



# **DISCIPLINARY PROCEDURE**

**September 2017**

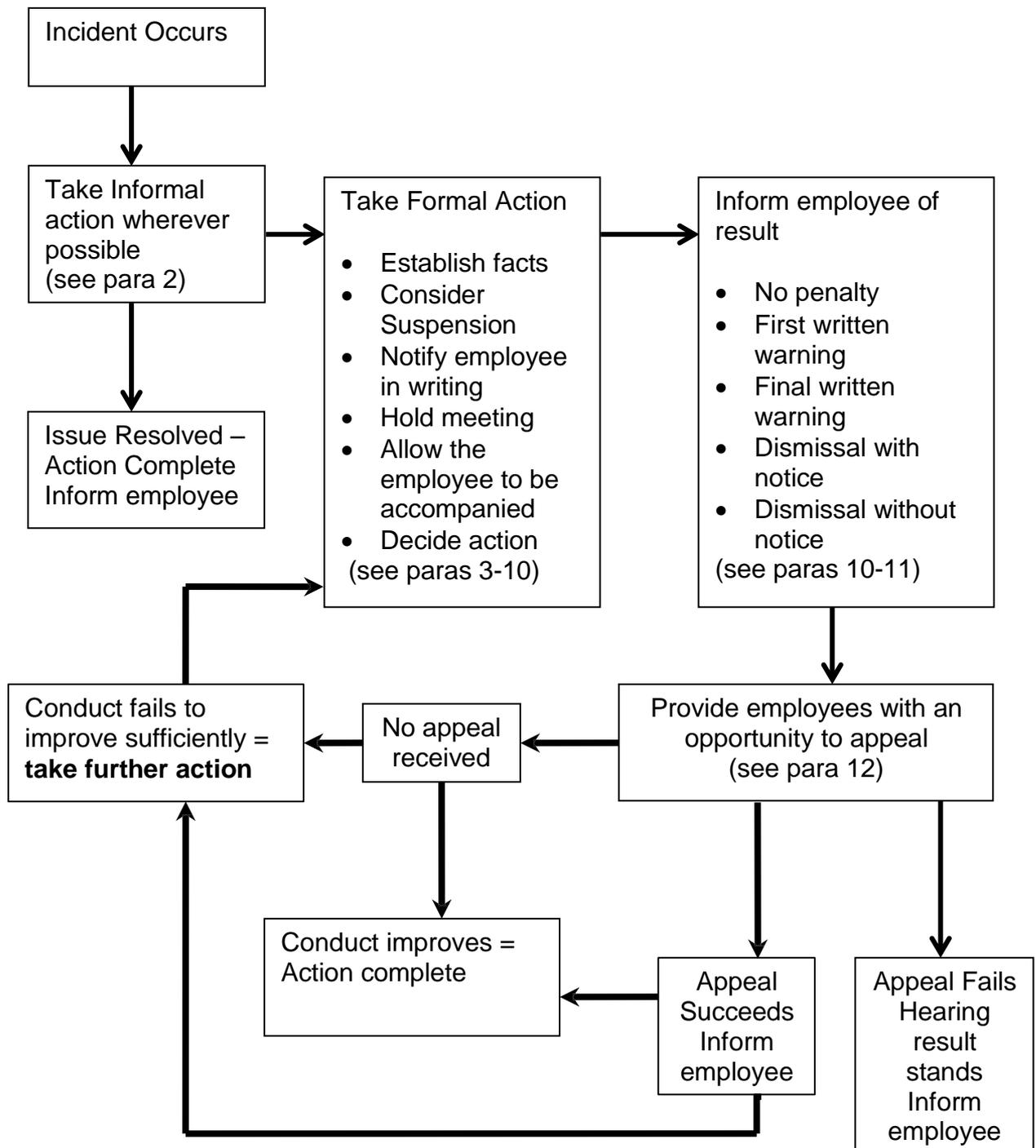
# DISCIPLINARY PROCEDURE

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## Handling Discipline

- Always follow the Model Disciplinary Procedure based on the ACAS Code of Practice
- Seek advice from your HR Adviser and contact the Local Authority Designated Officer in child protection issues



# DISCIPLINARY PROCEDURE

## 1. INTRODUCTION

- 1.1 This procedure applies to all employees at Radius Trust and is based on the ACAS Code of Practice.
- 1.2 Managers should always seek to resolve disciplinary issues in the school. If they are settled at an early stage they are normally less time consuming and less likely to damage working relationships.

