



Employment

2.02 Disciplinary Procedures

Policy statement

Employees are encouraged to achieve high standards of conduct and work performance and we aim to provide fair, effective and consistent methods for dealing with disciplinary matters.

Principles

- Employees are made aware of the standard of conduct and work performance expected of them.
- Prior to any disciplinary meeting employees are given a management statement of the case and are allowed to respond to the allegations made during the meeting.
- A trade union representative or a colleague employed at the setting may accompany the employee to the meeting and appeal. They may not be accompanied by any other external representative.
- Minor incidents should be dealt with informally by the supervisor or manager.
- The disciplinary procedure is applied in the case of a serious offence or when dealing with a minor incident informally is unsuccessful.
- Prior to a disciplinary meeting a prompt and thorough investigation takes place and the employee is informed that this is happening. If appropriate, the setting may not hold an investigation meeting with the employee but may proceed straight to a formal disciplinary meeting.
- The employee must take all reasonable steps to attend the disciplinary appeal meeting.
- Except in cases of gross misconduct, no employee will be dismissed for a first offence.

Categories of gross misconduct

Gross misconduct is a category which can include:

- Theft, fraud and deliberate falsification of records, expenses, qualifications and other offences of dishonesty.
- Physical violence.
- Serious bullying or harassment.
- Deliberate damage to property.
- Conviction of a criminal offence relevant to the employee's role.
- Gross negligence.
- Serious insubordination.
- Misuse of the setting's property or name.
- Misuse of electronic communications which defames individuals or brings the organisation into disrepute.
- Bringing the organisation into serious disrepute.
- Serious incapability whilst on duty brought on by alcohol or illegal drugs.

- Serious negligence which causes or might cause unacceptable loss, damage or injury.
- Serious infringement of health and safety rules.
- Serious failure to comply with policies, procedures and legal requirements that safeguard children.
- Serious breach of the early years setting's and statutory policies.
- Serious breach of confidentiality (subject to the Public Interest (Disclosure) Act 1998).
- Defaming or bad mouthing the setting on social networking sites.
- Serious breaches of the General Data Protection Regulations.
- Bribery and corruption.

THIS IS NOT AN EXHAUSTIVE LIST.

Misconduct.

Steps prior to taking disciplinary action

When an allegation is made the manager establishes the facts to determine if a disciplinary meeting should be held. Where appropriate, signed written statements are obtained as soon as possible from those concerned, including times, dates, details of those present and issues of concern.

Procedures

- As soon as possible, the manager informs the employee that an allegation has been made and that an investigation is to take place
- Following the investigation the manager produces a written statement about how the allegation came about
- The manager sends the statement and any witness statements to the employee, including any evidence that will be used in the meeting. The employee is invited to attend the meeting and is informed of their right to be accompanied. The employee should be given enough notice to prepare their response and to contact any witnesses they may wish to bring to the interview to give evidence.

Appeal

- If an employee feels they have been disciplined unfairly they may appeal in writing to the person named in the disciplinary letter, setting out the grounds for appeal, within 7 days of receiving the letter.
- The employee, manager and chairperson attend an appeal meeting within 15 working days of the employee's request.
- A letter detailing the outcome of the appeal is issued within 10 working days of the appeal meeting.

Disciplinary penalties (following a formal meeting)

The penalty issued depends on the gravity of the offence. There are 5 types:

1. Formal verbal warning (first formal warning)

- This is usually for minor breaches and should be confirmed in writing. If the warning relates to unsatisfactory performance it should set out the performance required, the improvement required, the timescale, a review date and any support to be given to the employee by their manager.
- If the warning relates to conduct the letter should include the nature of misconduct and the changes in behaviour required.
- A colleague or Trade Union representative may accompany the employee to the meeting.
- The warning is kept on the employee's file and may be removed after 3 months if no further action has been found necessary and the breach has been resolved.

2. **Written warning**

This is given if the infringement is more serious or a formal verbal warning has proved unsuccessful. A disciplinary meeting with the manager is held and the employee is informed of the nature of the complaint and of any related evidence and is given a chance to respond. Within 10 working days of this meeting the employee will be told of the decision and given a confirmation letter. This will state:

- The meeting date and those present
- The penalty imposed
- details of the behaviour that brought about the warning and the changes now required
- Timescales for performance improvement, where appropriate
- Details of remedial action to take, the period of review, extra training, supervision needed, possibilities of redeployment or demotion
- any further misconduct will result in another disciplinary meeting and will normally end with a confirmed final warning which, if unheeded, will result in dismissal with appropriate notice
- there is a right of appeal

After a period of 6 months, if no further action has been needed and the breach has been resolved, the warning will expire.

