



## Disciplinary & Grievance Policy & Procedure

### **1. Introduction:**

The Pre-school is required to set out a disciplinary procedure and rules. Many potential problems and difficulties can and should be resolved informally. The employee will have every opportunity to discuss the concern, to make any comments and to record them if desired. The Manager should be able to demonstrate that clear advice and help have been given to the employee at this informal stage and will have a record of any reprimand or informal warning given as part of the normal managerial functions.

The formal procedure is intended to be used for problems that are serious in themselves or serious because they remain unresolved after informal steps have not achieved a satisfactory solution.

Statutory requirements make it necessary for the Authority to draw the attention of the DCSF and General Teaching Council to certain cases involving staff and other Pre-school based employees. (see section 15)

### **2. Purpose, Scope And Managers:**

A disciplinary procedure is necessary for promoting fairness and order in the treatment of individuals, and is designed to help and encourage all employees to achieve and maintain high standards of conduct and job performance. Pre-schools should have clear standards of behaviour for staff to observe, should notify staff of this procedure and take account of appropriate terms and conditions of employment.

This procedure applies to:

- all employees of the Pre-school, including the Manager;
- staff in units or bases that are attached to a Pre-school.

All staff must have ready access to this procedure on request and are entitled to complete confidentiality in relation to personal, professional and medical information.

No disciplinary action will be taken against an employee until the case has been fully investigated. In certain circumstances it may be deemed appropriate to suspend the individual from all Pre-school duties on full pay and without prejudice during investigations (see 4.1) .

Before any of the 4 stages (described below) in the procedure the employee will:

- be advised in writing of the nature of the complaint against him or her;
- have the right to be accompanied by his/her representative
- have a right of appeal when a penalty has been imposed.

This procedure has four levels of sanction, depending on the seriousness of the misconduct:

Stage 1: Formal oral warning

Stage 2: Written warning

Stage 3: Final written warning

Stage 4: Dismissal

The Manager will determine the stage at which this procedure will be entered. Stage 4 will normally be entered only where gross misconduct is alleged or where an employee already has a 'live' final written warning. A finding of gross misconduct will result in dismissal without notice, otherwise dismissal will be with contractual notice. The exception to the norm here is where an employee already has a live Stage 1 or Stage 2 warning and is then found to have committed an act of misconduct which, though short of gross misconduct, is so serious that it would alone have merited a Stage 3 warning. In these circumstances, a jump from Stage 1 or Stage 2 to Stage 4 might be appropriate.

### **3. Definition And Separation Of Roles:**

There are several distinct roles to be taken during any disciplinary proceedings. It is essential that they are clearly defined and that the person carrying out the role is clearly identified.

#### **3.1. The Commissioning Manager:**

This is the person who has the authority to decide whether a complaint or incident is sufficiently serious to warrant a formal investigation under this procedure. The Commissioning Manager will appoint an Investigating Officer to carry out the investigation, and will also be the person who will conduct, if necessary, the disciplinary hearing and make the judgement in the light of all the available evidence. The Commissioning Manager will normally be the Manager. If the investigation is about the actions of the Manager, the Commissioning Manager will normally be the Chair of the Committee.

#### **3.2. The Investigating Officer/Presenting Officer:**

This is the person who is charged by the Commissioning Manager to carry out an investigation into the complaint or incident. He/she will consider all of the available evidence, both written and oral, and will produce a written report to the Commissioning Manager. The Investigating Officer will, if necessary, interview witnesses and others in order to produce a balanced report that can lead to a fair judgement.

The Investigating Officer will conclude his/her report with a view on the balance of probabilities about what happened. He/she must not, however, take a view about whether a disciplinary hearing is appropriate or whether a disciplinary sanction is justified: both of these decisions can only be taken by the Commissioning Manager.

The Investigating officer is likely to be a member of the Committee or a member of the Pre-school's Leadership Team. Care needs to be taken to ensure that the Investigating Officer is able to carry out the investigation impartially.

There may be circumstances, particularly in small Pre-schools, where there is no one, other than the Manager, with sufficient seniority or capacity to carry out an investigation. If the Manager has to carry out the investigation, then she cannot also be the Commissioning Manager: that role would need to be taken by the Chair of the Committee and any disciplinary hearing that might follow would need to be conducted by a panel made up from the Committee.

Whether the Commissioning Manager is the Manager or the Chair of the Committee, it is always possible to appoint an Investigating Officer from outside the Pre-school, possibly from the staff of the local authority or from an independent source.

#### **3.3. The Person or Panel who conducts the Hearing:**

Normally, the Manager is the Commissioning Manager and will conduct the Hearing. If the Chair of the Committee is the Commissioning Manager, then the Hearing will be conducted by a Disciplinary panel of 3 Committee members, not by the Chair alone. Whilst there is no requirement, legal or otherwise, to exclude the Chair from the Disciplinary Panel, it is likely that the Chair's relationship with the Manager will be too close to ensure demonstrable impartiality. It is, therefore, recommended that the Disciplinary Panel comprise 3 Committee members other than the Chair.

In the case of a hearing that is considering dismissal, it is expected that the Manager will have been the Commissioning Manager and will conduct the hearing (unless she is the subject of the hearing). Statutory guidance does, however, list the possible exceptions to this rule for a dismissal hearing.