## 2. INFORMAL RESOLUTION

- 2.1 Good employment relations, practices and procedures in recruitment, induction, training, communication and consultation can prevent many disciplinary problems arising.
- 2.2 The aim of this procedure is to help and encourage all employees to achieve and maintain standards of conduct and to ensure consistent and fair treatment.
- 2.3 No disciplinary action will be taken against an employee until there has been a full investigation.
- 2.4 The procedure may be implemented at any stage if the employee's alleged misconduct warrants it.
- 2.5 An employee should not be dismissed for a first breach of discipline except in the case of gross misconduct when the penalty will normally be dismissal without notice.
- 2.6 The Executive Head/Head/Principal/Manager must clearly ensure that they do not discriminate unfairly in any area of practice which could lead to dismissal or any other detriment, for example warnings. They should make sure that they comply with the Equality Act 2010.
- 2.7 Cases of minor misconduct or breaches of rules are normally best dealt with informally. A quiet word is often all that is required to improve an employee's conduct. In some cases additional training or advice may be needed. However, there will be cases where the matter is more serious or the informal approach has not worked.
- 2.8 When the informal approach is being used the Executive Head /Head/Principal/ Manager should:
  - talk to the employee in private;
  - discuss the shortcomings in conduct and encourage improvement. Any criticism should be constructive with the emphasis on finding ways to improve conduct and for that improvement to be sustained;
  - listen to what the employee has to say and if it becomes evident that

there is no problem make this clear.

- 2.9 Where improvement is required make sure that the employee understands what is needed, how their conduct will be reviewed and the timescale for this. The Executive Head /Head/Principal/Manager should confirm this in writing.
- 2.10 Care should be taken that any informal action does not turn into formal disciplinary action because this may unintentionally deny the employee certain rights, for example the right to be accompanied. If during the informal discussion it becomes apparent that the matter is more serious the meeting should be adjourned and the employee told that the issue will be continued under the formal procedure.
- 2.11 Brief notes should be kept of any informal action that has taken place including action agreed and review timescales.
- 2.12 Progress should be reviewed over specified periods.
- 2.13 The Executive Head /Head/Principal/Manager should consider whether the use of an independent mediator would be helpful.
- 2.14 Where informal action does not resolve the matter or the misconduct is more serious, a move to the formal procedure will be needed.

## **MOVING TO THE FORMAL STAGE OF THE PROCEDURE**

### **3. Establish the Facts**

- 3.1 It is important to carry out a thorough investigation of potential disciplinary matters to establish the facts of the case without delay. The Staff Code of Conduct may be referred to.
- 3.2 If, during the course of a disciplinary investigation, safeguarding/child protection matters come to light the investigation will be put into abeyance and guidance sought from the Local Authority Designated Officer.
- 3.3 Employees should be dealt with in a fair and reasonable manner. It is important to keep an open mind and look for evidence which supports the employee's case as well as evidence against.
- 3.4 An Investigating Officer should be appointed who will confine themselves to establishing the facts of the case. This would normally be a Manager at the school or in some cases may be an external investigator. Different people must carry out the investigation and disciplinary hearing.
- 3.5 The Executive Head /Head/Principal should inform the Chair of Governors that an investigation is to take place.

- 3.6 The Investigating Officer will arrange to interview the employee and any witnesses but it is important that at this stage disciplinary action is not considered. This will be done at a later stage when all of the facts have been established. It is good practice to allow the person being interviewed to be accompanied by a work colleague or trade union representative. The employee will be advised of the broad allegations against them which may be given in more detail in the investigation report.
- 3.7 When the investigation is complete the Investigating Officer will write a report and decide whether or not there is a case to answer based on the balance of probabilities.
- 3.8 The Investigating Officer may ask someone to be present to take notes at investigation meetings and thought should be given to the appropriateness of the person carrying out this role. Confidentiality must be maintained.

