

## **Guilsborough Preschool**

### **DISCIPLINARY POLICY**

(Also see grievance and behaviour policies)

**Reviewed and Rewritten May 2012**

#### **1. Purpose and Scope**

Guilsborough Preschool (GPS) requires appropriate standards of conduct and performance from its employees. The purpose of the Disciplinary Policy, in the first instance, is to help and encourage improvements in conduct and/or performance and is not simply a means of imposing disciplinary action.

This policy applies to all employees and is designed to ensure that employees are treated fairly, reasonably and consistently

This policy complies with the statutory requirements regarding disciplinary and reflects best practice and the ACAS code of practice.

*N.B. Decision makers should also refer to the 'ACAS Guide on Disciplinary and Grievance' for further information, sample letters, preparation for meetings and advice on making disciplinary decisions*

This policy may be implemented at any stage if the employee's alleged misconduct/poor performance warrants such action.

#### **Misconduct**

Examples of misconduct include, but are not limited to, the following:

- Attendance e.g. persistent lateness, etc.
- Failure to carry out a safe, lawful and reasonable instruction,
- Recurring work issues
- Relationships with others e.g. abusive, rude, threatening language or behaviour, etc.
- Failure to follow health and safety procedures.
- Disclosure of confidential information concerning the employees or children attending GPS (see confidentiality policy)
- General disregard to rules, standards, policies, or procedures, etc.
- Bringing GPS into disrepute

#### **Gross misconduct**

This is generally misconduct serious enough make any further working relationship and trust impossible. Each case will be reviewed in terms of severity and circumstances. Examples of gross misconduct include, but are not limited to, the following:

- Dishonesty.
- Submission of false references/information or failure to disclose relevant information when requested in connection with a job application.
- Deliberately accessing internet sites containing pornographic, offensive or obscene material,
- Deliberate damage to preschool property.

- Disorderly or indecent behaviour e.g. acts of bullying, harassment, victimisation, discrimination, rudeness to a parent etc.
- Any other breach of procedures leading to loss of trust and confidence in the employee.
- Serious negligence which causes unacceptable loss, damage or injury.
- Serious breach of confidence/confidential information.
- General fitness for duty e.g. reporting for work under the influence of alcohol, drugs or other substances that may affect work performance, etc.
- Serious breach of health and safety rules
- Bringing the Preschool into serious disrepute

### **Poor performance**

Poor performance can take many forms. This list is not exhaustive but merely intended to illustrate a few instances when the Disciplinary Policy may be used:

- Poor standards of work, e.g. frequent mistakes, not following a job through, unable to cope with instructions given, etc.
- Inability to cope with a reasonable volume of work to a satisfactory standard.
- Attitude to work, e.g. poor interpersonal skills, lack of commitment/drive, etc.
- Lack of apparent skill in the work required.

## **2. Responsibilities**

Where there is a breach of staff performance or conduct, a disciplinary investigation and hearing will be conducted by a Committee Member and the Preschool Manager. In the event that the breach is by the Manager then two members of the Committee (one of which will be the Chair) will conduct the investigation and hearing.

The persons conducting the disciplinary process must ensure that employees are treated fairly, reasonably and consistently and that disciplinary proceedings are conducted as a priority and in confidence. The persons conducting the investigation or disciplinary, are responsible for keeping an accurate record of all meetings related to the allegation. It may be appropriate to elect an additional person to attend for the purposes of notetaking.

The employee will be expected to maintain appropriate standards of conduct and performance both in general and during disciplinary proceedings and to prepare for disciplinary proceedings accordingly.

## **3. Counselling/informal intervention**

Following an allegation, the Preschool Manager or Committee Chair will discuss the incident with the employee concerned at the earliest opportunity to determine whether disciplinary proceedings are appropriate.

It is desirable that the majority of minor problems concerned with misconduct/poor performance will be corrected through effective communication and counselling by the Manager / Chair as soon as possible after the alleged misconduct/poor performance. All counselling will be documented. It is important to offer the employee the chance to explain and be listened to.

*In cases of unsatisfactory performance*, the employee and Manager / Chair will meet to: -

- agree areas for improvement, what actions should be taken, and who will be involved
- set SMART (Specific, Measurable, Achievable, Realistic and Timely) objectives
- set a review date
- incorporate all details on an action plan
- prepare a file note of the meeting and keep it with a copy of the action plan

If at the end of the period the objectives of the plan are met, no further action will be taken.

In most cases of either misconduct or poor performance, there will be no requirement to resort to formal disciplinary proceedings.

However, if it is decided that further counselling will not bring about the improvement required, and/or the alleged misconduct/poor performance warrants immediate disciplinary action, the meeting will be adjourned and formal disciplinary process should begin.

