



*Doing our best to achieve our best*

Clarendon Primary School, Nursery & Family Centre

## Disciplinary Policy and Procedures for all staff

### ***Note on delegation of power to dismiss:***

*This procedure assumes that the power to dismiss staff remains with the Governing Body and has not been delegated to the Headteacher.*

<b>Policy Scope and Purpose</b>	
<b>Scope and Purpose:</b>	Clarendon Primary School's disciplinary policy, procedure and associated guidance have been devised to ensure that lawful, fair and effective arrangements exist for dealing with matters relating to conduct and behaviour of a more serious and/or persistent nature.
<b>Aims and Objectives</b>	<p>The objectives of this policy are to ensure that:</p> <ul style="list-style-type: none"> <li>• Employees are treated in a fair and consistent manner.</li> <li>• Managers are supported in carrying out their responsibilities in maintaining high standards of conduct for all employees, and employees' standards of conduct are improved wherever necessary and practicable.</li> <li>• Issues are managed swiftly and effectively.</li> <li>• The children, employees, public and other recipients of the school's services are protected from the consequences of misconduct.</li> </ul>
<b>Start point of the Policy:</b>	When preliminary enquiries indicate that there is enough evidence to suggest that some misconduct has taken place that cannot be handled through everyday management processes.
<b>End Point of the Policy:</b>	<p>The outcome may either be one of the following:</p> <ul style="list-style-type: none"> <li>• No formal action</li> <li>• An appropriate level of written warning</li> <li>• Action short of dismissal</li> <li>• Dismissal</li> </ul>
<b>Legislative requirements:</b>	<p>The law on unfair dismissal requires employers to act reasonably. What is classed as reasonable behaviour will depend on the circumstances of each case; however, the core principles are set out in the <a href="#">Acas Code of Practice on disciplinary and grievance procedures</a> and its accompanying <a href="#">Acas guide to discipline and grievances at work</a> which are adhered to in this Policy and Procedure.</p>
<b>Who uses this Policy:</b>	This policy applies to all employees at the school.
<b>Roles and Responsibilities:</b>	<ul style="list-style-type: none"> <li>• The Governing Body, Head Teacher and Line Managers are responsible for implementing the policy in a fair and consistent manner.</li> <li>• All employees will be responsible for engaging with and adhering to this policy and procedures.</li> <li>• Trade Unions will be consulted regarding the content of the policy and will be reasonably available to support and represent their members.</li> <li>• The School's Human Resource service provider will be responsible for providing guidance and direction.</li> </ul>

## Policy Statement

The governing body is committed to ensuring that high standards of behaviour are aspired to within the school and recognises that most staff members meet or exceed the standards required of them. In pursuit of this commitment, the governing body expects managers to lead by example, demonstrating a high level of competence, integrity and sound judgement, promoting effective working practices and supporting and encouraging school staff when difficulties arise. In return, the governing body expects all employees to strive for high personal standards of conduct, seeking guidance and support from their manager when necessary and at an early stage.

The governing body acknowledges that minor matters of misconduct can, and should, be dealt with openly, supportively and constructively, in a dialogue between manager and employee, without having recourse to formal procedures.

### 1. Introduction

- 1.1 Clarendon Primary School's Disciplinary Policy, and its Procedure, have been devised to ensure that lawful, fair and effective arrangements exist for dealing with matters relating to conduct and behaviour.
- 1.2 The governing body acknowledges that the Policy and Procedure should be used to support the effective management of misconduct and not purely as a mechanism for imposing sanctions.
- 1.3 Everyday issues regarding standards of conduct and behaviour at work will be dealt with during the regular communication and performance conversations /supervision between employees and their managers. The governing body acknowledges this will include dealing with minor breaches of conduct that are not considered to merit progression under this policy.

### Equality Impact – Ensuring a Fair Process

Equality is not about treating everyone the same; equality is about valuing a person as an equal regardless of their characteristics and treating people according to their needs to achieve a fair outcome.

Line managers are responsible for having an Equality, Diversity, and Inclusion (EDI) discussion with their employee at the earliest stage possible, to understand if equalities issues could be a contributing factor and to understand if anything could be considered to enable the employee to fully participate in a process. Equalities issues could include but are not limited to disabilities or long-term health conditions (including undiagnosed), religious or cultural needs or caring responsibilities. Adjustments to the process could include but are not limited to engaging speech, language, or hearing impairment interpreters, modifying access to or the location of meetings, providing specialist, or modified equipment.

