

# Staff Disciplinary Code

## 2019-2020

Adopted and signed on behalf of the school by the Governing Body Representative at the meeting on: Autumn Term 2019

Name of the Governing Body Representative: Margaret Brightman

Signature of the Governing Body Representative:



Date signed: 22<sup>nd</sup> October 2019

Last reviewed: October 2019

Next review due by: October 2020



## TORRINGTON PRIMARY SCHOOL

### STAFF DISCIPLINARY CODE

#### **1. Introduction**

1.1 This code has been formulated by the Council after consultation with trade union representatives to provide fair, speedy and effective arrangements for dealing with disciplinary matters. It is intended to cover all cases of misconduct, including serious, cumulative or gross misconduct, and those instances of poor work performance which do not result from genuine lack of capability on the part of the employee to carry out the duties or responsibilities of his/her job. Where capability is an issue to be addressed the model

Managing Capability Guidelines should be used. The Council has produced model Managing Capability Guidelines. Procedures produced by the relevant Diocesan Boards may operate in voluntary aided schools.

1.2 The Code has been drafted in accordance with the principles contained in the ACAS Code of Practice on Disciplinary Procedures and in accordance with various Employment and Education Acts.

#### **2. Employees within the Code**

2.1 This procedure applies to all employees within schools, but does not apply:

- (a) On dismissal for grounds of redundancy; or
- (b) Where the individual has not completed the probation period and dismissal arises from unsuitability for confirmation of employment.

2.2 Although this procedure does not apply in the circumstances detailed in paragraph 2.1, all employees regardless of employment status or length of service, are subject to similar standards of conduct and work performance. Specifically employees should be aware of a number of Council/school policies which set out clear standards expected of them when carrying out their duties:-

- ! Employee Code of Conduct
- ! Equality and Diversity Statement
- ! Health and Safety Policy
- ! Information Systems and Security Standards
- ! Wired Working Policy
- ! Fraud and Corruption Policy

#### **3. General Principles**

3.1 In dealing with minor instances of poor work performance or misconduct initial action will normally be of an informal nature eg. Counselling, training, setting clear standards for performance and conduct and verbal warnings. In instances of poor work performance, formal action under this procedure will only be taken where the poor performance does not result from a lack of capability to carry out the duties – see para 1.

3.2 The object of the formal procedure is to provide a framework to deal with employees whose standard of conduct or work performance continues to fall short of that required by the School/Council after any informal action has been taken, including the issue of verbal warnings. It is also designed to encourage an employee whose standard of work or conduct is unsatisfactory to improve.

3.3 The types of issues which could result in disciplinary action being taken are outlined in appendix 2 of this code.

3.4 The Disciplinary Procedure will also be made readily accessible in the school, to all employees, for reference purposes.

3.5 The procedure is designed to establish the facts of a case quickly and to deal consistently with disciplinary issues. No disciplinary action will be taken until the matter has been investigated.

3.6 Managers have the right to initiate the procedure at any level depending on the specific circumstances of the case and to undertake an investigation prior to a formal hearing under this procedure. The employee will have access to any evidence that the presenting officer wishes to rely on at the formal hearing through witnesses or documentary evidence.

3.7 Employees have the right to be represented by a trade union representative or another employee at every stage of the formal disciplinary procedure, including the investigation stages, although the employee must make her/his own arrangements for this. If the employee requests to be accompanied by a colleague then the colleague should be given reasonable time off for this purpose.

3.8 No formal disciplinary action should be taken against a trade union official until the circumstances of the case have been raised with Education Personnel and a senior representative or full time official of the union concerned.

3.9 Minor instances of misconduct and poor practice should initially be dealt with in an informal way e.g. counselling, training, setting clear standards for improvement. This could be in the form of a verbal warning or standard setting, depending on the nature of the misconduct or poor practice. Such action is intended to be undertaken on an informal basis between the manager and the employee. However if the employee wishes he/she may be accompanied by a trade union representative or another employee, who, where appropriate, may speak on the employee's behalf.

3.10 Where a verbal warning is issued then a note should be placed on the employee's file. A copy of the note should also be given to the employee. The employee may comment on the content of the note if he or she wishes and this should also be placed on the personal file. If there is any further misconduct of any type within a period of 6 months from the date of issue of the warning then the employee will be subject to formal disciplinary action and the verbal warning may be taken into account.

3.11 Formal action under this procedure should only be taken where the poor practice does not result from a lack of capability to carry out duties. (see separate Managing Capability Guidelines).

3.12 The object of the formal procedure is to provide a framework to deal with employees whose standard of conduct or practice continues to fall short of that required by the school after any informal action has been taken as well as deal with issues of serious and gross misconduct.

3.13 Employees should receive a minimum of 5 working days notice of a disciplinary hearing, with written details of the grounds for the hearing together with any evidence management intends to rely on. Longer notice of the hearing should be given where possible.

3.14 At all stages, employees will be entitled to state their case before decisions are reached. Where an employee is unable to attend a hearing s/he is entitled to be represented in their absence. However, the Hearing Officer/panel, will have the discretion to proceed in the employees' absence. When exercising this discretion the Hearing Officer/panel should take into account all relevant circumstances, for example medical evidence, the number of postponements previously made. Letters requesting the employee to attend the hearing should make it clear that the hearing may proceed in their absence.

**3.15 Generally, the Governing Body should delegate hearing disciplinary cases, including dismissals, to the head teacher. In the case of dismissals however, where special circumstances exist, the Governing Body can choose to delegate to a panel of one or more governors or a panel of one or more governors and the head teacher together, but they must not allow any outside body or persons to take decisions for them. Further advice can be sought from Education Personnel.**

3.16 An employee should not be summarily dismissed (that is without notice) for a first breach of discipline, except in the event of gross misconduct. If an employee is dismissed for some other misconduct, such a dismissal will be with notice or payment in lieu of notice.

