

DISCIPLINARY PROCEDURE

1. Who this procedure applies to

- 1.1 This policy applies to all employees of the school/Council on permanent or temporary contracts. This policy does not apply to casual workers, consultants, agency workers or any other worker who is not an employee of the school/Council, nor does it apply to new employees in their probationary period.
- 1.2 This procedure should be read alongside the supporting guidance document – Disciplinary Procedure – Guidance for Managers.
- 1.3 This procedure is incorporated into individual employee's contract of employment.
- 1.4 A suite of templates and other information guidance information, are available in the Disciplinary section of the People Management Handbook for Schools (PMH4S). These cover both the management of the disciplinary process and investigation stages, as described throughout this procedure.

2. Principles

- 2.1 All elements of an employee's conduct, behaviour and performance should be managed fairly, consistently and in a timely way. An employee should be given honest feedback about all areas of their work, good and bad, and should never be unclear as to how they are performing. Concerns should not be allowed to fester; managers should raise any issues of concern as soon as possible and bring to attention improvements required. Record keeping and feedback is important at all stages (see also Capability Policy).
- 2.2. It may not always be possible to deal with issues or concerns as part of the usual management process and, sometimes, conduct or behaviours may be so unsatisfactory that they have to be managed as disciplinary matters (see section 13 - Disciplinary Rules and Standards of Performance). In these circumstances, this procedure will apply.
- 2.3. There are supplementary procedures and guidance relating to allegations of abuse of children and, when dealing with such allegations, due regard will be given to this procedures. (See also Staff Facing Allegations of Abuse)
- 2.4 The term 'Decision Maker' has been used throughout this document. This will differ in schools, depending on whether a case is misconduct or gross misconduct: for cases of misconduct, which do not result in possible dismissal, this will usually be undertaken by the headteacher, except where they are a witness to events or otherwise unavailable, and an alternative headteacher or governor may be appointed; but, for cases of gross misconduct, where the sanction could be dismissal, the role of Decision Maker, should the case go to formal hearing, will be undertaken by a Staff Disciplinary Panel, consisting of 3 suitably experienced governors (not staff governors). Governor Services can assist with external governors, should these be required. For the purposes of

correspondence and initial decision making regarding, for example, instigating further investigation, suspending the employee or moving to a hearing, the role of Decision Maker will be performed by the Chair of Governors or Chair of Staff Disciplinary Panel.

- 2.5 In exceptional circumstances, where it is not possible to use the headteacher and/or Chair, but urgent decisions are required (such as suspension), the role of temporary Decision Maker may be performed by a Director, with responsibility for Education (or other senior officer, as delegated), until a suitable Decision Maker can be identified.

3. Initial Fact Finding & Investigation

- 3.1 Where a suspected conduct concern arises, an Initial fact find exercise should be instigated as soon as possible. The conduct concern should be put to the employee for their explanation of events. The initial fact find is not a formal investigation and should not be used as such, neither should it be unnecessarily elongated. Further guidance on conducting the initial fact find is available in the 'Disciplinary Procedure – Guidance for Managers' and 'Guidance for Manager – initial fact find meeting'.
- 3.2 There may be cases, for example, of possible criminality, fraud, financial irregularities or safeguarding concerns, where it is not appropriate to instigate an Initial Fact Find before the matter has been referred to the appropriate agency. Advice from the HR Caseworker should always be sought in such cases.
- 3.3 Dependent on the employee's response, the facts established and the seriousness of the misconduct, the manager may be able to manage the employee's conduct outside of a formal process. Where the Decision Maker determines it is necessary and appropriate to instigate a formal disciplinary process, the formal stages of the disciplinary procedure will be followed.
- 3.4 The Decision Maker will usually be determined by the school (with HR advice), depending on the nature of the misconduct (see 2.4 above). The Decision Maker (advised by HR) will determine whether the conduct matter is one of potential misconduct or gross misconduct, and also whether suspension (in the case of gross misconduct only), or alternative working arrangements, are necessary.
- 3.5 Based on the initial fact find, the Decision Maker will compile the disciplinary allegations and write to the employee to inform them of their alleged wrongdoing and that a formal disciplinary process and investigation has been instigated. The allegation letter should also set out what the most severe sanction could be, if there are reasonable grounds to believe that the employee has committed a disciplinary offence.
- 3.6 Following the initial fact find, the Decision Maker will appoint an investigator to carry out a formal investigation to establish the full facts. In most cases this will be the initial fact finder, however, there may be instances where it is appropriate to appoint an alternative investigator. The investigator should be impartial, presenting facts only, and play no part in the decision making process.