In any of the following circumstances, a dismissal hearing may be conducted by a Disciplinary Panel of Committee members:

a) where the Manager is unwilling to perform the function

- b) where the Manager has been directly involved in earlier disciplinary stages, either as Investigating Officer or witness [but the Manager may conduct a dismissal hearing if she has been the Commissioning Manager at an earlier stage];
- c) where the Manager is subject to suspension; or disciplinary or capability procedures, including investigation; or a disciplinary sanction;
- d) where the Authority has made formal representations to the Chair of the Committee on the grounds of serious concerns about the performance of the Manager.

In circumstances where the Manager as Commissioning Manager does not hear the case, the Manager may jointly present the case with the Investigating Officer.

### **3.4. Expert Advice at the Hearing:**

At any disciplinary hearing, the Manager or Disciplinary Panel may be advised throughout the hearing, including the subsequent deliberations leading to a judgement, by a person with suitable qualifications or experience in employment law.

At any hearing where dismissal is to be considered, the following provision applies:

At any community or voluntary controlled Pre-school, the local authority must be invited to send an adviser.

### **3.5. The Employee and the Employee's Representative:**

The employee is the member of staff who is the subject of the complaint or allegation.

At every stage of the formal disciplinary procedure, the employee is entitled to be accompanied by and represented by a work colleague or his/her trade union/professional association representative (and by no one else).

"Representation" does not mean that the employee may take a silent or passive role in disciplinary proceedings. He/she has a duty to take an active part in all stages of the proceedings unless there are exceptional circumstances that would prevent the employee's participation.

### **3.6. Witnesses:**

It is not necessary that every witness be present at a disciplinary hearing to answer questions but the Manager or Disciplinary Panel will need to assess the strength of the evidence differently if a witness is not present to answer questions. There are 3 considerations:

- a) Pupils/students and other children under 18 must never attend a disciplinary hearing
- b) Employees of the Pre-school may be instructed to attend a disciplinary hearing if required
- c) Adult witnesses who are not employees of the Pre-school may be asked to attend to answer questions but cannot be compelled to do so.

### **3.7. The Note-Taker at a Disciplinary Hearing:**

A written record of the proceedings is essential at every disciplinary hearing. Where the proceedings are likely to be relatively short and straightforward, the record may be taken by the Manager or a member of the panel. Where the proceedings are likely to be lengthy or complicated and at every dismissal hearing, a separate note-taker should be engaged for the purpose. This is likely to be the Secretary to the Committee members or a member of staff at the Pre-school who has played no part in the procedure up to that point. The note-taker will make a record of the hearing but not of the confidential deliberations to determine a judgement at the end of the hearing.

### **3.8. Support for Participants:**

Involvement by anyone in disciplinary proceedings is likely to be stressful. The Commissioning Manager must consider how best to meet the Pre-school's duty of care both to employees and to pupils/students. In particular, consideration must be given to providing support to the alleged "victim(s)" (i.e. one who believes that they have suffered as a result of the employee's actions that are now the subject of

disciplinary proceedings) and to an employee who has been suspended, pending a disciplinary investigation.

In either case, the Pre-school should identify a member of staff who can provide impartial support which could include:

- regular information about the progress of the case;
- advice on getting access to specialist counselling or medical assistance;
- information about significant developments at the Pre-school: this will be particularly important for an employee who is suspended.

The Supporter – who has a different role from that of the employee’s trade union or professional association representative – should be briefed at the outset by the Commissioning Manager about his/her role. The Commissioning Manager should also inform the employee about the role of the Supporter.

## **4. Steps Leading To A Disciplinary Hearing:**

### **4.1. Suspension:**

It should be clearly acknowledged that suspension can have profound implications for an employee’s life and career. The Manager and/or Chair of the Committee should consult with their RBK advisor before taking action. Suspension is always with normal pay and without prejudice to the employee. The power to suspend rests with the full Committee or the Manager (or the Chair, if suspending the Manager). The power to lift suspension rests only with the Committee.

Suspension may be an appropriate step for the following reasons:

- a) To prevent a repetition of the alleged offence either for the sake of the pupils/students or to protect the employee
- b) Where the presence of the employee will hamper investigations

Suspension is not automatic, whatever the allegation, and should, in any event, be reserved only for serious allegations. Where a serious allegation has come to light but there is no corroborating evidence at the outset, consideration should be given to the following short- term alternatives to suspension:

- Working from home.
- Paid leave of absence.
- Working in a different location.
- Working in a more closely supervised environment.

Such alternatives should be used for no more than one week to allow time for a preliminary assessment of the evidence that is readily available. Where the allegation concerns safeguarding children, a risk assessment must be discussed with the LADO.

Once this assessment has been made, the decision as to whether to suspend can be taken.

Wherever possible, a meeting with the employee and his/her representative should be held, at which the allegations and the reasons for considering suspension will be discussed. Discussion should include the arrangements for keeping in contact with the employee, including ongoing advice and support during the period of suspension and for appealing against the suspension.

