

## **Boxgrove and Kidbrooke Park Primary Schools and Kidbrooke Park Learning Centre Disciplinary Procedure for School Staff**

### **Introduction**

Rules and procedures are necessary for promoting orderly employment relations as well as ensuring the fairness and consistency of treatment for all employees. While rules set the standards of conduct and performance at work, procedures help ensure that the standards are adhered to and also provide a fair method of dealing with alleged failures to observe them.

The purpose of this disciplinary procedure is to clarify the process that should be followed in situations where it has become evident that an employee's conduct is of an unsatisfactory level and should be seen as a way of helping and encouraging improvement.

When the behaviour which is causing concern is an apparent failure of performance rather than of conduct, then it will be appropriate to instigate the capability procedure.

No disciplinary action beyond an informal warning (or suspension from duty in the case of alleged gross-misconduct) will be taken against a shop steward, or other trade union representative, until the circumstances of the case have been discussed with a full-time official of the union concerned.

This procedure has been developed in accordance with the ACAS Code of Practice on Discipline and Grievance and the Employment Act 2008.

This procedure applies to all staff with the exception of the following:

- employees who are within a probationary period as any issues of misconduct will generally be dealt with under the probation procedure
- During or at the end of a fixed term contract of less than 26 weeks' duration
- To temporary employees with less than 26 weeks' service
- Agency workers. Please refer to the flowchart in Appendix N which details how to manage allegations against agency workers
- Redundancy
- Ill health cases
- Dismissal as a result of an employee becoming disqualified from undertaking his/her duties because of a statutory provision

### **Informal management**

Routine support and supervision by line managers is an effective means of resolving potential issues early. Clear communication of expectations and discussion when these are not met will often result in a resolution of behaviours which, if continued, could result in instigation of the formal disciplinary procedure.

### **General Principles**

The principles of this disciplinary procedure are:

- When there is reason to believe that an employee's conduct is of an unsatisfactory standard, matters will be dealt with as quickly as possible.
- No formal disciplinary action will be taken against an employee until the case has been fully investigated and a disciplinary hearing has taken place.
- Suspension is not in itself a form of disciplinary action and may take place in cases of alleged gross-misconduct or where there is a safeguarding concern.
- Before any disciplinary action is taken against an employee the manager should satisfy himself/herself that disciplinary action is the most appropriate way of dealing with the issue. In many cases the matter may be dealt with satisfactorily in other ways e.g. counseling or informal discussion.

- At every stage in the procedure, the employee should be advised of the nature of the complaint against him/her and given the opportunity to state his/her case before any decision is made.
- At all formal disciplinary hearings the employee has the right to be accompanied by a union representative or a work colleague also employed by the school/The Royal Borough, and to call witnesses.
- An employee will have an opportunity to hear the case against them and state their case.
- An employee will not be dismissed for a first instance of misconduct, except in the case of gross-misconduct.
- Employees have the right of appeal to any formal disciplinary sanction, i.e. written warning, final written warning and dismissal.
- Throughout this procedure, any reference to HOS, Director of Children's Services, Governors or employee shall be construed as relating equally to other persons authorised to take such action.
- Throughout this procedure references to time limits relate to school working days.

It is contrary to Royal Greenwich's policy to discriminate against an employee on the grounds of any of the protected characteristics covered under the Equality Act [2010], that is age, disability, gender reassignment, marriage or civil partnership, pregnancy and maternity, race, religion/belief, sex and sexual orientation. Also, any other forms of discrimination, whether because staff work part time or in any way which affects the employment of any person across Schools in Royal Greenwich. Any action which is contrary to that policy is a serious matter and may lead to a disciplinary penalty. It may also be a breach of the law for which the individual concerned may be held personally liable.

### **Responsibilities of the Governing Body**

Governors assume, under legislation, significant responsibilities in relation to the discipline and dismissal of staff:

- The responsibility to ensure the fair handling of disciplinary procedures, specifically at the stages of hearing and appeal.
- The authority to suspend and reinstate a member of staff. The HOS has the power to suspend also, but only the governing body can reinstate.
- The authority to issue a warning or final warning, as a result of disciplinary action, whether on grounds of conduct or capability.
- The overall responsibility for all dismissals at the school. These responsibilities are expected to be delegated to the HOS. Where the HOS does not have delegated responsibility (or the HOS is subject to disciplinary action), the initial decision should be delegated to one or more Governors.
- Appeal hearings must be conducted by an appeal panel comprising of at least one Governor for appeals against written and final written warnings and a panel of three Governors for a potential dismissal.

The Governing body must ensure that formal minutes of disciplinary and appeal hearings are always taken. Decisions of a hearing must be reported to the governing body at the next meeting following the exhaustion of the local disciplinary appeal procedure.

All governing body panels should be convened with an appropriate gender/ethnic balance wherever possible.

Governing bodies should ensure that no one who takes part in an initial disciplinary decision also hears the appeal. Furthermore, the governing body remains responsible for any decisions taken under delegated authority.

It is recommended that each Governor sitting on a disciplinary/appeal panel should ask Himself/herself whether there are any other personal circumstances or interests which might lead to their appearance being taken as that he/she is likely to be biased. If there are, then the Governor(s) concerned should withdraw and take no further part in the proceedings in order to ensure that there is a fair hearing.

### **What constitutes a disciplinary offence?**

Minor cases of misconduct are usually best dealt with informally. There will, however, be situations where matters are more serious or where an informal approach has been tried but is not working. If informal action does not bring about the necessary improvement or the misconduct, is considered to be too serious to be classed as minor, formal disciplinary action should be considered. If misconduct is repeated after warnings, this may also constitute gross misconduct.

A verbal warning is an informal warning for cases of minor infringements and constitutes the first step of the disciplinary procedure. This lets the employee know that their conduct is not acceptable and that if it does not improve they will be subject to the formal disciplinary procedure. Both parties should understand that informal action is not part of the formal disciplinary process and that employees do not have a statutory right to representation.

The verbal warning will state:

- details of the complaint
- the improvement or change in behaviour required and the timescale, if appropriate, allowed for this
- the likely outcome if the improvement is not made
- that there is no right of appeal

The verbal warning is not confirmed to the employee in writing but a record will be kept on their personal file, but it will be disregarded for disciplinary purposes after 6 months' satisfactory conduct.

### **Rules of conduct**

The public rightly expects high standards from people employed by the school/Royal Borough and it is therefore essential that there are clearly understood rules governing relationships between the school/Royal Borough and the public/pupils. In summary, the following are an indication of the standards of conduct that the school/Royal Borough expects of its employees and an indication of the kinds of conduct that may lead to formal disciplinary action, regardless of whether there has been an offence in law, and whether or not civil or criminal legal proceedings are being instituted. The list is not comprehensive and does not preclude the possibility of additional charges being brought, a breach of official instructions (including safety regulations, formal policies, security instructions, office or local notices, or in any other written or oral authoritative form):

This General Code of Conduct list should not be considered to be either exclusive or exhaustive and the Staff/Schools Code of Conduct should also be referred to when dealing with disciplinary matters. If a complaint alleging misconduct against an employee is made, then the complaint should normally be received in writing. If initially given verbally, the person making the complaint should be expected to confirm the details in writing. Allegations of misconduct should be fully investigated.

In addition the DfE provides guidance on dealing with allegations against staff; please refer to – Related Policies / Procedures / Guidelines.

## **Gross Misconduct**

The most serious breach of the School's/The Royal Borough's conduct requirements is referred to as gross-misconduct and may warrant dismissal without notice (summary dismissal).

If allegations constitute gross misconduct, this will be made clear to the employee in writing. The formal procedure will then be followed. If it is decided by a disciplinary panel that the allegations are proven, then in the absence of sufficient mitigating factors, summary dismissal is the most likely outcome, even for a first offence.

Any action which is considered to be a fundamental breach of contract, or is so grave that the employee cannot be permitted to continue to be present at the place of work, may make the employee liable to immediate suspension.

The Director of Children's Services (in practice The Royal Borough's Human Resources - HR) must be informed of any proceedings that may lead to an employee's dismissal. The Director is entitled, to be represented at such a hearing, in practice the hearing will be attended by HR. The Head and the Deputy Head of Human Resources must also be informed immediately of the suspension of any member of staff. In addition, conduct listed as misconduct, if repeated after warnings, may also constitute gross misconduct. The Staff/Schools Code of Conduct should be referred to when dealing with disciplinary issues

## **Suspension**

A HOS considering suspension should discuss the matter with an HR Adviser in the first instance.

An individual may be suspended from duty at any time if the circumstances warrant it. These circumstances include the arrest of an individual or the instigation of criminal proceedings or enquiries which the School/Royal Borough considers unacceptable. Suspension is not a punishment and will normally be on full pay. Where an employee is absent due to sickness, the suspension still applies and they will not be allowed to return to work until given permission to do so.

Such a suspension may not necessarily lead to disciplinary proceedings and does not pre-judge the outcome of any proceedings which might arise. It is important to stress to the individual that they have not been dismissed and no action should be taken to suggest they have. If investigations do become protracted, regular contact with the individual should be maintained and they should be notified once the investigations have been completed. The necessity for the employee to remain suspended will be reviewed at regular intervals and where possible, lengthy periods of suspension will be avoided.

The suspension of a member of staff is a neutral act and should only be used to enable a matter to be investigated, or in the interests of protecting children and/or staff.

At the time of suspension the employee must be asked to disclose any other employment with The Royal Borough or elsewhere, and if appropriate, be informed that the investigating officer will be notifying Schools' HR immediately. This may lead to the employee being suspended from other posts within The Royal Borough.

