



Rosendale Primary School and Children's Centre

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STAFF DISCIPLINARY POLICY¹

A statement of Rosendale Primary School's disciplinary policy, based on model Lambeth Local Authority policy, and including the following appendices:

- Appendix 1: Conduct of Disciplinary Hearings
- Appendix 2: Appeals
- Appendix 3: Disciplinary rules
- Appendix 4: Commentary on Staff Disciplinary Policy (to be read in conjunction with policy).

Last reviewed: November 2014

Next review: 2017

SLT owner: Headteacher

Distribution: Staff and governors

Purpose and Scope

- 1.1 This policy applies to all employees of Rosendale Primary School.
- 1.2 Monitoring the operation of a school and thereby the work of the staff, forms part of the normal role of the Headteacher and Governing Body. Any perceived issue or concern regarding an employee's performance should normally be dealt with under the Capability Procedure (see Performance Management Policy). This Disciplinary Procedure will only be used where that normal process has been ineffective or where there is an alleged or reported act of misconduct.
- 1.3 The policy should only be used to deal with incidents, issues or concerns about an employee's conduct. In cases relating to an employee's capability, reference to and use of this policy will only be applicable where/when there is a recommendation for dismissal on grounds of incapability.
- 1.4 The Headteacher (or the Chairman of Governors in case of the Headteacher) is ultimately responsible for the application of this policy within the school. However, the Headteacher may choose to delegate implementation of all or part of this policy to the Head of School.
- 1.5 At each stage of this policy all those involved should bear in mind the need to satisfy the tests of natural justice, equity and reasonableness.
- 1.6 If dismissal may be a possible outcome, there must be prior and on-going consultation at all stages with the Local Authority Director of Education or his/her representative.
- 1.7 In certain cases of alleged or admitted gross misconduct it is accepted that it may be necessary to move to an immediate recommendation for dismissal.

¹ Adapted from policy adopted by Christ Church governors on 27.1.11. Based on Lambeth Local Authority model policy

Procedure - Warnings

2.1 Formal disciplinary action may be necessary where an employee's conduct falls short of acceptable and/or required standards. In such circumstances, it is essential that the investigating officer, (Headteacher, Chairman of Governors or his/her representative), carries out an investigation, as soon as may be reasonably practical to ascertain the facts. This may include advising the employee of the allegation(s) and asking for an account of his/her behaviour.

Prior to any investigatory interview, the employee shall be advised of his/her right to be accompanied by a trade union official or other representative.

No formal disciplinary action will be taken against a trade union steward/representative until a full-time official of the trade union has been informed.

2.2 In cases where the investigating officer believes there has been a relatively minor offence, s/he will discuss the matter with the Headteacher (or the Chairman of Governors with the LA representative, if the Headteacher is the subject of the Procedure) who may decide to:

- a) Take no further action;
- b) Issue a management instruction which will take the form of a conversation about future expectations of conduct and professional standards, confirmed in writing to the employee; or
- c) Proceed with a formal Disciplinary Hearing in accordance with 2.4 below.

Action under b) above will not be deemed to be a formal part of this Procedure.

2.3 In cases where the investigating officer, Headteacher or Chairman of Governors and/or their representative, believes there to have been an incident of potential gross misconduct the employee will be immediately suspended from duty. It may also be necessary to suspend the employee in cases where his/her continued presence at work may impede an investigation.

- During a period of suspension the employee will normally continue to receive his/her full normal wage/salary
- The reasons for suspension will be confirmed in writing to the employee immediately after the suspension takes place and s/he will be given the name of an independent person who will provide personal and confidential support/advice during the suspension
- The investigating officer and where appropriate, the Headteacher/Chairman of Governors, will keep the need for suspension under constant review and will formally review the position with the trade union or other representative no later than one month from the date of initial suspension. Suspension must not be allowed to become excessive and must not normally exceed three months
- The school will immediately inform the LA of any decision to suspend, or end the suspension of the employee.

2.4 Where it is considered, on the evidence available from the investigation, that a Disciplinary Hearing should be held, the Headteacher (or the Chairman of Governors if the Headteacher is the subject of the Procedure) shall inform the employee by letter which will enclose a copy of this Procedure and advise the him/her of:

- the place and time of the Hearing
- full details of the alleged offence(s)
- the right to be accompanied by a trade union official or other representative of his/her choice
- the right to call witnesses.

The letter will either be handed to the employee or sent by recorded delivery and first class post. Reasonable time (a minimum of five working days) must be allowed between the receipt of the letter and the Hearing so as to allow the employee to prepare his/her case.

Disciplinary Hearing

2.5 The conduct of the Disciplinary Hearing will be as set out in Appendix 1 to this Procedure.

2.6 The Headteacher or Chairman of Governors (in the case of a Headteacher) conducting the Hearing will be empowered to determine the extent of any disciplinary action up to dismissal. In so doing, they will consider whether the employee's conduct justifies formal disciplinary action having regard to all the circumstances in the case including the gravity of any misconduct and the employee's previous record.

The following disciplinary actions/sanctions are available if appropriate:

- Warning
 - Final Warning
 - Referral to the Governing Body for consideration without any recommendation
 - Recommendation to the Governing Body for Dismissal with Notice
 - Recommendation to the Governing Body for Summary Dismissal.
- (a) Normally the first formal disciplinary action will be a warning. However, if the matter is found to involve serious misconduct a final warning may be given or, if it is felt that the allegations/actions constitute potential gross misconduct, a referral to the Governing Body may result
 - (b) When a warning has been given, further misconduct whether or not of a similar kind, may result in a further sanction which may be a final warning or a referral to the Governing Body/recommendation for dismissal
 - (c) When a final warning has been given, further misconduct - whether or not of a similar kind - will result in a recommendation for dismissal
 - (d) Notwithstanding that a particular form of disciplinary sanction is permissible a lesser sanction may be imposed, if appropriate, having regard to all the circumstances
 - (e) In some circumstances, relegation may also be available and/or appropriate as an alternative to a recommendation for dismissal.

