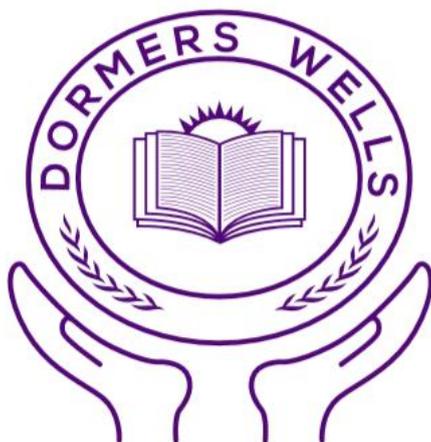


# Disciplinary Procedure

## Dormers Wells Infant and Junior School



*Believe Aspire Flourish*

*Diversity, Opportunity, Resilience, Moral values, Excellence, Respect, Self-Belief*

Policy last reviewed, ratified and adopted by Full Governing Body	March 2022
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This policy will be reviewed every year.

This policy is adopted from 'Ealing Schools Disciplinary Procedure, December 2015, Reviewed March 2016'.

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## DISCIPLINARY PROCEDURE

### 1 AIM

- 1.1 The aim of this procedure is to provide fair and effective arrangements for maintaining the standards of staff conduct and behaviour required by the school.
- 1.2 To support this aim the procedure takes account of best practice, legislative requirements and guidance contained in the ACAS Code of Practice on Discipline and Grievance Procedures.

### 2 SCOPE AND PRINCIPLES

- 2.1 Governing bodies are required by law to set disciplinary procedures for the staff that they employ and to make them known to these staff. It is a legal requirement for governing bodies to establish a committee to consider disciplinary appeals. Except in exceptional circumstances (see Appendix 4) governing bodies should formally delegate to head teachers the power to suspend and dismiss staff and to the chair of the governing body the power to suspend the head teacher. These procedures have been consulted on with the teaching and support staff trade unions and are commended to Ealing schools for adoption. If schools adapt these procedures they should consult with staff and staff side representatives regarding any changes.
- 2.2 These procedures apply to all staff, including head teachers, employed by the governing body to work in the school (for any staff who are not employees of the school, HR should be contacted for advice). They do not apply to agency staff including supply teachers or staff, working in the school under contract arrangements with external providers.
- 2.3 Any actions and/or sanctions to deal with the performance, rather than conduct, of a new member of support staff during the probationary period, or for internal appointments which are subject to a probationary period, should be dealt with under the probation policy and procedure for school support staff if that procedure has been adopted by the school. Copies are contained in the personnel handbook for schools accessible through [www.egfl.org.uk](http://www.egfl.org.uk) if the school has not adopted a probation policy and procedure then the provisions of the local conditions for support staff (Yellow Book) will apply. The probationary procedure does not apply to NQT's serving induction for which other procedures apply.
- 2.4 Disciplinary procedures should be seen primarily as a consistent and fair means of addressing concerns about the behaviour and conduct of employees, encouraging improvement whilst providing a range of sanctions if required.
- 2.5 The procedure will apply to all matters relating to:
- Conduct and behaviour in the workplace

- Breaches of school policy such as the Code of Conduct, the Teachers' Standards (England), Part 2 and the Equality & Diversity policy, rules and standards
  - Activities and behaviour outside the workplace which may bring the reputation of the school into disrepute
  - Allegations of misconduct arising from action under other school policies and procedures such as bullying and harassment
  - Inappropriate conduct towards children
  - Fraud & corruption
- 26 Separate procedures and guidance exist for dealing with the management of unsatisfactory performance, sickness absence and medical capability. Where in the course of investigating an incident of alleged misconduct it transpires that it is an issue of medical capability or unsatisfactory performance rather than misconduct, the matter should be referred for action under the relevant procedure. The same manager dealing with the misconduct under the Disciplinary Procedure will normally deal with the relevant capability or Medical Capability Review procedures.
- 27 The procedure is designed to help establish the facts of a case quickly and to deal consistently with disciplinary issues. Disciplinary action should not be taken until the matter has been investigated and employees will be given the opportunity to state their case before decisions are reached.
- 28 Where this procedure is adopted, it allows members of the school leadership team to initiate the procedure depending on the specific circumstances of the case, and the application of their judgement when considering whether informal or formal action is appropriate. However, an investigation (no matter how brief) should take place prior to a formal disciplinary hearing.
- 29 The employee will have access to any evidence that the presenting manager wishes to rely on at the formal hearing, whether through witnesses or documentary evidence.
- 210 Minor instances of misconduct and poor practice should initially be dealt with in an informal way e.g. confidential discussion, counselling, training, and setting clear standards for improvement. This could be in the form of an informal verbal warning (which can be confirmed in writing); this should include confirmation of appropriate and expected standards. It should be stressed that such action does not form part of the formal disciplinary procedure, although it should be made clear to the employee that formal action would be taken on recurrence of the conduct in question.
- 211 Where it is judged that minor forms of misconduct need to be dealt with more seriously, the Formal Reprimand Procedure should be used (see Section 10). Line managers may initiate this procedure. Appeals against formal reprimands will be heard by the head teacher (with the exception of decisions involving the head teacher). The use of the Formal Reprimand Procedure does not remove the need for investigation.

- 2.12 For more serious misconduct head teachers are expected to take all disciplinary decisions including dismissal (with the exception of decisions involving the head teacher). Appeals against any formal disciplinary sanction imposed by the head teacher, including dismissal, should be heard by the governing body appeal panel. It is a legal requirement for governing bodies to establish committees to deal with disciplinary (including capability) and grievance issues. Other than in exceptional circumstances (see Appendix 4), the governing body should delegate the responsibility for staff disciplinary matters, including the initial decision to dismiss, to the head teacher. The head teacher cannot delegate this responsibility to other members of staff in the school. However where a head teacher is on long-term sick leave, secondment or some other long-term absence, the governing body should consider whether it is necessary to pass full (or partial) delegated responsibility to the person acting in the head teacher's absence.
- 2.13 The school are strongly advised to take advice from a HR professional who can attend as adviser at the hearing. At hearings at community schools, where dismissal is a possibility, the LA has a statutory right to be represented at the hearing. The LA representative would usually be a member of the Schools HR Advisory team.
- 2.14 An employee should not be summarily dismissed (that is without notice) except in cases of gross misconduct. If an employee is dismissed for some other misconduct, such a dismissal will be with notice.
- 2.15 Employees have the right to appeal against any formal disciplinary sanction imposed. There is, however, no right of appeal against any informal action taken.

### **3. TIMESCALES**

- 3.1 All parties to the proceedings have an obligation to co-operate in ensuring that processes and timescales set out in this procedure are followed. Where the handling of the case would be compromised by the need to comply with the timescales and/or in the event more time is needed, the timescales may be extended. In this case the employee should be informed in writing and given the reasons for the timescale extension.
- 3.2 Where a trade union representative or work colleague chosen by the employee (who is the subject of disciplinary action or an investigation) to accompany them at any stage of the formal procedure cannot attend on the date proposed they should confirm this to the person conducting the hearing and an alternative date should be arranged. This should normally be within five working days, beginning with the first working day after the original date proposed by the employer.
- 3.3 The meeting would not normally be postponed a second time and this should be made clear in the communication which is sent agreeing the first postponement. However, in exceptional circumstances, a further postponement may be agreed.

#### **4. RIGHT TO REPRESENTATION**

- 4.1 Employees, who are the subject of disciplinary action/investigation, have the right to be accompanied/represented by a recognised trade union representative or work colleague at any formal stage of the procedure.
- 4.2 In exceptional circumstances, a representative who is neither a work colleague or a trade union representative may be permitted to attend the whole hearing, for example, if there are medical reasons or translation is needed. This will be at the sole discretion of the officer conducting the meeting (i.e. the Investigation Officer for Investigation Meetings, and the Hearing Officer for Disciplinary Hearings). Legal representation, specialist employment law advisers and similar, should not be allowed. The right of representation throughout the hearing is without prejudice to the employee's right to call witnesses at relevant times during the hearing.
- 4.3 Employees and their representatives should be consulted on the timing of meetings / hearings under this procedure but the final decision on timing will be made by the presiding manager.

#### **5. ROLE OF HUMAN RESOURCES (HR) REPRESENTATIVES**

- 5.1 At all stages in the Disciplinary Procedure, in addition to those stages where there is a specific recommendation, Schools HR (or the schools chosen HR provider) should be consulted for advice.
- 5.2 HR's role includes the following:
- Providing advice to head teachers and school managers on informal action;
  - Provide advice to head teachers or chairs of governors on taking a decision to suspend an employee;
  - Provide advice to head teachers or chairs of governors on taking formal disciplinary action, including advice on child protection or other complex cases, framing allegations, disciplinary hearing case documentation;
  - Ensuring that the investigating/hearing officers/appeal hearing governors are aware of the legal aspects and any other sensitive/complex aspects of a case;
  - Advising at disciplinary hearings and/or disciplinary appeals hearings;
  - Advising on letters which confirm the outcome of the hearing;
  - Advising on interpretation of school policy;
  - Monitoring suspensions and progress on disciplinary investigations/ hearings to ensure that the process is completed as quickly as possible.
  - By agreement and exception, to act as investigating officer for the school
- 5.3 The role of HR at disciplinary/appeals hearings is to provide advice and support to the Hearing Officer or panel (e.g. on procedural matters). The HR representative may also ask all parties questions at disciplinary/appeal hearings.

