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Disciplinary Policy and Procedure

Date: February 2022

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Policy Owner: People Strategy and Projects Team

Distribution: Internal Non-Confidential

**Purpose**

The purpose of this policy and procedure is to:

1. provide a framework for addressing employee conduct which falls below the expected standards and seeks wherever possible, to improve employee conduct;
2. ensure prompt, consistent and fair treatment of employees who will be advised of the nature of any complaint relating to their conduct and be given the opportunity to state their case before a decision is made;

This policy is non-contractual and Barnardo’s reserves the right to amend this policy at any time.

**Scope**

This policy applies to employees who have successfully completed their probationary period, except for act(s) of serious or potential gross misconduct committed during an employee’s probationary period, which will be addressed through the Disciplinary Procedure.

The policy does not apply to As and When Workers except where there are allegations relating to safeguarding.

**Roles and Responsibilities**

**Employees** are responsible for achieving and maintaining expected standards of conduct and are expected to co-operate with the procedure to enable it to be completed as quickly as possible.  
**Line Managers** are responsible for managing the conduct of employees in accordance with this procedure, ensuring that employees are aware of the expected standards of conduct and are treated fairly and consistently.   
**UNISON‘s** role and that of other trade union representatives is to represent the views and interests of their members who are subject to this policy and its associated procedures.   
**People Teams** are responsible for advising and supporting managers in the implementation of this policy and associated procedures, including where appropriate, attendance at formal meetings.

**People Strategy and Projects Team** is responsible for ensuring this policy and procedure complies with current statutory obligations, taking account of the ACAS and Labour Relations Agency Codes of Practice and updating this policy and other associated documents accordingly.

**Policy**

## General Principles

* 1. Barnardo’s recognises that going through a disciplinary procedure can be stressful and therefore employees will be made aware of [sources of support](https://livelink.barnardos.org.uk/otcs/llisapi.dll/open/302041577) available and where appropriate adjustments to the procedure will be considered to support employee wellbeing
  2. Wherever possible, every attempt should be made to resolve minor misconduct through discussion either as part of supervision/1:1’s or another private meeting which should be recorded placed on the employee’s staff file.
  3. The disciplinary policy may commence at any level as justified by the severity of the alleged misconduct.
  4. Employees will not be dismissed for a first breach of discipline except in cases of gross misconduct when the sanction will be dismissal without pay and without pay in lieu of notice.

## Safeguarding Allegations

* 1. Any reported breaches of our Safeguarding policy, Safeguarding Code of Conduct and/or professional/regulatory boundaries will be subject to this disciplinary policy and procedure.
  2. For any safeguarding allegation e.g. one which suggests that an adult working for or with Barnardo’s has caused significant harm to a child or adult, committed a criminal offence against a child or adult, or behaved in such a way that calls into question their suitability to work with children or adults at risks, an [Allegation Against An Adult Reporting Form](https://inside.barnardos.org.uk/sites/default/files/2021-07/Allegations%20against%20Adults%20Form_July%202021.doc) must be completed within 24 hours of the manager receiving the allegation.
  3. For any safeguarding allegations, managers must also refer to the [Investigation Guidance for Managers](file:///C:\Users\caroline.nuttall\AppData\Local\Microsoft\Downloads\Investigation%20guidance%20for%20managers.doc): [Responding to external investigations | Inside Barnardos](https://inside.barnardos.org.uk/safeguarding/responding-external-investigations) and [Referral Guidance’](https://inside.barnardos.org.uk/sites/default/files/2021-05/Referral%20Guidance.pdf) at the start of the process to ensure they are aware of how the investigation must be conducted, and if and when they need to make referrals to any external/ professional or regulatory bodies.
  4. Where any safeguarding matter is subsequently referred to the police or relevant external body, Barnardo’s policy is that the internal disciplinary process should continue to move forward alongside any external investigation as far as is reasonably practicable.
  5. Where such an issue arises advice should be sought via the Local People Team to determine whether under specific circumstances it is more appropriate to wait for the external processes to complete or if it is reasonable to reach employment decisions based on the evidence gathered internally.
  6. Where an employee chooses to resign before an investigation or procedure relating to allegations of safeguarding or serious misconduct have been completed, the process must still continue to a final conclusion as far as is reasonably practicable.