It may also be appropriate to check in from time to time to ensure any measures put in place are fit for purpose and likewise an employee should notify their line manager of any changes in their circumstances.

It is the responsibility of all parties, including internal and external investigators, to ask anyone they need to speak to or take a statement from in connection with a process (for example witnesses) whether any adjustments need to be made to ensure that they can participate in the process without disadvantage.

Additional advice and support can be sought from My HR Helpdesk, Trade Unions, or the School's HR Provider.

The headteacher and governing body is responsible for monitoring the impact of this policy on the workforce and ensuring it is not applied disproportionately to certain staff groups. They are also responsible for monitoring that the application of this policy does not discriminate against any of the protected characteristics, whether directly or indirectly.

This policy will be kept under regular review and amended from time to time.

## **What is Discipline?**

Discipline is about managing and modifying poor behaviour (misconduct) in the workplace by taking informal or formal action under the guidance of this disciplinary policy and procedure. This can include managing and modifying poor performance in cases where this is believed to be the result of deliberate negligence or misconduct. For example, where the employee is judged capable of carrying out their role to the required standard but for some reason has chosen not to do so (can but won't) or where serious errors have been made by the employee to the detriment of the school.

We may consider an employee's actions outside work (including their use of social media) to be misconduct or gross misconduct if they affect the employee's ability to carry out their job or have a negative effect on the reputation of the school.

In circumstances where there are concerns about an employee's performance capability, (where the employee is willing but not currently able to carry their role to the required standard) or concerns about the capability of an employee arising from absence due to ill health, the Appraisal Policy and Procedure or the Absence Management Policy and Procedure should be used as appropriate.

## **Guiding Principles**

The following guiding principles underpin our Disciplinary Policy and should be observed to maximise overall benefit for the school and its employees:

- No disciplinary action will be taken against an employee until the case has been fully and impartially investigated and facts established.
- Minor misconduct, other than in cases where there is repetition of the minor misconduct, will normally be dealt with during the regular performance conversations/supervision between employees and their managers.
- All disciplinary matters will be dealt with as promptly as possible to achieve a balance between timeliness and the need to ensure fair processes. Managers and employees will avoid unnecessary delays and seek to conclude a case within a reasonable timescale.
- Except in cases of gross misconduct, no employee will be dismissed for a first breach of the required standards of behaviour or conduct and will be given the opportunity to improve.
- The procedure may be implemented at any stage if the employee's alleged misconduct warrants such action.

Employees are required to be aware of the school's values, policies and procedures and always maintain appropriate standards of conduct and behaviour. If there is an allegation of misconduct/gross misconduct made against an employee, they will:

- Be informed of the nature of the issue(s) of concern or case against them.
- Be provided with the contact details for Employee Assistance support services from commencement of the investigation.
- Be encouraged to make contact with their trade union representative.
- Be informed of the potential level of sanction if an allegation of misconduct is upheld following a formal Disciplinary Hearing.
- Be given the opportunity to offer an explanation before any decision is made.
- Be given reasonable notice of any disciplinary meeting or hearing.
- Have the statutory right to be accompanied by a trade union representative, or work colleague not acting in a legal capacity at a formal meeting or hearing.
- Be notified of the outcome of any disciplinary meeting or hearing in writing within the timescales set out in the policy.
- Be provided, where appropriate, with supporting evidence by the appropriate manager in advance of any disciplinary meeting.
- Not be dismissed for a first breach of discipline except in the case of gross misconduct, when the penalty could be dismissal without notice or payment in lieu of notice.
- Be given the right of appeal against any disciplinary sanction imposed where: new evidence (not known at the time of the hearing) becomes available; mitigating circumstances were not considered in determining the outcome; the initial decision was not reasonable and consistent with other decisions made by the council in similar circumstances or where any part of the disciplinary procedure was wrong or unfair.

Managers should seek HR advice in advance of any formal action being taken.

### **Employee Support**

Employee wellbeing is our priority. All employees subject to disciplinary proceedings should be offered the support of the Employee Assistance Programme and be advised to contact their trade union representative if they have one.

The school has a duty of care to all staff, particularly those who are suspended from duty, and someone outside of the disciplinary process should be appointed to act as their support and point of contact within the school.

