

## **Barnies Day Nurseries and Out of School Clubs** **Grievance and Disciplinary Policy and Procedures**

Disciplinary rules and procedures are necessary to promote orderly employee relations as well as fairness and consistency. Disciplinary rules set standards of conduct and performance at work and procedures help to ensure that the standards are adhered to and also provide a fair method of dealing with alleged failures to observe them. Disciplinary procedures should be viewed primarily as a means of encouraging improvements amongst employees whose conduct or standard of work is unsatisfactory. This Policy applies to all permanent and fixed term employees working on the premises or working within the Barnies business structure.

Whilst engaged on any aspect of Barnies business, all employees are required to conduct themselves according to the rules and standards as outlined in the Terms and Conditions of Employment and related policies and procedures. This allows employees who are involved in isolated, minor misdemeanours the opportunity to improve their standard of conduct, but equally recognises that in cases of persistent or gross misconduct, employment will be terminated. All disciplinary action will be handled in line with the Disciplinary Policy and Procedure to ensure fairness and consistency.

### **INFORMAL ACTION**

This Policy outlines the formal steps of the Disciplinary Procedure, however, minor cases may be best dealt with in an informal way through coaching and counselling to encourage improvement. It is important that the employee understands the objective of the counselling, what action needs to be taken and how performance will be monitored and reviewed. Care should be taken to ensure that the informal meeting does not turn into a formal disciplinary meeting as this would unintentionally deny the individual certain rights. It is important to note that an informal counselling is not part of the formal Disciplinary Procedure.

### **DISCIPLINARY PROCEDURE**

#### **INVESTIGATION**

When a potential disciplinary matter arises the facts should be established promptly by way of an investigation. It is important that a record of the events that have taken place is kept for later reference. This normally involves holding a meeting with the employee/s involved and relevant witnesses. Minutes should be taken and where appropriate statements obtained. Having investigated the facts, the Manager or a designated Management panel will then decide if the matter is to be dealt with under the disciplinary procedure, whether a counselling/coaching is appropriate or whether to take no action. Before any disciplinary action is taken or a decision reached, the employee concerned must be informed of the allegations made against them, be informed of their right to be accompanied and given the opportunity to state their case at a disciplinary hearing to answer the allegations that have been made. It is recommended that a minimum of one working day's notification be given for a disciplinary hearing.

#### **PREVENTIVE SUSPENSION**

If circumstances surrounding an alleged or apparent incident of misconduct appear such that management considers it inappropriate to allow an employee to finish their working day/shift, the employee should be placed on preventive suspension from that point. For example where it is considered there are risks to employees, employer's property or a responsibility to other parties. This decision should be taken following consultation with the Proprietor. When an employee is placed on suspension, he/she should supply a contact address and telephone number.

Employees should be informed they are required to make themselves available within normal working hours.

Preventive suspension may also be extended beyond the end of the day/shift into subsequent days to enable a thorough investigation to take place.

It should be made clear to the employee concerned that this suspension is not disciplinary action and that no disciplinary action has taken place. It should also be stated that this period is with pay. In these cases the investigation should be concluded as soon as possible

## **RIGHT TO BE ACCOMPANIED**

The employee has the right to be accompanied in a disciplinary hearing by a single companion/representative who is either a fellow worker or a full time official employed by a trade union or lay trade union official.

There is no duty on the fellow employee or the trade union official to accept a request to accompany a worker.

In order to be accompanied the employee must make a reasonable request. This means that in making their choice, an employee should consider who is appropriate to accompany them in the meeting. For example, it may not be appropriate to insist on a colleague whose presence would prejudice the meeting.

An employee or trade union official, who has been requested to accompany a colleague and has agreed to do so, is entitled to take a reasonable amount of time to fulfil this responsibility, to attend the hearings and also to familiarise themselves with the case and to confer privately with the employee concerned.

Where a companion cannot attend on the proposed day it is reasonable to change this to accommodate his/her attendance provided the hearing takes place within 5 working days (the first day being the day after the original proposed date).

The chosen companion has a statutory right to address the hearing but no statutory right to answer on the employee's behalf. However, the companion may ask questions.

If it is considered that there may be either an understanding or language difficulty, an interpreter (or other as appropriate) should be considered. This can usually be another employee. Where the accompanying person/representative is able to act as an interpreter, he or she may perform the dual role. However, the individual is entitled to an interpreter and an accompanying person if preferred.

