



Believing and Achieving Together

Signed:

Date: September 2023

Review: September 2024

### 1 Scope

This procedure is recommended for adoption by the governing bodies of all schools. Roman Catholic voluntary aided schools may choose to adopt this procedure or the disciplinary procedure published by the Catholic Education Service (CES).

### 2 Purpose

The purpose of this procedure is to ensure that all cases of misconduct are dealt with in an appropriate, fair and consistent way. This procedure should be used to help and encourage employees to achieve and maintain appropriate standards of conduct.

### 3 Legal considerations

**Dismissal on the grounds of conduct:** The dismissal of an employee for misconduct or for some other substantial reason arising from unacceptable misconduct is potentially fair, although the decision needs to be reasonable based on facts established by an investigation and the employer needs to have followed a fair procedure. The employer will not generally have acted reasonably in dismissing an employee for repeated minor misconduct unless they have been given fair warning and a chance to improve.

**Statutory reporting:** The school, in consultation with the local authority if a maintained school, is required to report relevant cases dealt with under the Procedure for Dealing with Allegations of Abuse Against Staff and Volunteers in Schools to the Disclosure and Barring Service (DBS).

### 4 Roles and responsibilities

**Governing Body:** The governing body is responsible for setting disciplinary rules and procedures for staff.

Under the School Staffing (England) Regulations 2009 for maintained schools it may decide to delegate responsibilities for dismissing staff to one or more governors, to the headteacher or to one or more governors and the headteacher together. Statutory guidance states that governors should delegate the responsibility for all dismissal decisions to the headteacher, unless there is good reason not to.

The governing body has the power to impose and lift suspensions under this procedure.

The governing body is responsible for considering an appeal made by an employee at any stage of the procedure.

**Headteacher:** The headteacher has the power to impose (but not lift) suspensions under this procedure.

**Nominated Officer:** The nominated officer is appointed by the governing body or headteacher and is responsible for commissioning an investigation into the allegations and deciding whether there is a case to answer. They will appoint an investigatory officer to investigate the allegation on their behalf and review the officer's draft report to ensure that a reasonable investigation has been carried out. The nominated officer will hear the disciplinary case and make a decision about the outcome, including any sanction to be imposed, either individually or as part of a committee depending on the school's scheme of delegation.

**Investigatory Officer:** The investigatory officer carries out the investigation on behalf of the nominated officer. The investigatory officer will be provided with a brief by the nominated officer that details the allegation(s) and the scope of the investigation. The investigatory officer produces a report detailing their findings and makes a recommendation as to whether the case should proceed to a disciplinary hearing. They usually present the management case at the disciplinary hearing.

**Director of Children's Services:** In community and voluntary controlled schools the Director of Children's Services has the right for their representative to attend and give advice at any meeting where dismissal may be considered. Foundation/trust and voluntary aided schools accord these rights to the Director of Children's Services representative.

## 5 Disciplinary rules

It is not considered practical to present a detailed list of all acts or omissions that could lead to disciplinary action. Each case must be considered individually on its merits; the list below is not intended to be exhaustive and disciplinary action may be warranted in other circumstances.

### Minor misconduct

- Absenteeism, not relating to sickness absence
- Lateness
- Failure to comply with sickness absence notification and certification procedure
- Minor cases of insubordination
- Misuse of telephone or other organisational resources
- Variations from accepted standards of work
- Failure to undertake duties in a diligent manner

Such offences if substantiated could result in the issue of a written warning. Repeat occurrences of such offences could result in more serious sanctions.

### Serious misconduct

- Refusal to carry out a reasonable managerial instruction
- Disregard for health and safety rules including breaches of the Smokefree Workplace Policy
- Excessive use of the internet or inappropriate use of work e-mail account

- Actions which compromise the professionalism of the school and/or local authority or bring the school and/or local authority into disrepute
- Incapacity, for example through drug or alcohol misuse

Such offences if substantiated could result in the issue of a final written warning. Repeat occurrences of such offences could result in more serious sanctions.

