

DISCIPLINARY POLICY AND PROCEDURE For School Based Employees

1.	INTRODUCTION	2
2.	SCOPE	2
3.	PURPOSE	2
4.	PRINCIPLES OF APPLICATION	2
5.	SAFEGUARDING MATTERS AND EXTERNAL PROCESSES	4
6.	GENERAL RESPONSIBILITIES	5
7.	EMPLOYEE'S RIGHT TO BE ACCOMPANIED	6
8.	THE INFORMAL STAGE OF THE PROCEDURE	6
9.	THE FORMAL STAGE OF THE PROCEDURE	7
10.	SUSPENSION	7
11.	DISCIPLINARY INVESTIGATION	8
12.	MANAGERS AUTHORISED TO UNDERTAKE DISCIPLINARY HEARINGS AND APPEALS	10
13.	THE FORMAL MEETING	12
14.	ACTION AGAINST A PROFESSIONAL ASSOCIATION OR TRADE UNION REPRESENTATIVE	13
15.	LINK WITH OTHER PROCEDURES	13
16.	TIMESCALES AND DEFINITION OF A WORKING DAY	13
17.	SANCTIONS	14
18.	NOTIFICATION OF THE OUTCOME	16
19.	CRIMINAL OFFENCES OUTSIDE OF EMPLOYMENT	17
20.	APPEALS	18

Appendix 1: Disciplinary Offences

Appendix 2: Model Disciplinary Procedure

Appendix 3: Procedure to be followed at Disciplinary Hearing

Appendix 4: Procedure to be followed at Appeal Hearing

Appendix 5: Further Guidance on Discrimination

1. INTRODUCTION

- 1.1 All staff within Central Bedfordshire Council's maintained Community, Voluntary Controlled, Nursery and Special schools must demonstrate high standards of professional and personal conduct and treat all those with whom they have contact with respect, and in line with the Council's procedures.
- 1.2 This procedure is designed to help and encourage all employees to achieve and maintain satisfactory standards of conduct. The aim of this procedure is to ensure that all employees receive consistent, fair treatment.
- 1.3 At every stage in the procedure the employee will be advised in writing of the nature of the complaint against them and will be given the opportunity to challenge the allegations and state their case before any disciplinary action is taken. Written notice will be given of any formal disciplinary hearings.
- 1.4 The school's HR Provider and Legal Insurers should be consulted at each stage of the procedure and managers are encouraged to seek advice from both parties at the earliest possible opportunity.

2. SCOPE

- 2.1 The School Staffing (England) Regulations 2009 require the governing body to establish procedures for the regulation of the conduct and discipline of staff.
- 2.2 This procedure applies to all staff based within Central Bedfordshire Council's maintained Community, Voluntary Controlled, Nursery and Special schools. Staff who are not employed solely at the school such as centrally appointed peripatetic staff are subject to separate disciplinary procedures. Any concerns relating to the conduct of such staff should be drawn to the attention of the appropriate line manager at the earliest opportunity.

3. PURPOSE

- 3.1 Appropriate discipline at work is necessary for the efficient operation of the school and for the health and safety of all employees. This document has two main parts: the **policy** which sets out the expectations on employees in relation to their conduct and the **procedure**, which describes the action the school will take in circumstances where there is a failure to meet those expectations.

4. PRINCIPLES OF APPLICATION

- 4.1 The school's approach to the disciplinary process is based on a number of guiding principles that run through this document. These are:-
 - School managers will ensure that staff receive adequate induction, training, support, supervision and advice in connection with their work and are made aware of the relevant standards set out in this document, so as to encourage them to achieve and maintain the required standards of conduct.
 - All staff covered by the document will be treated in a fair, consistent and non-discriminatory manner.

- Unless it is totally impractical, the case against an employee will be heard by a different designated person/panel at each stage of the procedure.
- Proper and adequate procedures will be followed before any disciplinary decisions are taken.
- Any steps under the procedure will be taken promptly unless there is good reason for delay.
- If a member of staff has difficulty at any stage of the procedure because of disability, they should discuss the situation with their manager who will seek the advice of the schools HR provider as soon as possible in order for reasonable adjustments to the procedure to be considered.
- If an employee subject to the procedures is pregnant or on maternity leave the advice of the schools HR provider should be sought as soon as possible in order for reasonable adjustments to the procedure to be considered.
- Disciplinary proceedings are confidential. Information made available in the course of disciplinary proceedings must not be shared with anyone except those directly involved. This does not preclude a confidential consultation with a friend, colleague or trade union representative for support or professional advice. Any unwarranted breach of confidentiality could result in disciplinary being taken against those involved.
- In all but the most complex of cases, the Informal Stage will be completed before proceeding to the Formal Stage.
- There is no statutory right of accompaniment by a companion at the informal stage of the procedure however it is good practice to allow an employee to be accompanied if requested. If in attendance, the role of the companion will mirror those of the formal procedure.

Except in cases of gross misconduct, employees will have been given at least one warning before they are dismissed.

- **For Teachers:** The Teachers' Standards, which came in to force on 1 September 2012, define the behaviour and attitudes which set the required standard for personal and professional conduct throughout a teacher's career. The Teachers' Standards will, therefore, be a reference point when considering whether a teacher's conduct has fallen significantly short of the standard of behaviour expected of a teacher.
- Staff must not canvass managers or council members for support during disciplinary proceedings.
- Where it is deemed necessary to suspend a member of staff, they will be paid their normal rate of pay (including any other contractual payments) as received immediately prior to the suspension. The reason for suspension will be explained.
- A member of staff has a statutory right to be accompanied by an accredited worker's companion (i.e. Trade Union representative) or a work colleague, at all formal stages of this procedure. They should be informed of this right, be given

advanced notice of such meetings and given reasonable time to contact a representative. If the employee's chosen companion is not available at the time fixed for the meeting, it should be rescheduled to accommodate the availability of the companion, as long as a reasonable alternative date is offered which is within 5 working days of the originally proposed date.

- Advice from the school's HR provider and Legal Insurers will be available at all stages of the process and the CBC HR Statutory Services Team, where appropriate.

4.2 Protected Acts

The Equality Act 2010 refers to 'protected acts' and it is considered victimisation for an employer to subject a worker to detriment if that worker has performed or may perform in the future, a protected act i.e.

- Bringing proceedings under the Act
- Giving evidence or information in connection with proceedings brought under the Act
- Doing anything which is related to the provisions of the Act
- Making an allegation (whether or not express) that another person has done something in breach of the Act
- Making or seeking a relevant pay disclosure to or from a colleague (including a former colleague).

Victimisation does not need a comparator and there is no time limit between the occurrence of the protected act and the detriment to the worker provided that a link can be proven.

If a complaint about discrimination leads to a disciplinary process where the complaint proves to be unfounded, schools must be careful not to subject the complainant (or any witness or informant) to any detriment for having raised the matter in good faith. Such actions qualify a 'protected acts' and detrimental treatment amounts to victimisation if a protected act is an effective cause of the treatment.

Should disciplinary action be considered arising out of the above advice should be sought from the schools HR Advisers and Legal Insurers before any action is taken.

5. SAFEGUARDING MATTERS AND EXTERNAL PROCESSES

- 5.1** Where at any stage in the procedure, a safeguarding matter is suspected, the CBC Allegations Manager must be contacted for advice.
- 5.2** If an allegation of abuse is made against any employee of a school, the school must refer to the statutory guidance from the Department for Education entitled 'Dealing with allegations of abuse against teachers and other staff' and Keeping Children Safe In Education document. This guidance covers all schools and educational establishments, including Academies and Free Schools. The statutory guidance is available [here](#) and the Council's policy on Dealing with Allegations of Abuse is available [here](#). The Keeping Children Safe in Education Document is available [here](#)
- 5.3** Where it becomes necessary to refer matters to external parties (e.g. the Police) further proceedings at school level will be held in abeyance until the conclusion of these processes including any court/criminal proceedings, or until the external party provides written permission for internal procedures to continue.

