

MANAGERS TOOLKIT FOR HARROW SCHOOLS DISCIPLINARY POLICY AND PROCEDURE

1.	INTRODUCTION	2
2.	SCOPE	2
3.	ROLES AND RESPONSIBILITIES.....	3
4.	PRINCIPLES	7
5.	INFORMAL ACTION	7
6.	RULES ON CONDUCT	9
7.	CASES OF ALLEGED CRIMINAL ACTIVITY.....	11
8.	FORMAL STAGES OF THE DISCIPLINARY PROCEDURE & DISCIPLINARY SANCTIONS	11
9.	SUSPENSION.....	15
10	INVESTIGATIONS.....	19
11	NOTIFICATION TO ATTEND A DISCIPLINARY HEARING.....	21
12	HEARING PROTOCOL.....	
13	RIGHT TO BE ACCOMPANIED	23
14	GRIEVANCES DURING THE COURSE OF THE DISCIPLINARY PROCEDURE...	24
15	DISCIPLINARY HEARINGS	24
16	CONFIRMATION OF THE OUTCOME OF A DISCIPLINARY HEARING.....	26
17	RIGHT OF APPEAL	29
18	STATUTORY REQUIREMENTS BASED ON SCHOOL STAFFING REGS (ENGLAND) 2003.....	31

1. INTRODUCTION

- 1.1 The aim of the Disciplinary Policy for Schools is to help and encourage all employees to achieve and maintain the required standards of conduct and to ensure that the School is objective, firm, reasonable and consistent in its approach to dealing with employee Disciplinary issues.
- 1.2 The expectation is that the provisions contained in the Harrow Schools' Disciplinary Policy and Procedure will be adhered to. It is important to remember that tribunals have upheld complaints of unfair dismissal for management failure to follow procedure.
- 1.3 The guidance notes contained in the Toolkit **are not mandatory** but are intended to assist with promoting best practice in managing disciplinary matters.

2. SCOPE

- 2.1 The Disciplinary policy, procedure and Statutory Requirements applies to all Teachers on Teachers pay and conditions and Harrow Council employees employed in schools under the terms of Harrow's Pay Employment Conditions but does not apply to:
- staff engaged on temporary contracts of less than 6 months in duration (with the exception of incidents relating to safeguarding as set out in the following paragraph 2.2)
 - new staff that are still within their probationary period of employment and newly-qualified teachers during their statutory induction period (with the exception of incidents relating to safeguarding as set out in 2.2).
 - where the employee has been barred from teaching by the Secretary of State, where the contract would be automatically terminated.
 - where a determination that the employee should no longer work at the school is imposed by reason of any other statutory provision (e.g. lack of physical or mental fitness)
- 2.2 Where conduct problems concern an allegation against a member of staff relating to children or young people, or adults in a vulnerable situation, the guidance in Appendix 1 to the Disciplinary Policy for Schools "Threshold document for Harrow Designated Officer referrals" must take precedence over this policy and procedure.
- 2.3 Where conduct problems are identified as having arisen due to lack of capability, they will be addressed through the School's capability procedure.

3. ROLES AND RESPONSIBILITIES

3.1 The Council will:

- If it has a serious concern about the conduct of the Headteacher:
 - make a written report to the Chair of Governors, at the same time sending a copy to the Headteacher
 - give the Headteacher an opportunity to make representations to the Council about the report
- Work in accordance with the Schedule of Statutory Requirements relating to Dismissals, attached to the Disciplinary Policy & Procedure, in respect of:
 - Attending disciplinary hearings, when required or requested to do so
 - Writing the formal dismissal letter, when required or requested to do so
 - Notifying the Secretary of State for Education/Disclosure and Barring Service whenever an employee in a school is dismissed on grounds of misconduct or resigns in circumstances which would have led to their dismissal, or consideration of their dismissal, on those grounds, if they had not resigned.

3.2 The Governing Body will:

- Have ultimate responsibility for the regulation of discipline among employees in the School.
- Decide whether or not to collaborate with one or more other governing bodies in their arrangements for dismissal, either for all employees, or for specified types of employee, or at one or more of the Schools concerned.
- Adopt an appropriate disciplinary procedure covering employees in the School.
- Set up a Governors' Disciplinary Panel to deal with disciplinary cases involving the Headteacher and, if appropriate, other employees where dismissal is a possibility. If the Governing Body has decided to collaborate with one or more other governing bodies in arrangements for dismissal from the School, they will participate in setting up a Joint Governors' Panel to deal with relevant disciplinary cases.
- Set up a Governors' Appeals Panel to hear any appeals against dismissal. If the Governing Body has decided to collaborate with one or more other governing bodies in arrangements for dismissal from the School, they will participate in setting up a Joint Governors' Appeal Panel to deal with relevant appeals against dismissal.
- Notify the Council (the HR Team) and, for Voluntary Aided Schools, the Diocesan Director of Education (or representative) of any disciplinary hearing, which could lead to dismissal, in accordance with the Schedule of Statutory Requirements relating to Dismissals attached to the Disciplinary Policy & Procedure.

- The School will notify the Secretary of State whenever an employee is dismissed on grounds of misconduct, or resigns in circumstances which would have led to their dismissal, or consideration of their dismissal, if they had not resigned.
- Monitor the use of disciplinary processes for effectiveness and fairness.

3.3 **The Governing Body/Headteacher will:**

In the case of potential dismissal or dismissal, work in accordance with the Schedule of Statutory Requirements relating to Dismissals attached to the Disciplinary Policy & Procedure.

3.4 **The Chair of Governors will:**

Where the Director Education Services (or representative) has written a report to the Chair regarding any serious concerns about the conduct of the Headteacher:

- Give the Headteacher an opportunity to make representations to the Chair about the report, allowing the Headteacher to be accompanied by another person or a professional association representative.
- Respond in writing to the Director Education Services (or representative) with details of the action they propose to take in the light of the report.
- Decide, depending on the details of the case, whether the full report should be put to, and discussed by, the whole Governing Body or a committee of the Governing Body. Advice should be taken before any such discussions take place.
- Where there is a possibility of disciplinary action, ensure sufficient governors are available to carry out impartially the functions of any disciplinary and appeal hearings.

3.5 **The Headteacher (or Chair of Governors, in the case of the Headteacher) will:**

- Set and maintain clear standards of conduct at work.
- Bring to the attention of employees the arrangements for dealing with disciplinary issues.
- Distinguish between cases of misconduct and cases of capability.
- Distinguish between cases which warrant formal and informal action.
- Understand and apply the concept of gross misconduct and its impact on requiring an employee to stay away from work.
- Ensure that employees required to stay away from work are notified of a date of any disciplinary hearing **within three calendar months of their suspension** and that this period is only extended in exceptional circumstances. Ensure any extension is kept to a minimum and review monthly.
- Identify a senior representative to undertake disciplinary investigations.
- Ensure any allegations of misconduct are investigated thoroughly and fairly.
- Keep adequate and accurate records of all formal disciplinary investigations.
- Once a full investigation has taken place, and if considered to be necessary, organise and convene a disciplinary hearing, sending out the appropriate letters and any paperwork that will be considered at the hearing (the bundle), and making the necessary arrangements for the hearing.

- If, following the investigation, a disciplinary hearing is not considered to be necessary, write immediately to the employee to advise them that no further action will be taken
- For monitoring purposes, and as required by the Council, report on action which has been taken under the disciplinary procedure.

