



Disciplinary

The aim of this Policy is to encourage employees to maintain high standards of conduct at all times and to support the Scheme in dealing fairly and consistently with employees who fall short of the standards set by the organisation. This policy & procedure provides a framework within which the manager and committee can work with employees to encourage improvement and maintain satisfactory standards.

The policy also ensures that Ashfield Play Care Scheme deals with misconduct issues in accordance with its legal requirements.

This procedure is used to deal with misconduct. The following are examples of situations where action under this procedure may be taken. This list contains examples only and is not exhaustive:

- inappropriate behaviour;
- unsatisfactory work performance;
- harassment or victimisation;
- misuse of the Scheme's facilities, e.g. email or internet;
- poor time keeping;
- unauthorised absences;
- failure to follow the organisation's policies, procedures or workplace rules;
- failure to follow instructions.

It does not apply to cases involving genuine sickness absence or poor performance. This procedure does not form part of any employee's contract of employment and it may be amended at any time. It is the intention that this policy should be followed in most cases, but we reserve the right, where appropriate, to deal with disciplinary matters in a different way, particularly during the first two years of employment. We may also vary this procedure, including any time limits, as appropriate in any case.

Responsibility

It is the responsibility of the manager and committee to monitor the Policy internally to ensure that the rules of this procedure are applied fairly and consistently. It is the responsibility of the employee to familiarise themselves with their contract of employment and the accepted standards laid down in the policies and procedures and other relevant regulations.

Minor conduct issues can often be resolved informally between the employee and the manager. These discussions should be held in private and without undue delay whenever there is cause for concern. A note of any such informal discussions should be placed on the employee's personnel file. Formal steps will be taken under this procedure if the matter is not resolved, or if informal discussion is not appropriate.

Employee's Rights

The following employee rights will be recognised by Ashfield Play Care Scheme;

- The right to be accompanied by a fellow employee or Trade Union Representative (“the Representative”), not acting in a legal capacity, at any **formal** stage of the process including during an appeal.
- The right to be fully advised of the nature of the allegations against them and possible consequences in writing, enclosing copies of any evidence at least 24 hours prior to any hearing.
- The right to state their case.
- The right not to be dismissed at the first instance unless this falls within the area of gross misconduct.
- The right to appeal against disciplinary action taken.

Representative's Role

The role of the representative is to provide support for the employee. The representative can address the meeting to present and sum up the employee's case, ask questions on behalf of the employee and confer with the employee during the hearing. The representative may not, however, answer a question directed at the employee, address the hearing if the employee does not wish it or prevent the employer from explaining their case. They may clarify any areas addressed to ensure the process is fair and understood.

The employee must give notice of who their chosen companion is, in good time before the hearing.

A companion is allowed reasonable time off from duties without loss of pay but no-one is obliged to act as a companion if they do not wish to do so.

Authority

Allegations of misconduct will be investigated by either the deputy manager, manager or Committee Trustee. Any disciplinary or appeal meetings will be, wherever possible, conducted by an independent manager who has not been involved in the case.

Procedure

Prior to any disciplinary action being taken an investigation into the facts and alleged misconduct will normally be conducted.

The purpose of an investigation is for the organisation to establish a fair and balanced view of the facts relating to any allegations, before deciding whether to proceed with a disciplinary hearing. No decision on disciplinary action will be taken until after a disciplinary hearing has been held.

The amount of investigation required will depend on the nature of the allegations 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.

Employees do not normally have the right to bring a companion to an investigative interview.

Following any investigation, if it is considered that there are grounds for disciplinary action, the employee will then be required to attend a disciplinary hearing. The employee will be advised in writing and the meeting arranged at a reasonable time and place, they will be given details of the allegations against them, advised on the possible outcomes and offered the right to have a representative present. The employee must make every effort to attend. No disciplinary action will be taken before a disciplinary hearing has been held.

The organisation will also provide:

- a copy of any relevant documents which will be used at the disciplinary hearing; and
- a copy of any relevant witness statements.

Employees must treat any information given to them in connection with a disciplinary matter as confidential, including the names of any witnesses and contents of witness statements.

The hearing will be held as soon as reasonably practicable, but the employee will be given a reasonable amount of time to prepare his/her case based on the information provided to him/her.

Procedure at Disciplinary Hearings

If the employee or the employee's representative are unable to attend the hearing they must inform the disciplining manager immediately and they will arrange an alternative time. The employee can suggest an alternative time and date so long as it is reasonable and it is not more than five working days after the original date. Employees must make every effort to attend the hearing, and failure to attend without good reason may be treated as misconduct in itself. Where an employee is persistently unable or unwilling to attend the hearing without a justifiable reason the hearing will be conducted and a decision taken by the disciplining manager in their absence.

The hearing will be chaired by a manager or Trustee. Another individual (who has not been involved in the case) will also be present for the purpose of note taking.

At the disciplinary hearing the allegations against the employee will be confirmed and discussed along with all the evidence that has been gathered. Employees will be able to respond and present any evidence of their own. The Employees companion may make representations to the disciplining manager and ask questions, but should not answer questions on the employee's behalf. Employees may confer privately with their companion at any time during the hearing.

The employee will receive confirmation in writing of the disciplining manager's decision and the reasoning for it as soon as reasonably practicable after the disciplinary hearing, but normally within seven days. This may also be explained to you in person.

The Procedure is a consecutive one in that an employee will progress on to the next stage if further disciplinary action is taken, even if it is not the same behaviour that was at issue before, however if the misconduct is sufficiently serious, certain steps in the procedure may be removed.