## **6. ROLE OF INVESTIGATING OFFICERS**

6.1 Investigating officers will normally be drawn from the school leadership group. There will however be exceptional circumstances where it will be necessary to appoint an independent investigating officer. This could be where in the view of the head teacher all members of the school leadership group have prior involvement with the case, which compromises their impartiality, further advice on this can be obtained from HR. Investigating Officers should arrange for the following:

- Undertake investigations and prepare reports
- Ensure that full details of the allegations are supplied to the employee;
- Make arrangements for administering the process including requesting a statement from the employee

6.2 Where the responsibility has been delegated to them, the head teacher should generally hear Disciplinary Hearings, the exception would be where after discussion with the Chair of Governors they feel their own involvement in a case could be seen as compromising their impartiality.

6.3 Investigating officers should consult with HR regarding best practice before conducting a disciplinary investigation and at all stages of the process.

## **7. DISCIPLINARY RULES**

7.1 The rest of section 7 and further details in Appendix 1 outline situations that could result in formal disciplinary action being taken. This list is not exhaustive and there may be actions that are not listed, but may nevertheless be the subject of disciplinary action.

### **Gross Misconduct**

7.2 Gross misconduct is an act/s of misconduct serious enough to justify dismissal. Where an allegation is considered to potentially be gross misconduct, then this may result in the employee's suspension from work. If the allegation(s) are proven, then this could result, after due process, in summary dismissal without notice. Examples of gross misconduct are detailed in Appendix 1 although this is not an exhaustive list. Further information on suspension is provided in paragraphs 8.13 to 8.20 below.

### **Other Misconduct**

7.3 There are also other forms of misconduct, which might be serious enough to merit dismissal where the Hearing Officer decides that no lesser sanction would be sufficient; in this event justification for the decision to dismiss should be provided. Misconduct of a serious or repeated minor nature may result in the issuing of a written, final or indefinite final written warning. It may also result in dismissal where it is a repeated offence for which a previous formal warning has been issued. Examples include, inappropriate behaviour e.g.

hostility or rudeness, failure to comply with attendance or time-keeping requirements. Examples of misconduct are contained in Appendix 1. The list is not exhaustive.

- 7.4 Cumulative or repeated acts of misconduct may lead to dismissal with notice in situations where an act of misconduct is repeated while a previous warning is still live.

## **8. ABOUT THE PROCEDURE**

### **Confidentiality**

- 8.1 At all stages of the procedure confidentiality must be observed. Circulation of information will be to those necessary to ensure a fair investigation and hearing. Unnecessary disclosure of confidential information by any party at any stage could itself be a justification for disciplinary action.

### **Records**

- 8.2 Where a sanction is imposed records of proceedings must be kept on the employee's file at the school and managed appropriately. Tape or audio recording of hearings is not normally permitted, although tape or audio may be permissible as evidence at the hearing. Head teachers should ensure that the school keeps a record of the hearing and any sanction, with the outcome retained on the employee's personal file at the school. Retention periods are dealt with later in this procedure. The school should provide a minute taker to take notes of the disciplinary hearing. In exceptional circumstances this may be an external person e.g. a clerk to governors from another school or some other independent person.

### **Trade Union Representative**

- 8.3 Where an employee under investigation is a representative of a recognised trade union, the local branch secretary for support staff or regional official for teaching staff, of that union must be informed before proceedings commence, except where immediate action may be required e.g. suspension. In any event, HR should be consulted about cases involving trade union representatives before any action is taken under this procedure.

### **Discipline and Grievance**

- 8.4 Employees cannot raise a grievance about the fact that the school may take disciplinary action against them, including the fact that the school is commencing or contemplating commencing the investigation stage of the procedure.
- 8.5 The only exceptions would be a grievance that claims the disciplinary action amounts to or would amount to unlawful discrimination or some other breach of statutory duty, or that the true reason for the disciplinary action is not the reason given.

- 8.6 In such cases, consideration should be given to suspending the disciplinary procedure for a short period whilst the grievance is investigated. The decision about whether or not to suspend the disciplinary action, and for how long, is at the sole discretion of the school.
- 8.7 In any cases where a grievance is raised by an employee who has been subjected to the disciplinary procedure, advice should be sought from HR before proceeding.

### **Criminal Offences**

- 8.8 Sometimes an allegation about conduct at work or related to work, leads to criminal action against an employee, and/or an investigation by the police, or an external agency, and/or an investigation by the Council's Audit and Investigation section. In these circumstances (and subject to the exceptions in paragraph 8.9), the school is not always obliged to await the final outcome of the criminal proceedings or of the external investigation, but must consult with the police if the police are investigating a criminal matter, and should consult with any other agencies, before beginning disciplinary action. The school may then be able to conduct its own investigation and take its own disciplinary action. The school may choose to await the final outcome of the criminal proceedings or of the external investigation before commencing its own disciplinary action. In such cases, the delay between the date of the alleged misconduct and the date of the commencement of disciplinary action will not be a reason for the school to forego disciplinary action. Where an employee is found not guilty of a criminal offence, the school should consider whether this has any bearing on any disciplinary decision that has been reached.

### **Allegations of Child Abuse**

- 8.9 Notwithstanding paragraph 8.8, and the general obligation on the school to act promptly, there will sometimes be over-riding reasons to delay the commencement of disciplinary action. For example, where there are allegations of abuse against children (whether or not in the course of employment), this may lead to a multi-agency Allegations Against Professionals (AAP) meeting which will take precedence over any school disciplinary action. Procedures for dealing with allegations of child abuse by school based staff are available separately. In every case advice must be sought from the Designated Officer for Child Protection (DO) to assess whether the allegation meets the threshold of significant harm. If so a child protection strategy (AAP) meeting will normally be convened. HR and the head teacher or chair of governors should be involved and invited to attend strategy (AAP) meetings.

## **Other Sensitive Allegations**

- 8.10 There may also be specific legislation (for example regarding money laundering or terrorism), which prevents the school notifying the employee of the alleged misconduct. In such cases, the delay between the date of the alleged misconduct and the date of the eventual commencement of disciplinary action will not be a reason for the school to forego disciplinary action.
- 8.11 Criminal acts committed or alleged to have been committed, other than in the course of employment, may warrant disciplinary action where the offence affects the interest and / or reputation of the school and / or the performance of the employee's contract of employment or where the existence of the charge would seriously undermine the trust and confidence the employer has in the employee.
- 8.12 Where disciplinary issues come up involving potential or actual criminal offences, advice should be sought from Schools HR prior to making a decision.

## **Suspension**

- 8.13 Suspensions must be authorised and carried out by head teachers (or their designated deputy when the head teacher is not on site) or the chair of governors. The employee should be told of the reason for the suspension. Where this is not possible, for example, where it may prejudice an external investigation, then s/he should be given general or broad reasons. The employee should be told that suspension is a neutral act.
- 8.14 The circumstances and nature of the allegations may require an employee to be suspended from duty during formal disciplinary proceedings. This would be where there is a possibility of a criminal charge or dismissal for gross misconduct or where there has been a serious break down in relationships, or where it may not be suitable for the employee to remain at work i.e. if their presence could hinder or interfere with the investigation, or their presence at work potentially puts others at risk, then suspension would be appropriate. Decisions on suspension should be made by the head teacher or chair of governors, taking advice as necessary. Where circumstances permit the employee's trade union representative should be informed.
- 8.15 Alternatives to suspension should be considered where feasible, for example, transferring to other duties, transferring the employee to another workplace, working from home, working under supervision or special paid (gardening) leave. Consideration should also be given to the potential detrimental effect of suspension on both the employee and the service. Where a child protection allegation is being investigated, dignified alternatives to suspension should always be considered, bearing in mind the need to protect the child. The reason as to why suspension is considered appropriate should be provided to the employee.