3.17 Employees have the right to appeal against any formal disciplinary sanction imposed.

There is however no right of appeal against any informal action taken by management.

#### **4. The Disciplinary Procedure Informal Action**

4.1 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 immediately.

4.2 In many cases, dealing with matters of discipline early - the right actions at the right time - will often provide a more satisfactory result for both the manager and employee and may well prevent the need for more formal action in the future.

4.3 Before taking any formal disciplinary action, if appropriate, managers should initially try and resolve the matter informally through discussions with the employee as part of their day-to-day management responsibilities. For example, this may involve counselling, training, setting clear standards for performance, attendance and conduct and so on.

4.4 Where improvement in performance, 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, with a

copy given to the employee concerned. Employees should also be made aware of what action will be taken if they fail to improve. An example of an informal standard setting letter is attached. If the employee subsequently achieves the required improvements then the employee should be informed of the need to maintain that improvement. A copy should be placed on his/her personal file. The employee may comment on the content of the note if he or she wishes and this should also be placed on the personal file.

4.5 Where the required improvement is not reached or maintained then the informal action may be taken into account in any formal action subsequently taken under either the disciplinary or capability procedures.

4.6 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 taken immediately. The employee should be kept informed in writing of any decisions and associated timescales.

4.7 Details of sanctions appropriate under Informal Disciplinary Action are outlined in Appendix 1

### **Formal Action**

4.8 The object of the formal procedure is to provide a framework to deal with employees whose unsatisfactory standard of conduct or work performance either continues or falls short of that required by the school.

### **Management Investigation**

4.9 For any case being dealt with under this procedure, a fact – finding exercise will be undertaken by the presenting officer in order to accumulate sufficient information to determine whether or not the matter needs to be pursued formally. This could be undertaken by the Headteacher but in most cases it is expected that the Headteacher will identify a senior member of the school team who has been appropriately trained to undertake this task.

Support for the presenting officer can be provided by an LEA Personnel Adviser. The factfinding exercise may involve interviewing the parties, taking statements and any other steps which may be appropriate. Employees are required to co-operate with any investigation and to attend a fact-finding meeting at which they may be represented by a trade union representative or another employee.

4.10 The investigation should involve interviewing all the parties involved separately.

Statements should be obtained from any witnesses at the earliest opportunity and records kept of what was said. It is important that the investigation is concluded as quickly as possible.

4.11 Where evidence of fraud or corruption is identified head teachers should immediately report this to the Education Directorate's Head of Resources.

4.12 If following the fact-finding exercise, the investigating officer considers that the matter should be pursued formally, the head teacher should be informed.

4.13 If as a result of the fact-finding exercise it is found that formal disciplinary action is not appropriate, the head teacher should decide whether any other action is necessary in accordance with school's procedures or other guidelines (e.g. capability). The employee should be notified of any decision in writing.

4.14 If no further action is taken all records of the investigation will be removed from the employee's file, except in cases that involve children or other vulnerable clients.

4.15 If a decision is made to pursue formal disciplinary action a disciplinary hearing should be convened as soon as possible.

4.16 All relevant evidence gathered as part of the management investigation should be disclosed to the employee and/or his or her representative at the same time as the disciplinary pack containing the documents which the presenting manager proposes to rely on at the Hearing.

### **5. Suspension**

5.1 An employee may be suspended where the possibility of dismissal for gross misconduct may arise or where there are grounds for doubt as to the suitability to continue at work pending a fact-finding exercise and disciplinary hearing. Both the governing body and the head teacher have the power to suspend, although this would normally be carried out by the head teacher, and confirmed in writing within 3 working days. The letter will state the reasons for the suspension. Only the governing body may end a suspension.

5.2 All reasonable steps will be taken to notify the employees' trade union representative at the time of the suspension. Where possible the employee may be accompanied to the suspension meeting by a trade union representative or another work colleague.

5.3 The suspension should not be used as a punishment and the employee will normally receive full pay for the period of suspension (i.e. what the employee would have received if working normally) for the period of the suspension. However, there may be exceptional circumstances where, after consultation with Education Personnel and the Director of

Personnel and Administration, an employee may be suspended without pay. If this is being considered, the employee's representative should also be consulted.

5.4 The suspension will be reviewed after 10 working days and thereafter every 10 working days or sooner if appropriate.

5.5 During the period of suspension the employee must not enter the work place without prior permission from the Headteacher. A request to meet with the trade union representative on school premises will not be unreasonably denied.

## 6. Arranging the disciplinary hearing

6.1 A fact-finding exercise should be concluded without unreasonable delay, and a disciplinary hearing should be convened normally within 30 working days of the decision that there is a case to answer, other than in exceptional circumstances warranting a delay. Where an employee is suspended, the suspension will need to be reviewed in accordance with para 5.4 above. The presenting officer will inform the employee of the date, time and place of the hearing in writing, with a statement giving an outline of the allegations against the employee.

6.2 The employee will be given not less than 5 working days' notice of the hearing. Any management documentary evidence/witness statements must also be produced for all parties no later than 5 working days before the hearing.

6.3 The employee may submit written observations on the statement prior to the hearing.

These written observations may form the basis of the employee's case at the hearing but are not for the purpose of influencing whether or not the hearing should be held. These, and any other documents the employee may wish to present, must be produced for all parties no later than 2 working days before the hearing. Where an employee is unable to attend see para 3.14.

6.4 Where an employee has reasonably requested to be accompanied at a hearing and his/her representative is unable to attend on the notified date, he/she has the right to request a postponement of the hearing for a period of up to 5 working days following the day after the date which had previously been set. In this event a new date should be arranged as quickly as possible. A request for a postponement should be made as soon as possible after notification of the Hearing date.