6. GENERAL RESPONSIBILITIES

Governing Body

- 6.1** Responsibility for the dismissal of staff and the hearing of appeals may be delegated to a sub-committee. It is recommended that one is established to deal with disciplinary matters and a second to hear appeals in order to ensure that the principles of natural justice are maintained.
- 6.2** A disciplinary committee must comprise of no fewer than three people but must not be the full governing body as a separate group will be needed to hear appeals. Any person hearing a disciplinary case at any stage should not have had any previous involvement in the particular complaint against the employee. Members of such committees should familiarise themselves with this document and access relevant training through their HR provider.
- 6.3** Decisions taken by these sub-committees under their delegated powers must be reported to the full governing body.

School Management

- 6.4** The Headteacher has overall responsibility for maintaining discipline amongst all staff in the school but other managers may be required to deal with individual cases, depending on complexity. Where the alleged misconduct involves the Headteacher, responsibility for initiating disciplinary action and deciding the appropriate level of action rests with the governing body. For all other staff responsibility rests with the Headteacher.
- 6.5** Managers should ensure policies and procedures are readily available to employees and can be accessed by all staff in an appropriate format
- 6.6** Managers should seek advice from the school's HR provider at the earliest opportunity whenever an employee's conduct is giving cause for concern and might result in disciplinary action.
- 6.7** The schools legal insurers should be contacted at the earliest opportunity. The school should ensure that the advice provided by the legal insurers is followed, however the school should also ensure that their HR provider is aware of the legal advice, and where possible, the HR provider communicates with the schools legal insurers at all stages of the process.

Employees

- 6.8** All employees are responsible for familiarising themselves with standards of work and conduct including the School's Staff Code Of Conduct, their terms and conditions of employment, the equality and diversity policies, the examples of disciplinary offences given in Appendix 1 of this document and any relevant standards or rules relating to: timekeeping; absence reporting; confidentiality; using e-mail, internet and telephones; data protection etc. whilst on school business.
- 6.9** They must ensure that their own conduct accords with established standards of work and conduct, including those mentioned above, in a way that promotes a positive working environment.
- 6.10** In accordance with their contract of employment they must co-operate with the disciplinary process.

7. EMPLOYEE'S RIGHT TO BE ACCOMPANIED

- 7.1** Employees have the right to be accompanied at all stages of the formal procedure and may choose to bring a Companion for support to the informal meeting. There is no statutory right of accompaniment by a companion at the informal stage of the procedure however it is good practice to allow an employee to be accompanied if requested. If in attendance, the role of the companion will mirror those of the formal procedure.
- 7.2** A Trade Union Representative can accompany employees to Suspension meetings, providing this can be arranged quickly.
- 7.3** The employee's Companion can be:
- a work colleague;
 - a full time Trade Union Official; or
 - an accredited Trade Union Representative.
- 7.4** Employees are responsible for arranging their Companion. Employees may not be accompanied by a person who may prejudice the fairness of the disciplinary process or who may have a conflict of interests. Where such an issue exists with the attendance of a trade union representative, a resolution will be sought with the assistance of the school's HR provider and the relevant area union official.
- 7.5** The role of the Companion at all formal meetings under the Disciplinary Procedure is to support the employee. They are allowed to:
- address the meeting in order to present the employee's case;
 - respond on the employee's behalf to any view expressed at the meeting;
 - confer with the employee during the meeting;
 - ask questions of witnesses; and
 - sum up the employee's case.
- 7.6** However, they are not allowed to:
- answer questions on behalf of the employee;
 - address the hearing if the employee does not want them to; or
 - prevent the employee from explaining their case.
- 7.7** In order to exercise their right to be accompanied, the employee must provide the Headteacher (or Clerk to the Governors in cases involving the Headteacher) with the name of their Companion before the meeting.
- 7.8** Accommodation shall be made available for the employee and their representative to discuss the case prior to and during the hearing.

8. THE INFORMAL STAGE OF THE PROCEDURE

- 8.1** The Council believes that, for minor concerns about conduct and other issues, it is in the best interests of all involved if minor faults are dealt with informally by the immediate Line Manager, (that is without recourse to the formal procedure) as soon as a problem occurs.
- 8.2** Where a Headteacher (or in cases involving the Headteacher, Chair of Governors) has minor conduct concerns, they should speak to the employee informally about the issue.

This should be a two-way discussion aimed at discussing possible shortcomings in conduct and encouraging improvement. This meeting should be constructive, with the emphasis on finding ways for the employee to improve and for the improvement to be sustained.

- 8.3** The Headteacher, or their representative, (or Chair of Governors) should advise the employee of the following:
- Where the employee is falling short of expectations
 - How the employee's conduct is expected to improve, and
 - Timescale for improvement.
 - Additionally the Headteacher (or Chair of Governors) can advise the employee that they are issuing them with a verbal or informal warning.
- 8.4** There is no statutory right for employees to be accompanied at informal meetings. However, Line Managers should be careful that informal action does not turn into formal disciplinary action, as this may unintentionally deny the employee certain rights, such as the right to be accompanied.
- 8.5** Informal action is not formally documented; however, Line Managers should retain their own notes of the discussion and the agreed outcomes. These should be disregarded after 6 months.
- 8.6** Consideration should be given whether the employee has a disability (when considering the alleged misconduct) and whether reasonable adjustments may be an outcome of the process. Advice should be sought from the schools HR provider and Legal Insurers prior to further action being taken.
- 8.7** There is no specific procedure for the employee to appeal or dispute the informal stage, although the employee does have recourse to the Grievance Procedure.
- 8.8** If, during the discussion, it becomes obvious that the matter may be more serious, the meeting should be adjourned and the employee told that the matter will be continued under the formal disciplinary process.

9. THE FORMAL STAGE OF THE PROCEDURE

- 9.1** The formal discipline procedure should be invoked if there is:

- A recurrence of the behaviour, or
- An escalation to a more serious breach of conduct, or
- A suspected breach of conduct.

10. SUSPENSION

- 10.1** The governing body (in the case of suspension of the Headteacher) and the Headteacher (for all other staff) have the power to suspend any person employed to work at the school.
- 10.2** Suspension for alleged misconduct should only be instigated:-
- where the suspected offence may amount to gross misconduct; or
 - in a situation when it is decided that a member of staff should be away from the school in the best interests of the investigation or the employee while a serious matter is being investigated.

- 10.3** Suspension of this kind is not a disciplinary sanction and does not imply “guilt” or that any decision has already been made. Suspension may involve a total suspension from work, suspension of part of the employee’s normal duties, transfer to alternative work or transfer to a different workplace.
- 10.4** The alternative options should be considered before implementing a total suspension from work.
- 10.5** Wherever possible, the school’s HR provider and Legal Insurers should be consulted before this action is taken.
- 10.6** The Headteacher, when exercising this power, shall immediately inform the governing body and the Statutory HR Services Team of the Council.
- 10.7** The governing body, when exercising this power, shall immediately inform the Statutory HR Services Team of the Council and the Headteacher.
- 10.8** Suspension under this paragraph may only be ended by the Headteacher or governing body. On ending such a suspension, they shall immediately inform the Headteacher (if ended by the governing body) and the Statutory HR Services Team of the Council.
- 10.9** During suspension, the employee will be paid their normal rate of pay (including any other contractual payments) as received immediately prior to the suspension. Any period of suspension should be as brief as possible.
- 10.10** During a period of suspension, wherever possible, a Contact Officer should be nominated from the school staff, with whom the suspended employee can communicate in order to be kept informed about school matters and the progress of the investigation.
- 10.11** If the investigation is prolonged, a review of suspension should be undertaken. This should be undertaken no longer than 6 weeks after the date of suspension. If the suspension is to remain in place the employee should be notified in writing including the reasons for the continued suspension.
- 10.12** If the suspended employee should wish to communicate with other staff on matters relating to the disciplinary investigation (e.g. to use them as defence witnesses), this should be done via the nominated Contact Officer of the school and/or through their Companion.
- 10.13** Under the terms of the contract of employment staff are required to co-operate with their employer and should not, therefore, refuse to appear as a witness without good cause.