A Stress Risk Assessment for the employee should be carried out where stress is identified as a concern either by the manager or employee.

A referral to Occupational Health should be considered where appropriate.

Reasonable workplace adjustments may need to be considered to enable the process (see sections 2 and 6).

### **Adjustments**

Employees who have a disability that may impact on their ability to participate fully in this procedure or who need assistance because English is not their first language, should let their line manager or Trade Union representative know so that appropriate arrangements can be made for them.

### **Preliminary enquiries**

The purpose of the preliminary enquiry is to identify if there is enough evidence to indicate that misconduct has taken place. The preliminary investigation may indicate, without the need to talk to the employee, that the allegation is unfounded (for example where the rota confirms that the employee was not working on the day of the alleged incident).

Unless unfounded it will usually be necessary to discuss the matter directly with the employee to see what explanation they have to offer; except in cases where the allegation might result in a risk to another person or to evidence, for example in a safeguarding or fraud investigation. In such cases the employee should be told about the allegation when the risk to a person or to evidence has been controlled or removed. In all circumstances of Gross Misconduct, the investigating manager will need to carry out a risk assessment, with HR support, to determine if suspension is necessary.

Where an initial conversation with the employee takes place, the employee does not have the right to be accompanied, as the purpose of the conversation is simply to gather evidence about whether the suspected misconduct occurred.

- Records of enquiries should be kept in writing. No audio or video recordings of any meetings are allowed.
- The line manager should decide whether the issue can be resolved informally.
- If the issue cannot be resolved informally, a risk assessment should be completed, and an investigation will be required.

### **Informal Stage – Minor misconduct**

Cases of minor misconduct are usually best dealt with informally. A conversation may be all that is required to improve an employee's conduct. In some cases, coaching and advice may be what is needed. Everyday issues regarding the standards of conduct and behaviour at work will therefore be picked up during the regular communication and performance conversations/supervision between the employees and their managers. This will include dealing with very minor breaches of conduct, for example poor timekeeping (unless persistent), that are not considered to merit progression under the formal stages outlined in this policy and procedure.

- The line manager should meet the employee, in the same way they would during performance conversations/supervision and make the employee aware of the inappropriate behaviour. The line manager does not need to wait for the next scheduled performance conversation/supervision session as early intervention can help resolve matters before they escalate.
- In all but very minor cases of misconduct, the line manager should capture the discussion in writing to set out the agreed standards of conduct and support to help the employee to improve. Standards and support should be kept under review as part of regular performance conversations/supervision.
- The line manager should only keep a copy of the letter/e-mail on the employee's performance conversation/supervision file. As it is not part of the formal procedure, the line manager should not file a copy on the employee's personnel file.
- The line manager should advise the employee that if their conduct does not improve the matter will be moved to the formal stages of this procedure.

### **Formal Stage – Repeated minor misconduct, serious misconduct, gross misconduct**

There will 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 sufficient improvement in conduct, or the misconduct is considered too serious to be classed as minor, the formal stages of the disciplinary procedure should be followed.

Formal disciplinary action is likely to be recommended where employees do not adhere to the council's values and standards of behaviour as set out in the council's Code of Conduct.

Gross misconduct is conduct that is so serious or has such serious consequences that it justifies dismissal without notice for a first offence (summary dismissal), although we will always consider the circumstances of any case before deciding upon the appropriate penalty.

Whilst by no means an exhaustive list, please see our Examples of Misconduct and Gross Misconduct document.

Where some form of formal action is needed, what action is reasonable or justified will depend on all the circumstances of the situation. Therefore, whenever a disciplinary process is being followed it is important to deal with issues fairly. Managers must:

- Raise and deal with issues promptly and should not unreasonably delay meetings, decisions, or confirmation of those decisions.
- Act consistently.
- Carry out any necessary investigations, to establish the facts of the case.
- Inform employees of the basis of the problem and give them an opportunity to put their case in response before any decisions are made.
- Allow employees to be accompanied by a trade union representative or work colleague at any formal disciplinary meeting.
- Allow an employee to appeal against any formal decision made where: new evidence (not known at the time of the hearing) becomes available; mitigating circumstances were not considered in determining the outcome; the initial decision was not reasonable and consistent with other decisions made by the council in similar circumstances or where any part of the disciplinary procedure was wrong or unfair.