Whilst on suspension an employee:

- receives full pay
- must not discuss the detail of any allegations with any other member of staff, pupils or parents without the written express permission of the governing body/HOS.
- should refrain from any unnecessary contact with any person connected with the school/The Royal Borough which could compromise their position

- must be given the name of a contact within the school for maintaining communication during suspension. The named person should be agreed with the employee. The named contact is not to discuss any aspect of the case
- should book/take annual leave and report periods of sickness absence in the normal way except that this will be through their nominated school contact
- should be kept informed of relevant school matters, through provision of school newsletters, notes of meetings, new policies etc.
- should be contactable by telephone during normal school hours. However, most contact should be made in writing

A suspension checklist is attached at Appendix D.

### **Authority to suspend**

Both the governing body and the HOS can suspend any staff employed or engaged to work at the school but only the governing body can lift the suspension. When imposing or lifting a suspension the governing body must immediately inform the HOS, or vice versa and the Director of Children’s Services via Schools’ HR.

In the case of the governing body, in practice this function would either be undertaken by the chair of Governors under urgency powers, or delegated to a Governor or group of Governors. This would avoid the governing body considering a suspension in full session and therefore avoid the possibility of undermining the impartiality of Governors who may be required to consider matters at a later stage at either a disciplinary or appeal hearing.

In cases of alleged gross-misconduct by the HOS, the chair of the governing body or the chair of the governing body’s disciplinary panel may suspend the HOS.

A suspension may only be ended by the governing body who must inform the HOS and the Director of Children’s Services (Schools’ HR) immediately.

### **Criminal Proceedings**

The following arrangements apply irrespective of whether criminal offences are committed in the course of employment or outside of employment. Criminal offences include child abuse and abuse of young adults or vulnerable adults.

In advance of any formal disciplinary hearing, the circumstances of the case should be fully investigated by an appropriate person. In some situations it may be appropriate to seek an explanation from the employee before deciding to proceed with a formal investigation.

In cases of alleged or suspected child safeguarding the school’s Child Protection Officer, the Local Authority Designated Child Protection Officer (LADO) and Schools’ HR, must be informed immediately.

### **Formal Disciplinary Processes**

Once a HOS is aware that disciplinary action should be considered, there are particular steps which have to be followed and certain people will be responsible for those steps. The table below outlines these steps. Note, where the employee is on a precautionary suspension, every effort should be made to ensure that the hearing is held as soon as possible and that the employee is notified of any delays.

Step	Responsible person
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HOS contacts HR Adviser about possible disciplinary matter.	HOS or SLT. HR Adviser provide ongoing support
Preliminary enquiries. When facts are not clear or to establish if a full formal investigation is required.	Normally the HOS or SLT
HOS/SLT notifies individual in person and in writing that matter will be formally investigated.  Details of the Employee Assistance Programme to be provided.	HOS or SLT
HOS/SLT decides on who should investigate the matter with advice from HR.	Investigating Officer
When evidence indicates a case to answer, disciplinary hearing to decide and hear employee's response.	HOS to decide whether disciplinary sanction is required. In the case of gross misconduct delegated authority to dismiss would be required by the HOS otherwise a minimum of one Governor should chair the disciplinary hearing if HOS does not have IDD.
Where appeal lodged against a disciplinary decision short of dismissal.	HOS if no prior involvement in case or a minimum of one Governor.
Where appeal lodged against dismissal (appeals should be made within 10 days of the date of the decision letter).	Within 20 days of receiving the appeal, a panel of three Governors to hear the appeal.

The HOS, with advice from HR, will determine who should investigate the matter. There may be occasions when investigation by the line manager is not appropriate e.g. where they are a witness in the case.

During the investigation interview, the employee should be offered an opportunity to be accompanied at the interview while not resulting in any undue delay. If the Trade Union representative is unable to attend on the date given, a date may be given up to 5 workings later. The employee should be made aware that the investigation is being carried out in accordance with this procedure and given a copy when presented with the allegations. Investigations should be carried out as quickly as possible with minimum disruption to service provision. HR Advisers are not required to be present/assist at Investigation interviews.

### **Interviewing employees and witnesses**

#### **Witnesses who are children**

If the investigation requires that children are to be interviewed these should be completed as soon as possible. Children may only be interviewed with either their parent present or with their parent's written consent. Where several children/pupils are involved they should be interviewed individually and not collectively.

Child witnesses are not normally required to attend a disciplinary hearing, therefore, as the employee will not have the opportunity to cross-examine them in the hearing, their evidence should be taken, prior to the disciplinary hearing, in the presence of the employee's representative.

Notes of each interview should be made, signed by the investigating officer and the employee's representative, and retained confidentially.

### **Disciplinary hearing**

Following a full investigation if the investigating officer decides that there is a disciplinary case to answer then a disciplinary hearing should be arranged.

### **Authority to conduct disciplinary hearings**

It is vitally important to check, when arranging a disciplinary hearing that the person/s who are to conduct the hearing are authorised to do so. Please refer to the table on page 9.

### **Dismissals**

The HOS will normally be expected to lead in determining initial dismissal decisions (IDD). Therefore, other than in exceptional circumstances the governing body should delegate the responsibility for conducting disciplinary hearings, which may result in dismissal, to the HOS. The HOS may involve other Governors, or HR in the dismissal process, for example in hearing representations, but the final decision should be the HOS's.

The HOS will not conduct a disciplinary hearing, which may lead to dismissal, when:

- the governing body has not delegated responsibility for dismissal decisions
- they have been directly involved in and/or have carried out the investigation into the alleged misconduct of the employee
- they are related to or have any personal relationship with the employee
- the dismissal in question is that of the HOS

The Director of Children's Services (normally Schools' HR) has the right to attend all disciplinary hearings, which may lead to an employee's dismissal.

Please refer to Appendix A – Governor delegated responsibilities.

### **Maintaining impartiality**

In order to ensure impartiality, those responsible for conducting a disciplinary hearing must not be directly involved in any particular incidents of alleged misconduct by the employee, or related to the employee or have any personal relationship with the employee.

Where a disciplinary hearing is being arranged the following persons should not be responsible for conducting the disciplinary hearing or be part of the disciplinary panel or in any other way be associated with the disciplinary decision:

- the investigating officer
- any of the employees who have advised/represented the complainant or the accused
- any of the witnesses

Where a disciplinary panel is used, efforts should be made to ensure that the composition of the panel, in terms of ethnicity/sex etc., is appropriate to the circumstances.

### **Instruction to attend a formal disciplinary hearing**

The employee against whom disciplinary proceedings are being taken should be given, or sent, a written instruction to attend a formal disciplinary hearing. The written instruction should give the employee at least 5 days' notice of the hearing, and the letter should contain:

- an instruction to attend the hearing and notification of the date, time, place and who the hearing officer will be
- the reasons for the hearing
- the right of the individual to be accompanied at the hearing by his/her union representative/work colleague also employed by the School/The Royal Borough, and to call witnesses if desired.

#### **The letter should include:**

- the Investigation Report
- copies of any documentary evidence management will be presenting at the hearing
- a copy of the disciplinary procedure
- witness statements/interview notes whether or not such witnesses will attend the disciplinary hearing

The letter should request that the employee provides copies of any documentary evidence they intend to present at the hearing, to the hearing officer prior to the hearing date. This letter should be sent under the signature of the HOS, Governor or the chair of the disciplinary panel, as appropriate.

### **Employee's right to be accompanied**

Employees have the right to be accompanied at formal disciplinary and appeal hearings. This right allows for one person only to accompany the employee and that person should either be:

- a union representative
- a work colleague also employed by the School/The Royal Borough

During the hearing the employee's companion should be allowed to address the hearing in order to:

- present the employee's case
- sum up the employee's case
- respond on the employee's behalf to any view expressed at the hearing but not to answer questions on the employee's behalf
- ask questions of their own

The companion can confer with the employee during the hearing. It is good practice to allow the companion to participate as fully as possible in the hearing. However, the companion has no right to answer questions on the employee's behalf or to address the hearing if the employee does not wish it, or to prevent management from explaining their case.

The employee retains the responsibility for arranging their companion's attendance. If the employee's companion is unable to attend on a proposed date, the employee/their companion can request an alternative date, so long as it is within 5 working days of the original proposed date.

### **Witnesses**

All employees have a duty to co-operate with all disciplinary enquiries, and may be required to attend disciplinary/appeal hearings as necessary.

All persons who are invited or required to attend a disciplinary or appeal hearing as witnesses should:

- receive 'reasonable' out-of-pocket expenses (e.g. fares) for attending the meeting. (This provision shall apply equally to all witnesses, being either employees or non-employees)



- wherever possible, be granted compensatory time off for the hours spent in attending the meeting (unless they would have otherwise been on duty at the time of the meeting). In the case of teachers such attendance will be regarded as non-contact directed time.

Any compensatory time off shall be taken at a time which is mutually acceptable to the HOS and the employee concerned.

The employee may call their own witnesses to the disciplinary hearing, however, the employee retains the responsibility for arranging their witnesses' attendance unless they are suspended in which case they should liaise with their designated contact at the school.

### **Postponing a formal disciplinary /appeal hearing**

An employee who cannot attend a formal disciplinary/appeal hearing should, whenever possible, inform the hearing officer in advance.

If the employee fails to attend through circumstances outside of their control, and unforeseeable at the time the meeting was arranged (e.g. illness), the hearing officer should arrange another meeting. If an employee's companion cannot attend on a proposed date, the employee and their companion can suggest another date so long as it is reasonable and is not more than 5 working days after the date originally proposed. This 5 day time limit may be extended by mutual agreement.

### **Conducting a disciplinary hearing**

The purpose of the disciplinary hearing, informal or formal, is to decide whether disciplinary action is justified or not.

At the disciplinary hearing:

- management should clearly explain the allegations that have been made against the employee using the evidence gathered through the investigation calling any witnesses, and/or presenting written statements/documents as necessary to support their case
- the employee should be allowed to set out their case, calling any witnesses, and/or presenting written statements/documents as necessary to support their case and answer the allegations made against them
- following these presentations the hearing officer will decide if disciplinary action is warranted

Please refer to **Appendix H – Conducting a formal disciplinary hearing** for a full guide to conducting a formal disciplinary hearing.

