



# **Holy Trinity CE Primary School and Nursery**

## **Disciplinary Policy and Procedure**

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## CONTENTS

Section	Page
<b>DISCIPLINARY POLICY</b>	<b>1</b>
1 INTRODUCTION	1
2 SCOPE	1
3 PRINCIPLES	1
4 MISCONDUCT	2
5 CRIMINAL OFFENCES AND CAUTIONS OUTSIDE OF WORK	3
6 SUSPENSION	3
7 RIGHT TO BE ACCOMPANIED	4
8 GRIEVANCES RAISED DURING THE DISCIPLINARY PROCESS	5
9 ACTION AGAINST TRADE UNION/PROFESSIONAL ASSOCIATION REPRESENTATIVES	5
10 RECORD KEEPING	5
<b>DISCIPLINARY PROCEDURE</b>	<b>7</b>
11 INFORMAL	7
12 IDENTIFYING THE NEED FOR FORMAL DISCIPLINARY ACTION	7
13 FORMAL	7
14 INITIAL MEETING	8
15 INVESTIGATION	8
16 CONVENING A DISCIPLINARY HEARING	9
17 ATTENDANCE AT THE HEARING	10
18 PROCEDURE AT THE DISCIPLINARY HEARING	10
19 DISCIPLINARY OUTCOMES	11
19.3 NO FURTHER ACTION	11
19.4 FORMAL ACTION - PENALTIES	11
20 CURRENCY OF WARNINGS	12
21 HEARING OUTCOME	12
22 RIGHT OF APPEAL	13
23 APPEAL HEARING	13
<b>APPENDIX 1 - DISCIPLINARY RULES AND GUIDANCE</b>	<b>15</b>
MISCONDUCT	15
GROSS MISCONDUCT	16
<b>APPENDIX 2 – CONDUCTING THE DISCIPLINARY HEARING</b>	<b>18</b>
<b>APPENDIX 3 GUIDANCE ON CONDUCTING AN APPEAL HEARING</b>	<b>20</b>

# **DISCIPLINARY POLICY**

## **1 INTRODUCTION**

- 1.1 This document sets out Holy Trinity CE Primary School and Nursery policy on discipline as will be applied when an employee's conduct falls below the required standards. It aims to help and encourage all employees to achieve and maintain the required standards of conduct and to provide an objective, consistent and fair approach to dealing with discipline issues in the school taking account of the law of natural justice. It is not, however, intended to replace or restrict the normal day to day management and supervision of employees in relation to performance or conduct.
- 1.2 The document takes account of employment legislation and best practice guidelines in relation to discipline matters in addition to the legal obligations of Governing Bodies including the Employment Act 2008, Employment Rights Act 1996 as amended, Employment Rights (Dispute Resolution) Act 1998, Employment Relations Act 1999, Employment Rights Act 2004 and the ACAS Code of Practice on Discipline and Grievances at Work 2008.
- 1.3 The procedure has been agreed following consultation with the recognised Trade Unions and Professional Associations.

## **2 SCOPE**

- 2.1 This document applies to all employees of Holy Trinity CE Primary School and Nursery as adopted by the Governing Body.
- 2.2 This policy and procedure should not be used to address issues where other policies and procedures exist to deal with them.
- 2.3 This policy and procedure does not apply to support staff within their period of probationary service.
- 2.4 Any alleged misconduct which falls within the scope of the Management of Allegations policy requires the school to comply with additional child protection requirements as set out in that policy.
- 2.5 **The Local Authority is not able to accept liability for any actions, claims, costs or expenses arising out of a decision not to follow this recommended policy or procedure, where it is found that the Governing Body has been negligent or acted in an unfair or discriminatory manner in exercising its employment powers.**

## **3 PRINCIPLES**

- 3.1 The Governing Body should record the formal adoption of the policy and procedure and the delegation of authority to the Headteacher to take disciplinary action short of dismissal.
- 3.2 In the event of the Headteacher being subject to disciplinary action, the Governing Body will be responsible for administering the procedure.

- 3.3 The Governing Body and Headteacher are responsible for the overall management of standards in the school.
- 3.4 The Local Authority HR Employee Relations team should be consulted at all formal stages of the disciplinary procedure and must be in attendance at hearings where dismissal is being considered.
- 3.5 All disciplinary procedures will be applied to meet the requirements of the school's Equal Opportunities Policy in order to ensure that employees are not discriminated against.
- 3.6 Where appropriate, conduct issues should be addressed without the need to commence the formal stages of the procedure, except where the alleged misconduct is of a more serious nature or where a pattern of minor informal reprimands develops.
- 3.7 If there is the possibility of disciplinary action being taken, the employee should be advised to consult with their recognised Trade Union/Professional Association representative.
- 3.8 No formal disciplinary penalty will be applied until the employee has been advised of the nature of the complaint against them in writing and given the opportunity to state their case in a hearing.
- 3.9 No employee will be dismissed for a first breach of discipline except in the case of gross misconduct where the penalty may be dismissal without notice.
- 3.10 An employee will have the right of appeal against all formal warnings and dismissal.
- 3.11 Full and accurate records will be maintained throughout all disciplinary action.
- 3.12 In dealing with a breach of discipline under the formal procedure, the same person should not conduct both the detailed investigation and the hearing.
- 3.13 The governors sitting on any appeal panel will not have been involved in the case in any material sense or have acted as a panel member for the disciplinary hearing.

