

Disciplinary Procedure and Guidance

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Introduction

This document sets out the disciplinary procedure to be followed by managers/headteachers when dealing with all acts of alleged misconduct within the workforce. It should be read in conjunction with the Discipline Guidance and templates.

All decisions to implement the disciplinary procedure will be made in good faith and in a genuine belief that there has been misconduct which has had an adverse effect on the Council/school.

The employee is entitled to be accompanied by a trade union representative or work colleague at every stage.

Scope

This procedure applies to all employees of the the council and all school based staff for whom there is no specific procedure laid down in national or local conditions of service.

It is expected that governing bodies of all community and voluntary controlled schools would adopt this procedure. Foundation and voluntary aided schools and academies are encouraged to do the same.

Principles

The Council has a duty to manage its employees to achieve high standards of behaviour and conduct. Where these fall short the matter will be dealt with in compliance with the law and good employment practices.

This procedure will ensure that the council/school:

- meets all relevant legal requirements regarding any disciplinary decisions it takes in relation to employees
- resolves effectively and in a timely manner wherever possible issues which affect the standards of conduct/behaviour of an individual employee
- treats employees in a fair and consistent manner in relation to conduct and disciplinary issues
- supports managers/headteachers in carrying out their responsibilities in relation to the conduct of their employees
- ensures that all employees are aware of and understand the behaviours and conduct required by the council/school

Process

1. When a potential misconduct situation occurs the first step is for the manager/headteacher to make brief preliminary enquiries to assess whether further action may be required. This may include meeting with the employee and asking him/her for a response on the matter.
2. An attempt should be made to correct a situation and prevent it from getting worse through advice or informal action.
3. The manager/headteacher may hold a preliminary fact finding meeting to establish the facts, before proceeding to a formal disciplinary meeting.
4. Where alleged misconduct, if established, would be regarded as gross misconduct, consideration should be given to suspending the employee from work on normal contractual pay.
5. Where police investigations, criminal charges or convictions occur the manager/headteacher should consider whether the conduct warrants disciplinary action due to any employment implications.
6. If, following the fact finding, a decision is made to progress the matter through the formal disciplinary procedure, a disciplinary meeting will be arranged at which the employee will be given the opportunity to state his/her case. The employee's representative should be consulted on the date of the meeting.
7. The employee will be given at least 10 working days' notice of the meeting and must be told, in writing,
 - details of the allegation(s),
 - that he/she is required to attend a disciplinary meeting (giving the place, date and time)
 - that he/she has the right to be accompanied by a trade union representative or work colleague.

If the allegation, if established, would constitute gross misconduct this should be stated in the letter.

8. In some cases further information than that provided by the preliminary enquiries will be needed. In these cases a disciplinary investigation will need to be carried out. The employee must be told in writing of the alleged misconduct.
9. Within 5 working days of the formal meeting the manager will write to the employee confirming the outcome and outlining the next step including their right of appeal against the decision. Appeals are to be lodged within 5 working days.
10. Appeals will be dealt with speedily whilst still allowing the employee reasonable time to prepare their case.
11. The outcome of the appeal meeting will be formally notified to the employee in writing within 5 working days.
12. There is no further right of appeal.

Should further clarification be required please contact your Directorate HR team/School HR provider/Diocesan Officer.

For Schools:

Name of School:	
Date by which School have adopted procedure:	
Signature of Chair of Governors	

Appendix 1 - Guidance

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1. Introduction

This guidance supports the processes outlined in the Discipline procedure for managing employee misconduct.

Minor breaches of conduct will be dealt with informally by managers as part of their responsibility to establish and maintain standards of conduct. Where the matter is more serious, or the employee's conduct continues to be unacceptable, despite the manager's informal intervention, the formal Discipline Procedure will be used.

Where unacceptable performance is not due to issues of conduct e.g. health, lack of skills or qualifications, or because the job has changed in nature, the Positive Attendance Procedure or Capability Procedure should be followed.

Where employees are seconded to the council/school from an external organisation they will be subject to the disciplinary procedure applicable to their employer.

Where council/school employees are seconded to an external organisation they will be subject to the council/school's Disciplinary procedure.

2. Addressing conduct issues informally and promptly

It is the responsibility of all employees to conduct themselves in an appropriate manner and for managers/headteachers to continuously monitor this. When a potential misconduct/gross misconduct situation occurs the first step is for the manager/headteacher (or their nominee) to make brief preliminary enquiries to assess whether further action may be required. This may include meeting with the employee and asking him/her for a response on the matter. If a preliminary meeting is to be held with the employee it is important to inform them that they can bring a trade union representative or work colleague to the meeting to accompany them if they so wish. If the employee confirms that they are a member of a recognised Trade Union every effort should be made to have a trade union representative present. Unavailability of the representative will not however delay the meeting.