6.5 The hearing officer/panel will hold the disciplinary hearing (see appendix 3 for procedure).

An Education Personnel Adviser will attend hearings to advise. Education Personnel will notify the Director of Personnel and Administration beforehand of all suspensions and disciplinary hearings. The Director of Personnel and Administration may be represented where a case involves alleged gross misconduct or where a final written warning has been issued previously and remains 'live' for disciplinary purposes.

6.6 A notetaker may attend on behalf of the hearing officer/panel conducting the hearing to provide them with confidential notes. The employee may also have a notetaker in attendance.

## 7. Possible Outcomes of the Hearing

7.1 If as a result of the hearing, the view of the hearing officer/panel is that formal disciplinary action is not appropriate, the employee will be informed in writing. All records of the disciplinary hearing including the letter to the employee will be removed from the employee's personal file and destroyed.

7.2 If as a result of the hearing, the view of the hearing officer/panel is that formal disciplinary action is appropriate, one of the sanctions set out below will be administered. The timescale in brackets is the period of time during which the warning will normally remain 'live' for disciplinary purposes (see para 7.4 for exceptions)

(a) No disciplinary action to be taken

(b) Written warning (9 months from date of hearing)

(c) Final written warning (15 months from date of hearing)

(d) Indefinite written warning (indefinitely or subject to review) - see para 7.6

(e) Cessation of employment at the school and a recommendation to the Executive

Director for Education and Culture for dismissal with notice (following a written warning) or summary dismissal without notice (in cases of gross misconduct).

(f) Relegation

If an employee is dismissed any accrued annual leave will not be paid.

**No disciplinary action to be taken:** in which case all correspondence relating to the hearing should be removed from the employee's personal file and destroyed. The only exception being cases involving children and other vulnerable clients where the papers will be retained. The employee concerned and the presenting officer should still receive confirmation of the outcome in writing, but should be advised that no record (other than the above) has been kept on the personal file. In circumstances where it is beyond any doubt that the employee was not guilty of the allegation(s) made, the outcome letter should make this clear.

**Written, final or indefinite written warning:** in these circumstances the employee should be advised that any further disciplinary lapse may result in further disciplinary action including dismissal. In reaching a decision about which sanction to apply, the hearing officer/panel should take into account all the circumstances of the case.

**Dismissal:** in circumstances other than gross misconduct this would be after previous written warning or cumulative misconduct and would be dismissal with notice. Except in the event of gross misconduct, an employee may not be summarily dismissed for a first breach of discipline. In cases of gross misconduct, summary dismissal without notice will normally be appropriate.

**Relegation:** this constitutes downgrading the employee and may only be administered as an alternative to dismissal where mitigating circumstances prevail. The employee may be placed in a different work area and would be issued with a final written warning.

7.3 The disciplinary action given above in respect of 7.2(e) and (f) can be defined as follows:-

(i) Gross Misconduct – this is misconduct of such a serious nature that the school is justified in no longer tolerating the employees' continued presence at the place of work. Examples of gross misconduct are given in Appendix 2

(ii) Where the employee is considered to be blameworthy of an offence(s) but there are deemed to be mitigating circumstances to justify disciplinary action short of dismissal, the sanction may be relegation (downgrading). Relegation could also be accompanied by a transfer to a completely new work area, together with a final or indefinite written warning. If the employee does not accept the relegation, then the dismissal will stand. The relegation may be in a different work area/job and payment will be commensurate to the grade of the new post.

7.4 A spent warning shall normally be disregarded only for the purpose of future disciplinary proceedings. For other managerial purposes (e.g. appointments, references), the warning would remain on the record and may be taken into account as appropriate. Managers should not therefore remove the spent warning from the personal file.

7.5 If further misconduct occurs during the set time period then further disciplinary action must be considered. In addition, there may be occasions where an employee's conduct is satisfactory throughout the period the warning is in force, only for it to lapse soon thereafter.

Where a pattern emerges and there is evidence of abuse, disciplinary action must be considered and the employee's disciplinary record will be borne in mind in deciding what sanction to apply.

7.6 There may also be circumstances where the misconduct is so serious - for example either verging on gross misconduct or relating to issues including the care of children or vulnerable clients - that a disciplinary record cannot be disregarded for future disciplinary purposes. In such circumstances the written warning can never be removed and any other misconduct may lead to dismissal.

7.7 If the hearing officer/panel contemplate relegation, dismissal or summary dismissal, the Executive Director for Education and Culture and Director of Personnel and Development must be consulted. An employee may not be dismissed or summarily dismissed for a first breach of discipline except in the event of gross misconduct.

## **8. Notifying employees of the outcome**

8.1 The hearing officer/Chair of panel may inform the employee of the decision verbally at the end of the hearing following his/her deliberation of the evidence, but in all cases should confirm the decision in writing within 5 working days. Where the case is complex and the hearing officer/Chair of panel is unable to meet this timescale then the employee should be informed of the reason for the delay.

8.2 The hearing officer/Chair of the Panel will state in the letter to the employee the reason or reasons why the decision was taken, including the account taken of any mitigating factors, and advise the employee regarding appeal rights.

## **9. Appeals**

9.1 An employee wishing to appeal against formal disciplinary action must do so in writing to the Chair of Governors within 10 working days of receiving written notification of the disciplinary action. The appeal letter must clearly state the grounds for the appeal which fall into 3 categories, namely:-

(i) a procedural flaw, stating precisely where the disciplinary procedure has been breached

(ii) the severity of the sanction, stating precisely why it was thought that the sanction was too severe

(iii) any other perceived unfairness of the decision, stating precisely what this was

9.2 An appeal will not normally proceed until sufficient details of the grounds of the appeal are provided.

9.3 All appeals will be heard by a Disciplinary Appeals Sub-Group appointed by the main governing body and will consist of not less than three governors. An advisor from Education Personnel or the Director of Personnel and Development representative

may be present as appropriate (see para 6.5). A notetaker may also attend on behalf of the governors to provide them with confidential notes.

