

## Providing a Clear Framework to Help Promote Good Employment Relations

**Disciplinary rules and procedures provide guidance to employees on the standards and conduct expected of them and a mechanism to deal with the consequences of failing to meet such standards**

### Key points

- The principle features of this disciplinary procedure have been defined in accordance with the ACAS (Advisory, Conciliation and Arbitration Service) Code of Practice on Disciplinary Practice and Procedures at Work which incorporate the Employment Act 2002 and the powers created under it.
- This procedure follows the East Sussex County Council model, which has been drawn up in consultation with all the recognised unions and where relevant the Diocese of Arundel and Brighton Schools Commission and The Diocese of Chichester Board of Education.
- Its purpose is to assist the Trust in meeting its obligations, under the Education Reform Act 1988, to establish disciplinary and dismissal procedures and to make them known to their staff. The School Staffing Regulations (2003) have also been incorporated into this document.
- Each employee has a responsibility to be familiar with the rules and standards of conduct which relate to his/her area of work and with the Trust's standards of business conduct

## 1. Introduction

The aim of this document is to formulate arrangements which will ensure a fair, effective and consistent method of dealing with disciplinary matters in each Academy governed by the Hastings Academies Trust.

The purpose of the disciplinary procedure is to clarify the basic rules and requirements of the organisation; to specify a procedure for maintaining uniform standards of discipline; and identify a process for dealing with any breach of those standards.

The provisions set out in this procedure are admissible in evidence at employment tribunals. No material changes should be made to this procedure without the permission of the Trust in order to ensure compliance with the relevant legislation and with the ACAS code of practice.

## 2. General principles

The principles of this policy follow those recommended by the ACAS Code of Conduct for disciplinary procedures.

The Executive Officers of the Trust<sup>1</sup> and other managers operating the procedure, will apply the Trust's commitment to equality of opportunity, by treating all employees fairly and without discrimination, and in accordance with the East Sussex County Council's *Promoting Diversity and Equality in Employment Policy* and the Trust's *Equality and Diversity* policy.

No disciplinary hearing will be held until the case has been fully investigated.

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<sup>1</sup> i.e. the Chief Executive, Principals, Director of Development, Director of Operational Services, Director of Policy and Governance and Director of School Improvement

The Executive Officers have a responsibility for ensuring that all members of staff have been made aware of the disciplinary procedure and the rules of the Trust. Each member of staff should be informed of the standards of conduct and the levels of performance expected in their job.

Throughout this policy, the terms “executive officers and managers” can be taken to include their deputies or a senior member of staff to whom authority has been delegated to conduct the investigation or manage the process.

An employee shall have the right under this policy to be:

- Notified in writing of the nature and reasons for the disciplinary action being considered;
- Advised of the nature of the evidence against him/her;
- Provided with a copy of the policy and procedure;
- Represented by a Trade Union Representative or work-place colleague not acting in a professional capacity at all formal stages of the procedure (there may however be exceptional circumstances where this is not possible, e.g. immediate suspension for alleged gross misconduct, though every effort will be made to arrange for the attendance of an appropriate trade union officer);
- Entitled to appeal against any disciplinary action which results in a formal warning or dismissal.

It is recognised that in most instances minor breaches of conduct should be dealt with informally and promptly by the line manager without recourse to the formal disciplinary procedure. The use of supervision, coaching and an informal reprimand can also be effective in improving conduct. A note of such discussions should be in the form of a letter to the employee. This letter should provide for the employee to respond if they wish to do so. All correspondence of this nature should be disregarded for disciplinary purposes after one year.

Where, having established that there is substance in an allegation, an investigation should commence within 10 working days of the alleged misconduct having occurred or come to the attention of the relevant executive officer.

Disciplinary action shall not be taken against any employee for pursuing reasonable action concerned with preventing, or reducing risks, to the health and safety of other employees and/or pupils or students, or any acts covered by the Trust’s Whistleblowing Policy; however, action will be taken against employees who make malicious claims. The Public Interest Disclosure Act 1998 and the Employment Rights Act 1996 provide specific rights for workers who disclose information about alleged wrongdoings in certain specific circumstances

### **3. Scope**

This procedure has been agreed with the recognised trade unions and will form part of each employee’s contract of employment.