It may be appropriate, depending on the circumstances and the nature of the misconduct, to attempt to correct a situation and prevent it from getting worse through advice or informal action, without using the Disciplinary Procedure. Ensure that the employee understands the reason for the meeting and that if the misconduct re-occurs formal action may be taken.

A note of any preliminary meeting should be made and kept by the manager/headteacher (or their nominee) for reference purposes. This note will form part of management's case at any subsequent investigatory interview and or formal disciplinary meeting.

Any preliminary meeting is not an investigatory interview therefore following the preliminary investigations, if it is decided that a more thorough investigation is required then a disciplinary investigation will need to take place as soon as possible and investigatory interview with the employee concerned.

3. Fact Finding Meeting

If following initial preliminary enquiries a fact finding meeting is required the employee concerned must be given details of the complaint or incident as far as it is known

The employee is entitled to be accompanied by a trade union representative or work colleague. The role of this person is to act as a witness as to what is said at the meeting.

The meeting is not a disciplinary meeting at this stage and must not develop into one.

If necessary the fact finding should include speaking to witnesses, including clients and members of the general public.

In a school based setting this will be a meeting with the Headteacher (or their nominee). If the allegations are in relation to the Headteacher then the matter should be referred to the Chair of Governors with support from the local authority.

Before any fact finding meeting involving pupils is undertaken, advice must be sought on the conduct of the meeting from the school HR provider/ the Local Authority District Officer (LADO) / the Designated Adult Safeguarding Manager (DASM).

In exceptional circumstances it may be that the fact finding cannot be completed because of circumstances outside the control of the council/school.

If, following the fact finding meeting the manager concludes the matter can still be resolved informally an attempt should be made to correct a situation and prevent it from getting worse through advice or informal action. A brief note should be made and kept by the manager/headteacher for reference purposes.

4. Precautionary Suspension

After the preliminary fact finding where alleged misconduct, if established, would be regarded as gross misconduct, consideration must be given whether to suspend the employee from work on normal pay. For those on zero hours contracts this will be based on 12 weeks average pay. Details of the reason for suspension must be given to the employee as soon as possible. Suspension, in itself is a neutral act and a precautionary measure and not a form of disciplinary action and will only apply when other alternatives have been considered. (see appendix 3).

The manager/headteacher should inform the Local Authority Designated Officer (LADO) of any complaints involving suspected child protection cases within 24 hours, or the Designated Adult Safeguarding Manager (DASM) of any complaints involving vulnerable adults.

It may be necessary to seek advice from your Directorate HR Team/School HR provider/ Diocesan Officer on the appropriate course of action.

5. Police Investigations, Criminal charges or convictions

An employee should not be dismissed or otherwise disciplined solely because they have been or are the subject of a police investigation or have been charged with or convicted of a criminal offence.

The question to be asked in such cases is whether the employee's conduct or conviction merits action because of its employment implications. Where it is thought the conduct warrants disciplinary action the following guidance will be followed:

- the council/school will investigate the facts as far as possible, come to a view about them and consider whether the conduct is sufficiently serious to warrant instituting the disciplinary procedure
- where the conduct requires prompt attention the council/school will not await the outcome of the prosecution before taking fair and reasonable action
- where the police are called in they should not be asked to conduct any investigation on behalf of the council/school, nor should they be present at any meeting or disciplinary meeting.

In some cases the nature of the alleged offence may not justify disciplinary action – for example, off-duty conduct which has no bearing on employment – but the employee may not be available for work because he or she is in custody or on remand.

In these cases the council/school will decide whether, in the light of the needs of, the service, the employee's job can be held open.

Where a criminal conviction leads, for example, to the loss of a licence so that continued employment in a particular job would be illegal, the council/school will consider whether alternative work is appropriate and available.

Where an employee, charged with or convicted of a criminal offence, refuses or is unable to cooperate with the council/school's disciplinary procedure, this will not deter it from taking action. The employee will 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.

Where there is little likelihood of an employee returning to employment, the council/school may conclude that the contract of employment has been terminated through 'frustration'.

6. Allegations

Managers must be clear and specific when allegations are being made and should, throughout the disciplinary process, be consistent about the nature of the misconduct which is being investigated. New allegations that come to light during the investigatory stage can be added to the process and brought to the employee's attention in writing. If the new allegations are subsequently found to be not relevant they should not be referred to in the investigation report.

Any disciplinary sanction must be imposed only in respect of allegations that were properly investigated and brought to the employee's attention in writing as part of the proceedings.

Any complaint or incident involving financial irregularity must be immediately notified to The Executive director , Resources before proceeding with any disciplinary procedure or action. Serious cases may also need to be reported to the police who might then conduct a criminal investigation.

