

# Schools Disciplinary Policy



**Barking and Dagenham**  
**Council of the Year 2018**

<b>School/Academy Name:</b>	
<b>Date of Adoption:</b>	
<b>Chair of Governors Signature</b>	
<b>Signature of Head Teacher:</b>	

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## 1. Introduction

### Policy for school-based staff

The Council and Schools are committed to providing a working environment where individuals are treated with fairness, dignity and respect. This procedure is designed to ensure that there are fair and objective arrangements for dealing with disciplinary issues in the workplace.

There is a need for guidance to Governing Bodies and Head Teachers on a range of issues. One of these is a disciplinary procedure for all staff in Schools. This procedure is offered to Governing Bodies as an example of good practice for adoption across the Borough. Uniform use of the procedure will ensure fair and equitable treatment for all staff.

The disciplinary procedure for school staff is particularly significant since it covers a complex area. Procedures must be in line not only with natural justice but with a variety of legislation. Mistakes and errors in this area can be time consuming and could be very costly. They can also destroy the working relationships between staff, staff and pupils, staff and school management and staff and Governors.

The Procedure should not be viewed primarily as a means of punishing individuals but as a way of helping and encouraging employees to improve and to rectify unsatisfactory conduct. It is intended to ensure allegations of misconduct are dealt with promptly, fairly and consistently in accordance with relevant Council and school policies, employment legislation and "Best Practice".

This procedure (other than the list of Appendix 3) has been agreed with the accredited local representatives of the recognised trade unions. Adoption and operation of this procedure should ensure that the Governing Body and the Head Teacher operate in accordance with the following provisions:

- The Employment Rights Act 1996 and the Employment Relations Act 1999.
- Conditions of Service for School Teachers in England and Wales (Burgundy Book)
- Conditions of Service for Support Staff in England and Wales (Green Book)
- Conditions of Service issued to school staff at the time of their employment and the letters which confirm their contract of employment.
- The Education Act 2002 (Section 35 (8) and Section 36 (8))
- The School Staffing (England) Regulations 2009
- ACAS statutory Code of Practice for Disciplinary and Grievance Procedures,
- ACAS guidance on Bullying and Harassment at Work (effective from 6 April 2009).

In order to avoid unfair treatment or discrimination, Governing Bodies and Head Teachers should seek the advice and assistance of the Human Resources adviser at all stages in the operation of these procedures.

The Director of Children's Services or representative is entitled to attend all the meetings of the Governing Body's Disciplinary and Appeals Committees.

Adoption of these procedures will ensure that the Governing Body will have the full support of the Local Authority in progressing cases but, if a Governing Body wishes to consider adopting an alternative policy and procedure, then a copy of that draft policy and procedure, together with the reasons for wishing to adopt it, should be sent to the Director of Children's Services who will advise the local secretaries of recognised unions and organisations.

Governing Bodies should note that they have a statutory obligation to engage in collective bargaining with the recognised unions on terms and conditions of their members and the school should ensure that negotiations are pursued with the local representatives of the recognised trade unions/organisations, who will usually be the local union/association secretaries. Contact details will be provided by the Director of Children's Services or representative.

Governors must ensure that the adopted procedures are readily available to and understood by all members of staff.

These procedures relate exclusively to breaches of discipline by staff, including Head Teachers, in Barking and Dagenham community schools and voluntary controlled schools but may be adopted by other maintained schools, academies and free schools. This document does not apply to Borough Unattached Staff, Peripatetic Staff or Advisory Teachers.

## 2. General

### Advice and Support

Human Resources services will support and advise Head Teachers and Governors considering allegations of misconduct and monitor all formal disciplinary cases to ensure that they are dealt with in accordance with the Procedure, employment and equalities legislation, and "best practice".

**Community and Voluntary-controlled Schools using human resource providers other than the local authority recognised service provision must ensure that the local authority is notified in line with this procedure. That provider must adhere to the agreed procedure, when providing support. In cases, where the allegation is Gross Misconduct and/or any allegation which may lead to the possibility of dismissal, the Local Authority should receive notification of all hearings; as in the Local Authority is the employer and only an employer can terminate an employee's employment.**

### Representation

Employees may only be accompanied / represented at meetings arising from this procedure by a work colleague or an accredited trade union representative.

Employees have a statutory right to be accompanied by a trade union representative or a work colleague at any meetings of the formal process. In addition, employees may be accompanied as

appropriate by a trade union representative or work colleague at any meeting arising from the Disciplinary Procedure.

In exceptional cases, as determined in consultation with Human Resources, the employee may be accompanied / represented by a legal representative at formal hearings and appeals. This will only apply where:

- i) the potential outcome may determine what happens in proceedings consequential to the disciplinary procedure case: e.g. where the process may result in the employee being barred from future employment or
- ii) when it is agreed as a reasonable adjustment for a disabled employee.

The Legal Representative must be familiar with this LBBD policy, as formal hearings and appeals will be conducted in line with this Policy.

It is primarily the employee's responsibility to arrange for representation and to inform the representative of the arrangements (time and dates) of meetings. By agreement and to avoid delay, the employee's representative may be communicated with directly by the employer/HR adviser on such matters and vice versa.

There may on rare occasions be a need for an employee to require the extra support of a family member. This will be determined on a case by case basis following discussion between the HR adviser, employee and the work colleague/union representative involved.

### **Confidentiality**

In the interests of natural justice, to avoid prejudicing the outcome of any disciplinary investigation, and because of legal obligations under the General Data Protection Regulations as amended the proceedings must be kept **strictly confidential**. All witnesses involved in the process will be required to maintain confidentiality at all times and so must not discuss or disclose details of allegations, witness statements or the outcome of meetings with anyone or via the media. It is imperative that witnesses are not approached by anyone other than those who have been nominated to do so.

