Disciplinary Policy

WATERGATE SCHOOL

'I Can, You Can, Together We Will'

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1. Introduction

1.1 The Disciplinary Policy is designed to encourage all employees to achieve and maintain standards of conduct. The aim is to ensure fair and consistent treatment of all employees. This policy has been formulated by the Council after consultation with trade union representatives to provide fair, speedy and effective arrangements for dealing with disciplinary matters in schools.

1.2 The Policy is intended to cover all cases of misconduct, including minor, serious, cumulative or gross misconduct, and those instances of poor work performance which do not result from genuine lack of capability on the part of the employee to carry out the duties or responsibilities of his/her job. Where capability is an issue to be addressed this should be dealt with under the school's capability procedures. The Council has produced an LA Model Capability Procedure for Schools. Procedures produced by the relevant Diocesan Boards may operate in voluntary aided schools. In certain circumstances it may not be immediately apparent until an investigation has started if the case should be dealt with as a disciplinary or capability matter. In such circumstances advice should be sought from the school's HR Adviser.

1.3 There are some circumstances where dismissal on grounds of misconduct or capability may not apply, but where the school/Council may be considering convening a hearing to determine whether an employee should be dismissed for some other substantial reason (SOSR). In such circumstances, a similar format will be followed to that detailed in this Policy i.e. the employee will be invited to attend a hearing; will have the right to be represented; will have the right to respond to the case presented and will have a right of appeal against dismissal.

1.4 The Policy has been drafted in accordance with the principles contained in the ACAS Code of Practice on Disciplinary and Grievance Procedures (March 2015) and in accordance with relevant Employment and Education Acts.

2. Employees within the Policy

2.1 This procedure applies to all employees within schools, but does not apply:

(a) On dismissal for grounds of redundancy; or

(b) Where the individual has not completed the probation period and dismissal may arise from unsuitability for confirmation of employment.

In these circumstances the Lewisham LA Guidance for schools - Dismissal of Staff (By Reason of Redundancy) and the school's Probation Procedure will apply respectively.

2.2 Although this procedure does not apply in the circumstances detailed in paragraph 2.1, all employees regardless of employment status or length of service, are subject to similar standards of conduct and work performance. Specifically employees should be aware of a number of Council/school policies which set out clear standards expected of them when carrying out their duties, for example:-

- Employee Code of Conduct including Gifts and Hospitality
- Equality and Diversity
- Respect and Dignity
- Health and Safety
- Acceptable use of ICT (and associated guidance)
- Fraud and Corruption
- Child Protection and Safeguarding including DfE statutory guidance for schools & colleges — 'Keeping children safe in education'
- Appraisal for Teaching and Support Staff
- School Handbook if applicable

The Disciplinary Policy will be made readily accessible in Watergate School, to all employees, for reference purposes.

3. Key Principles

3.1 In dealing with minor instances of poor work performance or misconduct, initial action will normally be of an informal nature e.g. counselling, training, setting clear standards for performance/conduct and verbal warnings. In instances of poor work performance, formal action under this procedure will only be taken where the poor performance does not result from a lack of capability to carry out the duties — see para 1.2.

3.2 The object of the formal procedure is to provide a framework to deal with employees whose standard of conduct or work performance continues to fall short of that required by Watergate School/Council after any informal action has been taken. It is also designed to encourage an employee whose standard of work or conduct is unsatisfactory to improve.

3.3 Managers may initiate the procedure at any level, informal or formal, depending on the specific circumstances of the case. Further advice can be sought from Lewisham Schools' HR.

3.4 The types of issues which could result in disciplinary action being taken are outlined in Appendix 2 of this code. Gross misconduct is defined as misconduct of such a serious nature that the school/council is justified in no longer tolerating the employee's continued presence at work. If the allegation(s) are substantiated then this could result in summary dismissal without notice. Other misconduct of a serious or minor nature may result in the issuing of a written, final or indefinite final written warning. Cumulative or repeated acts of misconduct may lead to dismissal with notice in situations where an act of misconduct is committed while an earlier warning is still in force or where a repeated pattern can be established.

3.5 The procedure is designed to establish the facts of a case quickly and to deal consistently with disciplinary issues. An investigation must be undertaken as soon as possible to establish the facts of the case, in accordance with para 4.13.

3.6 Where the nature of the alleged investigation suggests child or adult protection concerns, an internal management investigation should not commence until it has been established if the police will be taking any action. Child and adult protection concerns may include allegations of physical abuse, sexual abuse, bullying, intimidation and manipulation, threats to withhold services or financial abuse. Managers should refer to the statutory guidance for schools & colleges 'Keeping Children Safe in Education' in such cases and seek advice from Lewisham Schools' HR.

3.7 Employees will have access to any evidence that the presenting officer wishes to rely on at the formal hearing through witnesses or documentary evidence.

3.8 Employees may be represented by a trade union representative or a workplace colleague at every stage of the formal disciplinary procedure, including the investigation stages, although the employee must make her/his own arrangements for this. If the employee requests to be accompanied by a workplace colleague then the colleague should be given reasonable time off for this purpose although they must seek prior approval by their line manager.

3.9 No formal disciplinary action should be taken against a trade union official until the circumstances of the case have been discussed with Lewisham Schools' HR and raised with the district official of the union concerned.

3.10 Employees should receive a minimum of 5 working days' notice of a disciplinary hearing, with written details of the grounds for the hearing together with any evidence management intends to rely on and the possible consequences. Longer notice of the hearing should be given where possible.

3.11 At all stages, employees will be entitled to state their case before decisions are reached. Where an employee is unable to attend a hearing he/she is entitled to be represented in their absence. However, the Hearing Officer/Panel, will have the discretion to proceed in the employees' absence. When exercising this discretion, the Hearing Officer/Panel should consider all

relevant circumstances, for example medical evidence, the number of postponements previously made, the employee's personal circumstances. Letters requesting the employee to attend the hearing should make it clear that the hearing may proceed in his/her absence.

