

Disciplinary Procedure



The success of Little Elms depends to a large degree upon the ability of our employees to achieve and maintain high standards. We therefore encourage staff to adopt a responsible attitude at work to help us operate effectively, provide a high standard of service and maintain a positive environment for all.

Legal obligations

Our legal obligations as an employer are detailed in the ACAS Code of Practice on disciplinary and grievance procedures. This code of practice was introduced in April 2009 and updated in 2015. A full copy of the ACAS Code of Practice and the accompanying guidance can be obtained from the ACAS website www.acas.org.uk

Scope

The procedure applies to all employees.

If an employee's conduct does not meet the required standards during their probationary period or any extension to their probationary period, this may result in the termination of employment; termination at this stage does not require progression through the formal stages of this Disciplinary Procedure.

Objectives and guiding principles

The objective of this procedure is to set out the standards of conduct expected of all staff and to provide a framework within which our managers can work with employees to maintain satisfactory standards of conduct and to encourage improvement where necessary.

It is our policy to ensure that any disciplinary matter is dealt with fairly and consistently. We will take the necessary steps to establish the facts and to give employees the opportunity to respond before taking any formal action.

This procedure does not form part of any employee's contract of employment and it may be amended at any time. We may also vary this procedure, including any time limits, as appropriate in any case.

Minor conduct issues can often be resolved informally between the employee and their line manager. These discussions should be held without undue delay whenever there is a cause for concern.

Formal steps will be taken under this procedure if the matter is not resolved, or if informal discussion is not appropriate (due to the serious nature of the allegation).

The employee will not normally be dismissed for a first act of misconduct, unless we decide it amounts to gross misconduct or the employee has not yet completed their probationary period.

The procedure

Our aim is to deal with disciplinary matters sensitively and fairly. All employees must treat all information in connection with the disciplinary procedure and its investigation as confidential.

Where there has been an allegation of misconduct or gross misconduct and/or there are concerns regarding the employee's suitability, we aim to establish the facts quickly and no disciplinary action will be taken until the matter has been fully investigated.

Stage 1: Investigation

- We will investigate any allegations/concerns quickly and thoroughly to establish whether a disciplinary hearing should be held
- The purpose of the investigation is to establish a balanced view of the facts relating to the allegations/concerns. The amount of investigation will depend on the nature of the situation and will vary from case to case. It may involve interviewing and taking statements from the employee and any witnesses, and/or reviewing relevant documents/CCTV.

- Investigations will normally be carried out by an appropriate Manager who is senior to the employee, which depending on the nature of the allegations/concerns, is likely to be the employee's Line Manager.
- Investigation interviews are solely for the purpose of fact finding and no decision on whether a disciplinary sanction will be issued will be made until after a disciplinary hearing has been held, if required.
- Investigation meetings are not disciplinary hearings and may take place without an employee representative present. The fact that an investigation meeting takes place does not necessarily mean that the matter will proceed to a disciplinary hearing.

If the investigations lead us to reasonably believe there are grounds for disciplinary action, a disciplinary hearing will be arranged.

Suspension

An employee may be suspended from the workplace on full pay prior to an investigation or disciplinary hearing to enable a full investigation to be undertaken, if it is considered that the allegations could constitute gross misconduct, if their attendance at work may constitute a threat to themselves, others or to the business or where we consider in our absolute discretion that the employee's continued presence in the workplace would hinder an investigation. During the period of suspension, the employee may be required to participate in conversations and/or meetings and/or complete reasonable work requests from home, as appropriate. Suspension is a precautionary measure and is not considered as a form of disciplinary action or intended to predict the outcome of a future disciplinary hearing, should one be held. The suspension will be confirmed in writing to the employee. A detailed explanation of the disciplinary allegations and the reasons for the suspension will not always be provided at the time of suspension, particularly if the suspension occurs before/during an investigation.

If an employee is suspended from the workplace in relation to allegations of a safeguarding nature, in some cases, detailed information regarding the allegations may not be initially shared with the employee. Little Elms partners with external and professional bodies (such as Ofsted, the Local Authority Designated Officer and the Police) and we will follow their advice and guidance in relation to safeguarding matters. In all cases on suspension, details of any allegations will be provided to the employee before any disciplinary hearing takes place.