### **Disciplinary Action**

When considering the circumstances of a case the hearing officer, must decide whether the allegations against the employee are proven, and if so what action should be taken.

In deciding whether the allegations are proven, there will be no difficulty when the facts clearly establish this. However, where the facts are in dispute, a decision may need to be taken on the balance of probability. If it is decided that the allegations are not proven, any written reference to the allegations should be expunged from the employee's personal file.

If it is decided that the allegations are proven, consideration should be given to the following when deciding what action should be taken:

- whether disciplinary action should be taken, or whether the case would be more appropriately dealt with in another way (e.g. counseling or a medical referral)

- if the proposed action is the same as those issued in similar cases in the past. This does not mean that similar offences will always call for similar disciplinary action; each case must be considered on its merit and any relevant circumstances taken into account
- whether any special circumstances, mitigation, exists which might make it appropriate to lessen the severity of the action
- the employee's disciplinary record, position, length of service
- whether the proposed action is reasonable in view of all the circumstances

After considering all of the above the hearing officer must decide on the necessary course of action. The following is an explanation of the different stages of disciplinary action. The level of disciplinary action will depend on the seriousness of the offence and may not necessarily follow the stages as listed.

### **Written warning**

If the infringement is regarded as more serious or there is a continued failure to improve following a verbal warning then a written warning may be issued.

The written warning will state:

- details of the complaint
- the improvement or change in behaviour required and the timescale, if appropriate, allowed for this
- the likely outcome if the improvement is not made
- the right to appeal, including how to make that appeal and to whom

The written warning will be confirmed to the employee in writing and a record kept but it will be disregarded for disciplinary purposes after 12 months' satisfactory conduct or performance, as applicable.

### **Final written warning**

Where there is a failure to improve in the timescales specified in a previous warning or where the infringement is sufficiently serious a final written warning may be issued.

The final written warning will state:

- details of the complaint
- the improvement or change in behaviour required and the timescales, if appropriate, allowed for this improvement
- a warning to the individual that failure to improve or modify behaviour may lead to dismissal
- the right to appeal, including how to make that appeal and to whom

The final written warning will be confirmed to the employee in writing and a record kept but it will be disregarded for disciplinary purposes after 24 months' satisfactory conduct or performance, as applicable.

### **Dismissal**

Following a final written warning if the individual's behaviour still fails to improve or the infringement is considered to be gross-misconduct then the final step is dismissal.

The dismissal will state:

- the reasons for the dismissal
- the date on which the employment contract will be terminated
- the notice period, as appropriate
- the right to appeal, including how to make that appeal and to whom

The dismissal will be confirmed to the employee in writing.

### **Gross-Misconduct**

If, following a formal disciplinary hearing, an employee is found to have committed gross-misconduct, the employee will normally be summarily dismissed.

The summary dismissal will state:

- the reasons for the dismissal
- the date on which the employment contract will be terminated, i.e. the date of the hearing or the decision
- that there is no right to notice
- the right to appeal, including how to make that appeal and to whom

The dismissal will be confirmed to the employee in writing. If an employee is found not guilty of gross-misconduct, but guilty of a less serious misconduct, a lower level of disciplinary action may be taken against the employee.

### **Minutes of the Meeting**

The formal minutes taken at the hearing must be shared with all parties present, including the employee and their representative within 2 weeks of the date of the hearing.

Copies of the minutes are for information only and no invitation to comment should be made. If the employee and their representative do wish to comment on the minutes they should make their comments in writing which should then be retained and noted for the records.

### **Employees who hold more than one job with a School/The Royal Borough**

The School/The Royal Borough is entitled to dismiss from its service any employee following a disciplinary hearing. Where the misconduct relates to a particular job, the employee will be dismissed from that job. If the employee holds more than one job with the School/The Royal Borough, consideration will need to be given as to whether the misconduct makes them unsuitable for any or all of the remaining jobs.

### **Employees who are a Newly Qualified Teacher (NQT)**

If the School/The Royal Borough dismisses a NQT during the induction period, the appropriate body should be informed, and the NQT informed of their rights. Dismissal before the end of the induction period does not prevent the NQT from completing induction at another institution. All NQTs must complete a full induction period before they can be judged to have failed the induction. If you have any queries please contact your NQT contact within the Royal Borough or your HR Adviser.

### **Written notification of disciplinary action**

Except in the case of a verbal warning, details of any disciplinary action must be confirmed in writing to the employee. A series of model letters are appended to these procedures.

The written notification should contain:

- the hearing date and names of all persons present
- the way(s) in which the stated conduct is unsatisfactory. This must be fully explicit, and where relevant state the dates/times etc. of offences
- details of any previous live warnings
- the disciplinary action imposed and how long it will last
- the consequences of any further misconduct
- the individual's right to appeal, including to whom and by when

The letter should be sent under the signature of the person who conducted the hearing (or chair of the disciplinary panel as appropriate) and sent to the individual as soon as possible after the hearing.

### **Written notification of dismissal**

Where the HOS, or chair of the disciplinary panel, decides that the employee should be dismissed from the school they shall, in addition, notify Schools' HR if not already notified, outlining the reasons. The HOS, or chair of the disciplinary panel shall, within 14 days of the date of the decision, inform the employee in writing that:

- he/she will be dismissed with due notice or
- he/she will be dismissed with no notice, i.e. summary dismissal.
- Should an employee be dismissed for an issue relating to child protection and a decision has been made to refer the employee to the DBS, then the written notification should inform the employee that details of the allegation(s), the investigation and the decision of the disciplinary panel will be passed to the Disclosure & Barring Service (DBS) for consideration of barring the person from future employment with children.
- It is an employer's statutory duty to consider whether to refer any teacher who is dismissed, or resigns prior to likely dismissal, for misconduct to the National College for Teacher and Leadership (NCTL).

The effective date of any dismissal will be in the letter confirming the decision from the School.

The School will inform payroll of the employee's termination date and notice entitlement.

If a subsequent appeal reverses the dismissal decision the withdrawal from School or the termination notice must be rescinded.

Letters relating to dismissal will preferably be delivered by hand, or where this is not practical, by recorded delivery.

Following a decision to dismiss an employee, formal notice will be issued by the Head of Human Resources, in the case of maintained schools.

### **Appeals procedure**

#### **Right of appeal**

Employees have the right of appeal against any formal disciplinary action, i.e. written warning, final written warning and dismissal.

An employee wishing to exercise his/her right of appeal is required to notify the clerk to the governing body in writing within 10 working days of receipt of the letter informing him/her of the disciplinary action and stating the grounds on which the appeal is made.

#### **Grounds for appeal**

It is not intended that an appeal hearing will constitute a re-hearing of the case, but that the details of the earlier proceedings shall be put before the appeal panel and the person who issued the original disciplinary action, i.e. HOS or chair of the disciplinary panel and the employee shall make submissions.

All appeals must itemise the grounds upon which the appeal is made and the details of those grounds, relating to one or more of the following:

- the findings are not disputed but the disciplinary action was too harsh (with details)
- the findings are disputed (with details) and the disciplinary action was too harsh

- the disciplinary action was inconsistent with formal disciplinary action taken in a similar case (with details including name of comparator)
- the investigation was incomplete (with details)
- the employee was not given a fair hearing (with details)
- new evidence has become available since the disciplinary hearing was conducted (with details)
- the employee did not have all the information or documentation that was relied upon at the original hearing
- the disciplinary procedure was breached which had a material effect upon the formal decision at the earlier stage (with details)

The requirement to itemise the grounds of appeal is not intended to be restrictive but to establish the employee's concerns so that attention can be directed to those concerns.

### **Arranging the appeal hearing**

Following receipt of a written request for an appeal the chair of the Governors' appeal panel will check that:

- there are clear grounds for appeal
- the appeal has been received within the designated 10 days of the date of the letter informing of the disciplinary action

If the appeal meets these criteria the chair of the Governors' appeal panel should arrange the appeal hearing. If not, then the chair of Governors' appeal panel should inform the employee, in writing, that the appeal will not be heard and the reasons for this.

### **Authority to Conduct an Appeal Hearing**

Appeals for a written warning or final written warning will be heard by a minimum of one Governor. Appeals against dismissal will be heard by a panel of three Governors, who have not been involved in the disciplinary decision to which the appeal relates. Schools' may want to consider the use of a panel rather than an individual Governor for more complex cases.

Wherever possible, arrangements should be made to ensure that the composition of the panel, in terms of ethnicity/sex etc., is appropriate to the circumstances.

### **Notification of Appeal Hearing**

The employee must be given at least 5 days' notice in writing of the date of the appeal hearing.

He/she must be sent a letter which should contain:

- the date, time and place of the appeal hearing
- the right of the individual to be accompanied by his/her union representative/work colleague also employed by the School/The Royal Borough, and to call witnesses if desired

### **Who Should Attend the Appeal Hearing**

- **The appeal panel** remain present throughout the hearing including the decision making stage.
- **The employee** and their union representative/work colleague also employed by the School/The Royal Borough remain present throughout the hearing, but withdraw whilst the decision is taken.

- **The HOS/chair of disciplinary panel** (who issued the disciplinary action). This person will present management's case, they shall not be a member of the appeal panel and will be present throughout the hearing, but shall withdraw whilst the decision is taken.
- **The Director of Children's Services (normally HR)** has the right to attend any appeal hearing following a dismissal and will remain present throughout the hearing.
- **Minute taker.** Arrangements should be made for minutes to be kept of the appeal hearing. This may be completed by either a member of the appeal panel or by arranging for a minute taker to be present.
- **Witnesses.** A witness should only be present at the hearing during the time that he/she is actually giving evidence, or answering any questions.

Witnesses must only be called to an appeal hearing if their evidence relates to the appellants grounds for appeal, not to the original charge of misconduct.

