

General Welfare Requirement: Suitable People

Providers must ensure that adults looking after children, or having unsupervised access to them, are suitable to do so.

Employment

2.1.1 Disciplinary

Policy Statement for St Joseph's Pre-school

St Joseph's Pre-school ensures that its staff are suitable and appropriate for their roles. If at any time we have reason to believe that they are not behaving in a suitable and appropriate manner for their role, then we will not hesitate to implement this policy. Our obligation is to protect the children at the pre-school, other members of staff and St Joseph's Pre-school's reputation from harm. St Joseph's Pre-school is committed to ensuring that all staff at the pre-school should be treated in a fair, consistent and sensitive way.

St Joseph's Pre-school acknowledges that going through a disciplinary procedure can be very stressful. We will endeavour to keep talking to both the member of staff being disciplined and any other staff affected. We will offer support to prevent:

- absence;
- mental health issues arising;
- existing mental health issues getting worse.

All personal information will be kept confidential.

Minor disagreements

Informal action will be considered, where appropriate, to resolve minor disagreements among pre-school staff or staff with Committee members. This can be achieved by:

- privately talking with the individual and any other staff/Committee member involved;
- listening to their point of view;
- agreeing improvements to be made;
- setting up a training or development plan, if it is a performance issue.

Capability issues

Capability or performance is about an employee's ability to do the job. St Joseph's Pre-school has a separate policy dealing with such issues¹. Whether issue is dealt with under the capability or the disciplinary procedure, it will be dealt with fairly.

Misconduct

Misconduct is when an employee's inappropriate behaviour or action breaks workplace rules. For example:

- bullying
- harassment including sexual harassment²
- refusing to do work ('insubordination')
- being absent without permission.

¹ See Policy 2.1.7 Capability

² Sexual harassment is different from harassment related to a person's protected characteristics, eg. sex, sexual orientation or gender reassignment.

Pre-school staff could also face disciplinary action for misconduct outside work. This depends on how serious the Committee sees the misconduct and whether it could have a negative impact on the reputation of the Pre-school.

Gross misconduct

Some acts count as "gross misconduct" because they are very serious or have very serious effects. If St Joseph's Pre-school finds there has been gross misconduct, we will still carry out an investigation and the full disciplinary procedure.

If after investigation it is confirmed that an employee has committed an offence of the following nature (this list is not exhaustive), the normal consequence will be dismissal without notice or payment in lieu of notice:

- a serious or wilful breach of the misconduct rules;
- any breach of the Safeguarding Children and Child Protection policy³;
- indecent or immoral behaviour;
- intoxication, either caused by alcohol or drugs, dangerous behaviour, fighting or physical assault;
- deliberate falsification of any records, include time sheets, absence records etc, in respect of themselves or a fellow employee;
- the theft of money or property, whether this belongs to St Joseph's Pre-school;
- the destruction, damage or sabotage of Pre-school property, or any property on the premises;
- infringement of the health and safety rules, including smoking on the premises⁴;
- gross insubordination and/or the refusal to carry out legitimate instructions given by their Line Manager;
- any breach of a policy which directly affects your ability to carry out your duties and/or the desired characteristics of your position;
- any act of dishonesty;
- posting, participating in and any other involvement with external internet sites such as blogs, social networks, chat rooms or other internet forums where derogatory, disparaging and/or any other offensive content or information of a confidential nature concerning St Joseph's Pre-school, it's employees, officers, agents, customers or suppliers is published;
- a serious breach of the Confidentiality Policy⁵;
- any criminal conduct that affects the ability or suitability for your continued employment;
- assisting, encouraging or procuring any other member of staff to commit any act which would justify gross misconduct;
- harassment, discrimination or bullying of employees, customers, clients or suppliers;
- bringing the Pre-school into disrepute;
- negligence which causes or might cause unacceptable loss, damage or injury.

While the alleged gross misconduct is being investigated, the employee may be suspended, during which time he or she will be paid their normal pay rate. Any decision to dismiss will be taken by the employer only after full investigation.