Safeguarding & Child Protection

Little Elms works in partnership with Local Authorities to address all allegations against an adult which indicate they may have:

- Behaved in a way that has harmed a child, or may have harmed a child;
- Possibly committed a criminal offence against or related to a child; or
- Behaved towards a child, or behaved in other ways that suggests they may be unsuitable to work with children

The Designated Safeguarding Lead (DSL) for the nursery will report any allegations against an employee to the Local Authority Designated Officer (LADO) before sharing the allegation with the employee or undertaking any form of investigation. This is a requirement of each Local Authority for the purposes of child protection and Little Elms will comply with the advice and guidance given for each individual case.

It may be a requirement that the employee is suspended immediately from the nursery or placed on non-contact (with children) duties, until such time an investigation can be undertaken. In the interest of child protection, in some cases, the employee will not be provided with any explanation for their suspension/restricted duties.

If there is a conflict between child protection/safeguarding regulations and this procedure, child protection regulations will always supersede.

Whistleblowing

In the event that a concern of a safeguarding nature is brought to the attention of the Designated Safeguarding Lead (DSL) by an adult or a child, the identity of the whistle-blower will be kept confidential wherever it is reasonable to do so. If the Disciplinary Procedure is used to address any whistle-blowing allegations, evidence

provided to individuals in order to prepare for any Disciplinary Hearing that may be arranged, will be anonymised to protect the identity of the whistle-blower.

Little Elms has chosen to take this approach to Whistleblowing in the interests of child protection; specifically, to ensure everyone working with young children feels confident to immediately report any behaviour that makes them feel uncomfortable.

Stage 2: Disciplinary Hearing

An employee will be given reasonable written notice of any disciplinary hearing and will be advised, in writing, of the nature of the allegation(s) made against them. The employee will be given sufficient information to enable them to prepare a response including copies of any documents to be considered at the hearing. No decision will be made in advance of the hearing.

The employee is expected to attend a disciplinary hearing if one is arranged without any unreasonable delay. If the employee fails to attend the hearing, it will be re-arranged. If the employee fails to attend the hearing again without good cause, it may be carried out in their absence and they will be notified of the decision in writing.

During the disciplinary hearing, the allegations will be discussed and the employee will be given the opportunity to present any information in their defence before a decision is made.

We may adjourn the disciplinary meeting if we need to carry out further investigations and the employee will be given reasonable opportunity to consider new information

The employee will be notified of the decision in writing, usually within seven working days of the hearing

At any formal disciplinary hearings under this procedure an employee will have the right to be accompanied by a work colleague or a certified trade union representative (evidence should be provided). The representative will be able to address the hearing, to ask questions on behalf of the employee and to confer with the employee. Representatives will not, however, be permitted to answer questions on behalf of the employee they are representing.

At any formal stages of this procedure, where possible the Manager responsible for the Disciplinary hearing will be different to the Manager who has conducted any investigations.

The Disciplinary Procedure may be entered into at any of the stages detailed below, depending on the severity of the offence.

Summary dismissal without notice may take place if an act of Gross Misconduct is committed. (Some examples of Gross Misconduct are provided below)

Appeal

The employee will be given the opportunity to appeal the decision. If they wish to appeal, the employee should state their full grounds in writing and the letter should be sent to the person named in the disciplinary outcome letter within five working days from the date the decision was communicated to them

An appeal meeting will be conducted impartially by a manager, where possible, who has not previously been involved in the case

The employee will be able to bring a companion to the meeting and the companion may be a work colleague or trade union representative (as stated above)

We may adjourn the appeal hearing if further investigations need to be carried out



We will inform the employee in writing of our final decision as soon as possible.

There is no legal right to appeal beyond this stage.

Disciplinary penalties

Informal Warning

In the first instance, where less serious offences are concerned or a failure to meet expected standards of conduct, the employee may receive an informal warning. A record of this discussion will be kept, usually on a 'Record of Conversation' and a copy maintained in the employee's personal file. The intent of an informal warning is to address and seek improvement for minor acts of misconduct and therefore can be issued without the need to follow the formal disciplinary process.

First Written warning

A first written warning will usually be appropriate for a first act of misconduct where there are no other active written warnings on the employee disciplinary record.

Final written warning

A final written warning will usually be appropriate for:

- misconduct where there is already an active written warning on the employee record,
- misconduct that is considered sufficiently serious, to warrant a final written warning even though there are no active warnings on the employee record.