9.4 The Appeals Sub-Group will hear the appeal as soon as practically possible. Generally this will be within 30 working days of registration of the appeal with the Chair of Governors or as soon as possible thereafter.

9.5 It is important that the Appeals Sub-Group is impartial and has not been involved in the case previously. If the employee or trade union representative has any concerns about the impartiality of the proposed members of the Appeal Sub-Group this should be referred to the Chair of Governors. If unresolved then the matter should be raised with the Executive Director for Education and Culture for advice.

9.6 The employee will have the right to representation by a trade union representative or other employee at the Appeal Hearing.

9.7 Where an employee has reasonably requested to be accompanied at an appeal hearing and his/her representative is unable to attend on the notified date, he/she has the right to request a postponement of the hearing for a period of up to 5 working days following the day after the date which had previously been set. In this event a new date should be arranged as quickly as possible.

9.8 Where an employee is unable to attend the appeal hearing he/she is entitled to be represented in their absence. However, the Appeal Sub-Group, following consultation with the union representative, will have the discretion to proceed in the employee's absence. In these circumstances it is recommended that advice be sought from Education Personnel.

9.9 The employee will be given not less than 5 working days notice of the Hearing and will be provided with a copy of all the documentary evidence. New evidence or additional witnesses will not be allowed save in exceptional circumstances, at the discretion of the Appeal Sub-Group.

9.10 A Personnel Adviser may also attend the Appeal Hearing as adviser to the Appeal Sub-Group.

9.11 The Hearing Officer/Chair of panel at the original Disciplinary Hearing will normally present management's case to the Appeal Sub Group. The original Hearing Officer/Chair of panel must ensure that the Appeal Sub-Group is presented with sufficient evidence as to the basis of his/her decision on the points which are the subject of the appeal. This may include, for example, providing management notes of the original hearing or calling appropriate witnesses.

9.12 The Appeal Sub-Group will not normally rehear the case but only consider the grounds of appeal and whether the decision taken and the sanction given by the original Hearing officer was reasonable in all the circumstances of the case based on the evidence put before him/her at the time. Specifically the Appeal Sub-Group should consider whether the original hearing officer/panel:

- Had sufficient evidence available in order to come to a reasoned judgement
- Can demonstrate that the arguments and reasoning, of both sides, were fully considered when reaching a decision

9.13 In exceptional circumstances the Appeal Sub-Group may request to hear from a particular witness or re-consider a piece of evidence. For example it may be necessary to hear evidence about whether:

- There was an adequate or appropriate investigation; or
- There was a procedural flaw which could be rectified by the appeal.

9.14 The final decision on any matter will rest with the Appeal Sub-Group following consultation with both parties.

#### Outcome of the Appeal Hearing

9.15 Where the Disciplinary Appeal Sub-Group confirms the original decision, then the employee will be advised of that decision in writing within 5 working days.

9.16 Where the Appeal Sub-Group decides to amend the decision of the Hearing Officer, then they may do so by substituting the sanction applied by the original Hearing Officer for one or more of the outcomes set out in para. 7.2.

9.17 Should the Appeal Sub-Group decide that the employee should be relegated then the employee will be re-instated to their original post with effect from the date of dismissal until the date of the decision of the Appeal Sub-Group. The terms and conditions application to the post arising from the relegation will apply from the date of the decision of the Appeal Sub-Group.

9.18 Should the Appeal Sub-Group decide that no sanction is applicable or that the employee should be issued with a written, final or indefinite written warning only, then the employee will be re-instated with effect from the date of dismissal.

#### Effect of Re-instatement

9.19 Where an employee is re-instated it means that they were never in fact dismissed and their contract of employment continued to exist from the date of the first decision to dismiss and the decision of the Disciplinary Appeal Sub-Group which resulted in re-instatement. This means that:

- Continuity of service shall be preserved
- He/she will be entitled to full back pay including pension
- He/she shall be entitled to accrue annual leave entitlement (where appropriate) for the period for which they were 'dismissed'.

9.20 If the employee was in receipt of state benefits then he/she will be expected to notify the appropriate Agency of their reinstatement and to repay any benefits received.

9.21 The decision of the Disciplinary Appeal Sub Group is final.

9.22 Procedures to be followed at an Appeal Hearing are outlined in [Appendix 4](#)

### **10 Complaint against a Headteacher**

10.1 If a complaint is made against a Headteacher it will be referred to the Chair of Governors.

10.2 The Chair of Governors will initiate an investigation into the complaint, at the same time notifying the Headteacher and the Executive Director for Education and Culture.

10.3 If, as a result of the investigation, the Chair of Governors is of the view that the Headteacher has a case to answer, he/she should arrange for a Disciplinary Panel of 3 governors to hear the case. The case will normally be presented by the Chair of Governors. Alternatively the Chair of Governors may request the Executive Director for Education and Culture to nominate a senior LEA officer, or recommend an appropriately qualified external person, to undertake the investigation and present the case at any subsequent disciplinary hearing.

10.4 Where there is a possibility of disciplinary action, the Chair of Governors must ensure that there are sufficient governors available to carry out impartially the functions of any disciplinary and appeals hearings. Members of the disciplinary and appeals hearing need not be left in complete ignorance; knowing about a situation does not constitute prejudice. However, members of hearings should be careful not to become directly involved, either through expressing opinions or taking action which might be seen to have prejudiced their ability to hear a case fairly.