3.12 Generally, the Governing Body should delegate hearing disciplinary cases, including dismissals, to the Headteacher. In the case of dismissals however, where special circumstances exist, the Governing Body can choose to delegate to a Panel of one or more governors or a Panel of one or more governors and the Headteacher together, but they must not allow any outside body or persons to take decisions for them. No member of the Governing Body who is employed to work in the school shall be eligible for membership of disciplinary panels. Further advice can be sought from Lewisham Schools' HR.

3.13 An employee should not be summarily dismissed (that is without notice) for a first breach of discipline, except in the event of gross misconduct. If an employee is dismissed for some other misconduct, such a dismissal will be with notice or payment in lieu of notice.

3.14 Employees have the right to appeal against any formal disciplinary sanction imposed. There is however no right of appeal against any informal action taken by management.

3.15 Watergate School is committed to maintaining professional relationships based on openness, honesty, and mutual trust. Employees are expected to act with integrity at all times.

Employees must not make covert or unauthorised recordings of meetings, telephone calls, or workplace discussions. This includes audio, video, and digital recordings made on personal or work devices.

Unauthorised recording may:

- Constitute a breach of trust and confidence;
- Undermine professional relationships and standards of conduct;
- Breach confidentiality requirements and data protection legislation.

Any recording of identifiable individuals may constitute personal data under the UK General Data Protection Regulation (UK GDPR) and the Data Protection Act 2018. Employees must ensure that personal data is handled lawfully, fairly, and transparently at all times. Unauthorised recording, storage, or sharing of recordings may result in disciplinary action.

Where an employee believes that recording a meeting is necessary as a reasonable adjustment, for example under the Equality Act 2010, a request must be made in advance and agreed by the Chair of the meeting. Any agreed recording arrangements must be clearly documented. Alternative arrangements, such as detailed minutes or accompaniment by a trade union representative, may also be offered where appropriate.

4. The Disciplinary Procedure

Informal Action

4.1 The following section deals with minor disciplinary issues and should not be used for cases involving serious or gross misconduct where formal action should be instigated immediately.

4.2 In many cases, dealing with matters of discipline early - the right actions at the right time - will often provide a more satisfactory result for both the manager and employee and may well prevent the need for more formal action in the future.

4.3 Minor instances of misconduct and poor practice should initially be dealt with in an informal way e.g. counselling, training, setting clear standards for improvement. This could be in the form of standard setting and/or issuing a verbal warning, depending on the nature of the misconduct or poor practice. Such action is intended to be undertaken on an informal basis between the manager and the employee. There is therefore no right at this informal stage to be accompanied by a trade union representative or another employee.

4.4 Where improvement in performance, attendance or conduct is required, the employee should be told what standards are expected, how this will be reviewed and over what time period. Any informal disciplinary discussions should be noted and confirmed in writing, with a copy given to the employee concerned. Employees should also be made aware of what action will be taken if they fail to improve. An example of an informal standard setting letter is attached at Appendix 5.

4.5 Where a verbal warning is issued this also should be confirmed in writing and a copy placed on the employee's file and given to the employee. The employee may comment on the content if he/she wishes and this should also be placed on the personal file. If there is any further misconduct of any type within a period of 6 months from the date of issue of the verbal warning then the employee may be subject to formal disciplinary action and the verbal warning may be taken into account.

4.6 If the employee subsequently achieves the required improvements then the employee should be informed of the need to maintain that improvement. A copy should be placed on his/her personal file. The employee may comment on the content of the note if he/she wishes and this should also be placed on the personal file.

4.7 Where the required improvement is not reached or maintained then the informal action, 'including standard setting letters and verbal warnings, may be taken into account in any formal action subsequently taken under either the disciplinary or capability procedures.

4.8 If during an informal meeting it becomes clear that the matter is more serious than first thought, the meeting should be adjourned and a decision made as to whether formal action should be taken immediately. Managers should contact their School's HR adviser for further advice at this stage. The employee should be kept informed in writing of any decisions and associated timescales.

4.9 Details of sanctions appropriate under Informal Disciplinary Action are outlined in Appendix 1

Formal Action

4.10 Managers should seek the advice of HR before taking any formal disciplinary action.

4.11 No formal disciplinary action should be taken against a trade union official until the circumstances of the case have been discussed with Lewisham Schools' HR and raised with the district official of the union concerned.

4.12 The object of the formal procedure is to provide a framework to deal with employees whose standard of conduct or practice continues to fall short of that required by the school after any informal action has been taken, as well as deal with issues of serious and gross misconduct.

Management Investigation

4.13 All cases being dealt with under the formal procedure should be investigated. A fact-finding exercise will be undertaken by the investigating officer, who will generally also be the presenting officer should the case be referred to a formal hearing, in order to accumulate sufficient information to determine whether or not the matter needs to be pursued formally. This could be undertaken by the Headteacher but in most cases it is expected that the Headteacher will identify a senior member of the school leadership team to carry out the investigation. In all cases, the manager conducting the investigation should be as objective as possible. Support for the investigating officer can be provided by the school's HR adviser.

4.14 The investigation will involve interviewing the parties, taking statements and any other steps which may be appropriate. Employees are required to co-operate with any investigation and to attend a fact-finding meeting at which they may be accompanied by a trade union representative or a workplace colleague. It will not be appropriate for anyone who is due to be interviewed as part of the investigation to accompany another work colleague to their fact-finding interview.

4.15 The investigation should involve interviewing all the parties involved separately. Statements should be obtained from any witnesses at the earliest opportunity and records kept of what was said. It is important that the investigation is concluded as quickly as possible. Where possible statements should be signed and dated by the witness concerned. Meetings should not be recorded via electronic devices by any of the parties involved and the investigating officer should confirm this at the beginning of the meeting.