### **Formal Stage – Suspension**

In most cases it will be possible for the employee to remain in work whilst an investigation is carried out. However, in some cases it may be appropriate, following careful consideration and risk assessment, for an employee to be temporarily moved to alternate duties, or as a last resort to be suspended from work, whilst the disciplinary matter is investigated.

The school has the right to suspend with pay in circumstances where there are reasonable grounds for concern that evidence may be tampered with or destroyed or witnesses pressurised before the disciplinary hearing, or if there is a potential serious risk to the business of the school or to other employees or third parties in allowing the employee to remain working. If an employee is suspended

during an investigation, they will be sent a letter to explain why the investigation cannot be conducted without the need for suspension.

Suspension is not a disciplinary sanction but is intended to protect both the employee and the organisation while any investigation is undertaken. It in no way implies that the allegations are proven. Any period of suspension will be regularly reviewed and kept as short as possible, and the employee will be kept informed of the investigation's progress.

- HR should be contacted when considering suspension.
- Any decision to suspend an employee must be made in consultation with the headteacher or chair of governors.
- Consideration should be given to alternatives to suspension, such as the employee working in a different role whilst the investigation takes place.
- Employers have a duty of care to all staff, particularly those who are suspended from duty, and someone outside of the disciplinary process should be appointed to act as their support and point of contact within the school.
- Employees will normally be asked not to speak to school employees (other than to the person appointed to act as their support and point of contact) or to school parents during the suspension period. The school will ensure that this does not affect the employee's ability to defend themselves properly at any disciplinary hearing. Employees who do not comply with this request may be subject to disciplinary action separate from the matters for which they have been suspended.

### **Formal Stage – Investigation**

The employee's line manager will normally be the Investigation Officer, undertaking the formal disciplinary investigation and reporting on their findings. Due to the nature of the allegations or the complexity of the case on occasions, a separate Investigation Officer may be appointed. The school can seek HR advice on nominating a suitably impartial investigator; this may be another member of staff who is more senior to the employee in question; a governor (in the case of allegations involving the headteacher); or an external investigator such as a person from the local authority or an independent professional services provider. It is important to bear in mind that, to maintain impartiality, the investigator should not be the same person who hears any subsequent case arising out of the investigation.

The purpose of an investigation is to determine whether there is a case to answer, to ensure that everyone is treated fairly, to gather evidence from all sides, and to provide the information needed to enable the person who commissioned the investigation to determine whether the formal procedure needs to continue or if the issue can be resolved informally instead. The nature and extent of the investigations will depend on the seriousness of the matter. A disciplinary investigation will include investigatory/fact finding meetings and witness statements.

### **Investigatory/Fact Finding Meetings**

- All investigatory/fact finding meetings must be fair and reasonable.
- Investigatory meetings will be held with appropriate witnesses to help establish the facts of the situation. Witnesses should be advised that this is a confidential process and that they are being interviewed to help establish the facts of the situation. As such, if the case proceeds to a hearing, they may be required to attend as a witness.
- A notetaker may be present at investigatory meetings held with witnesses, or the investigator may take their own notes. A copy of the meeting notes will be provided to the witness to review and to confirm them as an accurate reflection of the meeting.
- The notes will be used to inform the investigation report and if the case proceeds to a hearing, will be shared with the employee suspected of misconduct to enable them to prepare their responses.
- The employee suspected of misconduct should be given at least 5 days' notice of an investigatory meeting so that they have time to prepare.
- The employee will have the right to be accompanied at an investigatory meeting; however, if this causes any unreasonable delay e.g. more than 5 days, then the line manager/investigating officer may choose to go ahead with the meeting.

- The line manager/investigating officer will either take notes of investigatory meetings held with the employee or appoint a notetaker.

### **Witness Statements**

The Investigating Officer should interview all witnesses, except for customers or service users, to gather the facts of the case. These meetings can take place face to face or through a Teams call. Information provided by customers or service users (for example complaints received) can be used to gather facts and to prepare the investigation report. Schools should seek HR advice before seeking witness statements from children.

In certain circumstances it may be appropriate for an employee witness to give a statement without having a meeting, for example:

- If they only need to give very simple information.
- If they are ill and would not be well enough to attend an investigation meeting without undue delay.

Witness statements should be signed and dated by the witness.

