

# **Thorner's Church of England VA Primary School**

## **Disciplinary Policy**

### **1. Introduction**

- 1.1. The school values good standards of conduct and expects all employees to adhere to all school's standards, including the code of conduct and additionally for teachers, Teachers Standards\*. This disciplinary policy will be applied when an employee's conduct is alleged to have fallen below the required standards.
- 1.2. This policy is based upon the ACAS code of practice, incorporates relevant legislation and should be read in conjunction with the disciplinary procedure and guidance documents. It has been agreed following consultation with recognised trade unions, has been adopted by the Governing Body and forms part of the employment contract.

### **2. Purpose**

- 2.1 This policy aims to support and encourage all employees to maintain the required standards of conduct and to ensure misconduct is addressed. It provides a consistent and fair approach to dealing with discipline issues, taking account of the principles of natural justice. It is not, however, intended to replace or restrict the normal day to day management and supervision of employees.

### **3. Scope**

- 3.1. This document applies to all employees of the school except support staff within their period of probationary service (see **probationary policy**).
- 3.2. Any alleged misconduct which falls within the scope of the **management of allegations policy** requires the school to comply with additional child protection requirements as set out in that policy.

#### **3.3. Criminal offences outside of work**

- 3.3.1. If an employee is charged or convicted of a criminal offence outside of work this will not necessarily be considered as a reason for disciplinary action in itself; consideration will be given to the facts of the case, relevance and effect of the charge/conviction on the employee's position.
- 3.3.2. Any disciplinary process may be put on hold, or may take place simultaneously to or proceed ahead of the outcome of any external process, where it is reasonable to do so and would not prejudice an external case. It is not always necessary to await the outcome of any court hearing before deciding on disciplinary action.

#### **3.4 Action against Trade Union representatives**

- 3.4.1 The normal standards of conduct are expected of an employee representative of a recognised Trade Union/Professional Association. The normal disciplinary procedure will apply. However, disciplinary action will not be taken against such officials until the circumstances of the case have been discussed with the full-time representative or branch official of the Union/Association concerned.

\* Teachers standards defined in Annex 1 School Teachers Pay and Conditions Document

## 4. Responsibilities

### 4.1 Manager

- 4.1.1. Ensure all employees are aware of the disciplinary policy, required standards and the consequences of breaching them
- 4.1.2. Deal with disciplinary matters as promptly and reasonably as possible
- 4.1.3. Act consistently and fairly
- 4.1.4. Ensure any necessary investigations are carried out to establish the facts of the case
- 4.1.5. Ensure employees are informed of the basis of the problem and provide an opportunity to respond before any decisions are made.

### 4.2. Employee

- 4.2.1 Ensure they are aware of and maintain required standards
- 4.2.2 Arrange their own representation, including making any information available to their representative and arrange their own witnesses
- 4.2.3 Should not unreasonably delay the process.

## 5. Definition

- 5.1. **Misconduct:** Conduct by an employee falling short of the school's standards. A non-exhaustive list of examples is at **appendix A** indicating how seriously offences are normally regarded; offences will be considered more serious if repeated.
- 5.2. **Gross misconduct:** Considered to be conduct falling so far below the standards required that it can be regarded as a fundamental breach of contract. Such acts or omissions can lead to a summary dismissal for a first offence. A non-exhaustive list of examples is at **appendix A**.

## 6. Key principles

- 6.1. The Governing Body and Head teacher are responsible for the overall management of standards in the school/academy.
- 6.2. All disciplinary matters will be treated with confidentiality. Any breaches of confidentiality relating to disciplinary issues will be treated as disciplinary allegations in their own right.
- 6.3. The school recognises that involvement in the disciplinary process can be difficult and will make every effort to deal with issues without undue delay and will make staff aware of support available.
- 6.4. At all stages employees will be encouraged to contact their trade union representatives for advice. Employees have the right to be accompanied at formal disciplinary meetings (except the Initial Meeting) by a trade union representative or work colleague, but not by a practising lawyer.