Any complaint involving suspected sexual, physical or emotional abuse against children and/or vulnerable adults must be investigated using the The Council's Safeguarding Procedures; this may involve a joint approach with the Police.

The manager/headteacher should inform the Local Authority Designated Officer (LADO) of any complaints involving suspected child protection cases within 24 hours, or the Designated Adult Safeguarding Manager (DASM) of any complaints involving vulnerable adults.

7. Disciplinary Investigation

In some cases further information than that provided by the preliminary enquiries will be needed. In these cases a disciplinary investigation will need to be carried out. The employee must be told in writing of the alleged misconduct.

The purpose of the investigation is to establish the facts, to ask the employee for an explanation, to determine what happened and to obtain sufficient information for management to decide what action to take i.e. formal or informal action, welfare support, implementation of one of the council's other policies or to take no action at all.

Not all cases will need an elaborate investigation and it will not therefore be necessary to appoint an independent investigator(s) in straightforward cases e.g. persistent lateness. In these cases the manager/headteacher would normally investigate. In potential gross misconduct cases separate Investigating Officer(s) may be required. (See Appendix 2 for further guidance on investigations). Whoever is responsible for the investigation, it should be completed as quickly as possible but should be thorough. It should be carried out by an employee(s) of appropriate seniority in a confidential manner.

The investigation should include:

- Holding a preliminary interview with the employee concerned at the earliest possible opportunity.
- Interviewing all witnesses
- Obtaining relevant documentary evidence

8. Trade Union Officials

Normal disciplinary procedures apply in full to trade union officials. However, no formal disciplinary action should be taken against a trade union official until the circumstances of the case have been discussed with a full-time official i.e. The Regional Officer, or Convenor of the union concerned.

9. Overlapping Grievance and Disciplinary Cases

A grievance raised during the course of the disciplinary procedure (including a claim of harassment) will be referred to a more senior officer who will decide whether the grievance should be considered separately, or as part of the disciplinary process.

Where the employee's grievance relates to the disciplinary case it will be investigated as part of the disciplinary process and will not suspend the disciplinary procedure.

If the grievance is not linked to the disciplinary proceeding, the grievance and disciplinary can run in parallel, there is no need to suspend the disciplinary process whilst the grievance is resolved.

Grievances raised about the disciplinary proceedings will be dealt with at appeal stage if the disciplinary proceedings have been concluded and an appeal has been received

10. Holding a Formal Disciplinary Meeting

Where, on completion of an investigation/fact finding meeting, there are reasonable grounds to believe that there could be a case to answer the employee will be invited to attend a formal disciplinary meeting chaired by a more senior manager. In a school based setting the meeting will be conducted by the headteacher or the Disciplinary Committee of the Governing Body.

The employee is entitled to be accompanied by a trade union representative or work colleague. A representative of the Local Authority/Diocesan Authority in the case of a Church School will attend to advise the panel on the proceedings and will always attend when a possible outcome of the meeting could be dismissal. Any advice given by the LA representative must be considered before any decision regarding the matter is taken.

The employee will be given at least 10 working days' notice of the meeting to allow them reasonable time to prepare their case. Employees should make every effort to attend the meeting.

At the meeting the manager should explain the allegations against the employee and go through the evidence that has been gathered. The employee should also be given a reasonable opportunity to ask questions, present evidence and call relevant witnesses. Where the manager or employee intends to call relevant witnesses they should give advance notice that they intend to do this.

10.1 Organising a Formal Disciplinary Meeting

- Line Manager/headteacher to notify employee in writing. This notification should contain sufficient information about the alleged misconduct and its possible consequences to enable the employee to prepare to answer the case at a disciplinary meeting as well as details of the time and venue.
- the employee can request a postponement within five days of the original date if their chosen representative cannot attend.
- copies of any relevant information and witness statements should be made available to the employee at least 5 working days prior to the disciplinary meeting, or sooner if possible
- arrange for someone who is not involved in the case to take a note of the meeting
- the employee should submit any relevant papers and witness statements at least 5 working days in advance of the meeting, together with the names of any additional witnesses they wish to attend the meeting.
- arrange for an additional rooms to be available for the employee and their representative and for any witnesses

- if the employee concerned is a trade union representative discuss the case with a trade union full-time official.

10.2 Structure of the meeting

The disciplinary meeting will be conducted by a more senior manager/headteacher/or the Disciplinary Committee of the Governing Body.

The disciplinary meeting will be conducted as follows:-

Introductions will take place, the purpose of the meeting will be explained and an explanation will be given as to how the meeting will be conducted.

The approach will be formal, but polite and the meeting will be a two way process with the objective of ascertaining the true facts of the case.