2.7 Any disciplinary action taken under this Procedure will be confirmed by letter, signed by the Headteacher or Chairman of Governors (where the Headteacher is the subject) who conducted the Hearing, which will either be handed to the employee or sent by recorded delivery and first class post.

The letter will state:

- (i) The decision of the Hearing and the disciplinary sanction being imposed
- (ii) the reasons for this
- (iii) the right of appeal.

In the case of warnings the letter will state:

- (i) The ways in which the employee's conduct must improve, detailing, if appropriate, any assistance to be given and/or timescales in which the improvement is to be achieved, and
- (ii) the period for which the warning will remain effective (see paragraph 2.8 below).

Where a final warning is issued, the letter will clearly indicate to the employee the possibility of a referral to the Governing Body/recommendation for dismissal in the event of any further act of misconduct.

2.8 A copy of the letter confirming a disciplinary sanction up to dismissal will be placed and remain effective on the employee's personal file(s) normally for the following periods:

- warning - 12 months
- final warning - 24 months

These periods will run from the date of the Disciplinary Hearing. Provided the employee's conduct is satisfactory throughout the period the letter will The LA Director of Education or his representative will exercise any rights to attend to give advice, at any stages when dismissal is a possible outcome or is being considered.

3. Procedure - Dismissal

- 3.1 The referral of a case to the Governing Body will be heard by a Staff Dismissal Committee of the Governing Body.

NOTE: The "Staff Dismissal Committee" should include, by law, be at least 3 members of the Governing Body. The existing Staffing/Personnel may be re-constituted to perform this function.

It will also be necessary to establish a "Staff Dismissal Appeal Committee" to hear any appeal in respect of a decision taken under this procedure. The "Staff Dismissal Appeal Committee" can include such members of the Governing Body as the Governing Body determine subject, however, to the "Staff Dismissal Appeal Committee" including no fewer members of the Governing Body than the "Staff Dismissal Committee". Those members of the Governing Body forming the "Staff Dismissal Committee" cannot be included on the "Staff Dismissal Appeal Committee".

- 3.2 A referral to the Governing Body/recommendation for dismissal will normally be made following any investigation and/or hearing in accordance with section 2 of this Procedure.

In certain cases of alleged or admitted gross misconduct the investigating officer/Headteacher/Chairman of Governors may move to an immediate referral/recommendation for dismissal without recourse to the whole of the procedure in section 2.

- 3.3 Where a Governing Body Disciplinary Hearing is to be convened the employee will be informed by letter from the Clerk to the Governing Body or other appropriate agency, e.g., Local Authority. The letter will enclose a copy of this Procedure and advise him/her of:
- the place and time of the Hearing
 - details of the alleged offence(s)
 - the right to be accompanied by a trade union official or other representative of his/her choice
 - the right to call witnesses.

The letter will either be handed to the employee or sent by recorded delivery and first class post. Reasonable time (a minimum of ten working days) must be allowed between the receipt of the letter and the Hearing so as to allow the employee to prepare his/her case.

- 3.4 The conduct of the Disciplinary Hearing will be as set out in Appendix 1 to this Procedure.
- 3.5 The Governing Body Committee/Panel may dismiss the employee or may impose a lesser sanction i.e., Final Warning or Warning.

In some circumstances, relegation may also be appropriate as an additional or alternative sanction.

- 3.6 The decision of the Staff Dismissal Committee will be confirmed by letter, signed by the Chairman of the Staff Dismissal Committee who conducted the Hearing, which will either be handed to the employee or sent by recorded delivery and first class post.

In the case of a dismissal the letter will state the:

- (i) Reasons for this and the right of appeal; and

- (ii) Date from which the dismissal will take effect.

In the case of alternative sanctions being agreed the letter will state the:

- (i) Decision of the Hearing and the disciplinary action being taken
- (ii) Reasons for this, and
- (iii) Right of appeal.

- 3.7 The LA Director of Education or his/her representative will exercise any rights to attend at any stages when a dismissal is being considered. The Governing Body will consider any advice given before making a decision to dismiss.
- 3.8 The Headteacher (except where s/he is the person concerned) may also be present at all stages when a dismissal is being considered but not at the decision stage as s/he had made the recommendation and would have either presented the case direct or been present throughout the Hearing.

4. Appeals

- 4.1 An employee has the right to appeal against any disciplinary action under this Procedure which will be dealt with in accordance with Appendix 2. Appeals must be made, in writing, stipulating the grounds of the appeal, within ten working days of receipt of the letter confirming the action.
- 4.2 The conduct of the Appeal Hearing will be carried out in accordance with Appendix 1 to this Procedure. i.e. as a full re-hearing of the case.
- 4.3 If as a result of an appeal, or for any other reason, disciplinary action is withdrawn, any written record of the matter will be expunged from the employee's file.
- 4.4 The person or Group hearing the appeal may, in the light of the appeal, vary the disciplinary action taken. Any re-hearing of the case can result in a decrease or increase in sanction(s).
- 4.5 At any appeal the employee has the right, if they so wish, to be accompanied by a trade union official or other representative of his/her choice.

Appendix 1 – Conduct of Disciplinary Hearings

The procedure to be adopted at any Disciplinary Hearing will normally be as follows.

- 1 A Hearing involving a member of staff will be conducted by either the Headteacher or his/her representative (up to Dismissal stage) or a Committee/Panel of the Governing Body or the Staff Dismissal Committee of the Governing Body in the case of a referral/recommendation for Dismissal.

A Hearing involving the Headteacher, will be conducted by a Disciplinary Committee/Panel or the Staff Dismissal Committee of the Governing Body in the case of a referral/recommendation for Dismissal, constituted in accordance with Paragraph 3.1.
- 2 The person or group conducting the Hearing may be assisted in the conduct of the Hearing by one or more advisers, who may be from the Authority's staff.
- 3 The person/group conducting the Hearing will satisfy himself/herself/themselves that the employee understands the purpose of the Hearing, the nature of the complaint(s) and the possible implications arising from it.
- 4 The case against the employee will be presented normally by the investigating officer/Headteacher (or the Chairman of Governors or his/her representative where the Headteacher is the subject of the Hearing) who will describe the case and the presentation may include witnesses, written statements or other documents where these are considered necessary.
- 5 The employee and/or representative will be given the opportunity to question the presenting officer as well as any witnesses who may have given evidence.
- 6 The employee or his/her representative will then be invited to respond to the case as presented. The employee may also produce witnesses, written statements or other documents in support of his/her case.

