

WLP Disciplinary Procedure & Guidance

This policy is applicable to: All schools in the Wolds Learning Partnership (WLP)

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<p>Name of Responsible Committee/Individual:</p>	<p>Trust Board</p>
<p>Implementation Date:</p>	<p>Autumn Term 2022 <i>(Refresh only to format and job titles to reflect Trust – policy is as per Capability at point of conversion to WLP)</i></p>
<p>Review Date:</p>	<p>Autumn Term 2024</p>
<p>Target Audience:</p>	<p>Employees</p>
<p>Referenced Documents:</p>	<p>WLP Disciplinary Procedure and Managers Guidance Notes Code of Conduct WLP Scheme of Delegation WLP Capability Policy WLP Attendance at Work Policy ACAS Code of Practice (Disciplinary and Grievance) Whistleblowing Policy</p>

Disciplinary Procedure and Guidelines Index

Section	Contents
1	Introduction Employment Legislation Applying Disciplinary Procedures Categories of Disciplinary Offence
2	Disciplinary Procedure Introduction The Procedure
3	Flowchart - Discipline - Appeals
4	Procedure for determining issues of Capability (including ill-health)
5	Summary Chart - Capability - Appeals
Appendix A	Agenda for Disciplinary Hearing/Appeal
Appendix B	Agenda for Limited Appeals
Appendix C	Form for the Issuing of Disciplinary Warning
Appendix D	ACAS Code of Practice
Appendix E	Guidance Notes for Headteachers and Governors
Appendix F	Disciplinary Rules, Safety Rules and Off Duty Conduct

1. Introduction

- 1.1 The Trust is required to have a disciplinary procedure. The guidelines supplement the procedure.
- 1.2 The Trust is entitled to attend all the relevant proceedings in the disciplinary process where dismissal may be the outcome and the relevant decision maker in line with the Scheme of Delegation is obliged to consider any advice given by or on behalf of the Trust.
- 1.3 The employee has the right to make representations and to be accompanied by a trade union representative or a work colleague.
- 1.4 Employees have the right of appeal against disciplinary sanctions. Appeals can go no further than the Trust. This does not, however, preclude an employee taking the case to an Employment Tribunal where the Trust will be the respondent in defending its actions.
- 1.5 Where a Trust School decides to dismiss an employee after following the disciplinary procedure, the Trust will send the dismissal letter.
- 1.6 The disciplinary policy, procedure and these guidelines take account of and conform to the ACAS Code of Practice on Disciplinary Procedures. An Employment Tribunal will take the ACAS Code into account when considering relevant cases. The ACAS Code states that fairness and transparency are promoted by using rules and procedures for handling disciplinary situations.
- 1.7 ACAS state that to achieve fairness issues should be raised and dealt with promptly; parties should act consistently; investigations should be carried out to establish the facts; employees should be given an opportunity to put their case and given the right to be accompanied at any formal meetings; employees should be allowed to appeal against any formal decision made.
- 1.8 Disciplinary procedures must be applied in a non-discriminatory manner and in accordance with the Equality in Employment Policy.
- 1.9 Recourse to disciplinary procedures should be viewed as a last resort in the continuous process of the counselling of employees.

2. Employment legislation

- 2.1 Employees who have at least two year's continuous employment have the right to bring a claim of unfair dismissal to an Employment Tribunal under the Employment Rights Act 1996. This includes employees who are employed on temporary or fixed term contracts. Additionally, there is now no age limit on the right to claim unfair dismissal.

- 2.2 Employers must, in the written statement of terms and conditions of employment (the contract of employment), specify any disciplinary rules they have and the person to whom employees apply if they wish to appeal against any disciplinary decision, and explain how to make such an application.
- 2.3 Conduct dismissals can be unfair simply because the correct procedures have not been adopted and/or followed.
- 2.4 An employee may also claim constructive dismissal. This occurs where an employee terminates the contract, with or without notice, by reason of the employer's conduct. The employee must establish that there was a fundamental breach of contract; that the employer's breach caused the employee to resign and that the employee did not delay too long before resigning.
- 2.5 Some dismissals are automatically unfair: The following are some of the most common automatically unfair reasons:
- (i) in connection with trade union membership, activities or use of union services
 - (ii) a reason relating to pregnancy, childbirth or family leave, the right to time of for dependants or the right to request flexible working
 - (iii) discrimination on the grounds of any of the protected characteristics specified in the Equality Act 2010 (race, sex etc)
 - (iv) health and safety
 - (v) in connection with the rights of part-time and fixed term workers.

3. Applying Disciplinary Procedures

- 3.1 A disciplinary procedure deals only with an employee's conduct. There are separate procedures for dealing with poor performance (Capability Procedure) and ill health (Attendance at Work Procedure).
- 3.2 The ACAS Code of Practice states that many disciplinary issues can be resolved informally. A quiet word is often all that is required to resolve an issue. In some case additional training, coaching and advice may be what is needed. There will be situation where matters are more serious or where an informal approach has been tried but is not working.
- 3.3 The Trust will establish a committee, of not less than three, to hear disciplinary cases and a separate committee of at least equal number to hear disciplinary appeals.

4. Categories of Disciplinary Offence

- 4.1 Disciplinary offences fall into two distinct categories and are either misconduct or gross misconduct.
- 4.2 The boundary between misconduct and gross misconduct cannot be specifically defined, but some acts, termed gross misconduct, are so serious in themselves or have



such serious consequences that they may call for dismissal without notice for a first offence. A fair disciplinary procedure should always be followed, before dismissing for gross misconduct.

Section 2 – Disciplinary Procedure

1.0 Introduction:

- 1.1 This document sets out the disciplinary procedure to be followed by the Trust and managers in the maintenance of acceptable standards of behaviour of employees which impact on the job, the school and/or the Trust.
- 1.2 Conditions of Service for Teachers and Local Government Services employees should be considered in conjunction with this document.
- 1.3 The Trust Board is responsible for the conduct and discipline of all staff in the Trust although most disciplinary matters will, in the first instance, be dealt with by the Headteacher or line manager.
- 1.4 All matters relating to discipline will, as far as reasonably possible, be dealt with without undue delay and in a non-discriminatory manner. Proceedings, witness statements and records will be kept confidential and will, as appropriate, only be made available to those genuinely involved in the disciplinary process.

