

## Guidance for Governors

### Model HR Policy – Disciplinary Policy

#### Date Issued: Autumn Term 2017 Agenda

The disciplinary policy has been reviewed to incorporate changes to legislation since the previous release of the policy in September 2015. The policy provides a framework for approaching and dealing with staff discipline issues.

The aim of the policy is to provide a framework where all employees are treated fairly and consistently when dealing and managing the required standards and expectations of conduct. The model policy applies to all teaching and non teaching staff, including the Headteacher.


The key changes are:

- Informal Action has been changed to Informal Advice
- Information relating to covert recordings of meetings has been inserted in the record keeping section.
- Clarification about record keeping at the informal stage has been inserted. It now reads 'a record of the conversation/outcome retained on the employees file'.
- Clarification about child protection/safeguarding has been provided. Including links to the DSCB Management of Allegations policy and procedure.
- At the disciplinary hearing/appeal for Voluntary Aided and Foundation Schools an additional option 'in this school support will be sought from Dudley MBC to provide a HR representative only (no legal representative). All other options remain unchanged.
- Formal disciplinary action against union representatives, the removal of 'after obtaining the employees agreement'.

Governing Bodies are required to:

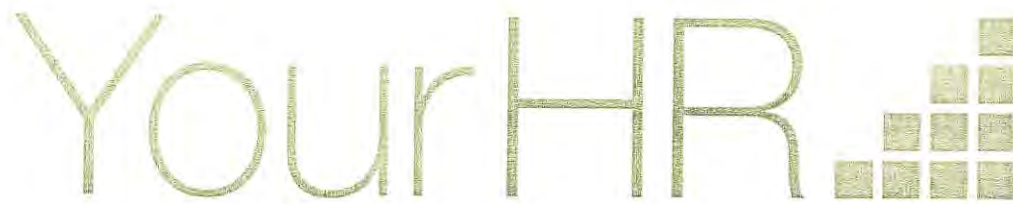
1. Read and decide whether to adopt the revised Disciplinary policy in school.
2. If adopted, publish the policy in school;
3. If adopted, the signed Governor Sheet of the policy should be completed and returned to YourHR (via email) with a copy being retained in school for reference.

Contact: **Helen Mallen**  
HR Traded Services Partner  
Tel: 01384 812529  
E-mail: [helen.mallen@dudley.gov.uk](mailto:helen.mallen@dudley.gov.uk)

YourHR 

*P. Stevenson,*  
*Chair of Governors.*  
*22/11/17*





# *Disciplinary Policy*

This policy has been formulated in consultation with the Dudley Safeguarding Board  
and with  
Professional Associations NUT, NASUWT, ATL, ASCL, NAHT, UNISON and  
GMB but not agreed

*July 2017*

© All rights reserved to YourHR, Dudley MBC



## Disciplinary Policy – July 2017

Section Update	Options	Committee Decision and Rationale	Delegation of Authority	Comments
10.0	<p><b>For Voluntary Aided and Foundation Schools</b> it is strongly recommended to seek support at the hearing</p> <p>In this school support will be sought from Dudley MBC to provide a HR representative only (no legal representative);</p>			
12.2	<p><b>For Voluntary Aided and Foundation Schools</b> it is strongly recommended to seek support at the hearing</p> <p>In this school support will be sought from Dudley MBC to provide a HR representative only (no legal representative);</p>			

Name of Committee Panel	e.g. Personnel Committee
Signed	
NAME IN CAPITALS	
Date	

Full Governing Body Ratification	
Signed	
NAME IN CAPITALS	
Date	

## Contents Page

1.0 Purpose of Policy.....	6
2.0 Scope of Policy.....	6
3.0 Principles / Aims.....	6
3.1 Record Keeping.....	7
4.0 Legal Context.....	8
5.0 Associated Documents.....	8
6.0 Disciplinary.....	9
6.1 Informal advice.....	9
6.2 Misconduct.....	9
6.3 Continued Misconduct.....	9
6.4 Gross Misconduct.....	10
6.5 Suspension or Temporary Reassignment to Alternative Duties.....	10
6.6 Child Protection/Safeguarding Allegations.....	10
7.0 Representation.....	10
8.0 Child Protection / Safeguarding.....	<b>Error! Bookmark not defined.</b>
9.0 Disciplinary Process.....	12
9.1 Preliminary Investigation.....	12
9.2 Suspension or Temporary Alternative Arrangements.....	12
9.3 Formal Investigation.....	14
9.4 Investigation Interview.....	15
9.5 Witnesses.....	15
9.6 Internal Audit.....	16
10.0 Investigation Report.....	16
11.0 Disciplinary Hearing.....	17
11.1 Inviting an Employee to a Disciplinary Hearing.....	17

12.0	The Disciplinary Hearing.....	18
12.1	Process .....	18
12.2	Outcomes of the Hearing .....	20
112.2.1	No Case to Answer.....	20
12.2.2	Oral Warning .....	20
12.2.3	First Written Warning .....	20
12.2.4	Final Written Warning.....	21
12.2.5	Extension of Warnings .....	21
12.2.6	Action Short of Dismissal .....	21
12.2.7	Sanctions .....	21
12.2.8	Dismissal.....	22
12.3	Absence from Work during the Period of a Warning .....	22
13.0	Appeals Process.....	22
13.1	Grounds for Appeal.....	23
13.2	The Appeals Process.....	23
13.3	The Appeals Decision .....	24
13.4	Re-Hearing.....	24
14.0	Non Attendance.....	25
14.1	When the Employee Fails to Attend.....	25
14.2	When the Employee Representative Cannot Attend.....	25
15.0	Statutory Regulatory Authorities .....	26
16.0	Police Investigation.....	27
17.0	Formal Disciplinary Action against Union Representatives.....	27
18.0	Grievances Raised during Disciplinary Action .....	27
19.0	Absence during Disciplinary Action .....	28
20.0	Collaboration of Governing Bodies.....	28



## Appendices Contents

Appendix	Title	Page Number
1	Disciplinary Process Flowchart	28
2	Examples of Misconduct	29
3	Examples of Gross Misconduct	30
4	Order of Proceedings for Disciplinary and Dismissal Hearings (Headteacher has the delegated power to dismiss)	31-33
5	Order of Proceedings for Disciplinary and Dismissal Hearings (Headteacher does not have the delegated power to dismiss)	34-37
6	Order of Proceedings for Appeal Hearings	38-40
7	Constitution of Appropriate Committees	41-42
8	Terms of Reference – Staff Dismissal Committee	43
9	Terms of Reference – Staff Dismissal (Appeals) Committee	44

## **1.0 Purpose of Policy**

To provide a framework where all employees are treated fairly and consistently when dealing with and managing the required standards and expectations of conduct. The correct application of the policy should benefit both employers and employees and may, in practice, lead to fewer concerns regarding alleged conduct concerns. It is the intention that wherever possible, all reasonable steps to effect an improvement in an employee's conduct are taken before invoking the disciplinary policy.

In some cases where there is a minor shortfall in standards of conduct expected, Informal advice will be appropriate which is detailed in section 6.1. The continuation of this policy will be invoked where Informal advice has been exhausted and there has been insufficient improvement in the employee's conduct, or where concerns or issues relating to the employee's conduct are of a more serious nature.

## **2.0 Scope of Policy**

This policy applies to all staff employed, both teaching and non-teaching, including the Headteacher. In cases where allegations are made against the Headteacher, substitute "Headteacher" for "the Chair of Governors".

This policy should not be used for:

Concerns relating to capability (performance): in these circumstances the relevant Schools Capability Policy should be referred to.

Concerns relating to incapability due to ill health: in these circumstances the Schools Absence Policy should be referred to.

Concerns relating to complaints: in the first instance the Schools Complaints Policy should be referred to.

Concerns relating to grievances: in the first instance the Schools Grievance Policy should be referred to.

Concerns relating to child protection/safeguarding allegations: in the first instance guidance or relevant policy on Management of Allegations should be referred to.

## **3.0 Principles / Aims**

The aim of this policy is to support the School/Academy in achieving and maintaining standards of conduct and providing employees with the opportunity to improve, with appropriate support.



