

THOMAS MILLS HIGH SCHOOL



POLICY DOCUMENT 7 – APPROVED 13/07/2021

DISCIPLINARY, CAPABILITY, HARASSMENT AND GRIEVANCE PROCEDURES

Vision Statement

*We, the staff and governors, aspire
to ensure that all our students,
irrespective of ability
and regardless of anyone's doubts,
achieve their potential in full;
and we aspire in this way to make Thomas Mills High School
the best in the country.*

Disciplinary, Capability, Harassment and Grievance Procedures

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1. Application of the Procedures

- 1.1 This procedure applies to all teaching and support staff in Thomas Mills High School (including those seconded to other schools or organisations) in which the governing body has adopted them for use. The schools concerned are those Community and Controlled schools which have delegated budgets under S.45 of the School Standards and Framework Act 1998, or successor legislation. The Education (Modification of Enactments relating to Employment) Order 1999 provides for the governing bodies of schools concerned to be deemed the employer for the purpose of this policy.
- 1.2 An employee working within a school but employed on another organisation's terms and conditions of employment should have any disciplinary matter managed under their appropriate policy/procedure.

2. Purpose

- 2.1 The overall purpose of these procedures is to promote fairness and order in the relationship between school governing bodies and the employees who come under their control. It aims to ensure that any disciplinary matter is dealt with promptly, fairly and that, if appropriate, steps are taken to establish the facts and to give the employee an opportunity to respond before taking any formal action. This includes ensuring that individuals involved in the disciplinary process are treated reasonably and equitably, with dignity and respect regardless of age, disability, gender, gender reassignment, marriage and civil partnerships, pregnancy and maternity, race, religion or belief and sexual orientation.
- 2.2 Every member of staff is expected to maintain high standards of professional conduct at all times. This includes times when they are not at work and in a situation where their conduct may potentially bring the school, service or profession into disrepute.
- 2.3 These procedures take account of the ACAS Code of Practice on Disciplinary and Grievance Procedures. They also take account of the conditions of service of the groups of employees to whom they apply and, where adopted, replace any model procedures to be found in the various conditions of service.

3. Interpretation

- 3.1 In these procedures the term "Governing Body" means the governing body of Thomas Mills High School and any committee of the Governing Body acting with delegated authority, or any body acting in a similar way to a governing body. The terms "Director of Children and Young People's Services" and "Head of Legal Services" includes any officer acting with appropriate delegated authority on behalf of the County Council.

Any provisions of these procedures should be interpreted in the light of the applicable legislation which confers the relevant decision making powers upon school governing bodies and determines the manner in which schools should be governed, in particular The School Standards and Framework Act 1998 (Schedules 16 and 17) and The School Staffing (England) Regulations 2009, as in force from time to time and including any successor legislation.

4. Confidentiality

- 4.1 All proceedings and documentation will remain confidential to the parties concerned and will not be disclosed to others, with the exception of official bodies which have a right to require disclosure of information or where the school has a responsibility to report or refer a case (see paragraphs 5 and 6 below).
- 4.2 In particular, all parties should be mindful of the need to preserve confidentiality on matters relating to children and young people. Wherever practicable, pupil statements and other statements referring to pupils will have their details protected by redaction, to avoid pupils being identified and/or sensitive

information being shared. Save in exceptional circumstances, pupils will not be asked to give evidence at disciplinary hearings.

- 4.3 In respect of schools, the delegated committee of the Governing Body will be notified of the outcome of any formal process, once it has concluded.

5. Safeguarding children and young people

- 5.1 The County Council issues separate guidance on managing allegations of abuse relating to children or young people made against school staff. Schools must refer to this in all cases in which it is alleged that a person who works with children has: behaved in a way that has harmed, or may have harmed, a child; or, possibly committed a criminal offence against, or related to, a child; or, behaved in a way that indicates s/he is unsuitable to work with children.

- 5.2 In such cases, appropriate and prompt consideration by relevant bodies (for example, the County Council's Local Authority Designated Officer or a Multi Agency Strategy Meeting) should be allowed for before the commencement of any processes under these procedures, usually also including the consideration of suspension. In some cases, this may require consideration of a short period of 'garden leave' pending initial consideration of the allegations under safeguarding procedures.

6. Referral of cases

- 6.1 It may be relevant that referral to the County Council's Audit Team must be made in all cases of alleged financial irregularity, fraudulent behaviour and theft or misappropriation of school property, before the commencement of any processes under these procedures. More likely, procedures outlined by the Educational Skills and Funding Agency (ESFA) would be followed.

- 6.2 A referral to the Disclosure and Barring Service and/or the National College for Teaching and Learning may be made by the school, upon the conclusion of disciplinary proceedings (and any appeal), in the following circumstances:

- (a) A referral to the Disclosure and Barring Service must be made if an employee has harmed, or poses a risk of harm to a child, and who has been removed from working in regulated activity, or would have been removed had they not left; or the employer becomes aware that the employee has received a caution or conviction for a relevant offence
- (b) Schools (or the County Council in respect of "unattached" teachers) have a legal duty to consider whether to refer to the National College allegations of serious misconduct by a teacher when they have dismissed that teacher for misconduct, or would have dismissed them had they not resigned first.

Disciplinary Procedure

7. Scope

- 7.1 This procedure will be used in all cases where misconduct, omission or, in certain circumstances failure in performance is such as to warrant disciplinary action.

- 7.2 The term "misconduct" in this procedure covers instances of misconduct, omissions or failures in performance which may be reasonably attributed to wilful or negligent acts or omissions on the part of an employee. A non-exhaustive list of examples of the types of acts and omissions which might be considered under this procedure are contained in Schedule 1.

- 7.3 Where any deficiencies in performance on the part of the employee arise from a lack of aptitude or skill rather than any wilful or negligent failure to carry out his/her duties the Capability Procedure should normally be used.
- 7.4 Separate guidance exists for dealing with problems arising from alcohol dependence or substance abuse. However, significant problems of misconduct arising from behaviour whilst under the influence of alcohol or drugs, particularly in cases of failure to engage with support offered, may also be dealt with under this procedure.

8. Exclusions

- 8.1 This procedure does not apply where employment is terminated by reason of redundancy or incapability arising from ill-health.
- 8.2 The normal management of employees and the associated processes such as performance review/appraisal are outside the scope of this procedure. There will be occasions when it is appropriate for an employee's performance and behaviour at work to be discussed with him/her as part of the normal management arrangements. If there is any shortcoming identified, an employee will be assisted to understand the standard of behaviour or performance required. This may be confirmed by a written instruction. By the very nature of these situations, the employee will not normally be accompanied at any meetings or discussions, although they may seek the advice of a trade union representative. Although there is no right to be accompanied at meetings in the course of normal performance management, this may be helpful and reasonable consideration will be given to any request for support from an employee's professional association. However, where the availability of a preferred representative would prevent a manager from dealing with concerns and providing appropriate support in a timely manner, it may not be possible to accommodate such a request.

9. Investigation

- 9.1 If the normal management processes do not bring about the required changes in behaviour or performance, the next step will normally be consideration of action under the formal disciplinary procedure. If it is sufficiently serious, a single instance of misconduct may be such as to warrant immediate consideration under the disciplinary procedure. Schools should seek the advice of their HR service provider before instituting formal disciplinary action or suspending an employee.
- 9.2 In order to establish the appropriateness of using the formal Disciplinary Procedure, it will normally be necessary for the Headteacher to conduct or commission a formal investigation. In cases relating to the Headteacher, the Governing Body may seek advice from the Local Authority and/or their HR service provider regarding commissioning an investigation, and would be responsible for commissioning any investigation. In the case of "unattached teachers", the employee's line manager or another manager within the directorate management chain will normally conduct or commission the formal investigation, referring to the Head of Service as necessary. If the employee concerned is a trade union official (as statutorily defined) the matter will be discussed with his/her branch secretary or a full time official before an investigation is undertaken. An employee who is the subject of investigation may be accompanied at any interview or similar investigatory meeting by a trade union representative or work colleague. A record should be made if the employee agrees to continue the procedure without support. The employee and any witnesses who make statements during the course of any investigation will normally be asked to check and sign any written statement of evidence.
- 9.3 The Investigating Officer's report will clearly state whether or not he/she believes there is a case to answer under the school's disciplinary procedures and, if they believe there is, the nature and seriousness of the alleged misconduct that needs to be further considered at a disciplinary hearing.

10. Consideration of suspension or redeployment

In certain circumstances it may be necessary to suspend an employee while an investigation is carried out into the situation giving rise to concern. The Headteacher may suspend an employee. S/he must immediately inform the Chair of Governors and the Director of Children and Young People's Services of the action s/he has taken.

If it is necessary to suspend the Headteacher, the decision must be taken by the Chair of Governors, who must immediately inform the Director of Children and Young People's Services. In circumstances where the Chair of Governors is unable to take a decision regarding the suspension of the Headteacher, for example, where s/he is indisposed or has a conflict of interests, the decision to suspend the Headteacher may be taken by the Vice-Chair.

In the case of "unattached teachers", suspension may be carried out by the relevant Head of Service or, in their absence, a more senior officer.

10.1 Suspension will normally be considered only:

- (a) Where there is a reasonable belief the employee's continued presence at work may put themselves or others at risk, or risk their employer's responsibilities to other parties;
- (b) Where there is a reasonable belief that the employee's continued presence at work may hamper or compromise an investigation process; or
- (c) Where relationships have broken down.

10.2 In all cases, consideration should be given to alternatives to suspension (for example, additional supervision or alternative/restricted duties, work arrangements or garden leave), remembering that consideration can be given to suspension at any time during the investigation. In cases of alleged gross misconduct where it is decided that suspension is not necessary, the school should record that, having considered this procedure and normal practices, it has been decided not to suspend.