## **Equality and Diversity**

* 1. This policy will be applied without any distinction as to age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex, sexual orientation, and irrelevant offending background, responsibility for dependants, economic status or political values.
  2. Any substantiated reported breaches of our bullying and harassment policies or our Equality, Diversity and Inclusion code of conduct, will be subject to this disciplinary policy and procedures.
  3. Managers must consider appropriate reasonable adjustments to the procedure to ensure that a disability, impairment, mental or physical health condition, language or literacy are not a barrier to fair access and treatment.
  4. Barnardo’s recognises that an employee's behaviour can sometimes be affected if they are experiencing poor mental health. Where this is believed to be the case appropriate support and adjustments (for example a referral to Occupational Health or Employee Assistance Programme) will be explored in the first instance before proceeding with any formal disciplinary action.

## Right to be accompanied

* 1. Employees have the right to request to be accompanied at a formal disciplinary hearing held under the formal procedure by a Barnardo’s colleague or UNISON/other trade union representative.
  2. There is no statutory right to be accompanied to an investigation meeting. However, an employee may make a request to be accompanied in certain circumstances which will be considered by the investigating manager.
  3. For further details, refer to the Accompaniment information sheet.

## Precautionary Suspension

* 1. There may be instances where a period of suspension, with pay, is necessary, having considered any alternatives to suspension.
  2. Suspension is precautionary, is not used as a disciplinary sanction and does not involve any prejudgement.
  3. The period of suspension should be as brief as possible and kept under review.
  4. If an employee is suspended, they will be informed in advance of the reason for doing so and the terms of suspension, which will be subsequently confirmed in writing.
  5. In the case of safeguarding issues relating to an As and When Worker they cannot be ‘suspended’ during the disciplinary process as they do not have employment status, but instead should not be considered for any further work until the matter has been investigated and the outcome of the disciplinary process known and considered.

## Trade Union Officials

In accordance with the ‘Facilities Agreement’ between Barnardo’s and UNISON,

no disciplinary action will be taken against an elected representative of UNISON until Barnardo’s has discussed the matter with the UNISON full-time officer via the Local People Team (who must also inform the People Strategy and Projects Team).

## Data Protection

Barnardo’s processes and holds personal data collected during the investigation stage and any subsequent stages of disciplinary action in accordance with Barnardo’s [Privacy Notice.](https://www.barnardos.org.uk/privacy-notice#personaldata) In particular, data collected as part of the investigation stage and any subsequent stages of disciplinary action is held securely and accessed by, and disclosed where necessary for the purposes of completing the disciplinary procedure. Key facts established through the disciplinary procedure may subsequently be disclosed in accordance with the Referral Guidance and Giving References Policy.

**Procedure**

## Establishing the facts

* 1. When a potential disciplinary matter arises, an investigating manager will conduct an investigation to establish the facts, which may include holding an investigation meeting with the employee.

1.2 Once the facts of the case are established the investigating manager will inform the employee of the outcome. The outcome of the investigation may be:

* That there is no case to answer and therefore no disciplinary action is taken.
* That the matter is dealt with informally, with support and/or training as appropriate to resolve the matter.
* A recommendation that there is a disciplinary case to answer and a disciplinary hearing is arranged.

