

## **The Enchanted Wood Day Nursery Ltd: Managing Behaviour**

### **Grievance / Disciplinary Procedure**

#### **Policy statement**

Grievances are concerns, problems, or complaints that employees raise with their manager / employer. The Enchanted Wood always seek to resolve disciplinary and grievance issues in the workplace. Where this is not possible, we will consider using an independent third party to help resolve the problem. The third party need not come from outside the organisation, but could be an internal mediator, so long as they are not involved in the disciplinary or grievance issue. In some cases, an external mediator might be appropriate. A written record of any disciplinary or grievances cases will be filed by the manager.

Employer/managers and employees will raise and deal with issues promptly and will not unreasonably delay meetings, decisions, or confirmation of those decisions.

#### **Principles**

It covers all matters which may become a source of grievance, excluding:

- Those concerned with disciplinary action unless the disciplinary action amounts to discrimination, or the action was not taken on the grounds of the employee's conduct or capability.
- Decisions on strategic business issues, which are taken by the trustees but not excluding the operational impact of those decisions.

Employees are encouraged to raise concerns verbally with the management team prior to raising a formal grievance.

Employees are entitled to be accompanied at a grievance meeting and appeal, by a trade union representative or by a work colleague.

#### **Procedure**

This policy is to encourage free interchange and communication between the management team and the staff they manage. This ensures that questions and problems can be aired and resolved quickly and that grievances are settled informally.

#### **Informal procedure**

If an employee has a complaint about their individual circumstances at work, then they are entitled to raise a grievance. Employees are expected to discuss ordinary day-to-day issues informally with the

## **Safeguarding and Welfare Requirement:**

management team through supervision meetings or if necessary request a separate meeting.

If after seeking to resolve concerns informally employees are not satisfied, then they should write to the nursery, explaining their grievance. This letter would be passed on to the board of trustees.

### **Formal procedure**

Employees must provide in writing, the nature of the alleged grievance and send the written complaint to a member of the management team.

Where the grievance is against a member of the management team, the matter should be raised with another manager within the management team or a member of the board of trustees.

Normally within 5 working days of receiving a grievance, the management team will write to the employee, inviting them to attend a meeting where the alleged grievance can be discussed. The meeting should be scheduled to take place as soon as reasonably possible, and normally at least 48 hours' notice of this meeting should be provided to the employee.

Employees are required to take all reasonable steps to attend the meeting. However, should, for a reasonably unforeseen circumstance, either the employee, their companions, or a member of the management team are unable to attend the meeting, it must be rearranged.

Should an employee's companion be unable to attend then the employee should 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. These time limits may be extended by mutual agreement.

At the meeting the employee must inform a member of the management team, the basis of the grievance and complaint.

After the final meeting, a member of the management team must write to the employee informing them about any decision and offering the right of appeal. This letter should be sent within 10 working days of the grievance meeting and should include the details of how to appeal.

Should the employee consider that the grievance has not been satisfactorily resolved, then they must set out their grounds of appeal in writing within 7 working days, of receipt of the decision letter, confirming that they wish to appeal against the decision or failure to make a decision.

Within 5 working days of receiving an appeal letter, the employee should be written to inviting her/him to attend an appeal hearing where the alleged grievance can be discussed. The appeal meeting should be scheduled to take place as soon as reasonably possible.

Employees are required to take all reasonable steps to attend the appeal hearing. However, should, for a reasonably unforeseen circumstances, either the employee, a member of the management team or their companions be unable to attend the meeting, it must be rearranged.

Should an employee's companion be unable to attend then the employee should 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. These time limits may be extended by mutual agreement.

After the appeal meeting, the appeal a member of the management team must write to the Employee informing them of the employer's final decision. This letter should be sent within 10 working days of the appeal hearing.

## **Safeguarding and Welfare Requirement:**

**This is the final stage of the procedure.**

### ***Disciplinary Procedure***

- It is important to carry out necessary investigations of potential disciplinary matters without unreasonable delay to establish the facts of the case. In some cases, this will require the holding of an investigatory meeting with the employee before proceeding to any disciplinary hearing.
- In others, the investigatory stage will be the collation of evidence by the employer for use at any disciplinary hearing.
- In cases where a period of suspension with pay is considered necessary, this period will be as brief as possible, will be kept under review and it will be made clear that this suspension is not considered a disciplinary action.
- If it is decided that there is a disciplinary case to answer, the employee will be notified of this in writing. This notification will contain sufficient information about the alleged misconduct or poor performance and its possible consequences to enable the employee to prepare to answer the case at a disciplinary meeting. Copies of any written evidence, which may include any witness statements, will be included with the notification.

Our Disciplinary procedure is designed to encourage all employees to achieve high standards of conduct, attendance and work performance. The procedure provides a fair, effective and consistent method of dealing with disciplinary matters. You are expected to know the standard of conduct or work performance expected of you and will be allowed to respond to any alleged fault or failing.

You are always entitled to be accompanied by a work colleague at a disciplinary meeting. For minor or isolated infringements of rules or expected behaviour, the nursery may give you informal advice, coaching or guidance. If your conduct or performance fails to improve as a result of this advice or guidance, or where the offence is more serious, then the disciplinary procedure will be applied.