10.3 Suspension does not constitute disciplinary action; it is a neutral act. If it is necessary to suspend an employee during investigations, it will be on full pay. Support for an employee who is suspended may be made available as set out in paragraph 17.

10.4 Suspension should not be unnecessarily protracted. The continuance of suspension should be kept under regular review and immediately lifted if the circumstances of the case no longer justify it. When suspension is lifted, it may be necessary to consider a re-integration plan before making arrangements for the employee's return to work.

11. Disciplinary Hearing

11.1 If it appears, after investigation, that there is a case to consider, a disciplinary hearing will be convened. In accordance with the School Staffing Regulations, a hearing may be conducted by the Headteacher or one or more governors, normally a panel of the Staff Determinations Committee. If dismissal is a possible outcome, the hearing must be conducted by that committee of the Governing Body which is authorised to make the appropriate determination, and only by the Headteacher where the authority to dismiss has been delegated to them by the Governing Body. In the case of "unattached teachers", the hearing will be conducted by an appropriate manager within the directorate management chain or, for hearings where dismissal is a possible outcome, the relevant Head of Service or a more senior officer.

- 11.2** Where it is proposed to hold a disciplinary hearing, the employee will be informed in writing, **normally at least 10 full working days in advance of the hearing**, of:
- (a) the nature of the alleged misconduct and, where it possible to state, the warning stage which the employee has already reached;
 - (b) the date, time and place for the hearing;
 - (c) the name of the person presenting the case and witnesses;
 - (d) the name(s) of the person(s) hearing the case
 - (e) the employee's right to produce written statements, **normally at least five full working days before the hearing**, and invite relevant witnesses to give evidence on his/her behalf;
 - (f) the employee's statutory right to be accompanied by a trade union official or work colleague of his/her choice
 - (g) *where a possible outcome of the hearing is a determination that the person shall cease to work at the school/be dismissed*, the possible outcome of the meeting.
- 11.3** **All paperwork which is to be considered at the hearing should be issued and received by the school as above, meaning that normally it can be circulated to all parties at least five full working days before the hearing.** Paperwork presented at a later date will only be considered in exceptional circumstances, at the discretion of the Headteacher or Local Authority Officer/chair of the panel hearing the case. Any request by the employee for the school (or Council as appropriate) to make available documents for consideration at the hearing should be made in good time, in order that the above timescales can be observed.
- 11.4** Foreshortened timescales for hearing dates and issue/receipt of paperwork may be mutually agreed, for example, where a matter arises close to the end of the school year and it is in all parties' interests to conclude matters before the school closure period.
- 11.5** The hearing will be conducted in as informal a manner as possible in accordance with the procedure laid down in Schedule 2.
- 11.6** The person or committee hearing the case may make a determination which is within their delegated powers. That determination may be communicated orally to the employee after the hearing, but will in any case be confirmed in writing, normally within five working days. The employee will be informed whether or not the allegations have been upheld. If the allegations are upheld, in full or in part, the findings and the decision will be confirmed in terms of:
- (a) the nature of the misconduct;
 - (b) the appropriate sanction i.e. a first or final warning or determination that the employee shall cease to work at the school (to dismiss in the case of voluntary aided schools or "unattached teachers");
 - (c) how to appeal against the decision and/or any disciplinary sanction, the length of time within which an appeal must be lodged, and whom it should be addressed to;
 - (d) If the determination is to issue a disciplinary warning, the employee will also be informed in writing of:
 - (e) what improvement is expected for the future;
 - (f) the length of time for which the warning is active (not usually less than six months nor greater than twelve);

- (g) any other information in respect of the improvement required e.g. any review of arrangements, and whom the employee should contact for assistance;
- (h) what might happen if the matter proceeds to the next stage e.g. what the possible sanction might be.

11.7 Employees will be required to sign and return a copy of any such letter confirming receipt.

12. Postponement of hearings and non-attendance

12.1 The date of the hearing will be postponed by up to five working days if the employee's representative is unable to attend on the specified date.

12.2 Employees must take all reasonable steps to attend a hearing. A hearing will not normally be held in the absence of the employee, except by mutual agreement, unless s/he fails to attend a hearing without reasonable cause, is otherwise constrained from attending (e.g. s/he is held in custody), or as described below. Separate advice should be sought in respect of employees absent from work due to pregnancy or maternity leave.

12.3 Sickness will be considered reasonable cause for non-attendance where the employee's GP or medical practitioner has certified the individual is too ill to attend formal meetings, and further advice on this matter may be sought from the school/Council's occupational health services provider. If the employee is unable to attend due to long-term sickness absence and no alternative date can be mutually agreed, the hearing may be held in their absence.

12.4 It is important that every effort is made to reach a conclusion in all cases of safeguarding allegations that have a bearing on the safety or welfare of children. If an employee tenders their resignation or refuses to co-operate with the process, this must not prevent such a safeguarding allegation being followed up in accordance with safeguarding procedures. Wherever possible, the person should be given a full opportunity to answer the safeguarding allegation and make representations about it. However, it may be necessary to conduct a hearing in their absence and reach a judgement about whether the safeguarding allegation can be regarded as substantiated on the basis of all the information available. In these circumstances, the Headteacher, Panel or manager may also make a decision regarding the sanction that would have been applied had the employee remained in employment.

12.5 In cases where it is necessary to proceed with a hearing in the absence of the employee and it is known this will be necessary in advance of the hearing, the employee will be offered the opportunity to make additional written submissions to the hearing and/or allow their representative to make statements on their behalf at the hearing. Where non-attendance is not known in advance, after consideration of the circumstances, if postponement is not considered appropriate, the hearing may proceed with consideration of any written submission from the employee already received and, where requested and available, appropriate contributions from their representative.

12.6 Similar consideration as outlined above will be given to the need to proceed with investigatory processes in the employee's absence, where this is appropriate.

13. Warning Stages and Disciplinary Sanctions

13.1 The Disciplinary Procedure provides for the employee to be given every reasonable opportunity to improve his/her conduct or performance. Unless the circumstances are exceptional e.g. gross misconduct, no employee should be dismissed without first having received at least one written warning and having had the opportunity to improve his/her conduct. Under most circumstances, this procedure provides for an employee to receive two written warnings for misconduct of the same or similar nature, a first warning and a final warning, before dismissal is considered.

- 13.2 Written warnings will normally remain in force for between six and twelve months. In exceptional cases, the person or committee hearing the case may make a determination that the warning will stay in force for a longer period. This may be appropriate where there is a history of repeated breaches of the same or similar disciplinary rules, or where the misconduct is serious enough that the committee hearing the case could consider dismissal as a possible sanction. The employee may appeal against the imposition of an extended warning period.
- 13.3 In addition to the disciplinary sanction, the Governing Body of the school or the County Council may, in appropriate circumstances, take action to recover monies or property legitimately due to it. Reporting of cases to relevant bodies may also be necessary, as described in paragraphs 5 and 6 of the General Introduction to this document.

First Warning

- 13.4 Where an employee's misconduct is such as to warrant a formal warning, and where there is no previous warning current, a first written warning will normally be the appropriate sanction.

Final Warning

- 13.5 Where a first written warning is current any further misconduct during the currency of that warning will normally lead to a final written warning being issued. A final written warning may also be issued in circumstances where an employee is shown to have committed serious misconduct, omission, or failure in performance short of gross misconduct. It may also be appropriate where dismissal would be a reasonable sanction, but the committee or individual hearing the case have good reason to believe that a warning will prove to be effective. A final written warning will contain a clear indication that any further disciplinary offence during the currency of the warning will normally, if substantiated at a hearing, result in dismissal without further warning.

Dismissal

- 13.6 If further allegations of misconduct are brought while a final written warning is current, the committee or individual hearing the case will normally determine that the employee shall cease to work at the school, unless there are strong mitigating circumstances. The committee or individual hearing the case may alternatively in appropriate circumstances determine to extend the final warning for a period between three and twelve months.
- 13.7 If the allegations against the employee are so serious that they would constitute gross misconduct (see Schedule 1, paragraph 21), the committee or individual hearing the case may determine that the employee shall cease to work at the school (in the case of voluntary aided or foundation schools or unattached teachers to dismiss), even where no disciplinary warning is current.
- 13.8 Where the employee's misconduct is not such as to constitute gross misconduct, but has, nevertheless, led to a fundamental breakdown of mutual trust and confidence such that it would be impossible or impractical to continue his/her employment, the committee or individual hearing the case may determine that the employee shall cease to work at the school (in the case of voluntary aided or foundation schools or "unattached teachers" to dismiss).
- 13.9 For school-based employees a decision that an employee shall cease to work at the school may only be taken by an appropriate committee (or individual) empowered to do so under the School Government Regulations in force at the time.

Alternatives to dismissal

13.10 In some cases, alternatives to dismissal may be considered at the Headteacher's, Panel's or manager's discretion, which will usually be accompanied by a final written warning. Examples include, but are not limited to:

- (a) Demotion
- (b) Transfer to another department or job
- (c) Recommendation for mediation between parties.

In all cases, advice should be taken from the school's HR service provider.

14. Appeals

14.1 An employee is entitled to appeal against any disciplinary sanction imposed. If the sanction has been imposed by the Headteacher, the appeal will be to a committee of the Governing Body. Where the sanction has been imposed by a committee of the Governing Body, the appeal will be to the Governing Body's Appeals Committee. For "unattached teachers", the appeal will be to another manager, normally more senior manager to the manager who conducted the initial disciplinary hearing.

14.2 An employee who wishes to appeal against a disciplinary sanction must lodge notification of his/her intention to appeal along with full grounds for their appeal (including any supporting documentation) within 14 days of the date of written notification of that sanction, as directed in the letter of notification.

14.3 A date for an appeal hearing will normally be arranged and notified to the parties within 14 days of an appeal being registered. All parties will normally be given at least 10 days' notice of the date of the appeal. Any further submissions from those responding to the appeal should normally be provided to the school (or the manager hearing the appeal) at least five working days before the appeal hearing, to enable them to be circulated to the parties in good time before the hearing.

