

## SECTION CAPABILITY PROCEDURES

Springwood Preschools and Nurseries places great importance on maintaining levels of performance at an acceptable standard and the capability procedure provides a fair and objective process to enable managers and owner to ensure that those standards are met in every aspect of the Springwood's operations. Springwood seeks to provide each employee with the direction, development, and support necessary to assure a productive and rewarding career. Before employees can be expected to reach appropriate standards of job performance, Springwood accepts employees should be provided with appropriate training, guidance, and support. Employees have a contractual responsibility to perform at a satisfactory level and are therefore expected to be committed to achieving such levels of performance.

This policy aims to help protect the nursery, its employees and children/parents/carers, from the consequences of poor work performance.

For the purpose of this Capability Procedure, capability is defined as:

*"Where a member of staff is failing in a significant or persistent (Poor Performance) way to carry out their responsibilities or duties in a satisfactory manner, either due to a lack of ability, inadequate training, lack of experience or long-term illness, persistence absences, not following their job description or laid-back attitude, etc. Such failings will be identified by use of the following procedures and steps taken to improve performance. Where such steps prove unsuccessful the member of staff may have their employment terminated on the grounds of incapability".*

**In exceptional cases where a poor performance's error or defect has serious consequences** (i.e. if it is a safeguarding concern, if it results in the serious jeopardy of the health and safety of children or other employees or where work performance is poor due to being off sick for a prolonged period of time and they are unlikely to be well enough to return to work within reasonable time) **disciplinary action will come into effect (without PIP) and instant dismissal or dismissal with notice from work may be pursued.**

The procedures set out in this document aim to ensure that there is:

1. A means of monitoring performance and establishing performance criteria.
2. A degree of consistency in how staff with widely differing responsibilities and duties are given opportunities to attain satisfactory levels of performance.
3. Assistance in identifying the most appropriate form(s) of support and providing that support.
4. If a member of staff fails to overcome their difficulties, any consequent action will be based on:
  - Adequate evidence that the member of staff is incapable of performing their duties satisfactorily.
  - A fair procedure.
  - The fact that the member of staff was given all reasonable assistance to overcome such failings.
  - Once an employee has been placed in the Capability Procedures all associated notes will remain in an individual's record for a period of 12 months or 2 years.

## 1. PROCEDURES:

Initial identification of an employee's failure to meet the required levels of performance, often arises, through normal performance management meetings i.e. one-to-ones, supervisions, appraisals, grievance, investigation meetings, peer on peer observation and may be used along with any three of four stages of disciplinary outcomes . It is expected that the majority of performance related issues will be resolved promptly at this level, except where there is evidence that such an approach has proved ineffective already. If this is the case, the manager or senior management should then invite the employee to attend:

### **Stage1 Formal Capability Meeting – Performance Improvement Plan (PIP):**

Where an employee of the company exhibits an inability to perform their duties satisfactorily, the company will attempt to resolve the matter via a meeting between the line management and the member of staff or senior management and the member of staff. Invitation letter will be send at least 48 hours prior the meeting. The nature and date of the meeting will be recorded and a letter sent to the member of staff indicating the nature of their unsatisfactory performance. During the meeting the manager/senior management member will present the evidence of the performance issue(s) to the employee and express their concerns, being sensitive at all times to the fact that unless otherwise identified, issues of performance are not disciplinary in nature, and that the correct approach is therefore one of constructive support, guidance, coaching and encouragement. The employee will be given a full opportunity to respond and explain any factors affecting his/her current performance levels. If any underlying medical or health issues are suggested, it may be appropriate to refer the employee to seek medical advice - where an employee declines to seek medical assistance, decisions will be made using the information available.

At this meeting, the line manager/senior management will create Performance Improvement Plan (PIP) with the member of staff, and a time period (normally up to one month) over which improvement will be expected. Including how such performance can be improved to the satisfaction of the line manager/owner and children's and provision's needs. Deadline can be extended if there is believe and strong evidences that the performance will improve if more time given (training is not available, medical emergency etc.) They will also agree how the individual's performance will be mainly monitored and progress is expected to be discussed every week. Consideration will be given to any justifying circumstances and these will be dealt with on a case by case basis.