## **STANDARDS OF CONDUCT**

Whilst engaged on Barnies business all employees are required to conduct themselves according to the rules and standards of conduct laid down in the Terms and Conditions of employment, related agreements, Barnies policies rules and procedures and the law of the land. Breaches may result in disciplinary action. Where a new policy, rule or procedure is introduced this will be communicated to the employees concerned.

## **DISCIPLINARY ACTION**

Other than in the cases of Gross Misconduct the procedure is intended to be progressive, with the intention of encouraging improvement and preventing further occurrences. However, the stage at which the procedure is initiated is dependent upon the seriousness of the misconduct.

When deciding on whether action is appropriate and what form it should take, factors for consideration which may be relevant include the extent to which standards have been breached, precedent, the employees disciplinary record and general service and special circumstances which may make it appropriate to adjust the severity of the penalty.

Prior to the disciplinary meeting, an employee must receive, in writing, an explanation of the conduct, capability or other circumstances which has led the Barnies to consider dismissal or disciplinary action.

## **STAGE ONE – RECORDED VERBAL WARNING**

In the case of minor infringements an employee should be given a Recorded Verbal Warning.

It will be made clear to the employee that this warning constitutes the first step of the disciplinary procedure and that failure to improve may lead to escalation of the procedure.

A record of the warning will be given to the employee outlining the reasons for the warning.

The employee will be informed that this warning will remain live in their personal file for a period of 6 months but will be disregarded for disciplinary purposes after this period.

The employee will be informed of their right to appeal against this warning and the appeal procedure.

A copy of the warning should also be given to the employee's representative where applicable, and a copy retained by Barnies.

## **STAGE TWO - WRITTEN WARNING**

Where there is a failure to improve or if the infringement is more serious, a Written Warning will be issued.

The employee will be informed that failure to improve may lead to escalation of the procedure and that this second stage of the disciplinary procedure.

A record of the warning will be given to the employee outlining the reasons for the warning.

The employee will be informed that this warning will remain live in their personal file for a period of 12 months but will be disregarded for disciplinary purposes after this period.

The employee will be informed of the right to appeal and the appeal procedure.

A copy of the warning should also be given to the employee's representative where applicable, and a copy retained by Barnies.

## **STAGE THREE - FINAL WRITTEN WARNING**

Where there is a failure to improve, or if the infringement is sufficiently serious, an employee will be issued with a Final Written Warning.

The employee will be informed that failure to improve or modify behaviour may lead to the employee's dismissal and that this is the third stage of the disciplinary procedure.

A record of the warning will be given to the employee outlining the reasons for the warning.

The employee will be informed that this warning will remain live in their personal file for a period of 12 months but will be disregarded for disciplinary purposes after this period.

The employee will be informed of their right to appeal and the appeal procedure.

A copy of the warning should also be given to the employee's representative where applicable, and a copy retained by Barnies.

## **STAGE FOUR – DISMISSAL**

If an employee's conduct or performance fails to improve the employee may be dismissed from Barnies or further misconduct takes place during the currency of a final written warning, whether or not involving a repetition of conduct which was the subject of the final written warning; or it is reasonably believed that an employee has committed an act of gross misconduct.

a) The employee will be informed of the date and reason/s for the termination of employment.

b) The employee will be informed of their right to appeal and the appeal process.

c) The employee will be informed of the arrangements for outstanding pay and notice pay.

d) The decision to dismiss and reasons for dismissal must be confirmed to the employee in writing.

A decision to dismiss will normally be taken by the Manager after you have received a written invitation to a disciplinary hearing and the disciplinary hearing has been held. If the Manager decides to dismiss you, he or she will state the reason, the date on which the dismissal takes effect and inform you of your right to appeal as soon as reasonably practicable after the end of the disciplinary meeting. These matters will be confirmed in writing.

## **GROSS MISCONDUCT**

Where an infringement is sufficiently serious the employee may be summary dismissed (dismissed and paid unto the day of the dismissal only).

### **EXAMPLES OF GROSS MISCONDUCT INCLUDE**

- Theft
- Fraud
- Fighting, assault
- Deliberate damage to Barnies property
- Being under the influence of alcohol or illegal drugs
- Serious misuse of I.T./computer facilities
- Serious negligence which causes unacceptable loss, damage or injury
- Serious acts of insubordination
- Threatening or bullying behaviour
- Falsification of Barnies records or any dishonesty involving Barnies, its employees, customers, or authorised visitors or attempts to commit such offences

- Unauthorised disclosure of confidential information
- Any action likely to endanger seriously the health and safety of the employee or any other person;
- Any action or behaviour which could seriously damage the Barnies reputation;
- Serious acts of discrimination.