The allegation(s) will be outlined by the original manager/investigating officer, and the evidence presented. This will include reference to any witness statements and the calling of witnesses as required. There will then be opportunity for questions to be asked related to the evidence presented.

The employee will be given the opportunity to state his/her case, present evidence and call witnesses. Opportunity for questions at this stage will again be given.

The manager/investigating officer will summarise their case, followed by the employee.

The meeting will adjourn and a decision will be reached by the senior manager/headteacher Disciplinary Committee of the Governing Body. If necessary the meeting may be adjourned in order to carry out further investigations. If this does occur the meeting will be reconvened as soon as possible and the individual will be informed of the outcome of the further investigations. He/she will also be given the opportunity to comment on and/or question this.

Following the adjournment the employee will then be recalled, will be informed of the decision and, if applicable, the penalty which is to be imposed. The employee will also be advised at this stage of his/her right of appeal and the time limit for any such appeal.

All decisions will be confirmed, in writing, no later than 5 working days following the date of the disciplinary meeting. The letter will include (in the event of a warning being given):

- (a) the reason for the warning,
- (b) the effective time period of the warning,
- (c) the consequences of any further breach of discipline,
- (d) the right of appeal, and
- (e) the time limit for any such appeal.

10.3 Absence of Individuals from Disciplinary Meetings or Appeals due to sickness

If an employee first reports sick on the day of the meeting and the employee informs the council/school they are unfit to attend, the meeting will usually have to be postponed.

The matter may need to be referred to Occupational Health to obtain advice on their condition/fitness.

The disciplinary meeting should then be rearranged according to this information.

10.4 Failure to Attend a Disciplinary Meeting

Where an employee simply fails to attend his/her disciplinary meeting he/she should be written to and informed of the following:

- (a) That the meeting has been rearranged for a specific later date and time.
- (b) That if they are unable or unwilling to attend the meeting, without good cause, the meeting will proceed in their absence.
- (c) A representative may attend in their absence to present their case.
- (d) Any written submission which the employee may wish to submit will be considered.

10.5 Witnesses / Written Statements

Witnesses will be required to attend the meeting and asked to state their evidence in front of the parties so that the employee and the manager have an opportunity to ask them questions.

In exceptional cases, however, this may be impracticable or unacceptable (e.g. in the case of children/vulnerable adults). In these circumstances the employee should be shown a copy of the witnesses' statements so that they are fully aware of what is being alleged against them.

Where evidence about an employee's alleged misconduct has been obtained in the form of written statements, either the statements themselves or a summary of their content will be given to the employee. In exceptional circumstances the council/school reserves the right to conceal the identity of any or all of the parties if there is a legitimate reason to do so, such as where there may be a risk to the safety of others if the identity of witnesses is disclosed. In those circumstances, consideration will be given to providing a summary of the information to the employee.

11. What to consider before deciding on any disciplinary action?

When deciding whether a disciplinary penalty is appropriate and what form it should take, consideration should be given to:

- whether the rules of the council/school indicate what the likely penalty will be as a result of the particular misconduct
- the penalty imposed in similar cases in the past
- whether standards of other employees are acceptable, and that this employee is not being unfairly singled out

- the employee's disciplinary record (including current warnings), general work record, work experience, position and length of service
- any mitigating circumstances which might make it appropriate to adjust the severity of the penalty
- whether the proposed penalty is reasonable in view of all the circumstances
- whether any training, additional support or adjustments to the work are necessary

Each case must be looked at on its own merits and any relevant circumstances taken into account. Such relevant circumstances may include health or domestic problems, provocation, justifiable ignorance of the rule or standard involved or inconsistent treatment in the past.

12. Disciplinary Penalties

Other than in the case of gross misconduct, employees should not normally be dismissed for a first breach of discipline.

Where, following a disciplinary meeting the manager establishes that no misconduct has taken place; the employee will be informed that there is no case to answer and no disciplinary action to take.

Where it is established that an employee has committed a disciplinary offence the following disciplinary action may be taken:

12.1 Stage 1 – Oral Warning

In cases of first minor breaches of discipline the employee should be given a recorded oral warning. The manager/headteacher will:

- set out the nature of the misconduct and the change in behaviour required
- inform the employee that a written warning may be considered if there is further misconduct
- confirm that the warning will remain "live" for a period of 6 months
- during this period, the council/school may rely on such a warning in the event of further misconduct on the part of the employee
- state that the employee may appeal against the warning within 5 working days, and confirm who they should submit their appeal to

12.2 Stage 2 – Written Warning

In cases of misconduct following a formal oral warning, or as a first stage for more serious offences, employees will receive a written warning. The warning will:

- set out the nature of the misconduct and the change in behaviour required
- inform the employee that a final written warning may be considered if there is further misconduct
- confirm that the warning will remain "live" for a period of 12 months from the date of issue, after which time it will be expunged from the employee's records
- during this period, the council/school may rely on such a warning in the event of further misconduct on the part of the employee

- state that the employee may appeal against the warning within 5 working days, and confirm who they should submit their appeal to

12.3 Stage 3 – Final written warning

Where either a more serious disciplinary offence has been committed or further minor offences have been committed by an employee following a written warning that remains "live", the employee will receive a final written warning. The warning will:

- set out the nature of the offence committed
- inform the employee that further misconduct may lead to dismissal
- confirm that the final warning will remain "live" for a period of 24 months from the date of issue, after which time it will be expunged from the employee's records
- during this period, the council/school may rely on such a warning in the event of further misconduct on the part of the employee
- state that the employee may appeal against the warning within 5 working days, and confirm who they should submit their appeal to

12.4 Final stage – Dismissal or other sanction

Where further misconduct occurs following a final written warning that remains "live" the employee may be dismissed with notice or with pay in lieu of notice.

There may be occasions when, having taking into account all appropriate circumstances, it is decided that another sanction is appropriate. This may include:

- Transfer
- Demotion/Loss of seniority

The above sanctions may be imposed in conjunction with other forms of disciplinary action, or as an alternative to dismissal.

The employee may appeal against any sanction imposed on them within 5 working days.

In cases of dismissal in schools where the local authority is the employer (Community and Voluntary Controlled), the dismissal letter from the panel must be followed by a further letter from the local authority confirming the dismissal. In these circumstances the school must contact the Director of Children's Services to advise them that a dismissal has taken place and provide a copy of the original dismissal letter from the Panel of Governors.

13. Gross Misconduct

Some acts, termed gross misconduct, are so serious in themselves or have such serious consequences that they may call for dismissal without notice for a first offence. The following examples of gross misconduct are not exhaustive or exclusive

- Theft or fraud
- Deliberate falsification of records

- Fighting at work, physical violence
- Physical conduct/inappropriate physical contact with clients
- Assault on/abuse of another person
- Deliberate serious damage to council/school property
- Deliberately accessing internet sites containing pornographic, offensive or obscene material
- Serious/persistent incapability through alcohol or illegal drugs
- Negligence causing/with the potential to cause unacceptable loss, damage or injury
- Serious infringement of health and safety rules
- Conduct prejudicial to the council/school's interests or which may damage or prejudice the council/school's reputation or integrity or bring the council/school into serious disrepute
- Discrimination, harassment or bullying directed towards other employees, clients or members of the public
- Serious misuse of the council/school's property or name
- Serious breach of confidence (e.g. serious breach of Data Protection, or the Council/school's Code of Practice on Computer Security, or the Council/school's Code of Conduct or appropriate Professional Codes).
- Conduct outside of work which makes the employee unsuitable for their type of work or is calculated or likely to destroy the council/school's trust and confidence in the employee taking into account the nature of the offence, the nature of the work to be done, the extent to which it involves contact with employees, partner agencies and the general public, and the status of the employee
- For those employees working with children or vulnerable adults, failing to comply with any obligation to inform or disclose any matter to your employer which may lead to a disqualification from you working with children or vulnerable adults.

If an employee is dismissed for gross misconduct managers have a statutory duty to refer to the Disclosure and Barring Service and/or the relevant Professional Body (e.g. National College for Teaching and Learning for Teachers, and General Social Care Council for Social Workers), where applicable. Please refer to **Safe Recruitment** guidance for more information.

Where, the offence involves children, disabled people, persons in care or other special circumstances, or is so serious as to be verging on gross misconduct, the warning shall not be automatically disregarded in accordance with the above timescales. There may be circumstances where the final written warning can never be removed and that any recurrence will lead to dismissal. In these cases, the period for which the warning may continue to be taken into account shall be decided at the time the warning is issued.

A decision to dismiss should not be based on an expired warning but the fact that there has been a previous warning that has expired may explain why a lesser sanction may not be appropriate.

14.Appeals

All employees have the right of appeal against any disciplinary sanction imposed on them.

The appeal will be heard by another senior manager who was not involved in the original meeting or decision and who will have the authority to overturn the original decision. In the case of a decision by a Executive director of the the council the appeal shall be to another Executive director . Appeals against dismissal for misconduct will be heard by the Staffing Committee. In a school based setting the appeal will be heard by the Appeals Committee of the Governing Body. A representative of the LA/Diocesan Authority in the case of a Church School will attend to advise the panel on the proceedings and will always attend when a possible outcome of the meeting could be dismissal. Any advice given by the LA representative must be considered before any decision regarding the matter is taken.