The aim of disciplinary action is to encourage improvement rather than to punish. However, where gross misconduct is proven, dismissal must take place unless there are exceptional mitigating circumstances.

This policy is to be implemented in accordance with the provisions of the ACAS Code of Practice in relation to any employment related issues and should be based on the following principles:

- Ensure that all employees are encouraged to display and maintain the required standards of conduct.
- Provide a framework to identify concerns relating to incidences of minor conduct early on, thereby minimising the need to invoke formal disciplinary action.
- No formal disciplinary action will be taken against any employee before a full investigation into the allegations has taken place.
- No formal disciplinary action will be taken against any employee before they are offered an opportunity to respond to the allegations.
- Ensure that the employee is aware of their right to representation at all formal stages of the procedure (the chosen companion may be a fellow worker, a trade union official, or a current recognised trade union representative who has been certified by their union as being competent).
- Where cases progress to a disciplinary hearing, such cases will be heard by a panel independent of the investigation.
- An employee will have the right of appeal against any formal disciplinary action.
- The level of conduct will determine the appropriate sanction decided by the hearing panel.
- Ensure that the required level of conduct and professionalism of the School/Academy are maintained.
- No employee will be discriminated against on grounds as detailed by the Equality Act 2010.

### **3.1 Record Keeping**

Formal notes must be taken at all stages of the investigation and at the disciplinary hearing. It is the responsibility of the School/Academy to provide a note taker in order to keep a factual record of any interviews/meetings during the formal disciplinary process. Notes of meetings are not normally verbatim but should accurately reflect the content of the meeting and will be provided for both parties' information. All notes should be distributed to all present and all parties asked to sign as to their accuracy.

Under no circumstances should a meeting be recorded covertly without the explicit consent of all parties involved, and employees may be required to confirm that they understand this and are not making a covert recording.

If the school has reason to believe that an employee, or their trade union representative, trade union official or colleague, has recorded a meeting or hearing covertly, this could constitute gross misconduct and may ultimately lead to the employee's dismissal in accordance with disciplinary procedures.

## **4.0 Legal Context**

Throughout the application of this procedure the School/Academy will comply with the legal framework of relevant employment legislation that affects all employees and includes:

- Equality Act 2010
- The School Staffing (England) Regulations 2009 and associated guidance and updates
- Education Act 2011 and associated guidance and updates
- Data Protection Act 1998
- Employment Rights Act 1996
- Any other relevant employment legislation

The School/Academy will also comply with the ACAS Code of Practice, the ACAS Code sets out key elements of fairness being that:

- Issues should be raised and dealt with promptly
- Parties should act consistently
- Employers should carry out the necessary investigations to establish the facts
- Employers should inform employees of the basis of the problem and allow the employee to put their case
- Employees should be allowed to be accompanied at any formal disciplinary meeting
- Employers will allow an employee to appeal against any formal decision made

## **5.0 Associated Documents**

Where applicable this policy should be read in conjunction with the following documents:

- 'Guidance for Safer Working Practice for Adults who Work with Children and Young People' October 2015.
- Department for Education guidance on "Keeping Children Safe in Education", September 2016
- Department for Education guidance on 'Use of Reasonable Force', July 2013
- Any other relevant documentation or guidance produced by the Department for Education
- Any relevant School/Academy policies such as those relating to:

- employment references;
- disclosure and barring;
- safer working practices;
- substance misuse;
- use of IT equipment / school resources;
- general complaints.
- Any updates to statutory guidance
- School/Academy Code of conduct
- Employment Terms and conditions including the Principal Statement of Employment, Job Description and any other relevant standards

This list is not exhaustive.

## **6.0 Disciplinary**

### **6.1 Informal Stage**

The informal disciplinary stage can be used to introduce positive changes to behaviour following breaches of discipline. This is the first stage of the disciplinary process and is used to deter any further instances of breaches of discipline which may lead to formal action.

Concerns should be discussed with the employee and positive advice, assistance and guidance offered to encourage employees to achieve and maintain the required standards of conduct and behaviour expected.

This is normally referred to as “informal advice” and a record of the conversation/outcome will be retained on the School/Academy employee’s file for 6 months, along with the improvement that is required, and any review period specified. There is no entitlement to representation at the informal stage.

Any informal advice should not be declared on employment references.

### **6.2 Misconduct**

Misconduct is where an employee’s behaviour or conduct falls below the standard required by the employer or is in breach of any School/Academy policy or rule. Examples of behaviour that might constitute misconduct are shown in Appendix 2.

### **6.3 Continued Misconduct**

Where the employee has;

- not improved or addressed their conduct as a result of a previous warning under the policy and the warning is still live; or
- committed a further offence requiring disciplinary action and the warning is still live.

#### **6.4 Gross Misconduct**

Gross misconduct is generally seen as misconduct serious enough to overturn the contract between the employer and the employee thus justifying summary dismissal. Acts which constitute gross misconduct must be very serious and examples of behaviour that might constitute gross misconduct are shown in Appendix 3.

#### **6.5 Suspension or Temporary Reassignment to Alternative Duties**

Suspension without prejudice or temporary reassignment to alternative duties must take place if the allegations are considered to be gross misconduct. More details of the suspension process can be found in section 8.2 and 19.

#### **6.6 Child Protection/Safeguarding Allegations**

For concerns of a child protection/safeguarding nature please refer to section 14 of this policy.

### **7.0 Representation**

Employees have a statutory right to be accompanied by a companion where the disciplinary meeting could result in:

- A formal warning being issued; or
- The taking of some other formal disciplinary action; or
- The confirmation of a warning or some other disciplinary action (appeal hearings).

The chosen companion may be a fellow worker, a trade union official, or a current recognised trade union representative who has been certified by their union as being competent.

Reasonable adjustments may be needed for an employee or their companion with a disability.

It would not normally be reasonable for employees to insist on being accompanied by a companion whose presence would prejudice the hearing.

At all stages within the formal procedure, employees must be advised of their right to representation. It is the employee's responsibility to arrange to be represented

The employee's representative can address a disciplinary hearing and confer with and advise the employee. However, the representative must not answer questions on the employee's behalf, address the hearing if the employee does not wish it or prevent the employer from presenting their case.

## **8.0 Child Protection / Safeguarding**

Where child protection concerns are raised against an employee, the Headteacher is responsible for immediately contacting the Local Authority's Designated Officer (LADO). This should be done prior to the commencement of any investigation.

Where the LADO believes it to be appropriate, they have the responsibility to contact the various agencies and where appropriate to arrange a multi-agency meeting as soon as possible after learning of the allegations. The multi-agency meeting may provide advice regarding appropriate action.

However, where after initial discussions with the LADO the decision is that the allegation does not warrant a multi-agency meeting then it will be for the Headteacher to deal with it in accordance with the normal management of allegations/disciplinary policies.

Any disciplinary process should be clearly separated from child protection investigations as the child protection process has different objectives from the Disciplinary Policy and the two should not be confused. The child protection investigation takes precedence over the disciplinary investigation.

All complaints / allegations about the use of force should be thoroughly, speedily and appropriately investigated. Suspension must not be an automatic response when a member of staff has been accused of using excessive force.

Any records in relation to child protection allegations should be kept in accordance with appropriate procedures.

Please refer to the Management of Allegations Policy and Procedure ([insert hyperlink](#))



## **9.0 Disciplinary Process**

### **9.1 Preliminary Investigation**

Where an alleged disciplinary matter is brought to the attention of the Headteacher or designated officer, he/she should contact their nominated HR Officer for advice. The Headteacher or designated officer, supported by their nominated HR Officer will then consider the evidence available and determine whether to undertake a preliminary meeting with the employee.

The aim of the meeting is to establish if there is a case to investigate further and if the matter could be construed as alleged gross misconduct. The individual must be advised of the purpose and confidential nature of the meeting and that they will be asked not to discuss the investigation with people outside of it.

Not all cases will require a preliminary meeting to be undertaken it is dependent upon the nature of the alleged disciplinary matter as to whether the matter proceeds straight to section 8.2 or 8.3.