If the period of suspension is brief only, leading quickly to reinstatement or to a disciplinary hearing under this procedure, an appeal against suspension will not be necessary. However, in a number of cases, investigation of the allegations, particularly by outside agencies, may be lengthy. In such cases, it is suggested that from the outset arrangements for reviewing the suspension and appealing against it should be clear.

Since it will normally be the Manager who has imposed the suspension (and since the Manager alone may not lift a suspension), it would not be appropriate for the Manager alone to hear such an appeal. It is suggested that a panel of three Committee members (one of whom may be the Manager), hear an appeal against suspension. If the circumstances that led to suspension under the above criteria no longer obtain, the panel will make a recommendation to the Committee that the suspension be lifted.

The smooth conduct of the suspension depends largely on the initial moves made by the Manager on the first day. Where allegations are made which involve the abuse (neglect, physical injury, sexual or

emotional abuse) of a pupil, it is important to know what to do quickly so that rumour is managed and those with a right to information and support are dealt with sensitively. The role of the Local Authority Designated Officer is crucial (and must comply with statutory guidance).

#### **4.2. Allegations about Safeguarding Children (Child Protection):**

Allegations about the safeguarding and protection of children must be handled in accordance with statutory guidance and the procedures of the RBK Safeguarding Children Board. The relevant statutory guidance is in chapter 5 of "Safeguarding Children and Safer Recruitment 2006" and appendix 5 of "Working Together to Safeguard Children 2006".

These procedures are no longer limited to allegations involving "significant harm/risk of significant harm". Any allegation that an employee or volunteer has:

- behaved in a way that has, or may have, harmed a child;
- possibly committed a criminal offence against or related to a child;
- behaved towards a child in a way that indicates that he/she is unsuitable to work with children must be dealt with in accordance with LSCB procedures.

The key points for a Commissioning Manager – either the Manager or the Chair of Committee members – to follow are:

- a) Read and understand section 10 "Allegations against those working with children" of the RBK LSCB Child Protection Procedures (a copy is held in every Pre-school)
- b) Whilst a preliminary assessment of the available evidence can be made in order to inform the referral no attempt should be made to carry out an investigation
- c) A strategy meeting, normally arranged within 2 working days of the allegation, will determine whether the allegation should be investigated by the police or by some other agency or by the Pre-school under its disciplinary procedure

#### **4.3. The Investigation:**

Alleged instances of misconduct should be acted upon promptly.

Following a complaint or allegation, it will, in many cases, be clear that a formal investigation is required. However, in some cases, a preliminary assessment of the readily available evidence will be appropriate to determine what has happened and whether a formal investigation is required. Once a decision has been made, normally by the Manager, that a formal investigation is needed, the employee should be informed in writing of the nature of the complaint.

The first stage of the process is to conduct a formal impartial investigation of the alleged misconduct, in order to establish the facts as far as possible and whether or not there is a case to answer.

If, from the outset, there is a suspicion of child abuse or such a suspicion arises during the course of the Pre-school investigation, the investigation must be put on hold and the Local Authority Designated Officer informed, as described in section 4.2.

The employee should be informed in writing of the nature of the complaint and receive copies of any letters or documents, which led the Commissioning Manager to believe an investigation was necessary. Normally this will occur at the outset of the investigation except where the Commissioning Manager believes that the conduct of the investigation might thereby be prejudiced. In those circumstances the employee will be informed at the earliest suitable time.

#### **4.4. Conducting the Investigation:**

- a) The Investigating Officer will impartially investigate thoroughly the facts of the matter, including the employee's version of events. The employee must be informed that he/she has the right to be accompanied by his/her trade union representative or a work colleague at an investigatory interview. Any information gained by the Investigating Officer when questioning the employee will be noted and will be presented in any subsequent disciplinary proceedings
- b) The investigation should be completed as quickly as is reasonably possible in the circumstances after the employee has been informed of the investigation

- c) All those questioned must be told that if their evidence is to be accepted, it will need to be in either the form of a signed written statement and that the employee concerned will receive a copy, or by oral testimony at a formal hearing attended by the employee affected. Those completing a written statement may be required to attend. During an investigation, it may be necessary to question a large number of people, not all of whom will be called to give evidence
- d) When statements are taken, the dates and any names quoted should be written out in full. All written statements should be signed by the interviewee with the date of the interview
- e) Evidence from staff must be in the form of written statements.
- f) In cases involving sexual misconduct or harassment, ensure a manager of the same gender as the person allegedly offended against is brought in to assist any investigation (it may be necessary to bring in a manager from outside the Pre-school in order to meet this requirement)