3.6 In addition to the paragraph above, the Headteacher will:

- Have the authority to give formal warnings (advised by a HR representative).
- Identify those senior employees in the School who have the authority to give formal warnings – this will usually be the Deputy Head(s) and/or Assistant Head(s)

3.7 All those involved in handling disciplinary matters will:

- Conduct disciplinary matters in an orderly, fair and reasonable way.
- Deal with any matter requiring formal disciplinary action using the policy and procedure adopted by the School's Governing Body.
- Understand and apply the concepts of:
 - disciplinary warnings
 - the balance of probability
- Understand and apply the concept of gross misconduct and its impact on:
 - dismissal
 - notice of dismissal
- Keep adequate and accurate records of all formal disciplinary hearings.

3.8 All Employees/Volunteers

Employees have a contractual responsibility to be aware of and to conform to the Council's rules, policies and procedures and to co-operate with any disciplinary investigation into misconduct and attend any disciplinary hearings convened in accordance with the Disciplinary policy.

Employees should advise their manager if they are subject to any criminal proceedings outside of work.

3.9 Managers

Managers are responsible for applying the disciplinary policy and procedure in a fair and consistent manner. They are also responsible for making sure employees and volunteers are aware of the School's rules, policies, practices and procedures. For Teachers, this includes the Teachers' Standards and in particular Part 2: Personal and Professional Conduct

3.10 Representative/Colleague

A representative/colleague is defined as either an accredited union representative or workplace colleague. A legal representative is not usually permitted to undertake this role (see Section 12 for further information).

The representative/colleague may:

- Address the hearing to put the employee's case forward;
- Sum up the employee's case;

- Respond on the employee's behalf to any view expressed at the hearing. However, the representative/colleague may not answer questions on the employee's behalf;
- Confer with the employee before, during and after the hearing, as the employee considers reasonable.

3.11 Investigating Officer

The Headteacher/Chair will authorise a senior employee, other designated person or an independent investigator to conduct the investigation. The assistance of HR may be sought for this. In the case of the Headteacher, the Chair of Governors will invite the Director Education Services (or senior representative) to conduct it. For a Voluntary Aided School the Diocesan Director of Education will be notified.

It is vital that the Headteacher or Chair of Governors does not undertake the investigation as this will prevent them from hearing the disciplinary.

The Investigating Officer is responsible for investigating an allegation of misconduct or gross misconduct using an unbiased approach. The Investigating Officer will produce a report of their findings to recommend to the Headteacher/Chair whether or not there is a case to be answered at a disciplinary hearing.

3.12 Presenting Officer

The Investigating Officer will normally become the Presenting Officer for the purpose of the disciplinary hearing. They are responsible for presenting the management case at the hearing and asking questions of the witnesses called.

3.13 Witnesses

Witnesses may be interviewed as part of a disciplinary investigation in accordance with the procedure. Management witnesses (on behalf of management and the employee) must attend the Hearing if required.

3.14 Human Resources (HR)

This can be a difficult process and, at any stage, HR will provide advice and support to Headteachers and employees on the application of the policy.

3.15 Contact Officer

A nominated representative may be appointed as a Contact Officer in cases of alleged gross misconduct. The Contact Officer is there to advise the employee on procedural issues and will endeavour to make contact with a suspended employee within 24 hours of the suspension, keeping a record of all contact. The Contact Officer will be a different person from the HR Officer appointed to support the Managers.

4. PRINCIPLES

4.1 The Disciplinary policy and procedure is based on the following principles:

- To maintain high standards of conduct within the School and to encourage improvement in conduct where shortcomings are identified. This includes 'Personal and Professional Conduct' for Teachers as outlined in Part 2 of the Teachers' Standards.
- Where appropriate to address conduct issues without recourse to the formal stages of the disciplinary procedure.
- To ensure that employees facing action under the formal stages of the disciplinary procedure are treated fairly and consistently.
- Not to discriminate against any individual in the application of this policy and procedure on the protected characteristics of age, disability, gender reassignment, marriage and civil partnership, maternity and pregnancy, race, religion or belief, sex, sexual orientation, or other grounds protected in law (e.g. part-time worker status, trade union membership or HIV positive status).

5. INFORMAL ACTION

5.1 As a manager you will guide employees on the behaviour expected of them and give feedback on a day-to-day basis. This is part of good management and does not form part of any disciplinary procedure. Although informal action will not be suitable for all sets of circumstances, it may often be a more satisfactory method of resolving problems than taking formal disciplinary action.

5.2 Where an issue directly concerns an employee's immediate line manager it may be helpful to involve an independent manager, as appropriate, towards informal resolution.

5.3 Informal action will involve:

- Calling the employee away from his/her immediate workplace to a private location free from interruptions.
- Having a two-way discussion with the employee, in which you point out any shortcomings in conduct or behaviour, asking for an explanation and encouraging improvement.
- Providing constructive criticism with emphasis on finding ways in which the employee can remedy any shortcomings.
- Listening to any explanation put forward by the employee and encouraging them to suggest solutions if appropriate.

5.4 If, at the conclusion of the discussion, you still have the view that the employee's conduct is below the required standard, it is your responsibility to:

- Clarify the areas of concern.
- Agree with the individual any action necessary to assist them in meeting the required standard and set a review date at which to assess progress.
- Offer/provide training and any other support to assist the employee to improve their conduct.

- 5.5 If, during the discussion, it becomes obvious to you that the matter is more serious, you should adjourn the meeting, making it clear that the matter will be pursued under the formal disciplinary procedure.
- 5.6 After the discussion you should confirm in writing to the employee the outcome of the meeting, a mutually agreed action plan (if appropriate) and the date of a progress review. If relevant, this should include details of any training and specialist help also agreed.
- 5.7 You should place a written record of informal meetings on the employee's supervision file. If the employee disagrees with the content of the written records they have the right to ask for their written response to be placed on their supervision file.

These notes are NOT formal warnings and must not be worded in those terms. They are simply a record of what was discussed.

- 5.8 Throughout the review period you should monitor the progress of the employee towards achieving expected standards, giving help and encouragement as necessary, either through formal or informal meetings/discussions. If any matters of concern arise these should be addressed at the time they arise, rather than at the review date.
- 5.9 At the end of the review period you should arrange a further meeting with the employee to inform and discuss his/her progress. There are three possible outcomes:
- If the employee is working to a satisfactory standard no further action is necessary;
 - If the employee has made some, but insufficient progress towards achieving standards, then the review date may be extended if further progress is considered likely;
 - If the employee has made insufficient or no progress towards achieving the required standard without a relevant and acceptable reason, you should advise the employee that his/her failure to improve to the specific standard may lead to the implementation of the formal disciplinary procedure.
- 5.10 In all cases the employee should be informed in writing of the outcome, with a copy on their file.

Before considering formal disciplinary action, you will need to consider whether:

- The employee had reasonable opportunity to know the rules or what is the acceptable standard of behaviour.
- The employee's behaviour/conduct is worse than that of other employees who are not subject to disciplinary action (i.e. is it consistently applied?).
- Appropriate levels of training and guidance have been given.
- There has been appropriate supervision, target setting and monitoring of the employee's behaviour/conduct.
- Informal meetings would be more appropriate.
- The employee would benefit from counselling or mediation.

6. RULES ON CONDUCT

6.1 Misconduct

Misconduct is defined as behaviour or action that warrants disciplinary action rather than dismissal for a first offence. An employee will only be dismissed for a first offence in the case of gross misconduct, when the penalty will be dismissal without notice or payment in lieu of notice (except in exceptional circumstances).