- 6.5. Where appropriate, issues will be addressed on an informal basis, except for more serious allegations or where previous informal warnings/advice has been ineffective.
- 6.6. At every stage, employees will be made aware of the nature of the allegations made against them and have an opportunity to state their case before any decisions are made. No formal disciplinary action will be taken before the case has been fully investigated and a hearing taken place. Employees will be provided with evidence prior to a hearing.
- 6.7. The panel at any hearing or appeal will have had no prior involvement or conflict of interest.
- 6.8. Decisions will be taken only by those with the authority to do so and the scheme of delegated authority is at **appendix B**.
- 6.9. Outcomes will reflect what is reasonable, based on the balance of probability and taking into account the seriousness of the allegation/s, circumstances (including mitigations), impact on the school/academy, any precedents and the employee's record of employment (including any current warnings on record).
- 6.10. Employees will not usually be dismissed for a first disciplinary offence, except in cases of gross misconduct.
- 6.11. Employees have the right of appeal against any formal disciplinary action

## **7. Suspension**

- 7.1 Suspension from duty on full pay may be necessary at any time in serious cases, where it would be detrimental to allow employees to remain at work pending completion of an investigation/disciplinary hearing, either due to the potential risk to the employee, pupils, colleagues, others, or to the investigation. Suspension is not automatic and consideration will be given to alternatives.
- 7.2 The period of suspension will be as short as possible and reviewed regularly.
- 7.3 Suspension is a neutral act and is not a disciplinary sanction.

## **8. Management leave**

- 8.1.1 In some cases, where urgent action is required, it may be necessary for an employee to take a short period of management leave on full pay ahead of any decision on how to proceed, including whether it is appropriate to suspend.
- 8.1.2 This is a neutral act and not a disciplinary sanction. It is not recorded as suspension or annual leave.

## **9. Records**

- 9.1 Accurate records should be made at all stages and held in accordance with Data Protection requirements. Summary notes will be taken of all disciplinary meetings/hearings and the employee will be provided with a copy.
- 9.2 Recording of meetings using audio/video equipment will not be permitted usually, unless there are exceptional reasons and subject to prior agreement of all parties.

9.3 The school will notify the relevant authorities eg DBS, NCTL when an employee is dismissed for misconduct or resigns in cases where they would have been dismissed/dismissal considered for misconduct otherwise.

## **10. Equality**

10.1 The disciplinary policy and procedure will be applied in accordance with the school's equality policy to ensure employees are not discriminated against. Reasonable adjustments will be considered where appropriate.

## **11. Link to other policies/procedures**

11.1 If a grievance is raised during the disciplinary process, consideration will be given to whether it will be treated separately under the dispute resolution procedure. Where it is linked to the disciplinary issues it may be considered alongside the disciplinary process – see *disciplinary procedure 11.3*

11.2 Matters of capability will be dealt with under the capability policy or medical incapability, in accordance with the attendance management policy.

11.3 If an employee resigns and a formal disciplinary process has been initiated, the process may continue at the manager's discretion. The position will be reflected in any subsequent reference request/referral to relevant authorities.

11.4 A list of policies/procedures linked to the disciplinary policy can be found at **appendix C** and should be read in conjunction with this policy.

In accordance with the Equality Duty we seek to ensure that all pupils achieve their best, according to their capabilities and regardless of their special needs, disability, gender, race, culture, social, economic, ethnic, religious background and denominational diversity.

Thorner's CE VA Primary School recognises that the welfare of the child is paramount and takes seriously its responsibility to safeguard and promote the welfare of the children and young people in its care.

Date adopted by the Governing Body: November 2020

Date to be reviewed: November 2023

## **Appendix A – Examples of misconduct and gross misconduct**

The Head teacher and/or Governing body will need to use sound judgement, with the advice of their HR Advisor as appropriate, to determine whether an act or omission constitutes misconduct or gross misconduct.