#### **4. Suspension**

- 4.1 It may be decided that a period of suspension, with pay, is considered necessary whilst the investigation is taking place, for example in gross misconduct cases and/or where there is a possible risk of harm to children, young people or vulnerable adults posed by the employee or where relationships have broken down (see 5.2 below).
- 4.2 The Governing Body, or their Chair on their behalf, or the Vice-Chair in his or her absence, shall have the power to suspend the Executive Head/Head/Principal or his or her deputy for misconduct or other good and urgent cause. Where the Chair or Vice-Chair has exercised that power, he or she shall immediately report that action to the other Governors. This suspension may be revoked only by the Governors. The Head/Principal, or his or her deputy in his or her absence, shall have power to suspend any member of staff other than the Head's/Principal's deputy for misconduct or other good and urgent cause. He or she shall immediately report that action to the Chair of the Governing Body at their next meeting. This suspension may be revoked only by the Head/Principal.
- 4.3 Suspension with pay should only be imposed after careful consideration. It should be as brief as possible and regularly reviewed. It should be made clear to the employee that suspension is not an assumption of guilt and is not considered a disciplinary sanction.

#### **5. What is Gross Misconduct?**

- 5.1 Gross misconduct is generally seen as misconduct serious enough to overturn the contract between the employee and the employer, thus justifying summary dismissal (dismissal without notice). Acts which constitute gross misconduct are very serious. The following list gives examples but is not exhaustive:
- serious breaches of any Radius Trust policies, rules or standards
  - maltreatment of pupils/students

- theft or unauthorised removal of Radius Trust property
- fraud, including the falsification of timesheets and expense claims
- physical violence
- offences of dishonesty
- serious sexual offences or misconduct
- bullying
- deliberate and serious or malicious damage to Radius Trust property
- serious misuse of Radius Trust property or name
- deliberately accessing internet sites containing pornographic, offensive or obscene material or distributing such material
- serious insubordination, and failure to follow a legitimate and reasonable management instruction
- unlawful discrimination or harassment
- bringing Radius Trust into disrepute, including inappropriate use of social networking sites
- serious incapability at work brought on by alcohol or illegal drugs
- causing loss, damage or injury through serious negligence,
- a serious breach of health and safety rules
- a serious breach of confidence
- corruptly soliciting or receiving any benefit or advantage from any individual or body with whom Radius Trust has dealings
- misuse of Radius Trust property, including taking or using without permission, taking Radius Trust vehicles for private use, using Radius Trust computers to access any social networking sites such as Facebook inappropriately or without permission, making telephone calls outside the United Kingdom or using any premium rate numbers e.g. chatlines

5.2 Where an employee is accused of an act of gross misconduct they may be suspended from work on full pay whilst the alleged offence is investigated. At the end of the investigation and completion of the full disciplinary process, where the Executive Head/Head/Principal/Manager is satisfied that the act of gross misconduct did occur the result would normally be summary dismissal without notice or payment in lieu of notice.

## **6. Notify the Employee in Writing**

6.1 Having carried out a thorough investigation, the Investigating Officer will make a decision as to whether there is a case to answer.

6.2 Once the Investigating Officer has made the decision the employee should be informed whether there is a case to answer or not. Where there is a case to answer the employee should be notified, in writing, and invited to a disciplinary hearing, which should be held without unreasonable delay, whilst allowing the employee a reasonable amount of time to prepare their case.

Where the trade union representative or work colleague is not able to attend the meeting on the date given, the employee is required to offer an alternative

date but it should be within 5 working days of the original meeting date if at all possible. Extensions of time should be agreed with the parties.

6.3 The letter should give 10 working days' notice of the meeting and include:

- sufficient information about the alleged misconduct and its possible consequences to enable the employee to prepare to answer the case at a disciplinary hearing;
- the time, date and venue for the hearing;
- copies of any written evidence, which should include witness statements if there are any;
- advice of their right to be accompanied by a work colleague or trade union representative( the employee is responsible for arranging such attendance);
- notification of any witnesses to be called by the Executive Head/Head/ Principal/Manager;
- a request that the name/s of any witnesses to be called by the employee is notified at least 3 working days in advance of the meeting;
- a request that any documentary evidence the employee wishes to present be sent to arrive no later than at least 3 working days before the date of the meeting so that it can be copied to all parties;
- a request that the employee confirms that they will be attending and provides the name of their companion;
- a copy of the disciplinary procedure.