If appropriate the Headteacher or designated officer should also interview any witnesses to obtain their version of events.

The preliminary investigation/meeting should gather all appropriate facts and should be carried out as soon as possible after the matter is brought to the Headteacher or designated officer's attention. Where possible, the employee's representative should be asked to attend the meeting, but this should not be delayed if a representative is not available.

If, following the preliminary investigation it is believed gross misconduct has occurred then suspension or temporary alternative arrangements is necessary prior to commencing the formal investigation.

If, following the preliminary investigation it is considered that the behaviour of the employee might have constituted misconduct only the matter should proceed to a formal disciplinary investigation.

If, following the preliminary investigation, it is considered there is no case to answer, the matter will be closed.

### **9.2 Suspension or Temporary Alternative Arrangements**

Suspension is not a disciplinary sanction nor is it an indication of guilt. Suspension should only be considered where gross misconduct is alleged or when the employee's presence during an investigation may

hinder the investigation. Temporary alternative arrangements should be considered before deciding to suspend.

In some cases, it may be deemed necessary to ask a person to refrain from attending the workplace whilst a preliminary investigation is being undertaken.

Examples of when suspension or temporary alternative arrangements will be used are:

- Where there is cause to suspect a child or other children at the School/Academy is/are at risk of harm or the case is so serious that it might be grounds for dismissal
- Where there is a risk that the investigation may be hindered through intimidation of witnesses
- Where there is reasonable grounds to suspect that evidence has/may be tampered with

Suspension should not be automatic in cases of gross misconduct; other alternatives such as a move to temporary duties or a change in work location should be considered.

The power of suspension lies with the full Governing Body of the School/Academy unless they have formally delegated such powers to one or more individual Governors or the Headteacher.

✓ In this school the power of suspension lies with Chair of Governors / Headteacher (Delete as appropriate).

For Community and Voluntary Controlled Schools, before exercising the power of suspension, the Governing Body (or Governor(s) or Headteacher with delegated powers), must first seek the advice of the Local Authority through their nominated HR Officer. They must also ensure they inform the Local Authority following any suspension.

For Voluntary Aided, Foundation and Academy Schools it is strongly recommended to seek advice from your nominated HR Officer prior to suspension.

Where the Headteacher has the power to suspend, the Chair of Governors should also be notified of any suspension.

A meeting must be held with the employee to confirm their suspension or move to temporary alternative duties. Where possible, the employee's representative should be asked to attend the meeting, but this should not be delayed if a representative is not available. Where suspension cannot take place immediately, the employee may be asked to refrain from the workplace and required to return for a suspension meeting as soon as possible.

A letter confirming the suspension / alternative arrangements must be issued to the employee within 5 working days by the Governing Body (or Governor(s) or Headteacher with delegated powers), giving the reason for the suspension / alternative arrangements and stating that the matter will be investigated. The employee should be informed that the suspension from duty is on full pay pending the outcome of the investigation.

The suspension / alternative arrangements should be reviewed within 15 working days of the suspension / alternative arrangements and thereafter as appropriate by the Governing Body (or Governor(s) or Headteacher with delegated powers) in consultation with their nominated HR Officer to ensure that the employee is not suspended for an unnecessarily long period of time. The employee will be written to following the review to confirm the outcome of the review of suspension / alternative arrangements.

If during the course of the investigation it is found that the alleged misconduct is not as serious as first thought and may no longer constitute gross misconduct, the suspension should be lifted immediately and the employee allowed to return to work. Any return to work should be discussed and appropriate support to reintegrate the employee should be agreed.

A temporary relocation arrangement can remain in place if it felt that returning the employee to their workplace may hinder the investigation.

Any suspension may only be lifted by the Governing Body and they shall, on ending such a suspension, immediately inform the Governor(s)/Headteacher with delegated powers of suspension. The Governing Body must also confirm this decision in writing to the employee within 5 working days of the decision.

For Community and Voluntary Controlled Schools the Local Authority must also be informed that the suspension has been lifted this can be done through their nominated HR Officer.

Suspension / alternative arrangements can take place at any time, if appropriate, during an investigation should allegations of gross misconduct come to light.

### **9.3 Formal Investigation**

Following the preliminary investigation, the Headteacher or designated officer shall, if he/she believes the allegation(s) so warrants, arrange for a full and thorough investigation to be carried out by an appropriate investigating officer who would normally be a member of Senior Leadership Team. Where appropriate this may be someone outside of



the School/Academy in order to provide an independent view. The nature and the extent of the investigation will depend on the seriousness of the matter, and the more serious the allegations are, the more thorough the investigation will be.

It is recommended that the investigating officer should seek advice from their nominated HR Officer prior to commencing any investigation.

The investigating officer's role is to remain open minded and to gather enough information so that they can decide if there is a case to answer.

The investigating officer's role is:

- To consult the Disciplinary Policy and seek advice from HR
- To ascertain the facts relating to a situation by investigating in a fair and consistent manner
- To assemble the evidence in support, or otherwise, of the allegations
- To put allegations and evidence to the employee in an investigatory interview
- To collate a factual report and present it to a disciplinary panel (or the Headteacher) if it is concluded there is a case to answer
- Ensure that in collating the documentation and producing the report that confidentiality is maintained at all times

The investigation does not require exhaustive examination of every possible aspect of the case. Decisions should be taken on the "balance of probabilities" and not "beyond reasonable doubt". However, investigating officers should have sufficient credible evidence, such as statements taken from investigative interviews and School/Academy policies and procedures, for each allegation, that will stand up to challenge from an employee/representative at a disciplinary hearing and in certain cases, at an employment tribunal.

#### **9.4 Investigation Interview**

The purpose of the investigation interview is to establish the facts of the case and allow the individual to respond to the allegations put to them.

Where appropriate, reasonable adjustments will be considered to facilitate the interview.

The investigation meeting should be carried out in a timely manner for all concerned. Usually, 5 working days notice of the investigation interview will be provided, this should be done in writing.

#### **9.5 Witnesses**

As part of an investigation there may be a requirement to interview witnesses and obtain statements and evidence from them. Witnesses must be advised of the purpose and confidential nature of the witness interview and that they will be asked not to discuss the investigation with people outside of it. Witnesses must be informed that they may be required to give evidence at any subsequent disciplinary hearing.

Investigatory meetings such as witness interviews do not attract the right to be accompanied. However, if a witness makes a reasonable request to be accompanied by an appropriate companion as detailed previously, then this should be considered and accommodated where practical. Any person accompanying the witness should also keep the matter confidential.

Reasonable notice should be given of the interview.

It is important to note that witnesses should not feel pressurised to provide evidence and their evidence should not be tampered with by any party.

### ***9.6 Internal Audit***

In circumstances of allegations of a financial or fraudulent nature, internal audit should be consulted to determine whether it is appropriate for audit to undertake an investigation. Where practicable, co-investigations may be undertaken by Internal Audit and the disciplinary Investigating Officer.

If the investigation requires surveillance to be carried out advice should be sought from Audit Services to ensure compliance with the Human Rights Act (1998).

## **10.0 Investigation Report**

Following the investigation, the investigating officer will compile a report detailing the findings and conclusions of the investigation, any evidence will be attached as appendices. This will include a recommendation to proceed with disciplinary action or not.

Where it is recommended that a disciplinary hearing be held two copies of the investigation report along with all papers and documentation to be relied upon at the hearing must be sent to the employee, at least 10 working days before the hearing. It is also recommended that members of the disciplinary hearing panel are each sent copies, at the same time.

Should the employee wish to refer to any evidence or call witnesses during the hearing, the evidence and/or names of witnesses must be submitted to the named contact in the disciplinary hearing calling letter, at least three



working days prior to the hearing, so these can be distributed appropriately to the panel members. If the employee is submitting a substantial amount of information, it would be beneficial to submit the evidence as early as possible to allow the panel enough time to review the information. If evidence is presented from either party after the given timeframes, it will be at the discretion of the panel as to whether or not the new evidence will be considered as part of the hearing.