#### **4 MISCONDUCT**

- 4.1 Misconduct is defined as behaviour or conduct by an employee falling short of the school's standards. Examples of misconduct are provided in the Disciplinary Rules (Appendix 1). Gross misconduct is considered to be behaviour or conduct that falls so far below the standards required that it can be considered as a fundamental breach of contract. Acts of gross misconduct can lead to a dismissal for a first offence. The Disciplinary Rules provide examples of gross misconduct (Appendix 1).

## **5 CRIMINAL OFFENCES AND CAUTIONS OUTSIDE OF WORK**

- 5.1 If an employee is charged with or convicted of a criminal offence outside of work, this may not in itself be a reason for disciplinary action. The school will establish the facts of the case and consider whether the matter justifies applying the disciplinary procedure.
- 5.2 It may be possible for a disciplinary investigation to run in parallel to a police and/or child protection investigation in certain circumstances. Where this may prejudice an external case a parallel school investigation will not take place. In these circumstances there are likely to be delays in conducting the school investigation. In such cases it is good practice to keep the employee informed of what is going on. Statements taken in external investigations may be used in any subsequent internal disciplinary proceedings.
- 5.3 It is not always necessary to await the outcome of any court hearing before deciding on disciplinary action. The criminal justice system works on the basis of guilt being 'beyond reasonable doubt' but in employment law the employer can make a decision based on the 'balance of probability' and as a 'reasonable' employer.
- 5.4 If dismissal is the disciplinary sanction, in order for it to be deemed fair, the school would need to show that it had a genuine and reasonable belief that the employee committed the criminal act, that the conduct in question would make it difficult to continue their employment and that dismissal is reasonable in the circumstances. A dismissal under such circumstances would be deemed to be fair even if the employee is not charged or convicted in the criminal justice system.

## **6 SUSPENSION**

- 6.1 An employee may be suspended from duty on full pay at any time in cases of gross misconduct or where there is a risk to the safety of colleagues, pupils or to the employee themselves or a risk to the contamination of evidence. Suspension is not a disciplinary penalty and is a neutral act. Suspension will not be automatic and consideration will be given to alternatives to remove an individual from the workplace.
- 6.2 In some cases it may be appropriate for the employee to take a short period of management leave on full pay (ie being asked to remain at home with no work having been allocated). Any period of management leave will not be recorded on file as part of any disciplinary record. This may include prior to an investigatory interview being held. In such cases the school will normally seek advice from the HR Employee Relations team. It is important to understand that management leave and suspension from duty are not disciplinary sanctions.
- 6.3 The decision to suspend will normally be made following advice provided by the HR Employee Relations team. This decision will be made at the outset either as a result of the initial exploratory interview, during or following the formal investigation
- 6.4 Staff will be notified in writing of any decision to suspend and should be advised to contact their Trade Union representative and provided with the contact details for the Staff Counsellor. The formal letter of suspension should be handed to the employee or sent Recorded Delivery, to ensure proof of receipt.

6.5 Schools will nominate a link member of staff to act as a nominated contact following management leave or suspension for the employee. The role of the link member of staff is to advise the employee of developments at their school.

In cases where it is known that the employee holds similar or equivalent employment(s) in other schools, consideration should be given as to whether the suspension from duty should be extended, for example, when dealing with matters raised under the Allegations policy. In such cases, advice should be sought from the HR Employee Relations Team.

6.6 Where suspension relates to a safeguarding allegation, the guidance in the Allegations Policy must take precedence over this policy and procedure.

6.7 Only the Chair of Governors may end a period of suspension following advice from the Headteacher and Human Resources.

## 6.8 **Suspension Terms**

6.8.1 During the period of suspension, unless otherwise informed, the employee is:-

- Prohibited from attending school premises other than to attend investigatory interviews or attending a disciplinary hearing;
- Prohibited from contacting any pupil, parent, employee of the School or officer of the Local Authority other than their representative or nominated contact. This prohibition does not prevent the employee from having social contact with colleagues outside of the work place, provided the disciplinary issues that are the cause of the suspension are not discussed. Should it be necessary for the employee to have contact with any witnesses in order to prepare their case, prior approval must be sought in advance through the Headteacher.
- Obligated to co-operate with the disciplinary investigation including any reasonable request to provide or identify documents;
- Obligated to ensure that they are, and remain, contactable during normal working hours;
- Required to follow normal notification/request procedures for sickness and annual leave through their nominated contact.

