behaviour
* threatening, intimidating or abusive behaviour
* physical violence and/fighting
* assault or causing bodily harm to another employee, manager, client/customer, visitor or any other third party, either on our premises or whilst engaged on our business or where the act committed irrevocably damages the required trust and mutual confidence between employer and employee
* misuse of our property or name
* any act, or failure to report an incident or suspicion, of bribery
* receiving or procuring for another, a commission, bonus, rebate, kickback, other payment, reward or benefit in kind arising from any transaction connected with a business relationship between us and any person or organisation (bribery)
* deliberate sabotage of our property, business or business relationships
* theft or unauthorised possession of property belonging to us, our employees, contractors, visitors, clients/customers or any other third party
* removal of any of our property from the premises without permission
* accessing or downloading on-line gambling during working hours, including games
* contravention of the Obscene Publications Act
* unauthorised disclosure of confidential information
* possession, selling, attempting to sell or transfer, any intoxicating liquor, drugs (other than those medically prescribed) or any other substances, including solvents or volatile substances
* serious negligence which causes or might cause unacceptable loss, damage or injury
* setting of an alarm, such as a burglar or fire alarm, deliberately and without good cause
* sleeping on duty
* smoking/vaping on our premises or in our vehicles
* undertaking private work on our premises and/or during working hours without express permission

**Discrimination/equal opportunity:**

* any act of bullying, harassment, victimisation or any other form of unlawful discrimination
* any discrimination on any of the grounds listed in our valuing diversity & promoting inclusion & equality policy. This includes any discrimination related to a protected characteristic (age, disability, gender reassignment, marital or civil partnership status, pregnancy or maternity, race (including nationality, ethnic or national origin))

**Health and safety:**

* serious breach of health and safety rules, irrespective of whether this resulted in an accident
* attending work unfit through alcohol, non-prescribed drugs or other substance abuse (including “legal highs”)
* carrying or using any explosives or weapons
* failure to notify us of any driving ban or any diagnosis of a health condition that may result in a driving ban (where the employee drives on business)
* driving any vehicle on business whilst intoxicated
* using a hand-held mobile whilst driving or in control of a company vehicle at any time, or whilst driving or in control of any vehicle whilst on our business
* disqualification from driving, if relevant to the employee’s duties

**IT misuse:**

* accessing and using unauthorised internet sites during working hours (including chat and social networking / social media sites)
* accessing or downloading material that could offend others because of its racist, religious, political or violent nature, or material deemed to incite hatred, violence or slander towards a specific individual or group
* creating, accessing or downloading inappropriate, offensive, obscene or indecent (ie pornographic, or sexually explicit) material on any of our computers and/or systems
* downloading and/or installing unauthorised software
* railure to comply with our IT policy
* installing unauthorised software that subsequently destroys part or all of our operating systems
* unauthorised use of, or tampering with, our IT equipment or other equipment
* unauthorised use of another employee’s or user’s password or keys to gain access to confidential information.

# Capability

* 1. Employees with a pattern of regular, or persistent, absence may be subject to action under this policy.
  2. This policy will also be followed in situations where employees are finding it difficult to meet our minimum performance standards, despite making every effort to do so. An example would be where an adjustment in technology results in the fundamental nature of the role being the same but the skills required have changed and the employee is finding it difficult to develop the required skills.
  3. The Pre School Manager will provide clear guidance on what is expected in each role. Ideally a job description will outline the key responsibilities, if not this should be requested so that one can be agreed.
  4. The Pre School Manager will also provide relevant support, such as coaching and training, as well as regular constructive ‘example led’ feedback. This will be discussed in performance appraisals where objectives will be reviewed and fresh ones set.