10.5 The Executive Director for Education and Culture may attend or be represented at any disciplinary or appeal hearing.  
November 2004 Education Personnel

Date: Autumn Term 2019

Review Date: Autumn Term 2020



## **Appendix 1**

### **Informal Disciplinary Action**

It is important that minor incidents of misconduct or poor working practice are dealt with quickly as soon as they arise. The reasons for this are firstly, the employee is made aware of the problem and given the opportunity to correct it, thus removing the need for further formal disciplinary action.

Secondly should there be further incidents it can be demonstrated that the employee's attention has been drawn to the problems and the expected standards have been explained to them.

Informal action can be in the form of a verbal warning that sets out what standards are required of the employee, depending on the nature and extent of the problem.

### **Verbal Warning**

A verbal warning is a quick and efficient means of stopping an isolated minor incident. Having taken action to stop the incident the manager should then arrange to meet with the employee informally to try to establish why the breach occurred. It may emerge that some form of counselling or other support is required.

The manager should remind the employee of the standards expected of him/her for improvement in working practices, attendance or conduct e.g., lateness, failure to follow procedures etc. and where appropriate issue a verbal warning, advising him/her that any further incidents could lead to formal disciplinary action being taken. The manager should explore any underlying reasons for the misconduct/poor working practices with the employee and provide support as appropriate e.g., training. A record should be kept of the verbal warning and any actions recommended should be confirmed to the employee in writing and a copy placed on the employee's personal file. The employee may comment on the content of the note if he or she wishes and this should also be placed on the personal file. If the required standards have been obtained then this should be confirmed in writing to the employee and a copy placed on the personal file. If the required standards are not reached/maintained then the manager may issue a further verbal warning or proceed to formal disciplinary action as appropriate. Where informal steps have failed to bring about the desired improvement then the formal procedure will be implemented.

The above action is intended to be undertaken on an informal basis between the manager and the employee. However if the employee wishes he/she may be accompanied by a trade union representative or another employee, who, where appropriate, may speak on the employee's behalf. Verbal warnings and standard setting letters may be used as evidence in formal action taken under either the disciplinary or capability procedures.

## **Appendix 2**

### **Types of Misconduct**

#### **Gross misconduct**

If, after investigation, it is deemed that an employee has committed an offence of the following nature (the list is not exhaustive), the normal consequence will be dismissal without notice:

- Serious failure to comply with or operate the School's or Council's Equality & Diversity Policy. Examples include; serious acts of discrimination, harassment, or verbal abuse against employees, clients or members of the public on grounds of race, sex, disability, age, sexual orientation or religious beliefs; the display or circulation within the workplace of any literature or material via any medium that could reasonably be expected to offend other persons
- Serious bullying or harassment
- Serious infringement of health and safety policy, procedures or guidance
- Serious failure to comply with or operate the School's or Council's Code of Conduct e.g. holding unauthorised paid employment during paid school time; conducting inappropriate relationships with vulnerable clients; 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 School or Council into serious disrepute

- Serious incapability whilst on duty brought on by alcohol or illegal drugs
  - Serious failure to comply with or operate the School's or Council's Information Systems and Security Standards e.g. gaining unauthorised access to passwords and breaches of the wired working policy
  - Serious breach of financial regulations or procedures
  - Unauthorised removal, possession, use or theft of property belonging to the School, the Council, an employee, client or member of the public
  - Acts of violence including the assault of an employee, pupil, or member of the public during working hours or in connection with their employment or work
  - Falsification of qualifications or information to obtain employment with the School or Council or which are a statutory or essential requirement of employment or which result in additional remuneration
  - Deliberate falsification of records i.e. attendance sheets, bonus sheets, subsistence and expense claims etc
  - Acceptance of bribes or other corrupt or fraudulent practices
  - Defrauding the School or Council of monies e.g. housing benefit
  - 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 offence at or away from work that renders the employee unsuitable to remain in the Council's employment or which may damage the School's or Council'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.

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

Misconduct may be deemed to be minor, serious or gross. Misconduct of a serious or minor nature may result in a first, advanced, or final written warning being issued. Cumulative or repeated acts of misconduct may lead to dismissal with notice; in situations where an act is committed while an earlier warning is still 'live' i.e. in force. Examples of misconduct where a form of warning may be issued, or where cumulative or repeated acts could lead to dismissal, are as follows:-

- 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

Overuse of telephone, fax, 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.

- Performance

Error resulting from poor working practices

Negligent performance (gross misconduct in serious cases)

Failure to meet targets, deadlines and/or objectives

Poor customer service

- Behaviour

Insubordination

Failure to follow a legitimate management instruction

Prolonged time-wasting

Inappropriate behaviour towards a colleague or person in the care or charge of the Council or member of the public (gross misconduct in serious cases).

- Poor Working Practices

Failure to maintain proper records

Failure to follow council procedures e.g. financial regulations, safety standards

• False or vexatious complaints/grievances made against another employee or manager

Serious cases of the above examples are potentially 'gross misconduct'.

#### **Appendix 3**

#### **The Procedure to be followed at Disciplinary Hearings**

The Hearing Officer/Chair of Panel will introduce all parties present and explain the purpose of the hearing. Both parties should be asked if they intend to bring witnesses, although failure to name witnesses at this stage does not mean that they cannot be called later within the hearing.

The employee will then be asked to state whether he/she admits or denies the allegations.

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

If the employee admits the allegations, the employee will be invited to present any mitigating circumstances to the Hearing Officer/Panel. The presenting manager, the Hearing Officer/Panel and the HR Adviser may then ask questions of the employee in turn.

In addition, the Hearing Officer/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 Hearing Officer/Panel may decide to adjourn the hearing to allow for this if necessary.