11. DISCIPLINARY INVESTIGATION

- 11.1** The purpose of an investigation is to establish a fair and balanced view of the facts relating to any allegations of misconduct against the employee before deciding whether to proceed with a disciplinary hearing.
- 11.2** There are two types of investigation:

Simple, fact finding investigation

- This is carried out by the Headteacher, or other delegated officer (or Chair of Governors in cases involving the Headteacher).

- This is a useful means of checking the facts for a matter of minor misconduct. Alternatively, it can be used as a preliminary to a full investigation.
- However, if the misconduct is of a more complex nature, and if witnesses need to be interviewed, then it may be necessary to appoint an Investigation Officer, to investigate the issues and establish facts.
- The school's HR Provider can advise on when a full investigation is appropriate.

Full and formal investigation

- This is carried out by an Investigation Officer, appointed by the Headteacher (or Chair of Governors).
Their findings will be presented in a written report to the Headteacher (or Chair of Governors). The written report should also indicate if the investigator considers there is a case to answer or no case to answer.
- Before the investigation starts, the Headteacher (or Chair of Governors) will meet with the employee to tell them about the investigation, and give them the name of the Investigation Officer.
- The employee may wish to comment at this stage. This will be confirmed in writing within 2 days of the meeting.
- If an Investigation Officer has yet to be appointed when the employee is notified, their name must be confirmed to the employee in writing, within 5 days of the meeting.
- In exceptional cases, the employee may be placed on suspension on full pay during this time.

- 11.3** In more serious or complex cases and particularly where serious or gross misconduct is alleged, the investigation should be carried out by a senior manager other than the one designated to conduct the disciplinary hearing.
- 11.4** Early on in the investigation, the Investigation Officer will meet with the employee to ask them questions about the alleged misconduct. They will share with the employee the proposed list of witnesses, and ask the employee if there are any further people they want to be interviewed. The decision about whether to do so is at the Investigation Officer's discretion.
- 11.5** Unless there are exceptional circumstances involving accusations against the Headteacher, governors should not be involved in these meetings. The Investigation Officer may be assisted by a representative from the school's HR provider. The employee may be accompanied by a Companion (work colleague or Trade Union Representative).
- 11.6** In some cases, to establish the facts, it may be helpful to obtain a statement from a service user, children and young people (i.e. those under the age 18) or a member of the public. However, this is not generally encouraged. Witness statements from service users may be anonymised to protect the identity of the witness and for children and young people will always be anonymised. Where written statements from children or young people are required, the investigator should consider informing the parents/guardians and giving them the opportunity to be present. All statements should be signed by the witness as a true record.
- 11.7** The Investigation Officer will also review any documentary records such as emails, reports, timesheets, supervision notes, performance management records etc.
- 11.8** An investigatory meeting should not be used to issue a disciplinary sanction. The employee should be informed of this at the commencement of the investigatory meeting.

- 11.9** The employee must cooperate fully and promptly in any investigation, including informing the investigating manager of the names of any relevant witnesses, disclosing any relevant documents and attending any investigatory interview. The investigatory interview with the employee may take place over more than a single session and will be recorded in written form. A written record of the interview(s) will be made by the Investigation Officer (or their minute taker) and will be signed as a true record by the employee if there is agreement that this is a true record of the interview. If there are any points of disagreement these will be noted in writing and kept with the record of the investigatory interview.
- 11.10** The investigation needs to be conducted in a timely fashion. The Investigation Officer needs to give dedicated time to this activity, and consideration should be given to freeing them up from their substantive role, while the investigation is undertaken.
- 11.11** Following the conclusion of the investigation stage, the employee must be notified in writing within 7 calendar days. There are two potential outcomes of an investigation:
- There is a case to answer and therefore the employee will be asked to attend a disciplinary hearing, or
 - There is no case to answer and the employee will be told that the allegations are not being pursued further under the Disciplinary Procedure.
- 11.12** If there is no evidence to substantiate the need for further proceedings, the employee will be informed in writing of this, and if a precautionary suspension from work is in place, will return to work. No reference to the allegations will be kept on the employee's personal file.
- 11.13** The school's HR Provider can provide advice to assist with the above decisions. The schools Legal Insurers should also be consulted before any decisions are taken.
- 11.14** If the decision is not to proceed to a formal disciplinary meeting, as well as writing to the employee to notify them of the outcome, they should also arrange to meet with them to discuss the outcomes of the investigation and the reasons why the matter is not being pursued formally. The employee may bring a Companion with them to this meeting.
- 11.15** The Headteacher (or Chair of Governors) may also like to consider if there is a need for any further informal action, for example a 'what has been learned' meeting. Where appropriate the employee should be informed of any action and time limitations relating to the action in writing.
- 11.16** If a disciplinary hearing is to be called, the employee will be sent a copy of the investigation report.
- 11.17** Before writing to the employee, the witnesses, if any, that are to be called to the disciplinary hearing will need to be identified. The school's HR Provider can assist with this.

12. MANAGERS AUTHORISED TO UNDERTAKE DISCIPLINARY HEARINGS AND APPEALS

- 12.1** It is recommended that the following be designated to conduct disciplinary hearing and hear appeals. Particularly in the case of small schools it is recognised that it may not always be possible for a different member of staff to institute disciplinary action at different stages in the procedure. However the same person should not be involved in the original decision and appeal at any stage.

Charge	Allegations Against	Action by Designated Body / Person	Appeal to
Misconduct	Staff other than Head or Deputy Head	Headteacher or Line Manager	Headteacher or designated governor
Serious or gross misconduct		Headteacher or Disciplinary Committee* for dismissal delegated power to dismiss is required to be given by the GB to H/T.	Appeal panel of Governing Body
Misconduct	Deputy Head	Headteacher	Appeal panel of Governing Body
Serious or gross misconduct		Headteacher or Disciplinary Committee* for dismissal delegated power to dismiss is required to be given by the GB to H/T.	Appeal panel of Governing Body
Misconduct	Headteacher	Chair of Governing Body or nominated representative	Appeal panel of Governing Body
Serious or gross misconduct		Disciplinary Committee	Appeal panel of Governing Body

13. THE FORMAL MEETING

13.1 If the employee is to be asked to attend a disciplinary hearing the investigator is responsible for arranging the hearing which will be with the Headteacher or disciplinary committee and notifying the employee in writing. The employee must be sent a letter and given at least 7 calendar days' notice of the hearing. The letter will set out:

- The allegations.
- The right to be accompanied by a Companion (Work colleague or Trade Union Representative).
- The time, date and venue for the meeting, including the process to request a change if the time is significantly impractical for the employee or their Companion to attend.
- That either party can produce witnesses and/or written witness statements and relevant supporting documents at the disciplinary hearing, should they wish.
- The names of the people who will be present at the disciplinary meeting, including those who have been called as a witness, and the potential sanction(s).

13.2 In addition, copies of the investigation report, a copy of the disciplinary policy and procedure, and any statements or documents to be presented by the investigator at the disciplinary hearing must be sent to the employee at least 7 calendar days before the hearing.

13.3 The employee will be asked to provide:

- The name of their Companion
- The names of any witnesses they are calling, and
- Any additional documentation that they wish to be considered

This is subject to the requirement to exchange this information at least seven calendar days before the meeting.

13.4 The employee is expected to attend the disciplinary meeting. However, if there are exceptional circumstances which means that the employee is unable to attend at the date or time invited, or if their Companion is unable to attend, the employee may request a change to the meeting time and/or date. The employee must provide reasons for submitting this request. In accordance with the Employment Rights Act 1999 the employee may offer a reasonable alternative time within five working days of the original date if their chosen companion cannot attend. An alternative offered by the employer must -

- (a) be reasonable, and
- (b) fall before the end of the period of five working days beginning with the first working day after the day proposed by the employer.