- 8.16 The suspension should be confirmed in writing to the employee within two working days of the act of suspension, with the reasons for the suspension.
- 8.17 Consideration should be given (by the respective managers) to suspending an employee from any other employment a person may hold with the Council or other Ealing schools, although alternatives to suspension must be considered as detailed above.
- (i) If it is known that the employee is a trade union member, where practicable reasonable steps should be taken to notify the employee's trade union representative prior to the suspension.
- (ii) Reasonable efforts must be made to enable a trade union representative/work colleague to accompany the individual, although this will not always be possible.
- 8.18 A suspension is a neutral act and should not be used as a sanction. An employee who is suspended pending a disciplinary investigation will be suspended on full contractual pay. NB: "Full contractual pay" means basic salary, contractual overtime and any contractual allowances but does not include voluntary overtime. This may also: include any authorised deductions (e.g. for payment of rent etc.) and / or be at half or nil pay in accordance with the School's sick pay scheme and / or be at a rate of pay appropriate to any contractual variation in effect at the time. There may be exceptional circumstances where the employee is unable to be available to the school, in normal working hours while suspended e.g. imprisonment. In such cases pay may be withheld. The head teacher should seek HR advice before withholding pay.
- 8.19 All suspensions must be reviewed by the head teacher or chair of governors after 20 working days. Thereafter, a suspension must be reviewed every 20 working days and a written explanation provided for the continuation of the suspension, if the employee (or their representative) requests it. Where possible the written explanation should give an estimate of how long the suspension is likely to last. The chair of governors or head teacher with the chair of governors' authorisation must act promptly to lift the suspension if it becomes clear that there is no longer a justification for suspension (whether or not the disciplinary action is to continue).
- 8.20 Employees who are suspended will not be permitted to enter the school site except by prior agreement with the head teacher or chair of governors, or when instructed to do so to attend an investigation interview or disciplinary hearing. They must also not contact work colleagues during working hours for any reason connected to the suspension or their work at the school, unless they have permission from the school to do so. This permission may be required if the employee who is suspended wishes to contact colleagues at the school, in support of their own defence. Employees must make themselves available as required during normal working hours and comply with the school's policies and procedures, e.g. sickness and leave arrangements.

## **9. INFORMAL ACTION**

- 9.1 The following section deals with minor disciplinary issues and should not be used for cases involving serious or gross misconduct, where formal action should be instigated. Performance issues should be dealt with under the School's Capability Procedure.
- 9.2 Before taking any formal disciplinary action, if appropriate, line managers should initially try and resolve the matter informally through discussions with the employee as part of their day-to-day management responsibilities. Cases of minor infringement of rules and standards should be dealt with through confidential discussion, counselling, management guidance, informal warnings, instructions and training; rather than the formal Disciplinary Procedure. The school manager should confirm informal discussions and action to the employee in writing making it clear to the employee that the action constitutes an informal measure.
- 9.3 An informal warning can be defined as a manager informing an employee during a confidential discussion that the employee has fallen below the standards of conduct/behaviour expected by the school and recurrence/s may lead to more formal action under the disciplinary procedure. It may be followed up in writing.
- 9.4 Where improvement in attendance or conduct is required, the employee should be told what standards are expected, how this will be reviewed and over what time period. Any informal disciplinary discussions should be noted, and confirmed to the employee concerned in writing. Employees should also be made aware of what action could be taken if they fail to improve.
- 9.5 If the employee subsequently achieves the required improvements, then they should be informed about this and advised of the need to maintain that improvement. A file note should be taken by the head teacher/manager confirming this outcome. A copy should be given to the employee
- 9.6 Where the required improvement is not reached or maintained, then the informal action may be referred to in any formal action subsequently taken under either the School's disciplinary or capability procedures.
- 9.7 If during an informal meeting it becomes clear that the matter is more serious than first thought, the meeting should be adjourned and a decision made as to whether formal action should be initiated. Managers should speak to their head teacher who should contact HR for further advice at this stage. The employee should be kept informed of any decisions and advised of any timescales.

## **10. START OF FORMAL ACTION - FORMAL REPRIMAND**

- 10.1 The formal procedure is designed to be used only if attempts to resolve potential problems through normal supervision and discussion or informal action has been unsuccessful, or in cases of more serious misconduct. The object is to provide a framework for dealing with employees in a fair and equitable manner.

### **Misconduct**

- 10.2 Disciplinary action may be taken for misconduct and gross misconduct, examples of which are included at Appendix 1. The lists are not exhaustive.

### **Minor misconduct - Formal reprimand procedure**

- 10.3 If despite informal discussions, conduct does not meet acceptable standards, employees may be given a formal reprimand. A formal reprimand may also be given if appropriate, as a sanction for minor forms of misconduct without prior warning.
- 10.4 The employee's line manager should arrange to interview the employee concerned on a one to one basis. An employee has the right to be accompanied by a trade union representative or work colleague.
- 10.5 If the outcome of the meeting is that a formal reprimand should be given, then the manager will advise the employee of the reason for the warning, that the warning is the first stage of the disciplinary process, the improvements required and any time periods.
- 10.6 Employees should also be advised of their right to appeal against the decision to the head teacher, or if the head teacher made the decision (or is the subject of the decision), to the governing body appeal panel, within 5 working days of the formal reprimand being given.
- 10.7 A copy of the reprimand will be kept on the employee's personal file and a copy given to the employee. The reprimand will lapse after six months, subject to satisfactory conduct and then be expunged.
- 10.8 If the misconduct persists managers should consult the head teacher and HR with a view to proceeding to the next stage of formal action, as excessive use of formal reprimands must be avoided.
- 10.9 Where a manager becomes aware of alleged or suspected serious misconduct by an employee, it should be reported to the head teacher and advice should be sought from Schools HR. In all cases an investigation should be carried out. Suspension should also be considered where appropriate (see paragraphs 8.13 to 8.20 above).

## **11. DISCIPLINARY INVESTIGATION**

- 11.1 If an investigation is required this should be carried out in accordance with section 6 and appendix 11

## **12. DISCIPLINARY HEARING**

- 12.1 If an investigation confirms that there is a case to answer and/or the allegation/s is considered too serious to consider under an earlier stage of this procedure, and the head teacher/governor receiving the report agrees, then a Disciplinary Hearing will be arranged. The head teacher will decide whether it is the head teacher or member/s of the governing body who will conduct the hearing (the head teacher may not be able to hear the matter because of one of the aspects of appendix 4 applies). The exception to this would be if the person under investigation was the head teacher in which case the chair of governors would arrange a panel of governors to conduct the hearing. The hearing will normally be arranged within **10** working days of the investigation being completed. Governing body disciplinary panel hearings may however take longer to arrange. The head teacher will hear the case (except in cases involving the head teacher) and will make the arrangements to hold the hearing with advice from HR. It is important that the Hearing Officer is impartial and has not had previous involvement in the case which would compromise their ability to hear the matter impartially. Where the allegations may lead to dismissal then a HR representative should attend.

- 12.2 Arrangements to hold a disciplinary hearing will then be made in accordance with the following paragraphs.

- The head teacher should make arrangements for a clerk to attend and to take notes of the hearing, a copy of which will subsequently be made available to the employee.
- A HR representative may attend to provide advice to the decision making person or panel, and may ask questions during the proceedings
- The investigating officer will normally present management's case at the disciplinary hearing.

- 12.3 The head teacher must inform the employee by letter, at least **5** working days before the hearing of the following:

- The date, time and place of the hearing;
- The details of the alleged misconduct including whether it is deemed minor, serious or gross as well as the possible consequences including where relevant dismissal;
- The identity of the person who will be presenting the case;
- The right for the employee to be accompanied by a trade union representative or work colleague;
- The right for the employee to call witnesses and to produce relevant information;

- Enclose a copy of the disciplinary procedure, together with any supporting evidence (including the report of the investigating officer). If the case is particularly lengthy or complex then longer notice should be given;
  - Confirmation of any witnesses that will be called by the school.
- 12.4 An employee may choose to submit written evidence prior to the disciplinary hearing. This must be provided to the head teacher or governing body disciplinary panel chair and officer presenting the case at least **2** working days before the date of the disciplinary hearing, and include the names of any witnesses the employee proposes to call. It is for the employee or their representative to organise for their witnesses to attend the hearing. Where the witnesses are school employees, the head teacher will arrange for them to be released from duties.
- 12.5 Evidence produced later than the timescales mentioned above will not necessarily be considered. The head teacher or governing body disciplinary panel chair has discretion to allow evidence that has been submitted late in exceptional circumstances, having heard representations from both parties, and having taken into account the reasons for the delay, the importance of the evidence and whether or not a short postponement would be a fair and practical alternative to exclusion of the evidence.

### **Non-attendance by Employee**

- 12.6 If the employee does not attend the disciplinary hearing, the hearing may either proceed in their absence or be adjourned, taking into account the reasons for the non-attendance. If the reason for not attending is non-availability of an employee's representative refer to paragraphs 3.2 and 3.3 of this procedure.
- 12.7 If non-attendance is due to a medical reason, the employee must inform the Hearing Officer as soon as possible. Written confirmation together with a medical certificate can be required. The employee may also be referred to Occupational Health to ascertain whether they are fit to attend the hearing.
- 12.8 If it is decided to adjourn the disciplinary hearing, then a new date and time will be arranged. If the employee again fails to attend, the hearing will normally go ahead in their absence after considering all the circumstances of the case. This should be confirmed in the letter to the employee setting out details of the new date and time for the hearing. Where an employee is unable to attend, they may arrange for representation (in accordance with section 4) at the hearing in their absence, or make written submissions.

