

Employment

2.1.1 Disciplinary

Policy Statement for St Joseph's Nympsfield Out of School Club

St Joseph's Nympsfield Out of School Club (OOSC) 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 OOSC, other members of staff and St Joseph's Nympsfield Out of School Club's reputation from harm. St Joseph's Nympsfield Out of School Club is committed to ensuring that all staff at the OOSC should be treated in a fair, consistent and sensitive way.

Gross misconduct

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 policy¹;
- 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 the OOSC,
- the destruction, damage or sabotage of OOSC property, or any property on the premises;
- infringement of the health and safety rules, including smoking on the premises²;
- gross insubordination and/or the refusal to carry out legitimate instructions given by the Play Leader;
- 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 the OOSC, its employees, officers, agents, customers or suppliers is published;
- a serious breach of the Confidentiality Policy³;
- 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 OOSC 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.

¹ 1.2 Safeguarding and child protection

² As per EYSF para 3.7

³ 1.4 Confidentiality

Minor disagreements

Informal action will be considered, where appropriate, to resolve minor disagreements among OOSC 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.

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.

St Joseph's Nympsfield Out of School Club recognises that an employee may feel they want to resign or 'jump before they are pushed' when they are facing a disciplinary. The OOSC 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 date⁴.

St Joseph's Nympsfield Out of School Club will also check whether a similar situation has been dealt with before. If so, the OOSC 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 Play Leader or Deputy Play Leader 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.

⁴ An employee can only claim 'constructive dismissal' if they have worked for the OOSC for 2 years or more

- 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 OOSC, in advance wherever possible, so that the meeting can be re-scheduled to another date or time.
- 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.

If the employee is absent or off sick

If the employee is absent or off sick for the disciplinary meeting, St Joseph's Nympsfield Out of School Club 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 OOSC 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 OOSC 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 Nympsfield Out of School Club reaches a decision in the staff member's absence, we will tell them in writing and advise them of their right to appeal.

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.

Following the disciplinary meeting, the OOSC 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 OOSC Play Leader or Deputy Play Leader 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 with 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 OOSC'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 Nympsfield Out of School Club 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 OOSC may talk privately with any staff who knew the disciplinary procedure was happening. This can help avoid any negative effects on the OOSC, eg. bad feeling; gossip; bullying; low work morale.

Written record

As good practice, no matter what the outcome, St Joseph's Nympsfield Out of School Club 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 Nympsfield Out of School Club 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

- Criminal Justice and Court Services Act (2000)
- Equalities Act (2010)
- General Data Protection Regulations (2018)
- Employment Rights Act (1996)
- Data Protection Act (2018).

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 advice.

Associated Policies and Procedures

- 1.2 Safeguarding and child protection
- 1.4 Confidentiality
- 2.1 Employment and staffing
 - 2.1.2 Grievance procedure
- 3.2 Health and safety general standards
- 5.3 Data Protection
- 5.6 Retention periods for records

Version Number	Author	Purpose of change	Date
1.0	NP and HS	Updating policies	23.01.2023
2.0	KC	Reviewed, formatted and <ul style="list-style-type: none">• updated using ACAS advice as a reference; and• inclusion of "Associate Policies and Procedures" section• further wording/clarification under "Disciplinary Procedure" sub heading;• advice if employee is absent/off sick for disciplinary meeting.	26.02.2024 Committee Meeting