Appeals should be lodged in writing within 5 working days of being informed of the disciplinary sanction.

When lodging an appeal the employee should state the grounds upon which they seek to appeal. These may be

- There was a defect in the procedure
- Not all evidence was considered
- The sanction/decision was too severe
- New evidence has come to light since the last meeting

In most cases an appeal hearing will take place, however in the event that the grounds of appeal relate to a defect in the original procedure/disciplinary meeting the Senior HR Manager/ Appeals Committee of the Governing Body may advise that a rehearing is held in place of an appeal hearing. The decision of the appeal hearing or the rehearing would be full and final and there would be no further appeal process.

The manager/ Appeals Committee of the Governing Body will inform the employee whether the appeal will be an appeal hearing or a rehearing, based on the grounds of their appeal, to enable to them to prepare.

14.1 Appeal Hearing

An appeal hearing will be conducted as a review. The senior manager/Appeals Committee of the Governing Body will look at the fairness of the decision, to determine if the decision was reasonable based on the evidence available at the original disciplinary meeting. The employee will state their case and the hearing panel will respond to the points raised. The whole case is not reheard, only the points which are pertinent to the appeal e.g. the sanction was too harsh.

New evidence may be considered in the Appeal Hearing providing that it has been included in the documents submitted before the hearing. Where new evidence is submitted the employee should clearly state what the evidence is and why it is believed that it would alter the original decision.

For an appeal hearing the manager/headteacher who dealt with the misconduct at the formal meeting will present the case to the Senior Manager/Appeals Committee of the Governing Body. The manager/headteacher may decide to call the investigating officers as a witness.

Appeals will be dealt with speedily whilst still allowing the employee reasonable time to prepare their case. Employees should submit their statement of case and any supporting documents not less than 5 working days in advance of the appeal.

The senior manager /appeals committee will consider any representations made by the employee, the employee's representative or work colleague and those of the manager who imposed the original disciplinary sanction.

The senior manager/appeals committee must decide on the basis of both sets of representations, together with any subsequent facts that may have come to light, whether or not to uphold the disciplinary sanction.

14.2 Structure of the Appeal Hearing

The Appeal will be conducted as follows:-

Introductions will take place, the purpose of the meeting will be explained and an explanation will be given as to how the meeting will be conducted.

The approach will be formal, but polite and the meeting will be a two way process with the objective of ascertaining the true facts of the case.

The employee will be given the opportunity to state his/her case. This will include presenting any evidence, reference to any witness statements and the calling of witnesses as required. There will then be the opportunity for questions to be asked related to the evidence presented.

The manager/Appeals Committee will then respond to the points raised, present evidence and call witnesses. The allegation(s) will be outlined by the original manager/headteacher/ investigating officer, and the evidence presented.

Opportunity for questions at this stage will again be given.

Both parties will be given the opportunity to summarise their case.

The meeting will adjourn and a decision will be reached by the senior manager/appeal committee.

Following the adjournment the employee will then be recalled and will be informed of the decision. The decision will be confirmed in writing within 5 working days.

There is no further right of appeal.

14.3 Rehearing

For a rehearing the manager/Appeals Committee of the Governing Body will repeat the process for a disciplinary meeting in accordance with the disciplinary procedure and come to their own decision. If an investigation has not already been carried out, the Manager /appeals committee should consider whether one is necessary.

14.4 Potential outcomes

The outcome will be either:

- The employee's appeal is upheld; in this case the sanction may be removed or replaced with a lesser penalty, such as demotion or another form of warning. Any records relating to the matter on which the appeal has been successful will be removed from the employee's records.
- The employee's appeal is not upheld and the original decision will stand.

The appeal must not result in any increase in penalty.

15.Keeping Written Records

Notes should be taken of all key points raised during disciplinary meetings and appeals and a copy given to the employee. In certain circumstances (for example to protect a witness) some information may be withheld. This information may be required at an Employment Tribunal.

Managers/headteachers are advised to keep a record of all disciplinary cases. This record should include:

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

These records are to be kept confidential and retained in accordance with this procedure and the General Data Protection Regulations 2016.

16.Equality

Managers/headteachers should be aware of their personal responsibility in ensuring that discrimination in any form does not impact on their handling of a case of misconduct.

Managers/headteachers should consider providing flexibility in arranging the date and venue of a meeting or appeal.

Reasonable adjustment may be needed for a worker with a disability (and possibly for their companion if they are disabled) e.g. the provision of a support worker or advocate with knowledge of the disability and its effects.

Appendix 2 – Investigations

Investigations

The council/school is committed to ensuring that where necessary, disciplinary investigations are carried out by an employee's manager/headteacher without delay.