Employees should be advised that any breach of the terms of suspension could itself become a disciplinary offence.

## 7 **RIGHT TO BE ACCOMPANIED**

7.1 The employee has a right to be accompanied at all formal stages of the disciplinary process (even if they have left employment) by a Trade Union/Professional Association representative or a work colleague of their choosing (although not in the capacity of a practising lawyer).

## **8 GRIEVANCES RAISED DURING THE DISCIPLINARY PROCESS**

- 8.1 Where, during the course of the disciplinary process, the employee raises a grievance about any aspect of the disciplinary process not having been followed correctly, the Headteacher/Governor(s) will decide whether it will be treated as a separate grievance under the school's grievance procedure. Where the subject of the grievance is linked to issues that are the subject of the disciplinary hearing the grievance will be conducted alongside the disciplinary procedure. The HR Employee Relations team will advise before a decision is reached.

## **9 ACTION AGAINST TRADE UNION/PROFESSIONAL ASSOCIATION REPRESENTATIVES**

- 9.1 Disciplinary action will not be taken against an employee representative of a recognised Trade Union/Professional Association until the circumstances of the case have been discussed with the full-time representative or branch official of the Union/Association concerned.
- 9.2 The normal standards of conduct are expected of such Trade Union/Professional Association officials. The normal disciplinary procedure will apply and this will include procedures for suspension where warranted.

## **10 RECORD KEEPING**

At all stages of the disciplinary process, the employee will be given copies of formal notes which may be anonymised in order to protect a witness.

- 10.1 It is for the Governing Body to demonstrate that any dismissal is fair and reasonable should the employee complain to an Employment Tribunal, rather than for the claimant to prove their case. It is essential, therefore, to maintain full and accurate records of each stage of action.
- 10.2 The records kept on an employee's personal file will include:-
- The complaint against the employee;
  - The employee's defence;
  - Investigation notes;
  - Findings made and actions taken;
  - Whether an appeal was lodged;
  - The outcome of any appeal;
  - Any grievances raised during the disciplinary procedure;
  - Subsequent developments;
  - Notes of formal meetings/advice and guidance issued to the employee;
- 10.4 If dealing with investigations under the Dealing with allegations of abuse against members of staff and volunteers policy, you should refer to Paragraph 3.8 of the Dealing with allegations of abuse against members of staff and volunteers policy and procedure.

- 10.5 In order to comply with relevant legislation, the school will treat all records as confidential.
- 10.6 The HR Employee Relations team will be responsible for notifying the Independent Safeguarding Authority (ISA), the Teaching Agency (TA), or other regulatory body as appropriate, when an employee:-
- is dismissed for misconduct;
  - resigns in cases where they would have been dismissed for misconduct had they not resigned;
  - resigns in cases where dismissal for misconduct would have been *considered* had they not resigned.



## **DISCIPLINARY PROCEDURE**

### **11 INFORMAL**

- 11.1 Where appropriate, conduct issues will be addressed by the line manager, a member of the senior leadership team or the Headteacher as part of normal day to day management responsibilities. Such actions will fall outside of the formal disciplinary procedure.
- 11.2 Written advice and guidance regarding standards of conduct will be given to employees where minor and/or unrepentant acts of misconduct occur.
- 11.3 It will be for the Headteacher to decide whether to issue advice and guidance or whether to proceed to an investigation or exploratory interview under the formal procedure. Where advice and guidance is issued, the employee must be warned that failure to observe instructions, or repetitions of misconduct in the future are likely to be considered under the formal stages of the disciplinary procedure. The advice and guidance will be recorded on the employee's personal file. The employee should be given a copy of the written advice and be provided with an opportunity to record their comments if they disagree with the content. The employee may raise a formal grievance if dissatisfied with the content.
- 11.4 There is no right for the employee to be accompanied at the informal stages of the procedure although employees are advised to seek advice from their Trade Union or Professional Association at this time. Representatives may be permitted to attend at the Headteacher's discretion.

### **12 IDENTIFYING THE NEED FOR FORMAL DISCIPLINARY ACTION**

- 12.1 The Headteacher or the Chair of Governors (in the case of alleged misconduct of the Headteacher) as appropriate will decide whether the circumstances warrant moving to the formal stages of the disciplinary procedure. A member of the HR Employee Relations team can advise where required. Applying the formal procedure will largely depend on:-
- The nature of the alleged misconduct;
  - The seriousness of the alleged misconduct;
  - Previous action, including any warnings regarding the employee's conduct.