This procedure applies to all employees employed by the Trust and employed to work at each Academy within the Trust with the exception of support staff within their first year of employment who are covered by the *Supported Introduction to Employment Policy*.

The procedure does not apply where a manager believes that an employee’s performance or behaviour is a matter of:

- Capability, in which case a separate procedure dealing with the management of unacceptable performance is available to address such concerns;
- Certificated sickness absence and certificated ill health where the Trust’s management of attendance procedure should be used.

### **4. Representation**

In all cases where action is to be taken under the formal stages of the disciplinary procedure, the employee has the right to be represented by their trade union, or accompanied by a single friend or

work-place colleague not acting in a professional capacity. It is the responsibility of each employee to arrange their own representation.

There is no right to legal representation at any stage of this procedure.

## **5. Accredited representatives of trade unions or staff organisations**

Disciplinary action against an accredited trade union representative can lead to a serious dispute if it is seen as an attack on the functions of a trade union. Formal disciplinary action against a Trade Union representative should not be taken until the circumstances of the case have been discussed with a senior trade union representative or full-time official, although normal disciplinary standards should apply to their conduct as workers.

## **6. Criminal action**

If the case involves suspected criminal action at work, the Trust must be informed of any alleged offence which could lead to Police proceedings. Provided the allegations have been properly investigated and, although normally the expectation would be that the criminal investigation and any consequent action should be concluded first, in exceptional circumstances, the Trust may decide to take disciplinary action before the outcome of the court case is known. The employee should have the opportunity to be accompanied by a trade union representative or work colleague to make representations on this question.

An allegation of a criminal offence committed outside of work will not be treated as an automatic reason for disciplinary action. The main consideration is whether the offence is one which renders the employee unsuitable for remaining in the Trust's employment. Where it is felt necessary to investigate the case, this must be carried out using the disciplinary procedure. If sufficient evidence has been gathered, and if it is believed on the balance of probabilities the employee committed the offence, there is no obligation to wait until the outcome of any criminal proceedings before taking disciplinary action.

### **Financial irregularity**

If an investigation involves alleged financial irregularity, corruption or fraud the Director of Operational Services must be informed immediately. The Director of Operational Services will then arrange for a financial investigation into the allegations. The Investigating Officer should be involved or kept informed of progress throughout.

If regarded as serious, the Director of Operational Services and the Chief Executive or, in the absence of the Chief Executive, the Principal will decide whether the matter should be referred to the Police.

## **7. The disciplinary investigation**

### **Informal action**

Cases of minor misconduct are usually best dealt with informally. A quiet word is often all that is required to improve an employee's conduct, quickly and confidentially. The Trust's *Staff Code of Conduct policy* may be helpful in addressing such issues. 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 an improvement, or the misconduct is considered to be too serious to be classed as minor, the relevant Executive Officer should take formal action.

### **Formal action**

Where formal action is required, wherever possible the allegations should be thoroughly investigated by another senior manager appointed by the relevant Executive Officer. This person will be known as the Investigating Officer and will be advised by a personnel officer. This person

should be independent from the allegations resulting in potential action. The employee will be informed in writing of the situation, the broad nature of the allegations and the procedure to be followed.

If it is not possible to appoint another senior manager to conduct the investigation, the relevant Executive Officer should do so, but the initial dismissal decision should then be referred to a Disciplinary Panel.

The Investigating Officer will undertake a thorough investigation into the matter. The employee's version of the events will be obtained and witnesses interviewed and asked to provide statements where this is appropriate. The employee will be advised that any information gained by questioning can be presented at any subsequent disciplinary hearing.

Where children or young people are asked to provide written statements or verbal accounts, care needs to be taken to ensure that there are no opportunities for collusion. Parents'/carers' consent to interview children should be obtained where appropriate. Such statements should be obtained on the day of the incident or as soon as possible afterwards.

The Investigating Officer may call on other employees in the Trust/Academy to supply information which will assist in the investigation. Where other employees are questioned, it should be explained to them that they may be asked to provide a statement and/or to attend a disciplinary hearing and act as a witness. If the Investigating Officer or employee wish to call witnesses at the hearing, their identity will be disclosed to the other side in advance, unless exceptional circumstances prevent this.