A meeting will take place to discuss the accusation of the alleged gross misconduct. The employee will be informed of the date and reason/s for the termination of employment. The employee will be informed of their right to appeal and the appeal process. The employee will be informed of the arrangements for outstanding pay. The decision to dismiss and reasons for dismissal will be confirmed to the employee in writing

## **OTHER SANCTIONS**

It may be appropriate to issue other sanctions in conjunction with or as an alternative to a warning. These may include; transfer, demotion or loss of seniority. Where an employee is considered for dismissal, but after full consideration a Final Written Warning is issued, this warning may also include a short period of unpaid suspension (no more than 5 working days). The responsibility for deducting pay is held with the Proprietor.

## **DISCIPLINARY APPEAL PROCEDURE**

All employees have the right to appeal against any formal disciplinary warning. The employee should state the reason(s) for the appeal in writing within 5 working days of receiving the disciplinary warning. The appeal will be heard by an appropriate Manager, usually the next level of management if possible. The Manager hearing the appeal must not have been involved with the previous disciplinary meeting.

The appeal should be dealt with as promptly as possible, wherever possible within 5 working days of receiving the appeal.

The employee should receive a minimum of one working day's notice of the date and time of the appeal meeting to enable the employee to gather his or her evidence for submission.

At the meeting the employee will have the opportunity to discuss his/her appeal.

The employee has the right to be accompanied at the appeal meeting. An adjournment may take place to give full consideration to the evidence submitted at the appeal. The meeting will reconvene and the employee informed of the outcome of the appeal.

### **THE APPEAL OUTCOME MAY BE:**

Upheld and the disciplinary action withdrawn

Substituted for a lesser disciplinary action

Rejected and the original action remains.

Where new evidence comes to light during an appeal, which was previously not disclosed and as a result the offence is now deemed to be of a more serious nature, the warning may be escalated to a warning which reflects the offence.

## **SPECIAL CIRCUMSTANCES**

Certain circumstances may require special consideration when handling disciplinary matters such as:

### **TRADE UNION OFFICIALS**

Although normal disciplinary standards should apply, the employee has the right to be accompanied in a disciplinary hearing by a full time official employed by a trade union or lay trade union official, who has been certified by their union as competent to accompany the employee.

### **CRIMINAL CHARGES OR CONVICTIONS OUTSIDE EMPLOYMENT**

These should not be treated as automatic reasons for dismissal. Consideration should be given to whether the offence is one that makes employees unsuitable for their type of employment.

In all cases it will be considered whether the conduct is sufficient to warrant disciplinary action. Employees should not be dismissed solely because a charge is pending against them or they are absent as a result of being remanded in custody.

#### **GRIEVANCES WITHIN THE DISCIPLINARY PROCEDURE**

If, during a disciplinary case, an employee raises a grievance about the behaviour of a Manager handling the case, depending of the circumstances it may be appropriate to suspend the disciplinary procedure for a short period until the grievance is considered. Consideration should also be given to the appropriateness of another Manager dealing with the disciplinary case.

#### **OTHER**

There may be circumstances where the disciplinary procedure does not apply, eg, some collective dismissals, some gross misconduct dismissals or dismissals where employment cannot continue for reasons beyond anyone's control.

#### **FAIR AND EQUAL TREATMENT**

In all circumstances, when operating the procedure there will be no discrimination on the grounds of sex, marital status, age, race, nationality, ethnic or national origin, disability, religion, political opinion or sexual orientation.

#### **RECORDS**

Records should be kept detailing the nature of any breach of Barnies policies, rules or procedures requiring formal action, of the employee's defence, and any subsequent appeal or action. These records should be kept confidential and retained in accordance with the Data Protection Act 1998. Where appropriate, copies of meeting records should be given to the individual/s concerned, however some information may be withheld for confidentiality purposes or to protect witnesses.

Barnies operates a confidentiality policy in all aspects of its operations and procedures. This policy is governed by its contents.

This policy will be reviewed on an annual basis or whenever further legislation is introduced which may require amendments to its constitution.