14.4 The main grounds for an appeal are likely to be, although are not limited to:

- (a) if the employee wishes to contest the finding and/or the disciplinary sanction;
- (b) if new relevant evidence not available to the original hearing becomes available;
- (c) if there is an alleged lack of fairness in the original hearing.

If the appeal is against the finding and the sanction imposed by the original hearing, the appeal will normally constitute a complete re-hearing. If the appeal is against the disciplinary sanction only, the Appeal Committee (or manager in the case of "unattached teachers") may agree with the appellant and his/her representative that they will hear submissions in mitigation of the sanction.

14.5 The procedure for the conduct of an appeal is set out in Schedule 2. An Appeal Committee (or manager in the case of "unattached teachers") may uphold the original finding and sanction; uphold the original finding but modify the sanction (only in the most exceptional case will the severity of the original sanction be increased); or not uphold the finding and therefore remove the sanction.

15. Records and lapsed warnings

15.1 Advice given in the course of normal performance management and records of any allegations, complaints and subsequent investigatory or disciplinary processes all form part of an employee's employment history. As such, it is important that proper records are retained, in accordance with the

data protection legislation and the recommendations within the ACAS Code of Practice. Furthermore, where an allegation relates to the safety and welfare of children, there is a requirement to retain a clear and comprehensive summary of any allegations made, details of how and who followed up the allegation and any resolution and conclusion. This record must be retained at least until the person attains normal retirement age or for a period of 10 years from the date of the allegation if that is longer. This includes people who leave the organisation.

15.2 As such, although a disciplinary warning may be deemed to have 'lapsed' after the period of the warning has expired, the record of the disciplinary matter should not be removed from the employee's employment history/personal file held by the school. This applies equally to cases where a disciplinary complaint against an employee is withdrawn, or is found to have been mistakenly initiated, although a clear record of this outcome should be prominent in the papers retained.

15.3 Allegations that are found to be malicious should be removed from the employee's employment history/personal file held by the school, and any that are unsubstantiated, are unfounded or malicious should not be referred to in employer references.

16. Headteachers

16.1 In locally managed schools the responsibility for the conduct and discipline of employees at the school will be part of the headteacher's responsibility. Where there is a concern or complaint about misconduct on the part of the Headteacher, it will normally be the responsibility of the Chair of Governors to initiate any necessary action. Chairs of Governors should seek the advice of the Director of Children and Young People's Services before instigating any formal disciplinary action or suspending a headteacher.

16.2 If there is sufficient cause for concern, the Chair of Governors may request the Director of Children and Young People's Services to carry out an investigation into all the material facts and circumstances of the complaint or concern. This investigation will be carried out in confidence. The Chair of Governors and one other governor (who should not later be a member of a committee which hears the case) will consider the report of the investigation and any recommendations of that report and will decide what action is to be taken.

16.3 If the Chair of Governors and the one other governor decide to take no action after due consideration of the Director of Children and Young People's Services report, they will report their decision and the reason for that decision (but not the details of the investigation) to the full Governing Body.

16.4 If the governors considering the report decide that the matter should be considered under the formal disciplinary procedure, the matter will be considered by the Hearings Committee of the Governing Body. The procedure will be conducted as for all other employees.

17. Advice and Support to Employees

17.1 In most cases employees subject to allegations or complaints being dealt with under this procedure will seek the advice and support of their trade union or professional association. However, employees may address questions about procedure, the conduct of investigations or hearings, or other related matters to the Headteacher, the Chair of Governors or the Director of Children and Young People's Services, where they are directly responsible for those procedures.

17.2 It will normally be appropriate to make arrangements for a nominated individual to keep the employee informed of developments and to offer support, particularly in cases where the investigation is prolonged, the employee is suspended from duty, or has been offered and accepted leave of absence, pending investigations. This should be arranged through a suitable senior member of the School's staff or an officer of the County Council who is not involved in the investigation or procedure in any other way. The name of a nominated individual will normally be notified to the employee.

17.3 Employees, including witnesses, should also be encouraged to access support available through the school/County Council's participation in any well-being service, for example, the Employee Assistance Programme, or their own GP, as necessary.

18. Grievance complaints

18.1 If an employee wishes to raise a grievance during the disciplinary process, this should be addressed in writing to the Chair of Governors of the school. They will decide what action should be taken and their decision in this matter will be final. Depending on the nature of the grievance, this may be to temporarily suspend the disciplinary process to allow the grievance to be considered. Complaints about the conduct of the disciplinary process will not normally be dealt with under the grievance procedure, but can be raised during the disciplinary hearing and any subsequent appeal. If action taken by the Chair of Governors is the subject of the grievance, s/he will delegate the matter to another governor for consideration and decision.

18.2 In cases where the grievance raised is unconnected to the disciplinary matter, it may be appropriate for this to be considered under grievance procedure running in parallel with disciplinary procedures.

19. Criminal offences

An allegation of a criminal offence committed outside of work will not be treated as an automatic reason for disciplinary action. Consideration needs to be given to what effect any warning, caution, charge or conviction has on the employee's suitability to do their job and their relationship with their employer, work colleagues and the school community. Where it is felt necessary to investigate the matter, consideration will be given to whether or not this can be completed before the outcome of any criminal investigation/prosecution is known. In all cases, advice should be taken from the LA and the school's HR provider.

20. Examples of potential Misconduct

It is not possible to specify all forms of behaviour that will result in disciplinary action. Each case must be judged in the light of the circumstances and context surrounding it. Varying circumstances may well allow different disciplinary actions or no disciplinary action at all to be taken for what are similar offences

The following examples give an indication of the Governing Body's/Local Authority's position as to the types of behaviour which constitute misconduct. The examples are not exhaustive and omissions from the list are not in themselves grounds for appeal. There is some overlap between the examples below and those listed in Schedule 2 (examples of Gross Misconduct). This allows for appropriate consideration of the seriousness of the alleged misconduct/gross misconduct. The appearance or absence of an example in one schedule or the other should not substitute proper consideration of circumstances surrounding each case, or be in itself grounds for appeal.

Employees should, so far as is reasonably practicable, be familiar with the working rules and procedures relating to their own school/department and their particular area of work. These rules may be in the form of codes of practice, school policies and procedures, induction material, manuals, posters, notices and periodic memoranda and failure to have due regard to these may be grounds for disciplinary action in relation to general misconduct or professional negligence.

Examples of potential Misconduct

- (a) Professional negligence, misconduct, omission or, in certain situations failure in performance to a reasonable and acceptable standard.

Examples include: breaches of safeguarding procedures; failure to report or properly comply with school procedures for reporting allegations of abuse; failure to observe proper professional boundaries in staff-pupil relationships; failure to exercise reasonable care for the safety and welfare of oneself, other employees, pupils, governors, members of the public or others on school premises; actions causing loss, damage or injury through negligence; failure to use public funds in a proper and lawful way or observe basic 'value for money' tests.

- (b) Failure to observe school/department rules and procedures or those relating to the employee's area of work

Examples include: those relating to time-keeping, attendance, signing in/out, proper reporting of sickness absence, smoking

- (c) Persistent lateness or absence

- (d) General misconduct

Examples include rudeness, insolence, drunken or aggressive behaviour, use of foul or abusive language, sexist, racist or other offensive behaviour.

- (e) Expressing personal beliefs in ways which exploit pupils' vulnerability or might lead them to break the law
- (f) Cases of harassment or bullying, including cyber bullying
- (g) Cases of discrimination, harassment or victimisation contrary to the law and/or the school's equalities policies, including giving instructions or bringing pressure to bear on others to do so or malicious complaints against or victimisation of employees using school procedures e.g. harassment, disclosure of malpractice etc.
- (h) A breach of health and safety rules, failure to observe health and safety policies and procedures, or endangering self or others
- (i) Misuse of school or County Council's property or that belonging to others while in the course of work
- (j) Use of paid time or the school or County Council's materials or facilities for purposes unrelated to the job.
- (k) Taking unauthorised leave
- (l) Insubordination, non-compliance, failure to obey a reasonable and lawful instruction or direction, or conduct intended to otherwise undermine
- (m) Bringing the school, service or profession into serious disrepute, including failure to observe reasonable standards of ethics and behaviour (or appropriate professional standards) within and outside work, or to have proper and professional regard for the ethos, policies and practices of the school or County Council. This might include information on social networking sites, particularly where this involves malicious, defamatory or abusive communication
- (n) Misuse of the internet or inappropriate use of electronic mail
- (o) Wrongful sharing of security passwords in connection with building security and computer systems
- (p) Unauthorised or inappropriate disclosure of confidential information, failure to observe data protection principles or the use of such information or official contacts for personal interest or gain
- (q) Misuse of the school or County Council's name, equipment, materials or information, including copyright and other intellectual property rights.
- (r) Failure to disclose an interest in school or County Council contracts.
- (s) Deliberate failure to disclose unspent criminal convictions or, in respect of employment exempt from the terms of the Rehabilitation of Offenders Act (i.e. employment with children or young people), failure to disclose any Police warning, caution, bind-over or conviction before and during relevant employment

21. Examples of potential Gross Misconduct (which may justify dismissal without notice)

As stated above, it is not possible to specify all forms of behaviour that will result in disciplinary action. Each case must be judged in the light of the circumstances and context surrounding it. Varying circumstances may well allow different disciplinary actions or no disciplinary action at all to be taken for what are similar offences

The following examples give an indication of the Governing Body's/Local Authority's position as to the types of behaviour which constitute gross misconduct. The examples are not exhaustive and omissions from the list are not in themselves grounds for appeal. There is some overlap between the examples below and those listed in Schedule 1 (examples of Misconduct). This allows for appropriate consideration of the seriousness of the alleged misconduct/gross misconduct. The appearance or absence of an example in one schedule or the other should not substitute proper consideration of circumstances surrounding each case, or be in itself grounds for appeal.