2. The Procedure

The right to be accompanied

- 2.1 An employee has the right to be accompanied by a companion (trade union representative or work colleague) at any of the formal stages of the disciplinary procedure from investigation through to an appeal.
- 2.2 The employee's representative can address the hearing to put and sum up the employee's case, however does not have the right to answer questions on the employee's behalf. If the work colleague or trade union representative cannot attend on the proposed date, the employee can suggest an alternative date and time so long as it is reasonable and it is not more than five working days after the original date. Where an alternative date is scheduled this does not count towards a non-attendance at paragraph 2.11 below.

Precautionary Suspension

- 2.3 In certain circumstances where relationships have broken down or where it is considered there are risks to an employer's property or responsibilities to another party or where a thorough disciplinary investigation may be prevented, a brief period of suspension with pay may be used while the case is investigated. Such suspension will only be used as a last resort and is precautionary and not a disciplinary action and will be reviewed to ensure it is not unnecessarily protracted. The Scheme of Delegation details who has authorisation to suspend an employee and this will only be done following consultation with Personnel Department. The Chair of the People, Personnel & Wellbeing Committee of the Trust Board should be informed of the suspension. The details of the incident or allegation must not be given at this stage to ensure objectivity should a hearing and an

appeal be required at a later stage.

Establish the Facts

- 2.4 When a disciplinary matter arises, the Headteacher or identified manager should first establish the facts promptly before recollections fade, and where appropriate obtain statements from any witnesses.

The extent of the fact finding and investigation and the form it takes will vary according to circumstances, including the nature and gravity of the case, the state of the evidence and the potential consequences of an adverse finding to the employee.

Where the facts are in dispute the investigation should, as far as possible, determine the facts.

In establishing the facts and gathering the evidence witnesses should be interviewed. The number of witnesses to be interviewed can be determined by whether or not a fact has been clearly established however the investigation may be flawed if an obvious witness is overlooked.

Once the fact finding has been completed a decision will be made on whether matters are progressed and dealt with under the disciplinary procedure.

Formal investigatory interview

- 2.5 A formal investigatory interview will normally be held within 10 school working days of the alleged misconduct being discovered where the allegation(s) will be put to the employee. The employee will be notified of the interview in writing 48 hours in advance and notified of the right to be accompanied. It should be made absolutely clear that the interview is for investigation purposes and is not the disciplinary hearing. The Headteacher or identified manager should make arrangements for notes to be taken at any investigatory meeting.

NB 1 In cases of alleged abuse of children refer to the Child Protection Procedures.

NB 2 If the Headteacher/Senior Manager intends to hear the disciplinary case (see paragraph 27.1) should one prove necessary, (s)he should not undertake the investigation.

- 2.6 Witnesses should make written statements and will be advised that they may be required to attend any disciplinary hearing at the request of either party. It should be made clear that the matter is confidential and must not be discussed with anyone and that statements will be given to the employee involved.

- 2.7 Having held an investigatory interview, the Headteacher or identified manager will make a decision on whether to drop the matter, arrange informal or formal coaching or

counselling or convene a formal disciplinary hearing.

- 27.1 Where a formal disciplinary hearing is to be convened it will be heard by the Headteacher for less serious offences where the potential outcome is an oral or first written warning.
- 27.2 Where a formal disciplinary hearing is to be convened it will be heard by the identified party in line with the Scheme of Delegation for more serious offences where the potential outcome is a final written warning or dismissal or when the Headteacher/Senior Manager has investigated the matter.
- 2.8 The CEO or representative must be informed and is entitled to attend all proceedings where dismissal is a potential outcome. No disciplinary action should be taken without a formal hearing.

Disciplinary Action against a Headteacher

- 2.9 Disciplinary action against a Headteacher will not be initiated without the involvement of the CEO and Chair of the Trust Board. The Trust will undertake a role which would normally be ascribed to the Headteacher with regard to the investigation and any subsequent disciplinary proceedings.

Disciplinary Action against CEO

- 2.10 Disciplinary action against the CEO will not be initiated without the involvement of the Chair of the Trust Board. The Trust Board will undertake a role which would normally be ascribed to the Headteacher with regard to the investigation and any subsequent disciplinary proceedings.

Disciplinary Action against Trade Union Representatives

- 2.11 Although normal disciplinary action must be taken when appropriate against trade union representatives, no such action should be taken until the circumstances of the case have been discussed by the Headteacher with a senior trade union/professional association official and Personnel Department.

Disciplinary Hearing

- 2.12 The Headteacher/CEO or designated committee of the Trust Board should, as soon as practicable, hold a disciplinary hearing. Where a disciplinary hearing is held the employee will be informed, in writing, of the following to enable the employee to prepare to answer the case at the meeting:

- the allegation(s) against him/her
- the possible consequences
- the right to be accompanied

The employee will be given 5 calendar days written notice of the hearing where the employee will be given an opportunity to state his/her case. Where the employee does not attend the first hearing a second hearing will normally be arranged and may be held

in the employees absence (see also paragraph 2.2 above).

- 2.13 Copies of relevant evidence the Trust deems appropriate to the allegation will normally be made available to the employee at least 48 hours prior to the hearing. The employee will also be provided with a copy of the disciplinary procedure and the names of witnesses to be called. However, it may be appropriate (with the employees agreement) for a disciplinary hearing to follow on from the investigatory interview in certain circumstances and providing the right to be accompanied is given.
- 2.14 Minor cases of misconduct may be best dealt with by informal advice, coaching or counselling. Managers may issue informal warning however must also ensure that problems are discussed with the objective of encouraging and helping employees to improve. Such informal warnings do not form part of the formal procedure.
- 2.15 If the hearing is to be conducted by the Headteacher the identified manager will put the results of the investigation to the employee. This may include witness statements which may be supported by presentation of oral evidence by the witnesses themselves and other written evidence. The employee will then have the opportunity to state their case, ask questions, present evidence and call witnesses (see Appendix A).
- 2.16 Having considered all of the evidence presented the Headteacher will decide what action to take, after an adjournment, and will inform the employee and their representative accordingly. The decision will be confirmed in writing as soon as possible after the hearing.
- 2.17 If the allegation(s) are considered to be unfounded the employee will be informed accordingly, in writing, and no further action will be taken.
- 2.18 When the hearing is to be conducted by a committee of the Trust Board, the investigating officer or clerk to the committee should notify the employee, the Governors or Trustees and any witnesses of the date and time of the hearing. The information circulated should be as detailed in paragraph 4.2 above. The agenda for the hearing is at Appendix A.

Disciplinary Action

- 2.19 The disciplinary actions available are:

No further action

This should be communicated to the employee in writing with a copy provided for their representative.