## 11.0 Disciplinary Hearing

### 11.1 Inviting an Employee to a Disciplinary Hearing

If, following the outcome of the investigation, it is decided that there is a recommendation to proceed, the employee should be notified of this in writing and a formal disciplinary hearing convened without unreasonable delay.

In cases of misconduct, the disciplinary hearing will normally be chaired by the Headteacher or an appropriate designated officer who would normally be a member of the Senior Leadership Team as determined by the Headteacher and will normally be supported by a nominated HR officer.

In cases of gross misconduct the disciplinary hearing will be conducted by the Staff Dismissal Committee (see appendix 5) or the Headteacher where the power to dismiss has been delegated to the Headteacher by the Governing Body (see appendix 4).

✓ In this school the power of dismissal lies with the Governing Body / Headteacher. (Delete as appropriate)

**For Community and Voluntary Controlled Schools**, the panel must be supported by;

- Dudley MBC Legal Services representative;
- Dudley MBC HR representative.

✓ **For Voluntary Aided and Foundation Schools** it is strongly recommended to seek support at the hearing.

In this school support will be sought from Dudley MBC to provide a legal and HR representative;

Or

In this school support will be sought from Dudley MBC to provide a HR representative only (no legal representative);

Or

In this school support will not be sought from Dudley MBC to provide a legal and HR representative.

**For Academy schools** it is recommended to seek advice at the hearing.

In this school support will be sought from appropriate professional employment advisors.

(complete/delete as appropriate)

Please see 9.0 Investigation Report above regarding the administration of the hearing.

## 12.0 The Disciplinary Hearing

### 12.1 Process

At the hearing, the Chair of the Panel will lead the proceedings and should explain the process to be followed. All parties are expected to behave in a professional manner at all times.

The Investigating Officer will explain the allegations against the employee and go through the evidence that has been gathered.

The employee should set out their case and answer any allegations that have been made.

All parties should be given a reasonable opportunity to ask questions, present evidence and call relevant witnesses. They should also be given an opportunity to raise points about any information provided by witnesses.

In exceptional circumstances where witnesses are unable to attend any disciplinary hearing, his/her written statements can be submitted as evidence. During a hearing witnesses should appear one at a time and should only be present whilst they are giving evidence or being questioned.

The order of proceedings for the disciplinary hearing is at Appendices 4 and 5.

After all evidence has been presented an adjournment will take place. The panel must make a decision based on the evidence and information relevant to each allegation. If it is possible to make a decision on the day of the hearing the panel need to prepare a statement. Once the panel have reached a decision the hearing will



reconvene. The employee and their representative will be told the decision in the statement which should:

- Summarise why the hearing was called and the allegation/s
- Briefly summarise the evidence the panel looked at in respect of each of the allegations, and whether or not the allegation was found to be substantiated
- Include a reference to any mitigating circumstances
- Give the decision i.e. no case to answer/oral warning/first written warning/ final written warning/dismissal
- State the length of time a warning will remain in effect
- Where a warning has been issued, state what actions or improvements the employee needs to achieve, together with the timescale for achieving these, the employee's conduct will be monitored throughout the life of the warning, and that further misconduct may result in further disciplinary action being taken
- If the employee is to return to work, state what arrangements are to be made for this. This is particularly important if the employee has been suspended or temporarily reassigned to alternative duties
- In dismissal cases state whether or not this is summary dismissal. (Summary dismissal is for gross misconduct and is without payment in lieu of notice)
- In cases of summary dismissal, state that the dismissal takes place with immediate effect
- In cases of professional misconduct, or criminal activity, state the intention to supply details of the outcome of the disciplinary hearing to an appropriate professional body, or to the Police
- State that the employee has the right to appeal, and should he/she wish to do so, must exercise their right by stating the grounds for appeal, in writing, state who the appeal must be addressed to, within 10 working days of the date of the letter confirming disciplinary action

This statement will form the substance of the decision letter which must be sent to the employee within 5 working days of the hearing decision. A copy of the decision letter will also be forwarded to the nominated HR Officer at the same time as notifying the employee.

Where a decision cannot be reached on the day of the hearing, the employee will be informed of the decision in writing within 5 working days of the hearing.

The School recognise that the Local Authority is then required to ratify the dismissal within 14 days as set out in the School Staffing (England) Regulations 2009. If notification is not received by the Local Authority in time to allow 14 days for the ratification of the dismissal, then the School accept that any liability for extended employment costs will pass to the School. Where the employee works in more than one School, the letter from the Local Authority will explain that they are required to cease work at the School from which they have been dismissed.

Delete for Voluntary Aided / Foundation / Academies

## **12.2 Outcomes of the Hearing**

### **12.2.1 No Case to Answer**

If following a disciplinary hearing the panel concludes that on the balance of probability there is no case to answer, the employee will be informed in writing.

Where the allegations relate to a child protection or safeguarding matter, records will be kept in line with the latest Department of Education guidance on managing allegations and the Data Protection Act 1998.

### **12.2.2 Oral Warning**

The employee will be told that his/her conduct is unacceptable and that an oral warning will be recorded on his/her file. The employee should be told that this is the first formal action within the Disciplinary Policy and warned of the possible consequences of further misconduct. The warning will remain on the employees file for 6 months, after which it shall be disregarded.

### **12.2.3 First Written Warning**

If the issue is sufficiently serious or further misconduct occurs during the life of an existing oral warning, a first written warning may be issued setting out the details of the offence, the improvement required and the possible consequences of further offences. The warning will remain on the employees file for 12 months, after which it shall be disregarded.

#### **12.2.4 Final Written Warning**

If the issue is sufficiently serious or further misconduct occurs during the life of an existing live warning, a final written warning may be issued setting out the details of the offence, the improvement required and the possible consequences of further offences. The warning will remain on the employees file for 24 months, after which it shall be disregarded.

#### **12.2.5 Extension of Warnings**

This option provides an intermediate stage where it is felt that a further offence during the period of a current warning does not warrant progression to the next stage of the formal procedure. For example, an employee with a current first written warning on file for 6 months who re-offends may have the warning extended so that it remains on file for 12 months. Any extension can only occur as an outcome of a disciplinary hearing.

#### **12.2.6 Action Short of Dismissal**

Where gross misconduct is proven, summary dismissal must take place unless there are exceptional circumstances. In these cases and alongside a final written warning the following options may be considered:

- Suspended for a maximum of 5 days without pay
- Demoted to another post at a lower grade
- Transferred to another post at the same grade
- Given a final written warning that would remain live for up to 3 years

This list is not exhaustive.

If a sanction short of dismissal is imposed, the employee will be warned that dismissal could result if there is no satisfactory change in conduct, and the employee will have the usual right of appeal.

#### **12.2.7 Sanctions**

In addition to any of the above, the panel may feel that additional conditions should be imposed.

Examples include the withholding of an increment/pay progression, payment for damage to School/Academy property, reclaiming stolen money/hours and attendance at training.



### **12.2.8 Dismissal**

Dismissal is with notice pay where continued misconduct is proven.

Dismissal is without notice pay where gross misconduct is proven.

Dismissal takes immediate effect from the date the decision is made and may occur in the following circumstances:

- Where the employee has not improved his/her conduct as a result of a final written warning, and the warning is still live
- Where the employee has committed a further offence requiring disciplinary action and the warning is still live
- Where an allegation of gross misconduct is proven. In such cases the employee will be summarily dismissed i.e. dismissed without payment in lieu of notice

### ***12.3 Absence from Work during the Period of a Warning***

Should any employee be absent for a duration which will prevent adequate performance monitoring, the warning may be suspended for the duration of that absence and will be re-instated upon their return to work. The employee must be informed of this change at the earliest opportunity.

## **13.0 Appeals Process**

Any employee, who is issued with a formal warning during this process or is dismissed, has the right to appeal to the Staff Dismissal (Appeals) Committee. The appeal should be submitted in writing to the Clerk to the Staff Dismissal (Appeals) Committee and should clearly state the specific grounds for appeal, this must be done by the employee within 10 working days of receipt of the warning or dismissal letter.

Appeals will be heard without unreasonable delay.

When an appeal hearing is convened two copies of all relevant papers and documentation to be relied upon at the hearing must be sent to the employee, at least 10 working days before the hearing. It is also recommended that members of the appeal hearing panel are each sent copies, at the same time.