### **Disciplinary Hearing Procedure**

- 12.9 The disciplinary hearing will be conducted in accordance with the arrangements set out in Appendix 2. The head teacher or governing body disciplinary panel chair should ensure that all the relevant facts have been presented by both parties prior to summing up and may decide that further information / witnesses are required. The head teacher or governing body

disciplinary panel chair may adjourn the hearing where appropriate for any reason. The parties will be given reasonable notice of the hearing being reconvened, and at least **3** working days' notice of this. Shorter notice can be given by mutual agreement. The head teacher or panel chair will make the final decision on any matters raised at the hearing.

### **Decision**

12.10 A decision will be taken following careful consideration of the evidence provided by all parties. Following completion of the disciplinary hearing, all parties other than the head teacher or GB panel, the HR representative and the note taker will withdraw.

If a decision is reached quickly, the head teacher or panel chair may recall the parties to give this decision orally, and confirm in writing, within **5** working days of the conclusion of the disciplinary hearing.

If it appears unlikely that a decision will be made while the parties are still present, then arrangements will need to be confirmed for how the decision will be communicated

### **Disciplinary Measures/Outcomes**

12.11 Disciplinary measures/outcomes that may be reached are as follows:

#### **a) No Disciplinary Action to Be Taken**

In cases of alleged misconduct all correspondence relating to the hearing should be removed from the individual's personal file. A case where a child protection allegation has been made which has been shown to be unsubstantiated, the record will be retained in accordance with 'Keeping Children Safe in Education'. This will be retained until the employee has reached normal pensionable age or 10 years from the date of the allegation if that is longer. Child protection allegations that are shown to be unfounded will be removed from file. The employee concerned and manager presenting the case should still receive confirmation of the outcome in writing, but should be advised, where appropriate, that no record where appropriate (other than the outcome letter) has been kept on the personal file.

#### **b) A Formal Warning**

This will be recorded and the employee should be advised that any further disciplinary lapse could result in further disciplinary action.

In reaching a decision about which sanction to apply, the head teacher or disciplinary panel should take into account all of the circumstances of the case.

#### **c) A Final Written Warning**

The employee should be advised that this is a final written warning and that any further disciplinary lapse could result in further disciplinary action, including dismissal. In exceptional circumstances, an indefinite final written

warning may be given e.g. cases involving criminal acts or where child protection is involved.

**d) Demotion to a Lower Point within the Employee's Grade**

Where a member of support staff is considered to be blameworthy of (an) allegation(s) but there are deemed to be mitigating circumstances to justify disciplinary action short of dismissal, the sanction may be relegation (downgrading). The relegation could also be accompanied by a transfer to a new work area, together with a final written warning. The relegation may be in a different work area / job and payment will be commensurate to the grade of the new post. The date this will take effect from should be provided.

**e) A Combination of (b) or (c) with (d)**

**f) Dismissal With or Without Notice**

Dismissal is an appropriate sanction for very serious misconduct or for further misconduct after previous warnings. Other than for gross misconduct, dismissal is with notice. In cases of gross misconduct, the School has the right to dismiss summarily (i.e. without notice).

**g) Demotion and/or Transfer (as an Alternative to Dismissal) to a Similar or Lower Graded Post**

A transfer may be considered appropriate in circumstances where it would not be appropriate to allow the employee to return to their former work area. In cases of gross misconduct this would only be appropriate if there is substantial mitigation. A transfer would normally be accompanied by a written or final written warning. Before reaching such a decision, the head teacher or disciplinary panel must be content that there is a suitable vacancy into which the employee can transfer. For support staff payment would be made at the grade or pay rate applicable to the new job and not the rate applicable to the employee's previous job. If the employee refuses to accept the new employment then the original dismissal will stand. Where demotion or transfer of a member of support staff is proposed as an alternative to dismissal, payment will also be made at the rate applicable to the new job. An employee's refusal to accept such an offer will result in dismissal. In cases of gross misconduct then dismissal will be without notice and in all other cases dismissal with notice.

**Live Warnings**

12.12 Warnings will cease to be "live" following the specified period of satisfactory conduct set out below, after which they will be disregarded for future disciplinary purposes. The time period shall apply to formal warnings and in the event that an employee leaves the School, it will expire after the same time period:

- Formal Reprimands will be expunged after 6 months of satisfactory conduct:
- Formal written warnings will be expunged after 12 months of satisfactory conduct:

- Formal final written warnings will be expunged after 18 months of satisfactory conduct.
- Where a child protection allegation has been proven, this will remain on file for 10 years from the date of the offence or until the employee reaches 65 years of age whichever is the latter. This requirement applies to all staff proven guilty of child protection offences, regardless of the level of sanction imposed.
- Where the allegation is “unsubstantiated” or “unfounded”, including malicious allegations, it should not be referred to in any future employment references.

12.13 In all cases where a written warning is given to an employee, the employee will be notified in writing of the period over which the warning will be regarded as “live”. A spent warning should be disregarded for the purpose of future disciplinary proceedings.

### **Written Notification**

12.14 The letter to the employee should normally be sent within **5** days of the disciplinary hearing. The outcome letter must set out the following if relevant:

- The reason for the decision and the disciplinary sanction; covering details of the allegations, including which were upheld and why, the factual issues covered, how the decision was reached, which version of events was preferred and why this was;
- The implications and consequences of future misconduct;
- Recording arrangements for disciplinary warnings;
- The date (if any) from which any written warning or final written warning will be disregarded for the purposes of this procedure (in exceptional circumstances such warnings may be effective indefinitely);
- The effective date of dismissal;
- The right of appeal and,
- Any further action required, including the lifting of suspension (where appropriate) and date of return to work, relegation, training, standard setting etc.

## **13. APPEALS**

13.1 The appeal stage forms part of the statutory procedure and, whilst there is no compulsion on an employee to appeal, an employee has the right of appeal against any formal disciplinary action taken under this procedure. An employee may appeal for a number of reasons, including:

- The process followed was flawed;
- The disciplinary sanction was not appropriate and / or reasonable in all the circumstances and / or;
- New evidence has come to light.

13.2 The intention to appeal must be registered within **5** working days of the date of the letter informing the employee of the outcome of the disciplinary hearing, and should be sent to the head teacher initially. The grounds for appeal,

specifying the reasons should follow within a further 5 days (i.e. within **10** days of the date of the outcome letter). If not received within this timescale then the employee will be deemed to have failed to appeal and no further action will be taken. If the employee wants a short extension of time for lodging the full grounds of appeal, then the employee must make a request with reasons within the time limit. The request will normally be granted where there is good reason. The duration of the extension will be at the discretion of the chair of the appeal panel, but will not normally be longer than **5** working days.

- 13.3 Appeals against disciplinary action (with the exception of Formal Reprimands) will be heard by the governing body appeal panel. This should be a panel of up to three governors who should not previously have been involved in the case. The panel may be supported by HR (see procedure at Appendix 3). Appeals against Formal Reprimands will normally be heard by the head teacher.
- 13.4 If an employee lodges an appeal against dismissal, then the employee will not be reinstated, nor be entitled to have the termination date delayed, pending the outcome of the appeal hearing.

#### **Timing of Appeal Hearing**

- 13.5 The Appeal Hearing will be normally held within **15** working days of receipt of the appeal. The employee and (if appropriate) their representative, will be given at least **5** working days written notice of the hearing. Where possible the employee and their representative should be consulted over the date and time of the appeal hearing. The written notice should include:
- The date, time and place of the hearing;
  - Details of the person or panel hearing the appeal;
  - The employee's right to attend and be represented at the appeal by a trade union representative or work colleague.
- 13.6 Provided the employee has been given the appropriate notice of the date of the hearing, the appeal may be considered on the basis of the available evidence in the absence of the individual where no reasonable excuse has been provided.

#### **Appeal Hearing Procedure and Process**

- 13.7 Appeal Hearings will be conducted in accordance with the arrangements set out in Appendix 3. The appeal hearing should address the arguments set out in the grounds of appeal (rather than a full rehearing of the issues) and determine whether the decision made at the original hearing was reasonable in all the circumstances.
- 13.8 The head teacher or chair of the original disciplinary hearing can decide to prepare a statement in response to the employee's submission. If this course of action is decided, the statement should be provided to the employee within

5 working days of receipt of the notice of the appeal or of the full grounds of the appeal, if sent later. If further clarification or elaboration is considered necessary, either or both parties will be asked to provide this information, at least 3 working days before the appeal hearing.

### **Outcomes**

#### **13.9 Possible outcomes of Appeal Hearing considering appeals against a warning:**

- A decision to uphold the employees appeal and either revoke the decision completely or impose a lesser sanction;
- Deny appeal and confirm decision to issue reprimand, First or Final warning, or withhold annual increment;

The chair or appeal panel will not however be empowered to impose a more severe sanction than that imposed at the original disciplinary hearing.