## **7. Right to be Accompanied**

7.1 Employees have the right to be accompanied at a disciplinary meeting by a work colleague or trade union representative or official. A trade union representative who is not an employed official must have been certified by their union as being competent to accompany a worker. The employee is responsible for arranging such attendance.

7.2 If the employee is a trade union representative the case should be discussed with a full time union official after obtaining the employee's agreement.

7.3 To exercise their right to be accompanied, the employee must first make a reasonable request. It would not normally be reasonable for an employee to be accompanied by a companion whose presence would prejudice the hearing or who might have a conflict of interest. The request does not have to be in writing.

7.4 The trade union representative or work colleague may address the hearing to put, and sum up, the employee's case, respond on behalf of the employee to any views expressed at the meeting, ask witnesses questions and confer with the employee during the hearing. However, the companion does not have the right to answer questions on the employee's behalf, address the hearing if the employee does not wish it or prevent the employer from explaining the case.

7.5 Where a work colleague has agreed to accompany the employee they are

entitled to take a reasonable amount of paid time off to fulfil that responsibility. A reasonable amount of time would be to allow them to familiarise themselves with the case, confer with the employee before and after the hearing and attend the hearing. If the trade union representative or work colleague is unable to attend on the date set the employee can suggest an alternative date so long as this is reasonable and not more than 5 working days after the original date.

7.6 The employee should notify the Executive Head/Head/Principal/Manager who their companion will be.

## **8. DISCIPLINARY HEARING**

### **Preparation**

8.1 When preparing for the hearing the Executive Head/Head/Principal/Manager should:

- arrange for the hearing to be in private where there will not be interruptions, with separate waiting areas for both parties and for witnesses;
- inform the employee of their right to be accompanied;
- allow the employee time to prepare their case;
- ensure that copies of any relevant papers and witness statements are made available to the employee in advance of the hearing;
- allow the employee to call witnesses and/or submit witness statements subject to prior notification;
- treat evidence from a witness who wishes to remain anonymous with caution and, after taking written statements, seek corroborative evidence and check that the person's motives are genuine;
- consider what explanation may be given by the employee and if possible check it out before the meeting;
- arrange for someone who is not involved in the case to take a note of the hearing and act as a witness to what was said. The employee may be given a copy of these notes. Thought should be given to the appropriateness of the person carrying out this role. Confidentiality must be maintained;
- ensure that all the relevant facts are available, such as disciplinary records, any other relevant documents and, where appropriate, written witness statements;
- check whether there are any special circumstances which may have affected the employee's conduct, for example any personal or other outside issues;
- consider arranging for an interpreter where the employee has difficulty speaking in English. It may be that this person is in addition to the companion although ideally the person should carry out both roles;\*
- consider whether adjustments are necessary for a person who is disabled and/or their companion is disabled. Reasonable adjustment may be needed for an employee with a disability (and possibly for their

companion if they are disabled), for example the provision of a support worker or advocate with knowledge of the disability and its effects. It may be that this person is in addition to the companion although ideally the same person should carry out both roles;\*

- think about the structure of the hearing and make a note of the points to be covered;
- prepare an agenda for the meeting.

\* the employee should make known any special requirements as soon as possible so that appropriate arrangements can be made.

8.2 There could be occasions where an employee is unable or unwilling to attend a hearing. This could be for reasons such as genuine illness, being held in custody or because they refuse to face up to the situation. Where there are genuine reasons for non-attendance the hearing could be rearranged on a maximum of two occasions. Where an employee is persistently unable or unwilling to attend a disciplinary meeting without good cause, the Executive Head/Head/Principal/Manager should make a decision on the evidence available. Where this happens the Executive Head/Head/Principal/Manager should consider:

- the seriousness of the disciplinary issue under consideration;
- the employee's disciplinary record, including current warnings, general work record, work experience, position or length of service;
- medical opinion as to whether the employee is fit to attend the meeting;
- how similar cases in the past have been dealt with.