In addition, employees should, so far as is reasonably practicable, be familiar with the working rules and procedures relating to their own school/department and their particular area of work. These rules may be in the form of codes of practice, school policies and procedures, induction material, manuals, posters, notices and periodic memoranda.

Examples of potential Gross Misconduct

- a) Serious professional negligence, misconduct, omission or, in certain situations failure in performance to a reasonable and acceptable standard.
- b) Examples include: serious breaches of safeguarding procedures; failure to report or properly comply with school procedures for reporting allegations of abuse; failure to observe proper professional boundaries in staff-pupil relationships; abuse of a position of trust; serious failure to exercise reasonable care for the safety and welfare of oneself, other employees, pupils, governors, members of the public or others on school premises; actions causing loss, damage or injury through serious negligence; serious failure to use public funds in a proper and lawful way or observe basic 'value for money' tests.
- c) Threatened or actual physical assault or violence towards employees, pupils, governors, or others on school premises or in the course of work.
- d) Serious sexual misconduct
- e) Abuse against children or young people
- f) Expressing personal beliefs in ways which exploit pupils' vulnerability or might lead them to break the law
- g) Serious cases of harassment or bullying, including cyber bullying
- h) Serious cases of discrimination, harassment or victimisation contrary to the law and/or the school's equalities policies, including giving instructions or bringing pressure to bear on others to do so or malicious complaints against or victimisation of employees using school procedures e.g. harassment, disclosure of malpractice etc.

- i) Malicious or vexatious complaints against colleagues or other members of the school community
- j) Serious offences involving the misuse or illegal possession of drugs, and/or serious cases of being under the influence of alcohol or drugs at work.
- k) A serious breach of health and safety rules, failure to observe health and safety policies and procedures, or endangering self or others
- l) Deliberate and serious damage or misuse of school or County Council's property or that belonging to others while in the course of work
- m) Theft or misappropriation of cash or property belonging to the school, the County Council, fellow employees, pupils and others at school
- n) Fraud or dishonesty, including falsely reporting sickness absence, falsification of work records, timesheets, travelling and subsistence or similar claims, or serious use of paid time or the school or County Council's materials or facilities for purposes unrelated to the job.
- o) Taking significant unauthorised leave
- p) Serious insubordination, non-compliance, failure to obey a reasonable and lawful instruction or direction, or conduct intended to otherwise undermine
- q) Bringing the school, service or profession into serious disrepute, including failure to observe reasonable standards of ethics and behaviour (or appropriate professional standards) within and outside work, or to have proper and professional regard for the ethos, policies and practices of the school or County Council. This might include information on social networking sites, particularly where this involves malicious, defamatory or abusive communication
- r) Serious misuse of the internet or inappropriate use of electronic mail, including deliberately accessing or sharing pornographic, offensive or obscene material
- s) Deliberate and wrongful disclosure of security passwords in connection with building security and computer systems
- t) Serious unauthorised or inappropriate disclosure of confidential information, failure to observe data protection principles or the use of such information or official contacts for personal interest or gain
- u) Serious misuse of the school or County Council's name, equipment, materials or information, including copyright and other intellectual property rights.
- v) Failure to disclose an interest in school or County Council contracts.
- w) False statements or failure to disclose relevant information in applications for employment, including any personal incapacity which may be incompatible with the satisfactory discharge of the duties and responsibilities of the job
- x) Deliberate failure to disclose unspent criminal convictions or, in respect of employment exempt from the terms of the Rehabilitation of Offenders Act (i.e. employment with children

or young people), failure to disclose any Police warning, caution, bind-over or conviction before and during relevant employment.

22. Some Reasons Which Might Justify Dismissal With Notice

As distinct from gross misconduct, for which the normal sanction is dismissal without notice, dismissal will normally only take place after due warning through the disciplinary procedure. However, there are a limited number of circumstances which fall short of gross misconduct where the governing body may determine that an employee shall cease to work at the school without prior warning being issued. These are circumstances where the action of the employee has broken the mutual trust and confidence necessary to sustain the employment relationship. The following is a non-exhaustive list of circumstances which may give rise to such a determination:

- (a) Behaviour of a serious or criminal nature outside employment the nature of which makes continued employment impossible.
- (b) Committal to prison for an offence which is of such a kind, or entails a sentence of such length, as to make continued employment impossible.

Depending on the seriousness of such matters, dismissal without notice may also be considered.

23. Procedure for a Hearing

Hearings will be held in as informal a manner as possible and the employee will be afforded every reasonable assistance to put his/her case. The conduct of the hearing is at the discretion of the Headteacher, Chair of the committee or manager hearing the case, but s/he will allow the parties every reasonable opportunity to present their case.

In the case of an appeal the order of presentation set out below would normally be reversed, with the employee as appellant presenting his/her case first. However, by prior agreement or where the appeal constitutes a re-hearing of the full case, the case against the employee may be presented first as at the initial hearing. Chairs of appeal committees or managers hearing appeals should ensure that all parties have a common understanding and agreement on the order of presentation.

1. Introduction

The Headteacher, Chair of the appropriate committee or manager hearing the case will ensure that those present are introduced to each other and that they are aware of the procedure to be followed.

2. Presentation of the Allegations

The person presenting the case against the employee may make an opening statement outlining the case. The person or committee hearing the case and the employee responding to it may ask questions.

S/he will then call any witnesses and ask them to give their evidence. The employee or his/her representative may then ask questions of each witness. The person or committee hearing the case may also ask questions of any witness. The person presenting the case may then re-examine the witness.

Where evidence is presented in the form of documents, the person presenting the case or an appropriate witness will explain the nature and significance of the documents.

3. The Employee's Case

The employee or his/her representative may make an opening statement. The person or committee hearing the case and the person presenting the case against the employee may ask questions.

S/he may call any further witnesses and invite them to give their evidence. The person presenting the case against the employee may ask questions of each witness after s/he has given his/her evidence. The person or committee hearing the case may then ask questions. The employee or his/her representative may re-examine the witness.

Where there is any documentary evidence, the employee or any witness on his/her behalf will explain its significance.

4. Re-examination

Both parties will be asked if they wish to re-examine any evidence. The person or committee hearing the case may also do so at its discretion.

5. Final Statements

The person presenting the case against the employee may make a final statement. The employee or his/her representative may then also make a final statement.

6. Adjournment

Either party may ask for an adjournment at any stage. The decision to adjourn is at the discretion of the Chair, who will consider a request in the light of the reason given for it.

7. Consideration of the Case

All parties will withdraw. The Headteacher or the committee will deliberate.

If it is necessary to recall either party or any witnesses, to resolve a point of uncertainty, both parties will be invited to be present, whether or not the point of doubt concerns one party or both.

8. Decision

If possible the decision will be communicated orally to the employee after the hearing. The decision will be confirmed in writing to the parties involved as soon as possible after the hearing.

Section B
Capability Procedure

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General Introduction

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Appendix 1 – Timeline

Appendix 2 – Procedure for a Hearing

General principles underlying this policy

1. Introduction

Every job carries standards of performance that employees are expected to achieve, but occasionally an employee's performance may fall short of the standards expected.

This school seeks to provide each employee with the direction, development and support necessary to assure a productive and rewarding career. This procedure ensures that the school has a fair and consistent framework for dealing with capability matters effectively, consistently and in a timely matter to ensure that no individual is discriminated against.

This policy sets out the procedure that must apply in cases of capability. Its emphasis is one of support and it is important that the right procedure is used according to the situation under review.

The Capability Procedure is designed to:

- Encourage staff to meet agreed standards of behaviour, conduct and job performance
- Deal fairly and consistently with staff who do not improve to meet those standards and identify ways to help them improve
- Be applied in a consistent, fair prompt and supportive way.

For a variety of reasons, the performance of an employee may give rise to concern because the evidence suggests that s/he is unable to carry out the duties and responsibilities of his/her post to a professionally acceptable standard, through lack of capability, aptitude, skill or ability and not through any lack of willingness or effort on his/her part. Where the employee concerned fails to carry out his/her duties and responsibilities to a reasonable and acceptable standard for reasons of his/her capability, the procedure set out in this document should be used. One important factor will be the impact of the employee's performance on pupils' achievement, progress and well-being.

Another reason for concerns about performance may be genuine but unacceptable absence due to ill-health. This may affect the long-term ability for employees to continue to carry out the requirements of the role and may have a detrimental effect upon service delivery. In such circumstances, the issues should be addressed in accordance with the absence management procedures.

This policy has been subject to full and meaningful consultation with the recognised Trades Unions. The policy will be reviewed as may be required by legislative or organisational change.

For specific advice and guidance, managers should refer to their named HR Consultant. There are template letters and additional guidance on the Schools' Choice [website](#).

2. Scope

This procedure applies to all teaching and support staff in schools (including those seconded to other schools or organisations) in which the governing body has adopted them for use.

Where the concerns relate to the Headteacher, the Chair of Governors will manage the procedure and, where concerns persist, will convene a Special Committee of the Governing Body (which should not include any governors from the Appeals Committee) to determine what action should be taken. The Committee will proceed in all other stages of this procedure. The committee will carry out those

functions normally undertaken by the Headteacher/line manager. A Headteacher who is the subject of this procedure will have all the rights accorded to other employees at the various stages.

An employee working within a school but employed on another organisation's terms and conditions of employment should be managed under their appropriate policy/procedure.

3. Exclusions

Disciplinary procedures exist to deal with misconduct, wilfully deficient performance, refusal to follow instructions, negligence and other similar situations, and should be used where such considerations form a significant part of any complaints.

The assessment and treatment of employees undergoing an induction or probationary period (including Newly Qualified Teachers), or similar, will be dealt with according to the terms of their probationary period, unless the employee's performance falls so far below professionally acceptable standards as to require immediate action.