13.10 The decision of the head teacher appeal hearing or governing body appeal panel hearing will be final.

#### **13.11 Possible outcomes of Appeal Hearing considering appeals against demotion or dismissal are:**

- An adjournment to allow for additional evidence and/or witnesses and/or information to be made available;
- A decision to uphold the employee's appeal and either revoke the decision completely or impose a lesser sanction;
- To make any other appropriate recommendation;
- Any combination of the above or;
- To submit the case back for a new hearing by a newly constituted governing body disciplinary panel (in the event that the panel believe that a disciplinary hearing was so faulty as to render the decision unsafe OR that important evidence was either not available or not appropriately considered at the original hearing AND feel unable to rehear the case and/or substitute a new decision for the original then the case may be remitted for a new hearing subject to the agreement of all parties to cooperate) or,
- To deny the appeal and confirm the relegation/dismissal.

The appeal panel will not, however, be empowered to impose a more severe sanction than that imposed at the original disciplinary hearing.-

13.12 The decision of the governing body appeal panel will be final.

### **Notification of Decision**

13.13 The decision will be given orally on the day of the hearing, unless it is not practical to do so. In all cases, the decision of the appeal will be confirmed in writing within 5 working days of the conclusion of the hearing.

13.14 Where the disciplinary action is rescinded, all records will be removed from the employee's personal file and destroyed. A copy of the investigation will be retained in accordance with Schools HR record keeping practices.

#### **14. MONITORING AND REVIEW**

14.1 This procedure will be reviewed on a regular basis and changes and improvements made where necessary by Schools HR. Employees at the school and recognised trade unions will be consulted on any proposed changes to this procedure,

## APPENDIX 1

### TYPES OF MISCONDUCT

#### Gross misconduct

**Gross misconduct** is either deliberate wrongdoing or **gross** negligence by the employee which is so serious that it fundamentally undermines the relationship of trust and confidence that must exist between an employee and an employer. **Gross misconduct** entitles an employer to dismiss an employee without notice (summary dismissal).

If an employee is found guilty of gross misconduct then the normal consequence will be dismissal without notice. Offences of the following nature are likely to amount to gross misconduct. The list is not exhaustive.

- Serious failure to comply with or operate the School's Equality and Diversity policies. Examples include; serious acts of discrimination, harassment, or verbal abuse against employees, clients, parents or members of the public on grounds of race, sex, disability, age, sexual orientation or religious beliefs; the display or circulation within the workplace or school community of any literature or material (such as pornographic or racist materials) via any medium that could offend other persons;
- Serious bullying or harassment;
- Serious infringement of the school's Health & Safety policy, procedures or guidance;
- Serious failure to comply with or operate the school's Code of Conduct e.g. holding unauthorised paid employment during paid school time; conducting inappropriate relationships with vulnerable pupils; not declaring a personal interest which may infringe the employee's impartiality;
- Serious negligence that causes or might cause unacceptable loss, damage or injury;
- Bringing the reputation of the school or Council into serious disrepute;
- Working while under the influence of alcohol or illegal drugs;
- Serious failure to comply with or operate the school's information systems and security standards e.g. gaining unauthorised access to passwords and breaches of the use of the email and internet policy including emails with pornographic attachments;
- Serious breach of financial regulations or procedures;
- Unauthorised removal, possession, use or theft of property belonging to the school, an employee, pupil, parent or member of the public;
- Acts of violence including the assault of an employee, client, parent or member of the public during working hours or in connection with their employment of work;
- Falsification of qualifications or information to obtain employment with the school or which are a statutory or essential requirement of employment or which result in additional remuneration;
- Deliberate falsification of records i.e. attendance sheets, timesheets, subsistence and expense claims etc.;

- Serious breach of rules or standards relevant to employment (e.g. Teacher Standards)
- Acceptance of bribes or other corrupt or fraudulent practices;
- Defrauding the school, the Council, or any other Council e.g. in relation to housing or council tax benefit, grants and housing property;
- Disclosure of highly confidential matters to public sources or the deliberate unauthorised use or disclosure of any information or computer generated information from which a living individual can be identified (Subject to the Public Interest Disclosure Act 1998);
- Committing a criminal or civil offence at or away from work that renders the employee unsuitable to remain in the school's employment or which may seriously damage the school's reputation. Or where there are reasonable grounds to believe that a serious criminal offence has been committed which may be connected or unconnected with their employment.
- Allegation of child abuse or serious malpractice if proven
- Gross insubordination e.g. wilfully disobeying a reasonable instruction, particularly while seeking the consent of other employees in the refusal

#### **Other types of misconduct:**

Other types of misconduct are listed below (the list is not exhaustive). These will usually result in a sanction that is less than dismissal, but dismissal may sometimes be the result depending on the circumstances and/or in cases where the misconduct is repeated.

- **Attendance and Time-keeping**  
Failure to comply with attendance and time-keeping requirements;  
Failure to follow procedures for booking and returning from leave;  
Persistent absence and/or excessive absence without medical reason
- **Telecommunications related issues**
- Abuse of telephone, e-mail or Internet for personal reasons;  
inappropriate use of e-mail or Internet (gross misconduct in serious cases);  
Recording conversations or meetings without having been given permission by the employee/manager concerned
- **Behaviour**  
Failure to follow a legitimate management instruction;  
Prolonged time-wasting;  
Inappropriate behaviour towards a colleague, manager, pupil or a person in the care or charge of the school, parent or member of the public (gross misconduct in serious cases)
- **Poor Working Practices**  
Failure to maintain proper records;  
Failure to follow school procedures e.g. financial regulations, safety standards
- **Malicious complaints/grievances made against another employee or manager** (gross misconduct in serious cases)
- Other breaches of the school's Code of Conduct.

## **APPENDIX 2**

### **15 PROCEDURE TO BE FOLLOWED AT DISCIPLINARY HEARINGS**

- 15.1 The head teacher or chair of the governing body disciplinary panel will invite both parties in to the room at the same time, introduce all parties present and explain the purpose and conduct of the hearing and how witnesses will be managed.
- 15.2 The employee will then be asked to state whether s/he admits or denies the allegations.

#### **Where employee admits the allegations**

- 15.3 If the employee admits the allegations, the employee will be invited to present any mitigating circumstances to the head teacher/disciplinary panel. The presenting manager, the head teacher or panel members and the HR Advisor may then ask questions of the employee in turn.
- 15.4 In addition, the head teacher / disciplinary panel may require that witnesses/evidence should be called / produced in order to ensure that all the necessary facts can be considered before making a decision on the case. The head teacher/disciplinary panel may decide to adjourn the hearing to allow for this if necessary.
- 15.5 It is for the head teacher / disciplinary panel to manage the process and intervene where appropriate.

#### **Summing - up stage**

- 15.6 Both parties will then have an opportunity to sum up, with management summing up first, followed by the employee/representative. This summing up may take into account statements made during the proceedings, but may not introduce new evidence.

#### **Deliberation**

- 15.7 The head teacher/disciplinary panel will then ask both parties to withdraw apart from the HR Advisor and note taker. The head teacher/disciplinary panel should indicate to the parties whether they should wait to be recalled for the decision. The head teacher/disciplinary panel should then reach a decision on the basis of the evidence presented in the course of the hearing with advice from the HR advisor as necessary.

#### **The Decision**

- 15.8 The head teacher/disciplinary panel chair may give the decision verbally at the end of the Hearing or in writing later. In any event the decision must be confirmed in writing, within 5 working days of the hearing, to the employee

and copied to their representative and to the manager presenting the case. The HR advisor will provide advice on the content of the outcome letter.

### **Where employee denies allegations**

#### **Management presentation with witnesses**

15.9 The management representative will present the case. Then other parties may ask questions on the presentation.

- Employee and/or trade union representative/work colleague;
- Head teacher/disciplinary panel members;
- HR advisor.

The manager presenting the case will then call witnesses if required. The other parties may ask questions of the witnesses

- Employee and/or trade union representative/work colleague
- Head teacher/disciplinary panel members
- HR advisor.

#### **Employee's presentation with witnesses**

15.10 Following completion of the management case, the employee and/or trade union representative/work colleague will present their case. Questions may be asked on this presentation by the presenting manager, the head teacher / disciplinary panel members and the HR advisor.

15.11 The employee / trade union representative / work colleague will then call witnesses if required. The head teacher / disciplinary panel chair will explain to the witness the procedure to be followed. The employee / trade union representative / work colleague may then ask questions of the witness. The other parties may ask questions of the witnesses.

- Manager presenting the case;
- Head teacher/disciplinary panel
- HR advisor.

15.12 Following questioning, witnesses may be re-examined once more by the manager, employee (trade union representative/work colleague), Head teacher / disciplinary panel members or HR advisor, if necessary, to clarify any points that came up during the cross-examination.