PIP will include:

#### PART 1

1. Areas where the member of staff is failing to perform adequately
2. The impact of the individuals failings on colleagues, children and work output
3. Actions to be taken to improve addressed issues SMART targets
4. Time scale
5. Monitoring tools
6. Progress check – where, when,
7. Whether the member of staff acknowledges a problem and shows a willingness to improve

If the individual's performance improves adequately within the timescale, then the process will end with written report. The report should be given to the member of staff concerned and she/he may record in writing any comments on the observations contained within the report.

The report must also indicate one of the following:

- Performance improved - No further action

- Partial improvement - Employee may be offered a different role within Springwood, if appropriate and viable, second PIP may be considered
- Little Improvement - If the conclusion of PIP is that performance has not sufficiently improved and that there is still evidence of incapability despite support and prior warnings, a Disciplinary procedures will take place STAGE2.

PIP can be use alone as a tool to help identify your SMART targets with appropriate time scale. PIP can also be used within your probation period.

## **Stage2: Disciplinary Procedures**

If the STAGE1 report indicates, Little Improvement then Disciplinary procedures will take place\*. The report should be precise and specific and shall contain clear information on:

### PIP PART 2

8. Areas where the member of staff failed to improve
9. Actions already taken by management to address these failings and whether these actions were adequate - i.e. were clear performance standards set and monitored
10. The impact of the individuals failings on colleagues and work output
11. Any other mitigating factors

With full report, please refer to Springwood Disciplinary Policy and Procedures

Where an employee is dismissed on the grounds of capability, the letter will include your right of appeal.

Springwood reserves the right NOT to follow these procedures in Full for staff who, have been with Springwood for a period of 24 months or less (1 year if you started before 6 April 2012) and:

✓ All above procedures apply to all members of Springwood – that is including student, apprentice, volunteer, employee with less than 2 or 1 years of service or employee on probation period. Springwood recognised that everyone should be provided with appropriate training, guidance and support so they can reach appropriate standards. Performance Improvement Plan alone can be useful tool in achieving that. However, regardless of all support provided we feel that student, apprentice, volunteer, employee with less than 2 or 1 years of service or employee on probation period, is not improving their performance and/or putting self or others, including children, at significant risk of harm or safety due to their non capability, we reserve the right to terminate their placement or contract. Disciplinary actions may not be considered.

✓ All new employees are subject to a probationary period when they join Springwood. This provides time to establish whether the role is the right choice for you and the setting. If you have not met the required standard, this will be discussed with you.

Springwood may choose to:

1. Terminate the employment, or
2. Extend the probationary period and apply PIP. PIP can be use alone as a tool to help identify your SMART targets with appropriate time scale. PIP can also be used within your probation period. It is to your line manager to decide how many PIPs you need considering your improvement and factors that may prevent improvement being satisfactory. We may extend your probation more than once before we decide whether to issue you with permanent contract or end

your employment. If Springwood feels that progress is not reasonable, we will end your contract without disciplinary action.

PIP PART1		Staff member Name _____	Line Manager Name _____	Date _____	YES	/	NO	Addition	comments:
Does the member of staff acknowledges a problems and shows a willingness to improve									
Areas where the member of staff is failing to perform adequately									
The impact of the individuals failings on colleagues, children and work output									
Actions to be taken to improve addressed issues SMART targets with time scale	<b>SMART 1</b>	<b>SMART 2</b>	<b>SMART 3</b>	<b>SMART 4</b>					
Monitoring tools – comments, observation, peer on peer, relevant evidence , statements, etc. – all must be attached to this form)									
Progress check – where, when, how									

Signature: Member of staff \_\_\_\_\_ Line Manager \_\_\_\_\_ Date \_\_\_\_\_

**OUTCOME REPORT:**

Performance improved	<i>Comments:</i>
Partial improvement	<i>Comments:</i>  <i>Action Plan:</i>

**PIP PART2 for STAGE2 for Disciplinary Procedures purpose**

Little Improvement	Areas where the member of staff failed to improve	Actions already taken by management to address these failings and whether these actions were adequate - i.e. were clear performance standards set and monitored	The impact of the individuals failings on colleagues and work output	Any other mitigating factors

Signature: Member of staff \_\_\_\_\_ Line Manager \_\_\_\_\_ Date \_\_\_\_\_

## **SECTION Disciplinary producers and grievance**

*Springwood is supported by ACAS in making in accurate positive decisions when disciplinary or grievance are apparent in the work place. The procedure protects Springwood and our employees and explains our system of how Springwood manages situations. Our disciplinary procedure is designed to encourage all employees to achieve high standards of conduct, attendance and work performance.*