Should the employee wish to refer to any evidence or call witnesses during the hearing, the evidence and/or names of witnesses must be submitted to the named contact in the appeal hearing calling letter, at least three working days prior to the hearing, so these can be distributed appropriately to the panel members. If the employee is submitting a substantial amount of information, it would be beneficial to submit the evidence as early as possible to allow the panel enough time to review the information. If evidence is presented from either party after the given timeframes, it will be at the discretion of the panel as to whether or not the new evidence will be considered as part of the hearing.

### **13.1 Grounds for Appeal**

Grounds for appeal should be one of the following:

- The finding or penalty is unfair, stating reasons
- New evidence has come to light, stating the evidence
- The disciplinary policy was not used correctly, stating how

The appeal will not be a re-hearing, but will be concerned with the grounds of appeal which should be set out in the letter from the employee.

### **13.2 The Appeals Process**

The appeal hearing will be conducted by the Staff Dismissal (Appeals) Committee.

For **Community and Voluntary Controlled Schools**, the panel must be supported by;

- Dudley MBC Legal Services representative
- Dudley MBC HR representative

For **Voluntary Aided and Foundation Schools** it is strongly recommended to seek support at the hearing.

In this school support will be sought from Dudley MBC to provide a legal and HR representative; This is the recommended option in accordance with Governance Guidance.

or

✓ In this school support will not be sought from Dudley MBC to provide a legal and HR representative.

Or



In this school support will be sought from Dudley MBC to provide a HR representative only (no legal representative);

**For Academy schools** it is recommended to seek advice at the hearing.

In this school support will be sought from appropriate professional employment advisors.

(complete/delete as appropriate)

The format for the appeal meeting is set out in appendix 6.

### ***13.3 The Appeals Decision***

The decision of the appeals committee will be one of the following;

- Appeal not upheld - confirm the original outcome
- Reduce the penalty given
- Appeal upheld

The Staff Dismissal (Appeals) Committee decision is final, there is no further right of appeal.

The decision letter must be sent to the employee within 5 working days of the appeal decision. A copy of the decision letter will also be forwarded to the nominated HR Officer at the same time as notifying the employee.

Where a decision cannot be reached on the day of the hearing, the employee will be informed of the decision in writing within 5 working days of the hearing.

### ***13.4 Re-Hearing***

A re-hearing can be requested in place of the appeal, on the following grounds:

- The dismissal hearing procedure was not used correctly
- Significant new evidence has come to light that was not available at the original hearing

When a request for a re-hearing is received, the Chair of the Staff Dismissal (Appeals) Committee should take advice from HR and Legal.

The proceedings for the re-hearing will be the same as for a disciplinary hearing in Appendices 4 and 5. For the avoidance of doubt, significant new evidence which has become available or known subsequent to the disciplinary hearing shall be admissible and subject to the procedure in Appendices 4 and 5. Only points raised during the re-hearing may be referred to when summing up.

There is no further right of appeal following a re-hearing.

## **14.0 Non Attendance**

### ***14.1 When the Employee Fails to Attend***

All parties and their representatives should make every effort to attend any meeting/hearing during this process. If the employee does not attend but has a genuine reason the meeting/hearing may be adjourned and rearranged for a later date. Unless there are exceptional circumstances only one adjournment will be allowed.

If there is an indication in advance of the meeting/hearing that the employee cannot attend for medical reasons, then a referral to Occupational Health can be undertaken to ascertain if they are fit to attend. Alternatively, a representative may attend on their behalf, in these cases the employee must put this in writing.

Where the employee does not attend and no explanation is provided, or the explanation if deemed by the Investigating Officer/Chair to be unacceptable, the meeting/hearing may be held in the absence of the employee.

In the case of the hearing, if in attendance, the employee's representative can present the case on their behalf. In the case such a decision to proceed will be taken by the Chair of the Panel following advice from the other panel members and any advisors to the panel.

### ***14.2 When the Employee Representative Cannot Attend***

In the event that the employee representative is unable to attend the meeting/hearing, the representative can request that the meeting/hearing is delayed and suggest an alternative time and date so long as it is reasonable and falls within 5 working days of the original date. In such cases the meeting/hearing will be postponed to accommodate the representative. Such requests will only be granted once. The alternative date must have due regard to the availability of

the other parties involved in the hearing and may be extended by mutual agreement.

## **15.0 Statutory Regulatory Authorities**

Where an allegation is substantiated or where an employee resigns prior to an outcome, it may be necessary to make a referral to the appropriate Statutory Regulatory Authority.

It is a legal requirement to refer cases to the Disclosure and Barring Service (DBS) in cases where it is thought that an individual has engaged in conduct (including inappropriate sexual conduct) that harmed (or is likely to harm) a child or if a person otherwise poses a risk of harm to a child.

In such circumstances, the duty to refer an individual to the DBS arises where;

- An employer has removed the individual from relevant work with children;
- Where the employee has ceased to work in circumstance where they would have been removed had they not done so.

Professional gross misconduct cases should be referred to the relevant regulatory body e.g. DFE / National College.

All referrals to Regulatory Authorities should be done through HR.



## **16.0 Police Investigation**

If an employee is charged with, or convicted of a criminal offence this is not in itself reason for disciplinary action, although any change to your criminal record should be reported to your Headteacher/Chair of Governors immediately. Failure to do so may in itself lead to disciplinary action. Consideration needs to be given to what effect the charge or conviction has on the employee's suitability to do their job and the impact this may have on their relationship with their employer, work colleagues and service users.

Where it is thought the conduct warrants disciplinary action because of its employment implications, the facts should be investigated as far as possible to come to a view about whether the conduct is sufficiently serious to warrant instituting the disciplinary procedure.

Where the conduct requires prompt attention, it is not necessary to await the outcome of the police investigation / prosecution before taking fair and reasonable action, however it is recommended to inform the Police of the actions you intend to take to ensure it will not harm their investigation.

Where an employee is charged with or convicted of a criminal offence and refuses or is unable to co-operate with disciplinary proceedings, the employee should be advised in writing that unless further information is provided, a disciplinary decision will be taken on the basis of the information available and could result in dismissal.

In some cases where there is a criminal conviction it may be appropriate to consider alternative work where that is available.

## **17.0 Formal Disciplinary Action against Union Representatives**

Where formal disciplinary action is being considered against an employee who is a trade union representative the normal disciplinary procedure should be followed. However, the matter should be discussed at an early stage with the branch secretary / official / officer of the union.

## **18.0 Grievances Raised during Disciplinary Action**

Where an employee raises a grievance during the disciplinary procedure then the schools grievance procedure should be followed. In exceptional circumstances the disciplinary procedure may be temporarily suspended in order to deal with the grievance, however, in the majority of cases it will be appropriate to deal with both issues concurrently.

## **19.0 Absence during Disciplinary Action**

If sickness absence appears to have been triggered by the commencement of the disciplinary process, the case will be dealt with in accordance with the School's absence policy. The employee will be referred to the Occupational Health service to assess the member of staff's health and fitness to engage in the disciplinary process. If the employee fails to provide consent for referral to Occupational Health then the disciplinary process may continue.

The employee will be required to self-certify their sickness absence for the first seven days and provide Doctor's medical certificates for subsequent sick days in order for the relevant payments to be made. If the employee fails to submit medical certificates, but maintains they are not fit to participate in an investigation, this will be considered as unauthorised absence.