3. **Final written warning**

If no improvement is seen or the infringement is sufficiently serious the manager will follow the same procedures as for issuing a written warning. If proven, a final written warning will be given to the employee stating that any further misconduct will result in dismissal with appropriate notice.

After a period of one year, if no further action has been found necessary and the breach has been resolved the warning will expire.

4. **Dismissal with notice**

5. **Summary dismissal (dismissal without notice)**

Dismissal can occur in cases of gross misconduct

Actions to take in cases of gross misconduct:

- Employees dismissed with notice will be paid for this notice period. An employee may be dismissed without notice if there has been an act of gross misconduct, or a major breach of duty or conduct that brings the organisation into disrepute. The employee will be suspended with pay while the circumstances of the alleged gross misconduct are investigated.
- A dismissal must be confirmed in writing within 10 working days of the date of the disciplinary interview. As well as covering the points in the written warning the letter should also include details of any outstanding money owed to the employee, how and when it will be paid and the final date of employment.
- In certain cases, where a member of staff is dismissed from the organisation or internally disciplined because of misconduct relating to a child, we inform the Independent Safeguarding Authority.

Suspension

- This should only be used where the manager needs to conduct an investigation prior to a hearing where it is felt that not suspending an employee would be more detrimental than suspending them.
- Cases involving potential gross misconduct will usually involve suspension, depending on circumstances.
- Suspension should be kept brief and reviewed to ensure it does not continue for longer than needed.
- When alleged misconduct relating to a child is involved we inform Ofsted and social services and may also contact the police and other relevant agencies. See policy 1.02 Safeguarding children, young people and vulnerable adults.

Timescales

- Employees must take all reasonable steps to attend the hearing. If they or the manager are unavoidably unable to attend the meeting must be rearranged.
- If an employee's companion is unable to attend the employee must make contact within 5 days of the date of the letter to arrange an alternative date that falls within 10 days of the original date provided.
- Time limits may be extended by mutual agreement.

Appendix A**Brighton Road Baptist Church Playschool.****CAPABILITY PROCEDURE****1. INTRODUCTION:**

The Playschool places great importance on maintaining levels of performance at an acceptable standard and the capability procedure provides a fair and objective process to enable managers to ensure that those standards are met in every aspect of the Playschool's operations.

Definition:

For the purpose of this Capability Procedure, capability is defined as:

"Where a member of staff is failing in a significant or persistent way to carry out their responsibilities or duties in a satisfactory manner, either due to a lack of ability, inadequate training or lack of experience. Such failings will be identified by use of the following procedures and steps taken to improve performance. Where such steps prove unsuccessful the member of staff may have their employment terminated on the grounds of incapacity".

The procedures set out in this document aim to ensure that there is:

1. A means of monitoring performance and establishing performance criteria.
2. A degree of consistency in how staff, with widely differing responsibilities and duties, are given opportunities to attain satisfactory levels of performance.
3. Assistance in identifying the most appropriate form(s) of support and providing that support.
4. If a member of staff fails to overcome their difficulties, any consequent action will be based on:
 - Adequate evidence that the member of staff is incapable of performing their duties satisfactorily.
 - A fair procedure.
 - The fact that the member of staff was given all reasonable assistance to overcome such failings.

2. PROCEDURE:**Stage 1 - Informal Procedure:**

Where an employee of the Playschool exhibits an inability to perform their duties satisfactorily, the Playschool will attempt to resolve the matter informally via a meeting between the Manager and the member of staff. The nature and date of the meeting will be recorded and a letter sent to the member of staff indicating the nature of their unsatisfactory performance and how such performance can be improved to the satisfaction of the Manager. The member of staff should be informed that they may be accompanied at any meetings by a trade union representative or work colleague.

At this meeting, the manager will agree performance standards with the member of staff, and a time period over which improvement will be expected. They will also agree how the individual's performance will be monitored.