Formal counselling

The employee should be advised of the area of concern and the improvement required. The concerns should be explained in detail in a constructive manner with clear examples given where possible. The employee should be left in no doubt of the improvement required and strategies for improvement, support, monitoring and a timescale should be agreed. This should be confirmed in writing to the employee with a copy provided for

their representative.

Oral Warning – generally given for minor acts of misconduct

The employee will be told that the conduct is unacceptable, advised of what is expected and that an oral warning will be recorded on the file. The employee should be told that this is the first action within the disciplinary procedure and that if the conduct does not improve further action will be taken. The oral warning will be confirmed to the employee in writing which will include their right of appeal.

After 26 weeks satisfactory conduct the warning will not normally be taken into account for disciplinary purposes.

First Written Warning – generally given for an accumulation of minor acts of misconduct, a breach of a current oral warning or a more serious act of misconduct

This will give details of the conduct, the improvement required and the consequences of any future misconduct. It will warn that further action will be considered if there is no satisfactory improvement or any further breach of conduct and will advise of the right of appeal.

After 26 weeks satisfactory conduct the warning will not normally be taken into account for disciplinary purposes.

First written warnings will be issued on the appropriate form (see Appendix C) and a copy will be sent to the employee and their representative (if appropriate) and a copy retained on the employee's file.

Final Written Warning – generally given for instances of substantial misconduct or in cases of repeated misconduct during a 'live' first written warning

If there is still a failure to improve and conduct or behaviour is still unsatisfactory within the currency of a written warning, or if the misconduct is sufficiently serious to warrant only one written warning, a final written warning may be issued. This will give details of the conduct, will warn that dismissal may result if there is no satisfactory improvement or a further breach of conduct and will advise of the right of appeal.

After 52 weeks satisfactory conduct the warning will not normally be taken into account for disciplinary purposes Final written warnings will be issued on the appropriate form and a copy will be sent to the employee and their representative (if appropriate) and a copy retained on the employee's file.

Dismissal with notice or payment in lieu of notice – generally given for further misconduct following a current final written warning.

If the conduct or behaviour is still unsatisfactory and the employee still fails to reach the prescribed standards after receipt of a final written warning, dismissal with notice may apply.

Summary Dismissal without notice - generally given in cases of gross misconduct regardless of any, or the absence of, written warnings.

An employee will only be dismissed for serious/gross misconduct or cumulative misconduct. The employee will not be dismissed for a first minor breach of discipline.

Disciplinary action will not be taken until the case has been carefully investigated.

Disciplinary action will be confirmed in writing.

- 2.20 The Scheme of Delegation details who has the authority to dismiss an employee. Where the manager, in the course of hearing a disciplinary case, considers that dismissal may be the appropriate course of action, the hearing should be adjourned and the employee informed that the case will be referred to a disciplinary hearing of the relevant party in line with the scheme of delegation. The employee will be requested in writing to attend the meeting of the relevant committee in line with the scheme of delegation and will be reminded of their right to be accompanied as described in paragraph 2.1 above.
- 2.21 The CEO or his representative, is entitled to attend all proceedings relating to a potential dismissal from employment.
- 2.22 The formal agenda for the hearing is at Appendix A.
- 2.23 The task of presenting the case may be delegated by to a member of senior staff or assistance may be sought from an officer of the Trust.
- 2.24 The relevant party in line with the scheme of delegation will decide whether or not to dismiss the employee, impose a lesser penalty or reject the allegations entirely or in part.

- 2.25 The decision makers at the Disciplinary Hearing must consider any advice given by or on behalf of the Trust.

Appeals

- 2.26 Employees have the right of appeal to an Appeals Committee against formal disciplinary action. An appeal must be made in writing to the person named in the letter confirming the disciplinary action, within 10 working days of receipt of the letter confirming the disciplinary action. The letter must specify the grounds for appeal. The grounds for appeal may be the perceived unfairness of the judgement, the severity of the penalty, new evidence coming to light or procedural irregularities.
- 2.27 Employees have no right of appeal within the Trust beyond the Appeals Committee of the Trust.

Holding an Appeal

- 2.28 In line with the scheme of delegation, a separate committee will be set up to hear the appeal as quickly as possible, normally within four working weeks of receipt of the appeal but allowing sufficient time for the employee to prepare for the hearing.
- 2.29 No member of the Appeals Committee (including nominated substitutes) will be involved in any preceding disciplinary action.
- 2.30 The Appeals Committee will not increase the severity of the action but may allow or dismiss the appeal in whole or part and the decision of the appeals body will be final.
- 2.31 The CEO or a nominee is entitled to attend meetings of the Appeals Committee and the Committee must consider any advice given by or on behalf of the CEO.
- 2.32 An appeal will normally constitute a full rehearing and will be conducted in accordance with the agenda shown at Appendix A (with the exception of 13b – there is no further right of appeal as the decision of the Appeals Committee is final). As it is a rehearing both parties may introduce new evidence providing the evidence was not available at the time of the disciplinary hearing.
- 2.33 If, however, the notification of appeal specifies a particular issue, such as the severity of the penalty imposed or the procedural irregularities, and it is clear that the appeal will not involve the re-examination of witness(es) or the submission of new evidence, the agenda shown at Appendix B may be followed.
- 2.34 It is essential that the appropriate agenda is adopted by the Chair, advised by an officer of the Trust and circulated before the hearing so that all concerned fully understand the procedure to be followed at the meeting. The agenda at Appendix B should not be used when considering an appeal against dismissal.