13.5 A representative of the school's HR provider should be invited to be present when allegations of minor, serious or gross misconduct are involved.

13.6 When allegations of serious or gross misconduct are made against the Headteacher, or such allegations are being heard against any member of staff in a school where dismissal may be a possible outcome, a representative from Central Bedfordshire Council's Schools HR Statutory Services Team must be invited to accompany the Headteacher or disciplinary committee as a representative of the Director of Children's Services. Failure to be accompanied will be viewed by the Council as "acting unreasonably" in the meaning of the Education Act.

13.7 The process for disciplinary meetings and appeals is set out in Appendices 3 and 4.

14. ACTION AGAINST A PROFESSIONAL ASSOCIATION OR TRADE UNION REPRESENTATIVE

14.1 This procedure applies equally to employees who are representatives of professional associations or trade unions. However, before proposing to take action beyond the preliminary stage against an accredited representative of a recognised professional association or trade union, schools should discuss the case with their HR provider and legal insurers and with the branch secretary or official employed by the professional association or trade union.

14.2 In cases of alleged gross misconduct by a representative of a recognised professional association or trade union and where the branch secretary or full-time official cannot be contacted quickly, the representative may be suspended on full pay until such consultations have taken place.

15. LINK WITH OTHER PROCEDURES

15.1 The submission of a complaint by an employee during disciplinary proceedings will not normally prevent the continuation of the disciplinary proceedings. Where appropriate, a complaint related to the disciplinary proceedings should be dealt with as part of the disciplinary process and not pursued through the grievance procedure.

15.2 Where an employee subject to this procedure is absent due to sickness, the normal expectation is that the disciplinary process will continue and the managing sickness procedure will apply as normal.

15.3 Where the employee asserts that the disciplinary proceedings being undertaken is unlawfully discriminatory or is motivated by reasons other than conduct, the employee can raise a complaint. If the employee raises this complaint in writing at any stage before the appeal stage of a dismissal, this can be dealt with as part of the disciplinary procedure. If the employee raises the complaint only after the disciplinary procedure has finished and it is on substantial new grounds then it will be necessary for the grievance procedure to be completed in full.

16. TIMESCALES AND DEFINITION OF A WORKING DAY

16.1 For the purposes of the operation of this Procedure, timescales relating to the provision of letters or exchanging information are expressed in calendar days.

16.2 In the case of teachers or other staff that work a term time pattern, a working day should be regarded as a day that the school is open for pupils.

16.3 For staff that work all year round a working day should be regarded as a day that they would normally be required to attend for work. Where a disciplinary case arises just before a school holiday, arrangements to resolve the matter speedily should be discussed between the parties. An intervening school holiday should not in itself be a cause for an undue delay in resolving the case.

16.2 The following timescales should be adhered to:-

- Written notice of investigatory meetings – 7 calendar days

- Written notice of disciplinary hearings – at least 7 calendar days
*(*NB this may require longer if the case is complex and involves a substantial volume of paperwork)*
- Written notice of outcome of disciplinary hearings – 7 calendar days
- Written notice of employee's intention to appeal – 10 calendar days following receipt of the decision
- Written notice of appeal hearing – 7 calendar days
- Written notice of outcome of appeal hearing – 7 calendar days

16.4 Submission of evidence

- 16.4.1** Implicit in the above timescales is the principle that evidence should be submitted in sufficient time for those involved in the procedure to have time to read it and to prepare a response.
- 16.4.2** In the case of hearings, the 7 calendar day period indicated above is the minimum notice the employee should be given, which includes receipt of the paperwork upon which the case against them relies. In turn, they must submit any documentation in support of their defence no later than three days before the date of the hearing.
- 16.4.3** In the case of appeals, the grounds for appeal together with supporting documentation should be submitted with the notice of intention to appeal (above). Management will then need to provide a response to the grounds of appeal at least 3 days prior to the appeal hearing date.

17. SANCTIONS

- 17.1** Before an employee is invited to a disciplinary meeting, the Headteacher (or Chair of Governors) will have identified the range of potential sanctions, and these will be explained to the employee in the letter to the employee providing notice of the Hearing..

17.2 Stage 1 – Formal Oral Warning

- 17.2.1** If conduct does not meet acceptable standards the employee will normally be given a formal oral warning.
- 17.2.2** The employee will receive written confirmation of the warning including its timescale, the nature of the improvement required, if applicable, and confirmation that a breach may result in another more serious warning.
- 17.2.3** The employee will be informed of their right of appeal.
- 17.2.4** A record of the warning will be kept on their personal file, but will be disregarded for future disciplinary purposes after 6 months, subject to their satisfactory conduct.

17.3 Stage 2 – First Written Warning

- 17.3.1** The employee will be issued with a written warning if further misconduct occurs during the life of an oral warning (even if the offence is unrelated), or if the misconduct itself warrants more than an oral warning.

17.3.2 This warning will:

- specify the nature of the complaint against them and that it is the first stage of the disciplinary procedure;
- set out the timescale for achieving and or maintaining the required improvement(s);
- inform them of their right of appeal; and
- confirm that a further breach may result in a more serious warning being issued.

17.3.3 A copy of the letter will be kept on their personal file, but will be disregarded for future disciplinary purposes after one year, subject to their satisfactory conduct.

17.4 Stage 3 – Final Written Warning

17.4.1 The employee will be issued with a final written warning where further misconduct occurs during the life of a written warning, or where the seriousness of their misconduct is such that it is not appropriate to give a first written warning.

17.4.2 This warning will:

- specify the nature of the complaint against them;
- give the timescale for achieving and/or maintaining the required improvement(s) (which may be different from the life of the warning);
- confirm that a further breach may result in dismissal or further action short of dismissal; and
- inform them of their right of appeal.

17.4.3 A record will be kept on their personal file, but will be disregarded for future disciplinary purposes after two years, subject to their satisfactory conduct.

17.5 Stage 4 – Dismissal with Notice

17.5.1 If conduct is still unsatisfactory, and there is still a failure to reach the required standards proven through the application of the disciplinary procedure, this will result in dismissal with notice.

17.5.2 Actions other than dismissal can be considered, such as a transfer, demotion, suspension and loss of seniority.

17.5.3 A decision to dismiss should only be taken by the Headteacher if the power to dismiss has been delegated to them by the Governing Body, in accordance with the School Staffing Regulations 2009. It is advised that any delegated power to dismiss that is given to the Headteacher by the governing body is recorded in the minutes of the governing body meeting at which the delegation was made.

17.5.4 The employee should be informed, in writing within 7 calendar days or as soon as reasonably possible, of:

- the reasons for the dismissal;
- the date on which the employment contract will end;
- the appropriate period of notice; and
- their right of appeal.

17.5.5 An employee will not be dismissed for a first breach of discipline, except in the case of Gross Misconduct (see below).

17.5.2 Actions other than dismissal can be considered, such as a transfer, demotion, suspension and loss of seniority.

17.5.3 A decision to dismiss should only be taken by the Headteacher if the power to dismiss has been delegated to them by the Governing Body, in accordance with the School Staffing Regulations 2009. It is advised that any delegated power to dismiss that is given to the Headteacher by the governing body is recorded in the minutes of the governing body meeting at which the delegation was made.

17.5.4 The employee should be informed, in writing within 7 calendar days or as soon as reasonably possible, of:

- the reasons for the dismissal;
- the date on which the employment contract will end;
- the appropriate period of notice; and
- their right of appeal.

17.5.5 An employee will not be dismissed for a first breach of discipline, except in the case of Gross Misconduct (see below).

17.6 Gross Misconduct

17.6.1 Gross misconduct is misconduct of such a serious and fundamental nature that it breaches the contractual relationship between the employee and the School. In the event that an employee commits an act of gross misconduct, the School will be entitled to terminate the employee's contract of employment without notice or pay. Examples of Gross Misconduct are set out in Appendix 1.