Separate guidance also exists for dealing with problems arising from alcohol dependence. However, this procedure may be applied where this or substance abuse has a significant effect on the employee's performance.

4. Purpose

While it is important to deal with capability issues fairly and effectively, it is just as important to look at ways of preventing problems escalating in the first place, for example, through:

- Careful recruitment, selection and training
- Clear standards, expectations and effective communication
- Regular supervision and performance development reviews.
- Identification and, where appropriate, assistance in resolving underlying problems

Many factors can contribute to poor performance, including those which are not directly related to the workplace. Assistance with resolving underlying issues could include reference to:

- The Wellbeing Service
- The SCC stress toolkit
- Referral to Occupational Health (where appropriate)

Good performance management is an all-year process, with regular supervision and feedback. Concerns about performance should be addressed promptly and not left until formal review meetings.

In many cases, the right word, at the right time and in the right way may be all that is needed to address poor performance. Managers must, in the first instance, seek improvement through normal performance management. This should include two-way discussion, with the objective of encouraging and helping the employee to improve and for the improvement to be sustained. Although there is no right for the employee to be accompanied at this stage, it may be helpful for the employee's Trades Union representative to be involved at an early stage. Additional training, coaching or advice may be agreed.

The purpose of the capability procedure is to:

- 1) Positively and constructively support employees to improve their performance through advice, guidance and support, when it is identified they are not performing to the required standard
- 2) Ensure that all employees are treated in a fair, consistent, understanding and timely manner and in accordance with all relevant legal requirements
- 3) Contribute towards the improvement of the performance and effectiveness of the school
- 4) Support managers in carrying out their responsibilities for the maintenance of high standards of work performance by all employees
- 5) Ensure the employee is aware of each stage of the procedure and the possible outcomes
- 6) Ensure all customers receive services of the highest standard

5. Application of the procedure

5.1 Normal Performance Management Arrangements

Informal feedback on performance does not form part of this procedure as this should be given through 'normal performance management arrangements' i.e. performance review meetings, one to one meetings, etc.

Feedback through normal performance management arrangements must include positive, proactive feedback on performance and constructive feedback when performance is not at the required standard – this must include

- confirmation of the required standard,
- the standard the employee is currently performing at,
- an agreement of how the required standard will be achieved and
- the consequences if standards are not achieved.

Every effort should be made to resolve performance issues on an informal basis.

Where concerns continue, discussions should include clear advice about the improvements needed, support available and how and when the employee's performance will be reviewed. This should be confirmed in writing and, where appropriate, may be linked to the Performance Development Review process and pupil progress evaluation processes. Use of SMART principles may assist in objective setting, i.e.:

- Specific – they are well defined
- Measurable – both quantitatively and qualitatively
- Achievable – they are not set too high to make it impossible to achieve them
- Resourced – the resources necessary are readily available
- Timed – the timescales set are reasonable

The template letter PM2 should be used at this stage to set out expectations and inform the employee of the possible progression if insufficient improvement is made.

5.2 Timescales

Capability issues should normally be resolved within ten to twelve weeks. However, it is acknowledged that there may be circumstances when the process will take longer to complete. These may include annual leave, working patterns or ill-health where reasonable adjustments need to be made under the Equality Act 2010. Where this is anticipated, advice must be obtained from the Schools' HR Consultant.

The period of monitoring under a first or final written warning will not normally exceed six weeks, (excluding school closure periods where appropriate), according to the needs of the individual and the school. Whilst every effort should be made to agree the appropriate length of this period of monitoring, where agreement cannot be reached, it will set by the headteacher.

5.3 Progressing to the next stage of the procedure

Before action under the formal stages of this procedure is considered, the employee should be informed in writing that this will be considered if there is no improvement within the agreed review period and invited to a meeting to discuss the evidence in more detail

In many circumstances, significant evidence will have already have been gathered as part of pupil progress monitoring, normal performance management and the additional support provided, which the school will simply collate and summarise as evidence.

The collated evidence will clearly indicate the support and advice offered to date and make a recommendation for one of the following:

- No further action,
- Further support as part of normal performance management
- Formal action under this procedure i.e. first written warning

In all cases, the outcome will be confirmed in writing to the employee.

Where the decision is made to take formal action under this procedure because the employee has made insufficient improvement despite the support and monitoring, the employee will be invited to a formal meeting under Formal Stage 1 of the procedure (PM letter 4).

All employees should progress through each stage of the procedure, and in accordance with agreed timescales.

Exceptions can apply in the following circumstances and consequently, line managers can decide to progress them to the next stage of the procedure earlier than agreed:

- 1) Deterioration in performance
- 2) Not meeting the targets in the agreed Development Plan.

6 Formal stage 1 – Meeting (written Warning)

6.1 Purpose

The purpose of Formal Stage 1 is to support the employee in improving their performance to meet the required standard against an agreed Development Plan (a template Development Plan is enclosed).

6.2 Procedure

At least five working days' notice will be given of the formal capability meeting. The notification will contain sufficient information about the performance concerns and their possible consequences to enable the employee to prepare to answer the case at a formal capability meeting. It will also contain copies of any written evidence; the details of the time and place of the meeting, and will advise the employee of their right to be accompanied by their accredited Trades Union Representative, or a work colleague.

This meeting is intended to establish the facts. It will be conducted by the Chair of Governors (for head teacher capability meetings) or the head teacher (or other senior school leader/the employee's line manager) for other employees. The meeting allows the employee to respond to concerns about their performance and to make any relevant representations. This may provide new information or a different context to the information/evidence already collected.

This is the start of the performance monitoring and review period. Formal monitoring, evaluation, guidance and support will continue during this period. At the formal review meeting the following will be discussed:

- a) Confirm that the employee has the right to representation;
- b) Confirm that the meeting is being held under the school's capability procedure and explain the process that will be followed and the possible outcomes;
- c) Confirm the expected standard of performance and the standard at which the employee is currently performing, i.e. identify the professional shortcomings, e.g. for teachers, which of the standards expected of teachers, or pupil progress targets, are not being met;
- d) Ensure the employee has the opportunity to respond to and explain any factors affecting their current performance and consider this when determining the appropriate course of action (it may be necessary for new information on performance to be disclosed);
- e) Confirm the risks to the school and pupils of the under-performance;
- f) Confirm the options available to support the employee in improving their performance (i.e. support, development, training, etc.);
- g) Ensure the employee is aware of what support is available to them e.g. the Employee Assistance Programme (EAP), Trades Union support, etc.;
- h) Confirm that Formal Stage 1 constitutes a 'written warning' which if no further action is taken, will remain active for 6 months from the end of Formal Stage 1.

On occasion, the manager may decide to adjourn the meeting if they decide that further investigation is needed, or that more time is needed in which to consider any additional information.

At the meeting the manager and employee will discuss and agree:

- a. The employee's current and expected levels of performance;
- b. The objectives for the Development Plan, how they will be achieved, the timescales for achieving them and when progress against each objective will be reviewed;
- c. The reasons the employee is not meeting the expected standards (which may be as a consequence of personal issues);
- d. When review meetings will be held;
- e. Warn the employee formally that failure to improve within the set period could lead to dismissal. (In very serious cases, this warning could be a final written warning);
- f. Write, agree and sign the Development Plan
- g. Any agreed reasonable adjustments to be made under the Equality Act 2010.

At the end of the meeting the manager will:

- a. Summarise the meeting;
- b. Ensure the employee understands what is expected of them, the process that will be followed and the possible next stages of the procedure, including the right of appeal against the warning (any appeal must be lodged, in writing, within 14 days of the date of the letter issuing the warning. The grounds of the appeal must also be detailed at this stage);
- c. Agree what support, development and reasonable adjustments (if appropriate) will be put in place

After the meeting the manager will:

- a. Confirm the outcome of the meeting in writing, including that a written warning has been issued;
- b. Ensure that the employee receives the support agreed in the Development Plan in a timely manner;
- c. Ensure that the agreed review meetings and any further review meetings deemed necessary take place;
- d. Continue to monitor the employee's progress against the Development Plan and progress the employee through the procedure as appropriate and in line with this procedure;
- e. Ensure that the employee is informed of any signs that they are not likely to achieve their targets at an early stage.

After the meeting the employee will:

- a. Make every effort to meet the objectives agreed in the Development Plan;
- b. Attend the agreed review meetings and any further review meetings deemed necessary;
- c. Give honest feedback on their current performance and progress against the Development Plan and pupil progress targets.

6.3 Formal Review Meeting

The letter confirming the outcome of the first formal meeting and a copy of the Development Plan will be sent to the employee and will invite the employee to a formal review meeting at the end of the agreed review period (*this can be brought forward if necessary (see section 5.3)*). The employee

has the right to be accompanied at the formal review meeting by their accredited Trade Union Representative, or a work colleague.

At the formal review meeting, the manager and employee will review the employee's progress against the Development Plan and the manager will confirm one of the outcomes stated below.

Possible Outcomes at the end of Formal Stage 1

The manager will confirm one of the following outcomes:

1) The required standard of performance has been met

The employee's performance will be managed under normal performance management arrangements and the written warning will remain active for 6 months from the date of the Formal Review Meeting.

2) The required standard of performance has not been met or significant progress has not been made towards meeting the required standards

The employee will be progressed to Formal Stage 2 of the procedure (see section 7) and a 'final written warning' will be given. Until the hearing takes place, the employee will continue to be supported to meet the requirements of the Development Plan.

The outcome of the formal review meeting will be confirmed to the employee in writing. If the employee has been progressed to Formal Stage 2 of the procedure, the letter will include an invitation to a hearing (see section 7) and confirmation that a final written warning has been issued, which if no further action is required, will remain active for 12 months from the end of Formal Stage 2, and warning the employee that failure to achieve an acceptable standard of performance (within the set timescale) may result in dismissal. The letter will also give information about the handling of the further monitoring and review period and the procedure and time limits for appealing against the final warning.