#### **4.5. Statements from Pupils:**

- a) This is a delicate area where the search for truth needs to be conducted in such a way as to avoid causing emotional harm to the pupil whose evidence is required. Care needs to be taken to ensure that the pupil does not, as far as possible, feel intimidated by the process. This is particularly true for a pupil who might have been the subject of the alleged misconduct
- b) An important requirement for the protection of children is that children should not be interviewed more than once. If, therefore, a child has already been interviewed by the police or by a social care agency in the course of an investigation into the same or similar allegations, then the interview statements must be requested from the other agency and used in the Pre-school's investigation.
- c) Where a formal investigation is underway, the parent/carer of the pupil should always be informed and invited to attend the interview with their child. The parent/carer should be informed that an incident is being investigated and that the pupil's evidence may be used if it proves necessary to hold a formal disciplinary hearing. The pupil will not be required to attend the hearing to give evidence in person.
- d) Where the Investigating Officer is not well-known to the pupil, for example, if the Investigating Officer is from outside the Pre-school, consideration should be given to asking the Pre-school's Designated Senior Person (DSP) for Child Protection to carry out this part of the investigation. The point here is that the pupil should feel able to speak frankly and, as far as is possible, in a situation that is not intimidating. The DSP will have received specialist training that will assist the search for the truth.
- e) In any event, when interviewing pupils, the Investigating Officer should be accompanied by a second adult, whose role is to ensure that a complete and accurate record is taken.
- f) The Investigating Officer, taking into account the age and capabilities of the pupil, should ask the pupil to write down an account of what happened. Where this is not practical, the investigating officer should write the account for the pupil and check carefully that the account accurately records what the pupil wishes to say. It is likely to be particularly helpful for the Investigating Officer to prepare questions in advance
- g) The Investigating Officer, in questioning the pupil, should aim to seek clarification of what the pupil saw and experienced. Leading questions must be avoided, but it is important to record the pupil's account of what happened, where and when and who else might have been present during the incident under investigation
- h) The pupil's account must, like any witness statement, indicate the time, date and place at which the account was written plus the names and roles of all those present at the interview

#### **4.6. Financial Irregularity:**

- a) If a case involves alleged financial irregularity, corruption or fraud, a full Internal Audit must be conducted at the earliest possible opportunity.
- b) Internal Audit will determine whether the matter should be referred to the police.

#### **4.7. Misuse of Pre-school Computers and Equipment:**

- a) If there are suspicions that an employee is misusing Pre-school computers (e.g. by accessing or downloading inappropriate material), the Manager will carry out an initial assessment of the circumstances, without alerting the employee at this stage. The Pre-school's Manager can advise on how to get equipment removed and examined for evidence

#### **4.8. Conclusion of the Investigation:**

- a) The Investigating Officer will give a report of his/her investigation to the Commissioning Manager. If there is no evidence of misconduct, no further action will be taken and the employee will be informed of this in writing as soon as possible. The employee, who may be accompanied by a work colleague or his/her trade union or professional association representative, should be offered a debriefing meeting within a reasonable period.
- b) If, after investigation, there is evidence of misconduct, the Commissioning Manager will arrange a disciplinary hearing.

#### **5. Arranging A Disciplinary Hearing:**

There needs to be flexibility with dates when arrangements for a hearing are made, especially where a trade union or professional association representative is expected to attend. This flexibility ensures the employee's fundamental right to representation.

The room to be used for the hearing should be large enough to accommodate the panel, both parties and a witness (if any). Tables are needed so that all present can write comfortably. The room should preferably be quiet and not overlooked. Two other rooms or quiet areas should be available for the two parties during adjournments.

Hearings should normally be held during normal working hours, but, where this is not possible, the hearing should begin as soon as possible after the end of the Pre-school day.

The employee must receive at least ten working days' advance notice in writing, by recorded delivery or delivered by hand, of:

- the nature of the investigation and the report of the investigating officer;
- the purpose of the hearing;
- the complaints or allegations;
- the stage reached in the procedure;
- when and where the hearing will be conducted;
- who will be attending, including witnesses to be called;
- the right to be accompanied by a work colleague or trade union representative;
- the requirement for confidentiality;
- the requirement for the employee to provide, in at least 3 working days before the hearing, all documents that he/she intends to present at the hearing. The documents must be presented in hard copy and with sufficient copies for those, except witnesses, who will attend the hearing.
- The persons hearing the case have to be impartial. They should not have been involved in any of the preparatory work, should have no detailed knowledge of the allegations prior to receiving the papers for the hearing.
- Where a panel of Committee members is to hear the case, panel members will be sent all of the papers to be presented not earlier than 2 working days before the hearing. Panel members must not discuss any aspect of the case or the contents of the case papers with anyone, including other panel members, before the hearing.

#### **6. Stages In The Formal Disciplinary Process:**

##### **6.1. Stage 1 – Formal Oral Warning:**

Where the normal managerial practice fails to bring about the required improvement in conduct or the alleged misconduct demands formal action, a disciplinary hearing will be arranged by the Commissioning Manager. This may result in the employee being given a formal oral warning. He or she will be advised of the reason for the warning and that it is a stage of the formal disciplinary procedure. A brief note detailing the reasons for the oral warning will be given to the employee within three working days of the hearing and a copy kept by the Manager on the confidential personal file of the employee. The warning will be reviewed after a maximum of **twenty term-time weeks**.

If a satisfactory standard has been maintained, the disciplinary record will be spent and the employee so informed in writing. Any written reply from the employee must be kept with the note of the oral warning.

## **6.2. Stage 2 – Written Warning:**

If the conduct continues to be unsatisfactory, or where serious misconduct is suspected, a disciplinary hearing will be arranged by the Commissioning Manager. If the decision of the hearing finds the case proved, the employee will be given a written warning which should give details of the finding against the employee. The hearing will normally be conducted by the Manager. The warning will be confirmed in writing within three working days giving details of the finding, the improvement required, the timescale and the assistance that will be given to improve.