*For minor or isolated infringements of rules or expected behaviour, Springwood may give you informal warning, and formal advice, coaching and guidance.*

*If your conduct or performance fails to improve as a result of this advice, coaching or counselling, or where the offence is more serious, then the disciplinary procedure will be applied.*

*The procedure provides a fair, effective and consistent method of dealing with disciplinary matters.*

*Consideration will be given to making reasonable adjustments, where practical, to the workplace and methods of working to accommodate disabled applicants and employees.*

## **Definitions and Examples of Disciplinary Matters**

### **Poor Performance-Capability**

Poor work performance is the failure to achieve the standard of work performance required of you by your Manager and/or Senior Management (caused for example by persistence absences).

If you fail to perform your duties to a satisfactory standard then your performance may be reviewed at intervals that we will determine. You will be liable to appropriate disciplinary action in accordance with the following rules if your performance continues to be unsatisfactory. Serious failures in your work performance/capability may constitute as gross misconduct. Please refer to Capability policy for more details.

### **Misconduct**

Misconduct occurs where your actions are such that they fall outside what is generally and reasonably agreed to be acceptable standards. The following list, which is not exhaustive, gives an indication of the types of behaviour likely to constitute misconduct and thus invoke disciplinary action. Depending on the severity of the situation, they may also constitute gross misconduct.

Breach of Springwood statutory policies and procedures

Poor timekeeping/poor attendance and failing to follow absence-reporting procedures.

Unauthorised absence.

Capability

Minor damage to property.

Minor breach of rules or failing to observe procedures.

Minor breach of health and safety procedures.

Rudeness to children, parents or colleagues.

Abusive behaviour.

Unsatisfactory sickness record.

Careless loss of or damage to Springwood property.

Unauthorised use, or misuse, of Springwood equipment.

Failure to wear protective clothing provided for your safety.

Unfitting behaviour.

Failure to carry out reasonable instructions.  
Unauthorised use of the Internet.  
Dressing inappropriately or allowing your appearance to fall below acceptable standards.  
Being an accessory to a disciplinary offence by another employee.  
Failing to improve performance improvement plan.

## **Gross Misconduct**

Gross misconduct occurs where there is repeated misconduct or where you behave or act in such a way that we cannot reasonably be expected to allow that behaviour or action to be repeated. The following list gives examples that are indicative but not exhaustive. Gross misconduct, if proven will most likely result in dismissal.

Theft  
Being unfit through involvement with drugs, alcohol or illegal substances  
Fraud  
Physical violence  
Gross negligence  
Serious failures in work performance/capability  
Poor timekeeping  
Poor attendance and failing to follow absence-reporting procedures.  
Unauthorised absence.  
Serious insubordination (refuses to obey orders)  
Ill-treatment of children  
Gross carelessness, which threatens or results in serious jeopardy of the health and safety of children or other employees  
Serious failure to comply with policies, procedures and legal requirements that safeguard children  
Staff suitability  
Breakdown in trust  
Safeguarding concern  
Serious breach of Springwood statutory policies and procedures  
Bringing the organisation into serious disrepute including its employees  
Malicious damage  
Deliberate damage to property or its content (eg. resources) and  
Bribery or falsification of records.  
Wilful damage or deliberate misuse and/or neglect of any item of property belonging to Springwood, employees, customers or any third party.  
Serious breach of security.  
Serious misuse of Springwood's funds.  
Serious failing in capability and to improve performance improvement plan.  
Committing an act outside work, or being convicted for a criminal offence, which is liable to adversely affect the performance of the contract of employment and/or the relationship between you and Springwood.

Failure to disclose correct information on your application form.

A serious breach of the confidentiality.

Harassment, discrimination or threatening behaviour (whether of a sexual, racial or religious nature, or against someone with disability). Continued employment would be unlawful.

Any of the above orders will result in disciplinary action.

## **Disciplinary procedures**

### **Investigation meeting**

Springwood will invite staff to an investigation meeting when Management team, including Owner and EY Advisor feel staff are not meeting their expectations or any type of whistleblowing has been brought to our attention. The purpose of an investigation is for us to establish a fair and balanced view of the facts relating to any allegations against you, before deciding whether to proceed to a disciplinary hearing. 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 you and any witnesses, and/or reviewing relevant documents. Investigative interviews are solely for the purpose of fact-finding and no decision on disciplinary action will be taken until after a disciplinary meeting has been held. You do not normally have the right to bring a companion to an investigative interview. However, we may allow you to bring a companion if it helps you to overcome any disability, or any difficulty in understanding allegation or English language. You must co-operate fully and promptly in any investigation. This will include informing us of the names of any relevant witnesses, disclosing any relevant documents to us and attending investigative interviews if required.