Examples of acts of misconduct which are likely to lead to formal action being taken are listed below. The list is not exhaustive:

- Failure to comply with a reasonable management instruction
- Failure to observe the Council's and/or School's Standing Orders, financial or other operational regulations
- Failure to observe Council/School policy, e.g., actions in breach of the Council's IT Security guidelines or the Council's data protection policy
- Negligence in the performance of duties
- Failure to provide a duty of care in the performance of role
- Breach of Health & Safety rules and requirements including any act or omission
- Poor-time keeping
- Misuse of School property and equipment including misuse of email, fax or internet facilities
- Failure to follow the School's sickness notification procedures and certification requirements
- Abuse of the sickness scheme e.g. engaging in activities which may delay recovery
- Actions during a period of sick leave likely to inhibit recovery or a return to health
- Being under the influence of alcohol or drugs
- Improper use of information obtained in the Council's and/or School's employment
- Abusive or inappropriate behaviour toward pupils, parents, fellow employees or members of the public

The distinction between misconduct and gross misconduct is often a matter of degree and some of the examples under misconduct may be of such an extreme nature that they amount to gross misconduct.

6.2 Gross misconduct

Gross misconduct is a legal term. It is used to describe misconduct that is so severe that the School would be justified in deciding:

- To dismiss - even for a first offence.
- To breach the employee's contractual rights - by dismissing without notice.
- To place no further trust in the employee.
- To protect itself by ensuring that anyone suspected of gross misconduct has no access to the work-place.
- To end rather than mend the working relationship - because it has broken down completely.

6.3 Some examples of **gross misconduct** are given below, but you will need to use sound judgment, as it is impossible to give a complete list. It is often helpful to take advice from HR on whether or not something amounts to gross misconduct.

- Serious acts of insubordination
- Serious breaches of Financial regulations or other operational regulations
- Gross negligence in the performance of duties
- Theft from the School, its employees or members of the public or other acts of dishonesty
- Dishonest or improper use of information obtained in the Council's and/or School's employment, e.g., disclosure of information pertaining to Council/School tender documents to outside contractors leading to unfair competition
- Serious breach of duty regarding disclosure of confidential information
- Serious breach of safe working practices and health and safety rules which endangers the health and safety of the individual, other employees, or members of the public and/or exposes the Council/School to claims against it
- Serious breach or failure to provide a safe working environment for children and young people
- Taking drugs on School premises for other than medical reasons
- Buying, selling or offering drugs on School premises
- Offering alcohol to students
- Fraud
- Falsification of information, e.g., qualifications or other relevant personal details in seeking and obtaining employment or promotion; information contained in time sheets, overtime claims, invoices, accounts, records or medical certificates
- Fighting
- Violent, offensive, abusive or indecent behaviour
- Bullying
- Unlawful acts of discrimination within the workplace on the grounds of race, sex, sexual orientation, age, disability, religious belief or trade union membership
- Harassment including discriminatory harassment, e.g. sexual harassment
- Unauthorised removal of and/or serious misuse of and/or deliberate damage to Council/School property and equipment including misuse of email, fax or internet facilities
- Serious breach of relevant School policies surrounding computer usage, internet access and electronic communications including Personal Blogs, Websites and Social Networking. E.g. incidents of bullying of colleagues or social media activity causing serious damage to the Council/School
- Sexual misconduct at work
- Aiding and abetting any of the above
- Other actions which fundamentally breach the relationship of trust and confidence which exists between employer and employee
- Conduct that is considered seriously contrary to the Code of Conduct for Officers
- Criminal offences and cautions outside of work, including reprimands, final warnings or penalty notices (dependent on the circumstances – seek HR advice)
- The making of covert recordings during a disciplinary or appeal hearing
- Any action which brings or could bring the Council/School and/or its reputation into disrepute

- 6.4 Managers should ensure that employees are aware of any rules, which are specific to their role/work place, which, if breached, would be deemed gross misconduct.
- 6.5 Tribunals are often asked to consider whether an offence amounts to gross misconduct. The Tribunal may consider it unfair to dismiss an employee for gross misconduct if they were not required to stay away from work. The panel may reason that, if the employer is willing to have the employee in the workplace up to the hearing, then the offence cannot warrant dismissal after it. If an employee is temporarily redeployed, rather than required to stay away from work, it may be necessary to demonstrate why it would have been inappropriate to let them continue in the redeployed role with a formal warning.

6.6 Criminal Offences and Cautions Outside of Work

Disciplinary action is not automatic if a criminal offence/caution occurred outside of work, but may be taken if it is considered that the charge or conviction would:

- Make the employee unfit to hold their job.
- Seriously damage trust and confidence in the employee.
- Seriously damage the reputation of the School.

7. CASES OF ALLEGED CRIMINAL ACTIVITY

- 7.1 If the case involves suspected criminal offences that may lead to police proceedings, there is no obligation to await the outcome of any criminal case before taking disciplinary action providing the allegations have been properly investigated and the Investigating Officer believes on the balance of probabilities that the employee committed the misconduct. In these cases it may be appropriate to seek advice from Police before undertaking an internal disciplinary process. However, in child protection cases, an internal investigation cannot commence until the police matter has been closed if the allegation involves suspected harm to children, young people or adults in a vulnerable situation, the guidance in Appendix 1 to the Disciplinary Policy “Threshold document for Harrow Designated Officer referrals” must take precedence over this policy and procedure.
- 7.2 If the allegation involves suspected serious financial irregularity or fraud, the Director of Finance must be informed.

8. FORMAL STAGES OF THE DISCIPLINARY PROCEDURE & DISCIPLINARY SANCTIONS

8.1 Preliminary Investigation

Following an allegation against an employee, the manager should conduct a preliminary investigation. The employee may be spoken to by the manager and asked to set out their version of events, without being accompanied, although the employee may be accompanied if both the employee and the manager consider this appropriate. If no satisfactory explanation is forthcoming and a decision is taken to pursue formal disciplinary proceedings, with a formal investigation, the employee will have the right to be accompanied at all further interviews.

8.2 Formal Disciplinary Process

This procedure should be used only when there has been no improvement following informal methods or where informal action would be inappropriate. The Headteacher or, in the case of the Headteacher, the Chair of Governors, will take the decision to pursue formal disciplinary action and will initiate an investigation and appoint an Investigating Officer. The purpose of this investigation is to determine all the facts and establish whether there is a case to answer.

8.3 At this point the Headteacher/Chair must inform the employee of the situation and the procedure that will be followed.