Retention of Records

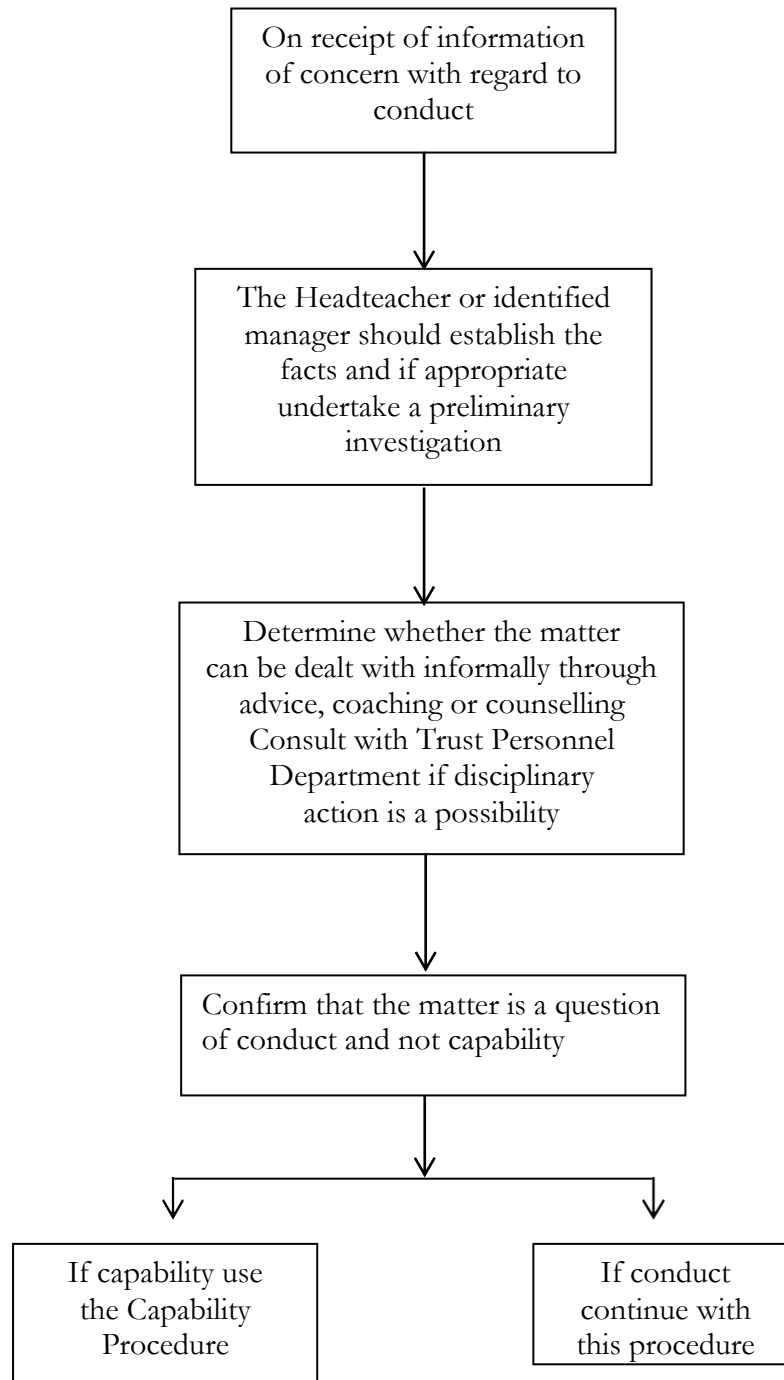
- 2.35 All disciplinary records will be removed from the employee's personal file and will not normally be taken into account for further disciplinary action once the currency of the



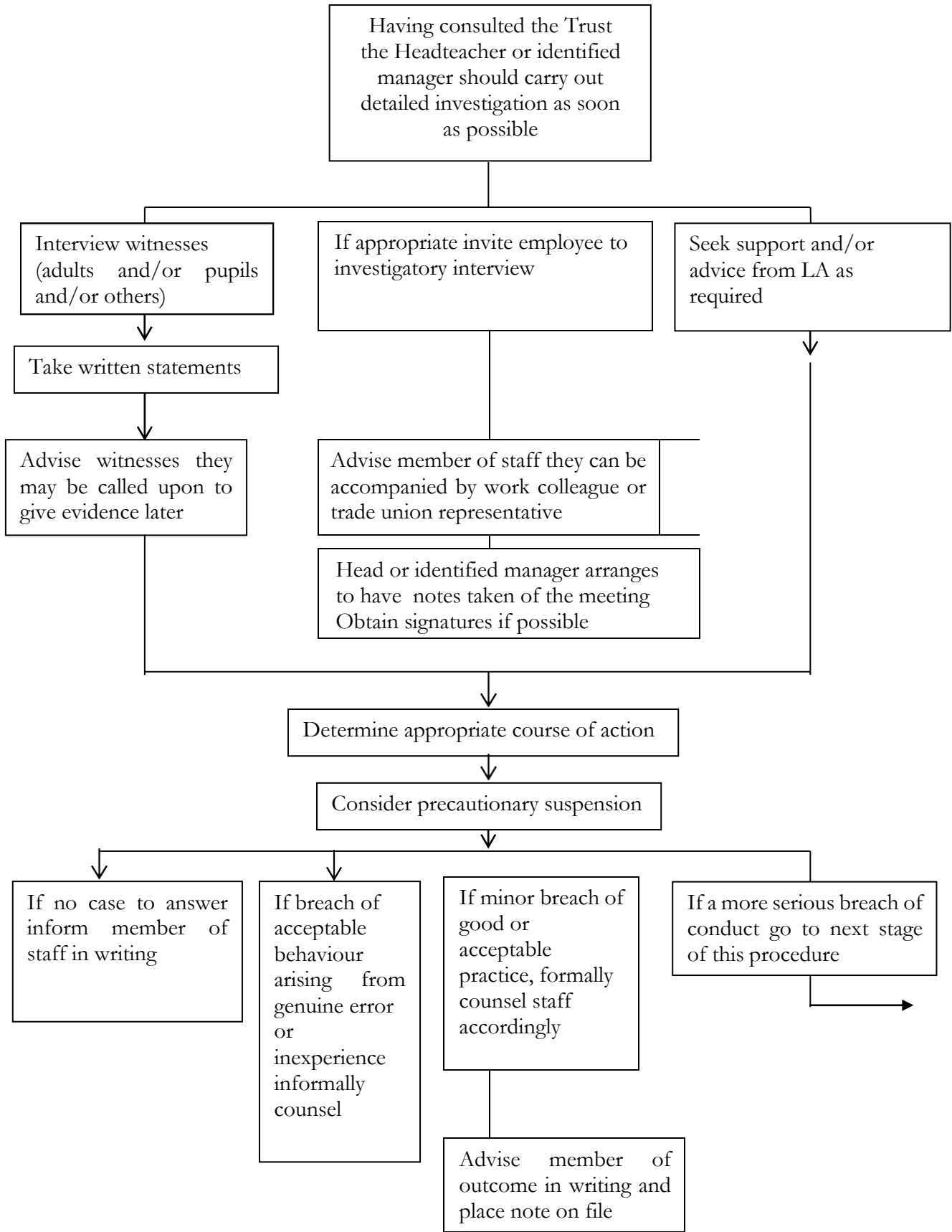
penalty expires. Copies of all documents notifying disciplinary decisions must be sent to the CEO.