Head Teachers and Governors involved in the various stages in this disciplinary procedure are advised that, under no circumstances, should they discuss the case with any other party or amongst themselves. Failure to observe this instruction could result in the case being dismissed on procedural grounds.

This matter is of particular relevance because individual members of the Governing Body may, at a later stage must be a member of an appeal body and natural justice demands that they must have no prior knowledge of the case. Governors must remain unbiased and their integrity must not be tainted.

### **Fairness and objectivity**

It is important to make sure that the disciplinary process is conducted in a fair and unbiased manner. The persons carrying out an investigation (the Investigating Officer) and conducting the Disciplinary Hearing (the Hearing Officer) must, to remain impartial, have had no prior involvement in the case

being investigated either as a witness or complainant. Head Teachers, senior leaders and governors involved in applying the procedures should undertake appropriate training.

### **Records**

The ACAS Code of Practice recommends that records should be kept of disciplinary hearings, detailing the following:

- the complaint against the employee
- the employee's defence
- findings made and actions taken
- the reason for actions taken
- whether an appeal was lodged
- the outcome of the appeal
- any grievances raised during the disciplinary procedure
- subsequent developments
- Notes of any formal meetings

Records should be confidential and kept in accordance with the requirements of the procedure and the Data Protection Act 1998 as amended. The employee should receive copies of any meeting records.

### **Definitions**

- a) "The Local Authority" means the Council of the London Borough of Barking and Dagenham.
- b) "The Governors" means all members of the Governing Body of a school appointed from time to time, in accordance with the provisions of the Education Acts and in accordance with the decisions of the Local Authority and the provisions of the Articles and Instrument of Government.
- c) "The Director of Children's Services" means the Chief Officer appointed as such by the Council of the London Borough of Barking and Dagenham, or his representative.
- d) "The Head Teacher" means the person who has been appointed - whether on a permanent, temporary or acting basis - in accordance with the provisions of the Articles of Government.
- e) "The employee" means the person employed by the Local Authority in a maintained School who is paid in accordance with the scales of salaries for teachers or for non-teachers in such school.
- f) "Complaint" means an allegation of misconduct, indiscipline and/or any other specific cause of disciplinary enquiry and/or action against a teacher. A complaint may be about a single matter or comprise a number of separate issues.
- g) "Work colleague or trade union representative" means the person accompanying, advising and representing the employee.
- h) Gross misconduct means serious misconduct

- i) Misconduct means a failure by the employee to observe the normally understood and accepted rules affecting work procedures, safety standards and professional conduct, whether written or not, to which the employee is lawfully and reasonably expected to conform.
- j) Investigating Officer shall be appointed by the Governing Body or Head Teacher or (as the representative of the Governing Body) after seeking advice from their HR provider.
- k) Hearing Officer shall be appointed by the Governing Body. This will normally be the Head Teacher or the Chair of the panel appointed by the Governing Body from amongst its number for this purpose.
- l) 'Governors' designated person' or 'designated person' is the person appointed by the Governors in cases where the head is the employee about whom complaints or allegations have been made.
- m) 'Natural Justice' the words "natural justice" have specific meaning in the law. Natural justice comprises two rules, the rule against bias and the rule of the right to a fair hearing. Because of the necessity of maintaining confidence in the process, it is most important that people who are engaged in these processes feel that they have had a fair hearing and that there has been no bias.

### **Monitoring**

The local authority Human Resources service will update the Procedure to comply with any changes to legislation and / or ACAS guidance, monitor closely the application of the procedure and seek to agree with the recognised Trade Unions any amended draft from time to time.

## **3. Special Circumstances affecting Disciplinary Cases**

### **Criminal Offences**

Criminal convictions, cautions or charges are not automatic reasons for dismissal. The Head Teacher or nominated Person, with Human Resources, should consider all the facts and whether the charge/offence is relevant to the person's employment and warrants investigation and action under the Procedure.

### **Child Protection / Fraud**

Head Teachers and Governors must seek advice from Human Resources where there are allegations of misconduct relating to child protection issues or fraud before taking any action under the Procedure.

Allegations could form part of or be linked to another procedure and may therefore need to involve other Officers of the Local Authority for example the Local Authorities Dedicated Officer (LADO) for child protection or the Local Authorities Audit Section. Employees should be referred to the appropriate local guidelines in child protection cases.

### **Child Protection / Fraud - Suspension**

The LADO may advise the School to suspend an employee for safeguarding reasons and this should adhere, except in extremely exception.



### **Trade Union Officials**

Head Teachers and Governors must seek advice from Human Resources where there are allegations of misconduct against a trade union shop steward, branch official, Health and Safety or Learning Representative. A senior officer/official of the Union must be contacted before starting a formal investigation under the Procedure.

### **Workers not directly employed by the School**

Head Teachers and Governors must seek advice from Human Resources on dealing with any allegations of misconduct concerning agency workers or workers not directly employed by the School.

## **4. Roles and Responsibilities**

All formal proceedings shall be confidential and held in private. If a public statement is considered necessary it will normally be confined to the operative decision only.

### **Employee's Responsibility**

Employees are required to comply with the London Borough of Barking and Dagenham Employees' Code of Conduct, the School's policies and procedures and any relevant Professional Codes of Conduct (i.e. Teachers' Standards)

Employees must comply with arrangements detailed in this Procedure which are designed to ensure that disciplinary issues are dealt with fairly and objectively. Employees are required to:

- co-operate fully with the process;
- maintain confidentiality;
- attend meetings at the times and places designated;
- give as much notice as possible when they or their representatives cannot attend formal meetings and be reasonable when suggesting alternatives, which should be within 5 working days of the original date except by mutual agreement; and
- follow the terms of any suspension.