In most cases preliminary enquiries will be carried out by the manager/headteacher of the employee who is the subject of disciplinary action. They will gather all relevant evidence and prepare a report which is clear and contains a summary of their findings based on the evidence seen. The report must contain an indication of whether there is any evidence to support the allegation.

The manager/headteacher must give their enquiries the highest priority and carry it out without undue delay whilst ensuring that the facts are investigated thoroughly.

The manager/headteacher should inform the Local Authority Designated Officer (LADO) of any complaints involving suspected child protection cases within 24 hours or the Designated Adult Safeguarding Manager (DASM) of any complaints involving vulnerable adults.

The employee/witnesses are required to co-operate with the investigation and any subsequent meeting. They have a duty to:

- i) Meet with the investigator
- ii) Put forward their own account and explanation of the events at issue
- iii) Answer the investigator's questions about the events at issue

Appointment of an Investigating Officer

In cases of gross misconduct the manager/headteacher may consider it necessary to appoint an independent investigating officer (IO) who has not been connected in any way with the case. The IO should be of sufficient seniority to reflect the importance of the matter and to ensure credibility. It is not the IO's responsibility to come to a final conclusion.

1. Carrying Out an Investigation

Whilst there is a need to ensure that the facts of a case are thoroughly investigated, there are obvious benefits for the employee and for managers/headteachers if disciplinary issues are dealt with quickly and effectively.

The investigation should include:

- (a) Holding a preliminary interview with the employee concerned at the earliest possible opportunity.

(b) Interviewing all witnesses, including clients and members of the public and obtaining appropriate statements. It is important that relevant information such as dates, times, witnesses and other basic facts are incorporated into the statement. The statement should then be signed and dated by the witness and the witness informed that their statement could be used at any subsequent disciplinary meeting, appeal or Employment Tribunal.

(c) Obtaining relevant documentary evidence e.g.: time sheets, notes of meetings, photographs, policy documents, relevant memoranda etc.

2. Conducting the Investigation Interview (s):

- Ensure that the employee /witness has been given reasonable written notice of the meeting and that they are aware of the reason for the meeting
- Ensure the meeting place is appropriate – comfortable, private, free from interruptions. It may be useful for the interview to take place at a 'neutral' location.
- Consider making any reasonable adjustments as necessary
- Consider using a note taker.
- Explain the purpose of the interview
- Ensure the employee has had the opportunity to be represented
- Ensure that the employee/witness understands the purpose of the interview
- Give the opportunity for the employee to describe their version of events
- Ask clarification questions and summarise events
- Ask the employee if they can identify any witnesses or documentary evidence
- Make the employee aware of support available to them
- If it becomes apparent during the course of investigation that a person is at risk e.g. victimisation or intimidation, inform the appropriate Manager immediately
- If any losses involving cash, property, store or other financial or potentially fraudulent matters are suspected or alleged during the course of the investigation, inform the Manager/ headteacher and Internal Audit immediately

Following the investigation interviews a statement should be prepared for the employee/witness to agree. The statement is not intended to be a verbatim record. Amendments can be made to the statement by mutual agreement and it may be possible for reasonable additions to be added in after the investigatory interview, where they serve the purpose of clarifying events. Once agreed, the statement shall then be included in the Investigation Report. Employees/witnesses will be required to sign copies of their statements. Email confirmations of accuracy will suffice. If there is a need to go back to the employee to clarify events or ask further questions after the interview has ended, this can be via phone or email if appropriate, as long as a written summary is agreed and included with the Investigation Report.

Recording equipment is not permitted in investigation interviews.

An investigation report should be prepared summarising the findings of the investigation in order for a decision to be made on the appropriate next stages of the process.

3. Attendance at Meetings

The Investigating Officer will be called to attend disciplinary meetings to present their report and to answer questions on the report. The Investigating Officer does not form any part of the decision making process.

4. Maintaining Contact

The Manager/headteacher must keep the employee informed of progress on the case. If the investigation is likely to be delayed the Manager/headteacher must make the employee aware as soon as possible.

Appendix 3 – Suspension

Suspension

When suspending an employee, he/she should be given the opportunity to be accompanied by a trade union representative or work colleague at all meetings. However the non-availability of such a person should not delay the process.

If the employee requests to be accompanied it must be made clear to the union representative or work colleague that he/she should not take an active part in the suspension interview, but is there to act as a witness.

The employee should be told that a serious complaint has been received/incident reported that could potentially lead to an allegation of gross misconduct. A brief outline of the complaint or incident should be given to the employee to allow them the opportunity to respond. Once the employee has given a response the interview should be adjourned for the response to be considered. If a satisfactory explanation is not given at the interview the employee should be suspended, pending full investigation. A separate investigatory interview will need to take place at a later date but as soon as possible following the suspension.