### **Summing – up stage**

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**

The Hearing Officer/Chair of Panel will then ask both parties to withdraw apart from the HR Adviser and notetaker. The Hearing Officer should indicate to the parties whether they should wait to be recalled for the decision. The Hearing Officer should then reach a decision on the basis of the evidence presented in the course of the hearing with advice from the HR Adviser as necessary.

### **The Decision**

The Hearing Officer/Chair of Panel 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 Adviser will provide advice on the content of the outcome letter.

### **Where employee denies allegations**

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

The management representative will present the case.

The other parties may ask questions on the presentation in the following order:

Employee and/or trade union representative

Hearing Officer/Panel members

HR Adviser.

The manager presenting the case will then call witnesses.

The other parties may ask questions of the witnesses in the following order:

Employee and/or trade union representative

Hearing Officer/Panel members

HR Adviser.

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

Following completion of the management case, the presentation is then reversed, with the employee and/or trade union representative having the chance to put their case. Questions may be asked on this presentation by the presenting manager, the Hearing officer/Panel members and the HR Adviser in that order.

The employee/trade union representative will then call witnesses. The Hearing Officer/Chair of panel will introduce all parties and will explain the procedure to be followed.

The employee/trade union representative will ask questions of the witness.

The other parties may ask questions of the witnesses in the following order:

Manager presenting the case

Hearing Officer/Panel members

HR Adviser.

Following questioning by the other party, witnesses may be re-examined once more by the presenting manager, employee (trade union representative), Hearing Officer/Panel members or HR adviser, if necessary, to clarify any points raised during the cross-examination.

Once each party has completed their questioning, witnesses should not, normally, be recalled.

However, the Hearing Officer/panel has 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 Hearing

Officer/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 Hearing

Officer/Chair of Panel may decide to adjourn the hearing to allow for this if necessary.

**Summing – up stage**

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**

The Hearing Officer/Chair of Panel will then ask both parties to withdraw apart from the HR Adviser and notetaker. The Hearing Officer/Chair of Panel should indicate to the parties whether they should wait to be recalled for the decision. The Hearing Officer/panel should then reach a decision on the basis of the evidence presented in the course of the hearing with advice from the HR Adviser as necessary.

**The Decision**

The Hearing Officer/Chair of Panel 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 Adviser will provide advice on the content of the outcome letter.

### **Step by Step Guide to the Disciplinary Hearing procedure**

**STEP 1**

**STEP 2**

**Employee admits allegations**

**STEP 3**

**STEP 4**

**STEP 5**

**STEP 6**

**STEP 7**

Employee admits or denies the allegations.

The next part of the hearing will vary depending on the employee's answer.

If the employee admits the allegations go to Step 3. If the employee denies the allegations go to Step 12

Having admitted the allegations the employee will present evidence of any mitigating circumstances to the Hearing Officer/Panel

The presenting manager may ask questions of the employee. The questions may relate to the mitigation or if appropriate the circumstances which led to the allegations. The presenting officer may present evidence to support any argument against the mitigation

The Hearing Officer/Panel may ask questions of the employee and presenting manager as appropriate, to ensure that he/she has a full understanding of all the facts of the case including the mitigation.

The HR Adviser may ask questions of the employee and presenting manager as appropriate.

**SUMMING UP STAGE**

Presenting manager sums up first

Employee or representative sums up next

No new evidence can be presented at this stage

The Hearing Officer/Chair of Panel should ensure that there is a management notetaker.

The Hearing Officer/Chair of Panel:

- Introduces all parties
- Explains the procedure to be followed

- Clarifies position with regard to witnesses on both sides
- Reads out the allegations and asks the employee whether he/she admits or denies the allegations

STEP 8

STEP 9

STEP 10

STEP 11

**Employee denies allegations – Management presents facts of the case**

STEP 12

STEP 13

STEP 14

STEP 15

**Management witnesses called one at a time.**

**Hearing Officer/Chair of Panel introduces all parties to each witness and explains procedure**

**Step 16 – Step 20 followed for each witness in turn.**

STEP 16

STEP 17

STEP 18

STEP 19

In exceptional circumstances the Hearing Officer/Chair of Panel may call witnesses or seek further evidence to ensure that he/she is aware of all the facts of the case.

The Hearing may be adjourned to allow for this to happen.

All parties withdraw apart from the Hearing Officer/Panel members, HR adviser. and notetaker. The Hearing Officer/Chair of Panel will advise the parties whether they need to wait to be recalled for the decision.

DELIBERATION

Hearing Officer/Panel reach a decision on the basis of the evidence presented. HR

Adviser will provide advice as necessary. The Hearing Officer/Panel members should make a note of the reasoning behind his/her decision and keep this carefully filed for future reference if need be.

DECISION

The Hearing Officer/Chair of Panel 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 together with the appeal rights, within 5 days of the Hearing.

The presenting manager presents the facts of the case on behalf of management.

Employee/representative asks questions of the presenting manager

The Hearing Officer/Panel ask questions of the presenting manager

The HR Adviser may ask questions of the presenting manager

Presenting manager presents witness evidence by asking questions of the witness

Employee/representative asks questions of the witness

Hearing Officer/Panel ask questions of the witness

HR Adviser may ask questions of the witness

STEP 20

**Employee's presentation**

STEP 21

STEP 22

STEP 23

STEP 24

**Employee's witnesses called one at a time.**

**Hearing Officer/Chair of Panel introduces all parties to each witness and explains procedure**

**Step 25 – Step 29 followed for each witness in turn.**

STEP 25

STEP 26

STEP 27

STEP 28

STEP 29

STEP 30

### **STEP 31**

### **STEP 32**

Employee/representative presents employee's side of the case

Witnesses may be re-examined in the above order to clarify any further points raised during presentation of evidence

Presenting manager asks questions on the presentation

Hearing Officer/Panel ask questions on the presentation

HR Adviser may ask questions on the presentation

Employee/representative presents witness evidence by asking questions of the witness Presenting manager asks questions of the witness

Hearing Officer/Panel ask questions of the witness

HR Adviser may ask questions of the witness

Witnesses may be re-examined in the above order to clarify any further points raised during presentation of evidence

All parties withdraw apart from the Hearing Officer/Panel members, HR adviser and notetaker. The Hearing Officer/Chair of Panel will advise the parties whether they need to wait to be recalled for the decision.