Where witnesses are school or LA employees they should be given reasonable time off with pay to attend the Hearing.
- 7 The presenting officer will be given the opportunity to question the employee, his/her representative and any witnesses called in his/her defence.
- 8 At any stage during the Hearing the person/group conducting the hearing and any adviser(s) may ask questions of the employee, the presenting officer or such other persons, as they may consider appropriate in order to ascertain the facts and arguments.
- 9 The presenting officer will then be invited to make a closing statement not introducing any new material.
- 10 Finally the employee or his/her representative will be given the opportunity to make a closing statement also without introducing any new material.
- 11 Both parties will withdraw to allow the person/group conducting the Hearing to review and consider the evidence in conjunction with any advisers.
- 12 The person/group conducting the Hearing will then recall both parties to inform them of his/her/their decision. The decision should normally be announced personally to the parties as soon as it is possible on the day of the hearing. If it is not possible to make a decision immediately the parties should be informed

of this. In any event a decision must be made and communicated to the employee within five working days of the hearing. The decision should be confirmed in writing and delivered to the employee either by hand or recorded delivery and first class post with a copy to the trade union or other representatives and the presenting officer.

Appendix 2: Appeals

Headteacher

- 1 Any appeal against any decision by the Disciplinary Committee/Panel will be heard by the remaining members of the Governing Body or, in the case of a dismissal, the Staff Dismissal Appeal Committee of the Governing Body.
- 2 In relation to the decision of the Disciplinary Committee/Panel/ Staff Dismissal Appeal Committee, the Governing Body will:
 - (i) confirm the decision, or
 - (ii) withdraw the decision, or
 - (iii) vary the decision and impose alternative disciplinary sanction(s).
- 3 The decision of the Appeal Group will be final and binding.

Other Staff

1. Warnings

An appeal against a warning given by the Headteacher, or his/her representative, will be heard by the Governing Body or a Committee/Panel of the Governing Body duly authorised under their Terms of Reference to do so.

2 Dismissal

- 2.1 An appeal against a decision by a Staff Dismissal Committee of the Governing Body to dismiss an employee will be heard by a Staff Dismissal Appeal Committee of the Governing Body, with full delegated powers (excluding members of the Staff Dismissal Committee - see the note at paragraph 3.1 of the main document).
- 2.2 The Appeal Group will either:
 - (i) Confirm the decision to dismiss the employee
 - (ii) Withdraw the decision to dismiss the employee
 - (iii) Vary the decision and impose alternative disciplinary sanction(s) in accordance with the Procedure.
- 3 The decision of the Appeal Group will be final and binding.

Appendix 3: Disciplinary Rules

It is impossible to prescribe a common set of disciplinary problems covering all aspects of employment but the following examples may, depending on the circumstances, be considered as gross misconduct, and may therefore result in dismissal. This list, of course, is neither exclusive nor exhaustive.

- 1 Child abuse or inappropriate professional conduct involving a child or young person under 19 years of age.
- 2 Violence or threat of violence to another employee/client.
- 3 Sexual or racial harassment.
- 4 Theft of LA/school or another employee's property.
- 5 Deliberate falsification of any document.
- 6 Criminal conduct at work.
- 7 Corrupt or improper practice.
- 8 Sleeping whilst on waking duty.
- 9 Unlawful discrimination against another employee, an applicant for employment or a parent/student on the grounds of disability, race, ethnic origin, colour, nationality, sex, marital status or religion.
- 10 Breaking the LA's/school's safety rules.
- 11 Reporting for, or being at, work while under the influence of drink or non-prescribed drugs.
- 12 Unauthorised use of a LA/school owned vehicle.
- 13 Knowingly disclosing confidential information without express consent.
- 14 Neglect of duty or behaviour liable to bring the LA/school into disrepute.
- 15 Failure to follow a management instruction / gross insubordination.

Gross misconduct is generally seen as misconduct serious enough to destroy the employment contract between the employer and the employee and make any further working relationship and trust impossible. In essence therefore an employer is entitled to consider that s/he cannot allow the continued presence of the individual employee at his/her place of work because of the incident(s).

Appendix 4: Commentary on Staff Disciplinary Policy

This commentary should be read in conjunction with the Disciplinary Procedure. Each section corresponds to a section of the Procedure. If in doubt you should seek guidance and assistance from appropriate LA personnel staff.

1. Purpose and Scope of Policy

- 1.1 The policy applies to all employees of a school including the Headteacher.
 - 1.1.1 During induction (teachers) and probationary (support staff) periods, allegations against such employees should normally be dealt with separately. It is recognised, however, that there may be certain allegations of gross misconduct against such staff e.g. child protection issues, which must be dealt with under this Procedure.
 - 1.2.1 The Procedure is for dealing with breaches of discipline/acts of misconduct which are considered sufficiently serious to warrant formal investigation. Such breaches may be single events, some of which could be regarded as potential gross misconduct (see Appendix 3) or persistent minor breaches which the normal managerial process has failed to stem, i.e. poor timekeeping.
 - 1.2.2 Employee counselling is a vital part of any manager's job. It is often a more satisfactory method of dealing with, and resolving relatively minor problems. Counselling should take the form of a discussion with the objective of encouraging and helping the employee to recognise faults and improve. Where this is done it is essential that notes/records are kept of such action for reference purposes.
 - 1.2.3 It will be necessary to use the Procedure in Capability cases where the Headteacher/Chairman of Governors feel that they have no option other than to recommend the dismissal of the employee. In those circumstances, the Procedure will be implemented as set out in section 3 of the policy (above).
 - 1.2.4 Strict adherence to the Disciplinary Procedure will ensure that employees are treated in a consistent, fair and reasonable manner and that any action taken will be appropriate to the circumstances. This will aid good employee relations and should ensure that, if dismissal follows, then it will be seen to be fair and, if necessary, stand the scrutiny of an Employment Tribunal.
- 1.3 An allegation relating to an employee's competency should be dealt with, initially, under the Capability Procedure (see Performance Management Policy). As a general guideline, the Disciplinary Procedure should be used for dealing with acts of misconduct; these are wilful acts of commission or omission or breaches of rules. In other words the Disciplinary Procedure will apply to cases where employees will not or do not for whatever reason observe the rules or standards of conduct or behaviour. The Capability Procedure will apply in circumstances where employees cannot perform satisfactorily because of perhaps a medical problem, lack of training or an innate inability.
 - 1.4.1 Governing bodies and Headteachers are responsible for the application of the Procedure within their school. The role of the Chairman of Governors will be as follows:

Where the subject is not the Headteacher

The Chairman will normally only be involved if there is a recommendation for dismissal or an appeal against disciplinary action. It is advisable, therefore, that, while the Chairman should be aware of the nature of the offence, s/he should not have detailed knowledge of the matter. This will ensure that s/he is not "tainted" and, therefore, not excluded from any involvement in the matter. If the Chairman is involved, s/he may chair the Staff Dismissal Committee or the Staff Dismissal Appeal Committee. In which case, s/he will be party to the decision and, along with the

rest of the Governing Body, will be responsible for that decision.

Where the Headteacher is the subject

In this case, the Chairman's role is more extensive. S/he is, in effect, the manager of the Headteacher. Where there is reported or alleged misconduct by the Headteacher, the Chairman should consult LA Personnel. LA Personnel will then either conduct an investigation with, or on his/her behalf, then go back to him/her to determine whether or not disciplinary action is necessary. If so, a disciplinary committee will meet. One LA Personnel officer will sit with the Chairman as the "prosecution" while another officer will sit with the Governing Body. At the end of the hearing, the Chairman of Governors and his/her adviser will withdraw while the Governing Body take the decision. Any subsequent appeal must be heard by a committee of governors, excluding those who took the decision and the Chairman who will continue in his/her role as prosecutor. In the event of a recommendation for dismissal, this will need to be referred to the Staff Dismissal Committee and the Staff Dismissal Appeal Committee of the Governing Body.

- 1.4.2 In the case of issues concerning the conduct of staff, the Headteacher or Head of School, in most instances, will wish personally to deal with formal Disciplinary action. Delegation of the disciplinary function is possible but not necessarily desirable in a school situation.
- 1.4.3 If it is possible and/or desirable to delegate any part of the process then this is likely to be at the investigation stage. The Headteacher or Head of School should decide who will act as the "investigating officer" if a breach of discipline is suspected or reported. It would not be appropriate for this to be anyone other than a member of the senior staff. The member of staff chosen will have no other role in this process other than to present information/evidence to any party, i.e. Headteacher and/or Governing Body, conducting a Disciplinary Hearing.

In cases where the Headteacher is the subject of the Procedure, it is expected that the Chairman of Governors will initiate and conduct/oversee any investigations/procedures. In so doing the Chairman of Governors will thereby disqualify him/herself from sitting on any subsequent Disciplinary Committee/Panel. It is expected that s/he will call upon the assistance of the LA to whom the Chairman of Governors may delegate the role of investigating officer. A Senior LA Officer will be assigned to give direct support and advice to the Chairman throughout the application of this procedure. Any decision to proceed with disciplinary action under the Procedure must rest, however, with the Chairman of the Governing Body.

- 1.4.4 Governing Bodies must deal with dismissal recommendations; this power/process cannot be delegated. Recommendations regarding the actual process, however, are dealt with in section 3 of the policy.
- 1.4.5 It is vital that all employees are made aware of the existence of the Disciplinary Procedure (in law they must have access to a copy) and that Chairmen of Governors, Headteachers and other senior staff are familiar with its application. It is written in such a way as to try to ensure that the tests of natural justice are satisfied and it accords with the guidelines laid down in the ACAS Code of Practice.
- 1.4.6 Once a Governing Body has adopted the Model Procedure (or other), they may wish to put a notice in staff rooms referring to the agreed Procedure and saying that it is available at some given point. Alternatively, the Procedure may be displayed with the notice.
- 1.5 As a general rule it would benefit senior staff using the procedures to bear in mind at all stages that they must seek to act in a reasonable and fair manner.

- 1.6 The LA Director of Education, will always exercise his/her right to be consulted in cases where dismissal is a possible outcome. Schools should inform Personnel as soon as any such potential case is identified.
- 1.7 Whilst, in certain cases, it is possible to move to an immediate recommendation for dismissal, the Headteacher and/or Chairman of Governors are urged to undertake an investigation, as set out in the policy and discussed under Paragraph 2.1 below, before making such a recommendation. This should still be done even where the facts of the case are clear and/or admitted to another agency e.g. the police.

2. Procedure - Warnings

- 2.1.1 The need for disciplinary action against an employee will arise where conduct falls below the required standard. It may be that the failure relates to a single event (e.g. theft, violence etc.). Alternatively, repeated shortcomings may be the problem; if that is the case, it would be expected that the employee would have had the shortcomings pointed out at earlier stages, but had failed to respond to promptings, a management instruction or informal warning(s). Where earlier meeting(s) have been held it is essential practice to maintain written records of those.
- 2.1.2 Schools must ensure that employees are made aware of the standards of conduct and behaviour expected of them and of the rules and conditions of service which apply to staff. Such rules are contained in formal documents e.g. national conditions of service, the contract of employment, employee handbooks, or they may relate to output or performance standards which are determined at the school. It is expected that employees should have been made aware of required standards from the outset of employment via structured induction, appraisal, regular feedback and counselling processes.
- 2.1.3 Where the Chairman of Governors, Headteacher or other senior member of staff believes that a disciplinary offence may have occurred an investigation should be carried out as soon as reasonably practicable to ascertain the facts. This is done for two reasons:
- (a) To collect evidence whilst it is 'fresh' in preparation for a possible formal Hearing
 - (b) To determine whether there is a prima facie case for a disciplinary Hearing.