### **Misconduct**

Ordinary misconduct is defined as behaviour or action that warrants disciplinary action (rather than dismissal) where it is a first offence. The following sets out examples of misconduct which are likely to lead to formal action being taken under the disciplinary procedure although it should not be regarded as exhaustive (in some instances, items listed under misconduct may be of such an extreme nature to amount to gross misconduct):-

- a) Failure to comply with a reasonable management instruction;
- b) Act(s) of minor insubordination;
- c) Failure to observe the local authority's and/or school's standing orders, financial or other operational regulations;
- d) Failure to observe local authority/school policies;
- e) Disregard of specific departmental rules and working procedures;
- f) Negligence in the performance of duties;
- g) Failure to provide a duty of care in the performance of role;
- h) Breach of Health & Safety rules and requirements including any act or omission;
- i) Poor-time keeping;
- j) Unjustifiable absence from work;
- k) Misuse of school property and equipment including misuse of email, fax or internet facilities;
- l) Failure to follow the school's sickness notification procedures and certification requirements;
- m) Inappropriate actions during a period of sick leave likely to inhibit recovery or a return to health;
- n) Improper use/disclosure of information obtained in the school's employment;
- o) Abusive or inappropriate behaviour toward pupils, parents, fellow employees or members of the public;
- p) Minor acts considered contrary to the safeguarding of children;
- q) Acts in breach of a teacher's professional duties.
- r) Failure to report female genital mutilation in accordance with 'mandatory reporting of female genital mutilation'
- s) Failure to fulfil duties in relation to the 'prevent duty' including failure to refer to the Channel programme or undertake 'prevent' awareness training.
- t) Acts outside of working hours which are incompatible or inconsistent with their duties to the school or which are likely to bring discredit upon or lead to loss of confidence by the school.

### **Gross misconduct**

Gross misconduct is considered to be conduct or behaviour that may be considered as a fundamental breach of contract. Only acts of gross misconduct will lead to a dismissal for a first offence. Again, it is not possible to define all acts which could be classified as gross misconduct, for the disciplinary action taken by the school and the penalty applied will ultimately be determined by the circumstances of the incident. In general, the following types of offences are

deemed to constitute gross misconduct and are likely to lead to dismissal without notice, or pay in lieu of notice:-

- a) Serious acts of insubordination;
- b) Serious breaches of financial regulations or other operational regulations;
- c) Gross negligence in the performance of duties;
- d) Theft or attempted theft from the school, its employees or members of the public or other acts of dishonesty;
- e) Dishonest or improper use of information obtained in the local authority's and/or school's employment;
- f) Serious breach of duty regarding disclosure of confidential information;
- g) Serious breach of safe working practices and health and safety rules which endangers the health and safety of an individual, other employees, or members of the public and/or exposes the local authority/school to claims against it;
- h) Serious breach or failure to provide safe working environment for children and young people;
- i) Being under the influence of drugs or alcohol on school premises for other than medical reasons in circumstances where it could constitute a health and safety hazard or where it would be in breach of a position or responsibility and trust;
- j) Buying, selling or offering drugs on school premises;
- k) Offering alcohol to pupils;
- l) Fraud;
- m) Falsification of information, for example, exam results, qualifications or other relevant personal details in seeking and obtaining employment or promotion; information contained in time sheets, overtime claims, invoices, accounts, records or medical certificates;
- n) Violent, offensive, abusive, neglectful or indecent behaviour;
- o) Bullying, harassment or victimisation;
- p) Unlawful acts of discrimination within the workplace on the grounds of race, sex, sexual orientation, age, disability, religious belief or trade union membership;
- q) Unauthorised removal of and/or serious misuse of and/or deliberate damage to local authority/school property and equipment including misuse of email, fax or internet facilities;
- r) Improper use or attempted use of an employee's official position for their own private advantage or for the private advantage of some other person or third party;
- s) Serious acts outside of working hours which are incompatible or inconsistent with their duties to the school or which are likely to bring discredit upon or lead to loss of confidence by the school;
- t) A serious breach of the school's policies relating to the use of information technology;
- u) Conduct that is seriously contrary to the school's code of conduct for employees;
- v) Criminal offences and cautions outside of work, including reprimands, final warnings or penalty notices (see section 5 - criminal offences and cautions outside of work);
- w) Acts considered to be seriously contrary to the safeguarding of children;
- x) Failure to register with the Independent Safeguarding Authority;
- y) Serious failure to report female genital mutilation in accordance with 'mandatory reporting of female genital mutilation'
- z) Serious failure to fulfil duties in relation to the 'prevent duty' including failure to refer to the Channel programme or undertake 'prevent' awareness training.
- aa) Any other action(s) which fundamentally breach the relationship of trust and confidence which exists between the school and employee.
- bb) Aiding and abetting any of the above;