#### **4. Principles of the Disciplinary procedure**

##### **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 an 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.

##### **Notifying the employee**

The employee will be advised at the earliest opportunity in writing of the nature of the alleged misconduct/poor performance and that there will be an investigation. The employee will be given the opportunity to answer the allegation during the investigation and before any disciplinary hearing.

##### **Suspension**

Following an allegation, it may be necessary to suspend an employee pending a full investigation if:

- the investigation is likely to be hindered if the employee remains in work;
- there are risks to the safety of other employees or children,;
- The incident is serious enough to warrant suspension.

At this stage, the employee is not entitled to formal representation, however it is recommended that an additional person attends the suspension meeting in order to act as an impartial witness.

Suspension is usually applicable in cases of potential gross misconduct. Where the allegation against the employee is of a safeguarding issue, the employee will be suspended with immediate effect. (See the safeguarding policy for more information)

Suspension should last normally for no more than 5 working days while the Preschool investigates the alleged misconduct/poor performance, although in exceptional cases this period may be longer, for example in order to carry out a full investigation.

The employee will receive full pay while suspended from work.

## **Investigation**

A comprehensive investigation is an essential part of disciplinary proceedings. It ensures fairness to the employee by providing the opportunity to explain his or her alleged misconduct/poor performance. It enables the disciplining person to gather all the available evidence and to take a view as to whether it is appropriate to hold a formal disciplinary hearing.

Investigations will be conducted as soon as possible after the alleged misconduct/poor performance.

No disciplinary action will be taken against an employee until the case has been fully investigated. When conducting an investigation, 'no stone should be left unturned'. All questions should have been asked (where possible) prior to the disciplinary meeting.

If, after the investigation, it is decided that there is a case to answer at a disciplinary hearing, the employee will be notified.

In cases of serious misconduct/poor performance where dismissal is likely to be considered, the case will be forwarded onto different impartial persons to hold the disciplinary hearing.

## **Disciplinary hearing**

The employee will be notified that they are required to attend a disciplinary hearing and provided with the details of the specific allegation and **all** the investigation documentation **at least** 24 hours prior to the hearing in order to give the employee the opportunity to prepare his/her case. The employee will be informed of the potential consequences of their actions, their right to be accompanied, Date, Time and venue of the meeting [*See ACAS Guidelines*]

The employee will be given the opportunity at the hearing to state his or her case before any decision is made.

After the disciplinary hearing, the employee will be informed of the decision and of any disciplinary action imposed.

In some cases, the hearing may be adjourned and the decision given at a later date.

## **Right to be accompanied**

At all formal stages of disciplinary proceedings (including an appeal hearing but excluding the investigation stage) the employee will have the right to be accompanied by either:

- A work colleague; or
- A full time trade union official; or
- A trade union representative

The role of the representative is to observe, take notes and give advice to the employee. They may explain and sum up the employee's case, ensure a fair and consistent procedure is being carried out and review the evidence and ask questions. However the representative may not answer questions on the employee's behalf.

If the representative cannot attend on the date set for the meeting, the meeting will be postponed for up to 5 working days and may (at committee discretion) be postponed for longer. If the employee does not attend the re-scheduled meeting, the panel have the discretion to hear the case in the employee's and/or representative's absence.

### **5 Stages of formal disciplinary action**

If, at the disciplinary hearing, it is felt that misconduct/poor performance has occurred, the following disciplinary actions will apply: -

**Stage 1 – verbal warning:** If conduct/performance does not meet acceptable standards the employee will normally be given a formal verbal warning. (This is sometimes also called an 'Improvement Note' in the case of poor performance). He or she will be advised in writing of the reason for the action, the mitigating factors that have been considered, the improvement required, any training needs identified and what action will be taken if improvement is not made i.e. proceed to next stage. A copy of the verbal warning will be kept on the employee's file but it will be disregarded for disciplinary purposes after 6 months

**Stage 2 – written warning:** If the misconduct/poor performance is sufficiently serious, and/or if a further related misconduct/poor performance occurs, a written warning will be given to the employee. He or she will be advised in writing of the reason for the action, the mitigating factors that have been considered, the improvement required, any training needs identified and what action will be taken if improvement is not made i.e. proceed to next stage. A copy of the written warning will be kept on the employee's file but it will be disregarded for disciplinary purposes after 12 months.