### **New evidence**

It is not intended that an appeal hearing will constitute a re-hearing of the case, therefore, it would be inappropriate to accept any new evidence in relation to the original charge of misconduct/performance, in the form of documents or witnesses, unless either party did not have, nor could reasonably be expected to have, been aware of such evidence at the original disciplinary hearing. For further advice please contact from the Schools' HR Team.

The School (and The Royal Borough if appropriate) should give the appellant reasonable access to information if it is material to the appeal, unless it is of a confidential or personal nature.

### **Postponing the appeal hearing**

The appeal hearing will take place on a date determined by the chair of the appeal panel.

An employee who cannot attend an appeal hearing should inform the chair of the appeal panel in advance, whenever possible.

If the employee fails to attend through circumstances outside of their control, and unforeseeable at the time the meeting was arranged (e.g. illness), the chair of the appeal panel should arrange another meeting.

The appeal hearing may proceed in the employee's absence if they fail to attend the re-arranged meeting without good reason. If an employee's companion cannot attend on a proposed date, the employee and their companion can suggest another date so long as it is reasonable and is not more than 5 working days after the date originally proposed by the chair of the appeal panel. This 5 day time limit may be extended by mutual agreement.

### **Conducting the appeal hearing**

The purpose of the appeal hearing is to decide whether the disciplinary action issued was justified or not.

At the appeal hearing the employee should clearly explain their reasons for appeal calling any witnesses, and/or presenting written statements/documents as necessary to support their case.

The HOS/chair of disciplinary panel should then be allowed to set out their case, calling any witnesses, and/or presenting written statements/documents as necessary to support their case and justify their decision to issue the disciplinary action.

The appeal panel's decision is final and will be one of the following:

- not to uphold the appeal and the previous decision is confirmed
- to uphold the appeal and the disciplinary action is reduced

- to uphold the appeal and that no disciplinary action is warranted, and all records will be expunged from the employee's file.

Please refer to **Appendix I – Conducting an Appeal Hearing** for a full guide to conducting the appeal hearing.

### **Written notification of the appeal hearing**

Following an appeal hearing the decision should be confirmed to the employee, in writing. The letter should be sent under the signature of the chair of the appeal panel and sent to the individual as soon as possible following the hearing.

### **Special Cases**

#### **Royal Borough employees – Criminal offences**

Where there are reasonable grounds to suspect that a criminal offence has been committed, The Royal Borough has a duty to notify the Police. The Police may at their discretion pursue the matter, and where appropriate, bring a prosecution against the individual(s) concerned.

The Financial Regulations for schools with delegated budgets require that every HOS shall notify the Director of Children's Services in conjunction with Corporate Finance immediately of any circumstances which may suggest the existence of irregularity affecting cash, stores or other property of The Royal Borough, and of any loss by any means whatsoever of cash, stores or other property belonging to The Royal Borough.

Where there are reasonable grounds to suspect that a criminal offence has been committed, the HOS shall have the responsibility for notifying the Police, if appropriate, after consultation with the Director of Children's Services. If the offence in any way involves suspected child safeguarding then the school's 'designated person for child protection', the Local Authority Designated Officer (LADO) and Schools' HR, must be informed immediately (see paragraph 5.2 below).

Once a decision has been taken to notify the Police, it is important that they are notified as soon as possible, since undue delay is likely to cause them problems when pursuing their enquiries.

If the matter is not referred to the Police, the HOS should still discuss the circumstances of the case with the Director of Children's Services to decide on an appropriate course of action.

Where a HOS becomes aware of action being taken by the Police against an employee for a criminal offence outside her/his employment, consideration should be given as to whether the alleged offence is one that makes the individual unsuitable for her/his type of work or unacceptable to other employees. The circumstances of the case should be discussed with the Director of Children's Services to decide on an appropriate course of action.

All employees are expected to co-operate in any criminal investigations.

### **Child protection**

Cases of alleged or suspected child safeguarding involving harm to pupils, or any case in which children are involved, should be progressed in accordance with the guidelines set out in the DfE document 'Keeping Children Safe in Education; Statutory Guidance for Schools and Colleges' specifically Part 4 (allegations of abuse made against teachers and other Staff). Guidance is also

available from the DfE document 'Working Together to Safeguard Children; A guide to inter-agency working to safeguard and promote the welfare of children', and the Safer Recruitment training offered by The Royal Borough.

This guidance should be followed in respect of any allegation that a person who works with children has:

- behaved in a way that has harmed a child, or may have harmed a child;
- possibly committed a criminal offence against or related to a child;
- behaved towards a child or children in a way that indicates they are unsuitable to work with children.

The procedure for dealing with child protection cases requires the involvement of the Local Authority Designated Officer (LADO), and possibly the Police, and will always take precedence over the school's disciplinary procedure.

If there is a concern or allegation that a child is being, or has been, harmed then the HOS must be informed or, in their absence, the School's designated person for child protection. The LADO must also be informed. If the concern or allegation is about the HOS, then the chair of Governors must be informed. It is important that no contact is made with the employee until the concern or allegation has been discussed with the LADO. In addition, HR are available to advise the School as appropriate and offer support regarding disciplinary or employment issues.

The LADO in consultation with the HOS, Schools' HR and possibly the Police will determine what action needs to be taken. If it is agreed that the concern or allegation relates to a child protection matter then a strategy meeting will be held. Any subsequent action, which needs to be taken by the school, will be dependent on the outcome of a strategy meeting to which the school will be invited.

Should an employee be disciplined for an issue relating to child protection then the warning, as with other disciplinary warnings, will be disregarded for disciplinary purposes when the 'life' of the warning has expired. However, the warning, details of the allegation and the investigation will always remain on the employee's personal file and will be mentioned if The Royal Borough/school is later requested to provide a reference for that employee.

Should an employee be dismissed for an issue relating to child protection then details of the allegation(s), the investigation and the decision of the disciplinary panel will be passed to the Disclosure & Barring Service (DBS) for consideration of barring the person from future employment with children.

Should an employee resign before a disciplinary investigation or hearing has been completed the disciplinary process will continue through to a conclusion even if this means it is completed after the employee has actually left the Royal Borough. Should a disciplinary hearing conclude that had the employee remained in employment he/she would have been dismissed then details of the allegations, the investigation and the decision of the disciplinary panel will be passed to the DBS for consideration of barring the person from future employment with children. School's HR will support the HOS during the referral process to the DBS for them to consider a prohibition order.



**Further guidance and advice**

Advice and guidance on the application of this disciplinary procedure can be obtained from Schools' HR.

This policy is monitored by the governing body, and will be reviewed annually.

**Confirmation the Disciplinary Procedure for staff in respect of Boxgrove and Kidbrooke Park Primary Schools has been discussed by the Governing Body**

Chair of Governors: ..... Date: .....  
(Boxgrove Primary School)

Chair of Governors: ..... Date: .....  
(Kidbrooke Park Primary School)

Executive HOS: ..... Date: .....

**Appendix A – Governor Delegated Responsibilities**

In line with the School Staffing Regulations (2012) the Governing Body of Boxgrove and Kidbrooke Park Primary Schools and Kidbrooke Park learning Centre have considered the delegation of responsibility for the initial decision to dismiss staff.

The Governing Body's decision is as follows:

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

Chair of Governors of Boxgrove and Kidbrooke Park Primary Schools and Kidbrooke Park learning Centre

## **Appendix B – Related Policies/Procedures/Guidelines including media communication**

Full details of the School's/The Royal Borough's policies and procedures are available from the School office. However, specific reference may need to be made to the following:

- The School's/The Royal Borough's rules relating to communication with the media and publication of articles and books.
- The DfE provides guidance on the use of force to control and restrain pupils (as per Section 550A of the Education Act 1996). These guidelines give guidance to the level of force, which would be considered to be reasonable in the circumstances, for the purpose of preventing the pupil from committing any offence, causing personal injury to any person, including the pupil him/herself, or damage to property, or engaging in behaviour prejudicial to the maintenance of good order and discipline.

The DfE have also produced the following guidance documents:

- Working Together to Safeguard Children: A guide to inter-agency working to safeguard and promote the welfare of children - 2015
- Keeping Children Safe in Education: Statutory guidance for schools and colleges - 2015

A copy of these documents can be obtained from the DfE Internet site; [www.education.gov.uk](http://www.education.gov.uk)

Any enquiry from a newspaper or other source of publication seeking information about The Royal Borough or any of its affairs should immediately be directed to The Royal Borough's Communications Service.

Employees (apart from HOSs – see paragraph below) must not, except with the explicit authority of The Royal Borough's Communication Service make any communication with the media, which identifies them as employees of The Royal Borough; unless they make clear they are speaking in a private capacity.

The purpose of this rule is to avoid any misunderstandings on the part of the general public as to whether or not any particular communication has the authority of The Royal Borough.

Therefore, school based employees must not, singly or jointly, make any communication with, or make available any written information to, a newspaper or other source of publication without the permission of the HOS. Prior to giving this permission the HOS should consult The Royal Borough's Communications Service. Should the HOS wish to communicate with the media, as above, they should first seek advice from the chair of Governors, or in his/her absence, The Royal Borough's Communications Service.

If permission is given, employees must ensure the accuracy of the information they supply and must adhere to any procedures applying to publication for their area of work.

In publications that are concerned with purely technical or scientific matters, where The Royal Borough's affairs are not discussed, employees are at liberty to write and publish books or articles on those matters, and, if they so wish to, indicate that they are connected to The Royal Borough. Where a connection with The Royal Borough is mentioned, employees must ensure that a statement appears in a prominent position in such publications to the effect that The Royal Borough accepts no responsibility for the author's opinion or conclusion. Clearance to contribute to the publication

should be sought from The Royal Borough's Communications Service and a draft of a proposed article should be submitted to The Royal Borough's Communications Service prior to submission to the publication.