4.16 CCTV footage may be used in evidence where this was recorded in a public area. Such footage should be shown to the employee to allow them the opportunity to comment and respond.

4.17 Where evidence of fraud or corruption is identified Headteachers should immediately report this to the Council's Anti-Fraud and Corruption Team (AFACT) or the Directorate for Children and Young People's Services' Head of Resources or his/her nominated officer.

4.16 Where the Council's Special Investigations (SI) team have undertaken an investigation, the investigation report may be produced and the SI officer involved may be called as a witness at any subsequent hearing. In addition, the investigating officer may also meet with the employee as part of their fact finding where there are additional questions they may wish to ask or where new information comes to light.

4.19 If following the investigation, the investigating officer considers that the matter should be pursued formally, the Headteacher (if not the investigating officer) should be informed. Specific details of the case should not be provided in case the Headteacher is required to fulfil the role of Hearing Officer.

4.20 If as a result of the investigation it is found that formal disciplinary action is not appropriate, the Headteacher should decide whether any other action is necessary in accordance with school's procedures or other guidelines (e.g. informal action such as standard setting or a verbal warning, capability). The employee should be notified of any decision in writing.

4.21 If no further action is taken all records of the investigation will be removed from the employee's file, except where there are allegations involving vulnerable service users/children in which case the paperwork will be retained indefinitely.

4.22 If a decision is made to pursue formal disciplinary action a disciplinary hearing should be convened as soon as possible. Advice should be sought from the school's HR Adviser before taking formal disciplinary action.

4.23 All relevant evidence gathered as part of the management investigation should be disclosed to the employee and his/her representative at the same time as the disciplinary pack containing the documents which the presenting officer proposes to rely on at the Hearing.

5. Suspension

5.1 Suspension with pay should be considered only in cases where there is a possibility of dismissal for grounds of gross misconduct, where relationships have broken down, where the employee's presence could hinder the investigation, or where there is concern about the possibility of further misconduct. Consideration should be given to the potential detrimental effect of suspension on both the employee and the service. Employees should not be suspended without good justifiable reason. Transferring the employee elsewhere in the school may be considered as an alternative to suspension in appropriate cases.

5.2 Both the Governing Body and the Headteacher have the power to suspend (and subsequently lift a suspension), although this would normally be carried out by the Headteacher, and confirmed in writing within 3 working days. Other than in exceptional circumstances (for example where police or special investigations may be involved) investigations should be started and undertaken as quickly as possible, ideally within 4 months if possible.

5.3 Where reasonably possible, the employee may be accompanied by a trade union representative or another work colleague to the suspension meeting.

5.4 The employee should be told the reason for the suspension. Where this is not possible, for example it may prejudice an investigation, then he/she should be given broad reasons. The employee should be advised that during the period of suspension he/she must not enter the workplace without prior permission from the Headteacher. A request to meet with the trade union representative on school premises will not be unreasonably denied.

5.5 Suspension will usually be on full pay (including any contractual payments received on a regular basis), save for where the employee is already on reduced pay, or during the period of suspension would be subject to a reduction in pay had it not been for the suspension (e.g. sick pay, maternity/adoption/additional paternity leave) However, there may be exceptional circumstances where an employee may be suspended without pay, for example where the employee is on unauthorised absence e.g. being held on remand for a lengthy period. Advice should always be sought from Schools' HR in such circumstances.

5.6 The suspension will be reviewed every 10 working days and the employee should be written to. The letter should provide the employee with information on how the investigation is progressing.

6. Arranging the disciplinary hearing

6.1 If following consultation with the school's HR Adviser a decision is made to pursue formal disciplinary action a disciplinary hearing should be convened as soon as possible. The presenting officer or school's HR Adviser will inform the employee of the date, time and place of the hearing in writing, with a statement giving an outline of the allegations against the employee. Any evidence gathered as part of the management investigation which is going to be presented should be disclosed to the employee and his/her representative in the form of a disciplinary pack including the names of any witnesses to be called. Where appropriate confidential or sensitive information, such as names of pupils, may be redacted. The covering letter and disciplinary pack should be sent to the employee no later than 5 working days before the hearing. Longer notice should be given where possible; this is particularly important if the documentation to be submitted is lengthy or complex.

6.2 The employee must provide details of any witnesses together with any documents they intend to rely on as early as possible, but no later than 2 full working days before the hearing. As above in 6.1, this is particularly important if the documentation to be submitted is lengthy or complex.

6.3 Where an employee is unable or fails to attend, the hearing may proceed in their absence as per Para 3.11. above.

6.4 Where an employee has reasonably requested to be accompanied at a hearing and his/her representative is unable to attend on the notified date, he/she has the right to request a postponement of the hearing for a period of up to 5 working days following the day after the date which had previously been set. The Hearing Officer/Panel has the discretion to postpone or adjourn a hearing. Should they do so a new date will be arranged as quickly as possible. A request for a postponement should be made as soon as possible after notification of the hearing date.

6.5 The Hearing Officer/Panel will hold the disciplinary hearing following the procedure set out in Appendix 3 of this policy. A Schools' HR Adviser will attend hearings to advise and to represent the Executive Director for Children and Young People.

6.6 A notetaker may attend on behalf of the hearing officer/panel conducting the hearing to provide them with confidential notes; the notetaker's role is confined to taking notes of the proceedings. Notes may be in the form of a summary and are not necessarily verbatim. These are management notes and are not therefore subject to

prior agreement with the employee. The employee may also have a notetaker in attendance if he/she wishes.

6.7 The hearing should not be recorded via electronic devices by any of the parties involved and the Hearing Officer/Panel should confirm this at the beginning of the meeting.