In recognition of both employee and management time and the unsettling nature these circumstances can have on the employee, management and the Trust/Academy itself, it is important that the investigation process is concluded as quickly as possible. To facilitate this, should the employee be unable to attend the investigation meeting (for whatever reason) and has given advance warning of this fact, the meeting will be rescheduled for another date. However, it should be noted that such a meeting will only be rescheduled on one occasion, within 5 working days of the first date. Should the employee be unable to attend the rescheduled investigation meeting, they will be asked to put forward written representation. The investigating officer will then take a decision in the employee's absence based on the evidence available.

At this stage the investigating officer can:

- Decide that there is insufficient evidence to pursue disciplinary action, in which case the employee will be informed of this in writing, and if under suspension or refrained from work, will return to work immediately;
- Decide that formal disciplinary action is not appropriate and recommend that formal written conduct counselling setting takes place with monitoring and reviewing at regular intervals;
- Expectations of future conduct will be contained in a letter to the employee. The relevant Executive Officer will continue to monitor and review the employee's conduct to ensure that formal standards are met;
- Decide that there is sufficient evidence to support the allegations. In this case the Investigating Officer will recommend that a formal disciplinary hearing is arranged .

Where malicious allegations are made by pupils, it should be noted on their files and the school should consider an appropriate sanction.

## **8. Suspending an employee**

If the matter being investigated is serious, e.g. where it would be inappropriate for the employee to remain at work or their presence may inhibit a proper investigation, the employee will be suspended on full pay by the relevant Executive Officer in consultation with a Personnel Practitioner.

The relevant Executive Officer or their delegated representative will conduct any interview which may lead to suspension, and he/she will normally be accompanied by the Academies' Personnel

Officer. The Articles of Association do, however, provide not only the relevant Executive Officer with powers of suspension, but also the Board of Directors.

Alternatively, if during the course of an investigation, the Investigating Officer is of the view that a breach of discipline may have occurred the employee may then be suspended.

Suspension is a neutral act and should be for as short a time as possible. A decision to suspend an employee will be taken when it is necessary to safeguard both the organisation and the employee from further allegations. Any suspension should be kept under regular review.

Suspension will normally last until an investigation has been concluded or any disciplinary hearing has been held. The employee will be informed immediately of their suspension in person. The employee will receive confirmation in writing including the reason(s) for the suspension within five working days.

As a point of contact, the employee should be given the name of a member of staff at the Trust/Academy who will not be involved in the investigations. The primary role of the contact is to provide information about the progress of the investigation. The name of the contact will be given in the letter confirming suspension/refraining from work.

Employees who fall sick during the suspension will be subject to the Staff Attendance Policy, and may be required to be examined by a Medical Adviser appointed by the Trust. Their sickness, however, will not necessarily lead to a deferment of the disciplinary investigation. Each case will be considered on its own merits.

Employees who wish to take annual leave during their suspension should make the request through the relevant Executive Officer in the normal way. Suspension alone will not be considered as sufficient reason to carry annual leave forward to the next leave year.

Agency work should not be undertaken within normal working hours while an employee is suspended/refrained.

Employees on suspension/refrainment must not enter Trust establishments unless they have prior permission to do so from the suspending officer. If an employee wishes to collect personal belongings they must contact the Trust's Head of Human Resources to arrange to be accompanied. In addition, the suspended staff member is expected to be available within normal working hours to assist with the investigation. Agency work should not be undertaken whilst on suspension unless prior permission is given by the relevant Executive Officer.

## 9. The disciplinary hearing

Where it is decided by the investigating officer to refer the case to a disciplinary hearing, the employee will be given at least **ten full working days'** notice of the date of the hearing. The invitation to a disciplinary hearing will clearly state the allegations against the employee and the right to representation. A copy of the management case and any supporting information, including any witness statements which may be referred to at the hearing, will also be sent to the employee.

The employee is required to submit a response in writing to the allegations along with any supporting statements or documentation and pass this to the personnel officer attending the hearing **five full working days** before the hearing.