### **DELIBERATION**

Hearing Officer/Panel reach a decision on the basis of the evidence presented. HR adviser will provide advice as necessary. The Hearing Officer/Panel should make a note of the reasoning behind his/her decision and keep this carefully filed for future reference if need be.

### **SUMMING UP STAGE**

Presenting manager sums up first

Employee or representative sums up next.

No new evidence can be presented at this stage

### **STEP 33 DECISION**

The Hearing Officer/Chair of Panel 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 together with the appeal rights, within 5 days of the Hearing.

### **Appendix 4**

#### **The Disciplinary Appeal process**

The Chair of the Appeal Sub Group should ensure that there is a management notetaker. The Chair of the Appeal Sub Group will introduce all parties present and explain the purpose of the hearing. Both parties should be asked if they intend to bring witnesses, although failure to name witnesses at this stage does not mean that they cannot be called later within the hearing.

Presentation by the appellant

The appellant or representative presents the grounds for the appeal

The presenting manager/Appeal Sub Group/HR Adviser/ may ask questions of the appellant/representative on the grounds for appeal in that order.

The appellant/representative to call any witnesses

The presenting manager/Appeal Sub Group/HR Adviser may ask questions of witnesses in that order.

Response to the Appeal by Management

The presenting manager will respond to the appeal in the presence of the appellant.

The appellant (or representative)/Appeal Sub Group/HR adviser may ask questions of the presenting manager.

The presenting manager to call any witnesses

The appellant (or representative)/Appeal Sub Group/HR Adviser may ask questions of any witnesses

If required the Appeal Sub Group may recall witnesses or seek further evidence to ensure that they are aware of all the facts of the case. The Appeal Hearing may be adjourned to allow for this to happen. If recall is necessary to clear points of uncertainty, both parties will return, notwithstanding the fact that only one may be concerned with the point giving rise to doubt.

Summing Up Stage

The presenting manager, followed by the appellant (or representative) will have the opportunity to sum up their case. This summing up may take into account statements made during the proceedings, but may not introduce new evidence.

Deliberation by the Appeal Sub Group

Both parties will withdraw, leaving the Appeal Sub Group to deliberate accompanied by the HR

Adviser and notetaker. The Chair of the Appeal Sub Group will indicate to the parties whether they should wait to be recalled for the decision. The HR Adviser will provide advice as necessary. The

Appeal Sub Group should make a note of the reasoning behind their decision and keep this carefully filed for future reference if need be.

The Decision

The decision is made by the Appeal Sub Group and may be given to the parties verbally at the end of the meeting or later in writing. In any event the decision must be confirmed in writing by the Chair of the Appeal Sub Group within 5 working days. The HR Adviser will provide advice on the content of the outcome letter.

### **Step by Step Guide to the Disciplinary Appeal Hearing procedure**

**STEP 1**

**Presentation by the Appellant**

**STEP 2**

**STEP 3**

**STEP 4**

**STEP 5**

**The appellant's witnesses called one at a time.**

**The Chair of the Appeal Sub Group introduces all parties to each witness and explains procedure**

**Step 6 – Step 10 followed for each witness in turn.**

**STEP 6**

**STEP 7**

**STEP 8**

**STEP 9**

**STEP 10**

**Management presentation**

**STEP 11**

**STEP 12**

The appellant or representative presents the grounds of the appeal

The presenting manager may ask questions of the appellant/representative on the grounds of the appeal.

The Appeal Sub Group may ask questions of the appellant/representative on the grounds of the appeal

The HR Adviser may ask questions of the appellant/representative on the grounds of the appeal.

The presenting manager presents management's case in response to the appeal

The Chair of the Appeal Sub Group should ensure that there is a management notetaker.

The Chair of the Appeal Sub Group:

- Introduces all parties
- Explains the procedure to be followed
- Clarifies position with regard to witnesses on both sides

The appellant/representative presents witness evidence by asking questions of the witness

The presenting manager asks questions of the witness

The Appeal Sub Group ask questions of the witness

The HR Adviser may ask questions of the witness

Witnesses may be re-examined in the above order to clarify any further points raised during presentation of evidence

The appellant or representative may ask questions of the presenting manager.

**STEP 13**

**STEP 14**

**The appellant's witnesses called one at a time.**

**The Chair of the Appeal Sub Group introduces all parties to each witness and explains procedure**

**Step 15 – Step 19 followed for each witness in turn.**

**STEP 15**

**STEP 16**

**STEP 17**

**STEP 18**

**STEP 19**

**STEP 20**

**STEP 21**

**STEP 22**

**STEP 23**

**SUMMING UP STAGE**

Presenting manager sums up first  
Employee or representative sums up next.  
No new evidence can be presented at this stage  
All parties withdraw apart from the Appeal Sub Group, HR Adviser and notetaker  
The Chair of the Appeal Sub Group will advise the parties whether they need to wait to be recalled for the decision.

#### DELIBERATION

The Appeal Sub Group reaches a decision on the basis of the evidence presented.  
HR adviser will provide advice as necessary. The Appeal Sub Group should make a note of the reasoning behind their decision and keep this carefully filed for future reference if need be.