Where an employee is proposing to participate in any media broadcast in which mention is to be made of The Royal Borough or any The Royal Borough affairs, the employee must ensure that they have authority from their HOS (who must consult the Communications Service in respect of the script of the broadcast before giving a decision) or in the case of the HOS, they should seek advice from the chair of Governors, or in his/her absence, The Royal Borough's Communications Service.

The above conditions shall not prevent an official of a union, who is an officer or employee of The Royal Borough, from making any communication to the newspapers, radio or television in his/her capacity as a union representative.

### **Duties as an employer and an employee**

This part of the guidance is about managing cases of allegations that might indicate a person would pose a risk of harm if they continue to work in regular or close contact with children in their present position, or in any capacity. It should be used in respect of all cases in which it is alleged that a teacher or member of staff (including volunteers) in a school or college that provides education for children under 18 years of age has:

- behaved in a way that has harmed a child, or may have harmed a child;
- possibly committed a criminal offence against or related to a child; or
- behaved towards a child or children in a way that indicates he or she would pose a risk of harm to children.

This part of the guidance relates to members of staff who are currently working in any school or college regardless of whether the school or college is where the alleged abuse took place. Allegations against a teacher who is no longer teaching should be referred to the police. Historical allegations of abuse should also be referred to the police.

Employers have a duty of care to their employees. They should ensure they provide effective support for anyone facing an allegation and provide the employee with a named contact if they are suspended. It is essential that any allegation of abuse made against a teacher or other member of staff or volunteer in a school or college is dealt with very quickly, in a fair and consistent way that provides effective protection for the child and at the same time supports the person who is the subject of the allegation.

### **Initial considerations**

The procedures for dealing with allegations need to be applied with common sense and judgement. Many cases may well either not meet the criteria set out above, or may do so without warranting consideration of either a police investigation or enquiries by local authority children's social care services. In these cases, local arrangements should be followed to resolve cases without delay. Some rare allegations will be so serious they require immediate intervention by children's social care services and/or police. The designated officer(s) should be informed of all allegations that come to a school or college's attention and appear to meet the criteria so they can consult police and children's social care services as appropriate.

The following definitions should be used when determining the outcome of allegation investigations:

- **Substantiated:** there is sufficient evidence to prove the allegation;
- **Malicious:** there is sufficient evidence to disprove the allegation and there has been a deliberate act to deceive;
- **False:** there is sufficient evidence to disprove the allegation;
- **Unsubstantiated:** there is insufficient evidence to either prove or disprove the allegation. The term, therefore, does not imply guilt or innocence.

In the first instance, the HOS or principal, or where the HOS or principal is the subject of an allegation, the chair of Governors, chair of the management committee or proprietor of an

independent school (the 'case manager') should immediately discuss the allegation with the designated officer(s). The purpose of an initial discussion is for the designated officer(s) and the case manager to consider the nature, content and context of the allegation and agree a course of action. The designated officer(s) may ask the case manager to provide or obtain relevant additional information, such as previous history, whether the child or their family have made similar allegations previously and the individual's current contact with children. There may be situations when the case manager will want to involve the police immediately, for example if the person is deemed to be an immediate risk to children or there is evidence of a possible criminal offence. Where there is no such evidence, the case manager should discuss the allegations with the designated officer(s) in order to help determine whether police involvement is necessary.

The initial sharing of information and evaluation may lead to a decision that no further action is to be taken in regard to the individual facing the allegation or concern; in which case this decision and a justification for it should be recorded by both the case manager and the designated officer(s), and agreement reached on what information should be put in writing to the individual concerned and by whom. The case manager should then consider with the designated officer(s) what action should follow both in respect of the individual and those who made the initial allegation.

The case manager should inform the accused person about the allegation as soon as possible after consulting the designated officer(s). It is extremely important that the case manager provides them with as much information as possible at that time. However, where a strategy discussion is needed, or police or children's social care services need to be involved, the case manager should not do that until those agencies have been consulted, and have agreed what information can be disclosed to the accused.

Employers must consider carefully whether the circumstances of a case warrant a person being suspended from contact with children at the school or college or whether alternative arrangements can be put in place until the allegation or concern is resolved. All options to avoid suspension should be considered prior to taking that step (see further information on suspension which follows).

If there is cause to suspect a child is suffering or is likely to suffer significant harm, a strategy discussion should be convened in accordance with the **statutory guidance Working together to safeguard children**. If the allegation is about physical contact, the strategy discussion or initial evaluation with the police should take into account that teachers and other school and college staff are entitled to use reasonable force to control or restrain children in certain circumstances, including dealing with disruptive behaviour.

Where it is clear that an investigation by the police or children's social care services is unnecessary, or the strategy discussion or initial evaluation decides that is the case, the designated office(s) should discuss the next steps with the case manager. In those circumstances, the options open to the school or college depend on the nature and circumstances of the allegation and the evidence and information available. This will range from taking no further action to dismissal or a decision not to use the person's services in future. Suspension should not be the default position: an individual should be suspended only if there is no reasonable alternative.

In some cases, further enquiries will be needed to enable a decision about how to proceed. If so, the designated officer(s) should discuss with the case manager how and by whom the investigation will

be undertaken. In straightforward cases, the investigation should normally be undertaken by a senior member of the school or college's staff. However, in other circumstances, such as lack of appropriate resource within the school or college, or the nature or complexity of the allegation will require an independent investigator, many local authorities already provide for an independent investigation of allegations, often as part of the personnel services that maintained schools and colleges can buy in from the authority. It is important that local authorities ensure that schools and colleges have access to an affordable facility for independent investigation where that is appropriate.

### **Supporting those involved**

Employers have a duty of care to their employees. They should act to manage and minimise the stress inherent in the allegations process. Support for the individual is vital to fulfilling this duty. Individuals should be informed of concerns or allegations as soon as possible and given an explanation of the likely course of action, unless there is an objection by the children's social care services or the police. The individual should be advised to contact their trade union representative, if they have one, or a colleague for support. They should also be given access to welfare counselling or medical advice where this is provided by the employer.

The case manager should appoint a named representative to keep the person who is the subject of the allegation informed of the progress of the case and consider what other support is appropriate for the individual. For staff in maintained schools and colleges, that may include support via the local authority occupational health or employee welfare arrangements. Particular care needs to be taken when employees are suspended to ensure that they are kept informed of both the progress of their case and current work-related issues. Social contact with colleagues and friends should not be prevented unless there is evidence to suggest that such contact is likely to be prejudicial to the gathering and presentation of evidence.

Parents or carers of a child or children involved should be told about the allegation as soon as possible if they do not already know of it. However, where a strategy discussion is required, or police or children's social care services need to be involved, the case manager should not do so until those agencies have been consulted and have agreed what information can be disclosed to the parents or carers. Parents or carers should also be kept informed about the progress of the case, and told the outcome where there is not a criminal prosecution, including the outcome of any disciplinary process. The deliberations of a disciplinary hearing, and the information taken into account in reaching a decision, cannot normally be disclosed, but the parents or carers of the child should be told the outcome in confidence.

Parents and carers should also be made aware of the requirement to maintain confidentiality about any allegations made against teachers whilst investigations are on-going as set out in section 141F of the Education Act 2002 (see paragraph 164). If parents or carers wish to apply to the court to have reporting restrictions removed, they should be told to seek legal advice.

In cases where a child may have suffered significant harm, or there may be a criminal prosecution, children's social care services, or the police as appropriate, should consider what support the child or children involved may need.

## **Confidentiality**

It is extremely important that when an allegation is made, the school or college makes every effort to maintain confidentiality and guard against unwanted publicity while an allegation is being investigated or considered. The Education Act 2002 introduced reporting restrictions preventing the publication of any material that may lead to the identification of a teacher who has been accused by, or on behalf of, a pupil from the same school (where that identification would identify the teacher as the subject of the allegation). The reporting restrictions apply until the point that the accused person is charged with an offence, or until the Secretary of State or the General Teaching Council for Wales publishes information about an investigation or decision in a disciplinary case arising from the allegation. The reporting restrictions also cease to apply if the individual to whom the restrictions apply effectively waives their right to anonymity by going public themselves or by giving their written consent for another to do so or if a judge lifts restrictions in response to a request to do so. The provisions commenced on 1 October 2012.

The legislation imposing restrictions makes clear that “publication” of material that may lead to the identification of the teacher who is the subject of the allegation is prohibited. “Publication” includes “any speech, writing, relevant programme or other communication in whatever form, which is addressed to the public at large or any section of the public”. This means that a parent who, for example, published details of the allegation on a social networking site would be in breach of the reporting restrictions (if what was published could lead to the identification of the teacher by members of the public).

In accordance with the Association of Chief Police Officers’ (ACPO) guidance the police will not normally provide any information to the press or media that might identify an individual who is under investigation, unless and until the person is charged with a criminal offence. (In exceptional cases where the police would like to depart from that rule, for example an appeal to trace a suspect, they must apply to a magistrates’ court to request that reporting restrictions be lifted).

The case manager should take advice from the designated officer(s), police and children’s social care services to agree the following:

- who needs to know and, importantly, exactly what information can be shared;
- how to manage speculation, leaks and gossip;
- what, if any information can be reasonably given to the wider community to reduce speculation; and
- how to manage press interest if and when it should arise.

## **Managing the situation and exit arrangements**

### **Resignations and ‘settlement agreements’**

If the accused person resigns, or ceases to provide their services, this should not prevent an

allegation being followed up in accordance with this guidance. **A referral to the DBS must be made, if the criteria are met.**

If the accused person resigns or their services cease to be used and the criteria are met it will not be appropriate to reach a settlement/compromise agreement. A settlement/compromise agreement which prevents the school or college from making a DBS referral when the criteria are met would likely result in a criminal offence being committed, as the school or college would not be complying with its legal duty to make the referral.