8.3 Where the employee continues to fail to attend the hearing they should be informed that the case will be heard on the evidence available.

### **Holding the Hearing**

8.4 A properly conducted disciplinary hearing should be a two way process.

8.5 At the disciplinary hearing the Executive Head/Head/Principal/Manager should:

- introduce those present, explaining their role;
- explain that the purpose of the hearing is to establish the facts and consider whether any disciplinary action should be taken in accordance with the procedure;
- explain how the hearing will be conducted;
- listen carefully and wait for answers as this can encourage the employee to be more forthcoming.

### **Statement of the Complaint**

8.6 The Investigating Officer should explain exactly what the complaint against the employee is and outline the case by going through the evidence that has been gathered.

### **Employee's Reply**

- 8.7 The Executive Head/Head/Principal/Manager should allow the employee to put their case and answer any allegations that have been made, give them a reasonable opportunity to ask questions, present evidence, and call and ask questions of any relevant witnesses who will leave the meeting as soon as the questioning has finished.

### **General Questioning and Discussion**

- 8.8 The Executive Head/Head/Principal/Manager should use this stage to establish the facts and:
- ask the employee if they have any explanation for the alleged misconduct or if there are any special circumstances to be taken into account;
  - keep the approach formal and encourage the employee to speak freely with a view to establishing the facts;
  - use questions to clarify the issues and to check that what has been said is understood;
  - do not get into arguments or make personal or humiliating remarks;
  - avoid physical contact or gestures which could be misconstrued as judgmental;
  - if it becomes apparent during the hearing that the employee has provided an adequate explanation or there is no real evidence to support the allegation, the proceedings should be brought to a close.
- 8.9 If new facts emerge during the meeting it may be necessary to adjourn the hearing to investigate them and reconvene when this has been done.

### **Summing Up**

- 8.10 Once questioning has finished the Executive Head/Head/Principal/Manager should summarise the main points. The purpose of this is to ensure that all parties are reminded of the nature of the offence, the arguments and evidence put forward and to make sure that nothing has been missed.
- 8.11 The employee should be asked whether they have anything further to say. This will help to demonstrate that the employee has been treated reasonably.

### **Adjournment**

- 8.12 The hearing should be adjourned to allow for reflection and proper consideration before a decision is taken about whether a disciplinary action is appropriate. It also allows time for further checking of points raised, particularly if there is a dispute over facts.

## **9. Problems that Could Arise During the Disciplinary Hearing**

- 9.1 Where an employee raises a grievance during a disciplinary hearing, this will normally be investigated separately and the hearing will continue. There may be exceptions if:
- the employee raises a grievance by alleging that the Executive Head/Head/Principal/Manager has a conflict of interests, *or*
  - bias is alleged in the conduct of the disciplinary hearing, *or*
  - there is possible discrimination.
- 9.2 The Executive Head/Head/Principal/Manager should be aware that disciplinary hearings may not proceed smoothly and people may become upset or angry. They should be prepared for this and allow time for a distressed or angry employee to compose themselves before continuing. It may be advisable to take a short adjournment. It could be that people will let off steam during the meeting but abusive language or conduct should not be tolerated.

## **10. Deciding on Appropriate Action**

- 10.1 When deciding whether a disciplinary penalty is appropriate and, if so, what form it should take, the Executive Head/Head/Principal/Manager should consider the following:
- any rules Radius Trust may have which indicate the penalty for a particular misconduct;
  - what penalty has been imposed for previous similar cases;
  - whether the standards of other employees are acceptable and that this employee is not being unfairly singled out;
  - the employee's disciplinary record, including current warnings, general work record, work experience, position and length of service;
  - any special circumstances which might make it appropriate to adjust the severity of the penalty;
  - whether the proposed penalty is reasonable in view of all of the circumstances;
  - whether any training, additional support or work adjustments are necessary.
- 10.2 When coming to a decision consideration should be given to what has happened and how serious each allegation is. The decision should be based on the balance of probabilities.
- 10.3 Where it is found that there is no case to answer a letter should be sent to the employee and a copy kept on file to show that an investigation has been held and the conclusion was that there was no case to answer.
- 10.4 The decision letter should be sent to the employee within 5 working days of the

hearing and they should be asked to acknowledge receipt of the letter (see below).