6.8 The Hearing Officer/Panel may decide that further information/witnesses are required.

6.9 The Hearing Officer/Panel will make the final decision on any matters raised at the hearing.

7. Possible Outcomes of the Hearing

7.1 Possible outcomes are listed below together with the periods that the sanction remains in force:

- **(a)** No disciplinary action to be taken
- **(b)** Informal action such as standard setting or verbal warning
- **(c)** Written warning (12 months from date of the hearing)
- **(d)** Final written warning (18 months from date of the hearing)
- **(e)** Indefinite final written warning (indefinitely or subject to review) - see para 7.4 below
- **(f)** Cessation of employment at the school and a recommendation to the Director of Children and Young People's Services for dismissal with notice (following a written warning) or summary dismissal without notice (in cases of gross misconduct).
- **(g)** Relegation with a final written warning

No disciplinary action to be taken*:* in which case all correspondence relating to the hearing should be removed from the employee's personal file. The only exception being cases where there are allegations involving children and other vulnerable clients where the papers will be retained indefinitely. The employee concerned and the presenting officer should still receive confirmation of the outcome in writing, but should be advised that no record (other than the above) has been kept on the personal file.

Informal action *such as standard setting or verbal warning* in circumstances where the Hearing Officer/Panel considers that a formal warning would be too severe but where the employee needs to be reminded of the standards required.

Written, final or indefinite final written warning: In these circumstances the employee should be advised that any further disciplinary lapse may result in further disciplinary action including dismissal. In reaching a decision about which sanction to apply, the hearing officer/panel should consider all the circumstances of the case, including any disciplinary sanctions in place. Where the decision is to impose an indefinite final warning, the hearing officer/panel should, except where there are exceptional circumstances, consider including a review period. This should be included in the sanction letter. This should not be less than 3 years, after which a further review period may be appropriate, or the warning may be considered as spent. It will be the employee's responsibility to request a review at the relevant point. This should be submitted to the headteacher who will liaise with the school's HR Adviser to consider the request. There will be no right of appeal against the outcome of the review. In some circumstances, for example those involving children, the hearing officer/panel may impose an indefinite warning which will not be subject to review.

Dismissal*:* In circumstances other than gross misconduct this would be after previous written warning(s) or cumulative misconduct and would be dismissal with notice. Except in the event of gross misconduct, an employee may not be summarily dismissed for a first breach of discipline nor, save in exceptional circumstances, dismissed for a first breach of discipline. In cases of gross misconduct, summary dismissal without notice will normally be appropriate. Gross misconduct is misconduct of such a serious nature that the school is justified in no longer tolerating the employee's continued presence at the place of work. Examples of gross misconduct are given in Appendix 2.

Relegation: Where the employee is considered to be blameworthy of a serious offence (s) but there are deemed to be mitigating circumstances to justify disciplinary action

short of dismissal, the sanction may be relegation (downgrading). Payment will be commensurate to the grade of the new post. Relegation could also, where possible, be accompanied by a transfer to a different work area within the school, together with a final or indefinite final written warning. If the employee does not accept the relegation, then the dismissal will stand.

7.2 If an employee is guilty of further misconduct during the period that a warning is in force, this may result in a more severe sanction being applied. A spent warning will normally be disregarded only for the purpose of future disciplinary proceedings (excluding warnings relating to vulnerable adults or children). For other managerial purposes (e.g. appointments, references), the warning would remain on the record and may be considered as appropriate. Managers should not therefore remove the spent warning from the personal file.

7.3 If further misconduct occurs during the period that a warning is in force, then further disciplinary action must be considered. In addition, there may be occasions where an employee's conduct is satisfactory throughout the period the warning in is force, only for it to lapse thereafter. Where a pattern emerges and/or there is evidence of abuse, disciplinary action must be considered and the employee's disciplinary record may be borne in mind in deciding what sanction to apply. For example, a 'spent' warning may indicate that an employee was aware of the school's required standards of conduct, or may be relevant to any arguments of mitigation.

7.4 There may also be circumstances where the misconduct is so serious - for example either verging on gross misconduct or relating to issues including the care of children or vulnerable clients - that a disciplinary record cannot be disregarded for future disciplinary purposes. In such circumstances the written warning can never be removed and any other misconduct may lead to dismissal.

7.5 If the Hearing Officer/Panel contemplate relegation, dismissal or summary dismissal, the Executive Director for Children and Young People Services or his/her representative must be consulted.

8. Notifying employees of the outcome

8.1 The Hearing Officer/Panel may inform the employee of the decision verbally at the end of the hearing following deliberation of the evidence, but in all cases should confirm an outline of the decision verbally within 5 working days and follow this up in more detail in writing within 10 working days. Where the case is complex and the Hearing Officer/Panel is unable to meet this timescale then the employee should be informed of the reason for the delay. The decision letter must include the employee's right of appeal.

8.2 The letter should outline the reason or reasons why the decision was taken, the account taken of any mitigating factors, and the rights of appeal. Where the sanction is a warning then the employee should also be advised of the period the warning will remain in force and the possible consequence of further offences. The Hearing Officer/Panel should consult with the school's HR Adviser to ensure that the contents of the letter meet these requirements. The letter should be sent first class or by hand as appropriate with separate copies sent to the presenting manager and the trade union representative. A copy should also be placed on the employee's personal file.

9. Appeals

9.1 An employee wishing to appeal against formal disciplinary action must do so in writing to the Chair of Governors within 10 working days of receiving written notification of the disciplinary action. The appeal letter must clearly state the grounds for the appeal which must fall within one or more of the following: -

- **(i)** a procedural flaw, stating precisely where the disciplinary policy/procedure has been breached
- **(ii)** the severity of the sanction, stating precisely why it was thought that the sanction was too severe

(iii) any other perceived unfairness of the decision, stating precisely what this was

9.2 Whilst there is an entitlement to an appeal, there will not be an appeal hearing unless the grounds fall within one or more of the above three categories. If sufficient details are not provided, the school's HR adviser will ask the employee for clarification. The information should be provided by no later than 20 working days from the date of the registration of the appeal. If the information is not provided then the appeal will not norm.