### **Disciplinary Meeting**

At the disciplinary meeting, we will go through the allegations against you and the evidence that has been gathered (can be from similar or unrelated investigation). You will be able to respond and present any evidence of your own. You may ask relevant witnesses to appear at the meeting, provided you give us sufficient advance notice to arrange their attendance. You will be given the opportunity to respond to any information given by a witness. However, you will not normally be permitted to cross-examine witnesses unless, in exceptional circumstances, we decide that a fair hearing could not be held otherwise. We may defer the disciplinary meeting, if we need to carry out any further investigations such as re-interviewing witnesses in the light of any new points you have raised at the meeting. You will be given a reasonable opportunity to consider any new information obtained before the meeting is reconvened. We will inform you in writing of our decision and our reasons for it, usually within one week of the disciplinary meeting. Where possible we will also explain this information to you in person.

Investigation and Disciplinary meetings may be lead by any Springwood's Senior member of staff, including managers from any four Springwood provision, Director or EY Advisor.

The order of a disciplinary system is as follows:

- ✓ Staff receive a written invitation to an investigation meeting highlighting issue which will be discussed. If Springwood feels that matters are serious enough then:
  - ✓ You will be invited to attend a disciplinary meeting to discuss the matter.

Letter will include details of your alleged conduct or characteristics, or of the circumstances which have led to the contemplation of taking disciplinary action.

You will also be informed of your right to be accompanied by a work colleague or trade union representative.

You will be given an appropriate amount of notice of the meeting in order to prepare your response.

- ✓ At the meeting, the circumstances of the complaint against you will be fully discussed and you will be provided with an opportunity to respond to the management case.
- ✓ The employee is made aware of the possible outcomes.
- ✓ Springwood have a break clause of 15 minutes to discuss facts and answers and make a decision whether or not to issue a disciplinary penalty (please see below all stages/penalties).
- ✓ Springwood leaders return to the meeting and inform the staff member of their formal decision
- ✓ The employee is made aware that this meeting is strictly confidential.
- ✓ The outcome of the disciplinary meeting will be confirmed in writing, and will include information on the right of appeal and to whom to address any appeal letter.

### **Right to be Accompanied**

You have a right to be accompanied at all disciplinary or grievance meeting, by either a work colleague or a Trade Union Representative who may address the meeting but may not answer questions on your behalf. You will be allowed reasonable time to confer privately with them. If he/she is not available to attend on the proposed date, you may suggest a reasonable alternative date. If you wish to exercise your right to be accompanied you should let Springwood know who your chosen companion is in a good time before the meeting (full name, occupation, work place and contact details). Springwood reserves the right to refuse the chosen companion if they consider them unsuitable or unfit.

### **Right to Appeal**

If you wish to appeal, you must inform us in writing, clearly setting out the grounds for appeal. An appeal meeting will then be arranged. You may appeal to Springwood's director Rachael Clarke, EY Advisor Karolina Klepcka, or your line manager, or seek advice from us who you can appeal too. Also, please see ACAS document for your advice or guidance. Any appeal should be made within 5 working days of the receipt of a report, investigation report, written warning/notice of disciplinary warning or termination. The appeal, which will normally be heard wherever possible, by a member of senior management who had not any involvement in the proceedings, will be heard as soon as practically possible, normally within 10 working days of receipt of your appeal. You will be given at least 2 working days' notice of the date of the appeal hearing and the outcome will be communicated to you in writing. Where you have been dismissed you will receive your payment until agreed date (e.g. day you have been issued with instant dismissal is your last day of employment), but not beyond that.

### **Suspension**

Where there are grounds for suspecting that you have committed a disciplinary offence, or where there has been a breakdown in your relationship with the Springwood or other employees/connected parties, or if we feel that children, adults or property might be at risk, we reserve the right to suspend you whilst we conduct an investigation. If we do suspend you, you will most likely continue to receive your full pay and contractual benefits for the duration of the investigation, following which we may convene a disciplinary hearing. The period of suspension will be kept as brief as possible. Any such suspension will not constitute disciplinary action and we will be as sensitive and discreet as possible in the circumstances. Employees should not contact the workplace or colleagues whilst suspended.