- 3.7 The investigator will interview the employee in relation to the disciplinary allegations and obtain their account. The Decision Maker should ensure that the investigator is sufficiently skilled and has the capacity to undertake the investigation, so as not to incur delays in the process.
- 3.8 To encourage a more collaborative approach and to avoid unnecessary delays later in the process, at the onset of the investigation the Decision Maker, HR and trade union representative should agree a suitable preliminary hearing date, should the conduct matter eventually proceed to a formal meeting. If this date become unsuitable later in the process, for example, where the investigation takes longer to conclude than originally envisaged, the Decision Maker will work with all parties to set a revised hearing date.
- 3.9 The employee may be accompanied by a trade union representative or work colleague at the investigation interview and will be given at least two days' notice of the interview date. This will be increased to five days if the employee's representative is not available. The interview will go ahead in the absence of the trade union representative, if they still cannot attend.
- 3.10 **AWOL (Absence Without Official leave)**
Instances of unauthorised absence will be managed in line with the AWOL process set out in the Disciplinary Procedure – AWOL Guidance for Managers. Advice should be sought from the HR Caseworker for guidance on managing this type of concern.
- 4. Adjusted Duties or Suspension**
- 4.1 A period of adjusted duties may be appropriate during the disciplinary process or, in some cases, as a last resort, suspension with full pay may be considered necessary. Both interventions are a neutral act and will not prejudge the outcome of the process. Suspension should only be considered in cases of gross misconduct.
- 4.2 Wherever possible, the employee will be informed of the decision to adjust their duties or suspend in a face-to-face meeting. However, in all cases this will be confirmed in writing. The letter should confirm the rationale for the adjusted duties/amended working arrangements, or suspension. Consideration will need to be given to any safeguarding aspects. A safeguarding risk assessment may be required.
- 4.3 The Decision Maker will keep the adjusted duties or suspension under regular review (usually 4-weekly but adjusted to accommodate school holidays), or sooner should circumstances change at any point during the process - (see Section 5 & 6 of the Disciplinary Procedure – Guidance for Managers).

5. Following the Investigation

- 5.1 After the investigation is completed, the Decision Maker will consider the evidence that has been collated, including the information gathered at the initial fact finding stage of the process.
- 5.2 The Decision Maker may decide that there is no case to answer and will inform the employee in writing that no formal disciplinary action will be taken.
- 5.3 The Decision Maker may, however, decide that there is a case to answer and a disciplinary hearing will be arranged as soon as possible.

6. Disciplinary Hearing

- 6.1 The Decision Maker will write to the employee giving 10 working days' notice to attend a disciplinary hearing. The letter will include:
- the purpose of the hearing.
 - the nature of the alleged misconduct – (the formal disciplinary allegations).
 - copies of any reports and/or documentation relating to the evidence of the allegation/s.
 - the right to be accompanied by a trade union representative or work colleague.
 - an explanation of what to do if the employee or their representative cannot attend the hearing (see below).
 - the details of any witnesses to be called to attend the hearing by the Decision-maker.
 - the process for the employee to inform the Decision-maker of any witnesses they would like to request to attend the hearing - these must not be character witnesses.
 - an indication of any potential outcomes from the hearing.
- 6.2 If the employee's representative cannot attend the hearing on the date provided, the hearing must be postponed. The employee has a duty to propose an alternative time within 5 working days of the original date and, providing this is reasonable, the hearing will be re-arranged for this time or a mutually agreed date.
- 6.3 If the TU or companion remains unavailable to attend, the employee will be expected to attend alone or to arrange for an alternative companion. If the employee fails to attend without good reason, or is unable to do so, the Decision Maker may have to take a decision based on the available evidence.
- 6.4 After the hearing is concluded, the Decision Maker will adjourn the hearing and deliberate their decision. The Decision Maker will provide a timescale to the employee in which their decision will be forthcoming. In any event, the decision should not be unduly delayed.