**Appendix B**  
**Scheme of delegation – Thorner’s CE VA Primary School**  
**Authority to act under the formal procedure (minimum level of authority)**

<b>Action/role</b>	<b>For action against all employees (except HT)</b>	<b>For action against Head teacher</b>	<b>For action against Executive Head teacher</b>
<b>Suspension</b>			
<b>Lifting suspension</b>			
<b>Investigating Officer</b>			
<b>Presenting Officer</b> <i>i.e. determine case to answer &amp; present management case at hearing</i>			
<b>Presiding Officer</b> <i>i.e. hear case at hearing (except cases of gross misconduct or live final written warning)</i>			
<b>Presiding Officer</b> <i>i.e. hear case at hearing (in cases of <b>gross misconduct or live final written warning</b>)</i>			
<b>Presiding Officer (Appeal)</b> <i>i.e. hear appeal (except <b>dismissal</b> cases)</i>			
<b>Presiding Officer (Appeal)</b> <i>i.e. hear appeal (in cases of <b>dismissal</b>)</i>			

**Date reviewed:**

## **APPENDIX C**

POLICIES AND OTHER DOCUMENTS TO BE CONSIDERED AND READ IN CONJUNCTION WITH THE DISCIPLINARY POLICY (Listed in alphabetical order)

<b><u>Policy/procedure/guidance</u></b>
<u>Allegations of abuse against staff and volunteers</u>
Child protection policy** <u>Code of conduct</u>
Data protection policy <u>Dispute resolution policy</u>
<u>Drugs and alcohol policy</u>
<u>Equal opportunities policy</u>
<u>E-safety/internet use/social networking/ICT policies</u>
<b><u>Guidance for safer working practice*</u></b> national guidance for those working with children and young people in education settings.
<u>Health and safety policy</u>
Intimate care
<b><u>Keeping Children Safe in Education*- DfE statutory guidance</u></b>
<u>Mandatory Reporting of Female Genital Mutilation procedural information*</u>
Use of Positive Force
<u>Prevent Duty Guidance*</u>
School Record Keeping Policy <u>NCTL -Teacher misconduct – Disciplinary procedures for the teaching profession</u>
<u>Whistleblowing Policy</u>

\*It is expected that staff will adhere to the statutory duties and/or best practice outlined within these documents as applicable to their role and responsibilities.

\*\*The child protection policy is available from the Safeguarding and Standards Team. Please contact [sasteam@dorsetcc.gcsx.gov.uk](mailto:sasteam@dorsetcc.gcsx.gov.uk) for further details.

## Disciplinary procedure

***This should be read in conjunction with the disciplinary policy and guidance documents and ACAS guidance on conducting investigations in the toolkit.***

***Advice can be sought from HR at any stage but will usually be sought in relation to suspension, criminal/safeguarding allegations and prior to any formal action being taken.***

A **flow chart** outlining the main steps is at **appendix AA**

### Definition

*The ‘Manager’ will be the decision-maker pre-hearing and usually will be the Head teacher or in the case of alleged misconduct of the Head teacher, the Chair of Governors/Trustees.*

*The ‘Investigating Officer’ will be responsible for the investigation and report findings*

*The ‘Presenting Officer’, usually the ‘manager’, will present the management case at a hearing*

*The ‘Presiding Officer’ will hear the case and will be the decision-maker at a hearing. There will be a different Presiding Officer (Appeal) to hear any appeal.*

*The **Scheme of Delegation** at appendix B of the policy confirms the minimum level of authority to take action at each stage of the process and guidance on the roles is at appendix 1 in the toolkit.*

## 1 PRELIMINARY INVESTIGATION

- 1.1 When managers become aware of an alleged breach of discipline, they should conduct a brief fact-finding investigation to establish whether the alleged incident could have taken place and whether it is appropriate to treat the matter informally or formally.
- 1.2 This decision will largely depend on:-
  - The nature of the alleged misconduct.
  - The seriousness of the alleged misconduct.
  - Previous action, including any advice/warnings regarding the employee’s conduct.