### **Head Teacher's and Governors' Responsibilities**

The Head Teacher and Governors must ensure that employees are made fully aware of the standards expected by the Employee's Code of Conduct, the School's policies and procedures, relevant Professional Codes of Conduct, Contractual Terms and Conditions.

The Head Teacher and Governors must comply with arrangements detailed in this Procedure which are designed to ensure that disciplinary issues are dealt with fairly and objectively. The Head Teacher (or Chair of Governors in cases of disciplinary proceedings against Head Teachers) is required to:

- promptly notify the employee of any concerns about unsatisfactory conduct and/or behaviour and ensure that copies of signed and dated complaints made are available to the employee at the appropriate point in the procedure.
- maintain confidentiality;
- try and resolve minor issues informally with the employee through informal discussion and advice, which must be documented and copies provided for the schools' HR service for retaining on personnel files subject to deletion in accordance with this procedure;
- establish the facts promptly before recollections fade and decide whether a formal investigation is required;
- seek advice from Human Resources before undertaking any further investigations in cases where there is a complaint/allegation that comes under the remit of Child Protection; and
- ensure that regular contact is maintained with employees (and their representatives whenever possible) on suspension to keep them advised of the progress of the investigation

### **Responsibilities for All**

All attendees at Hearings and Appeal Hearings should seek permission from the Chair of Disciplinary Panel, if they would like to record the Hearing. In normal circumstances this will not be allowed.

All Hearings and Appeal Hearings should be conducted in a professional manner, where any participant does not conduct themselves professionally they may be expelled from the proceedings. This will be the decision of the Hearing Officer or Chair of the Governors' Panel.

### **Investigations**

If the investigation provides evidence that may be regarded as misconduct or gross misconduct, the Investigating Officer should recommend to the Head Teacher or Chair of Governors (or whichever Governor has been appointed to make the decision) whether there is a need for a disciplinary hearing and, if so, arrangements for the hearing to take place should be made and for the employee to be advised formally in writing of:

- the date and arrangements for the hearing;
- the specific complaints and allegations made;
- the maximum level of sanction if the allegations are upheld including (the IO, cannot determine the maximum sanction, as this is the responsibility of the decision maker/s - change not accepted) whether dismissal may be a considered option;
- the right to be represented;
- the right to present evidence and call witnesses; and
- the names of witnesses being called together with copies of the evidence to be presented, including any CCTV evidence, offending internet material or emails arising from the investigation.

The employee and/or his/her representative is/are responsible for:

- i) calling witnesses for the employee and notifying them of the time and date of the hearing and

- ii) providing the employee's evidence/documentation for presentation at the hearing a minimum of two days in advance of the meeting.

The employee and the employee's representative should be given a minimum of 10 school working days' notice of the date of the hearing with details of the information to be presented (e.g. the investigation report, witness statements etc.) and the names of witnesses to be called. If agreed by the employee, 10 days may be waived the cases of impending school holidays and then the case can be heard earlier.

If the employee's chosen representative is unable to attend, the Hearing shall be rescheduled to a mutually convenient time no more than 5 school working days after the date originally proposed. (This deadline may only be extended by agreement).

The employee will be notified in writing that if s/he fails to attend the re-arranged hearing without good reason, fails to arrange representation or refuses to co-operate, the case may be heard in his/her absence.

The Hearing Officer conducting the meeting will arrange for a note taker to be present. The minutes/report will be made available to the employee and his/her representative after the meeting for verification (If the employee disagrees with the notes of any meetings, s/he can ask for his/her version to be attached to the minutes).

## 5. Disciplinary Process

### Human Resources

Procedural advice should be sought from the Human Resources provider to ensure adherence to the procedure and the concept of natural justice. A Human Resources Adviser should attend all formal Disciplinary Meetings and Appeals to ensure a thorough and fair process for all concerned in line with the School's procedure and best practice contained therein.

The Human Resources Adviser will be available to give appropriate support and advice during the process; this will include: -

- talking through the process to be followed and
- advising where to go for further help and support

It is essential that any complaints alleging misconduct are investigated and the facts established promptly before recollections fade. Investigations do not need to be time consuming, but speed should not be at the expense of thoroughness. Complaints should be put in writing, be signed and dated and copies made available to the employee about whom the complaint has been made.

In accordance with the principles of natural justice, employees shall be advised at each stage, by the Investigating Officer, of the precise nature of the complaint and any allegation(s) against them and given the opportunity to respond, as part of the investigation, before any decision is made about the outcome of an investigation.

No disciplinary action will be taken until the matter has been investigated and employees shall not be dismissed for the first instance of misconduct except, if so determined, in a case of gross misconduct or for breach of implied term of mutual trust and confidence.

The employee shall have the right to appeal against any disciplinary action .

### **Gardening Leave**

**Garden leave** or **Gardening leave** describes the practice where an employee leaving a job – having resigned or otherwise had their employment terminated – is instructed to stay away from work during the notice period, while remaining on the payroll.

**Locally (LBBD) Gardening Leave** normally describes the situation when an employee is sent home pending possible formal suspension or initial fact finding, where a serious allegation has been made. This is performed as a formal suspension requires five days' notice as the employee's Professional Association/Trade Union and Human Resources must be present.

### **Suspension**

Where the alleged misconduct is so grave that it is not reasonable for the employee to remain at school pending an investigation, the Head Teacher, in consultation with the Chair of the Governing Body and the Director of Children's Services or representative, may suspend the employee on full pay. The employee shall be advised to make immediate contact with his/her Trade Union or Workplace Colleague and that s/he may be accompanied by this person at the meeting called for the purpose of formal suspension.