### **Gross Misconduct**

- Theft – unauthorised removal, possession or theft of property
- Physical, emotional or sexual abuse of children or young people including an intimate or sexual relationship with a pupil even if above the legal age of consent
- Corrupt practices – acceptance of bribes or other corrupt practices
- Fraud – deliberate falsification of timesheets, subsistence, mileage or other claim forms; obtaining employment by deception and falsification of qualifications.
- Damage – willful damage to school or, where relevant, local authority property or equipment
- Assault – acts of violence including physical assault or threat of physical assault
- Gross negligence/carelessness – causing loss, damage or injury through serious negligence
- Harassment or bullying including “cyberbullying” using ICT – This can be a single serious instance or have taken place on a number of occasions
- Discrimination – unlawful discrimination against an employee or pupil’s protected characteristics (age, disability, gender reassignment, marriage/civil partnership, pregnancy/maternity, race, religion or belief, sex or sexual orientation)
- Serious breaches of confidentiality or Data Protection regulations
- Criminal offences – conviction of a criminal offence, whether or not an incident occurring in the course of employment, of such a nature that it is unacceptable for the employee to remain in post.
- Inappropriate use of the internet e.g. posting derogatory or offensive comments on the internet about the school, a colleague/governor/parent
- Any situation which gives rise to a fundamental breach of trust and confidence by the employee making continuation of their employment unacceptable.

Such offences if substantiated could result in dismissal without notice.

## **6 Conduct an initial investigation and decide how to proceed**

### **6.1 Initial investigation**

When an allegation of misconduct is made or an incident takes place, the headteacher (or other manager) should carry out an initial investigation to determine the basic facts. This should be undertaken at the earliest opportunity and should ensure that there is some apparent substance to the allegation and that it has not been made maliciously.

Where an allegation has been made against an employee regarding the abuse of a child, the head teacher must immediately contact the Local Authority Designated Officer (LADO) and refer to the Procedure for Dealing with Allegations of Abuse Against Staff and Volunteers in Schools.

The initial investigation may involve preliminary questioning of the person(s) who made the allegation, any key witnesses who may be able to contribute to the initial assessment and, depending on the circumstances of the case, a brief discussion with the employee.

## **6.2 Deciding appropriate action**

In deciding the course of action to be taken, the person undertaking the initial investigation will need to consider:

- the available evidence about whether the allegation warrants further investigation;
- the potential seriousness of the matter in line with the school's disciplinary rules;
- whether this is the first instance of misconduct or whether there have been previous examples. This will include consideration of live warnings or informal action taken previously; and
- any personal difficulties or mitigating circumstances which may have been a contributing factor.

Professional association and trade union representatives are expected to exhibit the same standards of conduct as all other employees. However, no formal action shall be taken against an accredited professional association or trade union representative until the circumstances of the case have been discussed with a senior representative or full-time official of the organisation concerned.

### **6.2.1 Take no further action**

Where the allegations appear to be without substance and it is clear further investigation is not necessary, the headteacher should take no further action.

The employee should be informed of the allegations or suspicion of misconduct and the subsequent decision to take no further action.

### **6.2.2 Deal with the matter informally**

Where the actions of the employee appear to be a cause for concern but are not sufficiently serious enough to warrant formal disciplinary action the headteacher should handle the matter on an informal basis. This should involve clearly explaining to the employee:

- the standard of behaviour required;
- the action that they should take in order to improve; and
- what will happen if the standard is not reached i.e. that formal action may be taken under the disciplinary procedure.

### **6.2.3 Deal with the matter formally and consider suspension**

The school will appoint an appropriate nominated officer who will oversee the formal investigation. Impartiality is essential and the nominated officer must be a person who has not been previously involved in the matter. The nominated officer will appoint an investigatory officer and brief them officer on the scope and aims of the investigation.

The employee should be informed that a formal disciplinary investigation will be undertaken, with a brief outline of the allegations made against them. They should be advised that the matter will be dealt with confidentially and that they should not discuss it with other members of staff or anyone who is directly involved.

In appropriate circumstances the headteacher or governing body will need to decide whether to suspend the employee at the beginning of, or at any point during, the investigation. This should be based on whether:

- the matter is potentially gross misconduct; or
- suspension is necessary because it is likely that the employee will tamper with any evidence that needs to be obtained, potential witnesses will feel inhibited from giving evidence or another person or property will be at risk from the employee.

Suspension must be confirmed to the employee in writing within three working days. The employee must be informed that their suspension is on full pay and is a neutral act that will not prejudice the outcome of their case. The suspension must be kept under active review by the headteacher and the aim should be to keep the period of suspension to a minimum.