15.13 It is for the head teacher/disciplinary panel chair to manage the process and intervene where appropriate.

15.14 Once each party has completed their questioning, witnesses should not normally, be recalled. However, the head teacher/disciplinary panel have the right to recall witnesses or seek further information if this is required. If this

does happen, both sides should be recalled into the hearing. In addition, the head teacher/disciplinary panel may require that other witnesses/evidence should be called / produced in order to ensure that all the necessary facts can be considered before making a decision on the case. The head teacher/disciplinary panel may decide to adjourn the hearing to allow for this if necessary.

### **Summing - up stage**

- 15.15 Both parties will then have an opportunity to sum up, starting with the management representative, followed by the employee/representative. This summing up may take into account statements made during the proceedings, but may not introduce new evidence. Cross questioning is not permitted during the summations.

### **Deliberation**

- 15.16 The head teacher/disciplinary panel chair will then ask both parties to withdraw apart from the HR advisor and clerk. The Head teacher/disciplinary panel chair should indicate to the parties whether they should wait to be recalled for the decision. The Head teacher/disciplinary panel should then reach a decision on the basis of the evidence presented in the course of the hearing with advice from the HR advisor as necessary

### **The Decision**

- 15.17 The head teacher / disciplinary panel chair may give the decision verbally at the end of the Hearing or in writing later. In any event the decision must be confirmed in writing, within 5 working days of the hearing, to the employee and copied to their representative and to the manager presenting the case. The HR advisor will provide advice on the content of the outcome letter.

## APPENDIX 3

### **The Disciplinary Appeal process**

- 16.1** The appeal must be notified to the head teacher within 10 working days of the date of the written confirmation of disciplinary decision. The head teacher will arrange for a hearing of the governing body appeal panel to take place following receipt of the full grounds of appeal, except where the appeal is against a Formal Reprimand where the head teacher will normally hear the appeal.
- 16.2** The appeal should include a written statement outlining in detail the grounds of the appeal against the decision together with any supporting documentation. The appellant should clearly state with full reasoning, the basis on which s/he believes the decision to be at fault (i.e. why s/he believes that the procedure was incorrectly applied and/or that the evidence did not substantiate the allegations and/or that the sanction is too severe and/or that specific relevant evidence was not available or was not taken into account at the original hearing). No hearing shall be arranged until such a detailed statement has been received.
- 16.3** If further information, clarification or elaboration in support of the case is considered necessary, then the appellant will be asked to provide this information at least 3 clear working days before the date set for the appeal hearing if it is to be used. A hearing will be arranged and the employee notified of the date, time and place of the hearing.
- 16.4** The employee shall be given notice in writing at least five working days in advance of the time and place of the hearing that: s/he shall be allowed to be represented by his/her trade union representative, or a work colleague and; may call witnesses and; refer to previously submitted documents relevant to his/her appeal; at the hearing. The employee will also be informed that the appeal hearing will not be a full rehearing of the case and that s/he should restrict his/her presentation to arguments about the reasonableness of the decision and/or procedural faults or failure.
- 16.5** The head teacher / governing body appeal panel should ensure that there is clerk to take notes. The appeal panel chair will invite the parties into the room, introduce all parties present and explain the purpose of the hearing. The appeals process will not normally take the form of a rehearing and witnesses will only be allowed with the permission of the hearing officer and where it is relevant to the issue of the appeal. Both parties should therefore be asked if they intend to bring any witnesses. Failure to name witnesses at this stage does not mean that they cannot be called later within the hearing
- 16.6** The management representative(s) will present his/her justification of the disciplinary decision, in the presence of the appellant and his/her representative. The management representative(s) may also call witnesses to the appeal hearing.

- 16.7** The appellant (or his/her representative) will then have the opportunity to ask questions of the management representative on the evidence given by him/her and any witnesses whom s/he may call.
- 16.8** The head teacher/members of the panel may ask questions of management's representatives and witnesses.
- 16.9** The appellant (or his/her representative) will present his/her case against the reasonableness of the disciplinary decision in the presence of the school's representative and to call such witnesses as s/he wishes.
- 16.10** The management representative will then have the opportunity to ask questions of the appellant and his/her witnesses.
- 16.11** The head teacher / panel may ask questions of the appellant and his/her witnesses.
- 16.12** The management representative and the appellant (or his/her representative) will then have the opportunity to sum up their case if they so wish.
- 16.13** The head teacher / panel supported by the human resources advisor will deliberate in private only recalling the management representative and the appellant to clear points of uncertainty on evidence already given. If recall is necessary both parties are to return notwithstanding only one is concerned with the point giving rise to doubt.
- 16.14** Courses of action open to the appeals panel are:
- i) An adjournment to allow for additional evidence and/or witnesses and/or information to be made available;
  - ii) A decision to uphold the employee's appeal and either revoke the decision completely or impose a lesser sanction;
  - iii) To make any appropriate recommendation;
  - iv) Any combination of the above; **or**
  - v) to submit the case back to the head teacher for a new hearing (In the event that the head teacher / panel believe that a disciplinary hearing was so faulty as to render the decision unsafe **OR** that important evidence was either not available or not appropriately considered at the original hearing **AND** feel unable to rehear the case and/or substitute a new decision for the original then the case may be remitted for a new hearing subject to the agreement of all parties to cooperate); **or**
  - vi) To deny the appeal and confirm the disciplinary sanction;
- 16.15** The appeal panel will announce the decision to the management representative and appellant personally if practical and this will in any case be

confirmed in writing together with the reasoning behind the decision. The employee will also be reminded that there are no further rights of appeal.