- 6.5 The Decision Maker may verbally inform the employee of their decision and the reasons for it. However, in all cases, the Decision Maker will confirm the outcome in writing, within 5 working days unless there are exceptional circumstances which delays the written decision. The employee must be advised of their appeal rights in the outcome letter.

7. Disciplinary Outcomes

- 7.1 Possible outcomes of a disciplinary hearing may be:

- No case to answer
- No disciplinary sanction necessary
- Written Warning
- Final Written Warning
- Dismissal with notice
- Dismissal without notice – (summary dismissal) gross misconduct only
- Other disciplinary action (see below)

- 7.2 For avoidance of doubt, the School/Council reserves the contractual right to impose other disciplinary action and this will usually be accompanied by a Final Written Warning. Examples of such action may include:

- Mandatory training/retraining or development programme
- Recommendations for alternative working arrangements
- Consideration of demotion to alternative role (with associated reduction in pay, in line with terms and conditions applicable to the post)

- 7.3 No employee can be dismissed for a first breach of discipline except in the case of gross misconduct.

- 7.4 If there is further misconduct whilst a previously issued Written Warning remains live, this will normally be the basis for a sanction no lower than a Final Written Warning being issued, where the Decision Maker decides a sanction is necessary.

8. Recording of Warnings

8.1 First Written Warning

A record of the warning will be kept but it will normally be considered spent after six months, subject to achieving and sustaining a satisfactory standard of conduct.

Final Written Warning

A record of the warning will be kept but it will normally be considered spent after twelve months, subject to achieving and sustaining a satisfactory standard of conduct.

Other Disciplinary Action

A record of other action will be kept, but, other than in cases of demotion, transfer or loss of seniority, it will normally cease to be live after twelve months, subject to achieving and sustaining a satisfactory standard of conduct.

- 8.2 Warnings should be regarded as spent following the specified period, subject to satisfactory conduct, and should be disregarded for future disciplinary purposes. However, an employee's entire disciplinary history may be considered by the Decision Maker when deciding upon an appropriate sanction (see section 9 below).
- 8.3 A copy of any disciplinary outcome will be kept on the employee's personal file, at the school, and all notes and statements will be kept by the school.

9. Disciplinary Employment History

- 9.1 The severity or 'magnitude' of a misconduct incident will be determined in respect of the circumstances of individual cases. An expired warning from any previous disciplinary will not be used to increase the magnitude or 'upgrade' a current/live concern, to that of gross misconduct.
- 9.2 There may be circumstances where it is appropriate for the Decision Maker to take into account expired disciplinary sanction(s), previous allegations or disciplinary findings, when deciding on an appropriate sanction in the live case (in particular, allegations of abuse/safeguarding concerns or the potential identification of a pattern of behaviour). Consideration of such employment history should only take place after obtaining advice from the HR caseworker.

10. Referral to External Groups and Professional Bodies

- 10.1 The outcome of a disciplinary process may result in a referral being made to a range of external bodies.

Examples of such bodies include:

- The Disclosure and Barring Service (DBS)
- Teaching Regulation Agency

11. Appeals

- 11.1 The employee (appellant) has a right of appeal against any disciplinary sanction including dismissal. The appeal must be registered within 10 working days of receipt of the written outcome decision.
- 11.2 The appeal will be heard by an appeal panel consisting of 3 governors who have had no previous involvement in the case (Governor Services can support with alternative governors).
- 11.5 The appellant will have the right to be accompanied by a TU representative or work colleague at the appeal hearing.