## **7 Formal Investigation**

### **7.1 Conducting a formal investigation**

Any allegation of misconduct should be investigated without delay. The purpose of the investigation is to establish the relevant facts surrounding the alleged misconduct. The investigation should be undertaken without prejudice, and the investigating officer must ensure that they obtain all of the relevant information before concluding their investigation.

The employee's personal file should be reviewed to establish any relevant or similar live warnings.

### **7.2 Interviewing witnesses**

The investigating officer should interview any witnesses who may have relevant information regarding the facts of the case in order to ask questions and make a record of the meeting. Witnesses must be informed that they may be required to attend a formal disciplinary hearing and that copies of their statement may be provided to the employee and their representative. The record of the meeting should be typed and the witness given an opportunity to check it before signing to confirm that it is accurate.

The witness does not have a statutory right to be accompanied by a trade union representative or work colleague at the investigation meeting, however requests to be accompanied should usually be agreed where the witness considers that they require support. Any representative that attends the interview with the witness must not be involved in representing the employee involved and must keep all information confidential.

If it is necessary to interview children or vulnerable adults the investigating officer should consider whether permission from the adult responsible for the person to be interviewed should be sought beforehand. The interview should be conducted by a professional with experience and/or training in interviewing such individuals (with the investigating officer in attendance if this is appropriate).

### **7.3 Investigation meeting with the employee**

The investigating officer must meet with the employee to give them an opportunity to explain their version of events. They should be given reasonable warning of the meeting in advance.

The employee does not have a statutory right to be accompanied by a trade union representative or work colleague at the investigation meeting, however requests to be accompanied will usually be agreed.

The investigating officer will ask questions and make a record of the meeting. The record should be typed and the witness given an opportunity to check it before signing to confirm that it is accurate.

### **7.4 Investigation report**

The investigating officer must consider all of the relevant evidence and produce an investigation report in accordance with the nominated officer's brief. This should usually include the following:

- the name of the nominated officer and the investigating officer;
- details of the allegation(s) that have been investigated;
- the details of the people interviewed and an overview of their evidence;
- any explanation put forward or circumstances in mitigation;
- any specialist advice taken;
- any relevant live warnings on the employee's file to be considered;
- a conclusion as to whether there is a case to be answered and whether a disciplinary hearing should be convened;
- an assessment of the potential seriousness of the matter in light of the school's disciplinary rules; and
- all witness statements and relevant documentation (as appendices).

### **7.5 Review by nominated officer**

The nominated officer will consider a draft version of the investigating officer's report to ensure that a reasonable investigation has been carried. They will decide whether there is a case for the employee to answer at a disciplinary hearing.

## **8 Hold a disciplinary hearing**

If the nominated officer decides that there is a case to answer, the arrangements for the hearing will be as set out in the Procedures for Hearings and Appeals.

In reaching a decision the person(s) hearing the case should consider:

- Has there been as much investigation as is reasonable in the circumstances? (If the answer is "no", the case should be adjourned and the investigating officer should be asked for a further report.)

- Do I genuinely believe that the employee did, or failed to do, what has been alleged and do I have reasonable grounds on which to sustain that belief? (If the answer to either part is "no" then no formal action should be taken under the procedure - although some management action might be required.)
- Is the matter complained of sufficiently serious to justify the action I am contemplating taking? (This should involve consideration of the actual and, to a lesser extent, the potential effects upon clients, fellow employees, the public and the reputation of the school and local authority.)
- Is the decision within the band of reasonable responses of a reasonable employer in the circumstances? The following must be considered when deciding on an appropriate sanction:
  - the likely sanction in line with the disciplinary rules;
  - the sanction imposed in similar cases in the past;
  - whether standards of other employees are acceptable and that this employee is not being unfairly singled out;
  - the employee's disciplinary record (including current warnings), general work record, work experience, position and length of service;
  - any special circumstances which make it appropriate to adjust the severity of the sanction;
  - whether the sanction is reasonable in view of all of the circumstances; and
  - whether any training, additional support or adjustment to work are necessary.

The outcome of a disciplinary hearing shall be one of the following:

- no further action;
- a written warning;
- a final written warning;
- demotion and/or transfer within the school;
- demotion and/or transfer within the school and a written or final written warning; or
- the employee should cease to work at the school/be dismissed.