8.4 The following must be confirmed to the employee in writing:

- The nature of the allegation
- The process to be followed and likely timescales
- Who will be investigating the matter
- Their rights to be accompanied
- If they are to be suspended
- A copy of the School's Disciplinary Policy and Procedure
- Support mechanisms that are available, e.g. unions, professional associations
- Details of the Employee Assistance Programme

8.5 If any other allegations come to light during the course of the investigation, the Investigating Officer will inform the Headteacher/Chair. If instructed to do so by the Headteacher/Chair, the Investigating Officer will investigate the new allegations and the employee will be informed promptly of the new allegations. This may include investigating issues of gross misconduct, which could result in suspension. If after the investigation a Disciplinary Hearing takes place, the following may apply:

Disciplinary Sanctions

8.6 Warnings

Warnings may be used with the aim of:

- Securing an improvement in conduct
- Telling the employee directly and formally: what standards are required and what action the School will take if they are found to be involved in any further misconduct

A copy of the outcome letter issuing a warning will be kept on the employee's personal file and regarded as 'live' for a specified period of time, as follows:

8.7 First Written Warning

A first written warning will be given if, despite informal discussions, the employee's behaviour or conduct does not meet acceptable standards. The employee must be told:

- The reason for the warning

- That the warning is the first stage of the School's Disciplinary Policy and Procedure
- The length of time the warning will remain live
- The consequences of no improvement in conduct or behaviour
- Their right of appeal

8.8 A record of this warning should be kept on the employee's file and normally regarded as **'live' for a maximum of 6 months**. After this time has lapsed it will be disregarded in any future disciplinary matters. Where the same type of misconduct becomes a pattern, however, which is repeated every time a warning ceases to be live, previous warnings may be taken into account. This may result in the situation being treated as gross misconduct, following a full disciplinary investigation. The significance of the recurring issues needs to be taken into account when deciding if it should be treated as gross misconduct and advice from HR must be sought. The written warning should accurately reflect the warning given at the meeting and must not be written before the meeting. The employee must be warned that failure to improve could result in a final written warning. The employee must be advised of their right of appeal.

8.9 Final Written Warning

If there is a failure to improve or an offence of a different nature occurs, or if the misconduct is sufficiently serious to warrant only one written warning but insufficiently serious to justify dismissal, a final written warning will be given, following a disciplinary hearing. A letter confirming the final written warning will clearly explain the reason for the warning, the improvement required and timescale. It will warn that dismissal will result if there is no satisfactory improvement and will advise the employee of their right to appeal.

8.10 A copy of the outcome letter issuing the warning should be kept on the employee's personnel file and normally regarded as **'live' for 12 months**. After this time has lapsed it will be disregarded in any future disciplinary matters. Where the same type of misconduct becomes a pattern, which is repeated every time a warning ceases to be live, previous warnings may be taken into account. This may result in the situation being treated as gross misconduct, following a full disciplinary investigation. The significance of the recurring issues need to be taken into account when deciding if it should be treated as gross misconduct and advice from HR must be sought. The warning must clearly state that failure to comply will result in dismissal.

8.11 A final written warning tells the employee that any further misconduct will result in dismissal. To be effective it is not possible to issue more than one final written warning. Other, less severe warnings tell the employee that further misconduct will result in a more serious disciplinary sanction.

8.12 Therefore, except in cases of gross misconduct, an employee should not be dismissed:

- For a first offence
- Unless they have been told, in writing, that a further offence will result in dismissal

8.13 Managers often apply warnings:

- In sequence (a first written warning, followed by a final written warning) although they have discretion to apply the level of warning warranted by the seriousness of the case.
- To expire after six/twelve months providing no further misconduct has occurred.

8.14 Other Sanctions

- **Transfer to Another Suitable Alternative Post**

Normally this would be done by mutual agreement with the employee. Care must be taken that the post is suitable to ensure that the employee does not have grounds for breach of contract or constructive dismissal claims. Advice should be taken from HR.

- **Compulsory Transfer to Another Post at Lower Remuneration**

This is a technical dismissal and may only be considered if dismissing the employee could have been justified had the alternative post not been available and offered.

8.15 Dismissal

Dismissal will occur where there has been gross misconduct or where the employee already has a final written warning and further misconduct or unsatisfactory conduct has taken place. Only the Disciplinary Panel can take the decision to dismiss following a disciplinary hearing. **The employee will be provided, within five working days of the hearing, with written reasons for dismissal, the date on which employment will terminate and the right of appeal.**

Dismissal can be with or without notice.

8.16 Dismissal with notice

The employee should receive the appropriate period of notice or payment in lieu of notice. Where an employee has already been issued with a final written warning, further misconduct will normally result in dismissal with notice or pay in lieu of notice.

8.17 Instant Dismissal without notice

Actions of gross misconduct will, except in exceptional circumstances, justify dismissal without notice. Outstanding holiday pay will be limited to statutory holiday entitlement.

A dismissal will normally be considered fair if the employer has:

- Carried out a reasonable investigation
- Given at least one warning before contemplating dismissal (except for gross misconduct)
- Considered reasonable alternatives to dismissal
- Acted in a way consistent with its own procedures and its previous actions
- Taken into account all relevant factors known at the time
- Sufficient reason for the dismissal

8.18 Guidance on Schools collaborating on dismissals (Statutory Requirement)

Governing Bodies are free to choose whether or not to collaborate/work jointly in their arrangements for dismissal, thereby enabling them to draw on a wider pool of headteachers and governors. Careful consideration should be given to the benefits and disadvantages of collaboration between different categories of School.

8.19 Governing Bodies may collaborate on dismissals irrespective of whether or not the appointments were made under collaboration arrangements. They may decide to collaborate on dismissal either for all employees, or for specified types of employee (e.g. where the Schools share the services of employees) or on the merits of the particular circumstances under consideration.

8.20 Governors may have had previous direct involvement with the matter in question and therefore, there may be insufficient eligible governors to hear the matter fairly. Although knowledge of a particular matter alone does not necessarily render someone ineligible, there may be advantages for governing bodies in collaborating where there are insufficient governors, or in smaller Schools and communities where the closeness of local social contacts make governors uncomfortable about taking decisions on dismissal matters.

8.21 The ways in which different types of case should be heard are set out below:

	Panel for Case involving an employee other than the Headteacher	Panel for Case involving the Headteacher
Hearing for alleged gross misconduct, or if a final warning is already on file (i.e. where dismissal is a possibility)	Disciplinary Panel of 3 Governors from one of the collaborating Schools, advised by HR representative	Disciplinary Panel of three Governors drawn from one or more of the collaborating Schools, advised by HR representative
Appeal against dismissal	Joint Appeal Panel of three Governors drawn from one or more of the collaborating Schools advised by HR representative	Joint Appeal Panel of three Governors drawn from one or more of the collaborating Schools, advised by HR representative

8.22 Collaborating governing bodies, and those to whom matters have been delegated by them, should take particular care when considering the position of a person employed to work at more than one of the collaborating Schools, whether under a single contract or separate contracts of employment. While there may be grounds to dismiss fairly from one of the Schools, this does not necessarily mean that there will be such grounds to dismiss that person from employment at another School. Before proceeding, advice should be sought from HR.

9. SUSPENSION

9.1 The Governing Body and the Headteacher have the power to suspend employees at the School but only the Governing Body can lift the suspension. In practice, this function will be undertaken by the Chair of Governors, acting on behalf of the Governing Body.

- 9.2 The issue of whether or not to suspend is not always straightforward and depends on the circumstances in each individual case. The Headteacher/Chair of Governors instigating the disciplinary investigation should where possible make the decision to suspend and if they are not available a delegated officer will act in their absence.

Normally an employee would only be suspended if:

- The allegations are serious enough, if substantiated, to lead to dismissal, or
- The continued presence of the employee could prejudice the investigation or impair the efficient exercise of the Council's function, or
- The employee has allegedly committed an act of gross misconduct, where an employee may be dismissed without notice or payment in lieu
- The continued presence of the employee at their place of work might be detrimental to their health

- 9.3 The decision to suspend is appropriate if the Headteacher/Chair of Governors has undertaken the preliminary investigation to clarify what is being alleged and that the allegation is one of potential gross misconduct.