The meeting should be held within five working days and the action should be confirmed, together with the reasons for it, in writing to the employee.

Where such action is against the Head Teacher the role of the Head Teacher shall be taken by such person as the Governing Body chooses to appoint for that purpose.

**Suspension is not a disciplinary act, and does not imply guilt, but careful consideration should be given to the case before an employee is suspended.**

**Employees will be suspended on full pay and paid as normal.**

Circumstances in which suspension may occur include:

- when children are considered to be at risk;
- where allegations are so serious that dismissal for gross misconduct is possible;
- where the conduct of the investigation may be impeded by the presence in school of the employee;
- when there is some other justifiable substantial reason for preventing the employee's presence in the school.

The continuation of suspension will be under regular review. If suspension exceeds a period of six weeks there will be a review of the need for continuing the suspension and the employee or his/her representative will be contacted by the employer for that purpose and their views taken into consideration.

## **5.1 Disciplinary Investigation**

In most cases disciplinary issues will be investigated by a person appointed by the Head Teacher. Normally, a senior teacher on the leadership pay range will be appointed in the case of complaints involving teachers and teacher related employees.

Advice must be sought from Human Resources where there are any concerns as to the impartiality of the nominated Investigation Officer. Any disagreement will be referred to the Chair of Governors whose decision is final.

**Note:** in some cases, Head Teachers/Governors may decide to suspend employees during an investigation in the light of evidence emerging

The employee will normally be informed in writing of the complaint, the nature of the allegation and that an investigation is taking place.

The focus should be on the specific complaints/allegations made and determination of whether the employee may be charged with misconduct or gross misconduct will arise from the evidence acquired and statements provided.

The investigating officer should establish the facts as quickly as possible, avoid the potential for collusion amongst potential witnesses and obtain all the relevant information by collecting written evidence and interviewing the employee and known witnesses. The officer should then decide whether there is an issue to be dealt with informally or a case to be dealt with using the formal procedure.

It is important to remember that disciplinary investigations are stressful for all concerned, especially for the employee, the complainant and potential witnesses. Moreover, re-integration to work of employees subjected to lengthy disciplinary procedures may be much more difficult to achieve as a result of a lengthy process. Therefore, consideration should be given as to what priority and support is needed to enable the school to carry out a full investigation as speedily as possible.

It is not possible to set rigid timescales for the completion of investigations but the Investigating Officer must seek advice as soon as possible from Human Resources if this is likely to take longer than 4 weeks. The employee and his/her representative should be kept regularly advised of the progress of the investigation if this is likely to last more than four weeks.

### **Witness Evidence**

Witnesses should be interviewed and/or asked to provide written statements. A record should be taken of interviews and the notes of meetings and witness statements signed and dated by the witness. Witnesses must be reminded of the need to maintain confidentiality, that they may be required to attend future hearings and that their statements will be used as evidence and made available to all parties involved.

If, during the investigation, pupils are involved, especially young pupils, they may be asked to make an oral statement, which will be written verbatim and witnessed on their behalf. Questioning pupils is an alternative but must be undertaken with sensitivity and leading questions must be avoided; these statements should be anonymised.

## Investigation meeting with the employee

The investigation will normally require the employee to have a face to face meeting with the investigating officer. The Investigating Officer, in consultation with the Human Resources adviser, must notify the employee as soon as practicable that an investigation is being carried out and the reason for this and arrange an investigation meeting.

The employee shall be formally notified in writing of the arrangements for the meeting and be given at least 5 working days' notice of the meeting. The employee should also be notified in writing of the specific complaints made and potential outcomes of the investigation. A copy of the disciplinary procedure shall be provided to the employee if not already made available.

Employees may be accompanied at any meetings under the procedure either by a trade union representative or work colleague. If a chosen representative is unable to attend a meeting, the Investigating Officer will reschedule the meeting to a mutually convenient time, not more than 5 working days after the original notified date. This deadline may be extended by agreement provided the meeting is held within 20 working days of the originally notified date.

The purpose of the investigation meeting is to give the employee the opportunity to respond to the allegation(s) and to raise any concerns or make comment as part of the fact-finding process.

Following the meeting it may be necessary to seek further information or to interview/re-interview witnesses to check facts or seek further clarification. Where new information is obtained during the investigation, it may be necessary to reconvene the investigation meeting in order to give the employee the opportunity to respond.

Once the investigation is completed, the Investigating Officer shall produce an Investigation Report setting out the complaints/allegations made, the evidence and recommendations as to whether there is a case of misconduct or gross misconduct to pursue.

**Note:** The determination of whether a case justifies a charge of misconduct or gross misconduct can only be made as a result of the investigation and the school should avoid pre-empting the outcome of the investigation when informing the employee of the reasons for the investigation. If there are reasonable grounds for considering whether the complaint may amount to gross misconduct, the employee should be informed at the interview and in any subsequent communications about a disciplinary hearing.

Any recommendation should take into consideration the following: -

- Has the employee admitted to any of the allegations?
- Has the employee broken any rules and procedures?
- Are the rules known to employees and have they been applied consistently?
- Is it reasonable to expect the individual to know their conduct was wrong?
- If there has been an instance of potential misconduct does it require formal action or can it be dealt with informally by counselling, training and development, etc.?

The employee will be notified in writing of the outcome of the investigation and the recommendation(s) as soon as possible but normally within 5 working days after the conclusion of the investigation.



### 5.3 Disciplinary Hearing

The arrangements and procedure for the Hearing are detailed at Appendix 3.

Before a Disciplinary Hearing can take place, the case must have been thoroughly investigated, the investigation report clearly written and supported by evidence. Care must be taken not to allow assumptions, prejudices or stereotyping to influence decisions.

