



# Disciplinary Policy & procedure

## **1 Purpose and Legal Obligations**

The purpose of this policy is to set out The Apple Trust's position and procedures on workplace discipline. At The Apple Trust we follow our legal obligations as an employer at all times including dealing with any disciplinary matter in a fair and consistent manner. We have the following policy and procedure that sets out our process.

The Disciplinary Policy and Procedure has been written in accordance with the ACAS Code of Practice and grievance procedures (2015). A full copy of the ACAS Code of Practice and the accompanying guidance can be obtained from the ACAS website <http://www.acas.org.uk>. It is designed to help managers, employees and their representative's deal with grievance situations in the workplace.

### **Objectives and guiding principles**

The purpose of the Disciplinary Policy and Procedure is to encourage all employees to achieve and maintain high standards of conduct and behaviour, attendance and job performance in accordance with the requirements of The Apple Trust policies (a copy which is located in the office and staff rooms).

The Disciplinary Policy and Procedure provides a mechanism for disciplinary matters to be dealt with promptly, fairly. The objective of this procedure is to set out the standards of conduct expected of all staff and to provide a framework within which our managers can work with employees to maintain satisfactory standards of conduct and to encourage improvement where necessary.

It is our policy to ensure that any disciplinary matter is dealt with fairly and consistently. We will take the necessary steps to establish the facts and to give employees the opportunity to respond before taking any formal action.

This procedure does not form part of any employee's contract of employment and it may be amended at any time. We may also vary this procedure, including any time limits, as appropriate in any case.

The procedure applies to all employees regardless of length of service.

Minor conduct issues can often be resolved informally between the employee and their line manager. These discussions should be held in private and without undue delay whenever there is a cause for concern. Where appropriate a note of any such discussions may be held on the employee's personnel file, but will be ignored for the purpose of future disciplinary issues.

Formal steps will be taken under this procedure if the matter is not resolved, or if informal discussion is not appropriate (due to the serious nature of the allegation against you).

The employee will not normally be dismissed for a first act of misconduct, unless it is decided it amounts to gross misconduct or the employee has not yet completed their probationary period. Complaints made against an employee by another employee (under the grievance procedures) will be investigated and dealt with under the disciplinary procedure and the aggrieved employee will be informed of the outcome, where appropriate.

Complaints and/or concerns arising from the Whistle blowing policy and/or reporting of suspected fraud will be investigated and dealt with under the disciplinary procedure.

It is recognised that there may be matters that cannot be dealt with internally and The Apple Trust reserves the right to make referrals to external authorities that may need to be involved (for example the Knowsley Social Care Team, Knowsley Early Years, Ofsted and the Police).

## **Principles**

Informal action will be considered, where appropriate to resolve problems. No disciplinary action will be taken against an employee until the case is investigated.

For formal action the employee will be advised of the nature of the complaint against him or her and will be given the opportunity to state his or her case before any decision is made at a disciplinary meeting.

Employees will be provided where appropriate with written copies of evidence and relevant witness statements in advance of a disciplinary meeting.

At all stages of the procedure the employee will have a right to be accompanied by a trade union representative, or work colleague. The employee must inform the nursery manager prior to the meeting who their chosen companion is. If their companion is unreasonable, for example, there may be a conflict of interest, the nursery manager may require the employee to choose someone else.

No employee will be dismissed for a first breach of discipline except in the case of gross misconduct, when the penalty will be dismissal without notice or payment in lieu of notice.

An employee will have a right to appeal against any disciplinary action.

## **Criminal charges or convictions**

Criminal investigations, charges or convictions for some offences, such as dishonesty or violence committed outside working hours may result in disciplinary proceedings taken against the employee up to and including summary dismissal. The Apple Trust will consider whether or not the employee's conduct or convictions merit action because of employment implications.

An external investigation, charge or conviction for any other type of offence may result in disciplinary proceedings being taken against the employee where, in the opinion of The Apple Trust, it is such as to affect, or be likely to affect: the suitability of the employee for the position in which they are employed; or the business or reputation of The Apple Trust; or where the existence of the charge or conviction could otherwise seriously undermine the trust and confidence that The Apple Trust has in the employee.