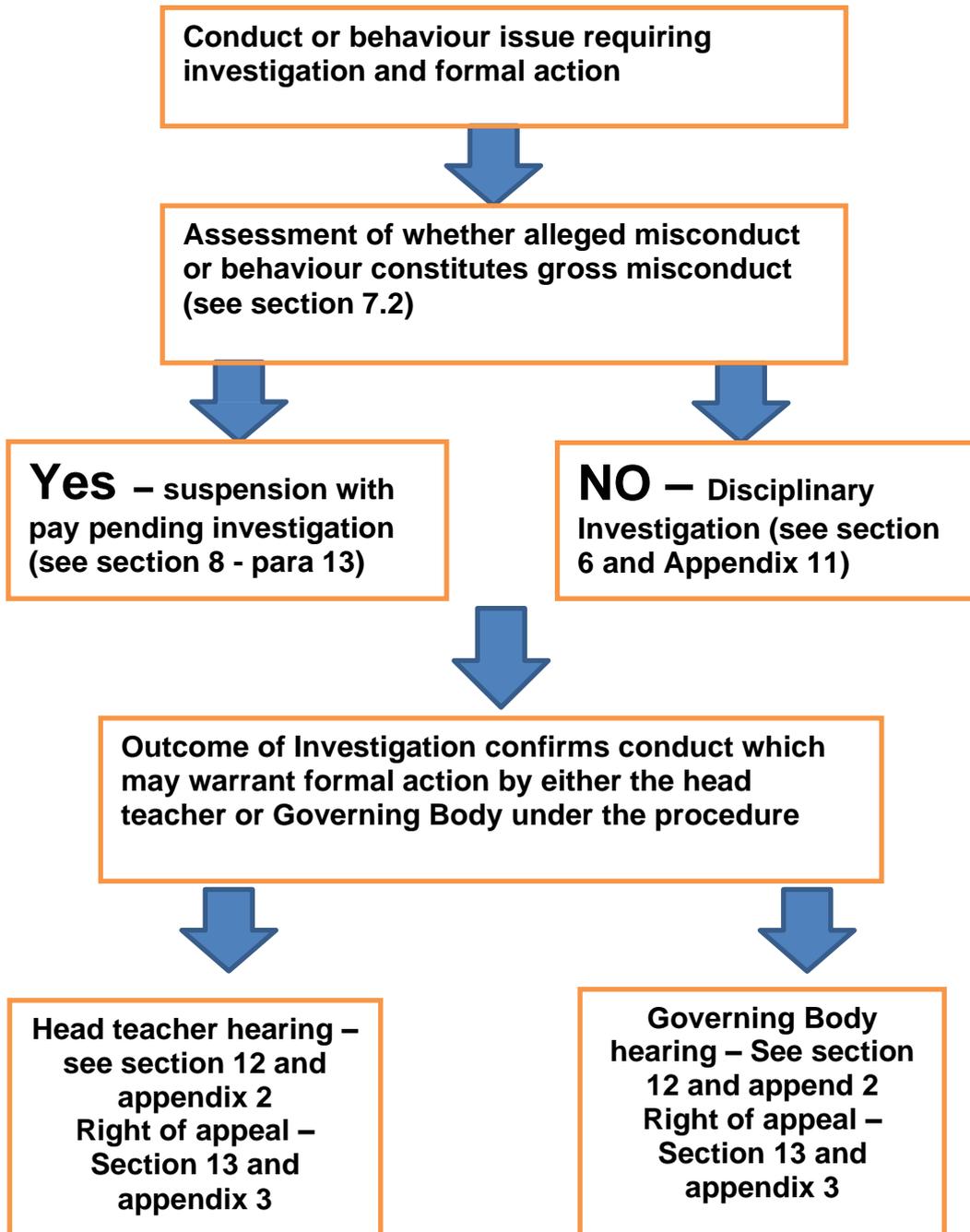
## **APPENDIX 4**

### **17 Alternative Arrangements**

- 17.1** In certain circumstance the governing body may feel that it is not appropriate for the head teacher to exercise delegated responsibility for staff disciplinary matters and may consider applying alternative arrangements. This would involve a governing body disciplinary panel exercising responsibility. The circumstances in which delegated responsibility for staff disciplinary matters may be exercised by the governing body are as follows:
- 17.2** Where the head teacher has been directly involved in disciplinary procedures leading to dismissal (other than in initiating an investigation), has had some prior involvement in an issue of misconduct involving a member of staff which could be seen to prejudice a head teacher's impartiality, or is a witness of particular conduct giving grounds for the dismissal in question.
- 17.3** Where a head teacher is subject to suspension, disciplinary or capability procedures, or disciplinary sanction.
- 17.4** Where the LA has made representations to the chair of the governing body on grounds of serious concerns about the performance of the head teacher.
- 17.5** Where the head teacher has failed to abide by financial limits agreed by the governing body for any school purpose.
- 17.6** A head teacher who is unwilling to perform these functions and whose previous history of service at the school did not include any such responsibilities (this would give the existing head teacher the option of preserving their working arrangements, but when the governing body considers a new appointment for the head teacher post the normal expectation for the head teacher to undertake these responsibilities should apply).
- 17.7** The governing body should review, at least annually or otherwise where necessary, the continuation of any circumstances where the head teacher does not lead on these staffing matters because of concerns about their conduct or performance. The head teacher should have the opportunity to make representations on any decisions to discontinue or continue delegated responsibility.

**APPENDIX 5**

**Flow Chart – Disciplinary Procedure**



## APPENDIX 6

Dear

### **Disciplinary Hearing**

You are instructed to attend a Disciplinary Hearing at (time) on (date) in (specify venue). The hearing will consider the following allegation(s):

List Allegation(s)

These allegations if proven at the Disciplinary Hearing could be deemed to constitute gross misconduct and may result in the termination of your employment. (***Only insert if applicable***)

The Chair of the Disciplinary Hearing will be (name and title) and the panel will also include (names)/ or specify the name of the relevant head teacher. The management case will be presented by (name). A representative from Schools Human Resources will attend to provide advice.

You may be accompanied by a recognised trade union representative or a work place colleague. I enclose the papers to which Management will refer at the hearing (specify). There will be no management witnesses (or show names). You must supply (name) with any papers to which you intend to refer not less than three working days prior to the hearing together with the names of any witnesses you intend to call to speak on your behalf.

You are instructed to attend this hearing and failure to attend without prior notification of a valid reason may itself constitute a separate disciplinary offence. Non-attendance due to sickness must be supported by a valid doctor's medical certificate, which relates specifically to your inability to attend the hearing. The Council on production of a valid receipt will pay for the cost of this. You may submit a written statement if you are unable to attend for any reason whatsoever and/or be represented in your absence by a trade union representative or a workplace colleague. The hearing may in any event be held in your absence.

I enclose a copy of the disciplinary procedure.

Yours sincerely

Head teacher/Chair of Disciplinary Panel

**APPENDIX 7**

**DRAFT LETTER OF SUSPENSION**

PERSONAL AND CONFIDENTIAL

Dear

SUSPENSION FROM DUTIES

I am writing to confirm your suspension from your duties as.....  
(Designation and location) .on..... (Date).....\*and that accordingly you returned  
the site keys in your possession to the Head teacher.

You were suspended from duty pending investigation into (detail the  
allegations).....

Suspension is a neutral act, carrying no implication of guilt.

Whilst you are suspended from duty, the following conditions will apply:

- i. You should not enter the school site for any reason.
- ii. You should not contact any member of staff during school hours or their  
working hours.
- iii. During your working hours you should remain available to be contacted if  
required.

I confirm that you are suspended on full pay. I have advised the school payroll  
provider accordingly.

Enclosed is a copy of the Schools Disciplinary Procedure for your information.

If there is anything that you are unsure of or you wish to clarify please contact  
(school contact).....You are advised to contact your trade  
union/professional association.

Yours sincerely

\*delete as appropriate

**APPENDIX 8**

**DRAFT 1<sup>ST</sup> WRITTEN WARNING**

PRIVATE AND CONFIDENTIAL

Dear

WRITTEN WARNING

I am writing to confirm the decision of the Head teachers/Governing Body Disciplinary Panel (as appropriate) which met on .....(date) The hearing/panel was convened (as appropriate) to consider

.....  
(Details of misconduct / unsatisfactory performance)

I gave/the panel gave (as appropriate) serious and careful consideration to all of the evidence presented to me/them and decided that you should be issued with a first written warning in accordance with section 12.11 of the schools adopted disciplinary procedure. You are required to..... (Details of any conduct/performance improvements required and timescale for improvement). You are hereby warned that should you fail to meet the improvements required further action will result.

You have the right of appeal against this decision. If you wish to exercise this right, you should confirm in writing the grounds or basis for the appeal to the head teacher at the school, within 10 working days from the date of this letter. The appeal will be considered by the Governing Body Appeals Panel.

The Governing Body have decided that your suspension will end on.....and you should report for duty on..... The head teacher will be discussing with you the arrangements for your return in due course (as appropriate).

A copy of this warning will be placed on your personal file. The warning will remain on file for a period of 12 months after which it will be disregarded.

Yours sincerely

Head teacher/Chair of Governing Body Disciplinary Panel (as appropriate)

**APPENDIX 9**

**DRAFT FINAL WRITTEN WARNING**

PRIVATE AND CONFIDENTIAL

Dear

FINAL WRITTEN WARNING

I am writing to confirm the decision of the head teacher / Governing Body Disciplinary Panel which met on .....(date). The panel was convened to consider.....

.....(details of misconduct/unsatisfactory performance).

The panel gave serious and careful consideration to all of the evidence presented to them and decided that you should be issued with a final written warning in accordance with section 12.16 of the schools adopted disciplinary procedure. You are required to.....

.....(details of conduct/performance improvements required, timescale for improvement and any support/training to be provided where necessary). You are hereby warned that should you fail to meet the improvements required further action will follow which may lead to your dismissal.

You have the right of appeal against this decision. If you wish to exercise this right, you should confirm in writing the grounds or basis for the appeal to the head teacher at the school, within 10 working days from the date of this letter. The appeal will be considered by the Governing Body Appeals Panel.

The Governing Body have decided that your suspension should end on.....(date). You should report for duty on.....(date). The head teacher will be discussing with you the arrangements for your return in due course (if appropriate).

A copy of this warning will be placed on your personal file. It will remain on file for a period of 18 months after which time it will be disregarded.

Yours sincerely

Head teacher / Chair of Governing Body Disciplinary Panel

## APPENDIX 10`

### **Private & Confidential**

Dear \_\_\_\_\_

### **Disciplinary Hearing outcome - dismissal**

This letter is to confirm the outcome of the Disciplinary Hearing held on (*insert date*) at which allegations about your behaviour /standard(s) under the School's Disciplinary Procedure were considered.

The Disciplinary Hearing was attended by yourself, your representative, (*insert name*), and (*insert names, titles of others in attendance*). A copy of the notes of the disciplinary hearing is enclosed.

The details of the allegations were (*insert details from hearing invitation*)

I have decided that ***you be dismissed with effect from*** (*insert date*) *with* (*insert contractual notice entitlement by referring to the contract of employment*) *weeks' notice and you will continue to receive full pay during this period (or without notice in cases of summary dismissal for gross misconduct) and your last day of service with (name of school) will be...* *You will also be entitled to any outstanding holiday pay up to your last day of service and I will arrange for these payments to be made to you in your final salary payment.*

**Special note: where there are allegations involving vulnerable clients the paperwork will be retained at least until the person reaches normal retirement age or for a period of 10 years from the date of the allegation(s) and in exceptional cases, warnings may be referred to in future disciplinary purposes if it relates to issues involving vulnerable clients or verges on gross misconduct. Amend wording to incorporate this relevant.**

### Reason for decision(s)

In coming to my decision, I took account of (*insert the factual issues covered e.g.*

- *Summary of investigation report*
- *Any evidence from management witnesses*
- *Account given by the employee/representative*
- *Any other information or other documents considered*

### Further information

Insert any further action required (*for example, return of school property etc.*).