It will warn that action under Stage 3 will be considered if there is no satisfactory improvement and will advise of the right of appeal. A copy of the warning will be kept by the Manager on the confidential personal file of the employee. The warning will be reviewed after one calendar year or, exceptionally, another period specified in writing at the time of the warning.

If a satisfactory standard has been maintained, the disciplinary record will be spent and the employee will be informed in writing.

## **6.3. Stage 3 – Final Written Warning:**

If there is a failure to improve, or there is a further instance of misconduct, or if the misconduct is found to be sufficiently serious to warrant only one written warning, a final written warning will be given to the employee after a disciplinary hearing. The hearing may be conducted by the Commissioning Manager. The warning will be confirmed in writing within three working days giving details of the findings of the hearing, the improvement required, the timescale, the assistance (if needed) that will be given to improve, will warn that dismissal may result if there is no satisfactory improvement and will advise of the right of appeal.

A copy of the warning will be kept by the Manager on the confidential personal file of the employee. The warning will be reviewed after a period of **one calendar year** unless it covers serious categories of misconduct, when it may remain valid for a longer specified time. The time must be specified in writing at the time of the final warning. If a satisfactory standard has been maintained, the disciplinary record will be spent and the employee will be informed in writing.

## **6.4. Stage 4 – Dismissal:**

Where allegations of gross misconduct or alleged repeated misconduct following a final warning are made, the Manager will normally conduct the hearing. A Disciplinary Panel of 3 Committee members will conduct the hearing, if the Manager is the subject of the allegation, or in the following circumstances:

- a) Where the Manager is unwilling to perform this function.
- b) Where the Manager has been directly involved in earlier disciplinary stages, either as investigator or as witness
- c) Where the Authority has made formal representations to the Chair of the Committee on grounds of serious concerns about the performance of the Manager.

If the case for dismissal is not established, a warning appropriate to the conduct may be issued.

If the decision is dismissal, then the employee will be informed immediately and advised of the right of appeal. The decision of the Manager (or Committee Disciplinary Panel), the reasons for it and the appeal arrangements will be confirmed in writing to the employee within three working days.

## **7. The Disciplinary Hearing:**

NB: Everything that follows in this section assumes that a Panel of Committee members will conduct the hearing. This is to ensure that the additional tasks required of a panel are explained. However, in most instances, other than at an appeal stage, the Manager will conduct the hearing (see paragraph 6.4 for exceptions).

### **7.1. Pre-Hearing Review Meeting:**

In some cases, particularly where the hearing is likely to be complex, it may be useful to hold a pre-hearing review meeting. The purpose of this meeting is to clear up any procedural matters before the hearing itself. The Commissioning Manager will decide whether such a meeting is appropriate and will, if agreed by all parties, meet with the Presenting Officer and the employee's representative together with the Commissioning Manager's expert adviser. A pre-hearing review meeting cannot take place unless both sides are present.

### **7.2. Presenting and Defending the Case:**

- a) Representatives to present or defend the case need a ready appreciation of all the facts and issues involved
- b) When presenting a case, it must be remembered that the people hearing the case will have limited knowledge of the case. It will be necessary for the person presenting to give the complete picture, allowing time for the panel to read and absorb documents presented.

### **7.3. Witnesses:**

When witnesses are called, their status should be established. Following this their knowledge of an involvement in the case needs to be stated. When a witness has made a written statement and this is submitted as part of the evidence, copies must be given to the employee before the hearing. Witnesses should be allowed to emphasise the important parts of the evidence that may be overlooked by someone simply reading it.

### **7.4. Procedure for the Hearing:**

- a) The Chair of the Panel introduces those present and describes their status, reminds those present of the purpose of the hearing; that adjournment is possible; that a written record of the meeting will be made; and that the proceedings of the hearing are confidential
- b) Opening statements may be made by both parties, explaining how the case will be demonstrated or defended, referring to the documentation to be presented and indicating the witnesses to be called
- c) The case for the employer is presented, witnesses being called as necessary. The employee or representative may ask questions of each witness and of the employer at the end of the presentation. The panel members may also question each witness and the presenting officer at the end of the presentation
- d) The response for the employee is presented, witnesses being called as necessary. The employer, and then the panel, may question each witness and the employee at the end of the presentation
- e) When all the evidence has been heard, the Presenting Officer sums up, gathering together the points of the case, not introducing new evidence. It is usual at this point to include a recommendation for a recognised disciplinary penalty and/or future action
- f) The employee or representative sums up.
- g) The two sides withdraw to enable the panel to discuss the case
- h) The panel will need to reach a conclusion on:
  - (i) whether they find all or some of the allegations proven;
  - (ii) what level and type of sanction is appropriate

The panel's decision is normally conveyed orally by the Chair of the Panel in the presence of both parties and will be confirmed in writing within three working days

### **7.5. Pre-Agreement:**

It is a perfectly acceptable part of disciplinary hearings for an agreement to be arrived at prior to the hearing between both parties. This normally means an agreement that the facts are not in dispute and that both sides recognise that a decision is required.