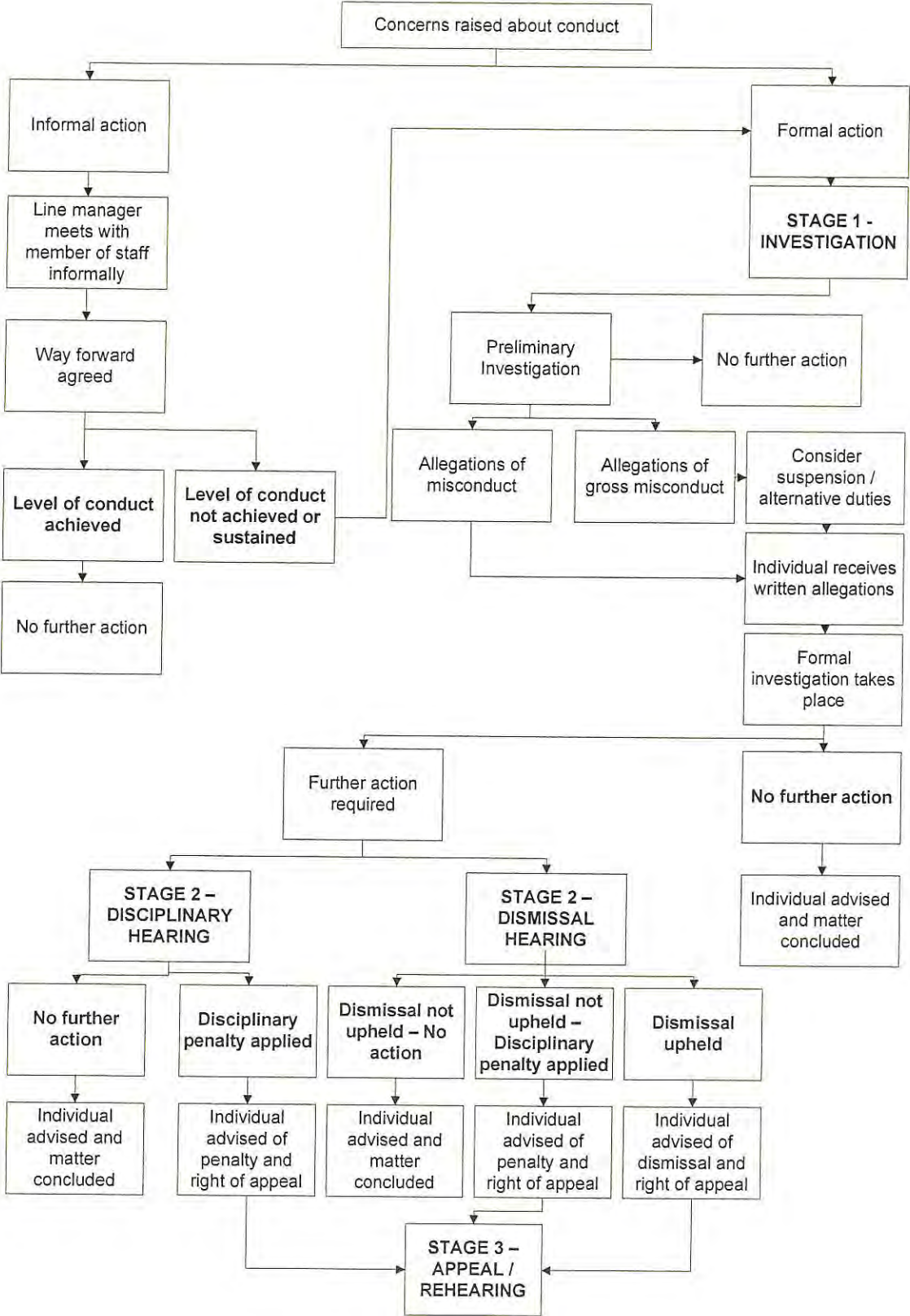
Any employee reporting in as sick during a period of suspension will have their suspension temporarily lifted for that period and their absence from work will be deemed as sickness absence. Once the employee presents themselves as fit for work, suspension will be re-instated

## **20.0 Collaboration of Governing Bodies**

The Collaboration Regulations (The School Governance (Collaboration) (England) Regulations 2003 SI 2003(1962) enable the governing bodies of two or more maintained schools to work together in relation to staffing functions, including dismissals. These provisions allow schools to draw on a wider pool of governors for the purposes of the disciplinary processes.

A school wishing to use collaborated governors should seek advice from HR regarding the engagement of collaborated governors and the procedure to follow.

Disciplinary Flowchart



### Examples of Misconduct

Misconduct is where an employee breaks specific rules about behaviour. The aim of the disciplinary action is to encourage the employee to improve their behaviour.

Examples of such behaviour may be **(this is not an exhaustive list)**:

- Poor Timekeeping;
- Failure to comply with a reasonable instruction from an authorised manager;
- Failure to follow School Policies or Procedures;
- Making unauthorised telephone calls;
- Sending personal emails at the School's expense;
- Accessing the internet for personal use during school time;
- Inappropriate use of Social Media.



### Examples of Gross misconduct

Gross misconduct is an offence that is so serious it would render the employment relationship impossible to continue.

Examples of such behaviour may be **(this is not an exhaustive list)**:

- Theft or fraud;
- Physical violence, bullying or harassment;
- Abusive and threatening behaviour towards colleagues or pupils;
- Deliberate and/or serious damage to property;
- Serious misuse of the School's property or name;
- Deliberately accessing internet sites containing pornographic, offensive or obscene material;
- Serious insubordination;
- Unlawful discrimination or harassment;
- Bringing the School into serious disrepute;
- Serious incapability at work brought on by alcohol or misuse of drugs;
- Causing loss, damage or injury through serious negligence;
- A serious breach of health and safety rules;
- A serious breach of confidence;
- Behaviour that has harmed or may have harmed a child;
- Committed a criminal offence against or related to a child;
- Behaviour towards a child in a way that indicates a risk of harm if working regularly or closely with children;
- Unauthorised absence from work;
- Serious breach of School Policies or Procedures;
- Compromise of a relationship between an employee and/or pupil;
- Serious discriminatory behaviour;
- Negligent, reckless or deliberate mishandling of personal data in breach of organisation policy, standards or guidelines;
- Failure to remain registered with a professional body where registration is an essential requirement to carry out the job role;
- Serious inappropriate use of Social Media.

Where gross misconduct is proven, dismissal must take place unless there are exceptional mitigating circumstances.

**Order of Proceedings for Disciplinary and Dismissal Hearings – Where the Headteacher has the delegated powers of dismissal**

**1.0 Preliminary Matters**

The Headteacher will chair the hearing which shall take place in private session and all parties shall be reminded that proceedings are confidential.

The employee shall have the right to be accompanied by a companion, who may be a fellow worker, a trade union official, or a current recognised trade union representative who has been certified by their union as being competent. It is the employee's responsibility to arrange to be accompanied. The employee's representative can address the meeting and confer with and advise the employee, however, the representative must not answer questions on the employee's behalf.

The Presenting Officer will have the right to be accompanied by a representative from their HR provider who can address the Panel, ask questions and confer with and advise the presenting officer.

The Headteacher will be supported at the meeting by advisors, as determined within the policy I who can provide advice, confer with the Headteacher and ask questions.

For all schools with the exception of Academies, the Chief Officer (Children's Services) and/or his/her representatives have the right to attend and advise the Panel in terms of employment law, procedure and regulation, under reference of the School Staffing (England) Regulations 2009.

It should be established whether any adjustments are required to the usual facilities arrangements.

Facilities shall be provided for each side to meet separately. A private waiting room will be provided for the employee and his/her representatives and their witnesses.

There may be occasions where either party request an observer. In these circumstances, the employee, their representative and the Headteacher should agree in principle to the observer. The formal request will be made to the Chair of the Panel to approve the request prior to the hearing commencing.

The Headteacher shall, at the commencement of the hearing, set out the procedure as set out below.

## **2.0 Opening Remarks**

The parties to the matter, with their representatives, should be invited into the Hearing.

- The Headteacher will introduce those present, or ask each individual to introduce themselves;
- Advise that an adjournment may be requested at any time during the meeting if appropriate;
- Outline the procedure to be followed;
- Outline the reason(s) for calling the hearing.