³ Policy 1.2 Safeguarding Children and Child Protection

⁴ e-cigarettes and vaping are included in this. See Policy 1.20 No Smoking

⁵ Policy 1.4 Confidentiality

Disciplinary Procedures

Where there is a more serious situation which arises, when a dispute cannot be resolved in an informal way or the manager or deputy is dissatisfied with the conduct or activities of an employee, a formal disciplinary procedure will take place. The employee will be advised, in writing, immediately. The letter will include sufficient information about the alleged misconduct and the possible consequences, eg. a written warning.

St Joseph's Pre-school recognises that an employee may feel they want to resign or 'jump before they are pushed' when they are facing a disciplinary. The Pre-school will try and talk through any concerns with the employee and encourage them to complete the disciplinary procedure first. Thus obviating the risk of a claim for 'constructive dismissal' at an employment tribunal at a later date⁶.

St Joseph's Pre-school will also check whether a similar situation has been dealt with before. If so, the Pre-school will follow the procedure in the same way for each disciplinary case to avoid accusations of unfair treatment. Evidence will be gathered and a decision made based on what is known about each case.

Stage 1 – investigation

- When disciplinary matters arise, an investigation may be carried out to establish the facts. The investigation takes into account statements of any available witnesses, along with any other evidence. The investigation will be conducted by the committee and the Lead Practitioner or Deputy Practitioner where appropriate.
- Sometimes it may be necessary to suspend a member of staff on full pay during the course of an investigation to avoid a potentially difficult situation or to allow a full or uninterrupted investigation to take place of where the facts, if proved, may result in dismissal.
- Suspension with pay is a temporary measure to allow an investigation and is not a form of disciplinary action or a penalty of any kind. It should not prejudice a member of staff's rights and should not be seen as a presumption of guilt.

Stage 2 – meeting

- When any investigation is concluded, the member of staff in question will be invited to attend a Disciplinary Meeting to discuss the allegations further. They will be given written notice of this meeting and the employee will be informed, in advance, of the nature of the allegations against them and provided with evidence collected during the investigation.
- They will be told what the potential sanctions could be, eg. dismissal, first written warning etc. They will be notified of their right to be accompanied at the meeting.
- The purpose of the Disciplinary Meeting is to allow the member of staff to be able to state their case fully and to discuss any issues.
- The member of staff has the right to be accompanied by a single companion, who can be another member of staff, at any Disciplinary Meeting. The companion will be permitted to confer with the member of staff and be allowed to address the meeting but not to answer on the member of staff's behalf.
- The member of staff must take all reasonable steps to attend this meeting. If they cannot attend, they should inform the Pre-school, in advance wherever possible, so that the meeting can be re-scheduled to another date or time.

⁶ An employee can only claim 'constructive dismissal' if they have worked for the Pre-school for 2 years or more

- The member of staff can bring evidence to the meeting, eg. emails, to show and talk about.
- If they persistently fail to attend scheduled meetings, they will be warned that the Disciplinary Meeting may go ahead without them, which could result in a decision being taken in their absence.
- A written record of the meeting will be made.

What a “Companion” Person should do

With the permission of the person raising the grievance, the companion is allowed to:

- take notes;
- set out the case of the person raising the grievance;
- speak for them;
- talk with them during the meeting.

The companion cannot:

- answer questions put to the person raising the grievance;
- prevent anyone else at the meeting from explaining their side of things.

Capability matters

- The member of staff will be given details of any shortfall in their performance so they may understand the exact nature of the complaint against them and be able to respond in an appropriate and relevant manner.

Conduct matters

- The member of staff will be provided with details of the conduct giving rise to the disciplinary action and any allegations will be put to them in full. This allows them to answer those allegations and gives them an opportunity to fully state their case.

If the employee raises a grievance

If the employee raises a grievance during the disciplinary procedure, St Joseph’s Pre-school may pause the disciplinary and deal with the grievance first. If the grievance and disciplinary cases are related, St Joseph’s Pre-school may deal with both at the same time if this is felt appropriate.

If the employee is absent or off sick

If the employee is absent or off sick for the disciplinary meeting, St Joseph’s Pre-school will pause the disciplinary procedure until they return to work.