9.3 All appeals will be heard by a Disciplinary Appeals Sub-Group appointed by the main Governing Body and will normally consist of not less than three governors, save in exceptional circumstances. A Schools' HR Adviser will attend appeal hearings to advise the Appeals Sub-Group and to represent the Executive Director for Children and Young People Services. A notetaker may also attend on behalf of the governors to provide them with confidential notes. the notetaker's role is confined to taking notes of the proceedings. Notes may be in the form of a summary and are not necessarily verbatim. These are management notes and are not therefore subject to prior agreement with the employee. The employee may also have a notetaker in attendance if he/she wishes.

9.4 The Appeals Sub-Group will hear the appeal as soon as practically possible. Generally, this will be within 30 working days of registration of the appeal with the Chair of Governors or as soon as possible thereafter. Where the appeal cannot be arranged within the specified timescale, the employee should be kept updated.

9.5 It is important that the Appeals Sub-Group is impartial and has not been involved in the case previously. If the employee or trade union representative has any concerns about the impartiality of the proposed members of the Appeals Sub-Group this should be referred to the Chair of Governors for consideration. If unresolved then the matter should be raised with the Executive Director of Children and Young People Services for advice.

9.6 The employee will be given not less than 5 working days notice of the appeal hearing and will be provided with a copy of all the documentary evidence produced for the original hearing plus the outcome letter and the letter/grounds of appeal. New evidence or additional witnesses will not be allowed save in exceptional circumstances, at the discretion of the Appeals Sub-Group

9.7 The employee will have the right to representation by a trade union representative or a workplace colleague at the Appeal Hearing. The employee may also have a notetaker in attendance if he/she wishes.

9.8 Where an employee has reasonably requested to be accompanied at an appeal hearing and his/her representative is unable to attend on the notified date, he/she has the right to request a postponement of the appeal hearing for a period of up to 5 working days following the day after the date which had previously been set. The Appeals Sub-Group has the discretion to postpone or adjourn an appeal hearing. Should they do so a new date will be arranged as quickly as possible. A request for a postponement should be made as soon as possible after notification of the appeal hearing date.

9.9 Where an employee is unable to attend the appeal hearing he/she is entitled to be represented in their absence. However, the Appeals Sub-Group, following consultation with the union representative, will have the discretion to proceed in the employee's absence_ In these circumstances it is recommended that advice be sought from School's HR.

9.10 Procedures to be followed at an Appeal Hearing are outlined in Appendix 4.

9.11 The presenting manager at the original disciplinary hearing will normally present management's case to the Appeals Sub Group and will call the Hearing Officer/Chair of the original panel as a witness to present evidence as to the basis of their decision on the points which are the subject of the appeal. Depending on the nature of the case and the grounds for the appeal, the School may decide to reverse these roles but the final decision on that remains with the School. The management case at the appeal could include calling appropriate witnesses and providing copies of management notes of the original hearing.

9.12 The Appeal Hearing should not be recorded via electronic devices by any of the parties involved and the Chair of the Appeals Sub-Group should confirm this at the beginning of the meeting

9.13 Appeals are normally by way of review rather than rehearing i.e. the Appeals Sub-Group should consider the grounds of the appeal and come to a decision as to whether or not the Hearing Officer/Panel made a reasonable decision on the basis of the evidence put before them at the time. Specifically, the Appeal Sub-Group should consider whether the original Hearing Officer/Panel;

- had sufficient evidence available in order to come to a reasoned judgement
- can demonstrate that the arguments and reasoning, of both sides, were fully considered when reaching a decision

9.14 In exceptional circumstances the Appeals Sub-Group may request to hear from a particular witness or re-consider a piece of evidence. For example it may be necessary to hear evidence about whether:

- There was an adequate or appropriate investigation; or
- There was a procedural flaw which could be rectified by the appeal.

9.15 The final decision on any matter will rest with the Appeals Sub-Group following consultation with both parties.

Outcome of the Appeal Hearing

9.16 If the appeal is upheld and the Appeals Sub-Group decide that no sanction is applicable, the employee will be advised of that decision in writing within 5 working days. In this case all correspondence relating to the original hearing and the appeal hearing should be removed from the employee's personal file. The only exception being cases where there are allegations involving children and other vulnerable clients where the papers will be retained indefinitely. The employee concerned and the presenting officer should still receive confirmation of the outcome in writing, but should be advised that no record (other than the above) has been kept on the personal file.

9.17 If the appeal is not upheld, either in part or completely, the Appeals Sub-Group may apply the following sanctions:

- Confirm the original decision.

- Amend the original decision of the Hearing Officer/Panel by substituting the sanction applied by the original Hearing Officer/Panel for a lesser sanction, see paragraph 7 above

- The Appeals Sub-Group may inform the employee of the decision verbally at the end of the appeal hearing following deliberation of the evidence, but in all cases should confirm an outline of the decision verbally within 5 working days and follow this up in more detail in writing within 10 working days. Where the case is complex and the Appeals Sub-Group is unable to meet this timescale then the employee should be informed of the reason for the delay. The HR adviser to the Appeals Sub-Group will advise on the content of the outcome letter to ensure that it meets these requirements.

9.18 Where the Appeals Sub-Group decides that the employee should be relegated as an alternative to dismissal, then the employee will be re-instated to their original post with effect from the date of dismissal until the date of the decision of the Appeals Sub-Group. The terms and conditions applicable to the post arising from the relegation will apply from the date of the decision of the Appeals Sub-Group.

9.19 Where the Appeals Sub-Group decides that no sanction is applicable or that the employee should be issued with a written, final or indefinite written warning only, then the employee will be re-instated with effect from the date of dismissal.