17.7 In cases where minor misconduct is found, a Stage 1 warning will be issued. If that misconduct is repeated, the sanction would usually escalate to a Stage 2 warning (following a further hearing) and potentially a dismissal (following a third hearing).

17.8 However, where an employee is accused of a more serious allegation, the Headteacher (or Chair of Governors) will outline a range of sanctions in the letter. On hearing the case, the panel will decide which sanction to apply. It is not necessary for the employee to have had prior warnings on file if the misconduct is sufficiently serious.

17.9 Additionally, at all stages:

- The allegations may be rejected if it is considered that there is no case to answer, or
- The matter may be referred to another procedure, if appropriate.

18. NOTIFICATION OF THE OUTCOME

18.1 If at all possible, the Headteacher/Disciplinary Chairperson will inform the employee of the outcome in person, and this will be followed up by a letter within 7 calendar days of the decision being taken.

18.2 The letter will include:

- The nature of the allegation(s)
- The findings of the Headteacher/Panel

- The decision of the Disciplinary Chairperson/Panel including the nature of any sanction and the length of time it will be kept on their personal file in the cases of warnings.
- The likely outcome if there is no improvement by the employee.
- The date of any review of the warning (if appropriate).
- The right to appeal against the decision.

18.3 The Chair of Governors must be informed of all written warnings issued, and the outcome of any appeal meetings.

18.4 The Headteacher (or Chair of Governors) will review the employee's conduct at the end of the review period. If there has been limited or no improvement, the Headteacher (or Chair of Governors) may decide to proceed to another disciplinary meeting.

18.5 If there has been sufficient improvement, a letter should be sent to the employee confirming this fact at the end of the review period.

19. CRIMINAL OFFENCES OUTSIDE OF EMPLOYMENT

19.1 The ACAS booklet on [Discipline at Work](#) provides good advice to employers when confronted with special situations such as this. The first question to be asked is whether the alleged offence (or conviction) merits action because of its employment implications? Does the offence make the employee unsuitable for their type of work, or unsuitable to remain in their present employment?

19.2 The school should investigate the facts as far as possible, come to a view about them and consider whether the conduct warrants disciplinary action. Where it determines that such action is required, the school does not need to wait for the outcome of the prosecution before taking fair and reasonable action. In these circumstances the procedure set out in cases of misconduct or serious/gross misconduct shall be applied as appropriate.

19.3 In some cases the nature of the alleged offence may not justify disciplinary action – for example, off-duty conduct which has no bearing on employment – but the employee may not be available for work because they are in custody or on remand. In these cases schools should decide whether, in the light of the needs of the organisation, the employee's job can be held open. Where a criminal conviction leads, for example, to the loss of a licence so that continued employment in a particular job would be illegal, the school should consider whether alternative work is appropriate and available.

19.4 Where an employee, charged with or convicted of a criminal offence, refuses or is unable to cooperate with the school's disciplinary investigations and proceedings, this should not deter a school from taking action. The employee should be advised in writing that unless further information is provided a disciplinary decision will be taken on the basis of the information available and could result in dismissal.

19.5 Where police or other investigations are being carried out in relation to this paragraph, a suspension may be continued until the investigations are complete or, where appropriate, court action taken. Suspension in these circumstances could be in the best interests of the school or the employee. The school's HR provider should be consulted before action is taken in these cases.

20. APPEALS

- 20.1** If an employee wishes to appeal against a warning or dismissal, they are entitled to do so within 10 calendar days of receiving, in writing, the decision following the disciplinary meeting.
- 20.2** To raise an appeal, the employee must write to the Headteacher (or Clerk to the Governors if the Headteacher), setting out the grounds for their appeal. The appeal letter will be passed to the Clerk to the Governors.
- 20.3** The Clerk to the Governors will acknowledge the appeal request in writing within 5 working days, and will arrange for a meeting to take place within a further 7 calendar days.
- 20.4** The employee will be sent a copy of the documents that will be considered, 7 calendar days before the hearing.
- 20.5** The appeal meeting will be heard by three members of the Governing Body. One of the Governors will act as Chairperson of the Meeting. The Clerk to the Governors will also be present to take notes during the meeting, and an Advisor from the School's HR Provider may also be present to advise the Panel.
- 20.6** A representative of the Schools HR Statutory Services Team will also attend the appeal hearing.
- 20.7** The Panel will review the paperwork and will invite the Headteacher (or Chair of Governors) to the meeting, as a witness, to provide information in order to understand the rationale for their decision. (The Headteacher, or Chair of Governors, will not play any part in the appeal deliberation and decision making process).
- 20.8** The employee may bring a Companion (work colleague or Trade Union representative) to the meeting
- 20.9** At the meeting, the employee will be asked to give their reasons for appeal.
- For appeal against a warning, the appeal will focus on these 'grounds' for appeal and will not be a re-hearing of the disciplinary.
 - For appeals against dismissal, the meeting will be a re-hearing of the case.
- 20.10** Witnesses may be called to appeal hearings.
- 20.11** When the Chairperson has heard all the information in respect of the appeal, and the rationale for the original decision, the Chairperson will invite the employee to sum up their reasons, before adjourning.
- 20.12** During the adjournment, the Chairperson will consider all the information that they have heard and reach a balanced decision. The rationale for their decision must be recorded in the notes. The possible outcomes are:
- **The employee's appeal is fully upheld.** This will mean that the employee's warning is revoked in full, or their dismissal is overturned.
 - **The employee's appeal is rejected.** This means that the warning will remain on file or the dismissal in place.
 - **The employee's appeal is partially upheld.** This is where the appeal Panel

upholds some points of the appeal, but reject others. This category is not to be used when the appeal Panel cannot reach a decision. Where there is a partial uphold outcome, the appeal Chairperson will need to record in the outcome letter if each point has been upheld or rejected.

- 20.13** The Panel will need to decide, in cases of a partial uphold, if the sanction is to be modified, reduced (e.g. to a lesser sanction or shorter timeframe) or if it will remain in place.
- 20.14** The appeal Panel cannot increase the sanction awarded at the disciplinary meeting. The panel may not make any award of compensation to the employee or vary unilaterally the employee's contract of employment.
- 20.15** The employee will then be asked to re-join the meeting, and be given the outcome verbally, which will be confirmed in writing. If the Chairperson/Panel cannot reach a decision on the day, the employee will be told of this, and advised of the outcome of the meeting within 7 calendar days.
- 20.16** **The appendices also form part of the disciplinary procedure.**
- 20.17** This is the end of the disciplinary procedure

Appendix 1

Disciplinary Offences

1. Misconduct likely to result in disciplinary action

The following list provides guidance on behaviour likely to imply misconduct but this is neither exclusive nor exhaustive

The distinction between misconduct and gross misconduct is often a matter of degree and some examples under misconduct may be of such an extreme nature that they amount to gross misconduct. Similarly, some examples under gross misconduct can be less extreme and, therefore, amount to misconduct rather than gross misconduct. The seriousness and nature of, and circumstances surrounding the allegation(s), must be assessed in deciding the level of any disciplinary measure.