- 11.6 For all appeals, an alternative HR Caseworker will be assigned to advise the appeal panel.
- 11.7 The appellant will be given 10 working days' notice, in writing, of the appeal hearing date. If the employee's representative cannot attend the hearing on the date provided, the hearing must be postponed. The appellant has a duty to propose an alternative time date within 5 working days of the original date and, providing this is reasonable, the hearing will be re-arranged for this time or, a mutually agreed date.
- 11.8 The purpose of an appeal hearing is not to repeat the process followed at the disciplinary hearing or to rehear the case in full. The appellant will be expected to focus on specific factors that they feel have been dealt with unfairly, or which have received insufficient consideration, such as:
- New evidence coming to light since the disciplinary hearing.
 - An inconsistent, disproportionate or excessively harsh sanction
 - Alleged bias of the Decision Maker
 - Alleged unfairness in the conduct of the hearing
 - The Decision Maker failed to take account of the full facts
 - There was a deficiency in the investigation in that it failed to collect, or present, the full facts of the case
- 11.9 The appellant can request that witnesses attend the appeal hearing and should provide reasonable notice, to the chair of the appeal panel, of who they intend to call – these should not be character witnesses.
- 11.10 The appeal panel may also request witnesses to attend the appeal hearing and will coordinate all witnesses attendance accordingly.
- 11.11 The Decision-maker will be present at the appeal hearing to present the rationale for their decision.
- 11.12 An appeal should not be used as an opportunity to punish the employee for appealing the original decision and it should not result in any increase in sanction.
- 11.13 The appeal decision and reasons will be confirmed to the appellant in writing within 5 working days, unless there are exceptional circumstances.
- 11.14 Following the outcome decision from the appeal process, there is no further right of appeal.
12. **Raising Concerns**
- 12.1 Concerns relating to the disciplinary process should be raised with the Decision Maker as part of the disciplinary process. The Resolution and Grievance Procedure should not normally be used to raise concerns directly relating to a live disciplinary matter.
- 12.2 If an employee raises a grievance during a disciplinary process, it may be appropriate to consider a pause in the disciplinary process to address the concern

in certain circumstances, for example, when the complaint alleges to a conflict of interest or impartiality on part of the Decision Maker.

- 12.3 Where an employee raises a grievance during a live disciplinary process, which does not relate to the disciplinary matter, this will be managed in the usual way through the Resolution & Grievance procedure.

13. Disciplinary Rules and Standards of Performance

- 13.1 There are two types of disciplinary offence; those which will be considered as gross misconduct and those which will be considered as misconduct. The following list of disciplinary offences are examples only and are neither exclusive nor exhaustive. In addition, there may be other offences of a similar gravity which will constitute gross misconduct or misconduct. Decision Makers will use their discretion to determine the severity or 'magnitude' of cases in light of the circumstances and available evidence.

13.2 Gross Misconduct

- 13.2.1 Gross misconduct is considered so serious that it would result in the employee being dismissed without notice (summary dismissal), unless there are exceptional mitigating circumstances.

Gross misconduct might include:

13.2.2 Theft and Wilful Damage

- Unauthorised removal, possession or theft of property belonging to the school/Council, a fellow colleague, pupil, or member of the public.
- Deliberate, wilful or malicious damage or misuse to property belonging to the school/Council, a colleague, pupil or member of the public.

13.2.3 Acts of Violence, Abuse or Inappropriate Behaviour

- Acts of violence including the physical assault or threat of physical assault of other colleague(s), pupil or member of the public.
- Serious abuse of a customer, especially a user of services (e.g. pupil) for vulnerable or dependent people.
- Rudeness, aggressive or offensive behaviour including the use of abusive language to colleagues, pupils or members of the public.

13.2.4 Harassment, Discrimination, Victimisation and Bullying (HDVB)

- Deliberate bullying or intimidation of a colleague, pupil or member of the public, including threatening behaviour.
- Acts of incitement or deliberate/malicious acts of harassment or discrimination of a colleague, pupil or member of the public on the grounds of sex, transgender status, marital status, civil partnership status, pregnancy, colour, race, nationality, national origins, ethnic origins, religion or belief, religious practices, sexual orientation, disability, age, previous criminal convictions, trade union membership, or misogynistic behaviour.

13.2.5 **Fraud and Deliberate Falsification of Records**

- Deliberate falsification of time recording methods, mileage or other expense claims etc.
- Deliberate falsification of qualifications or information which is a statutory or essential requirement of employment or which results in additional remuneration.
- Presenting a non-legitimate qualification or licence to gain employment, promotion or additional remuneration with the school/Council.
- Engaging in work or activities incompatible with absence whilst receiving sick pay.