A Disciplinary Hearing will be conducted by a Hearing Officer, who will normally be the Head Teacher or Designated Person with the authority to chair a disciplinary hearing and to issue sanctions. In cases where dismissal is a possibility then the hearing should be conducted by a panel of governors i.e. the Disciplinary Committee of the Governing Body (which can include the Head Teacher) A Human Resources Adviser will provide procedural advice to the Hearing Officer/Panel.

In cases when a Final Formal Warning has failed to bring about an improvement in conduct within the set period of time or, in some circumstances of alleged gross misconduct, consideration may be given by the Investigating officer, in consultation with the Head Teacher or designated person and the Director of Children's Services or representative, to determining that the case be heard by the Disciplinary Committee of the Governing Body.

#### Outcomes

When determining an outcome of the case the Hearing Officer should consider the following:

- Has there been as much investigation as is reasonable in the circumstances?
- Have the requirements of the Disciplinary procedure been properly complied with ?
- Has sufficient regard been given to any explanation put forward by or on behalf of the employee?
- Is the evidence sufficient to enable the relevant committee of the Governing Body to genuinely believe that the employee's was guilty of misconduct
- Are there reasonable grounds upon which to sustain that belief
- Is the misconduct serious enough to warrant the disciplinary sanction contemplated?
- Has sufficient regard been given to any mitigating circumstances put forward by, or on behalf of, the employee and to the response by the person presenting the case against the employee?
- Is the decision reasonable in all the circumstances, taking into account the individual's service history and action taken in similar cases?

After full consideration of the evidence presented, the Hearing Officer may adjourn the hearing, pending further investigation of issues raised at the hearing, before reconvening to decide on the outcome or determine an outcome from the following:

(i) **No Disciplinary Action**

When it is apparent that there is no case to answer or the matter does not warrant a warning, the employee shall be informed that the matter is being dropped and that no disciplinary action will be taken.

However, in some cases, when no disciplinary action is taken, it may be appropriate to make recommendations relating to the case.

The outcome and any recommendations shall be confirmed to the employee in writing and

kept on the employee's file for the period relevant to those recommendations. In exceptional cases this may be for the duration of the employee's employment. The records and other documentation from the investigation shall be destroyed.

(ii) **Counselling/Advice/Referral to Occupational Health**

Where the inappropriate behaviour, or misconduct, can be dealt with through additional training, support, advice or counselling, such a determination should be made and consideration given to referral to the Occupational Health service if there are concerns about the individual's health.

The employee will be informed of the outcome in writing and of the arrangements for any identified support or action taken.

**Note:**

Hearing Officers and Governors must ensure that any support agreed is provided, since it will be unfair to review the case for further action if the employer or employer's representative has not complied with the outcome determined.

iv) **Written warnings and retention of records**

In the event of a decision to issue a warning, the Hearing Officer should ensure that the employee is clear about both the reasons for the warning, and the consequences of failure to heed it.

- a) **1st Written Warning** – For a period of 6 months. First written warnings are normally given for first ~~and less serious~~ offence. The record of a first written warning shall be removed from the employee's file six months after the date upon which it was issued.
- b) **2nd Written Warning** – For a period of 12 months. Second written warnings are usually given for a second and more serious offence ~~or an accumulation of minor offences~~. A second written warning shall be removed from the employee's file one calendar year after the date upon which it was issued, providing no further breaches of discipline have occurred during that period.
- c) **Final Written Warning** - For a period of 18 months. Final warnings are usually given for further instances of misconduct or a first instance of gross misconduct, depending on the seriousness of the case. A Final Written Warning shall be removed from the employee's file eighteen months after the date it was issued, providing no further breaches of discipline have occurred during that period, except in exceptional circumstances notified at the time of the issuing of the final warning.

v) **Dismissal**

If the misconduct is of such a serious nature that the Hearing Officer concludes that the employee cannot continue in their job, the case may be referred, following consultation with the Director of Children's Services or representative, to the Disciplinary Committee of the Governing Body.



The outcome of such a hearing may result in the employee being dismissed with or without notice, depending on the seriousness of the case. Dismissal following cumulative warnings or by reason of capability, will be with pay in lieu of notice.

### **Consideration of cases should take into account:**

- the seriousness and nature of the offence;
- the employee's previous record;
- mitigating circumstances
- the nature of the job

### **Notes:**

1. Action may be taken to recover any monies misappropriated / lost in fraud cases or through breaches of Financial Regulations and / or any other policies and procedures relevant to the case.
2. When, as a result of the outcome of a case, there is an intention by the employer to refer the employee to any professional, statutory or regulatory body that could bar the employee from working with children and vulnerable adults, the employee should be informed that such a referral might be made and the employee and/or representative provided with the opportunity to make representations for non-referral.
3. In all cases, the Hearing Officer will notify the employee in writing of the outcome of the Hearing, including any recommendations, within 5 working days, along with the right to appeal as appropriate.

### **5.4 Appeal**

Employees have the right to appeal against any disciplinary action and if they wish to do so, they should write to the **Chair of the Governors** within 10 working days of receiving the letter confirming the outcome of the Hearing, stating the specific grounds for the appeal. An Appeal hearing will not be arranged until the above has been adhered.

The appeal will be heard by the Appeals Committee of the Governing Body (normally three Governors). The appeals committee will give at least 10 working days' notice of the date, time and place of the appeal hearing to take place.

An appeal will not normally involve a re-hearing of earlier evidence, but the request for an appeal should specify the grounds for the appeal and whether these refer to the reasonableness of the decision or to procedural matters.

If either side intends to produce new evidence, all relevant documentation should be circulated in advance within the agreed timescales (i.e. within 3 working days of the meeting).

### **Outcome**

The Appeal Committee can dismiss the appeal or uphold the appeal.