## Disciplinary hearing

* 1. Where it is decided there is a disciplinary case to answer, the employee will be notified in writing and invited to a disciplinary hearing.
  2. Wherever possible the hearing will be undertaken by a different manager to who conducted the investigation.
  3. The hearing should be held without unreasonably delay whilst allowing the employee enough time to prepare for the meeting and to present their case.
  4. If the employee or their companion is unable to attend the disciplinary hearing, an alternative date will be arranged that is within five working days of the original date given (unless not reasonably practical).
  5. The disciplinary hearing will provide the employee with the opportunity to set out their case, call their own witnesses, and answer the allegation(s) that have been made.
  6. At the end of the meeting, the manager will then adjourn the disciplinary hearing to review all the evidence and decide whether the allegation(s) is (are) upheld, whether a disciplinary sanction is appropriate and if it is at what level.

## Disciplinary hearing outcome

* 1. The outcome will either be confirmed on the day (and then in writing) or confirmed in writing following the meeting, or if necessary, a further meeting will be convened to deliver the outcome (again with the outcome subsequently confirmed in writing).

The outcome could be:

i/ No Further Action required under Barnardo’s disciplinary policy. Could include recommendations for further informal follow-up actions such as mediation, further training, increased supervision, other management action etc.

ii/ First Written Warning which will usually last for a period of 6 months, unless there are exceptional circumstances. Barnardo’s will withhold any SAPA increase /store performance related bonus (Retail only) during the period the warning applies. Eligibility for SAPA/store performance related bonus is reinstated on expiry of the warning.

iii/ Final Written Warning which will apply where:

* there is no satisfactory improvement in the employee’s conduct as a result of the first written warning, or
* a further related offence is committed, or any other instance of misconduct arises; or
* an employee’s first misconduct is sufficiently serious to warrant a final written warning.

A final written warning will usually last for a period of 12 months, unless there are exceptional circumstances. Barnardo’s will withhold any SAPA increase/store performance related bonus (Retail only) during the period the warning applies. Eligibility for SAPA/store performance related bonus is reinstated on expiry of the warning.

iv/ Dismissal which will apply where:

* there is no satisfactory improvement in the standard of conduct as a result of the previous issued warning(s),
* a further instance of misconduct arises within the previous warning period, or
* the above combined with other facts may warrant dismissal in the view of Barnardo’s as an employer, or
* the seriousness of the matter warrants this sanction to be applied in the first instance e.g. gross misconduct and dismissal is deemed reasonable in all of the circumstances.

If the employee is able to offer relevant mitigation, the manager can consider alternatives to dismissal. These may include deployment into a different role, demotion or extending an existing final written warning. Some alternatives to dismissal may affect pay and other terms and conditions of employment, and will usually be accompanied by a final written warning of 12 months’ duration. Barnardo’s may also withhold any SAPA increase/performance related bonus (Retail only) during the period the warning applies. If alternatives to dismissal are not accepted, dismissal will result.

The employee will be notified of the decision to dismiss as soon as possible and this will be confirmed in writing, including the reasons for dismissal, the date on which the employment contract will end, the period of notice (if any) and the employee’s right of appeal. In cases of gross misconduct dismissal will be without notice and without pay in lieu of notice.

## Gross Misconduct

4.1 Some acts, termed gross misconduct, are so serious in themselves or have such serious consequences that they may call for dismissal without notice for a first offence. Below is a list which gives examples of misconduct, which would be regarded as gross misconduct, unless there are exceptional circumstances or genuine mitigating factors. This list is not exhaustive and should be referred to as a guide:

* Breach of the Safeguarding Code of Conduct;
* Breach of the EDI Code of Conduct;
* Breach of the IT Code of Practice;
* Failure to report a mandatory statutory requirement, e.g. Female Genital Mutilation;
* Theft, fraud, falsification of records or financial irregularities;
* Dishonesty and breaches of Anti-bribery & Corruption policy;
* Physical violence, sexual misconduct, serious verbal abuse, written abuse (e.g. email);
* Serious insubordination;
* Conviction for a criminal offence that is relevant to the employee’s employment;
* Deliberate or serious damage to, or misuse of, Barnardo’s property or equipment;
* Serious breach of Barnardo’s policies and procedures, including but not restricted to, health and safety;
* Working under the influence of alcohol, drugs or solvent abuse;
* Possession, custody or control of illegal drugs on any Barnardo’s premises;
* Serious negligent conduct or performance;
* Conduct that brings Barnardo’s name into disrepute;
* Race, sex, disability, age, sexual orientation, religious/belief, gender reassignment, marriage and civil partnership or pregnancy and maternity discrimination or harassment; and
* Serious breach of data protection.