If the investigation finds that there is evidence to support the allegations, then the case will proceed to a formal disciplinary hearing at which the employee will have the statutory right to be accompanied.

For disciplinary investigations relating to claims of bullying, harassment, and victimisation an independent or external person may be sourced to investigate the case at the discretion of the school. The term 'external/independent' may mean that a senior manager from another school is appointed as an Investigating Officer, or in certain situations an investigator may be sourced from an external company. (See advice on nominating a suitably impartial investigator as stated in paragraph 11.)

This approach is to ensure the school has a clear approach to responding to inappropriate and potentially discriminatory behaviour, and that any resulting recommendations are acted upon in a timely manner. The overall aim is to ensure people feel confident in and protected by the school's approach and can raise concerns regarding other people's behaviour knowing they are safe and that their allegations will be taken seriously.

### **Investigation Outcome**

The investigating officer will provide a report to the Commissioning Manager that recommends whether the evidence obtained supports the allegations of misconduct. If there is clearly no case to answer, the Commissioning Manager should deal with the matter informally, through discussions with the employee as soon as possible to support them and to resolve any issues. This outcome should be confirmed to the employee in writing. The manager may need to take some remedial action to ensure that no further allegations of misconduct arise. For example, they may need to provide the employee with further information or training, or set out clear expectations for them, or follow this up through the normal supervision process. Mediation may also be appropriate in the circumstances.

Allegations of a safeguarding nature should be dealt with according to the regulations in place with advice from the Local Authority Designated Officer (LADO), where appropriate, and retained on file according to statutory guidance. The employee should be informed that if they are leaving their post for any reason, including resignation, a referral to DBS may be considered under safeguarding legislation if allegations are substantiated.

If the investigation finds that there is evidence to support the allegations, then a formal disciplinary hearing will be arranged by the nominated chair, supported by HR.

## **Formal Stage – Hearing and potential outcomes**

### **The Hearing**

The disciplinary hearing will be chaired by the Commissioning Manager or an appropriate level manager they nominate to be chair. The Investigating Officer will present the evidence gathered during the investigation. The employee and their representative will be given an opportunity to respond to the management investigation and present their own case. The employee may also call on witnesses to give evidence, if they are willing and if their evidence is relevant to the issues being considered in the meeting. Alternatively, the employee may present witness statements. Any written evidence should be presented to the chair in advance of the meeting where possible.

The chair of the hearing may choose to adjourn the meeting so that further evidence can be obtained. If this happens, the meeting will be reconvened once this is done, and the employee will be given an opportunity to respond to any new evidence. Before the meeting closes, the employee (or their companion) will be given an opportunity to make any comments or representations that they think are relevant and which may explain the situation. The school should work closely with their HR provider and, where appropriate, the Clerk to the Governor's, when organising hearings.

### **The Outcome**

The chair of the meeting will adjourn for a period to consider the outcome. If the chair is unable to decide on the day of the hearing, the meeting can be adjourned or ended, and agreement made as to how the chair will share their final decision. This could be that the meeting is reconvened or that the chair will call the employee to share their decision. In all circumstances, the decision will also be confirmed to the employee in writing as soon as possible and usually within five working days of the meeting.

If the allegations are not upheld, discussions should be held with the employee as soon as possible to support them and to resolve any issues. This outcome should also be formally confirmed to the employee in writing. Although it may have been deemed that a disciplinary sanction is not appropriate in the circumstances, the manager may need to take some action to ensure that no further allegations of misconduct arise. For example, they may need to provide the employee with further information or training, or set out clear expectations for them, or follow this up through the normal supervision process. Mediation may also be appropriate in the circumstances.

If the allegations are upheld to any extent, formal disciplinary action may be taken. This will usually take the form of a first written warning for a first offence. However, we reserve the right to implement this procedure at any stage depending on the circumstances and misconduct.

Written warnings, final written warnings, and any other action short of dismissal that are live will be disclosed when an internal reference is given and may impact the receipt of pay increments.