Minor Misconduct

- Absenteeism and lateness: e.g.
 - frequent late arrival at work
 - failure to comply with requirements to notify absence due to sickness
 - unauthorised absence from the workplace
- Misuse of property belonging to the Council / school : e.g.
 - Making unauthorised private telephone calls
 - Sending personal mail at the school's expense
- Rudeness or insubordination
- Disrupting the work of other Council / school employees or contractors
- Refusal to carry out a lawful Headteacher or a manager / supervisor
- Minor breach of health and safety

More Serious Misconduct

- Unauthorised copying of copyright or licensed material e.g. software
- Unreasonable or unacceptable conduct e.g.
 - Abusive language and behaviour
 - Misuse of plant or equipment
 - Threatened violence against a colleague, pupil, client, contractor or member of the public whilst at work
- Breach of the Council's regulations (e.g. financial, contractual, standing orders)
- Breach of health and safety rules and regulations
- Accepting gifts of hospitality from contractors, clients or members of the public without authorization
- Failure to work contracted hours
- Deliberately, and without good cause, failing to follow the agreed disciplinary procedure in respect of conduct

Gross Misconduct

The following list illustrates conduct likely to amount to gross misconduct but this list is neither exclusive nor exhaustive

- Any act of dishonesty, theft, misappropriation or malicious damage to property of the school, the Council, its employees, contractors or clients
- Falsifying records or expense claims: e.g.
 - time sheets
 - bonus sheets
 - car or any other expense sheets
 - overtime sheets
 - sickness claims
- Physical violence on pupils, Council employees, clients, contractors or
- members of the public whilst at work (including maltreatment of persons in the care of the Council)
- Sexual misconduct against pupils, employees, clients, contractors or members of the public whilst at work
- Being under the influence of alcohol or unprescribed drugs at work which gives rise to disruptive or hazardous behaviour
- Wilful and/or malicious direct or indirect unfair discrimination*, harassment or victimisation against other employees, customers or job applicants
- Malicious damage to property
- Serious breach of Council regulations e.g. financial, contractual, standing orders
- Non compliance with health and safety rules and regulations where it endangers the well being of others
- Gross abuse of orders and action which leads, or could lead, to major injury to another person
- Accepting or offering improper bribes or gifts, either to gain business or for personal gain
- Unauthorised use of Council vehicles at any time
- Criminal offences committed outside working hours which renders the employee unsuitable for continued employment with the Council or school
- Unauthorised access to information held by the Council whether held on computer or manual systems
- Unauthorised disclosure of information classified as confidential by the Council
- Falsification or omission of information for personal gain e.g. provision of information on an application for employment form, medical questionnaire, etc
- Improper use of position as a Council or school employee for personal gain

*** Please refer to Appendix 5 - Further Guidance on Discrimination**

2. Level of Misconduct

In paragraph 5 of the procedure, the Headteacher must consider the seriousness of the complaint I allegations and make a decision as to whether this be referred to the disciplinary committee of the governing body.

It is important to note that referral to the governing body in no way assumes the level of misconduct, or a particular sanction if the case is found. The disciplinary committee has the full options of sanctions available.

A further consideration in the Headteacher's decision to refer the matter to the disciplinary committee may be accusations of bias or victimisation by the respondent, rather than the perceived level of the allegation of misconduct.

3. Suspension

When called to a meeting where suspension is a possible outcome, the member of staff should be advised to seek the advice and assistance of his or her trade union. A person who is not a member of a trade union may be assisted by a friend. He I she, where accompanied, should be offered the opportunity of a brief meeting with the representative or friend before the meeting.

The member of staff should be informed at the outset of the meeting of the allegation and that, at the conclusion of the interview, suspension might occur. It should be made clear, however, that the meeting is not a formal disciplinary hearing but is for the purpose of raising a serious matter which may lead to suspension and further investigation.

The member of staff should be given as much information including the reasons for any proposed suspension, as is consistent with not interfering with an investigation about the allegation. The meeting is not concerned with examination of the evidence but is an opportunity for the member of staff to make representations concerning any possible suspension. The member of staff should be given an opportunity to make such representations after the information has been given and the reasons for any proposed suspension made out. A brief adjournment should be offered to the member of staff prior to response.

If, as a result of the meeting, it is considered by the Headteacher / chair of governors that suspension is necessary, along with a full investigation of the allegation, the individual should be advised that he or she is suspended from duty. Written confirmation of the suspension should be dispatched within one working day, giving reasons for the suspension.

4. Sanctions

A case must be found before a sanction is agreed. It is only after deciding a case of misconduct is proven that any previous sanctions which remain live on the employee's file be revealed or taken into account.

5. The Disciplinary Committee

Membership

- (a) The committee shall consist of three members of the governing body. Governors may wish to nominate an additional governor to act as reserve. No member shall have a pecuniary interest in any decision which may be taken by the committee. No governor who serves on this committee is eligible to serve on the appeals committee.

- (b) The Strategic Director (Learning) or his / her representative, may attend for the purpose of giving advice.

Quorum

The committee shall be quorate when three nominated governors or nominated reserves are in attendance.

Hearings

The Headteacher (or chairperson of the governing body, in respect of alleged misconduct by the Headteacher) will convene hearings as required.

Paragraph 5.3 of the Procedure deals with the non attendance of the employee at the hearing. As established at paragraph 4.1.2, non attendance may also be because of bail restrictions, a custodial sentence or the employee may be unable to offer a good reason for non attendance. It is the view of the LEA that before determining how to progress an investigatory meeting or a disciplinary hearing in the absence of the employee, it will be necessary for the governors to ensure that the absent employee has the right to be represented at such a meeting by a trade union or professional association representative or through a third party or through correspondence.

Terms of Reference

- (a) The disciplinary committee shall consider any allegations of misconduct referred to it by the Headteacher, or any allegations of misconduct likely to result in dismissal. This shall be in respect of the following staff:
- (i) Schoolteachers
 - (ii) APT & C Staff
 - (iii) Manual Workers
 - (iv) Any other school staff for whom the governing body has a responsibility
- (b) The disciplinary committee shall convene to hear any appeal against a sanction imposed for misconduct by the Headteacher
- (c) The governing body may delegate the decision for reinstatement after suspension to the disciplinary committee
- (d) The disciplinary committee will consider all sanctions defined in the procedure, if a case of misconduct is found i.e:
- formal oral warning
 - written warning
 - final written warning
 - dismissal
- (e) The disciplinary committee will not consider any prior disciplinary warnings concerning the employee until the case has been found.
- (f) The disciplinary committee will not normally be involved in the investigation of allegations
- (g) A representative of the disciplinary committee may be required to act as a witness at any appeal.
- (h) In reaching decisions the committee shall have regard to:

- (i) all evidence presented at the hearing
- (ii) the advice of the LEA
- (iii) employment law and practice

Appendix 2

Model Disciplinary Procedure

1. Purpose

- 1.1 This procedure sets out the action which will be taken when disciplinary rules are breached and should be read in conjunction with the Disciplinary Policy and Procedure and the Formal Meetings protocol.
- 1.2 The governing body's aim is to encourage improvement in individual conduct.
- 1.3 The procedure is designed to establish the facts quickly and to deal consistently with disciplinary issues.
- 1.4 The record of any formal sanction given to an employee under this procedure shall be placed in their personal file. It shall be removed from the file after the relevant period has elapsed (see Sanctions) provided that no further warnings have been given during that time.
- 1.5 No record of disciplinary warnings should be made in the school log book.

2. Preliminary/Informal Action

- 2.1 An employee, against whom a complaint of unsatisfactory conduct has been made, will be interviewed by a designated manager. If the manager is satisfied that in all the circumstances an informal reprimand is warranted, this will be issued to the employee.
- 2.2 The manager should also advise the employee that further disciplinary action will be taken if there is no improvement or further misconduct occurs.
- 2.3 The manager should keep a written record of the sanction and the circumstances which led to it being given.

3. Formal Action

- 3.1 This will be taken where, after proper investigation, it is suspected:-
 - previous advice and/or reprimands have been ineffective; or
 - the complaint is of a serious nature.
- 3.2 The employee will be interviewed by a designated person or committee of the governing body. The employee or their representative will have the opportunity to make representations in support of their defence.
- 3.3 After hearing all the evidence, the designated person or committee will decide whether the complaint against the employee is justified and action against them is warranted. If this is the case the employee will be given a sanction which is appropriate & proportionate to the offence (see Sanctions). The outcome of the hearing will be confirmed in writing within 7 calendar days.

4. Appeals

- 4.1 An employee who decides to appeal against any disciplinary decision taken under the formal stages of this procedure must do so in writing to the designated person shown in the

paragraph 12.1. Where the appeal would be heard by the appeals panel of the governing body, the notice of appeal should be sent to the Chair.

- 4.2** The designated manager or appeals panel will hear the appeal as soon as possible thereafter and will confirm the outcome of the hearing in writing. This decision will be final.