### **13 FORMAL**

- 13.1 The formal stages of the disciplinary procedure should be carried out as speedily as possible in the interests of both the management of the school and the employee concerned. Nothing stated in this procedure is intended to bar or discourage the resolution of any matter between the parties by agreed alternative means or by agreed variation to the procedure as published.

- 13.2 The formal stages of the disciplinary procedure are based upon a graduated system of warnings with more serious sanctions being applied where poor conduct is repeated or where the employee fails to heed previous warnings or where the nature of the misconduct justifies such a warning.

## **14 INITIAL MEETING**

- 14.1 Following concerns being raised about an employee, a member of the senior leadership team or the Headteacher should conduct an initial meeting with the employee as soon as possible, in order to avoid delay.
- 14.2 Employees will be advised to contact their representative prior to the meeting to arrange to be accompanied if they wish, but the meeting should normally take place within 48 hours.
- 14.3 The aim of the meeting is to:-
- Notify the employee of the alleged misconduct (unless there are exceptional reasons to do otherwise);
  - Tell the employee whether the matter will be subject to an investigation and of their right to be given 5 working days notice of any investigation meeting(s) in addition to their right to be accompanied;
  - To provide the employee with a copy of the disciplinary procedure (if this has not already been provided);
  - To make a decision as to whether it is appropriate to suspend the employee or send them home on management leave.
- 14.4 Following the meeting, the employee will be sent a letter setting out the information discussed at the initial meeting and the details of the investigation.

## **15 INVESTIGATION**

- 15.1 In all cases, an internal investigation will be required to establish whether or not there is a case for the employee to answer at a formal disciplinary hearing. Where an investigation takes place, the school will aim to conduct it promptly and without unnecessary delay while memories of events remain intact. However, the nature, scale and duration of any disciplinary investigation will depend on the seriousness and complexity of the misconduct being investigated.
- 15.2 Interviews with pupils will only be conducted where absolutely necessary. In cases where it is proposed to do so, such interviews will take place as soon as practicable. The employee against whom the allegations are being made should be advised of the right to have their representative (if applicable) attend all such interviews in the capacity of a silent witness to ensure accuracy of any evidence given and the fairness of the process. To avoid the necessity of pupils attending disciplinary hearings to give evidence, the employee's representative may request specific questions to be put to the pupil from the Investigating officer. Such requests for questions will not be unreasonably refused. A note of any question refused should be retained. The employee's representative is able to raise issues of procedure only which should be done without pupils being present.

- 15.3 Investigations relating to safeguarding allegations must be made with reference to the Allegations Policy. In such situations, any police investigation may restrict the conduct of a separate internal disciplinary investigation as it will take priority. Always seek advice from Human Resources or Local Authority Designated Officer, based in the Safeguarding Unit, prior to conducting any form of investigation, in these circumstances.
- 15.4 Statements or video evidence taken in the course of a social care or external investigation may be used as part of the internal investigation process and may be submitted as evidence to a formal disciplinary hearing. Any written statements should be signed and dated.
- 15.5 The person with responsibility for the investigation is the Investigating Officer. They will:
- Ascertain the facts and circumstances surrounding the allegation(s) of misconduct including identifying witnesses and taking statements from them.
  - Ascertain the employee's response to the allegation(s);
  - Form a view as to whether there is a case to answer at a formal disciplinary hearing keeping a record of investigation findings.
- 15.6 The Investigating Officer may be the Headteacher or a member of the senior leadership team (where delegated by the Headteacher). If the Headteacher acts as Investigating Officer, they can not chair any subsequent hearing.
- 15.7 An employee will be given 5 working days notice of any investigation meeting(s) and will have the right to be accompanied by a work colleague or Trade Union/Professional Association representative.
- 15.8 The employee will be sent a letter at the end of the investigation notifying them of the decision of the Investigating Officer and what the next steps will be.

## **16 CONVENING A DISCIPLINARY HEARING**

- 16.1 The purpose of the hearing is to consider the evidence to enable the Headteacher or Governor panel to decide what action, if any, to take.
- 16.2 Where the employee's dismissal is contemplated, the hearing will be conducted by a Governor Committee. In all other circumstances it may be conducted by the Headteacher or Governor Committee.
- 16.3 Where a formal disciplinary hearing is to take place, the employee will receive written notification from the school at least 10 working days in advance. This will include:-
- The location, date and time of the proposed disciplinary hearing;
  - Details of the disciplinary allegations which the employee is to face;
  - Whether dismissal is being contemplated as a sanction;
  - Their right to be accompanied (see section 7 - Right to be Accompanied);
  - Names of the Presiding Officer and, where appropriate, the supporting committee of governors;

- The requirement for the employee to confirm in writing that they are attending, at least 10 working days before the disciplinary hearing, providing all relevant documentation for the hearing and confirming the name(s) of their representative and any witnesses that are likely to be called as applicable;
- Offering assistance at the hearing or in attending the hearing in relation to disability.