9.4 **The Suspension Meeting**

The Headteacher/Chair of Governors will:

- Meet with the employee to relay the allegation made against them.
- Advise the employee that they have the right to be accompanied by a representative or work colleague during the meeting. See section 12 - Right to be Accompanied.
- Suspension will not be delayed due to the unavailability of the employee's representative.
- Relay the allegation and give the employee the opportunity to give an initial response.
- Explain to the employee that they are required to stay away from work, if after due consideration the Headteacher/Chair still believes that the allegation/s if substantiated amounts to gross misconduct.
- Explain to the employee that an Investigating Officer will be appointed to undertake a full investigation into the matter, during the course of which the employee will be interviewed and given the opportunity to give their version of events.
- **Confirm the requirement for the employee to stay away from work in writing within 24 hours.**
- When an employee is suspended they will be informed of:
 - The reason for the suspension
 - Any terms of the suspension
 - The date from which the suspension shall apply
 - The likely duration of the suspension

- The name of their nominated contact

The Headteacher/Chair should explain:

- The suspension is not a punishment and does not imply guilt.
- Full pay will continue as long as they are available to assist with, or respond to the disciplinary process.
- How long the investigation is expected to last.
- A nominated Contact Officer will be arranged.
- The employee is required not to contact pupils at the School or their parents.
- The employee has the right to contact colleagues at the School in a social capacity but must not discuss the case with them.
- The employee must not enter the School premises without express permission.

LETTER 1	CONFIRMATION OF SUSPENSION	APPENDIX - 3
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Suspension Checklist

- Decision to suspend or not to suspend, following discussion with HR /Safeguarding Officer if required.
- Employee informed of the decision both verbally and then later in writing.
- Employee escorted as discreetly as possible off the premises and asked to surrender their security identification and any School property in their possession.
- Suspension reviewed on a regular basis by the Headteacher/Chair of Governors and timelines set.
- Suspension should be reviewed on at least a monthly basis.
- Notification to HR.

9.5 Depending on the nature of the conduct under investigation an employee may or may not be given details about the allegations under investigation at the time of suspension. E.g., an employee may not be given details about the allegations under investigation if they include an allegation made by a child that is the subject of a criminal investigation.

9.6 During the period of suspension, unless otherwise informed the employee is:

- Prohibited from attending their place of work other than for the purposes of attending investigatory interviews or attending a disciplinary hearing.
- Prohibited from contacting any pupil, parent, employee of the School or officer of the Council other than their representative or contact. This prohibition does not prevent the employee from having social contact with their colleagues outside of the work place, provided the disciplinary issues that are the cause of the suspension are not discussed.

- Prohibited from undertaking alternative employment with another employer.
- Obligated to co-operate with the disciplinary investigation including any request to furnish or identify documents and attend meetings.
- Obligated to ensure that they are, and remain, contactable during normal working hours.

9.7 During the period of suspension the employee will normally be entitled to receive full contractual pay, not including any enhanced rates of pay or payments, special allowances, or payments for unsociable hours. However, pay may be stopped during the period of suspension in circumstances where the employee refuses and/or fails to co-operate or assist with the investigation. Any decision to stop pay during a period of suspension will be notified in writing to the employee. Should the employee commence sick leave during a period of suspension, they must notify the nominated contact on the first day of sickness, submit medical certificates for the relevant period and comply with the School's sickness reporting procedures. During periods of sickness the employee will be paid in accordance with the School's rules on sick pay. The school will refer the employee to occupational health to seek advice on any reasonable adjustments that may need to be considered as part of any investigation meeting.

9.8 **Alternatives to Suspension**

Alternatives to suspension should be considered pending the preliminary investigation, as at this stage it may only be one person's word against another. Alternatives to suspension should be discussed with HR.

Alternatives to suspension should not be used as a long-term measure within this procedure and should normally be for a maximum of one week.

Alternatives to suspension may include:

- Working from home
- Paid leave, i.e. management leave
- Working at an alternative location or in an alternative role
- Working in a more closely supervised environment

9.9 It will still be appropriate to require the employee not to contact pupils at the School or their parents. Although they have the right to social contact with their colleagues outside of the workplace, they must not discuss the disciplinary issues that are the cause of the suspension with them.

9.10 If, after the preliminary investigation, evidence suggests that the allegation(s), if substantiated, could constitute gross misconduct the employee should be suspended in accordance with the guidance above and any alternative arrangements ceased immediately.

9.11 **Review of Suspension**

In the rare cases where it is anticipated that the employee will be suspended for a period exceeding three calendar months, the decision to suspend will be reviewed at monthly intervals, by taking into account any new evidence that has come to light in the course of the investigation. The decision to end the suspension will be taken by the Chair of Governors.

- 9.12 In situations where an employee has been suspended, and initial evidence suggested that the allegations, if substantiated, could constitute gross misconduct, but upon investigation it is found that the employee's actions could constitute misconduct only, a letter should be sent informing the employee of this decision and notifying them that they are no longer suspended.

LETTER 6	OUTCOME OF GROSS MISCONDUCT INVESTIGATION – RETURN TO WORK	<u>APPENDIX - 9</u>
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10 INVESTIGATIONS

- 10.1 Adequate investigation is crucial for the fair handling of a disciplinary matter.

In all cases the Investigating Officer should:

- Enquire into the circumstances surrounding the suspected or alleged misconduct
- Give the employee a chance to offer an explanation
- Take a balanced view of all the information that emerges

- 10.2 Once the allegation of misconduct has been made, the Headteacher/Chair of Governors will appoint an Investigating Officer.
- 10.3 The Investigating Officer may be an employee's manager, although, in situations where this is not appropriate, another nominated individual with relevant experience or a specially trained independent investigator will be selected. The Headteacher/ Chair of Governors should contact HR who will help to identify an independent Investigating Officer.
- 10.4 The investigation should start as soon as possible after the event. If any new allegations or irregularities come to light in the course of the investigation they may need to be fully investigated as well. Advice from the Headteacher/Chair of Governors should be taken and the employee notified accordingly.
- 10.5 The Investigating Officer will arrange a suitable time and venue to speak to anyone who may be able to give evidence relating to the allegations, including the employee.

LETTER 3	COMPLAINT/ALLEGATION(S) OF MISCONDUCT – NO SUSPENSION	<u>APPENDIX - 5</u>
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- 10.6 It is very important that the employee is told what the allegations are and has an opportunity to provide their own explanation at an early stage. This may not be possible if the allegation involves the safeguarding of children or young people. *Please see Appendix 1 of the Disciplinary Policy and the "Threshold document for Harrow Designated Officer referrals" for further information on managing allegations against children, young people or adults in a vulnerable situation.*
- 10.7 It is possible that there may be a satisfactory explanation, which will resolve the matter, and no further action may be needed. If this is not the case, the Investigating Officer may need to speak to other witnesses and then return to the employee again.

- 10.8 The employee suspected of misconduct will be required to attend an investigatory interview. The employee must endeavour to attend any investigatory interviews and co-operate with the investigation. The employee has the right to be accompanied by a union representative or a work colleague at such an interview (see section 12 for further guidance). If their chosen representative is unavailable to attend the investigatory interview, then an alternative should be substituted.
- 10.9 The investigation meeting with the member of staff against whom allegations have been made should be attended by the:
- Investigating Officer
 - Employee
 - Employee Representative or Work Colleague (if the employee wishes)

LETTER 4	INVESTIGATION INTERVIEW	APPENDIX - 6
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- 10.10 If matters remain unresolved at the end of the Investigation meeting, e.g. if new facts are raised, further meetings should be convened to ensure all the facts have been explored.
- 10.11 The investigation should be concluded as quickly as possible and normally **within a maximum of 15 working days of informing the employee**. Where the circumstances of the case and/or the availability of witnesses mean that this timescale is unlikely to be met, the individual will be informed and an alternative timescale will be advised by the Headteacher/Chair of Governors. Any subsequent delays will be communicated to the employee.