Appendix 3

Procedure to be followed at the Disciplinary Hearing

1. Notifying the Employee of a Disciplinary Hearing

- 1.1. The investigator is responsible for arranging the disciplinary hearing which will be with the Headteacher or the disciplinary committee (see paragraph 3.10) and notifying the employee of this in writing, given at least 7 calendar days' notice of such a meeting. The employee should be notified of the right to be accompanied by a trades union representative or friend.
- 1.2. Where the employee is to be represented by a recognised trades union, the date of the disciplinary hearing should be a mutually convenient one. In accordance with ACAS advice, the employee can request a delay of up to 5 working days.
- 1.3. The employee should be given details of the complaint / allegations and should be informed that either party can produce witnesses and / or written witness statements and relevant supporting documents at the disciplinary hearing, should they so wish. This is subject to the requirement to exchange this information at least 7 calendar days before the disciplinary hearing.

2. Those in Attendance at the Disciplinary Hearing

- 2.1. The Headteacher or the disciplinary committee as appropriate must consider the seriousness of the complaint / allegations. In conducting the disciplinary hearing the Headteacher or the disciplinary committee may be accompanied by a representative of the Strategic Director (Learning). For more serious breaches of discipline and, especially where dismissal is a possibility, the Headteachers or the disciplinary committee must be accompanied by a representative of the Strategic Director (Learning). Failure to be accompanied will be viewed by the LEA as "acting unreasonably" in the meaning of the Education Act 2002.
- 2.2. If a senior member of staff has been designated to carry out the investigation he / she will not take part in deciding any disciplinary action but will be called to present the supporting facts and material (and may be supported by a representative of the Strategic Director (Learning)).

3. Failure by the Employee to Attend the Disciplinary Hearing

- 3.1. If for good cause, for example sickness, the employee is unable to attend the hearing; it will be rearranged to another date taking into account the reason. Sickness absence must be supported by a medical certificate. With the agreement of the employee the hearing could go ahead in their absence (See Appendix 1 for further advice).

4. Witness

- 4.1. If the investigator or the employee proposes to call witnesses to give evidence at the interview, their identity will be disclosed to the other side in advance, unless exceptional circumstances prevent this e.g. where anonymity is to be preserved. Where there is a requirement to call juveniles, parents / guardians should be informed and given the opportunity to accompany the child to the hearing.
- 4.2. The other side will receive advance copies of written statements to which reference
- 4.3. will be made at the hearing. It is preferable that the authors of statements attend the disciplinary interview as a witness, although in certain circumstances e.g. in the case of

juveniles, those in the care of the Authority or where anonymity is to be preserved, it is acknowledged that this should not be a requirement.

4.4. Hearsay evidence will not be considered at any stage.

5. Procedure to be followed at the Disciplinary Hearing

5.1. Presentation of the Case against the Employee

- (a) The investigator makes an opening address outlining the case
- (b) The investigator calls witnesses, if any, so that taking each one in turn:
 - he / she questions each witness;
 - the member of staff or his / her representative has the opportunity to put questions to each witness;
 - the investigator may clarify any issues by further questions to the witness;
 - the Headteacher or members of the governing body as appropriate have the opportunity to question each witness;
 - each witness withdraws after giving evidence;
 - the member of staff or his / her representative has the opportunity to put questions to the presenter of the case;
 - the Headteacher or members of the governing body as appropriate have the opportunity to question the presenter of the case.

5.2. Presentation of the Employee's Case

- (a) The member of staff or his / her representative makes an opening address outlining his / her case.
- (b) The member of staff or his / her representative calls his / her witnesses, if any, so that taking each one in turn:
 - he / she questions each witness;
 - the investigator has the opportunity to put questions to each witness;
 - the member of staff or his / her representative has the opportunity to clarify any issues by further questions to the witness;
 - the Headteacher or members of the governing body as appropriate have the opportunity to question each witness;
 - each witness withdraws after giving evidence;
 - the investigator has the opportunity to put questions to the employee;
 - the Headteacher or members of the governing body as appropriate have the opportunity to question the employee.

6. Summing up and Withdrawal

- (a) The investigator and the member of staff, or his / her representative, have the opportunity to sum up their case if they so wish, the member of staff to have the last word.
- (b) Both parties then withdraw.

7. The Decision

- (a) The Headteacher or disciplinary committee with the Strategic Director (Learning) or his representative if either is in attendance, will deliberate in private, only recalling the parties to clear points of uncertainty on evidence already given. If recall is necessary both parties are to return even if only one is concerned with the point giving rise to doubt.
- (b) The decision will be announced at the close of the hearing whenever possible. The Headteacher or Chairperson of the disciplinary committee will confirm the decision in writing within 7 calendar days of the decision.

8. Determining Disciplinary Action

8.1 Case Unfounded

If the Headteacher / disciplinary committee considers that the case against the employee is unfounded, the employee will be informed of this at the hearing and the decision will be confirmed in writing immediately. All reference to the matter in question will be removed from the employee's personal file.

8.2 Disciplinary Measures

If the Headteacher / disciplinary committee believes on the balance of probabilities that the alleged misconduct is substantiated, the appropriate disciplinary action will be determined, having regard to all the circumstances.

The measures available are:

8.2.1 Formal Oral Warning

A copy of a formal oral warning will remain live on file for a maximum of six months. The warning will be disregarded for disciplinary purposes after the six month period. All relating correspondence will be removed from the employee's file.

8.2.2 Written Warning

- for a serious offence; or
- where there has been a failure to improve conduct; or
- for a further offence of a similar nature for which a formal oral warning has been given which remains live.

A copy of a written warning will remain live on file for one year. A formal review will be held by this time to assess whether satisfactory standards of conduct have been maintained during the period. Reasons shall be given in writing if the warning is not to be expunged, if appropriate. Once the warning has expired it will be disregarded in all future cases of misconduct.

8.2.3 Final Written Warning

- for a very serious offence which would not amount to gross misconduct but would justify a final written warning;
- for a very serious offence which would justify summary dismissal for gross misconduct, but a lesser penalty is appropriate in the circumstances; or
- where there has been failure to improve conduct; or

- for a further and different offence after a written warning has been given and remains live.

A copy of a final written warning will remain live on file for two years. A formal review will be held by this time to assess whether satisfactory standards of conduct have been maintained during the period. Reasons shall be given in writing if the warning is not to be expunged, if appropriate. Once the warning has expired it will be disregarded in all future cases of misconduct and all related documents will be removed from the employee's file.

8.2.4 Dismissal

For failure to improve, or for an act(s) of further misconduct after a final written warning has been given and remains live. Dismissal will be with notice or pay in lieu of notice. The notice period will run from the date of the disciplinary hearing where the initial decision to dismiss was made.

For an act(s) of gross misconduct, dismissal will be without notice (summary dismissal).

8.3 Confirmation of Disciplinary Action

The employee will be provided with written confirmation of the finding, together with details of their right of appeal, within 7 calendar days of the conclusion of the hearing and a copy sent to the employee's representative.

8.4 Variation in Penalties

The following variations in action may be appropriate in certain circumstances:

- after a first written warning, further written warnings, although not normally more than one, may be issued before a final warning;
- it may be decided that the first instance of misconduct is sufficiently serious to justify the issue of a first and final warning;
- at a disciplinary hearing the Headteacher or the disciplinary committee may decide to issue a final warning rather than recommend dismissal;
- the governing body, when considering an appeal against the decision of the Headteacher or the disciplinary committee to dismiss, may decide to issue a further or final warning rather than dismiss.

Appendix 4

Procedure to be followed at the Appeal Hearing

1. The Right of Appeal

An employee may lodge an appeal against any formal disciplinary action taken against him / her under this procedure in writing within 10 calendar days of the date upon which they receive written confirmation of the disciplinary action.