7 Formal stage 2 – Decision Meeting

As with the formal capability meetings and formal review meetings, at least five working days' notice will be given, and the notification will give details of the time and place of the meeting, and will advise the employee of their right to be accompanied.

7.1 Purpose

The purpose of Formal Stage 2 is to determine:

- a. If the school has exhausted all options in supporting the employee to improve their performance;
- b. What the outcome of the procedure should be.

7.2 Procedure

The procedure for the hearing will follow the procedure set out in Appendix 2.

The outcome of the hearing will be one of the following:

1) The required standard of performance has been met

The employee is performing to the required standard and will be managed under normal performance management arrangements.

2) The required standard of performance has not been met but it has been determined that the required standard can be met within a short period

A further review period (it is recommended this is no more than two working weeks from receipt of the Development Plan) and Development Plan will be implemented (under Formal Stage 2 of this procedure).

In these circumstances:

- a) The additional support to be given to the employee and the duration of the extended review period will be explained to the employee verbally at the meeting and a development plan detailing this will be forwarded to them with the letter confirming the outcome of the meeting
- b) A review meeting will take place at the end of the extended review period and one of the three outcomes set out within Section 7.2 will be determined.

3) The required standard of performance has not been met and the panel has determined:

a) The required standard cannot be met within a short period

OR

b) The employee is capable of performing at the required standard but does not due either to negligence or carelessness or idleness, or a combination of some or all of these.

If performance remains unsatisfactory, a decision, or recommendation to the Governing Body will be made that the employee should be dismissed or required to cease working at the school. ¹ The employee is dismissed with notice (unless their performance has been so negligent so as to amount to gross misconduct, in which case they may be dismissed without notice). However, it may be agreed that the employee will not return to work at the school in a capacity which directly affects the education of pupils, or they may be granted paid leave for the duration of their notice period.

The outcome of the hearing will be confirmed to the employee in writing as soon as possible, and will include information about the employee's right of appeal. If a further review period has been granted (see outcome 2 above), the letter will include an invitation to the further review hearing.

8 Returning to earlier warnings

If there is evidence within six months of the procedure ceasing (for a first written warning or within twelve months for a final written warning) that the employee has not sustained the level of performance required, the procedure may be resumed at any stage up to and including that stage previously reached.

¹ In Foundation Schools, Voluntary Aided Schools and Foundation Special Schools, the governing body is the employer but the power to dismiss can be delegated to the head teacher, to one or more governors, or to one or more governors acting with the head teacher. In Community, Voluntary Controlled, Community Special, and Maintained Nursery schools, the power to determine that the member of staff should no longer work at the school can be delegated in the same way as above but it is the local authority (as the employer) that actually dismisses staff (or – for those who work in more than one school – requires them to cease to work at the school).

9 Exceptional circumstances

In exceptional cases where the level of performance could have serious consequences successive warnings may not be appropriate. For example;

- where the employee's performance falls so far short of an acceptable standard, that improvement to an acceptable level may reasonably be deemed impossible; or
- where a lack of competence has a seriously detrimental effect on the education of pupils and students; or
- where the employee's lack of competence could have other serious consequences, e.g. safety considerations

In such circumstances, the school may proceed directly to consideration of a final written warning or dismissal, as appropriate. Schools should seek advice from their Human Resources Advisor before taking such a decision.

10 Appeals

Employees have the right to appeal against the first written warning, final written warning and any outcome of the Formal Stage 2 decision meeting. The procedure for any appeal will follow that set out in Appendix 2, "Procedure for a Hearing", except that the running order will be reversed.

If an employee feels that a decision to dismiss them, or other actions taken against them, is wrong or unjust, they may appeal in writing against the decisions within 14 days of the decision, setting out at the same time, the grounds for appeal.

11 Headteachers

If there are concerns about the capability of the Headteacher, it would clearly be inappropriate for him/her to carry out the roles normally assigned to the Headteacher in this procedure. This section sets out how these roles may be appropriately reassigned, within the spirit and intent of this procedure.

Concerns about the performance of a Headteacher may emerge from either the Governing Body (or management committee in the case of Pupil Referral Units) itself or from external sources such as Ofsted inspection or the Local Authority (LA) in its monitoring role.

The Chair of Governors may discuss concerns about the Headteacher's performance as part of the normal dialogue between the Headteacher and Chair of Governors. Such discussions will precede the informal stages detailed in this procedure.

The Chair of Governors may consult the LA or their Human Resources Advisor and arrange for help and support to be provided. Consultation with the Headteacher's trade union may also assist the process. However, if the matter is, or becomes, sufficiently serious, the Headteacher should be advised that if the identified deficiency persists, it may be necessary to convene a committee of the Governing Body to consider the matter under the formal stages of this procedure. This possibility should be set out in writing.

If the help and support which has been provided within the normal management processes do not lead to the required improvement, the Chair of Governors will request the LA to investigate the nature of the problem, its level of seriousness and causes, through a formal investigation

When this investigation is complete, the Chair of Governors will convene a Special Committee of the Governing Body (which should not include any governors from the Appeals Committee), to receive the report and determine what action is appropriate. The Chair of Governors will normally be a member of this committee.

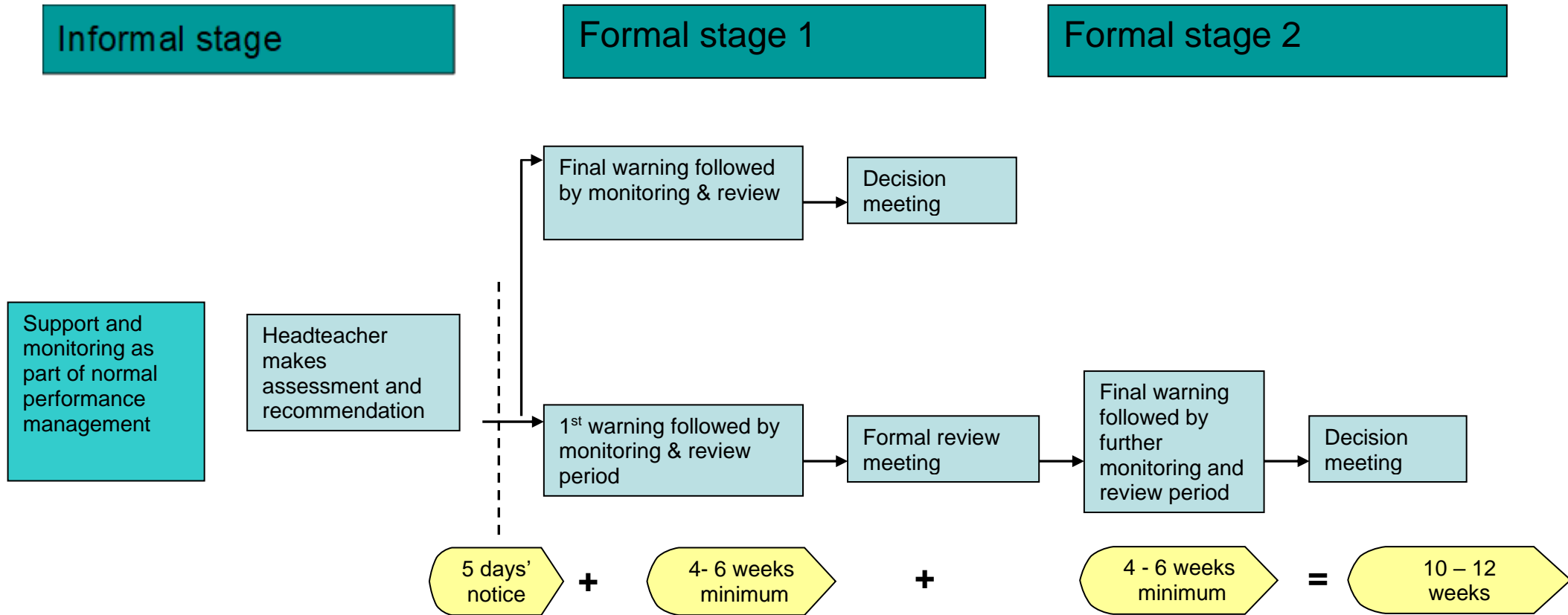
The Committee will consider the report and proceed as described in all other stages of this procedure. The Committee will carry out those functions normally undertaken by the Headteacher/line manager. The LA, through different professional officers as necessary, will provide appropriate advice, support and monitoring for the Special Committee.

A Headteacher who is the subject of this procedure will have all the rights accorded to other employees at the various stages.

Capability Procedure Timeline

Appendix 1

It is anticipated that most cases of capability will be resolved within ten to twelve working weeks (including informal feedback as part of normal performance management arrangements). However, it is acknowledged that there may be circumstances when the process takes longer to complete. Where this is anticipated, advice must be obtained from HR.



Note: The timings given above are illustrative only.

Schools will tailor the length of their monitoring and review periods to suit individual circumstances.

Procedure for a hearing

Hearings will be held in as informal a manner as possible and the employee will be afforded every reasonable assistance to put his/her case. The conduct of the hearing is at the discretion of the Headteacher, Chair of the committee or manager hearing the case, but s/he will allow the parties every reasonable opportunity to present their case.

In the case of an appeal the order of presentation set out below would normally be reversed, with the employee as appellant presenting his/her case first. However, by prior agreement or where the appeal constitutes a re-hearing of the full case, the case against the employee may be presented first as at the initial hearing. Chairs of appeal committees or managers hearing appeals should ensure that all parties have a common understanding and agreement on the order of presentation.

Introduction

The Headteacher, Chair of the appropriate committee or manager hearing the case will ensure that those present are introduced to each other and that they are aware of the procedure to be followed.

Presentation of the Case

The person presenting the case against the employee may make an opening statement outlining the case. The person or committee hearing the case and the employee responding to it may ask questions.