Section 3

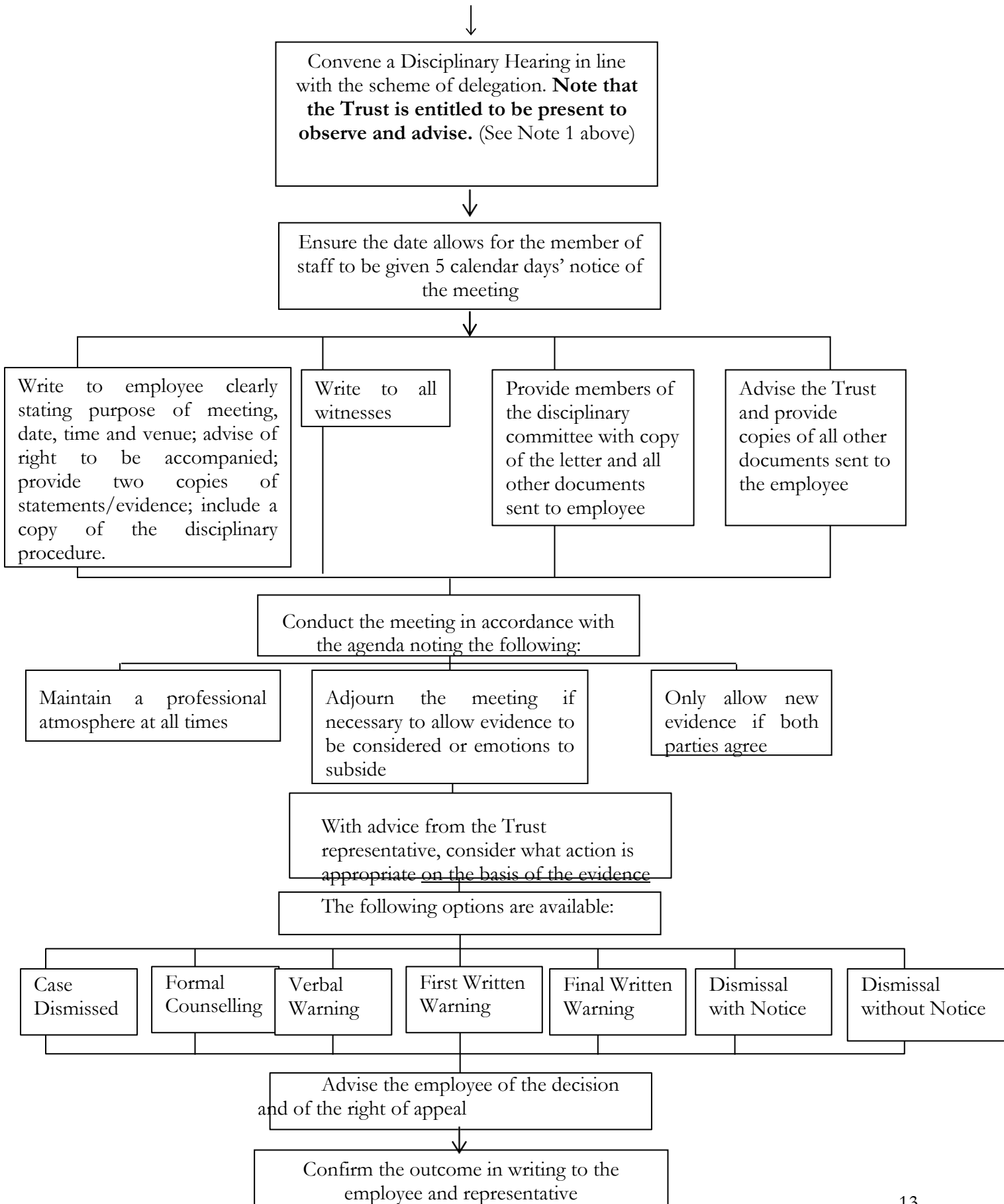
Flowchart of Disciplinary Procedures



If, at this stage, the matter is sufficiently serious or in certain circumstances where relationships have broken down or where it is considered there are risks to an employer’s property or responsibilities to another party or where a thorough disciplinary investigation may be prevented, a brief period of suspension with pay may be used while the case is investigated. The Scheme of Delegation details who has authorisation to suspend, and they may suspend an employee in these circumstances. The Trust should be consulted prior to suspension or as early as possible thereafter.



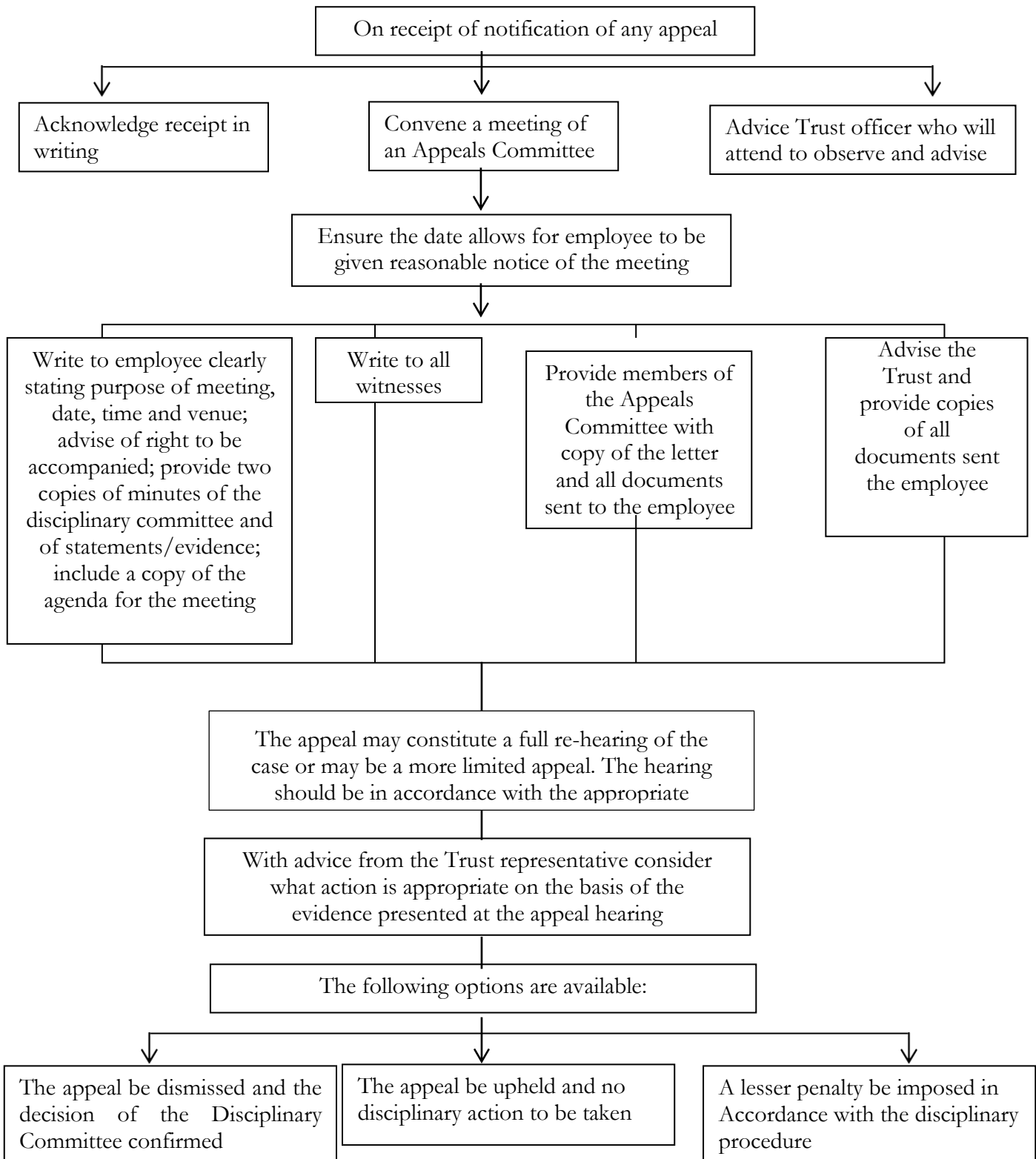
Note 1: If the Headteacher/Senior Manager has undertaken the investigation s/he would not hear the matter or determine the disciplinary action to be taken.