13.2.6 **Breaches of Rules, Regulations and Procedures**

- Any action resulting in a breach of data protection legislation (the General Data Protection Regulation and the Data Protection Act 2018) examples of such breaches could be considered as unauthorised use, access to, or disclosure of confidential information.
- Serious breaches of health and safety rules.
- Deliberate, repeated or serious failure to follow the school/Council's policies procedures and regulations, for example, sickness policies, smoking policy financial regulations, etc.
- Serious misuse of computer facilities including the misuse of email and internet access or any other breach of the IT Acceptable Use policy.
- Refusal, failure or persistent failure to obey legitimate instructions.

13.2.7 **Gross Negligence**

- Gross negligence in the performance of duties.
- Sleeping whilst on wakeful duty.

13.2.8 **Serious Breaches of Trust and Confidence**

- Serious safeguarding concerns that place vulnerable adults, children and their families at risk.
- Serious or repeated breach of the school's Code of Conduct for employees, including where an employee places others at risk.
- Being under the influence of drink or illegal drugs at work.
- Absence from the work place without permission for a significant amount of time without a reasonable explanation or any absence which amounts to dereliction of duty and results in service provision being compromised.
- AWOL (Absence Without Official Leave).
- Acceptance of bribes or other corrupt practices.
- Criminal conduct, including that which is committed outside of work that is relevant to the employee's employment.
- Failure to inform the school/Council of any changes to circumstances which may have a bearing on their employment, including criminal allegations, convictions or cautions which may affect the status of their DBS or Teaching Regulation Agency or registration with a regulatory/governing body.

- Failure to register and/or maintain registration with regulatory or governing bodies where this is a statutory or essential requirement for employment.
- Serious breach of a Code of Conduct, as stipulated by a relevant regulatory body.
- Bringing the school/Council, its image/reputation, name or service into disrepute or compromise public confidence in the integrity of the school/Council or the services it provides to the public.
- Making a malicious or untruthful allegation/complaint against the school/Council or its employees.

13.3 Misconduct

13.3.1 Some breaches of discipline will not be sufficiently serious to be considered as gross misconduct. Misconduct is considered less serious and would result in the employee receiving a written warning or final written warning, unless there are exceptional mitigating circumstances.

13.3.2 If a live final written warning is already in place and a further instance of misconduct occurs, unless there are acceptable mitigating circumstances, dismissal may be the outcome.

13.3.3 Misconduct might include:

13.3.4 Harassment, Discrimination, Victimisation and Bullying (HDVB)

The school/Council has a zero tolerance of HDVB, however it is recognised that there may be instances where an employee has not deliberately intended to cause offence, detriment or maltreatment on the grounds of HDVB. Conduct of this nature may be classified as misconduct, as opposed to gross misconduct, depending on the circumstances of each case.

13.3.5 Breaches of Rules, Regulations and Procedures

- Unsatisfactory timekeeping.
- Taking unauthorised, excessive or protracted breaks.
- Timewasting whilst at work.
- Abuse of, or failure to follow, rules on recording attendance.
- Less serious breach of health and safety rules.
- Less serious breaches of the school/Council's policies, procedures or regulations, for example, smoking policy, etc.
- Less serious misuse of computer facilities, including misuse of email and Internet access, phone or photocopying facilities.
- Using the school/Council's time and resources for personal purposes.
- Refusal or failure to obey legitimate instructions.

13.3.6 Less Serious Negligence

- Negligence or carelessness, or lack of due diligence, in the performance of duties.
- Failure to take proper care of, or have due regard for, the property of the school, colleagues, pupils or members of the public.

13.3.7 Other Types of Disciplinary Offences

- Rudeness or offensive behaviour including the use of abusive language to colleagues, pupils or members of the public.
- Behaviour towards colleagues, pupils or members of the public which falls short of the school/Council's expected behavioural standards.

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Sept 2024	3	A Morley & Others	Review of Procedure to reflect new workforce cultures and ways of working and to incorporate stakeholder feedback.