If the person(s) conducting the disciplinary hearing decide to impose a warning, the employee should be informed of:

- the detail of their misconduct;
- the improvement in behaviour or actions that are expected of them; and
- the consequences of not improving their action of behaviour, which may be further formal action under the disciplinary procedure which could result in their dismissal.

If a warning has been issued or a decision made to cease to work/be dismissed, the employee will be informed in writing of the decision and their right to appeal. The employee must submit any appeal to the chair of governors within five working days of receiving the letter setting out the grounds of their appeal. The arrangements for an appeal hearing are set out in the Procedures for Conducting Hearings and Appeals.

## 9 Notice

If the decision of the disciplinary hearing is that the employee should cease to work at the school/be dismissed on the grounds of gross misconduct, the employee is not entitled to notice and shall be dismissed with effect from the end of the day of the disciplinary hearing. No notice or pay in lieu of notice is provided.

If the decision of the disciplinary hearing is that the employee should be cease to work at the school/dismissed as a result of further misconduct having previously been issued with a final written warning, appropriate notice must be issued to the employee. The period of notice to which employees are entitled is as follows:

- Support staff: The greater of statutory notice of one week's notice per year of continuous service up to a maximum of 12 weeks or contractual notice of one month up to scale point 39 or three months at scale point 40 or above;
- Teachers: The greater of statutory notice of one week's notice per year of continuous service up to a maximum of 12 weeks or contractual notice of two months if ending on 31 December or 30 April or three months if ending on 31 August; or
- Head teachers: The greater of statutory notice of one week's notice per year of continuous service up to a maximum of 12 weeks or contractual notice of three months if ending on 31 December or 30 April or four months if ending on 31 August.

An employee may be asked to refrain from work during their notice period depending on the circumstances of the case.

## **10 Statutory notification**

Relevant cases dealt with under the Procedure for Dealing with Allegations of Abuse Against Staff and Volunteers in Schools must be referred to the Disclosure and Barring Service (DBS).

Cases of serious misconduct that fall outside the Procedure for Dealing with Allegations of Abuse Against Staff and Volunteers in Schools should be referred to the National College for Teaching and Leadership if a teacher has been dismissed for serious misconduct, or would have been dismissed for that reason if they had not resigned. If the National College for Teaching and Leadership considers that the teacher may be guilty of unacceptable professional conduct, may be guilty of conduct that may bring the profession into disrepute or may have been convicted, at any time, of a relevant offence and that a prohibition order may be appropriate, it will begin an investigation.

## **11 Expiry of warnings**

Any formal warnings issued under the disciplinary procedure must be disregarded and removed from the employee's personal file after the periods of time set out below:

- a written warning must be removed after a period not exceeding one year; and
- a final written warning must be removed after a period not exceeding two years.

Spent warnings for misconduct in relation to safeguarding of children/young people must be retained after removal from the employee's personal file until the date when the employee reaches age 65 or the date of action plus 10 years (whichever is the longest).

## **12 Particular issues**

### **12.1 Sickness absence**



If an employee is absent due to sickness during a disciplinary case, the headteacher should initially review the reasons for absence and the length of time that the employee is likely to be absent from work. The investigatory officer should continue with the other aspects of the investigation that can be completed in the employee's absence, such as interviewing witnesses and gathering relevant documentation. The headteacher should follow the school's managing sickness absence policy and procedure, including the provisions relating to sickness certification, in order to ascertain how long the employee is likely to be absent.

If the sickness absence is short term, the disciplinary process should be completed on the employee's return to work.

If it appears that the sickness absence is likely to be long term, the headteacher should seek a medical opinion from occupational health about the employee's fitness to participate in the disciplinary process. If, following consideration of the medical advice, it is would be unreasonable to continue with the disciplinary process the headteacher should manage the absence in accordance with the school's managing sickness absence policy and procedure and resume the disciplinary process when the employee is fit enough. If the medical opinion is that the employee is fit and well enough to participate, the disciplinary process continue, following consideration of any conditions set out by occupational health or other medical professionals.

### **12.2 Grievances raised during the disciplinary process**

Where an employee raises a grievance during the disciplinary procedure the disciplinary procedure may be temporarily suspended in order to deal with the grievance. Where the grievance and disciplinary cases are related it may be appropriate to deal with both issues concurrently.