If the appeal is dismissed (not accepted as sufficient for changing the original decision) the original decision arising from the hearing will stand.

If the appeal is upheld (accepted in full or in part) the committee may as deemed appropriate:

- impose a lesser penalty
- reinstate the employee
- make recommendations

**Note:** The Appeals Committee shall not have the power to impose a more severe penalty than originally imposed by the Hearing Officer or Disciplinary Committee panel.

The Appeals Committee shall not include any member of the Disciplinary Committee Panel. The Appeal Committee will normally consist of three members of the Governing Body and, in any case, no fewer members than the Disciplinary Committee.

Any decisions should be communicated in writing to the employee within seven working days of the appeal hearing.

**Note:** The opportunity to appeal against a disciplinary decision is essential to the concept of natural justice, and appeals may be raised by employees on any number of grounds, for instance: new evidence, undue severity or inconsistency of the penalty. The appeal may either be a review of the disciplinary sanction, not a re-hearing depending on the grounds of the appeal. (*ACAS guide, discipline and grievance at work*).

**This is the final stage; there is no further right of appeal.**

## APPENDICES

### Appendix 1:

#### PROCEDURAL NOTES FOR HEARINGS AND APPEALS

- 1 Any witnesses called, shall, after giving any evidence, withdraw from the proceedings.
- 2 Any person involved in an earlier stage of the decision-making process set out in this document should not be involved in a later stage of decision making process in the same case.

### HEARING PROCEDURES

#### 1. Hearing Officer's Role

- The Hearing Officer will clarify the roles of those present, check both sides have copies of the documentation and details of the witnesses to be presented and outline the process to be followed.
- The Hearing Officer will not normally allow any further documentation or witnesses to be presented at the Hearing unless both sides agree.
- The Hearing Officer, Human Resources advisor, the employee and his/her representative will be present throughout the hearing except for any adjournment and when the Hearing Officer is considering a decision.

#### 2. Presentation of the evidence

Evidence should normally be presented by the Investigating Officer with the support of the HR Adviser

- The employee and/or their representative will be given the opportunity to respond to the questions.
- Questions may be asked by the employee and/or representative in relation to the evidence presented.

*Where the employee admits to the allegation(s), the Hearing Officer may consider claims of mitigation instead of having the whole case presented. The Hearing Officer will still allow the employee or their representative to clarify any points raised during questioning and the opportunity to ask questions*

#### 3. Employee's presentation

- The employee and/or their representative will present a response to the evidence and complaint and allegation made, calling witnesses and referring to documentation and evidence as appropriate.

- After the presentation, the Investigation Officer, with the support of Human Resources, may ask the employee and/or their representative questions.
- The employee and/or their representative will then have the opportunity to respond and clarify any points raised during the questioning.

#### **4. Concluding Statements**

- Both parties, starting with the Investigating Officer, will have the opportunity to summarise their arguments if they wish and make a concluding statement. This is not a re-hearing of the whole case and neither side will be allowed to ask any further questions.
- Both parties will then withdraw whilst the Hearing Officer considers the case in order to decide on the outcome. If it is necessary to recall the employee or a witness, to clarify points of uncertainty as to the evidence presented, this must be done in the presence of the employee and representative.

#### **5. Outcome**

- In some cases, the Hearing Officer will recall the employee to notify the outcome, if a decision has been made. If further time is needed to consider the matter, the Hearing Officer will confirm the decision and any recommendation(s) in writing within 5 working days and arrange for the notes of the meeting to be issued to the employee and representative as soon as possible afterwards.

#### **6. Hearing by Governors**

The Governing Body will follow a procedure as set out below. The Governors shall act through a Disciplinary Committee with delegated powers. This committee would normally comprise three members:

- 1 Where a complaint is referred to the Governing Body a meeting of the Committee shall be convened within 20 working days to consider the complaint. The employee shall be given not less than 15 working days' notice, in writing, of the meeting and shall be informed of the nature of the allegations, the time and purpose of the meeting. Not less than 10 working days before the date of the meeting the teacher shall be provided with two copies of all documents/written evidence and a list of the persons to be called in support of the complaint.
- 2 The Director of the Local Authority shall appoint an appropriate officer to advise the Governors as required on procedures and to act on his behalf as Clerk to the proceedings.
- 3 The Head Teacher or designated person will present the case against the employee and shall call witnesses as necessary in the presence of the teacher who may be accompanied by a work colleague or representative.
- 4 The employee and/or his representative shall have the opportunity to ask questions of the Head Teacher or designated person or any witnesses on the evidence presented.
- 5 The employee or his representative shall put the employee's case calling witnesses and/or documentary evidence as s/he considers appropriate.

- 6 The Head Teacher or designated person shall have the opportunity to ask questions of any witness on the evidence presented.
- 7 The members of the Governing Body shall have the opportunity at any stage to ask questions of all participants.
- 8 Before summing up, either party may, in appropriate circumstances, recall and re-examine any witness. Thereupon the other party shall also, have the right of re-examination.
- 9 The Head Teacher or designated person shall have the opportunity to sum up but may not introduce new evidence at this stage.
- 10 The employee, or his representative, shall have the opportunity to make the final summing up but may not introduce new evidence at that stage.
- 11 Both parties shall then withdraw, leaving the Governing Body to deliberate in private. The officer appointed as Clerk shall remain with the Governing Body in order to advise on procedural matters and to record their decisions.

If there is a need to recall anyone to clarify points of uncertainty, then both parties will return. Witnesses may be recalled and re-examined by the Governors in the presence of both parties.