## 2 INFORMAL

- 2.1 Where appropriate, conduct issues will be addressed by the manager as part of normal day to day management responsibilities. Such actions will fall outside of the formal disciplinary procedure.
- 2.2 Where minor and/or unrepetitious acts of misconduct occur, informal actions including written advice and guidance regarding standards of conduct may be appropriate. It will be for the manager to decide. This may be determined following or without a full investigation; depending on the circumstances.
- 2.3 Where advice and guidance is issued, the employee must be warned that failure to observe advice or repetitions of misconduct in the future is likely to be considered under

the formal stages of the disciplinary procedure. The advice and guidance will be recorded on the employee's personal file. The employee should be given a copy of the written advice. There is no right of appeal against informal action, however the employee should be provided with an opportunity to record their comments if they disagree with the content or raise a formal grievance under the dispute resolution policy/procedure.

- 2.4 There is no right for the employee to be accompanied at the informal stages of the procedure although employees are advised to seek advice from their Trade Union or Professional Association at this time. Representatives may be permitted to attend at the manager's discretion.

### **3 FORMAL**

- 3.1 The formal procedure may be invoked where:

- Previous advice/guidance/warnings have been ineffective.
- A number or pattern of minor complaints exist.
- There is a more serious disciplinary matter.

- 3.2 The formal stages of the disciplinary procedure should be carried out as promptly as possible in the interests of all. Timescales can be extended with the agreement of both parties.

- 3.3 If an employee or their representative is unable to attend any formal meeting for good reason, it will be re-arranged once within 5 working days usually.

- 3.4 The formal stages of the disciplinary procedure are based upon a graduated system of warnings with more serious sanctions being applied where poor conduct is repeated or where the employee fails to heed previous warnings or where the nature of the misconduct justifies such a warning.

- 3.5 Nothing stated in this procedure is intended to bar or discourage the resolution of any matter between the parties by agreed alternative means or by agreed variation to the procedure as published.

### **4 REPRESENTATION**

- 4.1 At all formal meetings/hearings employees have the right to be accompanied by a trade union representative or workplace colleague, but not a practising lawyer.

- 4.2 Employees are responsible for arranging their representation, notifying their representatives of meeting arrangements and providing them with relevant paperwork.

- 4.3 Employees should confirm their attendance and notify the Chair of the meeting/nominated contact of the name of the person accompanying them in advance.

### **5 MANAGEMENT LEAVE/SUSPENSION**

- 5.1 In some cases it may be appropriate for the employee to take a short period of management leave on full pay (i.e. being asked to remain at home with no work having been allocated) pending a decision on next steps, including whether suspension is necessary. This decision is often taken at the outset but can apply at any stage of the

process. Any period of management leave will not be recorded on file as part of any disciplinary record.

- 5.2 An employee may be suspended from duty on full pay in cases of gross misconduct or where there is a risk to the safety of colleagues, pupils or to the employee themselves or a risk to the contamination of evidence. The manager will give consideration to whether suspension is necessary and to any alternatives to remove an individual from the workplace – see *guidance at **appendix 2** of toolkit.*
- 5.3 The decision to suspend will often be made at the outset but may be at any time during the process.
- 5.4 In cases where it is known that the employee holds similar or equivalent employment(s) in other schools, consideration should be given as to whether the suspension from duty should be extended, for example, when dealing with matters raised under the Allegations policy.
- 5.5 Staff will be notified in writing of any decision to suspend and should be advised to contact their Trade Union representative and be provided with the contact details for the Staff Counsellor. The formal letter of suspension should be handed to the employee or sent recorded delivery, to ensure proof of receipt.
- 5.6 Schools will nominate a link person to act as a nominated contact for the employee following management leave or suspension. The role of the link person is to advise the employee of developments at their school.
- 5.7 Where suspension relates to a safeguarding allegation, the guidance in the allegations policy must take precedence over this policy and procedure.
- 5.8 The scheme of delegation at **appendix B** of the policy will define who has the authority to invoke and end a period of suspension.