### **Levels of Disciplinary Sanction**

- **First Written Warning** – A first written warning is appropriate for instances of misconduct that are sufficiently serious to warrant disciplinary action, but where there is no current warning in place. It will remain live on the employee's file for 6 months. The warning will set out the nature of the misconduct and make it clear that any further misconduct (similar or otherwise) is likely to result in further disciplinary action.
- **Final Written Warning** – A final written warning is given in cases where there is a persistent failure to improve and a live first written warning is in place. It may also be given for a first act of misconduct in cases where the misconduct is sufficiently serious to warrant only one written warning, but insufficiently serious to justify dismissal. A final written warning will remain live on the employee's file for 12 months. The warning will set out the nature of the misconduct and make it clear that any further misconduct (similar or otherwise) will be likely to result in further disciplinary action, one outcome of which might be their dismissal.



- **Action short of dismissal** - Where the offence is such that dismissal would normally be the outcome, but there is mitigation to warrant taking action short of dismissal, an alternative, with conditions, may be used. This may include:
  - Final written warning with a recommendation of a transfer to a post at a similar grade in the same or in another area where available
  - Final written warning with an offer of continuing employment conditional on the employee accepting an offer of a post at a lower grade without salary protection.
  - Where these conditions cannot be met, for example following an unsuccessful redeployment attempt, then the dismissal may still proceed.
- **Dismissal with notice** – This would normally be applied where an act of misconduct is found to have been committed whilst the employee has a live final written warning in place, where conduct continues to be unsatisfactory, and the employee continues to fail to reach the prescribed standards. In exceptional circumstances (for example instances where the employee is likely to continue to commit misconduct even if subject to a warning), the employee may be dismissed even if no previous warning of dismissal has been given. Depending on the terms of the employee's contract, this may involve the employee being given pay in lieu of notice. If an employee is dismissed with notice, the school reserves the right to instruct the employee not to work for the duration of their notice period.
- **Dismissal without notice** – If an employee is dismissed for an act of gross misconduct, the result will normally be summary dismissal without notice or payment in lieu of notice. In these circumstances the school will take advice from our HR provider about statutory local authority advisory rights which may apply when dismissal is a potential outcome of a hearing.

#### **Formal Stage – Other considerations**

- If an employee commits a very similar offence for which a warning has already been issued, the earlier issue will be considered for the new disciplinary matter if the previous warning is still live.
- Where a serious safeguarding concern has been raised it may be that a relevant spent warning or the existence of a previous investigation should never be disregarded for disciplinary purposes.
- Other sanctions that may be imposed include financial reimbursement where there has been a financial loss, e.g. fraud or theft to the school. In exceptional circumstances, where there is a proven case of serious fraud, embezzlement, negligence, or gross misconduct leading to a dismissal and significant financial loss to the school, the school can apply to reclaim that loss or part of that loss from the employee's pension.

#### **Formal Stage – Appeal**

Employees have the right of appeal following an outcome at the hearing stage.

The purpose of an appeal is not to re-hear all the evidence presented at the original hearing/meeting. The letter of appeal must be based on specific grounds such as the emergence of new evidence (not known at the time of the hearing), mitigating circumstances that were not considered in determining the outcome, whether the initial decision was reasonable and consistent with other decisions made by the council in similar circumstances or where any part of the disciplinary procedure was wrong or unfair.

- If an employee wishes to exercise their right of appeal, they must do so by lodging a notice with the appropriate manager named in their dismissal letter, stating the grounds of the appeal and outline the outcome they are seeking from the appeals process, within 10 working days of being notified of a decision.
- The appeal will be heard by a senior manager (appointed by the headteacher / chair of governors), who has not previously been involved in the proceedings. The headteacher / chair of governors will chair any appeal against dismissal. The decision of the chair is final. The school will work closely with our HR provider to nominate the appropriate panel for an appeal.

- In cases involving the headteacher, the governing body will nominate an appropriate person to hear the appeal. (This will be done in consultation with our HR advisor.)
- The employee will have the right to be accompanied at a disciplinary appeal hearing. At the hearing, the employee will be given the opportunity to explain their grounds for appeal.
- A decision will normally be given verbally and confirmed in writing within five working days of the appeal hearing.

### **Timescales and postponement of meetings/hearings**

Every effort will be made to ensure that investigatory meetings and disciplinary hearings are scheduled for a time and place that is reasonable and within the employee's normal working hours. Employees are required to attend meetings if it is possible for them to do so. If an employee is too ill to attend or has some other reasonable reason why they cannot attend, we will consider re-arranging the meeting to a time when attendance is possible. However, it is important to ensure that disciplinary procedures are completed within a reasonable timescale.