# Procedure

## Informal procedure – counselling

* + 1. Counselling will not be regarded as action taken under the formal disciplinary procedure. Its main purpose is to find a solution to the problem that benefits both us and the employee.
    2. Employees who are aware that they are finding their jobs difficult, or who are unwell and this is impacting on their performance, should raise this with the Pre School Manager who will try to help in a supportive and constructive way.
    3. If the Pre School Manager has concerns regarding capability and the employee has not already raised these, the Pre School Manager will discuss these with the employee as soon as possible to try to establish the reasons. It may be, for example, that some coaching, training, occupational health support or career guidance is all that is required. The Pre School Manager should always try to address any concerns informally in the first instance by offering the appropriate support.
    4. The employee and Pre School Manager will then jointly agree an action plan, which clearly lays out what they are going to do to try to resolve the situation and which confirms an appropriate timescale for this. The agreed action plan should be realistic, clear and measurable and may relate to required skill levels, key results expected, job characteristics (eg relationship building) or a combination of these. The support or action that the Pre School Manager will take will also be agreed. This might include arranging training where this is deemed appropriate. If training is agreed, a timescale for when this will be delivered and the method of training should be included within the action plan (eg coaching, one to one training, self-development, a formal course). The Pre School Manager will be responsible for ensuring this is carried out.
    5. Unsatisfactory performance, attendance or conduct may be improved by informal guidance or coaching. This can often be the most effective way to improve this without the need to initiate the formal disciplinary procedure.
    6. Any counselling will be either confirmed in writing, or brief notes will be made and recorded on the employee’s personnel file for reference purposes. The employee may be requested to sign this record to confirm its accuracy and may also be provided with a copy of the notes. If the problem continues, these may be used as a basis for formal disciplinary action.
    7. If the informal approach has been exhausted, but no (or insufficient) improvement has occurred, then the formal stages will be followed.

## Suspension

* + 1. In any situation where gross or serious misconduct is suspected, we reserve the right to suspend all parties involved on full contractual pay and benefits whilst an investigation is carried out.
    2. The suspension will be confirmed verbally at the time, with confirmation in writing being sent as soon as is reasonably practical and ideally within two working days.
    3. Suspension will only be imposed after careful consideration and would normally be for no longer than five working days, or a period agreed with the individual, dependent upon the nature of the investigation or availability of witnesses.
    4. If a suspension meeting is held, there is no legal right for an employee to be accompanied.
    5. We will consider whether there is a case of gross or serious misconduct to answer and whether suspension remains appropriate. If this is the case, the employee will be informed of the continued suspension and the reasons.
    6. During a period of paid suspension, the employee will be expected to be available for interviews during working hours. They will not be permitted to enter our premises, undertake any activity on our behalf nor have any contact with other employees. Exceptions to this can occur only with the permission of the Pre School Manager.
    7. Every effort will be made to arrange the disciplinary hearing as soon as possible to minimise unnecessary anxiety and disruption
    8. Consideration may also be given to suspension if this is necessary to ensure impartiality, reduce the risk of evidence being tampered with or destroyed, to prevent any risk of reoccurrence of the behaviour in question or if the employee’s ability to continue working has been adversely affected by the situation being investigated. An alternative to suspension may be the requirement to undertake alternative duties during this time.
    9. Suspension on its own does not constitute formal action.

## Investigation

* + 1. In most cases, an investigation will take place before formal disciplinary action is put into process.
    2. Investigations should be carried out promptly before memory fades, to ensure all statements are as accurate as possible and to prevent any evidence being altered or destroyed.
    3. The Pre School Manager or person undertaking the investigation should not chair the disciplinary hearing unless, due to the size of the organisation or complexity of the case, there are not enough suitable people to allow a separate investigator and hearing chairperson.
    4. At this stage, information relating to any witnesses to an alleged incident (such as other employees or external individuals) should be checked and statements taken from these witnesses. All witnesses will be informed of the reason for this. Employees are required to fully co-operate with such investigations in a professional manner and to provide all information that may be relevant to the investigation.
    5. Other employees are required not to discuss any information relating to the case with anyone outside of the meeting, either inside or outside our organisation: this will be regarded as a breach of confidentiality.
    6. A witness may add written comments to be attached to their statement. The Pre School Manager will inform the witness if their statement is to be presented at the disciplinary hearing; if so they may be requested to attend the hearing.
    7. The investigation may also include examination of written or physical evidence, such as documents, photographs, CCTV footage or equipment.
    8. Within the investigation, employees will have the opportunity to respond to any allegations and provide their version of events. It is important to note that the right to be accompanied by a colleague or union representative does not apply to meetings held at the investigatory stage.
    9. Witnesses and informants may request to remain anonymous in certain instances. In order that a fair procedure is followed, we will, in such circumstances, explore the reasons for this request and decide whether the statements should be anonymous, disregarded or considered as holding less weight than statements from other named witnesses/informants. Where we agree to protect the identity of the witness/informant, statements and documents will be anonymised and relevant sections redacted.
    10. When taking statements from a witness/informant who wishes to retain their anonymity, we will make them aware that this cannot be guaranteed at a later stage in the process and that if the matter results in legal proceedings, they may be subject to a witness order requiring their attendance at an employment tribunal to provide evidence in the proceedings.
    11. The manager responsible for conducting the investigation will review the case including all the evidence collected to determine if a formal disciplinary hearing seems warranted.