16.4 Unless already provided with the hearing invitation letter, at least 10 working days prior to the hearing the employee will be given copies of any documents that will be relied upon at the hearing (known as the bundle). For example:

- Record of the investigation;
- Copies of (or a summary of) any statements obtained as part of the investigation;
- Notes of any investigatory interview(s) they attended;
- Names of any witnesses who will attending the hearing.

16.5 The final papers for the hearing must be collated and sent to all participants at least 5 working days prior to the hearing.

## **17 ATTENDANCE AT THE HEARING**

17.1 The employee is required to take all reasonable steps to attend hearings.

17.2 The Headteacher/Governor(s) arranging any hearing will make reasonable adjustments for an employee or their representative with a disability to fully participate in the hearing.

17.3 The Headteacher/Governor(s) arranging any hearing will arrange for a note-taker to take detailed notes at the hearing so that a full transcript can be produced following the hearing.

17.4 A member of the HR Employee Relations team will attend the hearing in most circumstances to support the Chairman or Governor panel. If dismissal is a potential outcome, the HR Employee Relations team must be informed of the meeting and given an opportunity to attend where the Local Authority is the employer (ie Community and Voluntary Controlled schools).

17.5 If the employee fails to attend the hearing due to reasonable circumstances out of their control, for example for reasons of sickness supported by a medical certificate, a further hearing date will be offered. If the employee fails to attend a second hearing, the hearing may be held in their absence based on their written submissions or their representative may attend in their absence if required.

17.6 Should the employee be unable to arrange representation for a hearing, a further date will be offered within 5 working days of the original date. If the employee is unable to arrange representation for the second hearing, the hearing will proceed in the absence of the representative.

## **18 PROCEDURE AT THE DISCIPLINARY HEARING**

- 18.1 The Presiding Officer at the disciplinary hearing will be the Headteacher or Chairperson of a Governor Committee, other than in cases where dismissal is contemplated. Where dismissal is being contemplated the Chairperson of a Governor Committee will act as Presiding Officer.
- 18.2 A number of others may be present at the hearing (see section 17 Attendance at the Hearing). Where the Local Authority is the legal employer (Community and Voluntary Controlled schools) and dismissal of an employee is a possible outcome of a hearing, a Governor Committee will always be convened and a member of the HR Employee Relations team must be in attendance to advise the panel. In the case of Voluntary Aided or Foundation schools, a member of the HR Employee Relations team is recommended to be in attendance, in order to advise the Governor Committee.
- 18.3 The hearing will be conducted in accordance with the procedure at Appendix 2.

## **19 DISCIPLINARY OUTCOMES**

19.1 In determining the appropriate disciplinary penalty, consideration will be given to:-

- the gravity of the offence and any explanation given;
- the employee's previous conduct record;
- actions taken in similar cases;
- the employee's length of service;
- whether the action considered is proportionate and reasonable in the circumstances.

19.2 The penalties available to the Presiding Officer of any disciplinary hearing are detailed below although this list is not exhaustive.

### **19.3 No Further Action**

No further action will be taken where there is no case to answer or the employee is not found to be culpable.

### **19.4 Formal Action - Penalties**

#### **19.4.1 Recorded Oral Warning**

If conduct does not meet acceptable standards, but it is felt that a written warning would be inappropriate, the employee will normally be given a recorded oral warning.

#### **19.4.2 Written Warning**

A written warning will be appropriate where the conduct of the employee has fallen below acceptable standards and informal guidance has not resulted in sufficient improvement or where the offence is sufficiently serious to justify an immediate formal penalty.

**19.4.3 Final Written Warning**

A final written warning is appropriate where:-

- the conduct of the employee continues to fall significantly below acceptable standards and previous warning(s) have not resulted in sufficient improvement;
- the misconduct is so serious that a first and final written warning is appropriate;
- dismissal is a clear possibility, but significant mitigating circumstances are accepted.

**19.4.4 Dismissal**

Dismissal will be considered where there has been gross misconduct or where the employee has a current final written warning and further misconduct or unsatisfactory conduct has taken place.

Dismissal with contractual notice

Unless an employee is dismissed for gross misconduct, the appropriate period of notice must be given (ie if dismissal is as a result of a series of warnings).

Dismissal without contractual notice (summary dismissal)

Actions of gross misconduct will, except in the most exceptional circumstances, justify dismissal without notice.

**20 CURRENCY OF WARNINGS**

20.1 Any warning applied will remain on the employee’s file but will only be regarded as live for further disciplinary purposes for a specified period of time (see table below) after which time it will normally be disregarded for disciplinary purposes. The exception to this will be in circumstances where the same type of misconduct becomes a pattern which is repeated every time a warning expires. In these cases, the circumstances of previous warnings should be taken into account in deciding on what further action is appropriate. The spent warning will be retained on file as part of the employment record, in accordance with the ACAS Code of Practice, although it will not be taken into account in determining the level of penalty.