In these circumstances, the statutory 3 step disciplinary procedure – letter, meeting, appeal – must still be followed, but the matter can be progressed more quickly. This approach will NOT apply to allegations of gross misconduct or where dismissal is a possible outcome.

## **7.6. Difficulties that may arise during Disciplinary Hearings:**

Listed below are some of the more serious examples, with suggestions on how they might be handled:

- a) Failure to attend by the employee - If no adequate reason is given, consider whether the case can be heard in the employee's absence
- b) Walkout threatened by the employee - Warn that this may result in the case being heard in the employee's absence and may in itself lead to further disciplinary action. Give careful consideration to an adjournment
- c) Emotional upset - Ensure that the individual understands that the hearing will continue (possibly after a short adjournment) when he/she has achieved composure
- d) New evidence presented at the hearing - There are two possibilities:
  - (i) One of the parties presents new evidence at the start of or during the hearing. The panel should accept new evidence only if there are compelling reasons that prevented the exchange of evidence in the normal timescale. If the evidence is admitted, then it might be necessary to allow an adjournment (possibly to another day) for the other party to consider and prepare a response.
  - (ii) A witness reveals a crucial piece of evidence that is not known to anyone else present. The panel should adjourn the hearing in order to consider whether to admit the new evidence. If the new evidence is so significant as to affect the likely fairness of the outcome of the hearing, then the panel may adjourn the hearing to another day in order to allow the investigating officer to extend his/her investigation.
- e) Overlapping Disciplinary and Grievance Issues
  - 1) An employee may raise a grievance after disciplinary proceedings have started against him/her. The Commissioning Manager should consider suspending the disciplinary case for a short period – no more than one week – to consider the implications of the grievance on the disciplinary. If the grievance has been raised before the appeal stage of the procedure and the matters of grievance are linked to those of the disciplinary, then the grievance should be considered within the disciplinary procedure. If the grievance concerns matters that are unrelated to the disciplinary, then a separate process under the Grievance Procedure will need to start. In almost all cases, the grievance should be considered after the completion of the disciplinary. The exception here would be where there is a long delay in the progress of the disciplinary – perhaps because police proceedings are awaited.

## **8. Disciplinary Records:**

All Pre-schools are required to follow the statutory guidance in "Safeguarding Children and Safer Recruitment in Education" which came into force in January 2007. Paragraph 4.34 sets out the disclosure requirements when employment references are required and they include:

- "details of any disciplinary procedures the applicant has been subject to in which the disciplinary sanction is current;
- details of any disciplinary procedures the applicant has been subject to involving issues related to the safety and welfare of children or young people, including any in which the disciplinary sanction has expired, and the outcome of those; and
- details of any allegations or concerns that have been raised about the applicant that relate to the safety and welfare of children or young people or behaviour towards children or young people, and the outcomes of those concerns, e.g. whether the allegations or concerns are investigated, the conclusion reached and how the matter was resolved."

Disciplinary records should be kept on the employee's confidential personal file. It is important that a full record of the outcomes of any disciplinary process is kept so that accurate and fair information can be passed to prospective employers and others who legitimately request information for reference purposes. Where a disciplinary sanction has expired – i.e. is "spent", as described in Section 6 above – this means that the sanction cannot be used in the "totting-up" of sanctions that would take an employee from Stage 1 to Stage 2 to Stage 3 to Stage 4, even though the sanction might still need to be declared in a reference. However, there are 3 points to be made here:

- a) Spent disciplinary sanctions must only be declared to a prospective employer if the reason for the sanction concerns safeguarding children. Sanctions for other reasons will not be declared to prospective employers after they are spent.
- b) The period during which a sanction is "live" may be extended if the employee is absent from work for a lengthy period. The duration of a sanction is to allow the employee to improve his/her conduct, a task which can only be achieved if the employee is at work.

c) A sanction may be used in the totting-up process even after it is spent in circumstances where there is a repeat pattern of behaviour; e.g. an employee takes unauthorised leave on the last day of term, receives an appropriate warning, then repeats the offence as soon as the warning is spent.

## **9. Resignations And Compromise Agreements:**

Paragraphs 5.8 and 5.9 of "Safeguarding Children and Safer Recruitment in Education" sets out specific requirements in relation to handling allegations concerning the safety and welfare of children and young people. In summary these are:

- a) Allegations concerning the safety and welfare of children must be followed to a conclusion even if the employee has resigned. The ex-employee will be given the same opportunity to participate in the investigation as he/she would have been as an employee, but the Pre-school must reach a conclusion whether or not the ex employee co-operates in the proceedings.
- b) "Compromise Agreement" is a legal device by which an employer agrees not to pursue a disciplinary process and an employee agrees to resign. A compromise agreement is often accompanied by an agreed reference for prospective employers. Where there are allegations concerning the safety and welfare of children, a compromise agreement must **not** be used.

## **10. Disciplinary Rules:**

The following lists are neither exclusive nor exhaustive and there are occasions when items in either list could be described as misconduct, serious misconduct or gross misconduct. Some of these examples may not be applicable to all categories of employees (e.g. A (v) (d) may more properly apply to teaching staff). The judgement of misconduct must ensure that no one person is treated more favourably or less favourably than another. Pre-schools that subscribe to the Personnel Advice service may seek advice from the RBK advisors.