The investigation could be fairly cursory or relatively detailed depending on the nature of the breach of discipline: it may be quite straightforward to establish that certain aspects of conduct have been unsatisfactory, but very complex to establish facts related to serious allegations e.g. fraud, where the LA's internal audit could be involved or child protection issues where other agencies could be involved.

- 2.1.4 In either eventuality the principles remain the same. The investigating officer, normally the Chairman of Governors, Headteacher or other senior member of staff, is establishing facts, NOT making judgements (this is the purpose of the Disciplinary Hearing). It will normally be necessary to inform the employee that the potential breach of discipline is being investigated, and usually necessary to interview the employee about events.

NB the employee is not answering allegations at this stage but responding to an investigation.

Employees have the right to be accompanied by a Trade Union official or other representative (i.e. friend/colleague). However, in some cases involving child protection it may be necessary to delay informing the Trade Union to ensure that any external investigation is not prejudiced or compromised.

The investigating officer should not ask an employee to attend an investigatory interview without ensuring that s/he has been informed of his/her right to be accompanied by a Trade Union official or other representative (i.e. friend/colleague). The employee should also be made aware of the potential outcome of the investigation, i.e. a disciplinary enquiry and the range of sanctions which could result if an allegation is sustained.

Reference to “working days” in this Section and throughout the document, normally includes holidays and leave periods. However, it is recognised by both the LA and its recognised trades unions, that there may be occasions, particularly in relation to teachers, where interviews/hearings should be convened during such times.

- 2.1.5 It is vital that during the investigation statements are obtained from witnesses and notes are made of conversations as well as obtaining documentary evidence to support (or refute) allegations. Contemporaneous notes, documentation and statements etc. should be retained for future reference. Statements may be obtained either by questioning a witness or they may be prepared by a witness. Ideally they should be signed by a witness.
- 2.1.6 Anonymous evidence may be acceptable to a Disciplinary Hearing but will almost certainly be strongly challenged by employee representatives. It is essential therefore that the reasons for the request for anonymity are examined - and supported. There are two forms of anonymous information: a) information provided in confidence where the identity of the source is known to somebody e.g. from a pupil at the school (in these cases, witnesses can give evidence on the child’s behalf); and b) information whose source is unknown. Generally, in these cases an investigation will only be instituted if the allegations relate to child protection issues. However, the use of such evidence is not advocated - because of the inherent risk of challenge or dismissal of such evidence. In certain circumstances e.g. child protection issues, it is accepted that there is a legal duty on the Chairman of Governors/Headteacher to initiate an investigation. In such cases there should always be a check for other personal motivations e.g. personal disagreements/disputes.
- 2.1.7 Evidence may sometimes need to be collected from parents and/or from students, but they should only be called as witnesses at a subsequent Hearing in extreme and exceptional circumstances. Schools have a clear obligation to ensure that those in their care are protected. The Headteacher should always take further advice if they are contemplating using evidence from students and/or parents.

In some situations, it may be necessary in enquiries to use expert witnesses e.g. Education Advisers, who have collected evidence/statements. Such witnesses would then be available to give evidence at a Disciplinary Hearing.

- 2.2.1 Dependent upon the nature and seriousness of the issues/offences, the Headteacher (or Chairman of Governors, if the Headteacher is the subject of the allegations/concerns) may decide to deal with the matter by way of a management instruction. Where this happens, this will not be regarded as part of the formal Procedure and any redress or appeal will be available, to the employee, through the second stage of the Grievance Procedure. i.e. representations to Governing Body or Committee/Panel.

If a management instruction is issued it would not normally be referred to in job references, unless the subject matter of the instruction was still a general and on-going concern or there was subsequent formal action under the disciplinary or capability procedures.

- 2.2.2 The vital process of investigation - to enable the employer to establish an honest belief that an offence has been committed and that the employee is at fault - could take some time. In some cases, it may be necessary to suspend the employee from duty for the duration of the investigation, and pending the outcome of any subsequent Disciplinary Hearing.
- 2.3.1 In any case of alleged or potential gross misconduct the employee must be suspended. The Director of Education should be consulted, and the employee should be informed - with written confirmation - of the reasons for the suspension. Such suspensions will normally be on full contractual pay. All suspensions must be kept under review and be as short as possible. In cases other than those relating to the Headteacher,

The Chairman of Governors must be informed of the suspension but must not be involved in the case in any detail - otherwise s/he prejudices his/her position in the event of any eventual referral/recommendation for dismissal to the Governing Body.

- 2.3.2 Where the subject of the investigation is the Headteacher, the Chairman of Governors has the power of suspension and is also directly responsible for arranging and conducting/overseeing any investigation into allegations concerning the conduct of the Headteacher.

In normal circumstances, the employee's Trade Union will be informed of the suspension immediately.

- 2.3.3 The release of information to the public must be considered carefully. Delays can lead to speculation and stress among staff and parents. It goes without saying, however, that confidentiality is paramount. Given the nature of school communities, it is recognised that it is necessary to make some form of statement. Such a statement should be constructed with great care and shared/agreed with the employee's Trades Union.

- 2.4.1 Once any investigation is complete a decision must be made whether or not to prefer an allegation. Where this is done the allegation should always be given in writing to the employee. It should state precisely the nature of the allegation and where possible what specific rules or conditions of employment have been breached. Please consult about wording; it is vital to ensure the allegation is correctly framed. The employee must be told the date, place and time of the Hearing. Reasonable time must be allowed before the Hearing for the employee to prepare a response; a minimum of five working days is specified in the Procedure. The Hearing should normally be held on an agreed date but if an employee refuses to co-operate the Hearing may be held, after due notification, in his/her absence. Normally, the date would be agreed with the employee's representative and it would not be reasonable to insist upon a date if the representative was unable to attend. However, reason must prevail, and any delay should not exceed five working days. There may be a difficulty when the employee is absent on certified sick leave and a Hearing may need to be adjourned for a longer period. It is still possible, however, to proceed; please take advice in such cases.