20.2 Exceptionally, there may be circumstances where the misconduct is so serious that it cannot realistically be disregarded for future disciplinary purposes. For example, where the misconduct falls within the Dealing with Allegations of Abuse against Members of Staff and Volunteers policy.

<b>Warning Level</b>	<b>Live Period (from date of issue)</b>
Recorded Oral	6 months
Written	12 months
Final Written	24 months

20.4 See also section 10 Record Keeping.

**21 HEARING OUTCOME**

21.1 Whether or not the employee has been informed of the outcome of the disciplinary hearing orally at the hearing, the employee will be notified of the outcome of the

disciplinary hearing in writing within 5 working days of the hearing with a copy sent to the Local Authority.

- 21.2 In the case of recommended dismissal of a Community or Voluntary Controlled school employee, the Presiding Officer will write to confirm the outcome of the meeting (with a copy to the Local Authority) but the Local Authority must send the dismissal letter as the employee's employer within 14 working days of the hearing.
- 21.3 In the case of Voluntary Aided and Foundation schools, the dismissal letter will be sent by the Governing Body as the legal employer. A member of the HR Employee Relations team may be asked to assist in the drafting of the letter.

## **22 RIGHT OF APPEAL**

- 22.1 An employee may appeal against a decision to issue them with any level of formal disciplinary penalty. The reason for appeal can be one of the following:-
- There was a defect in the procedure;
  - Not all evidence was considered;
  - The sanction/decision was too severe;
  - New evidence has come to light since the last hearing.
- 22.2 An employee seeking to appeal must do so within 10 working days' of written notification of the decision. The employee should send their letter of appeal together with the grounds of appeal to the person named in the letter confirming the outcome of the hearing.

## **23 APPEAL HEARING**

- 23.1 Once a written appeal has been received, an appeal hearing will normally be convened promptly, allowing at least 10 working days written notice to the employee (or shorter if agreed) noting their right to be accompanied (See section 7 Right to be Accompanied).
- 23.2 The Presiding Officer of the appeal panel in consultation with their Local Authority HR Officer will decide whether the hearing will take the form of a review of the decision or a re-hearing of the case. The employee will also be informed of this in the appeal invitation letter.
- 23.3 Copies of any documents relevant to the case including documents which were not provided at the original hearing and which are intended for consideration at the appeal hearing will be exchanged at least 5 working days in advance of the hearing.
- 23.4 If the employee fails to attend the hearing due to reasonable circumstances out of their control, a further hearing date will be offered. If the employee fails to attend a second hearing, the hearing may be held in their absence based on their written submissions or their representative may attend in their absence if required.
- 23.5 The employee need not attend the appeal hearing and can instead be replaced by their representative or they can make a submission in writing (to be received 5 days in

advance of the hearing). In such cases, a review of the original decision only will take place.

- 23.6 The appeal panel will comprise of a committee of 3 governors. Committee members must not have attended the disciplinary hearing for which the appeal was submitted, acted as a witness in the case or have been involved in the case in any material sense. A member of the HR Employee Relations team (who was not been involved in the original hearing) will also attend the hearing to advise the Governors. A note-taker will also need to be commissioned for the meeting.
- 23.7 The Appeal panel will reach findings based on documentation and the submissions from all parties. They have a broad discretion in terms of their findings. They may uphold the decision of the hearing, revoke it in its entirety or substitute a lesser penalty.
- 23.8 The decision of the Appeal Panel will be final.
- 23.9 A successful appeal against dismissal will result in the employee being reinstated and their continuity of employment preserved. Backpay will also be applicable in such circumstances.
- 23.10 A letter confirming the outcome of the appeal hearing will be sent to the employee within 5 working days.



## **APPENDIX 1 - DISCIPLINARY RULES AND GUIDANCE**

Standards of behaviour set in schools by the Governing Body and Headteacher are key in ensuring that employees understand what is expected of them whilst employed by the school. The school's Code of Conduct is used to complement the overall standards set and other documents in relation to standards. The Code provides employees with positive encouragement to help them enjoy a positive working experience in the school whilst ensuring they understand that a breach of its provisions will be sufficient to commence disciplinary action.

The Headteacher and/or Governing body will need to use sound judgement, with the advice of their Local Authority HR Officer as appropriate, to determine whether an act or omission amounts to misconduct or gross misconduct.