### **10.1. Misconduct:**

i) Absenteeism and lateness, for example:

- a) Failure to remain at the place of work during normal working hours without permission or sufficient cause for absence
- b) Frequent failure to attend work punctually
- c) Failure to notify the Pre-school immediately or as soon as reasonably practicable when absence is due to sickness
- d) Failure to provide medical certificates in accordance with the conditions of service and current national regulations

ii) Dishonesty – petty wrongs, for example:

- a) Making unauthorised private telephone calls
- b) Sending personal mail at the Pre-school's expense
- iii) Unauthorised or excessive use of Pre-school equipment such as telephones or computers
- a) Failure to comply with the Pre-school's policies on the use of email, the internet or telephone

iv) Neglect of duty, for example:

- a) Failure to adopt safe working practice/use protective equipment where required by law or management
- b) Negligent use of property in such a way as is likely to cause serious damage or loss
- c) Failure to discharge obligations placed on the employee by statute, contract of employment or reasonable instructions given by the Manager
- d) Failure to exercise proper control or supervision of pupils or students
- e) Failure to report any serious and known losses or damage to any property issued to or by the employee in connection with his/her employment
- v) Abusive, threatening or offensive behaviour or language
- vi) Victimisation of other employees or pupils
- vii) Unlawful or unacceptable discrimination which is contrary to the Pre-schools adopted policy against other employees, pupils or members of the public
- b) ix) Unauthorised disclosure information classified as confidential by the Authority or the Committee members of the Pre-school

### **10.2. Gross Misconduct:**

i) Dishonesty associated with place of work or job being undertaken, which may warrant dismissal:

- a) Theft or misappropriation of property belonging to the RBK or any other Authority, a contractor, Committee members, trustees, another employee, pupil or other third party
- b) Falsification of records or expenses claims
- c) Demanding or accepting monies or other considerations as bribe for the use of Pre-school property, provision of Pre-school services or the showing of favour on behalf of the Pre-school
- d) Falsification of any information given on an application form for employment in order to gain advantage, whether pecuniary or otherwise
- e) Falsification of registration of pupils
- ii) Serious misuse of Pre-school equipment (e.g. of a Pre-school computer for access to, or downloading of pornographic material)
- iii) Criminal activities during the course of employment
- iv) Wilful refusal to carry out a reasonable, lawful and safe instruction
- v) Wilful refusal to carry out the normal duties of the post
- vi) Gross negligence in unreasonably failing to attend to or to carry out the duties of the post over a prolonged period
- vii) Wilfully ignoring responsibilities/instructions thus placing other members of staff or pupils at risk of danger; for example, ignoring handling instructions/safety regulations in respect of radioactive materials
- viii) Being unfit to perform duties associated with the post as a result of taking alcohol or drugs other than in accordance with medical advice
- ix) Acts of violence in the course of employment, including:
  - x) physical violence towards other members of the Pre-school staff, parents, pupils, Committee members, members of the public or members/officers of the

#### Authority

- xi) Conduct incompatible with professional role and status such as:
  - xii) acts of violence;
  - xiii) sexual offences;
  - xiv) racial offences;
  - xv) drug offences;
  - xvi) sexual relations with pupils at the Pre-school or for whom the employee has any professional responsibility;
  - xvii) improper communication, using information technology, with pupils/students, colleagues or other members of the Pre-school community.
  - xviii) xi) Racial or sexual harassment of other employees, pupils or members of the public in the course of employment

### **10.3. Criminal Activities:**

- If a member of staff is being investigated for any criminal activities, for example sexual offences, fraud or downloading pornographic material, or is going to be prosecuted for criminal activities, special considerations apply. Depending on the offence in question, the issue of gross misconduct may arise and it may be appropriate to suspend, pending further investigation.
- ii) If an employee is suspected of committing any criminal offence at, or in connection with his/her work then the Manager will normally inform the police. If an employee is charged by the police, he/she should normally be suspended.

### **11. Case Unfounded:**

If the case against the employee is unfounded, the employee will be informed of this at the Disciplinary Hearing and it will be confirmed in writing.

### **12. APPEALS:**

#### 12.1 Appeal against Stages 1 – 3

Any employee who wishes to appeal against any disciplinary decision should inform the Chair of the Committee in writing within fourteen calendar days of receipt of that decision. A panel of different Committee members, no fewer than the number of Committee members who attended the original hearing and excluding the Manager, will hear the appeal. The decision of the appeal panel will be final and must be reported to the Committee

## 12.2 Appeal against Stage 4 – Dismissal

Any appeal arising as a result of a Stage 4 hearing, will be made in writing within fourteen calendar days of the receipt of a decision. The appeal will be to the Committee (with the exception of any Committee members previously involved). To be quorate the appeal panel must consist of at least the same number of Committee members as at the previous hearing.

At an appeal any disciplinary penalty imposed will be reviewed, but it cannot be increased.

At any appeal hearing the employee will enjoy the same rights as at any disciplinary hearing. The Manager is likely to be the Presenting Officer at an appeal hearing

The Clerk to the Committee, or a suitably impartial person, will arrange all appeal hearings and inform all the parties concerned.