The school reserves the right to proceed with a meeting/hearing in an employee's absence when it has not been possible to arrange a meeting/hearing that the employee is able to attend. In this case, the school will make every effort to ensure that the employee is able to make representations in writing or through a representative.

If an employee's representative or companion is not available to attend a scheduled disciplinary hearing, the school will agree to postpone and seek to agree a mutually convenient time. However, any such postponement must be short, and we reserve the right to proceed with the original hearing date if no new date can be found that is within five working days of the scheduled date.

### **Remote proceedings**

Wherever possible, meetings under this procedure will be held face-to-face. Where it is not possible, the school will conduct the process remotely. The school will ensure that employees and their representatives have access to the necessary technology for participating. The school will also ensure that the procedure remains fair and reasonable.

### **Recording meetings**

We will take a written record of all meetings conducted under this procedure. This will be done either by the person holding the meeting or by an additional person arranged by us to take notes.

Neither the employee nor any person acting on their behalf is normally permitted to record electronically any meeting that we hold under the Disciplinary procedure. This is to encourage openness and full participation. Any breach of this provision may lead to further disciplinary action, which could include dismissal.

In certain limited circumstances, we may permit a meeting to be recorded electronically, for example, where it is a reasonable adjustment for an employee with a disability. [Where we permit a meeting to be recorded electronically, we will take responsibility for making the recording.]

Where we intend to record meetings held remotely, we will comply with our data protection obligations and obtain prior consent from all attendees.

### **Grievances**

If an employee has a concern relating directly to the instigation or application of the disciplinary process, there is opportunity within the process for the concern to be raised. It is not necessary for the employee to raise a grievance through the grievance procedure. In most cases the concern will be considered and addressed as part of the disciplinary process, and the process will not normally be paused to hear the concern separately.

Depending on the concern being raised there may be occasions when the disciplinary process is paused at the discretion of the school whilst that concern is heard separately through the grievance procedure. For example, in some cases of alleged discrimination in the application of the disciplinary process. If such allegation is made the manager hearing the grievance can consider if the disciplinary process will continue.

If an employee raises a concern during the disciplinary process that is unrelated to the instigation or application of that process their concern will be addressed separately. The proceedings of the disciplinary process and the proceedings of the grievance procedure will run independently and, to ensure that the concern is dealt with fairly and promptly, may run concurrently.

In all cases a judgement should be made on the most appropriate way of handling the two issues without unreasonable delay; it is rare that it will be necessary to postpone formal disciplinary proceedings to deal with other concerns raised. HR advice will be sought if the appropriate course of action is unclear.

### **Trade Union Officials**

Managers must inform HR when considering taking formal disciplinary action against an accredited trade union official and, with the agreement of the employee, must notify a full time official of the trade union concerned. The school will, in most cases, take no action under this procedure (except for suspension in a case of alleged gross misconduct) until it has had an opportunity (if the employee consents) to discuss the matter with a full time official of the union.

### **Partnership Working**

If the employee is working across organisations, it is the disciplinary policy of their employer which will apply and should be followed in managing a conduct or behaviour issue. The Manager does not have to be employed by the same employer and advice can be sought from HR for specific cases where this situation applies. Managers from partner organisations will be expected to implement this policy and associated procedure when they are managing Surrey County Council (SCC) employees, with support from SCC HR.

If the employee is not wholly employed by one employer, advice should be sought from the relevant HR teams for both employers to identify and agree how the disciplinary should be managed across the organisations. Please note, this is only in relation to employment status and not how the post is being funded.

External partners may be informed of cases of misconduct or gross misconduct as appropriate as they may need to conduct their own internal procedures. In cases where referral to an external partner is likely to be necessary, particular care needs to be taken to ensure good records are kept of the investigation and disciplinary process. The employee should be informed when an external referral will be made.

### **Safeguarding Concerns**

In cases involving serious allegations against an employee who works in a position of trust with children or vulnerable adults, the relevant safeguarding team or LADO will be informed immediately by the manager and, if appropriate, a strategy meeting set up. There may be a requirement to pause the internal disciplinary process pending enquiries by external agencies (for example, police or social services). If a safeguarding investigation needs to take place this is a separate process to the disciplinary investigation. A safeguarding investigation is not a disciplinary investigation; however, a disciplinary investigation may be one outcome of a safeguarding investigation.