## **3.0 Order of Proceedings**

### **3.1 Disciplinary Hearing including Dismissal Hearings**

- 3.1.1 The designated officer / HR Officer will present the case calling such witnesses as may be necessary. Written evidence may be read out, subject to the agreement of the Headteacher.
- 3.1.2 The employee and/or representative may ask questions of the witnesses and, where the designated officer gives evidence, of the designated officer.
- 3.1.3 The designated officer / HR Officer may re-examine the witnesses.
- 3.1.4. The employee and/or representative will present their case calling such witnesses as may be necessary. Written evidence may be read out, subject to the agreement of the Headteacher.
- 3.1.5 The designated officer / HR Officer may ask questions of the employee, witnesses and, where the employee's representative gives evidence, of the employee's representative.
- 3.1.6. The employee and/or representative may re-examine the witnesses.
- 3.1.7. Members of the Panel may ask questions at any time but will seek to confine questioning until immediately prior to their re-examination
- 3.1.8. The designated officer / HR Officer will sum up the case.
- 3.1.9. The employee or representative will sum up the case.

3.1.10. The Headteacher may recall witnesses or call for further evidence on specific points but if it becomes necessary to act in this way both parties must be recalled.

3.1.11. Witnesses shall only be present whilst giving evidence.

At the conclusion of the meeting the parties and any other persons present, with the exception of the Clerk and the Advisors to the Panel shall withdraw whilst the Headteacher deliberates.

In cases where a decision is able to be reached, the Headteacher will deliver the decision and will advise the employee of their right of appeal and they should they exercise their right of appeal they should do so by stating the grounds for Appeal, in writing. The Headteacher should indicate who the Appeal must be addressed to and that any Appeal should be lodged within 10 working days.

The meeting will be confirmed in writing which must be sent to the employee within 5 working days of the meeting decision by the Headteacher.

For Community and Voluntary Controlled schools, a copy of the decision letter must be forwarded to their nominated HR Officer supporting the case at the same time as notifying the employee. The Local Authority is then required to ratify the recommendation of the Panel and will issue notification of termination of the employment contract within 14 days of the dismissal decision. This statutory requirement is set out in the School Staffing (England) Regulations 2003, Sections 35(8) and 36 (8) of The Education Act 2002.

If notification is not received by the Local Authority in time to allow for the ratification of the dismissal within 14 days of the initial dismissal decision, then any liability for extended employment costs would pass to the school.



**Order of Proceedings for Disciplinary and Dismissal Hearings – Where the Headteacher does not have the delegated powers of dismissal**

**1.0 Preliminary Matters**

The Chair of the Committee shall be taken by the Chair or Vice Chair of Governors, unless he/she is not a member of the Committee, or he/she is absent when the meeting begins, in which case those present shall elect from amongst their number, a person to take the Chair at the meeting during such absence. The Chair or Vice Chair cannot be an employee of the school.

It is recommended that staff Governors do not form part of either The Staff Dismissal Committee or the Staff Dismissal (Appeals) Committee. All other Governors should register a potential conflict of interest at the stage in which the Committee is convened. This is to demonstrate that any decision made is fair, independent and non-prejudiced. Any Governor who has been involved in the particular action taken, or who is in any material way an interested party shall not participate as a Governor in the proceedings.

The hearing shall take place in private session and all parties shall be reminded that proceedings are confidential.

The employee shall have the right to be accompanied by a companion may be a fellow worker, a trade union official, or a current recognised trade union representative who has been certified by their union as being competent. It is the employee's responsibility to arrange to be accompanied. The employee's representative can address the Panel and confer with and advise the employee, however, the representative must not answer questions on the employee's behalf.

The Presenting Officer will have the right to be accompanied by a representative from their HR provider who can address the Panel, ask questions and confer with and advise the Presenting Officer.

The Panel will be supported at the meeting by advisors, as determined within the policy who can provide advice, confer with the Panel and ask questions.

For all schools with the exception of Academies, the Chief Officer (Children's Services) and/or his/her representatives have the right to attend and advise the Panel in terms of employment law, procedure and regulation, under reference of the School Staffing (England) Regulations 2009.

It should be established whether any adjustments are required to the usual facilities arrangements.

Facilities shall be provided for each side to meet separately. A private waiting room will be provided for the employee and his/her representatives and their witnesses.

The Headteacher will normally present the case to Governors. However, in exceptional circumstances he/she may delegate the presentation of the case to another officer within the school. The Headteacher should make this recommendation to the Chair of the Panel at the beginning of any hearing. It is the Chair of the Panel that will grant this request.

There may be occasions where either party request an observer. In these circumstances, the employee, their representative and the Presenting Officer should agree in principle to the observer. The formal request will be made to the Chair of the Panel to approve the request prior to the hearing commencing.

The Clerk to the Governors shall confirm that the body is correctly constituted and that the preliminary matters, as above, have been carried out.

The Chair shall, at the commencement of the meeting, set out the procedure as set out below.

## **2.0 Opening remarks by the Chair of the Panel**

The parties to the matter, with their representatives, should be invited into the Hearing.

- Introduce those present, or ask each individual to introduce themselves;
- Advise that an adjournment may be requested at any time during the Hearing;
- Outline the procedure to be followed;
- Outline the reason(s) for calling the hearing.

## **3.0 Order of Proceedings**

### **3.1 Disciplinary Hearing including Dismissal Hearings**

- 3.1.1 The Headteacher (or designated officer) / HR Officer will present the case calling such witnesses as may be necessary. Written evidence may be read out, subject to the agreement of the Panel.
- 3.1.2 The employee and/or representative may ask questions of the witnesses and, where the Headteacher (or designated officer) gives evidence of the Headteacher (or designated officer).
- 3.1.3 The Headteacher (or designated officer) / HR Officer may re-examine the witnesses.

- 3.1.4. The employee and/or representative will present their case calling such witnesses as may be necessary. Written evidence may be read out, subject to the agreement of the Panel.
- 3.1.5. The Headteacher (or designated officer) / HR Officer may ask questions of the employee, witnesses and, where the employee's representative gives evidence, of the employee's representative.
- 3.1.6. The employee and/or representative may re-examine the witnesses.
- 3.1.7. Members of the Panel may ask questions at any time but will seek to confine questioning until immediately prior to their re-examination
- 3.1.8. The Headteacher (or designated officer) / HR Officer will sum up the case.
- 3.1.9. The employee or representative will sum up the case.
- 3.1.10. The Chair of the Panel may recall witnesses or call for further evidence on specific points but if it becomes necessary to act in this way both parties must be recalled.
- 3.1.11. Witnesses shall only be present whilst giving evidence.

At the conclusion of the meeting the parties and any other persons present, with the exception of the Clerk and the Advisors to the Panel shall withdraw whilst the Panel deliberates.

In cases where a decision is able to be reached, the Chair of the Panel will deliver the decision and will advise the employee of their right of appeal and they should exercise their right of appeal they should do so by stating the grounds for Appeal, in writing. The Chair of the Panel should indicate who the Appeal must be addressed to and that any Appeal should be lodged within 10 working days.

The meeting will be confirmed in writing which must be sent to the employee within 5 working days of the meeting decision by the Chair of the Panel.

For Community and Voluntary Controlled schools, a copy of the decision letter must be forwarded to their nominated HR Officer supporting the case at the same time as notifying the employee. The Local Authority is then required to ratify the recommendation of the Panel and will issue notification of termination of the employment contract within 14 days of the dismissal decision. This statutory requirement is set out in the School Staffing (England) Regulations 2003, Sections 35(8) and 36 (8) of The Education Act 2002.

If notification is not received by the Local Authority in time to allow for the ratification of the dismissal within 14 days of the initial dismissal decision, then any liability for extended employment costs would pass to the school.



## Order of Proceedings for Appeal Hearings

### **1.0 Preliminary Matters**

Where the Appeal is either against action taken by the Headteacher or against a decision to dismiss made by the Staff Dismissal Committee, the Appeal will be heard by the Staff Dismissal (Appeals) Committee referred to for the purpose of this procedure as the 'Appeals Committee'. This Committee has the power to confirm or vary any such previous decision, taking into account advice from the Chief Officer (Children's Services) Representatives / relevant advisors at their meeting. Their decision is final.

The Appeals Committee will usually consider the Appeal based on the original case presented. If a re-hearing is requested, along with the grounds for such a request, in the employees Appeal letter, this request will be considered in conjunction with taking advice from your nominated HR Officer.