## Formal procedure – disciplinary hearing

* + 1. In most cases, formal disciplinary action will not be taken until the case has been fully investigated.
    2. The employee will be advised in writing of the nature of the issue and provided with any relevant evidence that may exist.
    3. To enable them to prepare, they will be given adequate notice (normally at least 24 hours) of any formal disciplinary hearing and provided, in writing, with full details of the case to answer, as well as a copy of our disciplinary policy (or access to this).
    4. Employees have the right to be accompanied at all formal disciplinary hearings by a fellow worker of their choice, a trade union representative, or an official employed by a trade union. Any trade union representative must be certified in writing by their union as having experience of, or having received training in, acting as a worker's companion at disciplinary hearings. The employee should tell the person conducting the hearing in advance whom they have requested to act as a companion. If they do not wish to be accompanied, this will be noted. Fellow workers may not be compelled to attend as a companion.
    5. Should the date and time not be convenient for the representative, we will reschedule the hearing to a date within five working days of the original date set.
    6. The employee must take all reasonable steps to attend the disciplinary hearing; failure to attend the hearing without notifying us or providing genuine reasons may be considered an act of misconduct itself. Where an employee is persistently unable or unwilling to attend an agreed or rescheduled disciplinary hearing, without good reason, a decision may be made in their absence based on the evidence available at that time.
    7. Dependent on the level of the case, the individual’s manager will normally conduct any formal disciplinary hearings, otherwise the hearing will be carried out by a member of the Governing Committee. At all formal stages of this procedure, the person chairing the hearing is advised to be accompanied by a further suitable employee who will act as a witness and take full notes of everything that is said. Where no internal person of sufficient seniority or confidential status is available, or where preferred, an external party may be invited to attend in this capacity.
    8. Both parties have the right to request witnesses to give evidence at the disciplinary hearing. However, it is recognised that this may not always be appropriate. If it is deemed that the witness(es) may have relevant information about the alleged offence(s), we will invite them to attend.
    9. At every stage in the formal procedure, the employee will be advised, in writing, of the nature of the allegation(s) and provided with the relevant evidence gathered.
    10. The employee will be given the opportunity to state their case and respond to the allegation(s) at the hearing before any decision is made.
    11. The hearing will normally be adjourned to allow for full consideration of the evidence before a decision is made. It should be noted that further investigation may be required following the hearing, should new information/evidence emerge that was not previously known.
    12. The employee and/or companion may also request an adjournment as required. The companion is there to act as a witness to what is said, to provide moral support and to assist and advise the employee in presenting the case. They may address the hearing (provided the employee wishes this), ask questions on the employee’s behalf and confer with the employee but not answer questions on their behalf, nor may they prevent us from explaining our case.
    13. At all stages of the formal disciplinary procedure, notes will be taken. These will detail the nature of any breach of disciplinary rules or unsatisfactory performance, the employee’s defence or mitigation, the action taken and the reasons for our decision. The notes may not be verbatim but should be an accurate reflection of the hearing. The employee may be requested to sign the notes to confirm their accuracy and may be provided with a copy of them. Under no circumstances should any hearing or conversation be recorded without the prior permission of those present.
    14. An employee who is not happy with the accuracy of the notes can request, in writing, amendments to be made and we will consider this request. Where it is agreed to revise the notes, a copy will then be provided to the employee with an additional copy retained on their personnel file. Where the suggested amendments are not agreed, a copy of the employee’s written comments will be filed alongside the original notes.