## Disciplinary offences

Matters that The Apple Trust views as amounting to disciplinary offences include (but are not limited to):

- Persistent bad timekeeping
- Unauthorised absence
- Minor damage to The Apple Trust property
- Failure to observe The Apple Trust policies and procedures
- Abusive behaviour or language
- Dishonesty
- Unreasonable refusal to follow an instruction issued by a manager, supervisor or trustee.
- Deliberate failure to reach required standards of performance
- Failure to maintain (or elapsed) professional registration
- Poor attendance
- Smoking in non-designated areas of The Apple Trust premises

Matters that The Apple Trust views as amounting to gross misconduct include (but are not limited to):

- Theft from The Apple Trust, its employees/workers or the public.
- Fraud – any deliberate attempt to defraud The Apple Trust, its employees/workers, or members of the public.
- Failure to comply with requirements to declare interests and any gifts or hospitality received.
- Falsification of documents (personal, children's or company data), which includes, records, reports, accounts, expense claims, registers/ time sheets or self-certification forms, whether or not for personal gain
- Falsification or loss of a qualification or professional registration that is a stated requirement of the employee's employment or results in financial gain to the employee
- Sexual misconduct at work
- Fighting with or physical assault on employees/workers or the public
- Deliberate damage to The Apple Trust property or that of its employees/workers or members of the public whilst on The Apple Trust premises
- Drunkenness or being under the influence of illegal drugs while at work (including incapacity to perform normal duties)
- Possession, custody or control of illegal drugs on The Apple Trust premises
- Serious breach of The Apple Trust policies, procedures and rules
- Abuse of The Apple Trust computer system, including internet and email
- Breach of data protection, confidentiality or information security rules; including misuse of or failure to safeguard confidential information and/or children's/ parents data.
- Gross negligence (including any action or failure to act which seriously threatens the health and safety of any child, employee/worker or member of the public)
- Conviction, or management's reasonable belief, of a criminal (or other) offence that is relevant to the employee's employment
- Conduct that brings The Apple Trust name into disrepute
- Any form of bullying of children, employees/workers or the public

- Discrimination or harassment of a child, fellow employee/worker on the grounds of sex, sexual orientation, gender re-assignment, race, disability, age or religion or belief.

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

#### **4. Policy Statement**

Whenever the disciplinary procedure is being followed, it is important that issues are dealt with fairly. There are a number of elements to this:

- Managers, trustees, employees and volunteers should always try to resolve problems in the work place at the earliest possible opportunity and usually with the least possible formality.
- Ideally, matters should be addressed before they reach the stage of becoming a formal disciplinary issue.
- Managers and trustees should raise and deal with issues promptly and should not unreasonably delay meetings, decisions or confirmation of those decisions.
- Managers and trustees should carry out any necessary investigations, to establish the facts of the case (except where there is an allegation for safeguarding or child protection, when the safeguarding procedures will be followed).
- Managers and trustees should inform employees of the basis of the problem and give them an opportunity to put their case in response before any decisions are made.
- Employees are entitled to be accompanied at any formal disciplinary meeting; and to appeal against any formal decision made.

The Apple Trust recognises that a formal disciplinary procedure can be a stressful and upsetting experience for all parties involved. Everyone involved in the process is entitled to be treated calmly and with respect. The Trust will not tolerate abusive or insulting behaviour from anyone taking part in or conducting disciplinary procedures and will treat any such behaviour as misconduct under this procedure.

Records may include:

- The complaint against the employee
- The employee's defence
- Findings made and actions taken
- Reasons for actions taken
- Whether there was an appeal and, if so, the outcome
- Any grievances raised during the disciplinary procedure
- Subsequent developments
- Notes of any formal meeting.

#### **Disciplinary procedure**

Our aim is to deal with disciplinary matters sensitively and fairly. All employees must treat all information in connection with the disciplinary procedure and its investigation as confidential.

Where there has been a serious allegation of misconduct or gross misconduct and/or there are serious concerns regarding the employee's capability, we aim to

establish the facts quickly and no disciplinary action will be taken until the matter has been fully investigated. The employee will be informed if a formal complaint is made against them, and if necessary they may be suspended without prejudice on full pay pending the outcome of the investigation and disciplinary procedure.

It is company policy that the following procedure should be followed when an employee is being disciplined or dismissed. The procedure provides that in normal cases an employee will be given a series of warnings before discipline or dismissal is contemplated. The stages of the procedure that apply when a disciplinary penalty, eg demotion or dismissal, is applied.

Matters which may be dealt with under this disciplinary and dismissal procedure include discipline and dismissal for the following reasons:

- misconduct
- sub-standard performance
- harassment or victimisation
- misuse of company facilities including computer facilities (eg email and the Internet)
- poor timekeeping
- unauthorised absences

Minor cases of misconduct and most cases of poor performance may be dealt with by informal advice, coaching and counselling. An informal oral warning may be given, which does not count as part of the formal disciplinary procedure. No formal record of this type of warning will be kept.