## FORMAL STAGES

### 6 APPOINTMENT OF INVESTIGATING OFFICER

- 6.1 As soon as the formal procedure is invoked the manager should appoint an Investigating Officer (IO) in accordance with the school's scheme of delegation (see **appendix B** of the *policy*). The IO will:
  - plan the investigation – see *ACAS template investigation plan at **appendix 5**.*
  - contact the employee (see *model letter **appendix 12***) and ascertain the facts and circumstances surrounding the allegation(s) of misconduct including identifying witnesses and taking statements from them.
  - ascertain the employee's response to the allegation(s).
  - keep a record of findings and produce a report and may.
  - recommend whether or not there is a case to answer at a formal hearing or any alternative resolutions/actions.

***See guidance on role at **appendix 1** and ACAS guidance on 'conducting workplace investigations' at **appendix 4** in the toolkit.***

## 7 INITIAL MEETING

- 7.1 Where the manager decides that formal action is required they should arrange an initial meeting with the employee and advise the employee to contact their representative.
- 7.2 Employees may be accompanied to the meeting by a willing work colleague or trade union representative if available, but this will not delay the meeting.
- 7.3 The meeting should take place as soon as possible and normally within 48 hours of the alleged incident. Where possible, the meeting will take place face-to-face.
- 7.4 The purpose of the meeting is information giving only; there is no right or expectation of response and no **right** of representation at this meeting. In particular the manager should:
- notify the employee of the alleged misconduct (unless there are exceptional reasons to do otherwise).
  - tell the employee whether the matter will be subject to an investigation, the name of the Investigating Officer and of their right to be given 5 working days' notice of any investigation meeting(s) in addition to their right to be accompanied.
  - provide the employee with a copy of the disciplinary policy and procedure (if this has not already been provided).
  - inform the employee of whether suspension or management leave will apply.
- 7.5 Following the meeting, the employee will be sent a letter confirming the allegations, information provided at the initial meeting and the details of the investigation (*see model letter at **appendix 10** and **appendix 11**, if suspended*).

## 8 INVESTIGATION

- 8.1 In all cases in the formal procedure, an appropriate internal investigation will be required to establish essential facts, fully consider the matter and make an informed decision about whether or not there is a case for the employee to answer at a formal disciplinary hearing.
- 8.2 The school/academy will adhere to the principles outlined in the ACAS guidance 'conducting workplace investigations' at **appendix 4** of the toolkit and that document should be read in conjunction with this procedure.
- 8.3 The school/academy will aim to conduct an investigation without undue delay while memories of events remain intact. However, an investigation will need to be thorough and balanced, including evidence that supports and contradicts the allegation/s. The employee should be asked to identify any individuals that they believe should be interviewed or documentation to be considered. The nature, scale and duration of any disciplinary investigation will be proportionate and will depend on the seriousness and complexity of the misconduct being investigated.
- 8.4 Interviews with pupils will only be conducted where absolutely necessary and, such interviews will take place as soon as practicable. The employee against whom the allegations are being made should be advised of the right to have their representative attend all such interviews in the capacity of a silent witness to ensure accuracy of any evidence given and the fairness of the process.

- 8.5 To avoid the necessity of pupils attending disciplinary hearings to give evidence, the employee's representative may request specific questions to be put to the pupil from the Investigating officer. Such requests for questions will not be unreasonably refused. A note of any question refused should be retained. The employee's representative is able to raise issues of procedure only which should be done without pupils being present.
- 8.6 Investigations relating to safeguarding allegations must be made with reference to the **allegations policy**. In such situations, any police investigation may override, delay or restrict the conduct of a separate internal disciplinary investigation as it will take priority. Advice will be sought from the local authority designated officer, based in the Safeguarding Unit, prior to conducting any form of investigation, in these circumstances.
- 8.7 Statements or video evidence taken in the course of a social care or external investigation may be used as part of the internal investigation process and may be submitted as evidence to a formal disciplinary hearing.
- 8.8 Any written statements should be **signed and dated** and ideally all evidence should be attached as pdf documents to the investigation report.
- 8.9 An employee will be given 5 working days' notice of any investigation meeting(s) and will have the right to be accompanied by a work colleague or Trade Union/professional Association representative but not a practising lawyer.
- 8.10 Allegations may be reviewed and amended in light of the investigation at any stage up to and including the hearing notification and the employee will be made aware of any changes in writing.
- 8.11 The IO will check with the employee/representative that if there is deemed to be a case to answer, whether they would be interested in pursuing an alternative resolution to a hearing, if an option. The IO will include any response in the Investigation report and consider when making any recommendations.