S/he will then call any witnesses and ask them to give their evidence. The employee or his/her representative may then ask questions of each witness. The person or committee hearing the case may also ask questions of any witness. The person presenting the case may then re-examine the witness.

Where evidence is presented in the form of documents, the person presenting the case, or an appropriate witness, will explain the nature and significance of the documents.

The Employee's Case

The employee or his/her representative may make an opening statement. The person or committee hearing the case and the person presenting the case against the employee may ask questions.

S/he may call any further witnesses and invite them to give their evidence. The person presenting the case against the employee may ask questions of each witness after s/he has given his/her evidence. The person or committee hearing the case may then ask questions. The employee or his/her representative may re-examine the witness.

Where there is any documentary evidence, the employee or any witness on his/her behalf will explain its significance.

Re-examination

Both parties will be asked if they wish to re-examine any evidence. The person or committee hearing the case may also do so at its discretion.

Final Statements

The person presenting the case against the employee may make a final statement. The employee or his/her representative may then also make a final statement.

Adjournment

Either party may ask for an adjournment at any stage. The decision to adjourn is at the discretion of the Chair, who will consider a request in the light of the reason given for it.

Consideration of the Case

All parties will withdraw. The Headteacher or the committee will deliberate. The Director of Children and Young People's Services and/or the Head of Legal Services may be present at these deliberations to advise on legal and procedural matters. In any case where dismissal is proposed, the representative of the Director of Children and Young People's Services will advise the committee as to whether s/he concurs with the committee's decision.

If it is necessary to recall either party or any witnesses, to resolve a point of uncertainty, both parties will be invited to be present, whether or not the point of doubt concerns one party or both.

Decision

If possible, the decision will be communicated orally to the employee after the hearing. The decision will be confirmed in writing to the parties involved as soon as possible after the hearing.

General principles underlying this policy

ACAS Code of Practice on Disciplinary and Grievance Procedures

This procedure will be implemented in accordance with the provisions of the ACAS Code of Practice.

Confidentiality

The appraisal and capability processes will be treated with confidentiality. However, the desire for confidentiality does not override the need for the head teacher and governing body to quality-assure the operation and effectiveness of the appraisal system. Schools to say here how they might achieve this, for example, the head teacher or appropriate colleague might review all teachers' objectives and written appraisal records personally, in order to check consistency of approach and expectation between different appraisers. The head teacher might also wish to be aware of any pay recommendations that have been made.

Consistency of Treatment and Fairness

The Governing Body is committed to ensuring consistency of treatment and fairness and will abide by all relevant equality legislation.

Definitions

Unless indicated otherwise, all references to "teacher" include the head teacher.

Delegation

Normal rules apply in respect of the delegation of functions by governing bodies, head teachers and local authorities.

Grievances

Where a member of staff raises a grievance during the capability procedure the capability procedure may be temporarily suspended in order to deal with the grievance. Where the grievance and capability cases are related it may be appropriate to deal with both issues concurrently.

Sickness

If long term sickness absence appears to have been triggered by the commencement of monitoring or a formal capability procedure, the case will be dealt with in accordance with the school's absence policy and will be *(e.g. referred immediately to the occupational health service to assess the member of staff's health and potential fitness for continued employment and the appropriateness or otherwise of continuing with monitoring or formal procedures)*. In some cases, it may be appropriate for monitoring and/or formal procedures to continue during a period of sickness absence.

Monitoring and Evaluation

The governing body and head teacher will monitor the operation and effectiveness of the school's appraisal arrangements.

Retention

The governing body and head teacher will ensure that all written appraisal records are retained in a secure place for six years and then destroyed.

Section C

Harassment and Bullying Procedure

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- 1 Introduction
- 2 Scope
- 3 Confidentiality
- 4 Exclusions
- 5 Roles and responsibilities
- 6 Using this policy
- 7 Key terms: definitions of harassment and bullying
 - 7.1 Definition of harassment
 - 7.2 Definition of bullying
 - 7.3 Definition of victimisation
- 8 Complaints of harassment and bullying by third parties

1. Introduction

Harassment or bullying in any workplace is clearly undesirable and unacceptable. Not only can it have a detrimental effect on health and well-being of an employee who suffers it, but it can generally undermine good working relationships, affect staff morale and reduce overall effectiveness in a working environment. An employer has a legal duty to provide a safe working environment for its employees.

The purpose of this policy is to ensure that complaints of harassment or bullying are dealt with swiftly, fairly and consistently, that unwanted behaviour ceases, and that prompt and effective solutions are found, whilst maintaining all parties' rights.

2. Scope

This procedure applies to all teaching and support staff in maintained schools (including those seconded to other schools or organisations) in which the governing body has adopted them for use.

An employee working within a school but employed on another organisation's terms and conditions of employment should have any grievance managed under their own organisation's appropriate policy/procedure.

3. Confidentiality

The material involved in a complaint of harassment or bullying is of a sensitive nature. All the parties involved in these procedures, including the complainant, the person responding, and any witnesses, have a right to expect that the information which they provide will be treated in confidence by all parties.

Details should normally only be disclosed to those who have a role within the procedure, or for the purposes of seeking professional advice, and for legitimate purposes to expedite the procedure.

Any written instruction to an employee, or the outcome of any subsequent disciplinary proceedings associated with a complaint of bullying or harassment will normally be kept on the personal file of the employee receiving the instruction or warning.

Minutes of the proceedings of any committee of the Governing Body will usually be confidential to members of the committee, although the decision and outcome of the committee's deliberations will normally be reported to the delegated committee of the Governing Body. Other records, complaints, statements etc. collected during the process of investigation and assessment of the complaint should be held securely.

4. Exclusions

This policy is not intended to preclude the exercise of normal management functions, nor the issuing of reasonable and lawful instructions in an appropriate manner.

The procedure does not apply to authorised investigations into the conduct or capability of employees (including attendance and/or health), nor to the proper application of disciplinary, capability or similar procedures. Complaints about the conduct of such investigations and/or procedures should be raised through the appropriate appeals process or grievance procedure.

5. Roles and Responsibilities

All employees are reminded that they are expected to observe the highest standards of behaviour towards all members of the school community and that harassment or bullying of other employees may be regarded as a disciplinary offence.

It is a disciplinary offence to victimise an employee who has made a complaint of harassment or bullying, or an employee who gives evidence in good faith about a matter under investigation.

Where an employee has raised a complaint of harassment or bullying it must be recognised that this is likely to be a very stressful time for the employee concerned and Head Teachers, Governors and managers (as appropriate) must be mindful of this and consider what support may be necessary via school well-being programmes or similar. The same support should also be offered to alleged perpetrators who are being called upon to respond to such allegations.

6. Using this policy

This policy defines the key terms and expectations in this area. Complaints of bullying and/or harassment by colleagues should be made in accordance with the Schools' Grievance Policy, and will be dealt with via the process set out in that policy. This should be read by employees and Head Teachers, Governors or managers in conjunction with this Harassment and Bullying Policy. The Grievance Policy sets out both informal and formal measures. It is hoped that, in many cases, conflict between employees can be resolved by quick intervention and the use of informal measures, rather than resorting to a formal process, although it is recognised that there may be no alternative in serious cases.

Where a complaint of harassment or bullying has been upheld, the perpetrator's actions will usually be addressed under Disciplinary Policy.

7. Key terms: definitions of harassment and bullying

Harassment and bullying can take many forms. It can be directed at an individual, or a group, and examples include violence, abusive or offensive behaviour towards an individual or ignoring someone.

Employees can be subject to harassment and bullying on a wide variety of grounds, including their:

- age;
- gender;
- gender reassignment
- marital or civilly partnered status;
- pregnancy and maternity;
- physical characteristics;
- race, ethnic origin, nationality or skin colour;
- religion, belief or political convictions, or none;
- sensory or physical impairments, learning difficulties, ill health or medical condition;
- sexual orientation;
- trade union membership, or non-membership;
- willingness to challenge harassment and bullying, leading to victimisation;

This list is not exhaustive. Employees are also protected on the basis of being perceived to possess the above protected characteristics, whether they have them or not. They are also protected on an associative basis (e.g. parents of a disabled child are protected from harassment on this basis). Job applicants, as well as current employees, are also covered by the legislation.

7.1 Definition of Harassment

Harassment is unwanted conduct that has the purpose or effect of violating a person's dignity, or creating an intimidating, hostile, degrading or offensive work environment.

The types of harassment set out in the Equality Act 2010 are as follows:

1. General: based on a protected characteristic
2. Conduct of a sexual nature
3. Less favourable treatment because of rejection of or submission to conduct of a sexual nature, or harassment based on sex or gender reassignment

The Equality Act 2010 protects staff and customers from harassment because of: age, disability, gender, gender reassignment, marriage and civil partnerships, pregnancy and maternity; race, religion or belief, and sexual orientation. It should be noted that behaviour does not have to be directed at a person in order for them to make a claim; they simply have to be able to demonstrate that the behaviour had the effect of creating an intimidating, hostile or offensive environment for them. For example, that derogatory terms were used as a joke, or that the perpetrator was unaware the complainant was of a particular protected group when they made the offensive remarks, or that they treat everyone equally badly. Harassment is defined not by the intention of the perpetrator, but by the negative impact on the recipient.

Harassment can take many forms including:

- physical contact, ranging from touching to serious assault;
- verbal and written harassment through jokes, offensive language, gossip, slanderous correspondence;
- graffiti or obscene gestures;
- sending offensive material by email, by post, by text, or via social networking media;
- isolation or non co-operation at work; exclusion from social activities;
- coercion ranging from pressure for sexual favours to pressure to participate in particular activities;
- intrusion by pestering, spying, following;
- "outing" someone - to state openly and publicly someone's sexual orientation without their permission

The scope of the various forms of harassment is explained in more detail below.