### Right of appeal

You have the right of appeal against this decision through the School's Disciplinary Procedure. If you wish to do so, you must put it in writing to (*insert name, title*) within 10 working days (*insert specific date*) of the date of this letter. The appeal notification must incorporate a statement setting out clearly the grounds of appeal, or state that the full grounds will follow, which must be received within a further 5 working days (i.e. 15 working days of the date of the letter notifying the disciplinary decision). Where no appeal is received within the above timescales, the matter will be regarded as closed.

Yours sincerely

(*Name of hearing officer*)

(*Title*)

Cc: (Insert name, title), Investigation Officer

(Insert name), HR representative

(Insert name of fellow employee or trade union representative, if known)

## **APPENDIX 11**

### **INVESTIGATION GUIDANCE**

#### **18 Purpose**

The purpose of an investigation is to obtain and analyse information and to collect evidence to determine whether there is a prima facie case to answer. The governing body or head teacher will normally appoint an investigating officer to collect evidence which will form the basis of the decision regarding whether there is a disciplinary case to answer. It is important to remember that it isn't just management representatives who present evidence; both parties together with witnesses will do so. A good investigation should aim to establish all the relevant information, not just enough to support a management decision.

#### **18.1 Cases involving potentially criminal acts**

**Governing bodies or head teachers will have considered possible police involvement before appointing an investigating officer to conduct a disciplinary investigation. In such cases an internal investigation must be delayed until police investigations are complete.**

#### **18.2 Process**

The process is one of gathering and checking information from the following sources:

- The people involved. This may include staff, parents and, where unavoidable, children. Where it is necessary to speak to children in connection with a disciplinary investigation, the consent of the children's parents, or guardian should be obtained.
- Documentation, letters, procedures, receipts etc.
- Physical evidence - damaged property, photographs, equipment etc. (subject to obtaining the owner's consent where necessary).
- Personal observation e.g. site/area inspection where appropriate.

The evidence gathered should enable the investigating officer to be clear about three main aspects of the case:

- What has happened? The sequence of events, who was involved, when and where this took place etc.
- What rules and standards apply? What is the established practice that should be followed? How are these rules and standards made known to staff?

- Any background to the incident. What led up to the incident? Are there any issues regarding the management, communication and staff support in the work area concerned?

The information gathered may provide evidence for a management case for disciplinary action so it is important that it is collected in a manner consistent with this disciplinary procedure and that **all** information is carefully recorded and securely stored.

### **18.3 Gathering evidence –good practice principles**

Collect any evidence speedily. Ensuring that items or property that may be needed are kept securely.

Be aware of the need for confidentiality.

Where possible collect original items rather than copies.

Collect any documentation covering the three key aspects of the case, what has happened, established practice and the background.

### **18.4 Collecting information – good practice**

Collect information, including written witness statements, as quickly as possible while the events are still fresh in peoples' minds and before discussion starts to influence people. If possible, prevent witnesses from talking to each other before providing evidence. This is especially important where staff are suspended.

Ensure privacy when collecting evidence and treat people with sensitivity and courtesy.

Keep an open mind. Don't make assumptions. Try not to become personally involved and be as objective as possible. Even a sceptical approach can be appropriate.

Ascertain the facts and check them where possible. Dates especially can easily be mistaken or confused.

See the employee against whom the allegations have been made last in the investigation, once the evidence in support of the allegation/s has been collected.

Remember that complaints against those handling investigations are not uncommon!

### **18.5 Recording**

Double check that everything has been covered and that any information gained is clear.

Summarise the main points and check that the interviewee has no further points to make.

Tell the person that a further meeting may be necessary. Explain what happens next.

### **18.6 Taking statements**

Ideally people should write their own statement. If necessary it may be dictated. The statement should be consistent with what the person remembers of the incident.

Statements should be signed and dated. Ensure people know how their statements will be used. Inform interviewees that if the statement is used as part of a case they may be required to attend a hearing and answer questions about their statement.

### **18.7 Conducting an investigation interview**

Arrange meetings in advance. Ensure that staff involved understand the purpose of the investigation, the procedure and that they have been advised of their right to be represented if they are the subject of allegations which may lead to formal action.

If considered necessary have someone present when interviewing witnesses. A HR representative can attend if requested.

Witnesses should be informed that they can be accompanied at an investigation interview by a trade union representative, or colleague.

Be prepared for a range of feelings and behaviours from those being interviewed. These may range from anger and hostility to distress and great anxiety.

### **18.8 The interview**

Ensure suitable conditions are in place for the interview. Make sure that the person concerned knows that this is a disciplinary investigation, that they will be asked to make a statement (if they have not already done so), that information they give may be used at a disciplinary hearing and that they may be asked to appear as witnesses in a hearing.

Explain to witnesses that their statement will need to be copied to the employee against whom the allegation/s are made to allow them the opportunity to respond. Different protocols may apply in the initial stages of an investigation into allegations brought under the whistleblowing procedure.

Ensure that staff against whom allegations have been made are aware of their right to be represented by a trade union representative, or work based colleague.

Explain how the investigation will proceed in broad terms. Tell the person that the role of the investigating officer is to collect evidence, and to determine if there is a prima facie case to answer.

Explain that notes will be taken.

Assure those being interviewed that any findings will be treated as confidential. However, don't give assurances that their information will remain with the investigating officer. Confirm that it may be needed as evidence at a hearing.

## **18.9 Questioning**

Remember that information is best gained from a conversation, rather than an interrogation. Do not dominate, allow the interviewee to feel that they can answer freely. It is not good practice to pressure somebody who could be a potential witness at a hearing. Such pressure can bring into question the role of the investigating officer and can cause problems in relation to the whole investigation process.

Plan questions in a logical and orderly sequence and be prepared to supplement your list. Use open questions, keeping them short and simple to encourage the person to talk. Closed questions should be used to check points of detail and where the interviewee is vague. Probing questions should be used to obtain detailed information and to clarify other answers.

Concentrate and listen to the answers (don't miss points thinking about the next question). Avoid leading questions.

Don't imply criticism. The interview is to obtain facts. Personal criticism or judgement will inhibit the interviewee and make your task harder. The rights and wrongs of a case are for a hearing to decide.

Recap throughout the interview to ensure that the facts are agreed and understood. As a principle, focus on facts, what the person saw or heard, who was there, where, when etc. Ensure you distinguish between facts the person is giving and their opinions/assumptions. Ask how they know things they state as fact. Ask how they know that the things they are stating as factual are true. Ask for specific examples or clarification where necessary.

Take special care where the matter under consideration involves issues of race and/or sex.

## **18.10 Writing the investigation report**

- An investigating officer's report should include the following:-
- The purpose of the investigation and by whom it was conducted.
- A summary of the investigation - brief description of the events and findings.
- Background information and how the issue was brought to light.
- Confirmation as to whether or not the subject of the investigation has, in the view of the investigating officer, a case to answer

Details of the investigation, including a list of those interviewed records and details of interviews, statements, documents inspected and details of other actions taken e.g. personal inspection of site or damage etc.

Care should be taken to include all information whether it supports the management case or weakens it. Otherwise this could be challenged by a member of staff under investigation and is not fair or reasonable to them. The report must contain all relevant information so that the case may be objectively assessed. It should include a recommendation as to whether or not they feel there is a case to answer.

Evidence:

Any evidence included with the report should be:

- Authentic - it must be verifiable.
- Relevant - to the issue in question
- Accurate - check the dates, figures etc. tally
- Easy to use - list, number, index, label etc.

Assessing the case:

The information from the investigation will be assessed by the governing body or head teacher before a decision on how to proceed is taken. The evidence needs to show that the case has been thoroughly investigated before that decision can be reached.

The investigation should be completed as soon as possible, after the alleged misconduct depending on the complexity of the case, and the availability of witnesses and evidence. Except in exceptional circumstances, it should normally be completed within 20 working days, following appointment of the Investigating Officer. The outcome of the management investigation should be discussed with the head teacher. Where it has not been possible to interview the employee during the investigation, then the Investigating Officer should consider deferring production of the report for a short while until that has been done. However, while the Investigating Officer will normally meet the employee it is not always essential. In particular, if there is evidence that the employee would be unable to attend a meeting in the immediate future, then it is permissible for the Investigating Officer to finalise their report in the absence of a meeting. In such cases, the employee should have the opportunity to make written representations if practical.

The Investigating Officer will draw up a report of the investigation and provide a recommendation as to whether or not they feel there is a case to answer. This should normally be completed within 10 working days. If as a result of the investigation it is found that formal disciplinary action is not appropriate, the head teacher (or chair of governors in cases involving the head teacher) should decide whether any other action is necessary in accordance with school procedures or other

guidelines (e.g. Medical Capability Review). The employee should be notified of any decision in writing, normally within 5 working days

Allegations that are found to have been unfounded or malicious should be removed from personnel records and any that are not substantiated, are unfounded or malicious should not be referred to in employer references.