Appeals Against Disciplinary Decisions

The employee has the right to appeal against any formal disciplinary action taken.

Unless the disciplinary panel state otherwise, notice of appeal must be given in writing to the named contact detailed in the letter confirming the disciplinary action, and received within 10 working days of receipt of the letter confirming the decision confirming the disciplinary action.



**Procedure for Hearing Cases by the Disciplinary Panel in
line with the Scheme of Delegation**
(this procedure should not be used for hearing an appeal against
dismissal)

Introduction

1. Introduction by the Chair of the Committee and a reminder to all present of:
 - (a) the Disciplinary Procedure under which the meeting has been called;
 - (b) the manner in which the meeting will be conducted as set out below in paragraphs 2-11;
 - (c) the degree of confidentiality;
 - (d) those present and the purpose of the hearing;
 - (e) the nature of the complaint;
 - (f) the supporting evidence;
 - (g) confirm the witnesses attending,
 - (h) check for any preliminary issues.

Management Case

2. Presentation of the management case by the Headteacher or other nominated person to the Panel, including evidence from witnesses (where appropriate). When witnesses have given evidence and answered all questions put to them, they should leave the room.
3. Questions by the Panel and the employee and/or their representative on the evidence presented.

Employee Case

4. Presentation of employee case/statement by the employee and/or their representative, including evidence from witnesses (where appropriate). Witnesses should leave the room once they have given evidence and answered all questions put to them.
5. Questions by the Panel and/or the Headteacher or nominated person on the evidence presented.

Summing Up

6. Opportunity for the Headteacher or nominated person presenting the case to sum up their case.
7. Opportunity for the member of staff and/or representative to sum up their case.

Adjournment for Decision Making

8. Withdrawal by the employee and representative(s) and the Headteacher or nominated person whilst the panel considers the matter.
9. Consideration of the matter by the Disciplinary Panel. The CEO or his nominee, together with the Clerk to the meeting, will be present during the deliberations. In the event that further information or clarification is needed from any of the persons who have left the meeting then all such persons should return to the meeting when such information is obtained. An opportunity should be given to each party to question or comment upon this additional

information.

10. If there is no clear view about the facts presented by both parties, i.e. they are disputed or there is conflicting evidence, the Panel should decide on the balance of probability what version of the facts they accept.
11. If any new facts emerge during the presentation of either statements at stages (2) or (4) of the Procedure, the Panel should:
 - a) decide whether further investigation is required;
 - b) if so, adjourn the hearing and reconvene when the investigation is completed
12. Before deciding upon the penalty the Panel should consider:
 - a) the gravity of the offence and whether further guidance is needed;
 - b) the penalty applied in similar cases in the past;
 - c) the employee's disciplinary record and general service;
 - d) any mitigating circumstances presented;
 - e) whether the penalty to be imposed is reasonable in all the circumstances

Give Decision

13. Recall of parties concerned to hear the decision of the Panel orally.

The Chair of the Disciplinary Panel should:

- a) clearly inform the employee of the decision and the disciplinary sanction, if any
 - b) explain the right of appeal and how the mechanism operates;
 - c) in the case of a warning, explain what improvement is expected, how long the warning will last and what the consequences of a failure to attain the required improvement may be
14. Confirmation of the decision of the Panel in writing to all parties concerned. If the penalty is an oral warning this must be confirmed in writing to the employee with a copy retained on the personal file.

Appeal Hearing

15. The Appeal will be heard by an Appeals Committee in line with the scheme of delegation which will not include any member of the Disciplinary Committee involved in the original hearing. For a general, non-specific appeal the procedure will be as above, with the exception of 13(b) and will constitute a full rehearing of the case. If the appeal is against a specific issue and it is clear that witnesses need not be recalled and new evidence will not be introduced the procedure detailed at Appendix B may be used. However if it is an appeal against dismissal Appendix B should not be used.

Procedure for Hearing Limited Appeals by the Appeal Panel

Introduction

1. Introduction by the Chair of the Committee and a reminder to all present of:
 - (a) the Disciplinary Procedure under which the meeting has been called and the limited nature of the appeal;
 - (b) the manner in which the meeting will be conducted as set out below in paragraphs 2 - 11;
 - (c) the degree of confidentiality;
 - (d) those present and the purpose of the hearing;
 - (e) the nature of the complaint;
 - (f) the supporting evidence;
 - (g) confirm the witnesses attending;
 - (h) check for any preliminary issues

Employee Case

2. Statement(s) by the employee and/or their representative detailing specific issue(s) of appeal to the Committee.
3. Questions by the Panel and/or the Headteacher or nominated person on the evidence presented.