This means that all paperwork will be circulated to all parties at least **five full working days** before the disciplinary hearing as no additional documentation will be accepted as evidence on the day.

### Attendance at the disciplinary hearing

The person hearing the allegation(s) will in most circumstances be the relevant Executive Officer, advised by a personnel practitioner who has had no involvement in the investigation. The relevant Executive Officer on hearing the allegation will decide what action, if any, is necessary.

The Investigating Officer will not take part in deciding any disciplinary action but will be asked to present the case at the hearing.

The employee will attend the hearing and is entitled to be accompanied by a Trade Union representative or workplace colleague and will be asked to set out their case and answer any allegations that have been made. The employee will also be allowed to ask questions, present evidence and be given an opportunity to raise points about any information provided by witnesses.

### **Failure by the employee to attend a disciplinary hearing**

If the employee is unable to attend the meeting, an alternative date will be arranged, within 5 working days of the first date. If they are unable to attend that meeting it will then be held in their absence, but a representative will be given the opportunity to present the employee's case on their behalf.

If the employee is unable to attend due to long term sickness absence and no alternative date can be mutually agreed, the meeting can go ahead after taking advice from an Occupational Health Advisor appointed by the Trust. The employee's representative can attend to speak on the employee's behalf. Pregnancy related illness will be an exception and managers should take advice from the Trust's Head of Human Resources.

### **Witnesses**

If the Investigating Officer and/or employee wish to call witnesses at the hearing, their identity will be disclosed to the other side in advance, unless exceptional circumstances prevent this, e.g. where anonymity has to be preserved.

Where video evidence is to be considered at a hearing, the employee shall be given the opportunity to see the video on or before the date on which notice of the hearing is required to be given.

It is preferable that the witnesses who have made statements attend the hearing, although this cannot be mandatory if they are not a Trust employee.

### **Grievances and dignity at work complaints during the disciplinary process**

In the event that an employee raises a grievance or a dignity at work complaint in the course of the disciplinary process, or there remains an outstanding grievance or complaint, the Trust will consider suspending the disciplinary process until the outcome of the grievance or dignity at work investigation is known; each case will, however, be considered on its merits to ensure that the Trust is acting reasonably.

## **10. Levels of disciplinary sanctions**

### **First written warning**

Where following a disciplinary hearing, an employee is found guilty of misconduct, the employee should be given a first written warning setting out the nature of the misconduct and the change in behaviour required.

The employee should be informed of the consequences of failing to improve their behaviour which will be either a further written warning and/or ultimately, dismissal. The first written warning could be agreed without the need to call a formal hearing, but only with the agreement of the employee who may wish to take advice from their representative. The first written warning will remain live for **12 months**.

## **Intermediate written warning**

For a more serious offence (or offences) warranting more than a first written warning, or for a further offence after a first written warning has been given which remains live an intermediate written warning will be given. A copy of this warning will remain live on the employee's personal file for **12 months**.

## **Final written warning**

Where there is a failure to improve or change behaviour in the timescale set in the first written warning, or where the offence is sufficiently serious, the employee should be issued with a final written warning. The final written warning should give details of, and grounds for, the complaint. It should warn the employee that failure to improve or modify behaviour may lead to dismissal or to some other penalty, and refer to the right of appeal. A copy of the final written warning will remain live for **18 months**.

## **Dismissal**

For an act of gross misconduct, dismissal will be without notice (summary dismissal). For an act(s) of further misconduct which in itself is not gross misconduct, after a written warning has been given and remains on file dismissal will be with notice or pay in lieu of notice

## **Reporting of disciplinary action**

Any disciplinary action against a teacher that results in dismissal, the Trust has a legal obligation to refer the case to the Secretary of State for Education for consideration of whether any restrictions should be placed on the member of staff in relation to further employment where they will come into contact with young people.

## **Time limits for warnings**

Whilst the warning is current, it will be considered in any disciplinary or redundancy situation. After a successful final review, details of the disciplinary action and correspondence about the subsequent review will remain on the employee's personal file as part of the record of their work history, but will be disregarded for disciplinary and redundancy purposes. The time limits will start from the date of the decision.