- 12 The employee and the Head Teacher or designated person may be informed of the decision immediately after the meeting and/or shall be communicated to both in writing as soon as possible thereafter.
- 13 The Governors may decide to take one or more of the following courses of action:
  - to take **no further action** where no suspension has taken place.
  - to **reinstate** the employee who has been suspended.
  - to issue a **Formal or Final Written Warning**. In addition to such warnings the Governors may also take such action as may be appropriate under the current pay and conditions document

## APPEALS PROCEDURE

### 1 Against Formal and Final Warnings

- 1.1 In the event of the employee wishing to appeal against a formal warning, written notice of the appeal, together with the grounds upon which the appeal is based should be lodged within 10 working days of the date of the warning with the Chair to the Governing Body. The appeal shall be made to the Appeals Committee of the Governing Body and at least 10 working days' notice of the date and place of the hearing will be given to the employee. The procedure to be followed will be as set out above for hearings by the Disciplinary Committee of the Governors. The Appeals Committee will normally comprise 3 members.

1.2 The Appeals Committee may dismiss the appeal or uphold the appeal.

If the appeal is dismissed (not accepted as sufficient for changing the original decision) the original decision arising from the hearing will stand.

If the appeal is upheld (accepted in full or in part) the Appeals Committee may as deemed appropriate:

- impose a lesser penalty
- make recommendations

## APPEALS AGAINST DISMISSAL

- 1 Where the Disciplinary Committee had decided to dismiss the employee, the employee has the right of appeal to the Appeals Committee of the Governing Body. This committee will normally consist of 3 members of the Governing Body and, in any case, of no fewer members than the Disciplinary Committee. Any decision to appeal should be communicated in writing to the Clerk to the Governors within 10 working days of the original hearing.
- 2 The employee shall be given 10 working days' notice of the time and place of the appeal, in writing. This appeal will normally not take the form of a re-hearing under the procedures as set for hearings by the Disciplinary committee of the Governing Body above.
- 3 The Chair of the original panel must attend the Appeal Hearing solely for the purpose of answering any questions that the Employee or his/her Representative, the Hearing Officer (Management) and/or Appeal Panel may wish to ask regarding the basis for the original decision.
- 4 The Appeals Committee may determine to dismiss the appeal or uphold the appeal.

If the appeal is dismissed (not accepted as sufficient for changing the original decision) the original decision arising from the hearing will stand.

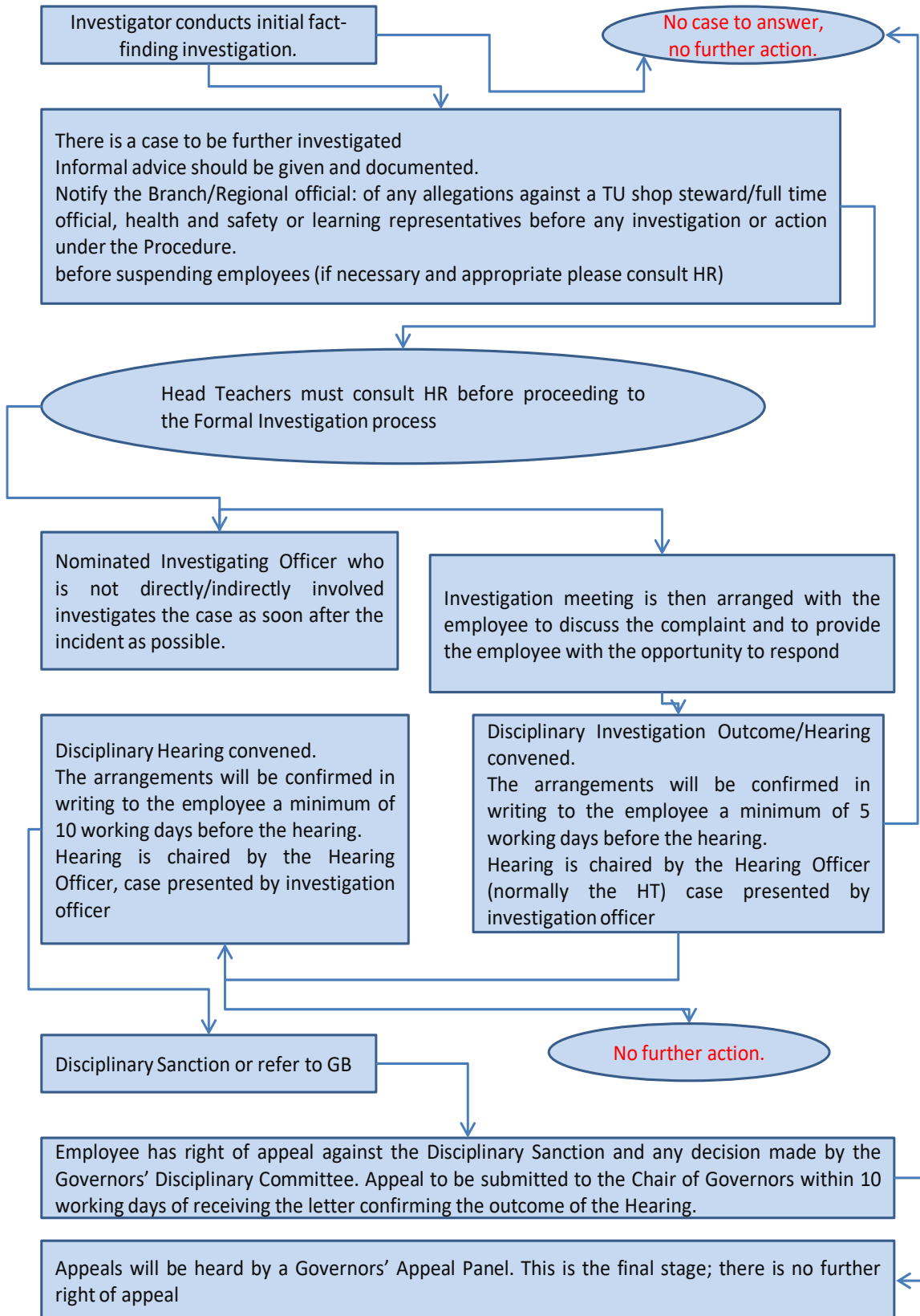
If the appeal is upheld (accepted in full or in part) the Appeals Committee may as deemed appropriate:

- reinstate the employee
- impose a lesser penalty
- make recommendations

**Appendix 2: Disciplinary Procedure – Flowchart**

Legal Check Please

## Human Resources - Circulated September 2019





## APPENDIX 3

### **Examples of offences that could lead to disciplinary action being taken as a result of an investigation**

Below is a list of **examples** of disciplinary offences only and not intended as an exhaustive list. What is listed under “misconduct” may also be considered as “gross misconduct” (and vice-versa) according to the seriousness of the case.

Schools should avoid using the list as a menu to select from in order to create a case.

Complaints, allegations made and the investigation process will inform what the disciplinary offence may look like and whether misconduct or gross misconduct may be the charge that is heard in any subsequent disciplinary hearing.

Head Teachers/Chairs of Governors should take advice from Human Resources on whether an alleged offence may be deemed to constitute a case of misconduct or gross misconduct.

The following are examples of offences that may be considered as misconduct. They may also be considered as gross misconduct according to the Seriousness of the offence and the nature of the employee’s job.

#### **Health and Safety**

- Wilful failure to comply with the obligation placed upon employees under the terms of the Health and Safety at Work Act 1974 and any subsequent amendments.
- Wilful failure to wear appropriate protective clothing or use necessary safety equipment provided by the school for particular duties.
- Wilful failure to comply with accident reporting procedures.
- Threatening behaviour, intimidation, physical assault or fighting at work either with fellow employees or other persons. This does not include reasonable self-defence in cases of assault on an employee.
- Serious breaches of health and safety regulations, endangering yourself or other people, including deliberate damage to, neglect or misappropriation of safety equipment.
- Dangerous or reckless behaviour involving risk of injury to a member of staff or to other persons or other conduct at work likely to diminish safety standards.

#### **Misuse of School equipment, material and resources**

- Accessing or downloading pornographic or offensive material from the web, intranet and/or any other sources.
- Deliberate damage to or deliberate neglect of School property.
- Misuse of materials, equipment or resources that is likely to endanger the health and safety of employees or any other persons or result in a financial loss to the School.
- Using the School’s facilities and equipment, including e-mail, and mobile devices to threaten, bully or harass employees, or pupils.
- Unauthorised use of school materials, equipment or resources for private purposes.

### **Neglect of duty and inappropriate behaviour**

- Wilful failure to renew or maintain accreditations, licenses or qualifications that are a requirement for the post or the responsibility of the post-holder.
- Wilful failure to account properly for or to make a prompt and true return of any money or property which comes into the possession of a member of staff during the course of duty.
- Wilful failure to follow financial procedures when submitting and approving claims for expenditure, including the provision and checking of receipts
- Making a false, malicious or vexatious complaint or accusation.
- Posting defamatory, offensive, incorrect or improper comments or disclosing confidential information about the School, its pupils, or fellow employees through any media including social networking sites.
- Offensive or abusive behaviour.
- Being under the influence of alcohol or drugs (other than those that have been medically prescribed) so that performance of work duties is detrimentally affected.

### **Absence and time-keeping**

- Wilful failure to report absence from work and the reason for such absence.
- Wilful failure to provide an absence certificate as required under sick leave procedures.
- Persistent bad timekeeping
- Absence resulting for an application for 'leave of absence'/'special leave', i.e. where this has been refused, partially granted or has been granted unpaid

The following are examples of offences that may be considered as a fundamental breach of contract and gross misconduct. However, they may also be considered as misconduct according to the seriousness of the offence and the nature of the employee's job:

### **Absence and time-keeping**

- Deliberate failure to follow the School's sickness absence and reporting arrangements, including unauthorised absence from work. (Lawful industrial action taken as part of a lawful trade dispute should not be regarded as relevant in this context).

### **Criminal offences in/outside work**

- Wilful failure to notify the employer of being subject to criminal proceedings.
- Wilful failure to disclose a conviction/caution for a criminal offence whilst employed by the School.
- Criminal offences committed in or outside work will be considered according to the particular circumstances of the case, but dismissal may be the outcome when: -
  - there is theft against the public purse amounting to fraud
  - continued employment would put at risk those taught or employed by the School.

### Data and information protection

- Failure to follow the School's policies and requirements leading to a loss of confidential or personnel information relating to the School, its pupils or fellow employees.
- Misuse of data or personnel information relating to the School, its pupils or fellow employees.

### Discrimination, bullying and harassment

- Sexual misconduct at any time with any person for whom the employer is vicariously liable including but not limited to fellow employees, pupils and contractors
- Acts of bullying and /or harassment that involve physical or mental intimidation or assault and discrimination on any grounds.

### Finance regulations and School procedures

- Stealing from the School, its staff or pupils;
- Offering or accepting bribes
- Deliberate contravention Financial Regulations or neglect of duty by failing to follow procurement rules that results in a financial loss to the School or damages its reputation or affects staff employment.
- Fabrication of any document for financial gain.
- Deliberate fabrication of qualifications or information which is a stated requirement of employment or which could result in financial gain.
- Dishonest or improper use of information obtained in the School's employment.
- Doing unauthorised private work during hours when contracted to work for the School or during periods of sick leave.
- Offences, including failures to declare conflicts of interest, which would affect the employee's ability to undertake contractual duties or carry out obligations in accordance with a relevant code of conduct