Management Case

4. Statement by the Headteacher or other nominated person to the Panel.
5. Questions by the Panel and the employee and/or their representative on the evidence presented.

Summing Up

6. Opportunity for the employee and/or representative to sum up their case.
7. Opportunity for the Headteacher or nominated person presenting the case to sum up their case.

Adjournment for Decision Making

8. Withdrawal by the employee and representative(s) and the Headteacher or nominated person whilst the Panel considers the matter.
9. Consideration of the matter by the Panel. The CEO or his nominee, together with the Clerk to the meeting, will be present during the deliberations. In the event that further information or clarification is needed from any of the persons who have left the meeting then all such persons should return to the meeting when such information is obtained. An opportunity should be given to each party to question or comment upon this additional information.
10. If there is no clear view about the facts presented by both parties, i.e. they are disputed or there is conflicting evidence, the Governors should decide on the balance of probability what

version of the facts they accept.

11. If any new facts emerge during the presentation of either statements at stages (2) or (4) of the Procedure, the Panel should:
 - a) decide whether further investigation is required;
 - b) if so, adjourn the appeal hearing and reconvene when the investigation is completed
12. Before deciding upon the penalty the Panel should consider:
 - a) the gravity of the offence and whether further guidance is needed;
 - b) the penalty applied in similar cases in the past;
 - c) the employee's disciplinary record and general service;
 - d) any mitigating circumstances presented;
 - e) whether the penalty to be imposed is reasonable in all the circumstances

Give Decision

13. Recall of parties concerned to hear the decision of the Panel orally.

The Chair of the Appeals Panel should:

- a) clearly inform the employee of the decision and the disciplinary sanction, if any
 - b) in the case of a warning, explain what improvement is expected, how long the warning will last and what the consequences of a failure to attain the required improvement may be.
14. Confirmation of the decision of the Panel in writing to all parties concerned. If the penalty is an oral warning this must be confirmed in writing to the employee with a copy retained on the personal file.

..... School Disciplinary Procedure - Written Warning or Final Warning	
Name of Employee	Department
Date of Offence	Section
Date of Warning Issued	Job Title
Full details of offence. Include reference to improvement required and the consequences if the improvement is not achieved.	
Signature(s) of Headteacher/Chairperson	<u>RIGHT OF APPEAL</u> You have the right of appeal against this warning, which you may exercise within 10 working days of receipt as directed in the accompanying letter.
After _____ weeks this warning will not count for progression to the next stage of the disciplinary procedure.	
DISTRIBUTION: Employee <input type="checkbox"/> Trade Union Rep or Work Colleague <input type="checkbox"/>	Headteacher/Senior Manager <input type="checkbox"/> CEO <input type="checkbox"/>

NOTES FOR GUIDANCE FOR HEADTEACHERS, MANAGERS AND TRUSTEES/GOVERNORS IN HANDLING A DISCIPLINARY MATTER

1. Initial Action

- 1.1 Ensure all the relevant facts are gathered promptly before memories fade.
 - take statements, collect documents
 - in serious cases, consider suspension with pay while an investigation is conducted
- 1.2 Be clear about the issue:
 - is action needed at this stage?
- 1.3 If so, decide whether the action should be:
 - advice and counselling
 - formal disciplinary action

2. Handling a Disciplinary Matter

- 2.1 Remember that, with the exception of cases of gross misconduct, disciplinary action is intended to encourage the employee to improve and should be viewed as a last resort in the continuous process of counselling of employees;
- 2.2 Be firm. It is the Trust's responsibility to maintain satisfactory standards.
- 2.3 Consider each case on its merits and avoid snap decisions made in the heat of the moment.
- 2.4 Follow the disciplinary procedure.

3. Is Disciplinary Action Necessary?

- 3.1 Having gathered all the facts, the Headteacher or nominated investigating officer should decide whether to:
 - Drop the matter - there may be no case to answer or the matter may be so trivial that it is better to overlook it.
 - Arrange counselling - this is an attempt to correct a situation and prevent it from getting worse without using the formal disciplinary procedure.
 - Arrange a disciplinary hearing - this will be necessary when the matter is more serious and it appears that there has been an offence which requires the appropriate disciplinary action.

4. **Counselling**

- 4.1 Counselling may often be a more satisfactory method of resolving problems than a disciplinary hearing.
- 4.2 It should take the form of a discussion with the objective of encouraging and helping the employee to improve.
- 4.3 The employee should be given the opportunity to be accompanied.
- 4.4 The employee should fully understand the issues and the outcomes.
- 4.5 An agreed record of any counselling should be kept for reference purposes.

5. **Criminal Cases**

- 5.1 If the police are involved in investigating possible criminal action consult the Trust who will liaise with the police and Crown Prosecution Service as necessary to avoid any possibility of compromising a criminal investigation whilst avoiding undue delay.
- 5.2 Do not dismiss or discipline an employee solely because s/he has been charged with or convicted of a criminal offence.
- 5.3 Decide whether and the extent to which the employee's conduct affects their ability or sustainability for continued employment. If it does, use normal disciplinary rules. If it does not, decide whether in the light of the needs of the school the employee's job can be kept open throughout the period of absence.
- 5.4 Base any decision on a reasonable belief based upon balance of probability following reasonable consideration of the circumstances of the case.
- 5.5 Where a criminal charge has been made, do not defer taking fair and reasonable disciplinary action, if appropriate, merely because the outcome of the prosecution is not known.

NB Before any action is taken the advice of the Trust Personnel Department should be sought.

5.6 Misconduct Involving Children

Any alleged misconduct involving a child or a vulnerable adult must be reported to Personnel and the Local Authority Designated Officer (LADO) immediately.

Advice and guidance will be given by the LADO and Personnel as to how to proceed.

6. **Failure by the Employee to attend a Disciplinary Hearing**

- 6.1 If the employee becomes ill or if they or the representative puts forward another

substantial reason for being unable to attend it is reasonable to consider postponing the hearing to a later date. Under normal circumstances only one such postponement should be made.

- 6.2 If the employee and/or the representative fails to attend and had not given prior notice of this, the clerk to the hearing should make an attempt to contact the person or persons concerned. If they cannot be contacted or if no reasonable explanation for their non-attendance is forthcoming then the case can be heard in their absence.