## **11. IMPOSING THE DISCIPLINARY PENALTY**

### **First Written Warning**

11.1 Where misconduct is confirmed a first written warning should be issued. The letter should:

- set out the nature of the unsatisfactory conduct;
- give details of the change in behaviour expected;
- give the timescale in which the improvement is required;
- explain that a final written warning may be given where there is no improvement or there is further misconduct;
- explain that the warning will be kept on their personal file for 12 months;
- give the right to appeal against the disciplinary sanction, including the timescales (see paragraph 12);
- request acknowledgement of receipt of the letter.

### **Final Written Warning**

11.2 Where an employee has a current warning in place then further misconduct may warrant a final written warning. However any further misconduct must be fully investigated and stages 3 to 10 of the procedure followed again.

11.3 Where a first act of misconduct is sufficiently serious a final written warning could be issued without there having been a first written warning.

The letter should:

- set out the nature of the misconduct;
- give details of the change in behaviour expected;
- give the timescale in which the improvement is required;
- explain that dismissal may result where there is no improvement or there is further misconduct;
- explain the warning will be kept on their personal file for 24 months;
- give the right to appeal against the disciplinary sanction, including the timescales (see paragraph 12).

## **DISMISSAL**

11.4 Where it is decided that the employee will be dismissed the Executive Head/ Head/Principal/Manager will notify the Governing Body. The letter of dismissal will be sent by HR.

### **Dismissal with Notice**

11.5 Employees should only be dismissed if, despite warnings, their conduct has not improved within the specified timescale or there has been another incident of

misconduct.

- 11.6 The letter to dismiss must contain:
- the reasons for dismissal;
  - the date on which employment will end;
  - the appropriate period of notice;
  - the right of appeal against dismissal, including the timescales (see paragraph 12).

### **Dismissal without Notice**

- 11.7 Where the employee has been dismissed for gross misconduct they will be subject to summary dismissal. Examples of such offences are shown in paragraph 5 above, however it is recognised that this list is not exhaustive.
- 11.8 The letter to dismiss must contain:
- the reasons for dismissal;
  - the date on which employment will end;
  - the right of appeal against dismissal, including the timescales (see paragraph 12).

## **12. APPEALS**

- 12.1 An employee has the right of appeal against any formal warning issued during the formal stages of this procedure and against any decision taken at the disciplinary meeting. In either case, notice of the appeal, outlining as clearly as possible the grounds on which the appeal is being made, should be sent to the Clerk to the Governors within 10 working days of the decision giving rise to the appeal.
- 12.2 The Clerk to the Governors will arrange a meeting of the appeals panel as described in Appendix 1, without unreasonable delay and ideally within 15 working days of receiving the letter of appeal. No person who had prior involvement in the case which is the subject of the appeal may be included on the appeals panel.
- 12.3 The Clerk to the Governors will:
- arrange for the disciplinary appeals panel to meet to hear the appeal without unreasonable delay and ideally within 15 working days of the receipt of the letter of appeal;
  - arrange a venue for the meeting together with separate waiting areas for each party and witnesses;
  - consider arranging for an interpreter where the employee has difficulty speaking in English;\*
  - consider whether adjustments are necessary for a person who is disabled and/or their companion is disabled. Reasonable adjustment

may be needed for an employee with a disability (and possibly for their companion if they are disabled), for example the provision of a support worker or advocate with knowledge of the disability and its effects;\*

- write to the employee to invite them to the meeting giving the time, date and venue, informing them of their right to be accompanied and that there is no further right of appeal;
- prepare an agenda for the meeting;
- send copies of all relevant paperwork to all parties, including the relevant records and notes from the original disciplinary meeting;
- be responsible for ensuring that members of the disciplinary appeals panel have copies of all appropriate paperwork and a copy of the disciplinary procedure prior to the hearing;
- attend the hearing to take minutes and invite both parties in to the hearing together;
- send the written decision letter to the employee without unreasonable delay and ideally within 5 working days of the decision being made.

\*the employee should make known any special requirements as soon as possible so that appropriate arrangements can be made.