#### 8.12 **Outcome**

The IO will produce a report (*see ACAS template report at **appendix 6***) with all evidence attached, ideally as pdf documents and present their findings to the manager/Presenting Officer, who will then determine the outcome; whether there is a case to answer or not at a disciplinary hearing or any alternative resolution/actions.

8.13 The employee will be sent a letter at the end of the investigation by the manager/Presenting Officer notifying them of the outcome and what the next steps will be.

8.14 If there is no case to answer there may be informal advice/guidance issued if appropriate (*see model letter at **appendix 13***). If there is a case to answer the employee will be required to attend a disciplinary hearing (*see model letters at **appendices 14a) and b)***).

### **9 DISCIPLINARY HEARING**

9.1 The purpose of the hearing is to consider the evidence presented by both parties, to enable the Presiding Officer (*see scheme of delegation at **appendix B in the policy***) to decide what action, if any, to take. Guidance on preparing for a hearing is at **appendix 7** of the toolkit.

9.2 Where a formal disciplinary hearing is to take place, the employee will receive written notification from the manager/Presenting Officer at least 10 working days in advance including

details of the allegation/s and an indication of whether the allegations are considered potentially gross misconduct or if the employee already has a live final written warning and therefore whether a sanction up to dismissal may be considered (*see model letters at **appendix 14a) and b)***).

9.3 The suitability of the venue and arrangements for the hearing should ensure confidentiality and equality of access making any reasonable adjustments for an employee or their representative with a disability to fully participate in the hearing.

9.4 The employee will be given copies of documents that will be relied upon at the hearing (known as the 'bundle' – *see guidance on preparation of bundle at **appendix 8)*** where possible with the meeting notification letter but at least 5 working days prior. For example:

- Investigation report.
- Copies of (or a summary of) any statements obtained as part of the investigation.
- Notes of any investigatory interview(s) they attended.
- Names of any witnesses who will be attending the hearing.

9.5 The employee must submit any papers for consideration by the panel at least 7 working days prior to the hearing allowing for an exchange of any final papers for the hearing at least 5 working days in advance of the hearing.

## **10 ATTENDANCE AT THE HEARING**

10.1 The employee is required to take all reasonable steps to attend hearings. If they are unable to attend for good reason they should notify the nominated contact as soon as possible and a further hearing date will be arranged, usually rearranged only once within 5 working days. If following a reasonable attempt to re-arrange the hearing the employee is still unable to attend, the hearing may be held in their absence, based on written submissions or their representative may attend in their absence if required. If they fail to attend without explanation or good reason the hearing may go ahead in their absence.

10.2 Should the employee be unable to arrange representation for a hearing, a further date will be arranged, within 5 working days of the original date usually. If the employee is unable to arrange representation for the re-arranged hearing, the hearing will proceed in the absence of the representative.

10.3 If exceptionally the school has to re-arrange the hearing, a new date will be arranged without undue delay and within 5 working days usually.

10.4 The person arranging the hearing will arrange for a note-taker to take summary notes at the hearing.

10.5 Where the Investigating Officer is not acting as Presenting Officer they will normally attend the hearing in the capacity of a witness. This will provide an opportunity for the facts of the case to be clarified and for both parties to question the detail and findings of their report.

10.6 Both parties have the right to call witnesses where relevant; they should only be present to give evidence and be questioned. They should be reminded about confidentiality and not to collude with other witnesses. Details should be communicated to both parties in advance and signed and dated witness statements should be provided by both sides, wherever possible. The employee is responsible for organising their own witnesses – additional guidance is contained within appendix 7.