7. **Obtaining Written Statements**

- 7.1 Anyone believed to have information about the alleged misconduct should be interviewed and written statements obtained if possible.
- 7.2 On completion of the investigation, the Headteacher or the person conducting the investigation should prepare their own statement of what has emerged, particularly if witness statements or other documentary evidence does not exist.
- 7.3 Ensure all copies of all relevant written evidence, including witnesses' statements and a copy of the disciplinary procedure are made available to the employee and his/her representative. It is advisable that the employee's copy be sent by registered mail.
- 7.4 Headteachers or a delegated senior member of staff may interview pupil(s) and written statements may be taken where the pupil(s) witness an incident and their evidence has a direct bearing on the case. This should be done as soon as possible after the events and every effort should be made to ensure the statement is given without the pupils being influenced by the investigating officer or other pupils. Questioning should be kept to a minimum where criminal activity is suspected.
- 7.5 This is particularly true when the incident arouses suspicion of child abuse. In such cases the Trust's Safeguarding and Child Protection Policy and Procedures should be followed and the matter be referred immediately to LADO and/or the Police who must be the investigating agency.
- 7.6 It is the Trust policy that except in cases of extreme necessity pupils should **not** be called to give evidence in person at disciplinary hearings. Other witnesses should be called.

8. **Disciplinary Decisions**

- 8.1 Where the disciplinary hearing results in the dismissal of the employee, the employee may, if they believe it is unfair, take the case to Employment Tribunal.
- 8.2 In order for the dismissal to be accepted as fair the Trust must show that:
 - a) it believed the employee was guilty of misconduct
 - b) it had in mind reasonable grounds upon which to sustain that belief
 - c) at the stage at which that belief was formed on those grounds, it had carried out as

- d) much investigation into the matter as was reasonable in the circumstances
the decision is within the range of reasonable responses of a reasonable employee.

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Disciplinary Rules

1. Introduction

- 1.1 Disciplinary rules are necessary for the efficient and safe performance of work and for the maintenance of good communications between the Trust and its employees. The examples below do not cover all circumstances and are therefore not comprehensive but provide a guide to the likely consequences of breaking the disciplinary rules and would normally lead to the action specified.

2. Examples of Gross Misconduct

- 2.1 The following list indicates the type of conduct which would constitute gross misconduct i.e. conduct resulting in a serious breach of contractual terms, and would normally lead to summary dismissal for a first offence:
- (a) unauthorised removal or use of the Trust's property or serious misuse of the Trust's property or name;
 - (b) offences of dishonesty, including theft and fraud, including defrauding the Trust in a private capacity;
 - (c) serious harassment, abuse, intimidation and bullying including related to any of the protected characteristics of the Equality Act and offences committed at work and/or outside working hours;
 - (d) fighting/physical violence;
 - (e) falsification of records such as payment, subsistence or expenses claims, qualifications including non/false disclosure of eligibility to work, criminal records and/or safeguarding information;
 - (f) deliberate damage to Trust property;
 - (g) serious breach of health and safety rules or regulations, including deliberate damage to, neglect of, or misuse of safety equipment (read in conjunction with the attached list titled 'Observance of Safety Rules') including smoking on Trust premises where it is a health and safety risk;
 - (h) serious neglect of duty or breach of professional codes/boundaries by act, or omission;
 - (i) undertaking additional employment or being engaged in any other business without the express consent of the Trust, where such consent is required;
 - (j) serious incapability whilst on duty and/or at work brought on by alcohol or substance/drug abuse;
 - (k) serious negligence which causes, or might cause, loss, damage or injury;
 - (l) serious insubordination including obstructive or disruptive behaviour;
 - (m) serious breach of confidence;
 - (n) serious breach of data protection regulations;
 - (o) damage to the Trust's reputation by unreasonable actions/neglect of duty which results in negative publicity(p) abuse of internet/email or social media
 - (q) deliberately accessing or attempting to access internet sites containing pornographic, offensive or obscene material
 - (r) abuse of Trust's resources (assets and equipment supplied for work purposes) for private purposes

22 As indicated above, this list is not intended to be exhaustive nor is it in any order of seriousness.

2.3. A single act of ordinary misconduct will not normally in itself justify dismissal, but it must be clearly understood that under the concept of cumulative misconduct, a succession of further misconduct incidents will be taken into account and cumulatively may result in dismissal.

3. **Observance of Safety Rules**

Section 7 of the Health and Safety at Work, etc Act 1974 provides

that: "It shall be the duty of every employee while at work -

- (a) to take reasonable care for the health and safety of themselves and of other persons who may be affected by their acts or omissions at work; and
- (b) as regards any duty or requirements imposed on their employer or any other person by or under any of the relevant statutory provisions, to co-operate with him so far as is necessary to enable that duty or requirement to be performed or complied with."

Although all safety rules must be stringently observed, the following list identifies, as examples only, the areas of importance:

1. Intentionally or recklessly interfering with or misusing anything provided in the interests of safety, health or wellbeing.
2. Endangering by act or omission, themselves, any other employee or other person.
3. Failing to observe safety precautions, safety rules and regulations.
4. Failing to comply with training provided and conform to safe systems of work laid down.
5. failing to comply with terms of permit to work systems or lock off systems or similar systems or procedures where they are in operation;
6. Failing to use or wear safety equipment and/or personal protective equipment/ clothing provided by the Authority.
7. Working on equipment, eg electrical equipment when unauthorised to do so.
8. Knowingly working with dangerous materials (e.g. asbestos, lead, hazardous chemicals, etc.) without proper precautions and/or authorisation.
9. Using unauthorised equipment.
10. Causing or contributing to unsanitary or unhealthy conditions.

11. Smoking in prohibited areas.

It is the duty and responsibility of all management and supervisory staff to ensure that safe plant and equipment, safe systems of work, safe places of work and acts as thereto, and a healthy environment are provided and used by all employees and that sufficient information, instruction and training and supervision is provided to ensure the health, safety and wellbeing of employees.

4. Off-Duty Conduct

This is a particularly sensitive area in that the employer has clearly to establish that the conduct has rendered the individual unsuitable for his/her work or unacceptable to his/her colleagues. In these cases, a number of factors have to be taken into account and, since every case will be different, it is impossible here to prescribe a set approach for dealing with such matters. It is fair to say, however, that the following should be considered:-

- (a) Potential risk to third parties - particularly children and other vulnerable sectors of the community;
- (b) The effect the conduct has on the employer's public image or reputation;
- (c) The effect on other employees - retaining someone in work may cause disharmony amongst the rest of the workforce; and
- (d) The effect that the conduct has on the employment relationship itself - has the bond of trust been irreparably undermined?