If the employee still says they cannot attend or if they go on extended sick leave, the Pre-school will see if it would help to make other arrangements, eg hold the hearing somewhere other than the workplace.

If the employee still refuses to or cannot meet, the Pre-school will look at the case and come to a reasonable decision. We will look at:

- how we have dealt with similar cases in the past;
- the seriousness of the disciplinary issue;
- the employee’s disciplinary record, general work record, work experience, position and length of service;
- getting a medical opinion on whether the employee is fit to attend the hearing (with the employee’s permission).

If St Joseph’s Pre-school reaches a decision in the staff member’s absence, we will tell them in writing and advise them of their right to appeal.

Following the disciplinary meeting, the Pre-school may need to undertake further investigations

In these circumstances the member of staff will be invited in writing to a second reconvened Disciplinary Meeting. This will be to discuss the outcome of any further investigations before a final decision is made.

Stage 3 – sanctions

- Following the Disciplinary Meeting the member of staff will be informed of the outcome in writing. They will be informed of the sanction, how long this will remain on their personal file and inform them of their right to appeal against this decision.

Verbal Warning

- Where a member of staff’s performance, conduct or attitude gives rise for concern and informal action has not been, or is not, sufficient to rectify the situation, the Committee Chair and the Pre-school Lead Practitioner or Deputy Practitioner will meet with the member of staff.
- The member of staff will be given a verbal warning and will be told the reasons for this.
- The solutions to the problem(s) will be discussed.
- A timescale by which such improvements should be effected will be agreed.
- The member of staff will be made aware that the warning forms the initial stage of the disciplinary procedure.
- A note of the warning and solutions agreed will be placed on the member of staff’s Employee Record.

Written Warning

- If, after a further investigation or further incidents have occurred, it is decided that the improvements specified at the first meeting have not materialised, a second meeting will take place.
- The Pre-school’s requirements concerning the member of staff’s behaviour and/or conduct, along with the future standard and behaviour that they should adhere to, will be discussed and presented to them in writing. A copy of the letter confirming the Written Warning will be placed on their Employee Record.
- They will be advised that the warning will remain “live” on their Employee Record for a period of 12 months, after which time it will be disregarded. They will also be advised that further offences will result in the disciplinary sanction being escalated, which could eventually lead to their dismissal.
- The member of staff will be made aware that this warning forms the second stage of the disciplinary procedure. For more serious offences, a written warning may be given as the first step in the disciplinary process.

Final Warning

- If, after a further investigation or further incidents have occurred, it is decided that the improvements specified still have not materialised a third meeting will take place.
- The member of staff’s continued failing performance and/or unacceptable behaviour, along with the expected solutions, will be discussed and presented in writing. They will be warned that failure to reach and maintain the requirements will result in dismissal. A copy of the letter confirming the Final Written Warning will be placed on their Employee Record.

- They will be advised that the Final Written Warning will remain “live” on their Employee Record for a period of 12 months, after which it will be disregarded. They will also be advised that further offences will result in their dismissal.
- Any written warning will include:
 - details of the misconduct which has taken place;
 - the improvements required;
 - the consequences of a further offence if failure to improve;
 - the effective date of the warning;
 - the specified time limit;
 - the right to appeal.

Whilst the normal procedure will involve all three warnings, in cases where the offence is thought to be serious enough the first and/or second warnings may be omitted.

- Typical examples of this would be refusals to obey reasonable instructions, unlawful discrimination, breaches of Health and Safety and breaches of the Safeguarding Children and Child Protection Policy.
- Depending on the circumstances, these may also be classed as gross misconduct.

Dismissal

- If, it becomes apparent that the required standards of performance and/or behaviour have not materialised, a further investigation and a meeting will be arranged.
- Following the meeting, if it is decided that the improvements specified still have not materialised, and disciplinary action is to be taken, then the member of staff may be dismissed with the appropriate notice being given.
- In all cases except gross misconduct, dismissal will be on the notice as specified in the relevant contract of employment.