Whilst the appeal is a re-hearing of the original case, new evidence is permissible. If either party wishes to introduce new evidence, they should give notice to the other party at least ten working days before the appeal hearing. If either side produces new evidence at the appeal hearing, it is open to either side to request an adjournment for further investigation.

If new evidence of misconduct is produced at the appeal hearing, which would give rise to further disciplinary allegations, the correct course of action would be to pursue the allegations at a new disciplinary interview, not at the appeal hearing.

If the recommendation for dismissal is not upheld, the Committee members may decide to issue a further warning or, in appropriate cases, to demote the employee rather than dismiss.

Demotion involves a change in the employee's contract that requires his/her consent to the new arrangement.

The employee will be informed immediately at the conclusion of the hearing and the

Clerk to the Committee will confirm the decision of the Appeal Panel/Governing

Body in writing to the employee within three working days, giving the reasons for the decision.

There will be no further right of appeal for the employee following the decision of the Appeal Panel of the Committee. The employee will not be able to re-open the matters that have been considered by looking to invoke a different procedure, such as the Grievance Procedure.

## **13. Ill-Health Procedure:**

Normally ill-health will not require procedural handling. However, where ill-health appears to be a factor which adversely affects an employee's conduct, the Pre-school should seek medical advice. All Pre-schools are able to get advice from the Authority's Occupational Health Unit via the Pre-schools' advisory service.

## **14. Support For Alleged Victims:**

Where an employee's conduct is investigated as a result of allegations by another employee of bullying, harassment, victimisation or discrimination, it is important to be sensitive to both the short-term and long-term needs of the victim of the alleged behaviour. This is necessary irrespective of the outcome of any investigation and disciplinary hearing, since the behaviour complained of may significantly affect the recipient, who will need support. Circumstances will vary but the Pre-school will need positively to monitor working relationships from the alleged victim's perspective, as well as formally or informally monitoring the conduct of the alleged perpetrator.

## **15. REFERRALS TO STATUTORY BODIES:**

There are statutory duties on employers to refer individual cases to national bodies in the event of a dismissal or resignation when dismissal was a likely outcome.

These are:

- All dismissals (or resignations) for misconduct must be reported to OFSTED and the DBS where consideration will be given as to whether the employee is suitable to be working with children or in Pre-schools.

- All staff who are dismissed (or resign) because of incompetence must be reported to the General Teaching Council (GTC) for England if they hold QTS or B.E.D status.

General Teaching Council for England (Disciplinary Functions) (Amendment) Regulations 2003.

## **Grievance Policy and Procedure:**

### 1.0 Purpose:

1.1 A Grievance can be concerns, problems or complaints that members of staff would like to raise with the Pre-school.

It aims to promote fairness and consistency in the treatment of staff and assists the Pre-school to function effectively.

### 2.0 Managers

2.1 Informal action will be taken in the first instance to resolve a grievance.

2.2 At all stages of the procedure the employee will have the right to be accompanied by a work colleague or a trade union representative.

2.3 The Pre-school wishes to identify and address grievances.

2.4 This should be done through informal meetings first which could be meetings like the 'One-to-One Supervisions' or specially set up ones. Once the grievance has been identified constructive action needs to be taken to resolve the reason for the grievance.

### 3.0 Procedure

If there is a grievance employees should try and solve this first informally.

#### 3.1 Informal Procedure (stage 1)

Once the problems have been identified initial discussion should be arranged between the member of staff who has the grievance together with the person(s) they have a grievance with.

The discussion\* should include:

- a clear explanation of the purpose of the meeting
- a clear explanation of the grievance
- Two way discussion about how it should be resolved

\* Attention should be given to the provision of constructive discussion. Both parties have the right to make their point of view clear. A mediator could be asked to take part.

#### 3.2 Formal Procedure first formal meeting (stage 2)

If it is not possible to resolve a grievance informally employees should raise the matter formally.

The first step is to raise the matter formally. The member(s) of staff should do this without unreasonable delay to a manager who is not subject of the grievance. This should be done in writing and should set out the nature of the grievance.

3.2.1 Employers should arrange for a formal meeting to be held without unreasonable delay after a grievance is received.

3.2.2 The manager, member(s) of staff and their companions\* should make every effort to attend the meeting.

3.2.3 The meeting that will be held will need to contain the following;

1. Employees should be allowed to explain their grievance
2. And how they think it should be resolved.
3. Consideration should be given to adjourning the meeting for any investigation that may be necessary.

#### 3.2.4 Decide on appropriate action

Following the meeting decide on what action, if any, to take.

Decisions should be communicated in writing, without unreasonable delay. And also where appropriate, should set out what action the Pre-school intends to take to resolve the grievance. The member of staff should be informed that they can appeal if they are not content with the action taken.

### 5.0 Formal Procedure Appeal (stage 3)

See Appeals procedure.

### 6.0 Overlapping Grievance And Disciplinary Cases

Where a member of staff raises a grievance during a disciplinary process the disciplinary process may be temporarily suspended in order to deal with the grievance. Where the grievance and disciplinary cases are related it may be appropriate to deal with both issues concurrently.