Suspension

At any point in the process, where appropriate an employee may be suspended on full basic pay whilst a full investigation is being carried out. An employee will be suspended by an appropriate manager and will be followed up in writing to the employee. This will provide details of why the employee has been suspended and point out that during such time, they remain bound by the terms and conditions of their contract of employment. Suspension with pay does not constitute disciplinary action. While suspended employees should not visit the premises, access the Scheme's IT systems or contact any clients, customers, suppliers, contractors or employees, unless authorised to do so by their line manager.

The usual penalties for misconduct are set out below. No penalty should be imposed without a hearing. Ashfield Play Care Scheme aims to treat all employees fairly and consistently, and a penalty imposed on another employee for similar misconduct will usually be taken into account but should not be treated as a precedent. Each case will be assessed on its own merits.

Formal Verbal Warning

A formal verbal warning will usually be appropriate for a first act of misconduct where there are no other active written warnings on the employees file.

A first written warning will be recorded and placed on the employee's personnel file and, in the event of satisfactory conduct, will not be used to progress to a higher level warning after a period of 12 months.

Written Warning

If conduct remains unsatisfactory despite a previous warning, or if there is a recurrence of the offence or the misconduct is sufficiently serious to warrant a more serious sanction than a formal verbal warning, then a written warning may be issued.

A written warning will be recorded and placed on the employee's personnel file and, in the event of satisfactory conduct, will not be used to progress to a higher level warning after a period of 12 months.

Should an employee be absent due to long term ill health or other leave such as maternity any recorded warning will be suspended for the duration of the absence and will be reinstated on their return to work. The employee will be notified of this process in writing.

Dismissal

If there is no improvement or further misconduct or gross misconduct occurs the employee may be dismissed.

Dismissal will usually only be appropriate for:

- misconduct during an employee's probationary period;
- further misconduct where there is an active written warning on an employee's file; or
- any gross misconduct regardless of whether there are active warnings on file. 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.

In some cases the organisation may at its discretion consider alternatives to dismissal. These will usually be accompanied by a written warning. Examples include demotion; a period of suspension without pay; loss of seniority; reduction in pay; loss of future pay increment or bonus; or loss of overtime.

Gross Misconduct

If, after careful investigation and a thorough disciplinary hearing, it is deemed that the employee has committed an offence which constitutes gross misconduct, which is a serious breach of contract and includes misconduct that, in the organisation's opinion, is likely to prejudice the Scheme's business or reputation or irreparably damage the working relationship and trust between Ashfield Play Care Scheme and the employee, then the normal process would be to summarily dismiss without notice.

Listed below are examples of what Ashfield Play Care Scheme would consider to be an act of gross misconduct. These are examples only and are not meant to constitute an exhaustive list.

- Gross insubordination to include failing to carry out a reasonable instruction.
- Failure to carry out legitimate managerial instruction(s).
- Aggressive behaviour, assaults or fighting, provoking or instigating a fight when on Scheme premises, on Scheme business or at a work function, or where action affects normal working relationships.
- Failure to comply with security or safety regulations, to include smoking in a non-smoking area.
- Being under the influence of or consumption of alcohol or drugs whilst on duty.
- Possession, supply or use of illegal drugs at work.
- Actual or threatened violence or behaviour which provokes violence.
- Deliberate and serious damage to Scheme property.
- Serious breach of Ashfield Play Care Scheme's policies, operating procedures and/or workplace rules.
- Child Abuse or being an Unfit Person under the terms of the Care Standards Act 2000 or the Children's Act 1989.
- Being charged with a criminal offence that may either affect the reputation or trust of the Scheme and/or employee OR affects their suitability to be employed and their DBS being revoked.
- Withholding information concerning serious breaches of rules and procedures.
- Knowingly breaching statutory rules or regulations.
- Causing loss, damage, or injury through serious negligence.
- Serious breach of health and safety rules.
- Borrowing Scheme monies without proper authority, unauthorised payment of wages, or removing money from petty cash.
- Serious misuse or misappropriation of Scheme monies or property or our name.
- Deliberate damage to property or administrative records, or Sabotage, including wilful damage whether actual, attempted or threatened of the Schemes or employees' property or administrative records.
- Unauthorised disclosure of confidential information acquired in the course of employment with the Scheme.

- Breach of the Scheme's rules on discrimination &/or harassment, bullying or any act of unlawful discrimination.
- Theft, fraud, accepting or offering a bribe, falsification of the Scheme's records or any dishonesty involving the organisation, its employees, customers or authorised visitors, or attempts to commit such offences.
- Indecent or otherwise distasteful behaviour.
- Any act which brings or is likely to bring the Scheme into disrepute or discredit.

Allegations against employees

All staff are advised to minimise time spent alone with children and be aware of the potential risk in doing so. If an allegation of abuse is made against a team member the manager will follow the procedures of the Safeguarding Policy.

If an allegation of abuse is made against the manager then a committee trustee will report the matter directly to Social Care and Ofsted.

Appeals Procedure

An employee has the right to appeal against any disciplinary decision, including dismissal. The intention to appeal must be given in writing within five working days of receiving the letter confirming the disciplinary outcome, to the person stated in the disciplinary confirmation letter.

The letter should state the reason for appeal and provide any new evidence where appropriate. The appeal manager will contact the employee in writing to arrange an appeal meeting, ideally within 15 working days.

If appealing against dismissal, the date on which dismissal takes effect will not be delayed pending the outcome of the appeal. However, if the appeal is successful the employee will be reinstated with no loss of continuous service or pay.

The appeal hearing will be conducted impartially by a manager or trustee who has not been previously involved in the case.

Following the appeal hearing the possible outcomes are that the manager may confirm the original decision; revoke the original decision; or substitute a lesser action.

The appeal manager will confirm their decision in writing as soon as possible, usually within 21 days of the appeal hearing. Where possible this will also be explained to you in person.

The outcome of this Appeal will be final. There is no further right of appeal.