Effect of Re-instatement

9.20 Where an employee is re-instated it means that they were never in fact dismissed and their contract of employment continued to exist from the date of the first decision to dismiss and the decision of the Appeals Sub-Group which resulted in re-instatement. This means that:

- Continuity of service shall be preserved
- He/she will be entitled to full back pay including pension
- He/she shall be entitled to accrue annual leave entitlement (where appropriate) for the period for which they were 'dismissed'.

9.21 If the employee was in receipt of state benefits then he/she will be expected to notify the appropriate Agency of their reinstatement and to repay any benefits received.

9.22 The decision of the Disciplinary Appeals Sub-Group is final.

10 Complaint against a Headteacher

10.1 If a complaint is made against **a Headteacher** it will **be referred to the** Chair of Governors.

10.2 The Chair of Governors will initiate an investigation into the complaint, at the same time notifying the Headteacher and the Executive Director for Children and Young People Services. Advice and support may be provided by the school's **HR** adviser.

10.3 If, as a result of the investigation, the Chair of Governors is of the view that the Headteacher has a case to answer, he/she should arrange for a Disciplinary Panel **of 3** governors to hear the case. The case will normally be presented by the Chair of Governors. Alternatively, the Chair of Governors may request the Executive Director for Children and Young People Services to nominate a senior LA officer, or recommend an appropriately qualified external person, to undertake the investigation and present the case at any subsequent disciplinary hearing.

10.4 Where there is a possibility of disciplinary action, the Chair of Governors must ensure that there are sufficient Governors available to carry out impartially the functions of any disciplinary and appeals hearings. Members of the disciplinary and appeals hearings need not be left in complete ignorance; knowing about a situation does not constitute prejudice. However, members of hearings should be careful not to become directly involved, either through expressing opinions or taking action which might be seen to have prejudiced their ability to hear a case fairly.

10.5 The Executive Director for Children and Young People Services may attend or be represented at any disciplinary or appeal hearing.

Appendix 1

Informal Disciplinary Actions

It is important that minor incidents of misconduct or poor working practice are dealt with quickly as soon as they arise. The reasons for this are firstly, the employee is made aware of the problem and given the opportunity to correct it, thus removing the need for further formal disciplinary action. Secondly should there be further incidents it can be demonstrated that the employee's attention has been drawn to the problems and the expected standards have been explained to them. Informal disciplinary action may also result from a fact finding/ management investigation and, in some cases, following a formal hearing where the Hearing Officer/ Panel decides that a standard setting/ verbal warning would be a more appropriate level of sanction.

Informal action can be in the form of a verbal warning that sets out what standards are required of the employee, depending on the nature and extent of the problem.

Standard Setting Verbal Warning

Standard setting and/ or a verbal warning is a quick and efficient means of stopping an isolated minor incident. Having taken action to stop the incident the manager should then arrange to meet with the employee informally to try to establish why the breach occurred. It may emerge that some form of counselling, training or other support is required.

The manager should remind the employee of the standards expected of him/ her for improvement in working practices, attendance or conduct e.g., lateness, failure to follow procedures etc. and where appropriate issue a verbal warning, advising him/ her that any further incidents could lead to formal disciplinary action being taken. The manager should explore any underlying reasons for the misconduct/ poor working practices with the employee and provide support as appropriate e.g. training.

A record should be kept of the verbal warning and any actions recommended should be confirmed to the employee in writing and a copy placed on the employee's personal file. The employee may comment on the content of the note if he or she wishes and this should also be placed on the personal file.

If the required standards have been obtained then this should be confirmed in writing to the employee and a copy placed on the personal file. If the required standards are not reached/ maintained then the manager may issue a further verbal warning or proceed to formal disciplinary action as appropriate. Where informal steps have failed to bring about the desired improvement then the formal procedure will be implemented.

The above actions is intended to be undertaken on an informal basis between the manager and the employee. There is therefore not right at this informal stage to be accompanied by a trade union representative or a workplace colleague. Standard setting letters and verbal warnings may be used as evidence in formal action taken under either the disciplinary or capability procedures.

Appendix 2

Types of Misconduct

1. Gross misconduct

If, after investigation, it is deemed that an employee has committed an offence of the following nature (the list is not exhaustive), the normal consequence will be dismissal without notice:

- Serious failure to comply with or operate the School's or Council's Equality & Diversity policies. Examples include; serious acts of discrimination, harassment, or verbal abuse against employees, clients or members of the public on grounds of race, sex, disability, age, sexual orientation, gender reassignment, marital status, civil partnership, pregnancy or maternity or religious/faith beliefs; the display or circulation within the workplace of any literature or material via any medium that could reasonably be expected to offend other persons
- Serious bullying or harassment
- Abuse of vulnerable adults or children contrary to Adult and Child Protection Procedures
- Serious infringement of health and safety policy, procedures or guidance
- Serious failure to comply with or operate the School's or Council's Code of Conduct (including gifts and hospitality) e.g. holding unauthorised paid employment during

paid school time; conducting inappropriate relationships with vulnerable clients/pupils; not declaring a personal interest which may infringe the employee's impartiality, accepting hospitality or gifts from existing or potential suppliers
- Serious negligence that causes or might cause unacceptable loss, damage or injury
- An action which has or could bring the School or Council into serious disrepute
- Serious incapability whilst on duty brought on by alcohol, illegal drugs or abuse of prescribed medication
- Serious failure to comply with or operate the School's or Council's Information Systems and Security Standards e.g. gaining unauthorised access to passwords and breaches of the Acceptable Use of ICT policy, including emails with pornographic or inappropriate attachments, posting derogatory or offensive comments on the internet about the School, the Council, their policies, a governor or an elected member of the Council, or a Council employee
- Serious breach of financial regulations or procedures
- Unauthorised removal, possession, use or theft of property belonging to the School, the Council, an employee, pupil or member of the public
- Acts of violence including the assault of an employee, pupil, or member of the public during working hours or in connection with their employment or work
- Falsification of qualifications or information to obtain employment/promotion with the School or Council or which are a statutory or essential requirement of employment or which result in additional remuneration
- Deliberate falsification of records i.e. attendance sheets, subsistence and expense claims etc
- Acceptance of bribes, gifts or hospitality, or other corrupt or fraudulent practices
- Defrauding the School, Council or any other organisation/person of monies e.g. Housing Benefit, Job Seekers Allowance,
- Disclosure of highly confidential matters to public sources or the deliberate unauthorised use or disclosure of any information or computer-generated information from which a living individual can be identified (Subject to the Public Interest Disclosure Act 1998)
- Serious breach of the Data Protection Act
- Committing a criminal offence at or away from work that renders the employee unsuitable to remain in the Councils employment or which may damage the School's or Council's reputation. Or where there are reasonable grounds to believe that a serious criminal offence has been committed which may be connected or unconnected with their employment.