- 2.4.2 Employees must be informed of their rights of representation and right to call witnesses. They should be invited to prepare written responses to allegations and, where applicable, should normally be provided with copies of witnesses statements at least five working days in advance of the Disciplinary Hearing. They should also be told who will be conducting the Hearing.

- 2.4.3 Where possible letters (including letters of suspension) should be given to the employee directly - taken to the home where necessary or sent by recorded delivery. If mailed somebody should be deputed to contact the employee to ensure it has been received, understood and acted on, e.g. s/he will be present on appointed day/time.

Disciplinary Hearing

- 2.5.1 The conduct of the Hearing is set out in Appendix 1 of the policy. The appendix sets out who should present and hear cases; it also establishes a sequential process to be followed during the Hearing.
- 2.5.2 The person or group conducting the Hearing should always be accompanied; this will facilitate consultation and advice on procedures and sanctions being available as well as a person to take notes. The person(s) conducting the Hearing may doubtless also wish to take notes; these should be retained in case of appeal. Minutes of Hearings up to dismissal do not need to be produced but the retention of notes is essential in the event of any appeal or subsequent challenge.

- 2.5.3 The Hearing should be conducted in a business like manner, always bearing in mind that it is a tense, stressful situation for everyone involved. The principles of natural justice on which the Procedure is founded must be borne in mind at all times and the defendant should have the ability to question any witnesses at the Hearing.
- 2.5.4 Though the process appears judicial in nature it is as well to remember that the Hearing is not a court and that the same burden of proof is not required. The person(s) conducting the Hearing must be satisfied that:
- the allegation was properly investigated
 - the allegation was clearly put and understood
 - the employee was given a proper opportunity to explain his/her actions
 - on the balance of probability there were reasonable grounds to believe the offence(s) had been committed by the employee.
- 2.5.5 When the person/group is satisfied that the parties have had sufficient opportunity to present their 'case', and that sufficient information has been obtained about the facts and any mitigating circumstances, the Hearing should be adjourned to allow time for a decision to be made. It is vital that at this stage any investigating or presenting officer takes no part in the decision-making process.
- 2.6.1 The person/group conducting the Hearing should be familiar with the range of actions/sanctions which may be applied. In determining the action/sanction, account should be taken not only of the nature of the misconduct but also of the employee's past record of employment. It is important that in even the most clear cut case time is taken to reflect on what has been said before reaching a conclusion. Nevertheless a decision should be made without undue delay and communicated to the employee orally and later confirmed in writing.
- 2.6.2 In determining the action/sanction it should be borne in mind that in general the aim is to take corrective and not just punitive action. The action is taken in order to 'put the employee back on the rails' and the sanction should be reasonable in all circumstances. Normally a warning is given for a first offence, a final warning for repeated or more serious offences and a recommendation for dismissal where it is deemed that an act of gross misconduct may have occurred. Clearly there is little point in adhering to the Procedure only to get the sanction wrong; the chances of an appeal will be minimised by sound judgement at the Hearing.
- 2.6.3 A referral to the Governing Body for consideration is appropriate where the Headteacher or Chairman takes the view that the misconduct can be viewed as gross misconduct. Recommendations for dismissal should be made where the incident clearly constitutes gross misconduct and may be with or without pay in lieu of notice, depending on the circumstances. If the recommendation for dismissal is for "summary dismissal" then it should be without pay in lieu. Referrals or recommendations for dismissal must be heard by the Governing Body or a Committee or Panel of the Governing Body (see section 3 of the Procedure).
- 2.6.4 If further misconduct occurs following a final warning, the Headteacher or Chairman must decide whether to make a recommendation for dismissal. If there has been a previous warning or warnings then it is the accumulation of acts with warnings rather than the nature of those acts that is the main focus.
- 2.6.5 Relegation or demotion may also be appropriate as an alternative to a recommendation for dismissal. This should only be contemplated where the offence(s) would normally have justified a recommendation for dismissal but other considerations make relegation/demotion a preferable alternative. The employee should be consulted and offered this - but it should be made clear that it is an alternative to a recommendation for dismissal. If this alternative is applied, it may also be accompanied by a lesser sanction i.e. warning or final warning.

- 2.7.1 On reconvening a Disciplinary Hearing the employee should be told of the decision reached. At this particular stage further discussion is discouraged. The reasons for the findings should be stated and any future associated action e.g. improvement in conduct, set out.
- 2.7.2 Warnings and final warnings must be confirmed in writing. The letter should set out very clearly: details of the type of warning i.e. warning or final warning and any remedial supportive or monitoring action to be followed/given in the future; and the right of appeal.
- 2.7.3 Where the allegation is not proved and dismissed, all reference to it shall be expunged from the employee's record.
- 2.8 The letter confirming the warning/final warning should also state that the letter itself will remain on the employee's file for the time specified and that it will be 'expunged from the employee's file' at the end of that time.

3. Procedure - Dismissal

- 3.1.1 Schools must determine, when agreeing to adopt a Disciplinary Procedure, the way in which they will deal with a dismissal recommendation. The Governing Body should set up a Committee or Panel to hear the actual recommendation and then meet (without the members of that Committee or Panel) as an appeal group. The alternative, at appeal stage, is for the Governing Body to appoint another Committee/Panel especially to hear Disciplinary Appeals. This, however, is NOT the LA's preferred option. If dismissal is a possible outcome then all members of the Governing Body should have had an opportunity to participate at either stage.

Members of the Governing Body should be clear that they will be advised that any prior and detailed knowledge of or involvement in any case will exclude them from sitting on either of the two groups referred to above. This is based on the accepted employment law concept of 'tainting' which means that they have information which could preclude them from taking a fair and unprejudiced decision.

This is likely to apply in particular to the Chairman of Governors. It is recognised that there will be circumstances where a Chairman, by virtue of his/her role, must have had the level/degree of knowledge which would preclude him/her from sitting in judgement.