Other acts of misconduct may come within the general definition of gross misconduct.

## Appeal

5.1Where an employee believes that disciplinary action taken against them is wrong or unjust, they have the right to appeal the decision by writing to the nominated impartial manager stating the grounds of appeal and the reasons for those grounds, within five working days of receipt of the letter confirming the disciplinary outcome.

5.2 Appeals will be heard by a manager who has not previously been involved in the case and wherever possible will be more senior than the person who issued the disciplinary sanction. Barnardo’s exercises the right to determine who should hear appeals.

5.3 The employee has the right to request to be accompanied at an appeal hearing. For further details, refer to Accompaniment information sheet.

5.4 Appeal manager reviews the grounds of appeal to decide whether the format of the appeal will take the form of a review or rehearing. Whilst the majority of appeals will take the form of a review, a rehearing may be appropriate to correct a previous procedural flaw. The employee must be specific about the grounds of an appeal as these will form the agenda for the appeal hearing and may determine who should be present.

5.5 The grounds of appeal will be fully explored and any new information directly relevant to the original disciplinary outcome that has come to light since the disciplinary hearing may be presented at the appeal by either the employee or by Barnardo’s.

5.6 If new evidence results in new or more serious allegations being raised against the employee during the appeal process, the manager should adjourn the appeal hearing to seek advice from the People Team on how to proceed.

5.7 The manager having explored the relevant issues will consider the facts and reach a decision. The decision may uphold the original decision (in part or in full); or dismiss the appeal, and depending upon the outcome, may also reduce the outcome of the original disciplinary hearing.

5.8 The outcome of the appeal hearing will either be confirmed on the day (and then in writing) or confirmed in writing following the meeting, usually within five working days, unless otherwise agreed. The decision reached will be final and the employee has no further right of appeal.

**Definitions**

* **Misconduct** – occurs when an employee breaks specific rules about behaviour or their conduct falls below the standard required. Examples of misconduct might include (but are not limited to) persistent bad timekeeping, unauthorised absence, inappropriate use of workplace facilities, refusing to follow instructions, minor breaches of Barnardo’s policies and procedures etc.

**Associated guidance and documents**

* Disciplinary Procedure Flow chart
* Frequently Asked Questions on Discipline
* Generic investigation guidance for managers (available from People Team)
* Investigation guidance for managers: Responding to external investigations into safeguarding/gross misconduct allegations
* Information sheet on Accompaniment
* Sources of Support

**References**

* ACAS Code of Practice: Disciplinary and Grievance Procedures
* ACAS Guide: Discipline and Grievances at Work
* Employment Act (Northern Ireland) 2011
* Employment (Northern Ireland) Order 2003 (SI 2003/2902) (NI 15)  
  Employment (Northern Ireland) Order 2003 (Dispute Resolution) Regulations (Northern Ireland) 2004 (SI 2004/521)
* The Labour Relations Agency (LRA, Northern Ireland), Code of Practice on disciplinary procedures

**Document History**

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| 1.0 | 01.12.15 | Policy & Advice Team | Agreed by Everton Bryan | Approved 02.11.15 |
| 1.1 | 07.06.17 | Policy & Advice Team | Agreed | Updated to reflect new safeguarding reporting forms |
| 1.2 | 01.06.18 | Policy & Advice Team | Agreed by CLT | Reviewed as part of CLT priority policy list |
| 1.3 | 28.02.22 | People Strategy and Projects Team |  | Update to reflect trauma informed practice, appeal remit, removal of reference to first and final warning |