**Stage 3 – final written warning:** If there is still a failure to improve and the related conduct/performance is still unsatisfactory, and/or if the misconduct/poor performance is sufficiently serious to warrant a further written warning but insufficiently serious to justify dismissal, a final written warning will normally be given to the employee. He or she will be advised in writing of the reason for the action, the mitigating factors that have been considered, the improvement required, any training needs identified and what action will be taken if improvement is not made i.e. proceed to next stage. A copy of the final written warning will be kept on the employee's file but it will be disregarded for disciplinary purposes after 12 months

**Stage 4 – dismissal with notice:** If the related conduct/performance is still unsatisfactory and the employee still fails to reach the prescribed standards, dismissal will normally result. No employee will be dismissed for a first breach of discipline except in the case of gross misconduct. The decision to dismiss should only be taken by The Committee representatives. The employee will be provided with written reasons for dismissal, any factors taken into consideration and the date on which the employment will terminate taking into account their contractual notice entitlement and any outstanding holidays.

**Dismissal without notice (summary dismissal)** if, the disciplining person is satisfied that gross misconduct has occurred, the result will normally be summary dismissal without notice or payment in lieu of notice. The employee will be provided with written reasons for dismissal and any factors taken into consideration. If an employee is summarily dismissed for gross misconduct part way through a holiday year, he/she is entitled to pay in lieu of statutory holidays that he/she has accrued up to the date of termination, less days of holiday already taken during that same holiday year.

**Alternatives to dismissal** There may be certain types of serious misconduct/poor performance where the decision is to take a course of action alternative to dismissal, for example *Final Written Warning and suspension without pay for a maximum of two weeks*

The employee will be provided with written reasons for any action short of dismissal, the improvement required and what action will be taken if improvement is not made.

## **6. Right to appeal**

***An employee will have the right to appeal against any disciplinary action*** imposed by informing the Preschool Committee within 5 working days on receipt of the disciplinary outcome letter. This right must be laid out in the letter sent to the employee confirming the disciplinary decision.

The employee must set out in writing their full grounds for appeal.

The employee will be invited to an appeal hearing and has the right to be accompanied at that hearing. The appeal will be heard by two members of the committee who were not involved in the original disciplinary hearing (where practically possible). The appeal hearing will reconsider the original decision. The employee will have an opportunity to put forward:

- New evidence which was not available during the first hearing; and/or
- Complaints of a flaw in the original decision-making process, such as the failure to follow procedures or the failure to give a fair hearing.

There may be a requirement to interview further witnesses or other people pertinent to the case. In such event, it may be necessary to postpone the appeal decision until all information has been sought.

The outcome of any appeal will be confirmed to the employee in writing and will take one of three forms:

- The original decision may be upheld, and any disciplinary action will be confirmed;
- The original decision may be overruled, and the disciplinary action rescinded;
- The original decision may be confirmed but a less severe action may be substituted (usually in cases of appeals based on extenuating circumstances). The disciplinary action cannot be increased.

There is no further right of appeal from that decision

***Failure to co-operate*** Disciplinary proceedings can sometimes be hampered by an unwillingness to co-operate or non-attendance at interviews and/or hearings.

If an employee fails to attend an arranged interview and/or hearing, depending on the grounds put forward for non-attendance, it may be sensible to grant one or more postponements, but there may come a point where it is reasonable to proceed in the employee's absence. Before reaching this stage, the employee should be given a clear warning that the investigation and/or hearing will go ahead if he or she fails to attend.

The panel will consider alternative ways of investigating/hearing the matter, such as allowing the employee to put forward a written statement. Allowing the representative to attend the hearing on their behalf or, with the individual's consent, arranging a home visit.

It may be necessary to seek a medical opinion if the reason for non-attendance is due to ill health. The decision will then be made as to whether the meeting will go ahead, with or without the employee being in attendance

## **7. Other Provisions**

**Disciplinary action against professional staff** When investigating an allegation against a professional member of staff, it may be necessary to notify the appropriate professional body e.g. XXXX

**Criminal offences** A criminal offence, whether committed during working time or outside work, will be treated very seriously. It is important that the reputation of the Preschool, and general safety and wellbeing of staff and children are protected at all times. Employees are

required to inform Guilsborough Preschool immediately if they are charged or convicted of a criminal offence. Any allegation of a criminal offence, whether or not this results in remand, will be investigated and action taken, including dismissal, should it be considered that the offence is relevant to the employment contract and/or which makes the member of staff unsuitable for continued employment by GPS.

**Employees with less than 12 months service** For employees with less than 12 months service, the policy principles will apply, however, if misconduct/poor performance occurs there will be no obligation on GPS to issue repeated warnings prior to termination of the employment contract.

**Disabilities** reasonable adjustments may be required for employees or their representatives with a disability

**Documentation** Disciplinary proceedings documentation will be kept accurate and secure at all times

**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.

### **Policy amendments**

- 1) Policy rewritten in consultation with staff in May 2012. Agreed at staff meeting on 25<sup>th</sup> May 2012