### **Stages of the Procedure**

#### **Making a Decision**

It is important to ensure that decisions are fair and consistent and it is vital that the merits of each case are considered carefully. When considering allegations, the nominee is required to consider whether 'on the balance of probabilities' the allegation is true. The following will be taken into account when reaching a decision:

- the nature and seriousness of the allegation

- disciplinary action taken in the past for similar types of misconduct
- the employee's previous record and length of service
- the explanation provided by the employee
- any mitigation presented by the employee

There are four formal stages to the Disciplinary Procedure. Springwood can commence the process at whatever stage it deems appropriate. The stages are as follows:

#### ***Stage One: - No Warning***

Where the allegation has not been upheld you may receive no warning - there is insufficient evidence to either prove or disprove the allegation and this therefore does not imply guilt or innocence. A record of this outcome will be kept on Springwood records but not in your personal files.

#### ***Stage Two: – Verbal Warning***

In the event of unsatisfactory performance or misconduct, you may receive a verbal warning. This will give details of the complaint, the improvements required and the time-scale (PIP). It outlines the consequences of failure to improve conduct or performance to acceptable standards. A record of the warning will be kept on your personnel file and disregarded for disciplinary purposes after 12 months maximum, subject to satisfactory conduct and performance.

#### ***Stage Three: – Written Warning***

In the event of more serious or further misconduct or failure to improve standards of work performance, or if the misconduct or poor performance is sufficiently serious, a written warning may be given to you. This will give details of the complaint and warn that any further misconduct or continued failure to improve performance to acceptable standards will render you liable to instant dismissal. A record of the written warning will be kept on your personnel file and disregarded for disciplinary purposes after 12 months, subject to satisfactory conduct and performance.

#### ***Stage Four – Dismissal***

If conduct or performance remains unsatisfactory or if you have committed an act of gross misconduct, and you still fail to reach the prescribed standards, your conduct is sufficiently serious or you have received two of any disciplinary warnings, dismissal with notice may result. You may be given from one week to four weeks notice. Springwood may, however, consider other possible disciplinary action. Examples include (but are not limited to) demotion, transfer, loss of seniority or salary increment, suspension with or without pay. A record of the dismissal will be kept on your personnel file and disregarded for disciplinary purposes after 2 years, subject to satisfactory conduct and performance.

### **SECTION Grievances**

#### **Informal Procedure**

Most routine complaints and grievances are best resolved informally, either in discussion with your colleagues or your manager. However, where you feel you are unable to resolve the issue through informal channels, you should use the formal procedure.

#### **Formal Procedure**

If you have a complaint about your individual circumstances at work, then you are entitled to raise a grievance. The key steps for resolving a grievance are:

- ✓ Discuss ordinary day-to-day issues informally with your line manager through supervision meetings, or if necessary request a separate meeting. You may additionally discuss confidential matters with the Springwood's Director or EY Advisor if required. Where this is not possible or appropriate, you should raise your concerns

verbally with the next level of management, prior to raising a formal grievance.

- ✓ If after seeking to resolve your concerns informally, you are not satisfied, please write to Springwood explaining your grievance.
- ✓ We will invite you to an investigation meeting to discuss the grievance. You will have the right to be accompanied at the meeting by a work colleague or trade union representative. The outcome of the meeting will be confirmed to you in writing.

You will have the right of appeal. Following an appeal the final decision will be confirmed to you in writing. Any appeal should be made within 5 working days of the receipt of a written notice of outcomes. The appeal, which will normally be heard wherever possible, by a member of senior management who had not any involvement in the proceedings, will be heard as soon as practically possible, normally within 10 working days of receipt of your appeal.

If you have any concerns about the manner in which you feel you are being treated because you made the disclosure, you should raise this with a member of the Senior team and this may be dealt with as a disciplinary matter in relation to such individuals.

All above procedures apply to all members of Springwood – that is including student, apprentice, volunteer, employee with less than 2 or 1 years of service or employee on probation period. If after investigation meeting, it is necessary to proceed with disciplinary meeting and considering disciplinary outcome we feel that student, apprentice, volunteer, employee with less than 2 or 1 years of service or employee on probation period is no longer meeting Springwood requirement we reserve the right to terminate their placement or contract.

Depending on the disciplinary outcome the appropriate people will be informed including organisations with statutory rights – Ofsted, DBS, School or College, Police, Parents, Social Service, Local Authority, LADO, etc.

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