It is important that every effort is made to reach a conclusion in all cases of allegations bearing on the safety or welfare of children, including any in which the person concerned refuses to cooperate with the process. Wherever possible the accused should be given a full opportunity to answer the allegation and make representations about it. But the process of recording the allegation and any supporting evidence, and reaching a judgement about whether it can be substantiated on the basis of all the information available, should continue even if that cannot be done or the accused does not cooperate. It may be difficult to reach a conclusion in those circumstances, and it may not be possible to apply any disciplinary sanctions if a person's period of notice expires before the process is complete, but it is important to reach and record a conclusion wherever possible.

'Settlement agreements' (sometimes referred to as compromise agreements), by which a person agrees to resign if the employer agrees not to pursue disciplinary action, and both parties agree a form of words to be used in any future reference, should not be used in cases of refusal to cooperate or resignation before the person's notice period expires. Such an agreement will not prevent a thorough police investigation where that is appropriate.

### **Record keeping**

Details of allegations that are found to have been malicious should be removed from personnel records. However, for all other allegations, it is important that a clear and comprehensive summary of the allegation, details of how the allegation was followed up and resolved, and a note of any action taken and decisions reached, is kept on the confidential personnel file of the accused, and a copy provided to the person concerned.

The purpose of the record is to enable accurate information to be given in response to any future request for a reference, where appropriate. It will provide clarification in cases where future DBS checks reveal information from the police about an allegation that did not result in a criminal conviction and it will help to prevent unnecessary re-investigation if, as sometimes happens, an allegation re-surfaces after a period of time. The record should be retained at least until the accused has reached normal pension age or for a period of 10 years from the date of the allegation if that is longer.

The Information Commissioner has published guidance on employment records in its Employment Practices Code and supplementary guidance, which provides some practical advice on record retention.

### **References**

Cases in which an allegation was proven to be false, unsubstantiated or malicious should not be



included in employer references. A history of repeated concerns or allegations which have all been found to be false, unsubstantiated or malicious should also not be included in any reference.

### **Timescales**

It is in everyone's interest to resolve cases as quickly as possible consistent with a fair and thorough investigation. All allegations should be investigated as a priority to avoid any delay. Target timescales are shown below: the time taken to investigate and resolve individual cases depends on a variety of factors including the nature, seriousness and complexity of the allegation, but these targets should be achieved in all but truly exceptional cases. It is expected that 80 per cent of cases should be resolved within one month, 90 per cent within three months, and all but the most exceptional cases should be completed within 12 months.

For those cases where it is clear immediately that the allegation is unsubstantiated or malicious, they should be resolved within one week. Where the initial consideration decides that the allegation does not involve a possible criminal offence it will be for the employer to deal with it, although if there are concerns about child protection, the employer should discuss them with the designated officer(s). In such cases, if the nature of the allegation does not require formal disciplinary action, the employer should institute appropriate action within three working days. If a disciplinary hearing is required and can be held without further investigation, the hearing should be held within 15 working days.

### **Oversight and monitoring**

The designated officer(s) has overall responsibility for oversight of the procedures for dealing with allegations; for resolving any inter-agency issues; and for liaison with the Local Safeguarding Children Board (LSCB) on the subject. The designated officer(s) will provide advice and guidance to the case manager, in addition to liaising with the police and other agencies, and monitoring the progress of cases to ensure that they are dealt with as quickly as possible consistent with a thorough and fair process. Reviews should be conducted at fortnightly or monthly intervals, depending on the complexity of the case.

Police forces should also identify officers who will be responsible for:

- liaising with the designated officer(s);
  - taking part in the strategy discussion or initial evaluation;
  - subsequently reviewing the progress of those cases in which there is a police investigation;
- and
- sharing information on completion of the investigation or any prosecution.

If the strategy discussion or initial assessment decides that a police investigation is required, the police should also set a target date for reviewing the progress of the investigation and consulting the Crown Prosecution Service (CPS) about whether to:

- charge the individual;
- continue to investigate; or
- close the investigation.

Wherever possible, that review should take place no later than four weeks after the initial evaluation. Dates for subsequent reviews, ideally at fortnightly intervals, should be set at the meeting if the investigation continues.

### **Suspension**

The possible risk of harm to children posed by an accused person should be evaluated and managed in respect of the child(ren) involved in the allegations. In some rare cases that will require the case manager to consider suspending the accused until the case is resolved. Suspension should not be an automatic response when an allegation is reported; all options to avoid suspension should be considered prior to taking that step. If the case manager is concerned about the welfare of other children in the community or the teacher's family, those concerns should be reported to the designated officer(s) or police. But suspension is highly unlikely to be justified on the basis of such concerns alone.

Suspension should be considered only in a case where there is cause to suspect a child or other children at the school or college is/are at risk of harm or the case is so serious that it might be grounds for dismissal. However, a person should not be suspended automatically: the case manager must consider carefully whether the circumstances warrant suspension from contact with children at the school or college or until the allegation is resolved, and may wish to seek advice from their personnel adviser and the designated officer(s). In cases where the school or college is made aware that the Secretary of State has made an interim prohibition order in respect of an individual at the school or college it will be necessary to immediately suspend that person from teaching pending the findings of the NCTL's investigation.

The case manager should also consider whether the result that would be achieved by immediate suspension could be obtained by alternative arrangements. In many cases an investigation can be resolved quickly and without the need for suspension. If the designated officer(s), police and children's social care services have no objections to the member of staff continuing to work during the investigation, the case manager should be as inventive as possible to avoid suspension. Based on assessment of risk, the following alternatives should be considered by the case manager before suspending a member of staff:

- redeployment within the school or college so that the individual does not have direct contact with the child or children concerned;
- providing an assistant to be present when the individual has contact with children;
- redeploying to alternative work in the school or college so the individual does not have unsupervised access to children;
- moving the child or children to classes where they will not come into contact with the member of staff, making it clear that this is not a punishment and parents have been consulted; or
- temporarily redeploying the member of staff to another role in a different location, for example to an alternative school or college or work for the local authority or academy trust.

These alternatives allow time for an informed decision regarding the suspension and possibly reduce the initial impact of the allegation. This will, however, depend upon the nature of the allegation. The case manager should consider the potential permanent professional reputational damage to

employees that can result from suspension where an allegation is later found to be unsubstantiated or maliciously intended. If immediate suspension is considered necessary, the rationale and justification for such a course of action should be agreed and recorded by both the case manager and the designated officer(s). This should also include what alternatives to suspension have been considered and why they were rejected.

Where it has been deemed appropriate to suspend the person, written confirmation should be dispatched within one working day, giving as much detail as appropriate for the reasons for the suspension. It is not acceptable for an employer to leave a person who has been suspended without any support. The person should be informed at the point of their suspension who their named contact is within the organisation and provided with their contact details.

Children's social care services or the police cannot require the case manager to suspend a member of staff or a volunteer, although they should give appropriate weight to their advice. The power to suspend is vested in the proprietor of the school, or governing bodies of the school or college who are the employers of staff at the school or college. However, where a strategy discussion or initial evaluation concludes that there should be enquiries by the children's social care services and/or an investigation by the police, the designated officer(s) should canvass police and children's social care services for views about whether the accused member of staff needs to be suspended from contact with children in order to inform the school or college consideration of suspension. Police involvement does not make it mandatory to suspend a member of staff; this decision should be taken on a case-by-case basis having undertaken a risk assessment.

### **Information sharing**

In a strategy discussion or the initial evaluation of the case, the agencies involved should share all relevant information they have about the person who is the subject of the allegation, and about the alleged victim.

Where the police are involved, wherever possible the employer should ask the police to obtain consent from the individuals involved to share their statements and evidence for use in the employer disciplinary process. This should be done as their investigation proceeds and will enable the police to share relevant information without delay at the conclusion of their investigation or any court case.

Children's social care services should adopt a similar procedure when making enquiries to determine whether the child or children named in the allegation are in need of protection or services, so that any information obtained in the course of those enquiries which is relevant to a disciplinary case can be passed to the employer without delay.

### **Specific actions**

Following a criminal investigation or a prosecution the police should inform the employer and designated officer(s) immediately when a criminal investigation and any subsequent trial is complete, or if it is decided to close an investigation without charge, or not to continue to prosecute the case after person has been charged. In those circumstances the designated officer(s) should discuss with the case manager whether any further action, including disciplinary action, is appropriate and, if so, how to proceed. The information provided by the police and/or children's social care services should inform that decision. The options will depend on the circumstances of the

case and the consideration will need to take into account the result of the police investigation or the trial, as well as the different standard of proof required in disciplinary and criminal proceedings.

### **On conclusion of a case**

If the allegation is substantiated and the person is dismissed or the employer ceases to use the person's services, or the person resigns or otherwise ceases to provide his or her services, the designated officer(s) should discuss with the case manager and their personnel adviser whether the school or college will decide to make a referral to the DBS for consideration of whether inclusion on the barred lists is required; and in the case of a member of teaching staff whether to refer the matter to the National College for Teaching and Leadership (NCTL) to consider prohibiting the individual from teaching.

There is a legal requirement for employers to make a referral to the DBS where they think that an individual has engaged in conduct that harmed (or is likely to harm) a child; or if a person otherwise poses a risk of harm to a child.

Where it is decided on the conclusion of a case that a person who has been suspended can return to work, the case manager should consider how best to facilitate that. Most people will benefit from some help and support to return to work after a stressful experience. Depending on the individual's circumstances, a phased return and/or the provision of a mentor to provide assistance and support in the short term may be appropriate. The case manager should also consider how the person's contact with the child or children who made the allegation can best be managed if they are still a pupil at the school or college.

### **In respect of malicious or unsubstantiated allegations**

If an allegation is determined to be unsubstantiated or malicious, the designated officers(s) should refer the matter to the children's social care services to determine whether the child concerned is in need of services, or may have been abused by someone else. If an allegation is shown to be deliberately invented or malicious, the HOS, principal or proprietor should consider whether any disciplinary action is appropriate against the pupil who made it; or whether the police should be asked to consider if action might be appropriate against the person responsible, even if he or she was not a pupil.