## Approach

* + 1. A disciplinary penalty will only be issued once a formal hearing has taken place and all the evidence and the employee’s defence has been heard and considered. Before making any decision on disciplinary action, we will consider the employee’s disciplinary and general record; length of service; any similar precedents; any mitigating circumstances or explanations given; what would be reasonable under the circumstances and whether any training, additional support or adjustments to the role or workload are necessary.
    2. Under normal circumstances, the formal disciplinary procedure will begin with a first written warning (or improvement note) and then will progress through the stages as necessary.
    3. However, if the matter is of a particularly serious nature, then we reserve the right to escalate the procedure, by omitting one or more stages, if it is appropriate to do so in the circumstances. This means that, on occasion, we may proceed directly to a final written warning for a first offence if this is viewed as a serious disciplinary matter which may, for example, fall just short of gross misconduct. In such cases we will consider the seriousness of the conduct or poor performance, any past disciplinary history, length of service, the likelihood of effective corrective action by the employee and the extent to which our concerns have been notified to the employee other than through this procedure.
    4. It is also important to recognise that any offence which constitutes gross misconduct may, following an investigation and disciplinary hearing, result in summary dismissal (dismissal without notice or payment in lieu of notice).

## First written warning (or improvement note)

* + 1. Following a disciplinary hearing, if we decide to issue a first written warning this will be confirmed to the employee. This will provide details of the offence(s), the improvement required and the agreed timescales in which the improvement will be expected.
    2. A copy of this first written warning will be retained on the employee’s personnel file. Subject to future satisfactory conduct, attendance and/or performance and, where appropriate, no repetition of the offence or a similar offence this warning will be disregarded for disciplinary purposes after twelve months from the date of issue.

## Final written warning

* + 1. Where there is a reoccurrence or a further disciplinary offence which is of a similar nature, or where the gravity of the offence warrants this, the employee will be invited to attend a disciplinary hearing, following which the employee may be given a final written warning. This will provide details of the offence(s), the improvement required and the agreed timescales in which the improvement will be expected.
    2. This formal written warning will be retained on the employee’s personnel file. Subject to future satisfactory conduct and performance, and no repetition of the offence or a similar offence, this warning will be disregarded for disciplinary purposes, after 12 months from the date of issue.
    3. The employee will be informed that dismissal may be considered if there is either no satisfactory improvement, a repetition of the offence or if a similar offence occurs during the following 12 months. This period may be extended at our discretion, or may be of an indefinite duration – the employee will be informed if this applies.

## Dismissal

* + 1. Dismissal will be considered if an employee is found to have committed an act or acts of gross misconduct or has failed to improve their performance, attendance and/or conduct despite a previous warning.
    2. The employee will be provided with written reasons for dismissal, the date on which employment will terminate and details of the right of appeal.
    3. All records of the process and the outcome will be retained on the employee’s personnel file.

## Penalties other than dismissal

* + 1. There may be circumstances where we consider alternative disciplinary sanctions to be appropriate. These could include suspension without pay; demotion (which may result in a reduction in pay for the employee); or transfer to another position or working pattern which may result in a reduction in pay. Demotion, as an alternative to dismissal, would constitute a permanent change to the employee’s terms and conditions of employment including, but not limited to, job title, pay and other remuneration. An employee who does not accept this alternative will be dismissed from our employment.