First Written Warning - 12 months  
Intermediate Written Warning - 12 months  
Final Written Warning - 18 months

## **Warnings related to misconduct involving children**

A warning will not be disregarded automatically where it has been given following improper behaviour of a sexual or physical nature towards pupils, students or young people. At the time such a warning is given the employee shall be informed that it falls within this category. In such cases the employee may, if s/he so chooses, lodge an appeal in accordance with the appropriate appeal arrangements set out below, not only against the warning itself and/or its level, but also against the decision to regard the warning as one that cannot be disregarded automatically.

Any warning that is not disregarded automatically shall be reviewed by the Principal at the time it would normally be disregarded. Where the Principal decides not to disregard a warning s/he shall inform the employee in writing and will consider the matter again on one further occasion only. This final review shall be within 10 working days of the anniversary of the first review. If at the final review the Principal decides that the warning should not be disregarded, the employee has the right to appeal to the Trust's Board of Directors. An appeal must be made in writing to the Clerk to the Trust within 5 working days of the employee receiving written confirmation of the Principal's decision.

## **Records**

Where a hearing concludes that there has been misconduct the record shall include any statement or report submitted to the formal disciplinary or dismissal hearing or appeal and the correspondence on the matter with the employee.

In addition the following information shall be retained: a note of the decision taken with the main reasons and the outcome of any appeal.

Where a hearing concludes that an allegation against an employee is without foundation the written record should reflect the discussion, specifying the main reasons for reaching this decision.

All records shall remain confidential and be retained by the Principal on the employee's personal file held at the school. A copy will also be retained on their personnel file by the Trust in a separate sealed envelope. A copy of any record shall be made available to the employee.

## **Advisers to those conducting hearings**

The person(s) conducting a hearing will be advised by a personnel officer who has not previously been involved in the case. A representative of the Trust is entitled to attend hearings and to give advice.

The Principal (except where s/he is the person concerned) is similarly entitled to attend to give advice, but must withdraw, where s/he played a part in the presentation of the case against the employee, or the case itself, while the Disciplinary Panel considers its decision. The Panel must consider any advice given before reaching a decision.

If the Principal is not the person presenting the case, they should not be present as an additional adviser to the process but may be called as a witness. In this circumstance the same provisions of giving evidence, being questioned and then withdrawing whilst the panel consider their decision would apply.

Advisers at hearings shall be limited to no more than two.

Where an employee is employed by the Trust at the Academy and elsewhere, the employee's disciplinary record with the Trust may be taken into account in dealing with any misconduct at the school and vice versa.

Where a decision is made that the employee should cease to work at the Trust or one of its academies, the Trust shall, in addition to terminating the employee's employment at the Trust/Academy, consider what action is necessary in respect of the employment elsewhere.

## **Confidentiality**

The press and members of the public shall be excluded from any hearing arranged in accordance with this procedure. All parties involved in a disciplinary issue shall ensure that the details remain confidential except that any party shall have the right of reply if the other makes details public.

Any breach of confidentiality by any party could be a disciplinary matter in itself.

The Disciplinary Rules for Schools and Colleges sets out types of misconduct which could be worthy of consideration at a disciplinary hearing.

## **11. School Staffing Regulations**

In accordance with the School Staffing Regulations (2003), the Trust may delegate responsibility to make initial dismissal decisions (IDD) to the Principal, following which there will be an opportunity to appeal to a Disciplinary Panel.

Whilst it is expected that the Principal will make the initial dismissal decision, there may be exceptional circumstances where this is not possible. Some examples are:

- (i) Where the Principal is unwilling to perform these duties and has previously never had such responsibilities
- (ii) Where the Principal has been directly involved in the disciplinary process, or has instigated the proposal to dismiss, or is a witness to the conduct giving grounds for the dismissal
- (iii) Where appointments of support staff outside of the leadership group are required to act in a senior management capacity
- (iv) Where the Principal is subject to suspension, disciplinary procedures (including capability) or disciplinary sanction
- (v) Where the Trust has grounds for serious concerns about the performance of the Principal
- (vi) Where the Principal has failed to abide by financial limits agreed

The Principal should contact the Head of Human Resources for further advice, where necessary. The School Staffing Regulations can be accessed on [www.governor.net.co.uk](http://www.governor.net.co.uk).