If the organisation removes an individual (paid worker or unpaid volunteer) from their employment with children or vulnerable adults (or would have, had the person not left first) because the person poses a risk of harm to adults and/or children, the school has a legal duty to make a referral to the Disclosure and Barring Service. It is an offence to fail to make a referral without good reason. It is also likely to be necessary to consider referring to the individual's relevant professional body where applicable. Referrals

should be made promptly once employment has ended and should be supported by any relevant evidence and the member should be informed in writing. The line manager or appropriate manager, in consultation with HR, is responsible for making any such referrals and ensuring they are made at the right time. In cases where referral to the DBS is likely to be necessary, particular care needs to be taken to ensure good records are kept of both the safeguarding and disciplinary investigations. The employee should be informed when a referral to the DBS will be made.

### **Policy review**

Reviewed: Spring Term 2024

Date for review: Spring Term 2027

## **Examples of Misconduct and Gross Misconduct**

It is not possible to define all acts of misconduct that could lead to disciplinary action. Generally, the test of reasonableness in the circumstances will apply before any disciplinary action is taken, bearing in mind the high standards expected of employees. 'Would a reasonable person be aware that disciplinary action would result from a certain action or omission?'

### **General Misconduct**

Depending on the circumstances, the following list provides examples of the types of conduct that will normally lead to disciplinary action other than dismissal:

- Breach of the school's Code of Conduct and the school's policies and procedures.
- Unauthorised action on behalf of the school or service including inappropriate use of IT systems and breaches of IT security.
- Public criticism of the school's decisions and/or activities connected with the employee's own work.
- Failure to follow a reasonable instruction including failure to observe the operational regulations or standing orders of the service.
- Failure to follow arrangements for absence reporting or unauthorised absence and persistent poor timekeeping.
- Failure to manage financial budgets appropriately, including unreasonable amounts of overspend.
- Abuse of public trust, i.e. engaging in unauthorised employment during hours contracted to work for the school, or engaging in employment during off-duty hours, which is detrimental to the interests of the school or brings it into disrepute.
- Misconduct in relation to official documents, i.e. when an employee without sufficient cause destroys or mutilates any record or document made, kept, or required for the purposes of the school, or alters, erases, or adds to any entry in such a record or document.
- Breaching political restrictions and lobbying or canvassing members on their own behalf.
- Improper disclosure of information, breaches of confidentiality or breach of data protection regulations.
- Sleeping on duty.
- Unauthorised use of the school's equipment.
- Acts of bullying, harassment, or discriminatory behaviour against a member of staff or the public on the grounds of gender, marital status, race, ethnic origin, religion, sexual orientation, age, disability, or gender reassignment.
  - Not adhering to the school's values and standards of behaviour, for example using inappropriate language or abusive behaviour.
- Actions or omissions inside or outside work which bring the school's reputation into disrepute or seriously affects public confidence in its ability to deliver effective services including lapses in professional registration.
- Failure to observe health and safety requirements or to report accidents or incidents whilst at work.

**This list is not to be regarded as exhaustive and serious examples of the above conduct may constitute gross misconduct.**

### **Gross misconduct**

The following list provides examples of the type of conduct, which will normally lead to dismissal without notice.

- Dishonesty, theft, fraud, deliberate falsification of records.
- Failure or being complicit in failure to follow the proper safeguarding or safer recruitment procedures designed to protect children and vulnerable adults.
- Sexual misconduct at work including the downloading or displaying of pornographic images.
- Sexual offences outside work including downloading illegal pornography.
- Emotional, financial, sexual, or physical abuse of children, vulnerable adults, or service users.

- Fighting, threatening behaviour or physical assault on another person.
- Incapacity through alcohol or being under the influence of illegal drugs.
- Gross incapability, gross failure, or gross negligence, which for example causes unacceptable loss, damage, or injury.
- Persistent or significant failure to manage financial budgets appropriately, including large amounts of overspending.
- Malicious damage to property.
- A serious act of insubordination.
- Unauthorised entry to computer or manual records or disclosing confidential information to the media or a third party in breach of whistle blowing arrangements.
- Serious bullying, harassment, or discriminatory behaviour against a member of staff or the public on the grounds of gender, marital status, race, ethnic origin, religion, sexual orientation, gender reassignment.
- Deliberate breach of health and safety regulations.

**These lists are not exhaustive**