### **Learning lessons**

At the conclusion of a case in which an allegation is substantiated, the designated officer(s) should review the circumstances of the case with the case manager to determine whether there are any improvements to be made to the school or college's procedures or practice to help prevent similar events in the future. This should include issues arising from the decision to suspend the member of staff, the duration of the suspension and whether or not suspension was justified. Lessons should also be learnt from the use of suspension when the individual is subsequently reinstated. The designated officers(s) and case manager should consider how future investigations of a similar nature could be carried out without suspending the individual.

#### **Appendix D – Suspension Checklist**

Certain allegations of disciplinary offences or concerns raised about individuals are so grave that they may require immediate suspension from duty.

Such circumstances may include the following:

- i) A full investigation is required, and it is thought that the individual is likely to impede the process if they remain at work.
- ii) If a person is incapable of remaining at work, as they present a risk to themselves or others e.g. threatening behaviour.
- iii) Where relationships have broken down or there are risks to The Royal Borough's property.
- iv) Potential Gross Misconduct issues
- v) In cases of child protection allegations

In instances where suspension is being considered, the HOS/governing body should, where practical, consult Schools' HR first. Possible alternatives to suspension, e.g. change of work location or duties, should be considered before a decision to suspend is taken.

Prior to a preliminary investigation, depending on when the facts emerge to form a management view that the issues are sufficiently serious to justify suspension, the employee should be called to a meeting and the following explained:

- A number of extremely serious concerns have arisen, relating to an incident.
  - Briefly outline the content of the allegations/concerns and wherever practical the reasons for suspension.
  - Give the employee an opportunity to make an initial brief response and answer any questions as appropriate relating to the process.
  - Explain that although further investigations will need to be conducted and that allegations have not been finalised, the concerns as indicated so far amount to potential gross misconduct (where applicable – see iv) above).
  - Advise the employee that as a precautionary measure and pending further investigations they are to be formally suspended from duty with immediate effect.
  - State that the suspension is without prejudice to his/her position at The Royal Borough/School and not a disciplinary sanction in itself.
  - Tell the employee that they will receive normal pay during suspension.
  - Explain that if at any stage during or at the end of the investigation, it is considered that the suspension should be lifted, they will be informed immediately.
  - Tell the employee that during suspension they must not attend for duty, visit the work place or any of The Royal Borough's/other Schools establishments or make contact with any member of staff without prior permission of a nominated manager/HOS.
  - Tell the employee that they must make themselves available for any meeting which will be arranged as part of the investigation. This will be undertaken by an Investigating Officer.
  - Inform the employee that if the matter proceeds to a hearing under The Royal Borough's/School's disciplinary procedure, they will be given prior notice (minimum 5 days) of the date, time and place of that hearing and information about the matter or matters to be considered at the hearing.
- 
- Give the employee a copy of The Royal Borough's/School's disciplinary procedure and state that they will have a full opportunity to respond to all the allegations and be represented throughout the process by their trade union representative or a fellow worker also employed by The Royal Borough.
  - Ask the employee to disclose any other employment with The Royal Borough/other Schools as this may lead to the employee being suspended from other posts within The Royal Borough/School (This could be checked on Oracle in advance also).
  - Ask the employee to hand over keys/entry passes to The Royal Borough/School premises.

- Ask the employee whether they have any The Royal Borough/School equipment e.g. phones, laptops or documentation at their home addresses which is necessary for The Royal Borough to have returned during their suspension, and agree arrangements for immediate return of all such items.
- Emphasise the need for strict confidentiality in this matter.
- State that suspension will be confirmed in writing. The suspension should be confirmed in writing as soon as possible following the meeting. The letter should outline the allegations/concerns, the date the suspension took effect, the conditions of suspension and state that a full investigation will follow, giving the name and contact details of the Investigating Officer and designated contact person.
- Ask the employee if they fully understood what's been said to them.
- Report any suspension to the Director of Children's Services and for Newly Qualified Teachers (NQT) this should also be reported to the appropriate body.

## **Appendix E – Conducting an Investigation**

### **Introduction**

The purpose of this document is to provide guidance in conducting an investigation when it is either suspected or alleged that an employee has breached the School's/The Royal Borough's policies or procedures and, if proven to be true, would warrant disciplinary action.

In cases of alleged or suspected child safeguarding the school's LADO, and HR, must be informed immediately.

In cases where the incident could potentially be a criminal offence the Police, and Schools' HR, must be informed immediately. If this is the case the School should take no further action until it is clear whether the Police will be proceeding with the case, or not.

Please substitute chair of Governors, where the document states HOS, if it is the HOS who is being investigated or if not appropriate for the HOS to investigate.

### **Commencing the Investigation**

When a potential disciplinary matter arises, the HOS should arrange for the necessary investigations to be conducted to establish the facts promptly before memories of events fade and to avoid any undue stress on the employee concerned.

If the allegation is either a child protection issue or a potential criminal offence either the Designated Child Protection Officer (LADO) or the Police will direct the school on what action may be taken. Any other potential disciplinary matter will need to be investigated by the School.

When deciding how the investigation should be carried out there are a number of issues the HOS should consider, such as:

- The level of alleged misconduct  
Employees are normally suspended if the allegation is of gross-misconduct.

- The type of alleged misconduct  
The way the misconduct was reported/discovered, and the type of misconduct, may raise concerns over confidentiality which may affect the information which is released to the employee

### **The investigating officer**

- this will not be the person who will hear any subsequent disciplinary hearing
- this will be a person with the appropriate training and/or is competent in conducting investigations, e.g. HOS, deputy HOS, other member of the senior management team or Governor.
- In certain circumstances it may be appropriate for the investigator to be someone independent of the school; Schools' HR can provide advice on this.
- If the investigating officer is to be a member of staff then they must be at an appropriate level of seniority to the person they are investigating.
- Schools' HR can provide guidance and support to the investigating officer.

### **The degree of investigation necessary**

The investigation must always be thorough but not all cases will require the same degree of input. The complexity and severity of the misconduct will determine the degree of investigation needed, ranging from:

- a short investigation where the issues are relatively straightforward, e.g. an investigation relating to an employee's time-keeping



- a lengthy investigation where the issues concerned are of a complex nature, e.g. where a number of serious complaints have been received from parents/pupils
- the investigation will be considerably simpler where the employee accepts the allegations made against them

### **Informing the Employee**

Prior to an investigation being conducted the individual must be informed.

As soon as possible the HOS or investigating officer, as appropriate, must arrange to meet with the employee. During the meeting the employee should be informed that:

- an allegation of misconduct has been made, giving the details as they are known at that time
- the allegation is to be investigated, in accordance with this guidance document, and by whom
- they have the right to respond to the allegation and an investigative interview will be arranged for them to do so
- the purpose of the investigation is to determine if there is a disciplinary case to answer and if a disciplinary hearing should be arranged
- they must not discuss the detail of the allegation with any other member of staff, pupil or parent without the express permission of the HOS
- they can be accompanied by a union representative or work colleague also employed by the School/The Royal Borough at any investigative meetings. If the employee is intending to be represented by the union they should be encouraged to make contact with them as soon as possible

The details of this meeting should be confirmed to the employee in writing and ideally the date of the employee's interview (at least 5 days' notice should be given) should be included. A copy of this guidance document should be included so that the employee is clear on how the investigation will be completed and what to do if they have a complaint.

### **Documenting the process**

It is essential that the investigation process is documented as it develops to show the steps taken by the investigating officer, e.g. how the complaint came about, the effort made to obtain access to witnesses, any advice obtained etc. This information, along with witness interview notes/statements and any documentary evidence should be retained as it will form the basis of management's case at the disciplinary hearing, should one be necessary.

### **Interviewing the employee**

As soon as possible the employee must be interviewed.

Details of the interview should have been confirmed to the employee in the letter confirming the investigation.

Notes of the interview should be made, signed by the employee, the investigating officer and the employee's companion as confirmation of their accuracy and retained confidentially.

## **Witnesses**

As part of the investigation, all those who are thought to have relevant evidence should be asked to provide this, including pupils, parents and members of the public.

### **Witnesses who will not attend a later disciplinary hearing**

All employees of the School/The Royal Borough have a duty to co-operate with disciplinary enquiries, and are required to attend disciplinary hearings as necessary. However, there may be circumstances, such as holidays, which prevent them from attending the hearing. In addition, in the case of pupils, parents or members of the public, it might be either inappropriate that they attend or they may be unable/unwilling to.

In a situation where a witness will not be attending the disciplinary hearing their evidence should be taken, prior to the disciplinary hearing and, when possible, in the presence of the employee's representative.

Following the interview the witness, the investigating officer and the employee representative should sign the notes (unless there are special circumstances that make this impracticable) as confirmation of their accuracy and retained confidentially.

A copy of any interview notes/statements, of witnesses who will not be attending the disciplinary hearing, will be provided to the employee prior to the disciplinary hearing.

### **Witnesses who will attend a later disciplinary hearing**

Witnesses who are able to attend the disciplinary hearing should be interviewed and notes taken, but this does not need to be in the presence of the employee's representative as the employee will be given the opportunity to cross-examine such witnesses at the disciplinary hearing.

A copy of any interview notes/statements, of witnesses who will be attending the disciplinary hearing, will be provided to the employee prior to the disciplinary hearing.

### **The investigating officer's consideration of the facts**

In deciding whether there is a disciplinary case to answer the investigating officer's consideration should include the following factors:

- the manner in which the suspicion/allegation was raised
- any explanation offered by the employee concerned when interviewed
- information gleaned from any interviews or documents considered
- whether there may be an inappropriate motive on the part of a person who reported the matter
- any known information as to mitigating circumstances that may affect the decision to instigate disciplinary proceedings or affect the stage at which such proceedings may be instigated
- any advice given by Schools' HR

### **Concluding the Investigation**

When the investigating officer has concluded whether there is a disciplinary case to answer the HOS or the Chair of Governors, as appropriate, should make the necessary arrangements. If the

conclusion is that there is a disciplinary case to answer then the hearing officer should arrange a disciplinary hearing, if not then they must inform the employee, in writing that no further action will be taken. A copy of this letter should be kept by the HOS.