#### DECISION

The Chair of the Appeal Sub Group 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 days of the Appeal Hearing.  
The Appeal Sub Group may ask questions of the presenting manager.  
The HR Adviser may ask questions of the presenting manager  
The presenting manager presents witness evidence by asking questions of the witness  
The appellant/representative asks questions of the witness  
The Appeal Sub Group ask questions of the witness  
The HR adviser may ask questions of the witness  
Witnesses may be re-examined in the above order to clarify any further points raised during presentation of evidence

#### EXAMPLES OF LETTERS

##### **'Standard -setting' letter**

Dear (employee's name)

Re:

I am writing to confirm our discussion on (date) concerning your failure to follow the Council's sickness procedures during your absence from duty from (dates).

I explained that if you are sick in future you must notify your supervisor on the first day of absence as soon as possible and by no later than (time agreed locally) to enable alternative arrangements for your shift to be covered for the day.

You are expected to keep your supervisor informed of the nature of your illness and when you are likely to return to work.

If your absence continues for between 4 working days and 7 calendar days then you must complete the Council's own self-certification form.

Medical certificates from your doctor must be provided to support any absence, which continues beyond 7 calendar days.

I must advise you that failure to comply with this procedure in future may lead to your pay being stopped for the period of the unauthorised absence and to disciplinary action being taken against you.

Signed by Manager

##### **Example of letter convening a gross misconduct hearing**

Dear (employee's name)

*Disciplinary Hearing (date)*

You are required to attend a disciplinary hearing on (date), (time), (location).

The allegation/s to be considered are:-List allegations:

(The HR Section will be able to provide advice on framing the allegations)

These allegations constitute gross misconduct and if proven could result in your dismissal.

The case will be heard by the school's Disciplinary Appeal Sub Group and presented by (name of presenting manager), who will be calling the following as witnesses:-

Name and designation

Name and designation and will be presenting the following documentary evidence:-

(List all documents to be presented)

An HR adviser will also be present.

Please let me have names of any witness/es whom you intend to call and copies of any correspondence you intend to present at the hearing as soon as possible and no later than (2 full working days before the date of the hearing).

You are entitled to be accompanied by a trade union or another employee. A copy of this letter has been sent to (appropriate TU rep. if known) for information. It is your responsibility to arrange your own representation.

You should remain on suspension until the date for the hearing and the terms of my suspension letter sent to you on (date) still apply.



If you do not attend the hearing at the time specified in this letter and fail to give an explanation, which the hearing officer considers adequate and satisfactory, the hearing may proceed in your absence. If, therefore, you are not able to attend the hearing you must notify me in writing, stating your reasons and giving as much notice as possible.

Signed by Manager

**Letter convening a hearing: misconduct**

Dear (employee's name)

*Disciplinary Hearing: (date)*

You are required to attend a disciplinary hearing on (date) (time) at (location). The disciplinary hearing has been arranged to hear the allegation

List allegations

The case will be heard by (name of hearing officer) and presented by (name of presenting manager), who will be calling the following as witnesses:-

Name and designation

Name and designation and will be presenting the following documentary evidence:

(List all documents to be presented)

Please let me have names of any witness/es whom you intend to call and copies of any correspondence you intend to present at the hearing, no later than (2 working days before the date of the hearing).

You are entitled to be accompanied by a trade union representative or another employee. A copy of this letter has been sent to (appropriate TU rep) for information. It is your responsibility to arrange your own representation.

If you do not attend the hearing at the time specified in this letter and fail to give an explanation, which the hearing officer considers adequate and satisfactory, the hearing may proceed in your absence. If, therefore, you are not able to attend the hearing you must notify me in writing, stating your reasons and giving as much notice as possible.

Signed by Manager

**'Outcome letter': no disciplinary penalty**

Dear (employee's name)

Disciplinary hearing: [ Date ]

I am writing to confirm my decision following the disciplinary hearing on [Date].

Having considered the evidence submitted, I found the allegation (list allegations) not proven.

Therefore, there is no disciplinary penalty arising from the hearing and all information relating to the hearing has been removed from your personal file and destroyed/will be retained on record.

A copy of this letter has been sent to your trade union representative.

Signed by Hearing Officer/Chair of Panel

**Structure of Outcome letter**

Re: Disciplinary Hearing held on (date)

I am writing to confirm the outcome of the disciplinary hearing held on (dates)

At the hearing you were represented by (name) who called (names) as witnesses. Management's case was presented by (name, job title) who called (names, job titles) as witnesses.

The purpose of the hearing was to consider the following allegations

(List allegations)

Having considered all the written and oral evidence my findings/the findings of the panel are as follows: (take each allegation in turn and refer to the evidence heard and the conclusion reached)

Give findings in relation to any mitigation pleaded and sanction.

Right of appeal.

Yours sincerely

Hearing Officer/Chair of Panel

**Suspension letter**

Dear (employee's name)

Suspension

I am writing to confirm my decision, given orally to you today, (in the presence of your trade union representative), to suspend you from duty with immediate effect.

The reason for the suspension is to allow investigation to take place into allegations that (give brief description). You will be given the opportunity to be interviewed as part of this process. Should disciplinary action result from my investigations, I will ensure that any allegations are notified to you in writing and that a disciplinary hearing is properly convened.

Your suspension will be reviewed after 10 working days and thereafter every 10 working days or sooner, if appropriate. During the period of your suspension you must adhere to all normal procedures in relation to the booking of leave, reporting sickness absence, etc.

In the meantime you should remain at home on normal pay and you should not enter your place of work without permission from either myself or (Headteacher/Chair of Governors) other than to see your trade union representative.

Signed Headteacher or Chair of Governors