## **12. Disciplinary hearing procedure**

Where, following investigation it is decided to pursue an allegation of misconduct formally, the hearing will be with the relevant Executive Officer (or other senior member of staff authorised by the relevant Executive Officer for this purpose), who may be accompanied and advised. The managerial level at which warnings may be given shall be determined by the relevant Executive Officer and shall be made known to employees together with this procedure. Where the allegation concerns one of the Executive, the hearing will be conducted by a Disciplinary Panel appointed and authorised by the Board for the purpose of giving such warnings.

### **Presentation of the management's case**

- (1) The relevant Executive Officer or Disciplinary Panel hearing the allegation(s) will make the introductions and outline the process to be followed, to ensure that everyone present understands what is going to happen.
- (2) The relevant Executive Officer or Disciplinary Panel will be advised throughout the hearing by a personnel practitioner. The Personnel Officer will take notes of the meeting which will then be available to all parties present.
- (3) The Investigating Officer will present the case, highlighting key points, and calling each witness if any, to present their evidence in turn. The Investigating Officer will refer to documents as necessary. The Investigating Officer will be advised throughout the hearing by a Personnel Officer.
- (4) The employee and/or their representative may question any witness and the investigator on their evidence.
- (5) The relevant Executive Officer or Disciplinary Panel hearing the allegation(s) may also question any person present.
- (6) Each witness will join the hearing to give evidence and leave after doing so, although they may need to be recalled if necessary.

### **Presentation of the employee's case**

- (1) The employee and/or representative will present their case, referring to any relevant documents, and will be able to question their witnesses.
- (2) The Investigating Officer may question any of the witnesses and the employee on their evidence.

- (3) The relevant Executive Officer or Disciplinary Panel hearing the allegation(s) may also question any person present.
- (4) Each witness will join the hearing to give their evidence and leave after doing so, although they may need to be recalled if necessary.

### Summing up

- (1) The Investigating Officer will summarise the main points of the case.
- (2) The employee and/or their representative will summarise the main points of their case, including any mitigating circumstances.
- (3) At this stage no new evidence may be introduced. The investigator, the employee and their representative then leave the hearing.

### The decision

- (1) The relevant Executive Officer or Disciplinary Panel hearing the case will consider whether on the balance of probability the allegation(s) have been substantiated and determine any disciplinary action. It is sufficient that the employer genuinely believes on reasonable grounds that the employee is guilty of misconduct. The relevant Executive Officer or Disciplinary Panel should take into account the employee's current disciplinary and general record, length of service, actions taken in any previous similar case, the explanations given by the employee and any mitigating circumstances. The relevant Executive Officer or Disciplinary Panel should also consider whether the intended disciplinary action is reasonable under the circumstances. If further clarification or information is required in order to make a decision, both parties will be recalled, or the hearing adjourned until the information is provided.
- (2) The relevant Executive Officer or Disciplinary Panel should hear and consider all the evidence available at the time of the hearing.
- (3) The relevant Executive Officer or Disciplinary Panel will read out their decision, including the reasons for it and, should the allegation(s) be substantiated, notify the employee of the 'disciplinary' action and their right of appeal. In complex cases deliberation may take some time. If this occurs a decision should be made within **two working days** of the conclusion of the hearing, and, in both situations, be confirmed in writing to the employee within 5 working days.
- (4) In cases where the substantiated allegation(s) amounts to gross misconduct or there is a further offence whilst a final warning is in operation, the relevant Executive Officer or Disciplinary Panel shall exercise their powers to determine that the employee should cease to work at the Academy. The Trust should be informed of the determination and the reasons.
- (5) In such cases, the Trust will write to the employee within 14 consecutive calendar days of receipt of the determination to terminate his/her employment at the Academy.
- (6) Unless the dismissal is for gross misconduct, the period of notice given will be in accordance with the employee's conditions of service. Where the dismissal is as a result of gross misconduct, the dismissal shall take effect from the date of the letter sent to the employee by the Trust.