Other types of misconduct

Misconduct short of gross misconduct may result in a written warning, final written warning or an indefinite final written warning being issued. Cumulative or repeated acts of misconduct may lead to dismissal with notice in situations where an act is committed while an earlier warning is still 'live' i.e. in force. Examples of misconduct where a form of warning may be issued, or where cumulative or repeated acts could lead to dismissal, as set out below. This list is not exhaustive:-

- Attendance and Time-keeping
  Failure to comply with attendance and time-keeping requirements.
  Failure to follow procedures for booking and returning from leave
  Persistent absence and or excessive absence without medical reason

- Telecommunications related issues
  Overuse of telephone, fax or internet for personal reasons
  Inappropriate use of e-mail or Internet (gross misconduct in serious cases)
  Recording conversations or meetings without having been given permission by the employee/ manager concerned.

- Performance (which is not deemed to arise from capability)
  Error resulting from poor working practices
  Failure to maintain proper records
  Failure to follow council procedures e.g. financial regulations, safety standard
  Negligent to performance (gross misconduct in serious cases)

Failure to meet targets, deadline and/ or objectives
Poor customer service

- Behaviour
  Insubordination
  Failure to follow a legitimate management instruction
  Prolonged time-wasting
  Inappropriate behaviour towards a manager, colleague or person in the care or charge of the School/ Council or member of the public (gross misconduct in serious cases).

- False or vexatious complaints/ grievances made against another employee or manager.

Serious cases of the above examples are potentially 'gross misconduct'.

Appendix 3

Step by Step Guide to the Disciplinary Hearing procedure

STEP 1	The Hearing Officer/ Chair of Panel should ensure that there is a management notetaker. The Hearing Officer/ Chair of Panel: • Introduces all parties **(expect witnesses who will be called later in the proceedings)** • Explains **the purpose of the hearing** and the procedure to be followed • Clarifies position with regard to witnesses on both sides • **Confirms that the proceedings should not be recorded by any of the parties present and all mobile phones should be switched off** • Reads out the allegations and asks the employee whether he/ she admits or denies the allegation.
STEP 2	Employee admits or denies the allegations. The next part of the hearing will vary depending on the employee's answer. If the employee admits the allegations go to Steps 3 to 10 If the employee denies the allegations go to Steps 11 to 32
Employee admits allegations	
Step 3	Having admitted the allegations, the employee presents any mitigating circumstances to the Hearing Officer/ Panel.
STEP 4	The presenting officer may ask questions of the employee. The questions may relate to the mitigation or if appropriate the circumstances which led to the **misconduct**. The presenting officer may present evidence to support any argument against the mitigation.

STEP 5	The Hearing Officer/ Panel may ask questions of the employee and presenting officer as appropriate, to ensure that they have a full understanding of all the facts of the case including the mitigation**. In exceptional circumstances the Hearing Officer/ Panel may call witnesses or seek further evidence to ensure that they are aware of all the facts of the case before making a decision. The Hearing Officer/ Panel may decide to adjourn the hearing to allow for this to happen**.
STEP 6	The HR Adviser may ask questions of the employee and presenting officer as appropriate.
STEP 7	**SUMMING UP STAGE** Presenting officer sums up first Employee or representative sums up next No new evidence can be presented at this stage
STEP 8	All parties withdraw apart from the Hearing Officer/ Panel members, HR adviser and notetaker. The Hearing Officer/ Chair of Panel will advise the parties whether they need to wait to be recalled for the decision.
STEP 9	**DELIBERATION** Hearing Officer/ Panel reach a decision on the basis of the evidence presented. HR Advisor will provide advice as necessary. The Hearing Officer/ Panel members should make a note of the reasoning behind their decision and keep this carefully filed for future reference if need be.
STEP 10	**DECISION** The Hearing Officer/ Chair of Panel may give the decision verbally either at the end of the Hearing or within 5 working days. In any event the decision must be confirmed in writing together with the appeal rights, within 10 working days of the Hearing
	Employee denies allegations – Management presents facts of the case
STEP 11	The presenting officer presents the facts of the case on behalf of management.
STEP 12	Employee/ representative asks questions of the presenting officer
STEP 13	The Hearing Officer/ Panel ask questions of presenting officer
STEP 14	The HR Adviser may ask questions of the presenting officer
	Management witnesses called one at a time. Hearing Officer/ Chair of the Panel introduces all parties to each witness and explains procedure. It is open to the Hearing Officer/ Chair of Panel to disallow irrelevant or repetitive questioning. Step 15 to Step 19 followed for each witness in turn
STEP 15	Presenting Officer presents witness evidence by asking questions of the witness.