Summary dismissal

- While it is envisaged that the warning procedure will apply to any member of staff who is not achieving the required standard of work or conducting themselves appropriately, provided that a full and proper investigation has been carried out, it may be possible to dismiss a member of staff summarily in cases of gross incompetence or gross misconduct.
- In cases of gross misconduct or gross incompetence, a member of staff may be dismissed without going through the warning stages set out above.
- After a thorough investigation into the circumstances and allowing the member of staff the opportunity of explaining their actions at a meeting, St Joseph’s Pre-school reserves the right to summarily dismiss them.
- In cases of summary dismissal, the member of staff will be dismissed without notice or pay in lieu of notice.

Alternative Penalties

- Disciplinary action may also include suspension without pay or less than full pay, demotion or transfer to new duties whether or not at a lower grade.
- In certain circumstances, an informal reprimand or warning may be more appropriate where only a minor infringement of the rules has taken place.

Period of warnings

- Except in certain cases, no form of warning will remain on an Employee file indefinitely.

- Provided the member of staff’s performance and/or conduct improves and remains at an acceptable level, warnings will be disregarded as follows:
 - *Verbal warnings* – disregarded after a six-month period, unless the particular offence is repeated or relates to a rule, which can only be broken on isolated occasions.
 - *Written warnings* – disregarded after a twelve-month period, unless the misconduct is of a serious nature or relates to a rule, which can only be broken on isolated occasions.
 - *Final written warnings* – disregarded after a twelve-month period, unless the misconduct is of a serious nature or relates to a rule, which can only be broken on isolated occasions.

After the disciplinary procedure

Talking to staff

All disciplinary outcomes and details will remain confidential. However, where appropriate, the Pre-school may talk privately with any staff who knew the disciplinary procedure was happening. This can help avoid any negative effects on the Pre-school, eg. bad feeling; gossip; bullying; low work morale.

Written record

As good practice, no matter what the outcome, St Joseph’s Pre-school will keep a written record of all disciplinary cases to help with any questions or similar cases in the future.

In line with data protection law, these records will be

- confidential;
- only kept for as long as necessary.

Reference after disciplinary action

By law, St Joseph’s Pre-school does not have to provide a reference. However, when we do we will ensure that the reference is:

- fair;
- accurate;
- consistent with others.

This means that we might have to give information about a member of staff’s disciplinary outcome.

Legal framework

- Employment Rights Act (1996)
- Criminal Justice and Court Services Act (2000)
- Equalities Act (2010)
- Data Protection Act (2018)
- General Data Protection Regulations (2018)
- The Worker Protection (Amendment of Equality Act 2010) Act 2023

Further guidance can be found at:

- www.legislation.gov.uk or www.hse.gov.uk or other government websites.
- www.acas.org.uk offers comprehensive advice for employers and employees. This procedure has been written following ACAS’ Code of Practice on disciplinary and grievance procedures.

Associated Policies and Procedures

- 1.2 Safeguarding Children and Child Protection
- 1.4 Confidentiality
- 2.1 Employment and Staffing
- 2.1.2 Grievance procedure
- 2.1.7 Capability
- 2.6 Staff Wellbeing
- 3.2 Health and Safety General Standards
- 5.4 Data Protection
- 5.7 Retention Periods for Records

Version Number	Author	Purpose of change	Date
1.0	K Coupe	New policy	Aug 2014
2.0	K Coupe	Reviewed & updated in line with GDPR & DPA 2018, and inclusion of version control	19Sept2018 Cttee Mtg
3.0	K Coupe	Updated with regards to • inclusion of reference to e-cigarettes and vaping (as per EYFS para 3.57); • procedure and updated using ACAS advice as a reference; and • addition of “what a companion should do”	13/07/2021 Chair (A Hitchings)
4.0	K Coupe	Reviewed, reformatted and updated • what the Pre-school will do if the employee is absent/off sick for the disciplinary hearing; • inclusion of “Associated Policies and Procedures” section as per EY Safeguarding Audit s175/157 2023	23/02/2024 Cttee Mbr (S Long)
5.0	K Coupe	Updated in line with The Worker Protection (Amendment of Equality Act 2010) Act 2023 • reference to sexual harassment in Misconduct section	17 Dec 2024 Cttee Mbr (G Ind)