## 13. The appeal process

An employee, who is aggrieved by the disciplinary action which results in a formal disciplinary measure or dismissal, has the right of appeal against such action. An employee should appeal in writing within **5 working days** of receipt of the written decision.

Appeals against a disciplinary warning or a dismissal will be heard by a second Disciplinary Panel appointed and authorised by the Board to hear appeals. To exercise this right, the employee or their representative should write to the Clerk to the Trust.

No Director hearing an appeal shall have been directly involved in the case to which the appeal relates. Having knowledge of a case does not prejudice a Director's right to sit on a panel. However, if the person concerned has expressed a view or made a comment about the case they cannot be on the panel.

The letter of appeal should state whether it is against:

- the allegations not being substantiated; and/or
- the form of the disciplinary sanction.

The panel will be advised by a personnel officer not yet involved in the case prior to this point.

### **Format of the appeal hearing**

All appeals will be heard at the earliest possible date and within 20 working days of receipt of the appeal.

The employee will be informed in writing of the place, date and time of the appeal hearing at least **10 full working days** before the date of the appeal hearing. A copy of the management case and any supporting information which may be referred to at the appeal hearing will be enclosed, including any witness statements.

The employee is required to submit a staff side case in response to the allegations along with any supporting statements or documentation and pass this to the management side **five full working days** before the hearing.

New evidence is permissible at the appeal. If either party wishes to introduce new evidence, they should give at least **5 working days** notice to the other party, prior to the hearing. Details of the new evidence together with the names/statements of any new witnesses should be given to the other party. If at the appeal hearing, the new evidence is of such significance that further investigation or information is required, it may be appropriate for an adjournment and to reconvene when this has been completed.

A full re-hearing will take place unless agreement has been reached by both parties.

The procedure will follow the same format outlined in section 11.

### **The decision**

The Disciplinary Panel hearing the appeal will consider the matter in private and decide whether or not to uphold the appeal. The Personnel Officer will also be present, but only to advise on aspects of this procedure. If further clarification or information is required in order for a decision to be reached, both parties will be recalled or the appeal can be adjourned until the required information is provided.

The Disciplinary Panel may increase, decrease or confirm the disciplinary sanction given at the original hearing.

The Disciplinary Panel may increase the disciplinary sanction only where serious new evidence is heard which has a significant bearing on the case and was unavailable or not disclosed at the original hearing.

The employee will normally be asked to wait for the decision on their appeal. However, if the case is a complex one, the employee will be given the opportunity to leave and called back at a later time to

receive the decision (accompanied wherever possible by their representative). In any event a decision will be made **within 2 working days** of the conclusion of the appeal hearing.

The Disciplinary Panel or nominated manager will confirm the decision to the employee in writing within **5 working days** of the conclusion of the appeal hearing.

The decision of the Disciplinary Panel is **FINAL** and there is no further internal right of appeal.

#### 14. Policy status and review

Written by:	Bill Goodwin
Owner:	Head of HR
Status:	Approved
Approval date:	V1 = 13/2/13 (Resources Committee) V1a = minor updates to terminology made in August 2014 V1b = Appendix 2 added July 2017
Review Date:	

## Annex 1 – Responsibility matrix

### 1. Principles

- Executive Officers: appointed and dismissed by Board or University of Brighton
- Teaching Staff: appointed and dismissed by Principals
- Support Staff: appointed and dismissed by Director of Operational Services or Academy Principal