Dismissal

Dismissal will usually only be appropriate for:

- further misconduct where there is an active final written warning on the employee record; or
- any gross misconduct regardless of whether there are active warnings on the employee record. Gross misconduct will usually result in immediate dismissal without notice or payment in lieu of notice (summary dismissal). Examples of gross misconduct are set out below.

Levels of authority

Nursery Managers and Designated Safeguarding Lead's have the authority to suspend an employee pending investigation.

Nursery Managers and Designated Safeguarding Lead's have the authority to dismiss an employee following a full and fair disciplinary process. All suspensions must be approved by the HR Manager or Head of Operations before they take place.

Informal Warnings can be issued by Nursery Management without prior approval from the HR Manager or Head of Operations. Any formal disciplinary sanction in line with this procedure must be approved by the HR Manager.

Gross misconduct

In the case of gross misconduct, the nursery reserves the right to dismiss an employee without notice (or payment in lieu of notice) if, after investigation and a hearing, the management are satisfied that there is sufficient justification for so doing.

Duration of warnings

Under normal circumstances warnings will be valid for the following time periods, although these may vary according to the nature of the occurrence and may therefore be determined at the time of issue:

- First written warning - six months
- Final written warning - twelve months.

On expiry, warnings will be disregarded for future disciplinary purposes.

Alternatives to dismissal

In some cases we may, at our discretion, consider alternatives to dismissal. These will usually be accompanied by a final written warning. Examples include:

- Demotion, which may result in a reduction in pay for the employee
- Transfer to another position or nursery setting, which may result in a reduction in pay for the employee
- A period of suspension without pay
- Loss of seniority
- Loss of overtime.

Examples of misconduct

The following list is not exhaustive but gives examples of conduct which may lead to disciplinary action short of immediate dismissal. Serious or repeated cases of such misconduct may, however, result in dismissal:

- Unsatisfactory time-keeping
- Time wasting
- Minor contravention of nursery policies
- Disruptive behaviour including minor acts of insubordination/refusal to obey a reasonable instruction

Examples of gross misconduct

The list below is not exhaustive, but is a guide to the type of behaviour, which may be considered gross misconduct and may result in summary dismissal (i.e. dismissal without notice or pay in lieu of notice):

- Failure to inform the employer of a disqualification to work with children or a criminal conviction, caution, warning or reprimand
- Failure to inform the employer of any information that may change their suitability to work with children.
- Theft or the unauthorised possession of property belonging to the nursery, its employees or customers
- Assault on any child, employee or persons associated with the nursery
- Violent, abusive or intimidating conduct
- Breach of policies and practices that are designed to safeguard children in our care
- Breach of Mobile Phone, Smartwatch & Social Networking policy
- Breach of Camera, Mobile Phone and Recording Device Use Policy
- Breach of confidence i.e. the divulging of confidential information relating to the nursery, its employees or clients
- Dishonesty, including the use of any funds, expenses or allowances for any other purpose than that for which they have been delegated by the nursery
- Being in possession of or under the influence of drugs or alcohol whilst at work
- Serious or persistent breaches of safety rules
- Falsification of records e.g. accident forms, medication forms, business documentation, expense claims, time keeping systems, application form etc.
- Signing/clocking in or out for another employee
- Discrimination/harassment in any way against a person
- Persistent failure to follow nursery documentary systems and procedures
- Unauthorised absence from work/unacceptable attendance levels
- Unprofessional conduct such as the use of obscene language or any act that violates commonly accepted standards of behaviour
- Negligence in the performance of the employee duties.
- Derogatory comments about Little Elms, other employees, children or parents on social networking sites
- Malicious damage to property belonging to Little Elms or other employees
- Actions which damage or are likely to damage the reputation of the business or bring it into disrepute
- Sleeping on duty

- Giving misleading or untrue information to the company at any point in time (including during the recruitment process)
- Disruptive behaviour including serious acts of insubordination/refusal to obey a reasonable written or verbal instruction
- Unauthorised smoking

Associated Documents:

- *Record of Conversation form*
- *Grievance Procedure*
- *Bullying & Harassment Policy*
- *Absence Management Procedure*
- *Continuous Performance Development Procedure*
- *General Data Protection Regulations Policy*