10.12 Notes and Records of Interviews

During the investigation the Investigating Officer will make records of interviews with witnesses and the employee regarding the allegation of misconduct.

- 10.13 Two copies of these records will be emailed to the interviewee for signature, as an agreed record of the interview and a signed copy returned to the Investigating Officer within a week of receiving the notes. If the interviewee disagrees with the content of the record, they have the right to ask for their written response to accompany the record. The original record should not be substantially altered.

10.14 Investigation Report

Once the Investigating Officer has assembled all the facts and evidence a report will be produced. This will contain details of the employee against whom the allegations have been made, brief details of the allegation, whether the case is one of misconduct or gross misconduct and a recommendation to the Headteacher/Chair as to whether there is a case to answer. The Headteacher/Chair will then decide whether the case warrants further action.

-	MODEL INVESTIGATION REPORT TEMPLATE	APPENDIX - 7
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10.15 Allegation(s) Unsubstantiated

If after reading the report provided by the Investigating Officer, the Headteacher/ Chair of Governors decides there is no evidence to substantiate the need for further proceedings and it is decided that there is no case to be heard, the employee will be informed of this in writing.

LETTER 5	OUTCOME OF INVESTIGATION – NO ACTION UNDER PROCEDURE	<u>APPENDIX - 8</u>
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10.16 Retention of Records

Regardless of whether it is decided that the case warrants a disciplinary hearing, if the matter relates to the protection of children, young people or adults in a vulnerable situation, a record of the investigation report must be kept on the individual's confidential HR file.

In the event that there is no action under the procedure, a summary of the case must be kept until the person's normal retirement age, or 10 years from the date of the allegation, whichever is the longer.

Where it is found there is a case to answer involving the protection of children, young people or adults in a vulnerable situation and disciplinary action is taken, the disciplinary papers must be kept for 75 years from the employee's date of birth.

If the employee is suspended during this period they will return to work as soon as possible following a meeting to discuss this and the initial report should not be placed on the employee's personnel file. **A record will be placed on the employees file if the matter relates to the protection of children or young people.**

10.17 Allegation(s) Substantiated

If the Headteacher/Chair of Governors has made the decision that there is a case to answer the Investigating Officer should assemble the bundle, which will contain their report of the investigation, details of all statements given by witnesses and the employee and any other information gathered during the investigation that will be presented at the hearing. Copies of the notes should also be included in the bundle.

10.18 The bundle should be given to the Headteacher/Chair of the Disciplinary Panel and **sent to the employee at least ten working days prior to the hearing**, to ensure they have had sufficient time to consider the information prior to the hearing.

10.19 The School may, at the Headteacher's discretion, continue with the Disciplinary process regardless of a resignation. Each case will be considered on a case by case basis.

11 NOTIFICATION TO ATTEND A DISCIPLINARY HEARING

11.1 The Headteacher/Chair of the Disciplinary Panel (now the Hearing Officer) must inform the employee, in writing, at least 5 working days before the disciplinary hearing of the following:

- The date, time and place of the hearing
- His/her right to be accompanied at the hearing
- The name(s) of any witnesses management intend to call
- That the hearing is of a formal disciplinary nature
- The nature of the allegations including copies of documents and records
- Whether the allegations, if substantiated, could constitute gross misconduct or misconduct and whether dismissal is being contemplated as a sanction
- The names of those who will be present at the hearing

LETTER 7	OUTCOME OF INVESTIGATION – NOTIFICATION OF DISCIPLINARY HEARING	<u>APPENDIX - 10</u>
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- 11.2 The employee must confirm their attendance at the disciplinary hearing at least 3 working days before the date of the disciplinary hearing. This confirmation may be by email or written letter.
- 11.3 Written statements, to be submitted at the hearing by the employee against whom disciplinary action is being taken, must be presented at least five working days in advance of the hearing to the Headteacher/Chair of the Disciplinary Panel, who will ensure all parties attending the hearing are sent copies.
- 11.4 It is at the discretion of the Headteacher/Chair of the Disciplinary Panel to decide if any additional information can be submitted after this date.
- 11.5 The employee is under a duty to take all reasonable steps to attend the hearing. The disciplinary hearing may proceed in the employee's absence when all of the following conditions are met:
- The employee has either failed to attend one disciplinary hearing (or failed to respond to one previous notification to attend a disciplinary hearing).
 - The employee is on notice that the disciplinary hearing may proceed in their absence.
 - The employee has been informed of the opportunity to provide a written statement setting out their defence to the allegations.

12 RIGHT TO BE ACCOMPANIED

- 12.1 At any disciplinary hearing or appeal hearing the employee has the right to be accompanied by a representative of their choice. The representative should be an accredited union representative or work colleague. In exceptional circumstances, other alternatives may be considered, subject to agreement by the Headteacher or senior employee identified by the Headteacher or Chair of Governors.
- 12.2 In exceptional circumstances only, the Headteacher may at their discretion allow the employee to bring a companion who is not a colleague or trade union representative where this will help overcome a particular difficulty e.g. caused by disability. The Headteacher should seek HR advice where this is requested.

- 12.3 Exceptionally, an employee is entitled to legal representation at a disciplinary hearing or appeal hearing. This is only applicable in circumstances where the decision of the disciplinary hearing may result in the employee being referred to an external body, as a result of which the employee may lose the right to practice their profession. HR advice should be sought on this.
- 12.4 The School will not meet any of the costs associated with the attendance of the representative at a disciplinary hearing beyond granting paid time off to a representative who is a School employee and is subject to the relevant Facilities Agreement.

13 GRIEVANCES DURING THE COURSE OF THE DISCIPLINARY PROCEDURE

- 13.1 It may be that at some stage during the disciplinary process the individual raises a grievance. Careful consideration needs to be given as to whether the grievance can be dealt with as part of the disciplinary process or should be dealt with separately under the School's grievance procedure.
- 13.2 Grievances concerning a suspension the fact that disciplinary action is being taken, the procedure being applied, or any of the individuals involved in the disciplinary process can normally be dealt with as part of the disciplinary process. The employee can make these complaints during the disciplinary hearing and they can be answered at the same time as the disciplinary allegations are being ruled upon.
- 13.3 For other types of grievances it may be necessary to halt the disciplinary proceedings whilst the grievance is dealt with separately under the School's grievance procedure. The main reason for this would be where the individual is complaining about unlawful discrimination unrelated to the disciplinary proceedings they are facing.
- 13.4 If you have any doubts about the correct approach to dealing with grievances raised during the disciplinary process consult HR.