If there is no improvement or the matter is serious enough, you will be invited to a disciplinary meeting at which the matter can be properly discussed. You will be allowed to bring a work colleague or trade union representative to the meeting. The outcome of the meeting will be communicated to you. There are the following possible outcomes.

### ***Oral warning***

In the case of minor infringements you may be given a formal oral warning. A note of the oral warning will be kept on your file but will be disregarded for disciplinary purposes after a specified period (eg six months). You have the right to appeal against a formal oral warning.

### ***Written warning***

If the infringement is more serious or there is no improvement in conduct after a formal oral warning you will be given a formal written warning giving details of the complaint, the improvement or change in behaviour required, the timescale allowed for this, the right of appeal and the fact that a final written warning may be given if there is no sustained satisfactory improvement or change. A copy of the written warning will be kept on file but will be disregarded for disciplinary purposes after a specified period (eg 12 months).

### ***Final written warning***

Where there is a failure to improve or change behaviour while a prior formal written warning is still in effect, or where the infringement is sufficiently serious, you may be given a final written warning. This will give details of the complaint, warn that failure to improve will lead to dismissal and refer to the right of appeal. The final written warning will be kept on file but will normally be disregarded for disciplinary purposes after a specified period (eg 12 months).

### ***Dismissal***

If your conduct or performance still fails to improve the final step will be to contemplate dismissal, or taking action short of dismissal, eg demotion. If we are contemplating dismissing you or applying some other disciplinary penalty, we will begin the following procedure.

Step 1: We give you a written statement and call a meeting to discuss the matter

We will set out in writing your alleged conduct, characteristics or other circumstances which led us to contemplate dismissing or taking disciplinary action against you. We will also set out the basis on which we have made the allegations against you. If possible, we will provide you with copies of any relevant evidence against you. The employer will invite you to a hearing to discuss the matter.

Step 2: Meeting is held and employer informs employee of the outcome

The meeting will take place before any disciplinary action, other than suspension on full pay, is taken. The meeting will be held without undue delay but only when you have had a reasonable opportunity to consider your response to our written statement and any further verbal explanation we may give. You must take all reasonable steps to attend the meeting.

After the meeting we will inform you of our decision and notify you of your right to appeal if you are not satisfied with it.

Step 3: Appeal against the disciplinary decision if necessary

If you wish to appeal you must inform Chair of Trustees in writing within a reasonable time.

If you do this, we will invite you to attend a further meeting. You must take all reasonable steps to attend the meeting. If practicable a more senior manager not previously involved in the disciplinary procedure will hear the appeal.

The appeal hearing may take place before or after dismissal or disciplinary action has taken effect. After the appeal hearing we will inform you of our final decision and confirm it in writing as soon as practicable.

***Gross misconduct***

If, after investigation, it is confirmed that you have committed one of the following offences (the list is not exhaustive), you will normally be dismissed:

- theft
- fraud and deliberate falsification of records
- physical violence
- serious bullying or harassment
- deliberate damage to property
- serious insubordination
- misuse of an organisation's property or name
- bringing the employer into serious disrepute
- serious incapability whilst on duty brought on by alcohol or illegal drugs
- serious negligence which causes or might cause unacceptable loss, damage or injury
- serious infringement of health and safety rules
- serious breach of confidence (subject to the Public Interest (Disclosure) Act 1998)

While the alleged gross misconduct is being investigated, you may be suspended, during which time you will be paid.

In most cases any decision to dismiss will be taken only after we have fully investigated the matter.

However, in a few cases of gross misconduct we may be justified in dismissing immediately without conducting an investigation. In these cases a two-step procedure will be followed.

Step 1: We give you a written statement

We will give you a written statement setting out the conduct that has resulted in your immediate dismissal and informing you of the right to appeal against the decision to dismiss.

Step 2: Appeal against the decision to dismiss

If you wish to appeal you must inform Chair of Trustees within FIVE working days from the date the decision was communicated to them. A meeting will be held (in accordance with the general principles set out above). We will then inform you of our decision as soon as possible after the meeting.

***General principles applicable to the procedures***

The following principles apply to the dismissal procedure set out above:

1. The person who has authority to discipline you in accordance with this procedure is Manager or Trustee.
2. You have the right to be accompanied to any meeting by a trade union representative or co-worker.
3. Each step in the procedure will be taken without unreasonable delay and hearings will be held at reasonable times and locations.
4. Meetings will be conducted in a manner that enables both us and you to explain their cases.
5. We will keep records detailing the nature of any breach of disciplinary rules or unsatisfactory performance, your defence or mitigation, the action taken and the reasons for it, whether an appeal was lodged, its outcome and any subsequent developments. We will keep these records confidential.

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