- Harassment on age grounds can affect people of any age
- Harassment on disability grounds affects people with physical and sensory impairments, learning difficulties and mental health conditions.
- Harassment on gender grounds affects people of any gender.

- Harassment on gender reassignment grounds affects people as soon as they manifest their transgendered status (e.g., by dressing in the clothes of the opposite sex).
- Harassment on marriage or civil partnership grounds affects those who are currently married or civilly partnered. There is no legal protection for previous or future relationships.
- Harassment on pregnancy or maternity grounds affects female employees who are pregnant or on statutory maternity leave.
- Harassment on race grounds affects people of all races, and includes race, colour, nationality, citizenship, caste, and ethnic or national origins.
- Harassment on religion or belief grounds affects people from all religions and religious groups; people with certain belief systems and also people who have no religious belief.
- Harassment on sexual orientation grounds affects people of all sexual orientations, whether they are heterosexual, lesbian, gay or bisexual.
- Sexual harassment refers to unwelcome conduct of a sexual nature. If an incident of perceived sexual harassment persists once it has been made clear that it is regarded by the recipient as offensive or unwelcome, this is deemed to be harassment. In certain cases, however, one incident of harassment may constitute sexual discrimination if sufficiently serious. It is the unwanted nature of the conduct that distinguishes sexual harassment from friendly behaviour that is welcome and mutual. People are also protected from less favourable treatment because of rejection of or submission to conduct of a sexual nature. Further details as to the forms it can take are given below.
 - (i) Physical contact of a sexual nature is commonly regarded as meaning unwanted physical contact, ranging from unnecessary touching of a colleague, to sexual assault and coercing intercourse.
 - (ii) Verbal conduct of a sexual nature may include unwelcome sexual advances, offensive flirtations, continued unwelcome suggestions for social activity outside the workplace, suggestive remarks, and lewd comments.
 - (iii) Non-verbal conduct of a sexual nature refers to the display of pornographic or sexually suggestive pictures, objects or written materials; leering, and/ or making sexually suggestive gestures.

Third party harassment – please see section 8.

7.2 Definition of Bullying

Bullying is the misuse of power or position to criticise and condemn unreasonably; to humiliate and undermine an individual’s professional ability. In terms of legislation, an employer’s duty to prevent bullying comes under the health and safety provision of a “duty of care”.

Obvious bullying may include:

- shouting at employees
- displaying instantaneous rages
- using personal insults and name-calling
- criticising unreasonably

- humiliating publicly
- threatening with demotion

Less obvious bullying may include:

- setting objectives with impossible deadlines
- removing areas of responsibility
- setting menial tasks
- changing working guidelines
- ignoring or excluding an individual
- talking only through a third party
- refusing reasonable requests
- blocking a person's promotion
- stealing credit for the work of the victim
- subjecting the employee to excessive scrutiny or 'micromanagement'

It is the pattern of such events that determines if bullying is taking place. Any one of these examples may occur in isolation and can be 'out of character' for the person who perpetrates it. A bully, however, will consistently use one or more of the above methods to harass and intimidate the victim.

7.3 Definition of Victimisation

Victimisation is treating someone less favourably than others because he or she has reported harassment (whether formally or otherwise), or supported someone in making a complaint, for example by giving evidence as a witness in relation to a complaint. It includes when A *believes* B has made, or may make, a complaint or support another's complaint.

In these situations the employee can use this policy or report the incident to a manager. If they choose not to report the issue formally, then it may not be appropriate for any further action to be taken. However, if the offence was very serious, the school, or county council, would consider that it was failing in its duty to provide a safe working environment, free from unlawful discrimination, if it did not act. In this situation, where the school/county council is aware of the incident, formal action could be taken without the employee's permission, although he or she would be informed.

8. Complaints of harassment or bullying by third parties

Employees should report any complaint to their Head Teacher.

Section D

Grievance Procedure

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4. Exclusions
5. Roles and responsibilities
6. Informal stages
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1. Introduction

Grievances are concerns, problems or complaints that employees raise with their employers. These may be about any aspect of their work, treatment that they have received, or relationships with colleagues. This policy is also used when dealing with complaints of bullying and/or harassment. The purpose of this policy is to ensure that complaints are dealt with swiftly, fairly and consistently.

2. Scope

This policy applies to all teaching and support staff in Thomas Mills High School.

An employee working within a school but employed on another organisation's terms and conditions of employment should have any grievance managed under their own organisation's appropriate policy/procedure.

3. Confidentiality

All grievance proceedings, including details of any investigation and statements relating to it, are confidential to the parties concerned, with the exception of official bodies which have a right to require disclosure of information. The delegated committee of the Governing Body will be notified of the outcome of any formal process, once it has concluded. Any breach of confidentiality may also be considered under the disciplinary policy.

4. Exclusions

This policy does not apply to complaints of professional malpractice, wrongdoing or criminal activity: such complaints should be raised immediately via the Whistleblowing Policy. Similarly, this policy will not be used to raise complaints where any other policy (such as the disciplinary policy) applies.

Pay and Grading Appeals will be considered under the specific arrangements in place for that purpose.

The grievance policy will not be used to deal with complaints made after employment has ended, for any reason. However, if a grievance has been raised and not concluded before an employee leaves, he or she will be invited to continue with the grievance process.

5. Roles and Responsibilities

Any complaint raised under this policy should be made in good faith. Any complaint found to have been made for malicious, false or similar reasons may give cause for disciplinary action. All employees are expected to co-operate in the implementation of this policy and the accompanying Harassment and Bullying Policy (where applicable) both of which are intended to secure fair and reasonable treatment and equality of opportunity for all employees.

Whether raised at the informal or formal stages of this process (see below) it is important that the employee approaches the right person with his/her grievance.

If the complaint is an informal one and involves other employee(s) the employee may make a direct approach to the individual(s) concerned. Otherwise, he/she should directly approach his/her line manager, or the Head Teacher (who may wish subsequently to delegate this matter to a senior member of staff, as appropriate) in order to explore

resolution of the matter. Where the grievance is about the Head Teacher, or the Governing Body, it should be referred to the Chair of Governors. Where the Head Teacher has an informal grievance of his/her own, this should be referred to the Chair of Governors in the same way.

The same principles apply within the formal stages (see below) of this procedure, with the grievance being submitted to the Head Teacher or Chair of Governors as appropriate. The grievance would then be heard by the Head Teacher, or by the Hearings Committee of the Governing Body, accordingly. Where an employee reaches the appeal stage, he/she would lodge the appeal with the person, or the Chair of the Committee, who heard the first formal stage. The Governors' Appeal Committee will then be convened to hear the appeal. For Head Teachers' grievances, the formal grievance hearing will be carried out by the Governors' Hearings Committee and any subsequent appeal by the Governors' Appeal Committee.

6. Informal stage

Many grievances can be resolved informally and quickly, and there is an expectation that employees will seek to do this, without unreasonable delay, before formal steps are considered. The relevant person (see paragraph 5 above) receiving the complaint will try to resolve it informally with the party or parties concerned wherever possible. Where there is a dispute between employees, it may be appropriate to involve a trained mediator in these circumstances, with the various parties' agreement.

7. Formal grievance process

If a complaint has not been satisfactorily resolved via informal measures then the employee raising it should set the complaint down in writing, without unreasonable delay, and state what steps have already been taken to resolve the grievance, and what he/she believes to be the solution to it. This complaint should be given, together with any supporting documentation, to relevant person as set out in section 5 above.

7.1 Investigation

In some cases it may be necessary to carry out an investigation into the grievance. The amount of any investigation required will depend on the nature of the allegations and will vary from case to case. It may involve interviewing and taking statements from the employee and any witnesses, and/or reviewing relevant documents. The investigation may be carried out by the relevant person or someone else appointed by the relevant person.

The employee must co-operate fully and promptly in any investigation. This may include disclosing the names of any relevant witnesses, disclosing any relevant documents and attending interviews, as part of the investigation.

The investigation may be instigated before holding a grievance hearing where this is considered appropriate. In other cases the grievance hearing may be held before deciding what investigation (if any) to carry out. In such cases a further grievance hearing will be held with the employee after the investigation and before any decision is reached.

7.2 Hearing

The relevant person will arrange a hearing, usually within two working weeks of the employee's written grievance being received although this may depend on what if any investigations are being carried out.

The hearing will be conducted in a manner which allows the employee to explain the grievance and how it might be resolved.

At the formal hearing the employee is entitled to be accompanied by a trade union representative or a workplace colleague. The person accompanying will be allowed to address the hearing, to help state the employee's case. This person does not have the right to answer questions on the employee's behalf.

A decision may be given at the end of the hearing, but in any case will be set out in a written response to the employee within two working weeks. This response may also contain what action is intended to resolve the grievance, if any part of it is upheld.

In some cases it may be necessary to adjourn the process to allow for further investigation to take place in order to allow a thorough consideration of the grievance, and to make recommendations for action. If so, the employee will be kept informed regarding the process and a further grievance hearing will be held following the further investigations.

7.3 Appeal

If the employee feels that his/her grievance has not been satisfactorily resolved, then he/she may appeal against the findings. A written notice of appeal should be submitted, stating the grounds for the appeal. An appeal hearing will be arranged, usually to take place within two working weeks.

New evidence is admissible for an appeal, providing that it is submitted at least a week before the hearing. The hearing will usually take the same format as the formal grievance hearing at 7.2 above. The employee has the same right to be accompanied.

A written response will be issued to the employee within two weeks of the date of the hearing, unless further investigation or similar is required. The decision made at the appeal is final. The employee will not be able to raise another grievance about the same matter.

8. Collective grievances

A collective grievance occurs where a group of staff feel aggrieved about the same issue. Where this occurs, the employees will be asked if they wish to have the grievance considered collectively and if so, whether they want to nominate one employee as a spokesperson. If the grievance is dealt with in this way it cannot then be raised by the same employees individually. A collective grievance procedure will follow the same timescales and process as one raised individually.