If the individual's performance improves adequately over the timescale, then the process will terminate at this stage. If performance remains unsatisfactory, then the formal procedure will be invoked by the Manager as set out in stage 2.

Stage 2 - Formal Procedure - Information Collection:

The Manager may call on the support of an external advisor to undertake collecting the necessary information. They would be expected to interview the member of staff concerned as well as any other appropriate individuals. The member of staff should be informed that they may be accompanied at any meetings by a trade union representative or work colleague.

A written report based on evidence gained e.g. by interviews and observation of performance will be prepared by the advisor / Manager. The report should be precise and specific in the observations and comments it makes and shall contain clear information on:

1. areas where the member of staff is failing to perform adequately
2. actions already taken by management to address these failings and whether these actions were adequate - i.e. were clear performance standards set and monitored
3. whether the member of staff acknowledges a problem and shows a willingness to improve
4. the impact of the individual's failings on colleagues and work output
5. any other mitigating factors

The report should be given to the member of staff concerned. The member of staff may record in writing any comments on the observations contained within the report.

Managers will consider the report, and may opt to take one of the following options:

- no further action
- Set reasonable performance standards for the individual and monitor these for a set period of time. *(This option should be chosen if this has not previously been carried out adequately and at least three months given to improve)*
- convene a formal capability hearing to consider the matter further

Stage 3 - Capability Hearing

The Manager will write to the member of staff informing them of the date of the hearing, attaching any relevant documentation. The letter shall contain:

- The performance deficits in sufficient detail to ensure that the member of staff fully comprehends their nature, extent and seriousness.
- The time, date and venue of the interview.
- The person who will conduct the interview, usually the Manager and chair of the committee.
- A statement that all employees have the right to be accompanied by a trade union representative or work colleague at any interview or hearing held under the provision of these procedures.
- At least 10 days notice of the hearing.

At the hearing, the member of staff will be given the opportunity to put forward a defence, to bring witnesses in support of their defence, to present mitigating circumstances and to make a full statement. A written copy of the procedure to be adhered to during the hearing should be made available to the member of staff before the hearing takes place.

If the allegation is found to be justified, then a decision on the action to be taken must be made. Depending on the nature, frequency and seriousness of the allegation(s) it is expected that at this stage a Warning will be given and this will be confirmed in writing.

A letter should be sent to the member of staff confirming the decision and the reason(s) why it was made. The letter will also indicate that the member of staff's progress will continue to be monitored and how this will be carried out. A time scale for performance to improve and a review date(s) will be specified.

If the failings are found to be not sufficiently serious to warrant a formal warning or where there are mitigating circumstances, then monitoring should be discontinued subject to a clear indication to the member of staff that it may be reintroduced if the problem(s) reappears.

Stage 4 - Second Capability Hearing:

If poor performance continues, the process set out in stage 3 should be repeated. The time scale for improvement will depend on the nature of the duties and responsibilities of the employee concerned and the seriousness of the complaint(s).

If the conclusion of the second hearing is that performance has not sufficiently improved and that there is still evidence of incapability despite support and prior warnings, a final warning should be issued.

The letter confirming the decision as well as covering the points made at Stage 3, should clearly state that if an improvement is not forthcoming, the Playschool will convene a final meeting at which it will consider terminating the contract of the member of staff involved on the grounds of capability.

Stage 5 - Third Capability Hearing:

The chair of committee will conduct the third hearing at which if previous advice, training and warnings have not had the desired effect, he/she will terminate the contract of the employee concerned. The procedures outlined in Stage 3 will be followed.

3. APPEALS:

An appeal against any decision to terminate the employee's contract of employment on the grounds of capability may be made in writing to the Committee within 14 days of the decision. The employee's appeal will be heard by a cross section of committee members. Decisions made on appeal shall be final.

4. LONG-TERM/PERSISTENT ILLNESS:

If an employee is unable by reason of ill health to perform their duties satisfactorily, allowing for any adjustments that may have been agreed with their manager, they are required to take sick leave. Presenting themselves for work commits the employee to performing their duties to an acceptable standard.

This policy was adopted at a meeting of Brighton Road Baptist Church Playschool Trustees.

On	<u>24/01/2019</u>	(date)
Signed on behalf of the provider	<u></u>	
Name of signatory	<u>Clair England</u>	
Role of signatory (e.g. chair)	<u>Chair of Trustees</u>	