### **Misconduct**

Misconduct is defined as behaviour or action that warrants disciplinary action (rather than dismissal) where it is a first offence. The following sets out examples of misconduct which are likely to lead to formal action being taken under the disciplinary procedure although it should not be regarded as exhaustive (in some instances, items listed under misconduct may be of such an extreme nature to amount to gross misconduct):-

- a) Failure to comply with a reasonable management instruction;
- b) Act(s) of minor insubordination;
- c) Failure to observe the Local Authority's and/or School's Standing Orders, financial or other operational regulations;
- d) Failure to observe Local Authority/School policies;
- e) Disregard of specific departmental rules and working procedures;
- f) Negligence in the performance of duties;
- g) Failure to provide a duty of care in the performance of role;
- h) Breach of Health & Safety rules and requirements including any act or omission;
- i) Poor-time keeping;
- j) Unjustifiable absence from work;
- k) Misuse of School property and equipment including misuse of email, fax or internet facilities;
- l) Failure to follow the School's sickness notification procedures and certification requirements;
- m) Inappropriate actions during a period of sick leave likely to inhibit recovery or a return to health;
- n) Improper use/disclosure of information obtained in the School's employment;
- o) Abusive or inappropriate behaviour toward pupils, parents, fellow employees or members of the public;
- p) Minor acts considered contrary to the safeguarding of children;
- q) Acts in breach of a teacher's professional duties.

## Gross Misconduct

Gross misconduct is considered to be conduct or behaviour that may be considered as a fundamental breach of contract. Only acts of gross misconduct will lead to a dismissal for a first offence. Again, it is not possible to define all acts which could be classified as gross misconduct, for the disciplinary action taken by the School and the penalty applied will ultimately be determined by the circumstances of the incident. In general, the following types of offences are deemed to constitute gross misconduct and are likely to lead to dismissal without notice, or pay in lieu of notice:-

- a) Serious acts of insubordination;
- b) Serious breaches of Financial regulations or other operational regulations;
- c) Gross negligence in the performance of duties;
- d) Theft or attempted theft from the School, its employees or members of the public or other acts of dishonesty;
- e) Dishonest or improper use of information obtained in the Local Authority's and/or School's employment;
- f) Serious breach of duty regarding disclosure of confidential information;
- g) Serious breach of safe working practices and health and safety rules which endangers the health and safety of an individual, other employees, or members of the public and/or exposes the Local Authority/School to claims against it;
- h) Serious breach or failure to provide safe working environment for children and young people;
- i) Being under the influence of drugs or alcohol on School premises for other than medical reasons in circumstances where it could constitute a health and safety hazard or where it would be in breach of a position or responsibility and trust;
- j) Buying, selling or offering drugs on School premises;
- k) Offering alcohol to pupils;
- l) Fraud;
- m) Falsification of information, for example, exam results, qualifications or other relevant personal details in seeking and obtaining employment or promotion; information contained in time sheets, overtime claims, invoices, accounts, records or medical certificates;
- n) Violent, offensive, abusive, neglectful or indecent behaviour;
- o) Bullying, harassment or victimisation;
- p) Unlawful acts of discrimination within the workplace on the grounds of race, sex, sexual orientation, age, disability, religious belief or trade union membership;
- q) Unauthorised removal of and/or serious misuse of and/or deliberate damage to Local Authority/School property and equipment including misuse of email, fax or internet facilities;
- r) Improper use or attempted use of an employee's official position for their own private advantage or for the private advantage of some other person or third party;
- s) Serious acts outside of working hours which are incompatible or inconsistent with their duties to the School or which are likely to bring discredit upon or lead to loss of confidence by the school;
- t) A serious breach of the School's policies relating to the use of information technology;

- u) Conduct that is seriously contrary to the school's Code of Conduct for employees;
- v) Criminal offences and cautions outside of work, including reprimands, final warnings or penalty notices (see Section 5 - Criminal Offences and Cautions Outside of Work);
- w) Acts considered to be seriously contrary to the safeguarding of children;
- x) Failure to register with the Independent Safeguarding Authority;
- y) Any other action(s) which fundamentally breach the relationship of trust and confidence which exists between the school and employee.
- z) Aiding and abetting any of the above;

## APPENDIX 2 – CONDUCTING THE DISCIPLINARY HEARING

In general terms, the following format will be adopted:-

- The Chair of the Governor’s Panel arranges for the parties to enter and to take their designated seats;
- The Panel Chair conducts introductions, checks that all parties have the same documents, explains the protocol for the hearing and responds to any initial procedural questions;
- Members of the Governor’s Panel and the HR Adviser to the Panel can ask questions at any time.
  - The Investigating Officer presents the case against the employee
  - The employee/representative may question the Investigating Officer;
  - Committee members and any Local Authority HR Officer in attendance may question the Investigating Officer;
  - The Investigating Officer calls in and questions any witnesses or reads from any witness statements;
  - The employee/representative may question the management witnesses;
  - Committee members and any Local Authority HR Officer in attendance may question the management witnesses;
  - Each management witness withdraws after their questioning has been completed.