We consider the following issues to constitute misconduct:

- theft, fraud and deliberate falsification of records, expenses, qualifications and other offences of dishonesty
- physical violence
- serious bullying or harassment
- deliberate damage to the property
- gross negligence
- conviction of a criminal relevant to the employee's role
- serious insubordination
- misuse of the nursery property or name
- misuse of electronic communications which defames individuals or brings the organisation into disrepute

## **Safeguarding and Welfare Requirement:**

- bringing the organisation into serious disrepute
- serious incapability whilst on duty brought on by alcohol or illegal drugs (including psychoactive substances, including those formerly known as "legal highs") or any prescription drugs that have not been prescribed for the user.
- serious negligence which causes or might cause unacceptable loss, damage or injury
- serious failure to comply with policies, procedures and legal requirements including those that safeguard children
- serious breach of confidentiality (subject to the Public Interest (Disclosure) Act 1988)
- defaming or bad mouthing the nursery on social media networking sites
- serious breaches of the General Data Protection Regulation
- serious infringement of health and safety rules
- serious breach of The Enchanted Wood's policies
- bribery and corruption

\*This is not an exhaustive list\*

### ***Disciplinary meeting***

- The notification will also give details of the time and venue for the disciplinary meeting and advise the employee of their right to be accompanied at the meeting.
- The meeting will be held without unreasonable delay whilst allowing the employee reasonable time to prepare their case.
- At the meeting the Nursery Manager will explain the complaint against the employee and go through the evidence that has been gathered. The employee will be allowed to set out their case and answer any allegations that have been made.
- The employee will also be given a reasonable opportunity to ask questions, present evidence and call relevant witnesses. They will also be given an opportunity to raise points about any information provided by witnesses.
- Where an employer or employee intends to call relevant witnesses, they will give advance notice that they intend to do this. Workers have a statutory right to be accompanied by a companion where the disciplinary meeting could result in:
- A formal warning being issued; or the taking of some other disciplinary action; or The confirmation of a warning or some other disciplinary action (appeal hearings). The chosen companion may be a fellow worker, a trade union representative, or an official employed by a trade union. A trade union representative who is not an employed official must have been certified by their union as being competent to accompany a worker.
- To exercise the statutory right to be accompanied workers must make a reasonable request. What is reasonable will depend on the circumstances of each individual case. However, it would not normally be reasonable for workers to insist on being accompanied by a companion whose presence would not prejudice the hearing nor would it be reasonable for a worker to ask to be accompanied by a companion from a remote geographical location if someone suitable and willing was available on site.

### ***Deciding on appropriate action***

- After the meeting we will decide whether disciplinary or any other actions are justified and inform the employee accordingly in writing.

## **Safeguarding and Welfare Requirement:**

- Where misconduct is confirmed, or the employee is found to be performing unsatisfactorily we will give the employee a written warning.
- A further act of misconduct or failure to improve performance within a set period would normally result in a final written warning.
- If an employee's first misconduct or unsatisfactory performance is sufficiently serious, it may be appropriate to move directly to a final written warning. This might occur where the employee's actions have had, or are liable to have, a serious or harmful impact on the organisation. A first or final written warning should set out the nature of the misconduct or poor performance and the change in behaviour or improvement in performance required (with timescale).
- The employee will be told how long the warning will remain current.
- The employee will be informed of the consequences of further misconduct, or failure to improve performance, within the set period following a final warning. For instance, that it may result in dismissal or some other contractual penalty such as demotion or loss of seniority.
- A decision to dismiss will only be taken by the Nursery Manager who has the authority to do so. In Some cases the Nursery directors may also be consulted on this.
- The employee will be informed as soon as possible of the reasons for the dismissal, the date on which the employment contract will end, the appropriate period of notice and their right of appeal.

Some acts, termed gross misconduct, are so serious in themselves or have such serious consequences that they may call for dismissal without notice for a first offence. But a fair disciplinary process will always be followed, before dismissing for gross misconduct unless the said employee walks out from her duties without permission that causes an overall effect on Health and Safety of the children and practice. Disciplinary rules will give examples of acts which the employer regards as acts of gross misconduct. These may vary according to the nature of the organisation and what it does, but might include things such as theft or fraud, physical violence, gross negligence, or serious insubordination. Where an employee is persistently unable or unwilling to attend a disciplinary meeting without good cause the employer will decide on the evidence available.

### ***Providing employees with an opportunity to appeal***

- Where an employee feels that disciplinary action taken against them is wrong or unjust, they should appeal against the decision.
- Appeals will be heard without unreasonable delay and ideally at an agreed time and place. Employees should let the employer know the grounds for their appeal in writing.
- The appeal will be dealt with impartially and wherever possible, by the employer who has not previously been involved in the case. Workers have a statutory right to be accompanied at appeal hearings.
- Employees will be informed in writing of the results of the appeal hearing as soon as possible.

### ***Special Cases***

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

### **Safeguarding and Welfare Requirement:**

- If an employee is charged with or convicted of a criminal offence this is not normally in itself reason for disciplinary action. Consideration will 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.

### ***Allowing the employee to take the grievance further if not resolved***

Where an employee feels that their grievance has not been satisfactorily resolved they can appeal. They should let their employer know the grounds for their appeal without unreasonable delay and in writing. Appeals will be heard without unreasonable delay and at a time and place which will be notified to the employee in advance. The appeal will be dealt with impartially and wherever possible by the Employer who has not previously been involved in the case. Workers have a statutory right to be accompanied at any such appeal hearing. The outcome of the appeal will be communicated to the employee in writing without unreasonable delay.

### ***Capability Procedure***

Our capability procedure is designed to ensure that cases of unsatisfactory performance are dealt with similarly and fairly, with the prime objective of improving an employee's performance to the required level. The procedure seeks to establish whether a concern about work performance is misconduct or a capability issue. Performance concerns due to lack of knowledge or skills are normally addressed through our nursery capability procedure. For example, if you are incapable of working to required standards through no fault of your own, then the nursery capability procedure will come into effect. Concerns about work performance due to carelessness, neglect or lack of effort are dealt through the disciplinary procedure as misconduct. Please see the full Capability Policy for further information.