- 3.1.2 The role of the LA is quite clear and has been agreed with the relevant Trades Unions. One senior officer will advise the Headteacher or Chairman of Governors while another will advise the Governing Body.
- 3.2.1 The same principles, advice, and procedures apply equally to Warnings and Dismissals (see Section 2 of this Commentary). However, if at this stage an Headteacher or Chairman believes that the misconduct can or does constitute gross misconduct s/he can move immediately to a referral/recommendation without the need for a Disciplinary Hearing. This should not happen, however, without a full investigation which includes an investigatory interview under paragraph 2.1 of the Procedure.
- 3.2.2 Normally it will be expected that the person making the recommendation (Headteacher or Chairman of Governors if the Headteacher is the subject of the Procedure) would present the case to the Governing Body. At this stage the LA Director of Education would certainly wish to be closely involved in supporting and advising on the case. There is nothing to prevent the Headteacher or Chairman of Governors asking for help and advice in terms of the presentation of the case. Indeed, it may be that, for various reasons, s/he would wish the case to be presented by an appropriate officer from the LA. In those circumstances the Headteacher or Chairman of Governors would be present to assist with the presentation and be called upon to present his/her evidence and recommendations. Where the Headteacher is the subject of the

procedure, a Senior LA Officer will be assigned to support and advise the Chairman of Governors and/or present the case.

- 3.2.3 If the Director of Education is/was unhappy about a referral/recommendation for dismissal then that fact would be made clear. Equally, if the Director of Education supported the referral/recommendation then the Headteacher/Chairman of Governors and the school would be offered every help and assistance in processing the case.
- 3.2.4 Cases which reach this stage must be based on potential "gross misconduct". Some definitions and examples of gross misconduct are given in Appendix 3.
- 3.2.5 Headteachers, Chairmen of Governors and indeed, Governing Bodies ought to be aware that, in the case of "teachers and workers with young people" the Department for Education (DfE) may also investigate and take their own disciplinary action where an act of gross misconduct may have taken place. Such instances are reported to the DfE in a variety of ways. The DfE will independently identify and deal with those cases where an employee has been accused of (and normally found guilty of) a criminal offence. There is a national process which alerts the DfE particularly, when an employee is convicted in court. In such cases therefore it is incumbent upon the LA - and therefore the school - to investigate and determine what action, if any to take.

In addition, there is a requirement on the LA to report any cases where a teacher or worker with young people is "dismissed from "relevant employment" on grounds of misconduct, or where someone resigns in circumstances where s/he would have been dismissed, or considered for dismissal, on those grounds." The LA must also inform the employee that s/he will be reported to the DfE.

- 3.3 The provisions of this paragraph have already been dealt with in the "Procedure Warnings" Section - paragraphs 2.4.1. to 2.4.3.
- 3.4 The conduct of Governing Body, Committee or Panel Hearing is also dealt with in accordance with Appendix 1 of the Procedure. The advice contained in paragraphs 2.5.1. to 2.8 apply equally to such meetings. (In view of the seriousness of the matter it is suggested that the employee be told, preferably on the same day, about the decision of the Governing Body/Committee/Panel.)

It is likely that any referral/recommendation for dismissal will be submitted and supported by both the Headteacher or Chairman of Governors (where the Headteacher is the subject of the Procedure) and the LA. The options of a lesser sanction e.g. final warning, warning and/or relegation/demotion are still options for the Governing Body, Committee or Panel.

In presenting the case it is essential that the Governing Body/Committee/Panel are clear as to why they are considering a recommendation for dismissal. It should be clear to them, in the presentation, why the lesser sanctions of relegation/demotion and/or Final Warning or Warning have not been chosen at the previous stage by the Headteacher or Chairman of Governors.

- 3.6.1 Unlike the warnings procedure (where formal minutes/records are not strictly necessary) it is essential that, as this is a formal meeting of the Governing Body Committee/Panel, minutes are kept. These need not be in detailed form but simply record that the meeting has been held to consider a case/recommendation and that the decision of the meeting was that
- 3.6.2 The letter conveying the decision to the employee must be signed by the Chairman of the Governing Body or Committee/Panel; it should not go out in the name of the Headteacher or the LA.

- 3.6.3 It is important that the letter of confirmation contains the information contained in paragraph 3.6 of the Procedure.
- 3.6.4 It is also essential that, when confirming a dismissal (both at the meeting and in the letter), the employee is told whether or not the dismissal is with notice or is a "summary" dismissal and takes effect immediately without pay. Where an employee is dismissed either summarily or with Notice/Pay, and indicates an intention to appeal, s/he is entitled, under Education legislation, to remain in employment/pay (in LA Schools) until the appeal period has expired or the appeal has been heard and the decision confirmed.

It is very important that the LA Director of Education is involved in any potential dismissal case(s). The LA would wish to be present to offer advice to the Governing Body/Committee/Panel as, in the event of a referral to Employment Tribunal or the Courts, the LA may need to respond with, and represent, the Governing Body. The LA should only be informed in writing of a decision to dismiss if a) the employee does not appeal and the appeal period has expired or b) the appeal has been heard and the decision confirmed.

- 3.7.2 Ultimately, if a case is referred to Employment Tribunal/Courts then provided the LA has supported the recommendation, it would represent the Governing Body at any presentations/formal Hearings.
- 3.8 In normal circumstances it is expected that the Headteacher or Chairman of Governors would liaise with the LA on any case which is serious enough to warrant even consideration of an allegation of "gross misconduct" and therefore a possible referral/recommendation for dismissal. The School Standards & Framework Act 1998 places a heavier and far more direct responsibility on Headteachers and Chairmen of Governors (by direction and/or implication) in dealing with such cases.
- 3.8.2 It is vital that Headteachers or Chairmen of Governors (where the Headteacher is the subject of the Procedure) attend when dismissal cases are being presented and considered. The Headteacher/Chairman of Governors may be asked for a view and may have to make a recommendation. They cannot, of course, remain in attendance when the Governors Committee/Panel are considering and reaching their decision.