The Chair of the Panel shall be taken by the Chair or Vice Chair of Governors, unless he/she is not a member of the Committee, or he/she is absent when the meeting begins, in which case those present shall elect from amongst their number, a person to take the Chair at the meeting during such absence. The Chair or Vice Chair cannot be an employee of the school.

It is recommended that staff Governors do not form part of either The Staff Dismissal Committee or the Staff Dismissal (Appeals) Committee. All other Governors should register a potential conflict of interest at the stage in which the Committee is convened. This is to demonstrate that any decision made is fair, independent and non-prejudiced. Any Governor who has been involved in the particular action taken, or who is in any material way an interested party shall not participate as a Governor in the proceedings.

The hearing shall take place in private session and all parties shall be reminded that proceedings are confidential.

The employee shall have the right to be accompanied by a companion who may be a fellow worker, a trade union official, or a current recognised trade union representative who has been certified by their union as being competent. It is the employee's responsibility to arrange to be accompanied. The employee's representative can address the Panel and confer with and advise the employee, however, the representative must not answer questions on the employee's behalf.

The Presenting Officer will have the right to be accompanied by a representative from their HR provider who can address the Panel, ask questions and confer with and advise the Presenting Officer.

The Panel will be supported at the meeting by advisors, as determined within the policy who can provide advice, confer with the Panel and ask questions.

For all schools with the exception of Academies, the Chief Officer (Children's Services) and/or his/her representatives have the right to attend and advise the Panel in terms of employment law, procedure and regulation, under reference of the School Staffing (England) Regulations 2009.

It should be established whether any adjustments are required to the usual facilities arrangements.

Facilities shall be provided for each side to meet separately. A private waiting room will be provided for the employee and his/her representatives and their witnesses.

There may be occasions where either party request an observer. In these circumstances, the employee, their representative and the Presenting Officer should agree in principle to the observer. The formal request will be made to the Chair of the Panel to approve the request prior to the hearing commencing.

The Clerk to the Governors shall confirm that the body is correctly constituted and that the preliminary matters, as above, have been carried out.

The Chair shall, at the commencement of the meeting, set out the procedure as set out below.

## **2.0 Opening remarks by the Chair of the Panel**

The parties to the matter, with their representatives, should be invited into the Hearing.

- Introduce those present, or ask each individual to introduce themselves;
- Advise that an adjournment may be requested at any time during the Hearing;
- Outline the procedure to be followed;
- Outline the reason(s) for calling the hearing.

## **3.0 Order of Proceedings**

### **3.1 Appeal Hearing**

3.1.1 The employee (Appellant) and/or representative will present the grounds for the Appeal and will call such witness as may be necessary.

3.1.2 The Presenting Officer/HR Officer may ask questions of the employee and of any witness called.

- 3.1.3 The appellant and/or representative may re-examine the witnesses.
- 3.1.4 The Presenting Officer/HR Officer will present his/her response to the appellant calling witnesses as necessary.
- 3.1.5 The appellant and/or representative may ask questions of the Presenting Officer/HR Officer and of any witness called.
- 3.1.6 The Presenting Officer/HR Officer may re-examine the witnesses.
- 3.1.7 Members of the Panel may ask questions of the parties or witnesses at any stage but will seek to confine questioning until immediately prior to their re-examination.
- 3.1.8 The Appellant or representative will sum up the case.
- 3.1.9 The Presenting Officer/HR Officer officer will sum up the case.
- 3.1.10 The Chair of the Panel may recall witnesses or call for further evidence on specific points but if it becomes necessary to act in this way both parties must be recalled.
- 3.1.11 Witnesses shall only be present whilst giving evidence.

At the conclusion of the meeting the parties and any other persons present, with the exception of the Clerk and the Advisors to the Panel shall withdraw whilst the Panel deliberates.

In cases where a decision is able to be reached, the Chair of the Panel will deliver the decision and will advise the employee of the outcome of their appeal. There is no further right of appeal.

The meeting will be confirmed in writing which must be sent to the employee within 5 working days of the meeting decision by the Chair of the Panel.

## **Constitution of Appropriate Committees**

### **1.0 Establishment of Staff Dismissal and Staff Dismissal (Appeals) Committees**

- 1.1 It is recommended that Committee members are established at the first full Governing Body Meeting of the Academic Year. When selecting membership for Committees the principles of natural justice must be seen to be applied.
- 1.2 Governors should establish a Staff Dismissal Committee and a Staff Dismissal (Appeals) Committee.
- 1.3 A Committee shall normally include not less than three members of the Governing Body. Where a Committee is established to take a decision regarding the termination of employment of School staff, no member of that Committee shall take part in the proceedings of the Committee established to consider any Appeal against that decision. The membership of the Appeal Committee shall include no fewer members of the Governing Body than that of the Staff Dismissal Committee.
- 1.4 It is recommended that staff Governors do not form part of either The Staff Dismissal Committee or the Staff Dismissal (Appeals) Committee. All other Governors should register a potential conflict of interest at the stage in which the Committee is convened. This is to demonstrate that any decision made is fair, independent and non-prejudiced. Any Governor who has been involved in the particular action taken, or who is in any material way an interested party shall not participate as a Governor in the proceedings.

### **2.0 Delegating Powers of Dismissal to a Headteacher**

- 2.1 The introduction of the School Staffing (England) Regulations 2003, which came into effect on 1 September 2003 gave significant additional delegated powers to headteachers for dealing with staffing issues. One of these key features was the provision to provide a Headteacher with delegated responsibility for initial dismissal decisions, following which there will be an opportunity to appeal to a panel of governors "The Staff Dismissal Appeals Committee".
- 2.2 The Governing Body should meet to consider whether they will delegate the power to dismiss to the Headteacher, if the power is not delegated then a panel of three governors will be constituted, as stated above and will form the Staff Dismissal Committee.
- 2.3 Governing Bodies are advised to meet at the beginning of each academic year to determine whether they wish to delegate



responsibility of dismissals to the Headteacher. Dismissals can be delegated in their entirety (all dismissals) or in part (only some specific dismissals).

- 2.4 All decisions should be recorded and minuted. The minutes may need to be relied upon to evidence the delegation of dismissals.
- 2.5 In making the determination to delegate responsibility for dismissals in full, or in part, the governing body should ensure that the Headteacher has the relevant skills and experience to carry out the role required.
- 2.6 Headteachers with delegated powers for dismissal cannot delegate the role.
- 2.7 There may be cases where the Headteacher has been involved directly with a case or may also be the line manager for the post taking action against. In these circumstances, and on a case by case basis, it may be necessary to convene the Staff Dismissal Committee. This again should be minuted by the Governing Body.

## **Staff Dismissal Committee - Terms of Reference**

Note: These terms of reference have been drawn up consistent with the attached model disciplinary policy for Teaching and Non-Teaching Staff in Schools' (Administrative Procedure D-22 refers).

### **Membership:**

- The Committee will comprise of three governors, each of whom shall have voting rights, unless it is not reasonably practical for the Committee and the Appeals Committee to comprise 3 governors each when the Committee shall comprise 2 governors only.
- The Headteacher may not be a member of the committee but will normally be in attendance to present the case to the Committee.

### **Terms of Reference:**

- On behalf of the Governing Body the Committee shall consider any staff disciplinary matter which it is considered by the Headteacher as misconduct up to and including dismissal.
- In all matters the Committee will have due regard to the procedures laid down in the School Disciplinary Procedure.

**Staff Dismissal (Appeals) Committee - Terms of Reference**

Note: These terms of reference have been drawn up consistent the attached model 1disciplinary policy for Teaching and Non-Teaching Staff in Schools' (Administrative Procedure D-22 refers).

**Membership:**

- The Committee will comprise the same number but different governors from the Staff Dismissal Committee which shall normally be three governors, each of whom shall have voting rights.
- The Headteacher may not be a member of the Committee but will normally be in attendance to present the case to the Committee.

**Terms of Reference:**

- On behalf of the Governing Body the Committee shall consider any appeal against a decision of the Staff Dismissal Committee or the Headteacher in relation to disciplinary matters.
- In all matters the Committee will have due regard to the procedures laid down in the School Disciplinary Procedure.