1.1. The appeal will be heard by the appeals committee of the governing body.

1.2. The letter of appeal from the employee should state whether:

- it is against the findings that the allegations have been substantiated and / or against the form of disciplinary action taken;
- the disciplinary procedure has been applied defectively or unfairly;
- new evidence has come to light which was not available at the disciplinary hearing and which may make a difference to the original decision.

2. Preparation for the Appeal Hearing

2.1 All appeals will be heard at the earliest possible date, having regard for the need to provide notice of hearings.

2.2 Evidence presented to the appeals committee must enable the assessment of whether or not the allegations against the employee were accurate, justified and substantiated and whether the disciplinary action was appropriate in all the circumstances.

2.4 Notifying the Employee of an Appeal Hearing

The employee will be informed in writing of the place, date and time of the hearing at least 7 calendar days before the date of the appeal hearing.

Where the employee is to be represented by a recognised trades union, the date of the appeal hearing should be arranged in conjunction with that representative.

The employee should be informed that either party can produce witnesses and / or written witness statements and relevant supporting documents at the appeal hearing, should they so wish. This is subject to the requirement to exchange this information at least 7 calendar days before the appeal.

2.5 New Evidence

New evidence is permissible at the appeal. If either party wishes to introduce new evidence, they should give notice to the other party at least 7 calendar days before the appeal hearing giving details of the new evidence and copies of any supporting documents and / or names of witnesses and / or written witness statements to be presented. If, at the appeal hearing, the new evidence is of such significance that further investigation, information and / or clarification is required, it may be appropriate for an adjournment and to reconvene when this has been completed.

2.6 Witnesses

Witnesses called to give evidence at the appeal hearing will have their identity disclosed to the other side in advance unless exceptional circumstances prevent this e.g. where anonymity is to be preserved. If juveniles are to be called as witnesses, parents / guardians should be informed of this and given the opportunity to accompany the child to the hearing.

3. Procedure to be followed at the Appeal Hearing

3.1 Presentation of the Case against the Employee

- (a) The Headteacher or representative of the disciplinary committee makes an opening address outlining the case.
- (b) The Headteacher or representative of the disciplinary committee calls witnesses, if any, so that taking each one in turn:
 - he / she questions each witness;
 - the member of staff or his / her representative has the opportunity to put questions to each witness;
 - the Headteacher or representative of the disciplinary committee may clarify any issues by further questions to the witness;
 - the members of the appeal committee of the governing body have the opportunity to question each witness;
 - each witness withdraws after giving evidence;
 - the member of staff or his / her representative has the opportunity to put questions to the presenter of the case;
 - the members of the appeal committee of the governing body have the opportunity to question the presenter of the case.

3.2 Presentation of the Employee's Case

- (a) The member of staff or his / her representative makes an opening address outlining his / her case.
- (b) The member of staff or his / her representative calls his / her witnesses, if any, so that taking each one in turn:
 - he / she questions each witness;
 - the Headteacher or representative of the disciplinary committee has the opportunity to put questions to each witness;
 - the member of staff or his / her representative has the opportunity to clarify any issues by further questions to the witness;
 - the members of the appeal committee or the governing body have the opportunity to question each witness;
 - each witness withdraws after giving evidence;
 - the Headteacher or representative of the disciplinary committee has the opportunity to put questions to the employee;
 - the members of the appeal committee of the governing body have the opportunity to question the employee.

3.3 Summing up and Withdrawal

- (a) The Headteacher or representative of the disciplinary committee and the member of staff, or his / her representative, have the opportunity to sum up their case if they so wish, the member of staff to have the last word.
- (b) Both parties then withdraw.

3.4 The Decision

- (a) The appeal committee of the governing body with the Strategic Director (Learning) or his representative will deliberate in private, only recalling the parties to clear points of uncertainty on evidence already given. If recall is necessary both parties are to return even if only one is concerned with the point giving rise to doubt.
- (b) The decision will be announced at the close of the hearing whenever possible. The chairperson of the appeals committee will confirm the decision in writing within 7 calendar days of the decision.

Appendix 5

Further Guidance on Discrimination

Discrimination relates to the grounds of age, disability, sex, gender reassignment, pregnancy, maternity, race (which includes colour, nationality and ethnic or national origins), sexual orientation, religion, belief or lack of religion/belief, or because someone is married or in a civil partnership.

Types of discrimination

Direct discrimination

Direct discrimination occurs when someone is treated less favourably than another person because they have a protected characteristic.

Example of Direct Discrimination:

- An employee is overlooked for promotion because they are female

Associative discrimination

Associative discrimination is direct discrimination against someone because they associate with another person who possesses a protected characteristic.

Example of Direct Discrimination by Association:

- An employee is overlooked for promotion because their partner has undergone gender reassignment

Perceptive Discrimination

Perceptive discrimination is direct discrimination against an individual because others think they possess a particular protected characteristic. It applies even if the person does not actually possess that characteristic.

Example of direct discrimination by perception:

- An employer decides not to promote a female employee because senior staff believe her to be pregnant irrespective of whether she is pregnant or not

Combined discrimination

Individuals who consider that they have been discriminated against because of a combination of protected characteristics can bring a claim of dual discrimination (Chapter 2, Section 14, Equality Act 2010). The concept applies to claims brought based on only a combination of two (2) protected characteristics.

Example of combined discrimination:

- A black female member of staff who is discriminated against because she is a black woman – as opposed to a black man or a white woman – could bring a single claim for combined race and sex discrimination. However, if she feels she is being discriminated against because she is black or because she is a woman, she could also bring a claim for race or sex discrimination on its own.

Indirect discrimination

Indirect discrimination may occur if certain rules, conditions or practices apply to everyone, but place a particular disadvantage to those with a protected characteristic, unless these are objectively justified (i.e. if it can be shown that it is 'a proportionate means of achieving a legitimate aim'. Being proportionate means being fair and reasonable, including showing that 'less discriminatory' alternatives have been considered as part of the decision making process).

Example of indirect discrimination:

- An employer who requires staff to commit to working from 8pm to 11pm every evening indirectly discriminates against women, who are more likely to be primary carers of children, unless this can be objectively justified as above.

Discrimination arising from disability

Discrimination arising from disability occurs when a disabled person is treated unfavourably because of something connected with their disability and the unfavourable treatment cannot be justified.

Bullying

There is no legal definition to describe bullying however ACAS states that bullying may be characterised as offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means intended to undermine, humiliate, denigrate or injure the recipient. Bullying may therefore be related to broader aspects of an individual's characteristics and interactions in the workplace. Employers should address bullying in the work place as part of their duty of care to employees.

Harassment

The legal definition of harassment is "unwanted conduct related to a relevant protected characteristic, which has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual"

The word 'unwanted' means essentially the same as 'unwelcome' or 'uninvited'. 'Unwanted' does not mean that express objection must be made to the conduct before it is deemed to be unwanted. A serious one-off incident can also amount to harassment.

Unwanted conduct 'related to' a protected characteristic has a broad meaning in that the conduct does not have to be because of the protected characteristic. It includes the following situations:

- Where conduct is related to the worker's own protected characteristic.
- Where there is any connection with a protected characteristic

Regardless of the intended purpose, unwanted conduct will also amount to harassment if it has the effect of creating any of the circumstances defined in paragraph one.

Examples include (list not exhaustive):

- Physical contact which is unwanted
- Jokes, offensive language, gossip, slanderous text messages or letters.
- Isolation, non-co-operation and/or exclusion.
- Unwelcome remarks about a person's age, dress, appearance, race, sexual orientation (including threats to 'out' someone), trans-status, or marital, civil partnership status
- Personal insults or insulting someone by word or behaviour
- Shouting at staff
- Overbearing supervision or misuse of power.

Victimisation

Victimisation occurs when someone is treated badly because they have made or supported a complaint or raised a grievance under the Equality Act; or because they are suspected of doing so. The Act also includes a new and additional protection relating to disability.

Examples of victimisation:

- A senior member of staff starts to behave in a hostile manner to another member of staff who previously supported a colleague in submitting a formal complaint against the senior manager for sexist behaviour