**Complaint against the investigating officer which arises during the investigation**

Should the employee complain (in writing) during the investigation, alleging that the investigating officer has not conducted the investigation in line with this guidance document, the investigation may be suspended for a short period. At which time the Chair of Governors will nominate an appropriate person to consider the specific allegation. That person’s decision would be final. Should such consideration take place and the allegation is proven, another investigating officer would be brought in to investigate the original issue.

**Appendix F – Disciplinary Investigation Report Template**

Disciplinary Investigation Report Date:	Report Author First- Last- title
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Employee name Employee Job Title	School
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Terms of Reference

Explanation of scope of report – i.e. in accordance with the School’s Disciplinary Procedure

**Background summary**

Where do they work, job title, grade, nature of what work they do, and for how long.

The manner in which the suspicion/allegation/complaint was raised.

Summary of the incident.

What date did the incident(s) occur.

**Evidence**

This is the main body of the report.

Facts gleaned from any documents considered.

Facts gleaned from any interviews.

Whether there may be an inappropriate motive on the part of a person who reported the matter.

Are there witnesses? Who are they? Where do they work, job title, grade.

What did the witnesses observe (i.e. saw or heard for themselves)?

Strictly do not include volume information, such as interview notes or other reference material within this section. That type of documentation should form part of the Appendices.

**Employee response**

Any explanation offered by the employee concerned when interviewed and their response to evidence put to them.

Any known information as to mitigating circumstances that may affect the decision to instigate disciplinary proceedings.

**Conclusions**

What have you concluded based on the evidence gathered?

Any previous relevant warning issued that is unexpired.

**Recommendations**

State whether based on the evidence you believe that a breach of the School’s rules of conduct has probably happened and accordingly that there is a ‘case to answer’.

If this is the case, you would normally recommend that a formal disciplinary hearing be arranged to consider the evidence and for a decision to be made.

**Appendices**

Appendix A - The investigative process should be documented as it develops, to show the steps taken by the investigating officer, e.g. how the complaint came about, the effort made to obtain

access to witnesses, any advice obtained. It may be necessary to rely on such information following the investigation. List documentary reference material as appendices here e.g. attach material that backs up the evidence e.g. interview notes, documents.

Appendix B - Only include appendices that are **specifically referred to within the main body of this report.**

Appendix C - etc.

#### **Appendix G - Who Should Attend a Formal Disciplinary Hearing**

- **The hearing officer**, i.e. HOS, Governor or disciplinary panel. The hearing officer will remain present throughout the hearing including the decision making stage.

- **The employee, and/or their representative, who may present their case.** The employee may be accompanied by their union representative or work colleague also employed by the School/The Royal Borough. The employee and/or their representative remain present throughout the hearing, but withdraw whilst the decision is made.
- **The person who will present management’s case.** Wherever appropriate, management's case should be presented at the hearing by the investigating officer. This person shall not be a member of the disciplinary panel and will be present throughout the hearing, but shall withdraw whilst the decision is made.
- **The Director of Children’s Services (normally School’s’ HR)** has the right to attend any disciplinary hearing (and remain present) where an employee may be dismissed, and in any event, his/her advice must be sought before any decision to dismiss is made.
- **The HOS** is also entitled to attend any disciplinary hearing in which they are not the hearing officer. They would have to withdraw whilst the decision is taken.
- **HR** may attend (and remain present) during the disciplinary hearing as advisor to the hearing officer. This person may also act as the representative of the Director of Children’s Services.
- **Minute taker.** Arrangements should be made for minutes to be kept of the disciplinary hearing. This may be done either by a member of the disciplinary panel or by arranging for a minute taker to be present.
- **Witnesses.** A witness should only be present at the hearing during the time that he/she is actually giving evidence, or answering any questions. Please refer to section on witnesses or further information. Witnesses may be accompanied at the hearing, by not more than one person, to give support or comfort. Such person will not be permitted to otherwise participate in the proceedings.

#### Appendix H - Organising the disciplinary hearing

Arrange convenient date and invite the Hearing officer(s), Officer presenting management case, witnesses, minute taker, Schools’ HR and the employee and their representative

Send out the following documents to the Hearing Officer(s) and employee: invite letter (giving 5 working days notice), disciplinary procedure, all witness statements, any documentation the Officer presenting management case will be referring to and any other documentary evidence requested to be included.



At the start of the hearing, the hearing officer should confirm the purpose of the hearing; ensure all of the correct attendees are present; do formal introductions and explain the formal procedure. The hearing officer(s) should confirm the employee has received the invite letter with the allegation details and aware of their right to be accompanied and to state their case and to call witnesses if desired.



Management presents their case and call any witnesses. The hearing officer(s), the employee, their companion, and HR may ask questions of the employee and any witnesses.



Employee presents their case and calls any witnesses. The hearing officer(s), the person presenting management's case, their companion, and HR may ask questions of the employee and any witnesses.



Both parties to summarise their cases respectively.



When hearing officer(s) is satisfied all the facts have been presented, the employee, their companion and the person presenting the case should withdraw whilst the case is deliberated. If any additional questions need to be asked all parties should return to the hearing. Decision making questions below can be referred to support the decision making.



When the hearing officer(s) has reached a conclusion, they should recall the employee, their companion and officer presenting management case to give decision. If a conclusion cannot be reached on the day then inform employee they should hear within 14 days of the decision. Employee has the right of appeal within 10 working days.



Formal minutes taken at the hearing must be shared with all parties present at the hearing within 2 weeks of the date of the hearing. Minutes must be reported to the governing body.

as in considering an appeal it is important to remain aware of the guidance on reaching the original disciplinary decision.

Officers considering whether an employee is blameworthy of the allegations put before them should consider their responses to the following questions:-

**Whether the misconduct charge against the employee is found?**

1. Has there been as much investigation as is reasonable in the circumstances?
2. Has sufficient regard been given to any explanation put forward by or on behalf of the employee?
3. Is it genuinely believable that the employee has committed the misconduct as alleged?
4. Are there reasonable grounds on which to sustain that belief on the balance of probabilities (i.e. is it more likely than less likely that the employee did what is alleged)?

**What is the appropriate sanction for the employee's misconduct?**

5. Is the misconduct sufficiently serious to justify the disciplinary decision contemplated?
6. Has regard been given to any mitigating circumstances put forward by or on behalf of the employee (and any response to these by management's representative, if any)?
7. Is the decision within the band of reasonable responses of a reasonable employer in the circumstances?

The effect of answering 'yes' to each of the first four questions is to reach a finding that the allegation of misconduct has been made out. Questions 5 to 7 help you decide what to do about it.

Question 5 is part of a statutory test – the justification for the decision in relation to the nature of the misconduct. Here it is necessary to consider whether there are any current warnings on the employee's record. The ACAS code of practice on disciplinary practice and procedures in employment recommends 'that disciplinary procedures should ensure that, except for gross misconduct, no employees are dismissed for a first breach of discipline'. If dismissal is a possibility, in the absence of a prior and live warning question 5 may require a reasonably objective view of whether gross misconduct has occurred. The sanction imposed should be both appropriate and consistent with similar cases in the past, and with any indications in the disciplinary code of a likely penalty.

The decision may also include, as a form of disciplinary action, supplementary action accompanying a warning or dismissal. Such action should be applied reasonably and be proportionate to the misconduct, and could include the recovery of monies; the withholding of allowances, benefits, or increments; demotion and/or transfer; increased supervision or training.

Question 6 may call for an invitation to management's representative to respond to any plea in mitigation put forward by or on behalf of the employee. The management response may take into account the employee's position held and performance, length of service, previous conduct and disciplinary record, whether or not these have been put forward by or for the employee.

Question 7 crystallises several important judgements on the fairness of dismissals. More particularly, evidence that it was considered before a dismissal decision was taken should register favourably with an Employment Tribunal.



Evidence of these 7 questions being considered at the decision making stage is good practice and could convince an Employment Tribunal of management's reasonableness in the circumstances.

#### **Appendix I - Organising the appeal hearing**

Arrange convenient date and invite the appeal panel, Chair of original disciplinary hearing, witnesses, minute taker, Schools' HR and the employee and their representative.



Send out the following documents to the appeal panel and employee: invite letter (giving 5 working days notice), copy of appeal letter and documentary evidence submitted by employee, copy of the decision letter from original hearing, documentation the chair of the original hearing will be referring to and any other documentary evidence requested to be



At the start of the hearing, the chair of appeal panel should confirm the purpose of the hearing; ensure all of the correct attendees are present; do formal introductions and explain the formal procedure. The appeal panel should confirm the employee has received the invite letter aware of their right to be accompanied and to state their case and to call witnesses if desired.



Employee presents their grounds for appeal and calls any witnesses. The appeal panel, the chair of the original hearing and HR may ask questions of the employee and any witnesses.



The chair of the original hearing responds to the grounds for appeal put forward by the employee and calls any witnesses. The appeal panel, the employee, their companion, and HR may ask questions of the chair of the original hearing.



Both parties to summarise their cases respectively.



When the chair of the appeal panel is satisfied all the facts have been presented, the employee, their companion and the chair of the original hearing should withdraw whilst the case is deliberated. If any additional questions need to be asked all parties should return to the hearing.



When the appeal panel has reached a conclusion, they should recall the employee, their companion and chair of the original hearing to give decision. If a conclusion cannot be reached on the day then inform employee they should hear within 14 days of the decision. The appeal panel's decision is final.



Formal minutes taken at the hearing must be shared with all parties present within 2 weeks of the date of the hearing.