### 2. Responsibilities

POST	INVESTIGATION AND PRESENTATION	DISCIPLINARY HEARING	APPEAL
<b>Executive Officers</b>			
Chief Executive	University of Brighton procedures		
Executive Principal	Chief Executive	Board Panel 1	Board Panel 2
Principal	Chief Executive	Board Panel 1	Board Panel 2
Director of Development	University of Brighton procedures		
Director of Operational Services	University of Brighton procedures		
Director of Policy and Governance	University of Brighton procedures		
Director of School Improvement	University of Brighton procedures		
<b>Teaching Staff</b>			
Associate Principal	Principal of other Academy	Executive Principal	Board Panel
Vice Principal	Principal of other Academy	Principal	Board Panel
Federation Leader/Director	Vice Principal	Principal	Board Panel
Heads of School	Vice Principal	Principal	Board Panel
Curriculum Leader	Vice Principal	Principal	Board Panel
Deputy Curriculum Leader	Vice Principal	Principal	Board Panel
Student Support Manager	Vice Principal	Principal	Board Panel
Other Manager	Vice Principal	Principal	Board Panel
TLR	Vice Principal	Principal	Board Panel
Class Tutor	Vice Principal	Principal	Board Panel
<b>Support Staff</b>			
Head of Service	Vice Principal	Director of Operational Services	Board Panel
Deputy Head of Service	Head of Other Service	Head of Service	Director of Operational Services
Other Manager	Vice Principal or Head of Other Service	Principal or Head of Service	Director of Operational Services
Staff	Vice Principal or Head of Other Service	Principal or Head of Service	Director of Operational Services

## Appendix 2

### Examples of Gross Misconduct

The following are examples of behaviour that could lead to summary dismissal. The list is not exhaustive and it is acknowledged that it will be necessary to exercise judgement in specific cases to determine whether particular misconduct is to be regarded as gross misconduct. Any decision to dismiss an employee must be fair and reasonable in all the circumstances.

- a. Any form of physical violence towards students. Please refer to the Code of Conduct for employees whose work brings them into contact with young people.
- b. Physical violence, actual or threatened towards other staff or visitors to the Trust.
- c. Any sexual approach or response to a students or the development of an intimate relationship with a pupil, whatever the provocation. Please refer to the Code of Conduct referred to above.
- d. Sexual offences, sexual insults, sexual harassment or sexual discrimination against students, other staff or visitors to the Trust.
- e. Racial offences, racial insults, racial harassment or racial discrimination against students, other staff or visitors to the college.
- f. Theft of Trust monies or property and of monies or property of colleagues, students or visitors to the Trust. Removal from Trust premises of property which is not normally taken away without the express authority of the Principal or of the owner of the property may be regarded as gross misconduct.
- g. Deliberate falsification of documents such as time sheets, bonus sheets, subsistence and expense claims for the purpose of gain.
- h. Acceptance of bribes or other corrupt financial practices.
- i. Wilful damage of Trust property or of property belonging to other staff, students or visitors to the Trust.
- j. Wilful disregard of safety rules or policies affecting the safety of students, other staff or visitors to the Trust.
- k. Any wilful act that could result in an action for negligence against the Trust.
- l. Refusal to comply with reasonable instructions given by staff with a supervisory responsibility
- m. Gross neglect of duties and responsibilities.
- n. Unauthorised absence from work.
- o. Being untruthful and / or engaging in deception in matters of importance within the Trust community.
- p. Deliberate breaches of confidentiality particularly on sensitive matters.
- q. Being incapable by reason of alcohol or drugs (nor prescribed for a health problem) from fulfilling duties and responsibilities of employment. (The Trust has produced advice that would need to be taken into account in the case of staff who may be dependent on alcohol).
- r. Conduct which substantially brings the name of the Trust into disrepute or which seriously undermines confidence in the employee.
- s. Any admitted offence or police caution of a sexual child abuse nature.
- t. Any admitted offence or police caution relating to a serious physical abuse of a child.

### Other Misconduct

The following are examples of behaviour that could lead to formal disciplinary warnings:

- a. Unsatisfactory timekeeping without permission.
- b. Neglect of safety rules and procedures. Some offences of wilful neglect may be regarded as gross misconduct.
- c. Breaches of confidentiality. Deliberate breaches on sensitive matters may be regarded as gross misconduct.
- d. Failure to comply with reasonable work related requirements or lack of care in fulfilling the duties of the post.
- e. Behaviour towards other employees, students and visitors that gives justifiable offence. Certain behaviour giving rise to offence may be regarded as gross misconduct.
- f. Acting in a manner that could reasonably be regarded as rude, impolite or contemptuous. In certain circumstances such behaviour may be regarded as gross misconduct.

- g. Conduct that is considered to adversely affect either the reputation of the Trust or confidence in the employee.