STEP 16	**Employee/ representative asks questions of the witness**
STEP 17	**Hearing Officer/ Panel ask questions of the witness**
STEP 18	**HR Adviser may ask questions of the witness**
STEP 19	**Witnesses may be reexamined in the above order to clarify any further points raised during presentation of evidence.**
	Employee presentation
STEP 20	**Employee/ representative presents employee's side of the case**
STEP 21	**Presenting officer asks questions on the presentation**
STEP 22	**Hearing Officer/ Panel ask questions on the presentation**
STEP 23	**HR Adviser may ask questions on the presentation**
	Employee's witnesses called one at a time. **Hearing Officer/ Chair of Panel introduces all parties to each witness and explains procedure. It is opens to the Hearing Officer/ Chair of Panel to disallow irrelevant or repetitive questioning.** **Steps 24 to Step 28 followed for each witness in turn**
STEP 24	**Employee/ representative presents witness evidence by asking questions of the witness.**
STEP 25	**Presenting officer asks questions of the witness**
STEP 26	**Hearing Office/ Panel ask questions of the witness**

STEP 27	**HR Adviser may ask questions of witness**
STEP 28	**Witnesses may be reexamined in the above order to clarify any further points raised during presentation of evidence.** **Once each party has completed their questioning, witnesses should not normally be recalled. However, the Hearing Officer/ Panel has the right to recall witnesses or seek further information if this is required. If this does happen, both sides should be recalled into the hearing. In addition, the Hearing Officer/ Panel may require that other witnesses/ evidence should be called/ produced in order to ensure that all the necessary facts can be considered before making a decision on the case. The Hearing Officer/ Panel may decide to adjourn the hearing**
STEP 29	**SUMMING UP STAGE** Presenting officer sum up first Employee or representative sums up next No new evidence can be presented at this stage
STEP 30	All parties withdraw apart from the Hearing Officer/ Panel members, HR adviser and notetaker. The Hearing Officer/ Chair of Panel will advise the parties whether they need to wait to be recalled for the decision.
STEP 31	**DELIBERATION** Hearing Officer/ Panel reach a decision on the basis of the evidence presented. HR adviser will provide advise as necessary. The Hearing Officer/ Panel should make a note of the reasoning behind his/ her decision and keep this carefully filed for future reference if need be.
STEP 32	**DECISION** The Hearing Officer/ Chair of Panel may give the decision verbally either at the end of the Hearing or within 5 working days. In any evet the decision must be confirmed in writing together with the appeal rights, within 10 working days of the Hearing.

Appendix 4

Step by Step Guide to the Disciplinary Appeal Hearing procedure

STEP 1	The Chair of the Appeals Sub Group should ensure that there is a management notetaker. The Chair of the Appeals Sub Group: • Introduces all parties **(except witnesses who will be called later in the proceedings)** • Explains **the purpose of the hearing** and the procedure to be followed • Clarifies position with regard to witnesses on both sides • **Confirms that the proceedings should not be recorded by any of the parties present and all mobile phones should be switched off.**
	Presentation by the Appellant

STEP 2	The appellant or representative presents the grounds of the appeal
STEP 3	The presenting officer may ask questions of the appellant / representative on the grounds of the appeal
STEP 4	The Appeals Sub Group may ask questions of the appellant / representative on the grounds of the appeal
STEP 5	The HR Adviser may ask questions of the appellant/ representative on the grounds of the appeal.
	The appellant's witnesses called one at a time. **The Chair of the Appeals Sub Group introduces all parties to each witness and explains procedure. It is open to the Chair of the Appeals Sub Group to disallow irrelevant or repetitive questioning** **Step 6 to Step 10 followed for each witness in turn.**
STEP 6	The appellant/ representative presents witness evidence by asking questions of the witness
STEP 7	The presenting officer asks questions of the witness
STEP 8	The Appeals Sub Group ask questions of the witness
STEP 9	The HR Adviser may ask questions of the witness
STEP 10	Witnesses may be re-examined in the above order to clarify any further points raised during presentation of evidence
STEP 11	**The presenting officer presents management's case in response to the appeal**
STEP 12	**The appellant or representative may ask questions of the presenting officer**
STEP 13	**The Appeals Sub Group may ask questions of the presenting officer**

STEP 14	**The HR Adviser may ask questions of the presenting officer**
	Management's witnesses called one at a time – this should normally include the Hearing Officer/ Chair of the previous Panel. The Chair of the Appeals Sub Group introduces all parties to each witness and explains procedure. It is open to the Chair of the Appeals Sub Group to disallow irrelevant or repetitive questioning **Step 15 to Step 19 followed for each witness in turn.**
STEP 15	**The presenting officer presents witness evidence by asking questions of the witness.**
STEP 16	**The appellant/ representative asks questions of the witness**
STEP 17	**The Appeals Sub Group ask questions of the witness**
STEP 18	**The HR adviser may ask questions of the witness**
STEP 19	**Witnesses may be re-examined in the above order to clarify any further points raised during presentation of evidence.** **Once each party has completed their questioning, witnesses should not normally be recalled. However, the Appeals Sub Group has the right to recall witnesses or seek further information if this is required. If this does happen, both sides should be recalled into the hearing. In addition, the Appeals Sub Group may require that other witnesses/ evidence should be called/ produced in order to ensure that all the necessary facts can be considered before making a decision on the case. The Appeals Sub Group may decide to adjourn the hearing to allow for this to happen.**
STEP 20	**SUMMING UP STAGE** Presenting officer sums up first Employee or representative sums up next No new evidence can be presented at this stage
STEP 21	All parties with draw apart from the Appeals Sub Group, HR Adviser and notetaker. The Chair of the Appeals Sub Group will advise the parties whether they need to wait to be recalled for the decision.
STEP 22	**DELIBERATION** The Appeals Sub Group reaches a decision on the basis of the evidence presented. HR adviser will provide advice as necessary. The Appeals Sub Group should make a note of the reasoning behind their decision and keep this carefully filed for future reference if need be.
STEP 23	**DECISION** The Chair of the Appeals Sub Group may give the decision verbally either at the end of the **Hearing or within 5 working days**. In any event the decision must be confirmed in writing within **10** working days of the Appeal Hearing.