14 DISCIPLINARY HEARINGS

14.1 Hearing the Case

The ways in which different types of case will be heard are set out in the table below:

	Panel for Case involving an Employee other than the Headteacher	Panel for Case involving the Headteacher
Hearing for alleged misconduct (unless a final warning is already on file)	Headteacher	Governors' Disciplinary Panel
Hearing for alleged gross misconduct, or if a final warning is already on file (i.e. where dismissal is a possibility)	Governors' Disciplinary Panel advised by HR representative	Governors' Disciplinary Panel advised by HR representative

FORM 1	HEARING ARRANGEMENTS CHECKLIST	APPENDIX - 1
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14.2 The Hearing

An employee and/or their representative who cannot attend the hearing should inform the Headteacher/Chair of the Governors' Disciplinary Panel in advance, as soon as possible. If the employee fails to attend through circumstances outside their control, and unforeseeable at the time the hearing was arranged (i.e. illness), the Headteacher/Chair of the Governors' Disciplinary Panel should arrange another hearing.

A decision may be taken in the employee's absence if they fail to attend the rearranged hearing without good reason. An employee's representative may attend on their behalf, if the employee is unable to attend. If an employee's representative cannot attend on a proposed date, the employee has the statutory right to suggest another date so long as it is reasonable and not more than five working days after the date originally proposed. The five working day limit may be extended by mutual agreement.

14.3 Adjournments

A reasonable number of adjournments may be requested by any of the parties present, to be granted by the Headteacher/Chair of the Governors' Disciplinary Panel. The Headteacher/Chair of the Governors' Disciplinary Panel will agree a time for resuming the hearing and both sides should leave and return together. Reasons for an adjournment could include new evidence being raised or be a support measure as part of a reasonable adjustment for the staff to attend the meeting.

14.4 Notes of a Hearing

Notes should be kept of any formal disciplinary hearing. A designated note taker (clerk) should always be present to take formal notes at any hearing. Although a verbatim note is still not required the notes should be fairly detailed as they may subsequently be required for an Employment Tribunal.

14.5 In all cases, the note taker (clerk) must be independent of the panel hearing the case but sourced by them.

14.6 It is the Council's policy not to allow recordings of disciplinary or appeal hearings. Managers should be aware that due to the advance of mobile phone technology it is becoming easier for employees to make covert recordings. The making of covert recordings during a disciplinary or appeal hearing will be considered a breach of policy and may be considered an act of gross misconduct.

Please see Appendix 2 for the Structure of a Hearing/Appeal

	STRUCTURE OF HEARING/APPEAL	APPENDIX - 2
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15 CONFIRMATION OF THE OUTCOME OF A DISCIPLINARY HEARING

15.1 Making and giving the decision at a Hearing

Where possible give your decision on the day of the hearing. Call an adjournment before reaching a decision:

- Consider whether there has been a proper investigation
- Come to a clear view about the facts
- If they are disputed, decide on the balance of probability what version of the facts is true

15.2 In certain cases where allegations may first have been heard in a criminal court. Employment decisions do not have to meet the same threshold as criminal matters.

15.3 The Balance of Probabilities

Decide the facts of the case on the balance of probabilities. You do not have to be sure of what happened - you are entitled to prefer one version of events rather than another provided that you think it more likely.

Consider:

- Which version of events do I genuinely believe occurred?
- Is my preference reasonable, what evidence supports it?
- Could I justify my reasoning to others?

15.4 Once you have decided that the employee has broken the rules, you should consider separately what penalty should apply.

15.5 Some managers are tempted to reduce the severity of the sanction because they are not sure of the facts of the case. This is not good practice since it gives a false impression of how serious the School takes the offence to be.

15.6 Before deciding the penalty you should consider the following:

- The information presented by both sides
- The gravity of the offence
- The individual's disciplinary record and general service
- Whether the proposed penalty is reasonable in all the circumstances
- The penalty applied in similar cases in the past
- Any mitigating circumstances which would affect the proposed penalty - this may include consideration of such factors as:
 - Whether there was any provocation
 - Whether the employee could have been expected to have realised what they were doing was wrong
 - Whether the employee brought the offence to the attention of management and/or admitted to it
 - Whether there were extenuating circumstances contributing to the employee's behaviour

Note: To ensure that your decision is consistent with best practice, you should take advice
June 2024 25

15.7 Previous Disciplinary Record

In cases where an employee has a 'live' first written warning, if a subsequent disciplinary results in a further penalty, the Hearing Officer may decide that both warnings combined are serious enough to warrant dismissal. E.g., an employee is given a first written warning. This first written warning is still live when a further final written warning is issued to this employee. The Hearing Officer in this case may decide that both penalties combined are serious enough for dismissal.

The penalties themselves do not have to be of a same or similar nature.

15.8 Check list when reaching a decision at a Disciplinary Hearing

You might find it helpful to record your answers to the following questions:

- Has there been as much investigation as is reasonable?
- Has the employee had reasonable notice of the matters to be considered at the hearing?
- Has the School's disciplinary procedure been applied reasonably?
- In the case of allegations against staff, has the safeguarding procedure for dealing with these been followed?
- Have I paid sufficient regard to any explanation offered by (or for) the employee?
- Do I genuinely believe that the employee has committed the alleged misconduct?
- Is it reasonable to have this belief (on the balance of probabilities) given the evidence I have heard?
- Is the misconduct serious enough to justify the sanction I am considering?
- Does the severity of the breakdown in trust warrant the action I am considering?
- Has the employee (and the Presenting Officer) had full opportunity to present any points to consider in mitigation?
- Have I given due consideration to mitigation?
- Is the decision within the band of reasonable responses of a reasonable employer?

15.9 Giving the decision

1.1 Whether or not the employee has been informed of the outcome of the disciplinary hearing orally at its conclusion, the employee will be notified of the outcome of the disciplinary hearing in writing. Written notification will normally be within 5 working days of the date of the hearing and will include:

- The reasons for upholding any allegation of misconduct
- The details of any disciplinary sanction applied
- If the disciplinary sanction is by way of warning, the nature and type of the warning and the date of its expiry
- A warning as to the consequence of further offences of a similar or different nature
- Any specific requirements for further conduct
- Any specific requirements in respect of training to be undertaken
- If the disciplinary sanction is dismissal, the reason(s) for dismissal
- Any right of appeal, giving the name of the person to whom the appeal should

○	CONFIRMATION OF DECISION AT DISCIPLINARY HEARING	<u>APPENDIX - 12</u>
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If the outcome is dismissal, the Headteacher/Chair of the Governors' Disciplinary Panel will inform the HR and, in the case of a Voluntary Aided School, the Diocesan Director of Education (or representative).

16 RIGHT OF APPEAL

- 16.1 An employee has the right to appeal against every formal level of disciplinary sanction, i.e. first or final written warning and dismissal, **within 10 working days** of the date of the written notification of the decision. The employee must submit a written statement to the person named in the letter confirming the decision reached at the hearing, explaining the grounds of the appeal.
- 16.2 If the employee, for whatever reason appeals outside of the specified time limit they shall include with their letter of appeal an explanation for why the appeal is being presented late. The decision as to whether to hear the appeal or not shall rest with the Chair of Governors.
- 16.3 The appeal should be acknowledged in writing:

LETTER 10	ACKNOWLEDGEMENT OF APPEAL	<u>APPENDIX - 13</u>
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The ways in which different types of appeal will be heard are set out in the table below.

	Panel for Case involving an Employee other than the Headteacher	Panel for Case involving the Headteacher
Appeal against warning	Governors' Appeal Panel advised by HR	Governors Appeal Panel advised by HR
Appeal against dismissal	Governors' Appeal Panel (not previously involved) advised by HR representative	Governors' Appeal Panel (not previously involved) advised by HR representative

The Governing Body may need to appoint different individuals to hear an appeal against a warning depending on who has issued it, e.g. the Chair of Governors could not hear an appeal against a warning they have issued to the Headteacher.