12.4 The invitation letter should give 10 working days' notice of the meeting. Both parties should provide any further relevant paperwork and notify the names of any witnesses to be called to the Clerk to the Governors at least 5 working days before the date of the meeting so that these can be copied to all parties.

12.5 The Executive Head/Head/Principal/Manager and the employee will attend the meeting to present the case, together with their companions. Separate waiting areas will be arranged for each party.

12.6 Any witnesses will sit in a separate area and will wait until called. They will be invited into the meeting to give evidence and be questioned and will then return to the waiting area.

12.7 The Chair of the panel will:

- introduce those present as necessary;
- explain the purpose of the meeting, how it will be conducted and the powers of the panel;
- ask the employee to explain why they are appealing;
- allow the employee to present their case;
- allow the Executive Head/Head/Principal/Manager to present their case;
- give all parties the opportunity to ask questions;
- listen to any new evidence that has been introduced and give both parties the opportunity to comment on it;
- explore all the relevant issues;
- summarise the facts;
- adjourn the meeting to consider the decision.

12.8 The panel will consider whether to uphold each of the grounds for appeal and

why. The panel can decide to uphold the appeal, dismiss the appeal or lessen the penalty that was awarded at the first hearing. The panel may not increase the penalty.

12.9 At the end of the meeting both parties will leave together and be told that the decision will be given in writing as soon as possible and ideally within 5 working days. The panel may wish to call either party back to clarify a point. Where this is the case both parties will be required to return and then leave together. However, it may have been decided at the start of the meeting that the decision will be given verbally in which case both parties should be asked to wait and invited back to hear the result together.

12.10 There is no further right of appeal.

12.11 If the result of the appeal is to reinstate the employee who had been dismissed, they will receive payment of salary for the period from the date of dismissal to the date of reinstatement.

### **13. REFERRAL TO DISCLOSURE AND BARRING SERVICE**

13.1 It is a statutory requirement for employers to refer all cases of misconduct that have a safeguarding/child protection element, even where the employee resigns during an investigation, to the Disclosure and Barring Service or the National College for Teaching and Leadership in respect of school teachers.

### **14. SETTLEMENT AGREEMENTS**

14.1 A Settlement Agreement is a legally binding agreement following the termination of employment. It sometimes provides for a severance payment by the employer, in return for which the employee agrees not to pursue any claim at an employment tribunal. The settlement agreement will usually deal with the notice element in the contract of employment and may provide for a 'payment in lieu'.

14.2 Settlement agreements are recognised by statute and are the only way a claim can be legally binding without tribunal proceedings having been initiated.

14.3 The Settlement Agreement must be explained to the employee by an independent solicitor who has not contributed to the case at an earlier stage before the agreement becomes binding. The solicitor giving the advice must also sign the agreement and certify that the appropriate advice has been given.

14.4 Settlement agreements cannot be used where there is a child/vulnerable adult protection issue and this should be made clear to the employee.

**15. PROCEDURE TO BE FOLLOWED WHERE THE CEO/HEAD/PRINCIPAL IS THE SUBJECT OF THE MISCONDUCT**

- 15.1 An Investigating Officer will be appointed by the Governing Body to carry out a full investigation of the facts and will make a recommendation as to whether there is a case to answer.
- 15.2 The same procedure will be followed as with any other member of staff except that the Chair of Governors will replace the Executive Head/Head/Principal/Manager in the procedure. The initial dismissal decision can be delegated to one or more governors.

**RELATED POLICIES AND PROCEDURES**

Appraisal Procedure  
Capability Procedure  
Disclosure Policy  
Grievance Resolution Procedure  
Staff Code of Conduct

## **APPENDIX 1: Authority levels for disciplinary procedures**

Staff capability and disciplinary meetings: by Head or appropriate manager as delegated by Head

Staff dismissal: by Head

Staff appeals: by Executive Head or appropriate manager as delegated by Executive Head + a member of the LGB or external

Head's capability and dismissal meetings: by Executive Head or appropriate manager as delegated by Executive Head

Head's dismissal: by Executive Head

Head's appeals: by Chair of Governors as delegated by the Chair + an LGB Governor or external