### 1. Employee’s Response

- The employee/representative presents their case in response to the allegations;
- The Investigating Officer may question the employee;
- Committee members and any Local Authority HR Officer in attendance may question the employee;
- The employee/representative calls in and questions any witnesses or reads from any witness statements;
- The Investigating Officer may question the employee’s witnesses;
- Committee members and any Local Authority HR Officer in attendance may question the employee’s witnesses;
- Each employee witness withdraws after their questioning has been completed.

### 2. Summing Up

- The Investigating Officer summarises the management position.
- The employee/representative summarises their position;
- Both parties withdraw;
- The Governor’s Panel/committee and the Local Authority HR Officer (if present) will make their decision with procedural advice from the Local Authority HR Officer
- Both parties are recalled;
- The Presiding Officer reads out the panel’s decision. This is confirmed in writing to the employee and should be recorded in the transcript of the hearing.

- The Presiding Officer brings the hearing to a prompt close, without further discussion or debate.
- The employee will be advised of their right of appeal against the decision and the timescales for its submission.

**APPENDIX 3 GUIDANCE ON CONDUCTING AN APPEAL HEARING – Name of employee appealing**

**XXXXXXXXXX SCHOOL – DATE / TIME**

**GUIDANCE FOR THE APPEAL COMMITTEE**

**Preparation pre meeting:**

- Ensure private rooms are booked without interruptions. One for the appeal hearing, one for the member of staff and his / her representative and one for the management side.
- Ensure all telephones are diverted
- Arrange refreshments for the meeting
- Ensure all parties have the papers in advance
- Check if the employee will have representation
- Arrange a notetaker

**Governor's Panel:** Names XXXXX

**HR Representative assisting -** XXXXXXXX

**Employee -** XXXXXXXXXXXXXXXX

**Representative –** Not advised that a representative is attending

**Headteacher –** XXXXXXXXXXXXXXXX

**Presenting Officer for management side –** XXXXXXXXXXXXXXXX

**Note taker –** XXXXXXXXXXXXXXXX

**LA Advisor to management –** XXXXXXXXXXXXXXXX

**General:** Both sides should enter the meeting together. Questions should be taken as per the procedure below and the meeting controlled so that questions are not ad hoc throughout.

The governors panel should not meet with either the employee or management side before the appeal hearing nor discuss the case to avoid any allegations of collusion.

Either the headteacher or the chair of the original panel can lead the management response. This must be clear at the outset. If the headteacher, the chair can be called as a witness or vice versa.

**Summary of procedure**

1. Introductions and explanation of roles by chair of panel. (Try and clarify from employee/representative if one person will be speaking mainly).
2. Check that everyone has the same paperwork.
3. Explanation of order of hearing by chair of panel as follows (including confirm that everyone has received copies of relevant packs.)

Confirm that the purpose of the hearing is to review the decision taken on <date> to XXXXXXXXXXXXXXXXXXXXXXXX and whether that was a reasonable decision to take in the light of the evidence presented at the disciplinary hearing. Due regard will be taken of the grounds for appeal as set out in the individual's letter of <date>.

(i) Chair of Panel will ask the employee/representative to present his case to the panel including calling witnesses (Note that witnesses can be asked to wait and may be called back).;

(a) The chair of the original panel/headteacher will have the opportunity to ask any questions of the employee

(b) The panel will have the opportunity to ask questions of the employee/representative

(ii) Chair of appeal panel will ask chair of original panel/headteacher to present management's case

(a) The employee/representative will have the opportunity to ask any questions of the chair or of original panel/headteacher.

(b) The panel will have the opportunity to ask any questions of chair of original panel/headteacher;

(iii) Chair of panel will ask original panel chair/headteacher to sum up management's case;

(IV) Chair of panel will ask employee/representative to sum up the employee's case; the employee / representative should have the last word.

(v) Chair of panel will then ask all parties except panel members and HR adviser to leave the room in order for the panel to deliberate.

(vi) Should the panel need to recall any party to clarify any points, both parties will be invited to return.

(vii) Both parties will be asked to return where a decision will be given verbally if this is possible – decision then confirmed in writing within 5 working days.

**4. Chair of panel will ask if there are any questions before the proceedings start and....**

- confirm that during the hearing requests may be made for short adjournments if necessary – these will be accommodated on the basis that they are reasonable requests. (Note it is useful for the chair to ask at various points in the proceedings if any party would like an adjournment)

- reference will be made to documentary evidence submitted by both parties during the hearing as appropriate. Confirm that both parties have received copies of documentary evidence.

- reference to timing/breaks if appropriate.

**5. Commence as outlined under 2 above.**

**6. Decision making**

- Adjourn the hearing for the appeal committee to make their decision

- Call back both parties together and deliver the decision verbally (it is helpful to write a script and read the decision from this). The verbal decision should be short. A fuller written decision will follow in 5 working days.

- The individual should be told that they have no further right of internal appeal.

- All papers used by the appeal committee should be passed back to HR for data protection reasons.