## Appeals

* + 1. At any stage of the formal disciplinary procedure, including dismissal, employees have the right to appeal the outcome of the hearing.
    2. When making an appeal, the employee will need to clearly state the grounds for the appeal. Typically, this will be based on procedural issues, new evidence or a belief that the penalty imposed is disproportionate to the offence.
    3. All appeals must be made as soon as is reasonably practicable – we would normally expect this to be within five working days from the date of the hearing or the outcome letter.
    4. On receipt of the appeal letter, acknowledgement will be made and an appeal hearing will be arranged without unreasonable delay.
    5. The appeal will be reviewed by the Chair of the Governing Committee. This may result in a full review of the evidence. The person conducting the appeal is advised to be accompanied by a suitable employee who will act as a witness and take full notes of everything that is said.
    6. An independent external person (such as a professional adviser) may be appointed to attend the appeal or review the matter impartially and provide advice.
    7. The employee will have the right to be accompanied by a fellow worker of their choice, a trade union representative, or an official employed by a trade union. As with a disciplinary hearing, the companion will be able to address the hearing, ask questions on the employee’s behalf and confer with the employee but not answer questions on their behalf.
    8. Should the date and time not be convenient for the companion, we will reschedule the hearing to a date within five working days of the original date set.
    9. The employee must take all reasonable steps to attend the appeal hearing. The grounds of the appeal will be considered when deciding the extent of any new investigation: it may be that a complete re-hearing will be held, should there be any suspected procedural defects.
    10. Where possible, the employee will be informed verbally of the decision reached. The findings of the appeal will then be notified in writing as soon as reasonably practicable, unless otherwise notified.
    11. The outcome of the appeal is final.
    12. Decisions previously imposed may be upheld or removed, or alternative sanctions may be imposed, but any sanction or penalty will not be increased.
    13. In cases where a decision to dismiss is upheld, the termination date will be the original date of termination. If a decision is taken to overturn a dismissal, both parties revert to the position as it was on the day of dismissal and continuity of service is preserved.

# Absence during disciplinary proceedings

* 1. We recognise that disciplinary situations can be stressful for both the employee involved and any other employees who are asked to give witness statements or to participate in the procedure in any way. However, we believe that in most cases this stress is best alleviated, and working relationships maintained, by completing the disciplinary procedure quickly.
  2. Where an employee or worker is unfit for work, this does not necessarily mean that they are unfit to attend an investigatory meeting or a disciplinary hearing and employees must make every effort to co-operate with us in completing the disciplinary process.
  3. If an employee is absent due to illness or other reasons such as maternity/adoption/paternity/shared parental or other leave, we will consider, in consultation with the employee (and/or their GP if appropriate in the case of illness), whether there are any reasonable adjustments that can be made to enable the case to be progressed (eg by allowing the employee to make further written submissions, by conference call or by holding the meeting at a different venue).
  4. If, after an attempt to contact the employee or worker, we reasonably believe that they are unlikely to be able to attend a hearing in the near future, or to provide any further information, we may decide the matter without the employee or worker's further input, based on the evidence and information available to us. Unless the employee has already been informed of this, we will write to inform the employee of our intentions to proceed in their absence before taking any decisions.

# Mediation

* 1. There may be circumstances where we consider that it may be beneficial to use mediation to help resolve an issue. Mediation is not suitable in all circumstances and will not necessarily be offered, but where appropriate and offered, may be introduced at any stage of the process where both parties agree that this could be an effective approach.
  2. Where mediation is introduced before or during the disciplinary process, the disciplinary procedure may be adjourned whilst the mediation is being undertaken. Should mediation prove unsuccessful the disciplinary procedure will be resumed.

# Related policies and documents

* Absence Management policy
* Bullying and harassment policy
* Data protection policy
* Valuing diversity & promoting inclusion & equality
* Grievance policy
* Health and safety policy
* IT policy
* Whistleblowing policy
* The above list is not exhaustive.

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| --- | --- |
| Policy Adopted by | Aston Clinton Preschool |
| On | …19th October 2024…….………………………………………………………… |
| Last Review Date | ….19th October 2024 |
| Date to be reviewed | …19th October 2025..…………………………………………………………… |
| Signed on behalf of the provider |  |
| Name of signatory | Hannah Hughes ………………………………………… |