The Governing Body must give any employee against whom an initial dismissal decision has been made the opportunity of appealing against that decision. This must be delegated to an appeal hearing of, normally, **at least three governors** who have not been involved in any previous action or decision connected with the dismissal.

- 16.4 At a Disciplinary hearing, **the panel will appoint a Chair**. At an **Appeal hearing**, the **committee will appoint a Chair**.
- 16.5 A Governors Disciplinary Appeal Panel may obtain assistance from a HR representative and from other appropriate individuals if advice is needed on technical or specialist issues.

- 16.6 The Governors Disciplinary Appeal Panel will consider an appeal against a first or final written warning, or dismissal. The panel will review all of the papers that were presented to the Headteacher/Chair. The purpose of this review is to establish whether or not the School's Disciplinary Policy and Procedure was followed. If the conclusion is that the policy and procedure has not been followed, consideration should be given to the following points:
- Was the failure to follow procedure sufficient to invalidate the entire process?
 - Did the failure to follow procedure impact on the outcome of the process?
- 16.7 If the answer to either of these questions is yes, the Warning Appeal Panel reviewing the case will normally conduct a re-hearing of the evidence and submissions made when the initial decision was taken considering all matters raised related to that decision.
- 16.8 The Appeal Panel advised by an HR representative, will hear an appeal against a decision to dismiss.
- 16.9 Where the grounds of appeal are based on the severity of the disciplinary sanction alone the role of the appeal panel is to conduct a review of the case.
- 16.10 Where the appeal meeting is conducted as a review, the Chair of the Appeal Panel/Committee will have **all documents** presented at the original disciplinary hearing available, along with the notes from the hearing, the letter stating the outcome and any other relevant information.
- 16.11 The decision will be reached based on the findings from a review of the documentation and the submissions from all parties to the appeal.
- 16.12 Where the grounds of appeal are broader, e.g.:
- The evidence did not support the conclusions of the Headteacher/Chair
 - There was a procedural defect in the original hearing such that the hearing was unfair
 - New evidence has come to light after the original hearing which needs to be heard in full. The appeal panel will conduct a re-hearing of the evidence and submissions made when the initial decision was taken and will consider all matters raised which are related to that decision whether or not they were known to the Headteacher/Chair at the time the initial decision was made. This may include new evidence.
- 16.13 Where an appeal is conducted as a re-hearing, the management case will be presented by the original Presenting Officer, with support from an HR Representative not involved in the original hearing.
- 16.14 The employee will be given notice in writing of the venue, date and time of the appeal hearing **at least 5 working days in advance of the hearing**. Copies of any documents relevant to the case, including (in the case of a re-hearing) documents which were not before the Headteacher/Chair and which are intended for consideration at the appeal hearing, will be exchanged at least 5 working days in advance of the hearing.
- 16.15 The employee has the right to be accompanied by a Trade Union Representative or work colleague at the Appeal Hearing.
- 16.16

LETTER 11	NOTIFICATION OF APPEAL HEARING	<u>APPENDIX - 14</u>
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16.17 The decision made at the appeal is final and there is no further right of appeal. The employee will be notified of the decision in writing.

LETTER 12	CONFIRMATION OF DECISION AT DISCIPLINARY APPEAL HEARING	<u>APPENDIX - 15</u>
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16.18 The effect of a successful appeal against dismissal will be that the employee will be reinstated and their continuity of employment will be preserved. The Council/School will make every attempt to redeploy the employee, if return to the position they held prior to dismissal is not considered appropriate or has been filled.

17 STATUTORY REQUIREMENTS BASED ON SCHOOL STAFFING REGULATIONS (ENGLAND) 2003

17.1 Headteacher's Performance

If the Council has a serious concern about the performance of the Headteacher it has a duty to make a written report to the Chair of Governors and, in doing so, should take the following principles into account:

- The Council should have grounds for concluding that the Headteacher's performance is having a detrimental effect on the performance, management or conduct of the School, or would soon have such an effect if action were not taken.
- Such a report should not come as a surprise either to the Chair of Governors or to the Headteacher. The Council should always have first registered its concern informally with the Headteacher. If that did not lead to appropriate action, the concern should then be taken up with the Chair of Governors. The Council should always have given advance warning of its intention to issue a formal report if action to secure the necessary improvement were not forthcoming.
- Before issuing a report, the Council should always consider whether its concern would be better pursued through the performance management (appraisal) arrangements.
- The types of concern which might trigger a report from the Council include:
 - There has been a pattern of repeated and serious complaints, over a period of time, from parents, staff, governors or pupils – not all stemming from the same individual or group, but from a number of people who were originally acting in isolation from each other – which have not been satisfactorily addressed through action to investigate what substance there may be to the complaints and to rectify valid causes of complaint.
 - There is significant evidence of continuing and systematic weakness in the management of the School or in its financial controls which, if not tackled, risks significant disruption to the School's continuing operation.
 - There are serious concerns about the discharge of staffing responsibilities delegated to the Headteacher, including failure to consider appropriate disciplinary action in relation to an employee.

- The types of concern which should not trigger a report from the Council include:
 - The Headteacher has opinions, beliefs or practices about pedagogic, management or other issues to do with the conduct of a School which the Council does not agree with, but which are within the field of legitimate professional debate and are not demonstrably damaging standards.
 - The Headteacher has not co-operated with the Council, or complied with a request from the Council, on an issue where they were under no legal obligation to do so.
 - Although the Headteacher's personality or style makes relations with the Council difficult, there is no evidence that this is damaging standards or the satisfactory running of the School.
- The report should always state the grounds for the Council's concern, and the evidence on which it is relying. In making the report, the Council should also advise the Chair of Governors on action that may be appropriate.
- The Council must always send a copy of the report to the Headteacher at the same time as it is sent to the Chair of Governors. The Headteacher should always have an opportunity to make representations to the Chair of Governors and to the Director of Children's Services (or representative) about the report. The Headteacher should be allowed to be accompanied by a trade union representative or workplace colleague.

17.2 The Chair of Governors must notify the Council in writing of the action they propose to take in the light of the report. The Chair is not obliged to accept the report or to take any particular action indicated by the Council. In particular, they are under no obligation to commence disciplinary or dismissal proceedings. However, the Chair of Governors should always take such a report very seriously, examine carefully the Council's reasons and evidence for raising the concern, and give the Council a properly considered response.

17.3 The Chair of Governors will need to decide, depending on the details of the case, whether the full report should be put to, and discussed by, the whole Governing Body or a committee of the Governing Body. Where there is a possibility of disciplinary action, the Chair must ensure sufficient governors are available to carry out impartially the functions of any disciplinary and appeal hearings. Members of the disciplinary and appeal panels need not be left in complete ignorance; knowing about a situation does not constitute prejudice. All of the governors should be informed that the Council has issued a report and broadly of the nature of its concerns, in view of their collective responsibility for the conduct of the School. However, members of the disciplinary and appeal panels should be careful not to become directly involved, either through expressing opinions or taking action that might be seen to have prejudiced their ability to hear a case fairly. They must avoid taking a view on the validity of the concern raised by the Council and the appropriateness of any disciplinary or dismissal outcome in advance of the hearing. Where members of the disciplinary and appeal panels receive reports or papers on a case prior to a hearing, they must take particular care not to divulge or discuss the contents with other panel members, or anyone else, before the hearing takes place.