It should be made clear to the employee that as a precautionary measure under the Disciplinary Procedure, suspension is necessary and that it is not a form of disciplinary action. However any breaching of the conditions of the suspension as outlined in the suspension letter will be dealt with immediately and as a serious matter.

If the employee is absent from work due to sickness it may be appropriate in certain circumstances to delay the suspension until the employee is fit enough to return to work.

The decision to suspend must only be taken by the appropriate senior manager/ headteacher following advice from HR as appropriate

In all cases of suspension all property, keys, fobs, mobiles, access to ICT equipment should be returned and ICT accounts suspended. Supervised access can be arranged via the line manager/headteacher if required.

Employees who are suspended should be offered appropriate support and reminded of the employee helpline. Contact should be maintained with them through their line manager/ headteacher. In cases involving harassment or bullying employees may ask to be put in touch with a designated support officer. Suspension should be kept under regular review, a minimum of once per month is recommended.

Any employee who is signed off as sick during a period of suspension will have their suspension rescinded until such time as they become fit for work.

Consideration should be given to any information provided to colleagues/parents/service users to explain the absence of the individual. It is important that a need to know approach is adopted when carrying out this process in order to maintain confidentiality. A suggested approach to this would be to bring the team together and simply inform them that the employee is absent from work at present and the arrangements that may be put in place to cover their work. They should also be informed that when asked by parents/service users about the employees absence to relay the same information.

Appendix 4 – Staffing Committee

Staffing Committee

Note: This does not apply to school based staff as their right of appeal is to the Appeals Committee of the Governing Body. In a school setting the appeal hearing will be in line with section 14.2 or 14.3 of this procedure.

Preparation for the meeting: Guidance and requirements for management and employee representatives

1. Appeals against dismissal on the grounds of misconduct or capability are heard by the The Councils Staffing Committee. It is important that appeal meetings are conducted as thoroughly and efficiently as possible and that unnecessary adjournments and delays are avoided.
2. The Staffing Committee consists of up to five members. They will be advised by a legal and HR advisor. The HR Team will be responsible for the general arrangements for the appeal.
3. Prior to the appeal hearing a bundle of papers is prepared for presentation to the Committee by the HR Team. Both parties (management and employee) should produce a written statement of case together with any other supporting documents. This Statement of Case should be sent to the HR Team for inclusion in the bundle of papers.
4. The HR Team will then collate and number the bundle of papers for submission at the appeal hearing. All papers for Staffing Committee will be presented in the same format.
5. Problems can be caused by the late submission of papers on the day of the meeting, especially if one side is taken by surprise and needs time to consider them. Time can also be wasted in the appeal meeting itself navigating around voluminous unpaginated (and sometimes repetitious) paperwork.

Requirements of representatives

6. For these reasons representatives are required:-
 - (i) to provide the HR Team when requested with a time estimate for the meeting, an indication of the number of witnesses they are calling, and the size of the paperwork, and to promptly supply their and their witnesses' availability;
 - (ii) to prepare a statement of their case and include it in the agreed bundle referred to at (iv)
 - (iii) to make sure that all the information therein is up to date and relevant, as some time may elapse between the statement of case being written and the date of the hearing;

- (iv) to liaise with HR so that *one* paginated bundle of *all* of the supporting documents that both representatives wish to rely on in presenting their respective cases is prepared. (It is emphasised that in agreeing a bundle representatives are not necessarily agreeing the veracity or relevance of any document in the bundle – this is merely a mechanism for ensuring that any papers either representative wants to refer to are available and paginated in one bundle. It does not prevent a representative questioning a document at the meeting). In practice this means that parties will need to disclose a list of the documents they intend to rely on to each other well in advance of the appeal meeting as a first step towards preparing the bundle;
- (v) to arrange for a copy of the agreed bundle (including the statements of case) to be delivered to the HR Team at least fifteen working days before the appeal for copying and distribution to the members of the Committee and their advisors;
- (vi) to confirm to any witnesses that are required to attend of the date, time and venue for the meeting as soon as possible after being notified of the same by the HR Team.

7. The final bundle will be issued to all parties 7 working days before the date of the hearing.
8. If following preparation of the bundle, documentation arises which a party wishes to rely on at the meeting, they should notify the other party as soon as possible, providing a copy. It is not expected that additional documentation will be produced on the day, and members will expect there to be a good reason for this, e.g. if a document has only come into existence since the bundle was produced.
9. It is emphasised that the Committee will not regard a document as evidence and take it into account simply because it forms part of the agreed bundle and has been supplied to members of the Committee in advance of the meeting. If representatives wish a document to be regarded as evidence in support of their case, either they or their witness(es) must refer the Committee to it at the appeal meeting. Members may not necessarily have read every document in detail, particularly where there is a large volume of documentation.