4. Appeals

- 4.1 An employee may appeal against any decision of the Headteacher, Chairman of Governors, Governing Body, Committee or Panel arrived at under sections 2 and 3 of this Procedure.
- 4.2.1 Appeals should be heard/organised in accordance with Appendix 2 to the Procedure. See also Paragraph 3.1 of the Procedure and this Commentary regarding the structure and number of members of the Appeal Group.
- 4.2.2 Clearly the person/group involved in the original Hearing may need to justify their decision at the appeal and it is sensible, therefore, for the person or Chairman of the group to retain all notes of the original Hearing. It is expected that the original presenting officer, Headteacher, Chairman of Governors and/or Chairman of the Disciplinary Hearing Group should be present at the appeal Hearing.

5. Local Authority

- 5.1 Paragraph 5.1 sets out the legal responsibilities and processes required of the LA in dismissal cases. It is fairly straightforward and simply requires a/the Staff Dismissal Committee/Appeal Committee to notify the LA in writing of their determination and the reasons for it. If the person concerned is employed solely to work at the school (and s/he does not resign), the LE shall, before the end of a period of 14 days beginning with the date on which the notification is given, either:

- (a) give him/her such notice terminating his/her contract of employment with the LA as is required under that contract, or

- (b) terminate that contract without notice if the circumstances are such that they are entitled to do so by reason of his/her conduct.

If the person concerned is not employed to work solely at the school, the LA shall require him/her to cease to work at the school.

6. Appendix 1 – Conduct of Disciplinary Hearings

- 6.1 A fundamental and guiding principle for the person/group conducting the Hearing is that the formulation of views before the end of the Hearing should be avoided.
- 6.2 The process, in Appendix 1, should be applied sequentially and rigorously. Whilst the person/group conducting the Hearing are able to ask questions at any time, it is suggested that this should only be done when it is felt essential. It will aid all concerned if questions are kept until the end of each presentation and/or witness statement(s).
- 6.3 If written statements or other documents are to be presented, by either party, copies of these should normally be forwarded/exchanged at least five working days before the Hearing. This is to enable the person/group conducting the Hearing and the employee (and his/her representative) adequate time to formulate questions and responses to issues arising out of the statements/documents.
- 6.4 If there are any difficulties in obtaining time-off from work for witnesses, the LA will strive to secure their release.
- 6.5 The person/group conducting the Hearing should make it clear to any witnesses whether or not they wish them to remain available or that they are able to release them.
- 6.6 There is nothing to prevent witnesses being recalled, particularly to clarify a fact or statement, provided that parties are again present and are also able to ask questions of the witness. Equally, once the Hearing has been adjourned to allow the person/group to reach a decision, there is no reason why all parties cannot be recalled if the person/group require further clarification of facts or statements. However, the recall provision should be regarded as exceptional and only actioned when absolutely essential.

7. Appendix 3 – Disciplinary Rules

- 7.1 Annexe 1 to this Commentary is not designed to present an exhaustive list of actions which may be construed as gross misconduct. It is good practice however to give an indication to employees of the types of behaviour/misconduct which may lead to dismissal for a first offence.
- 7.2 Whilst any of the offences could if proved lead to dismissal, it does not follow that contravening one of these will lead to automatic dismissal. It may be very likely, but regard must still be had to the circumstances of the event (mitigation), previous employment record etc. Gross misconduct is conduct of such a nature that the basis of trust implicit in the employment contract is destroyed. This should be borne in mind when making a judgement about the severity of the offence.
- 7.3 It may be worth noting that theft is, in its criminal definition 'the intention to permanently deprive'. In disciplinary cases theft is often difficult to prove, since employees might often claim to be "just borrowing the equipment/tools/calculator for the weekend". The allegation of unauthorised possession of property may be more appropriate than one of theft. This may well be a matter for investigation by the LA's Internal Audit staff in the first instance.

- 7.4 Criminal conduct at, or in connection with work, will normally always be gross misconduct. Should an employee be suspected of such offences the Personnel Manager should always be consulted prior to any decision to call in the police.
- 7.5 Treatment of criminal conduct which takes place outside work has to be considered as to its affect on the contract. The view taken will depend on the act, and the employee's job. In the case of school-based employees it is likely that such offences could well lead to dismissal.
- 7.6 Dismissal for any alleged criminal offence may take place before a trial. This is however a complex area and you must consult with your Personnel Manager before any disciplinary action is taken in such cases.
- 7.7 Care should also be taken when considering action against employees believed to be at work under the influence of drink or drugs. Should this be treated as a capability problem in the first instance?

Beware, before accusing staff of being 'drunk or drugged'. The problem may be a medically related one and whilst it should be tackled, an open mind should be kept. If an allegation is to be brought in this category it will be less contentious to deal with an allegation that the employee' appeared to be incapable of work because of the influence...' rather than one of 'being drunk'. Where an employee is believed to be unfit for work s/he should be sent home. It is wise in such circumstances to ensure that the employee is taken home safely (i.e. do not allow the employee to drive).

- 7.8 Conduct relating to "Child Protection" must always be treated very seriously and investigated thoroughly. Guidance concerning relationships with pupils and obligations under reporting procedures are dealt with in the "Code of Conduct" copies of which are in all schools. Where any allegations of child abuse are laid against an employee then schools are urged to contact the Personnel Manager immediately before embarking on any investigation. Other agencies, i.e. social services and police, may become involved; if that happens both the school and the LA Director of Education must only take action with their agreement.
- 7.9 Whilst the list at Appendix 3 points out examples of gross misconduct which could lead to dismissal employees could also be dismissed for persistent minor breaches of rules, where earlier warnings have not improved conduct.

8. Summary

The Headteacher and Chairman of Governors (where the Headteacher is the subject of the Procedure) are advised to speak to the appropriate Personnel Officer about any aspect of the application of the Disciplinary Procedure. They are reminded that it will never be fair to dismiss an employee on the spur of the moment for an offence regardless of how serious. Even where an act of misconduct is such as to warrant dismissal the employee has the right to state his/her case and the employer an obligation to investigate the circumstances. Disciplinary investigations and Hearings are not always long drawn out processes; they can be dealt with remarkably quickly where necessary.