10.7 An HR Adviser will attend the hearing in most circumstances to support the Presiding Officer. Where the local authority is the employer (i.e. Community and Voluntary Controlled schools) if dismissal is a potential outcome, the HR Advisory team must be informed of the meeting and given an opportunity to attend.

## **11 PROCEDURE AT THE DISCIPLINARY HEARING**

11.1 The hearing will be conducted in accordance with the procedure at appendix BB.

11.2 If a brief adjournment is required it should be possible to reconvene on the same day, however if further information/a longer adjournment is required it may be necessary to arrange another date, if so this will take place within 5 working days usually.

11.3 **Overlap with dispute resolution procedure** – where a grievance/dispute has been raised connected with the disciplinary matter, this will be heard at the disciplinary hearing; further investigation may be necessary beforehand. An employee will be given the opportunity of raising their concerns when they state their case; there will not be a separate hearing. During the hearing, if it is apparent that further investigation is required, it may be necessary to adjourn/arrange another hearing date without undue delay.

## **12 DISCIPLINARY OUTCOMES**

12.1 In determining the outcome, consideration will be given to all representations and then the Presiding Officer will decide whether, on the balance of probabilities the allegation/s are proven and if so, what level of sanction is appropriate. Consideration will be given to:

- The gravity of the offence and any explanation given/any mitigations.
- The employee's previous conduct record.
- Actions taken in similar cases.
- The employee's length of service.
- Whether the action considered is proportionate and reasonable in the circumstances.

12.2 The penalties available to the Presiding Officer of any disciplinary hearing are detailed below although this list is not exhaustive. Also, it is good practice to consider any wider actions/implications for the school.

### **12.3 No further action**

No further action will be taken where there is no case to answer or the employee is not found to be culpable. However, in some cases it may be appropriate to issue advice and guidance (see 2.2-2.4).

### **12.4 Formal action - penalties**

#### **12.4.1 Written warning**

A written warning will be appropriate where the conduct of the employee has fallen below acceptable standards and informal guidance has not resulted in sufficient improvement or where the offence is sufficiently serious to justify an immediate formal penalty.

#### 12.4.2 Final written warning

A final written warning is appropriate where:-

The conduct of the employee continues to fall significantly below acceptable standards and previous warning(s) have not resulted in sufficient improvement.

The misconduct is so serious that a first and final written warning is appropriate.

Dismissal is a clear possibility, but significant mitigating circumstances are accepted.

#### 12.4.3 Dismissal

Dismissal will be considered where there has been gross misconduct or where the employee has a current final written warning and further misconduct or unsatisfactory conduct has taken place.

##### ***Dismissal with contractual notice***

Unless an employee is dismissed for gross misconduct, the appropriate period of notice must be given (i.e. if dismissal is as a result of a series of warnings).

##### ***Dismissal without contractual notice (summary dismissal)***

Actions of gross misconduct will, except in the most exceptional circumstances, justify dismissal without notice.

### 13 CURRENCY OF WARNINGS

13.1 Any warning applied will remain on the employee's file but will only be regarded as 'live' for further disciplinary purposes for a specified period of time (see table below) after which time it will normally be disregarded for disciplinary purposes. The exception to this will be in circumstances where the same type of misconduct becomes a pattern which is repeated every time a warning expires. In these cases, the circumstances of previous warnings should be taken into account in deciding on what further action is appropriate. The spent warning will be retained on file as part of the employment record, in accordance with the ACAS code of practice, although it will not be taken into account in determining the level of penalty.

13.2 Exceptionally, there may be circumstances where the misconduct is so serious that it cannot realistically be disregarded for future disciplinary purposes. For example, where the misconduct falls within the dealing with allegations of abuse against members of staff and volunteers policy.

13.3 All safeguarding cases will be recorded on employee's files indefinitely

<b>Warning level</b>	<b>Live period</b> (from date of issue)
Written	12 months
Final written	24 months

## 14 HEARING OUTCOME

14.1 Whether or not the employee has been informed of the outcome of the disciplinary hearing orally at the hearing, the employee will be notified of the outcome of the disciplinary hearing in writing within 5 working days of the hearing.

14.2 **(Include for DCC schools)** In the case of recommended dismissal, the Presiding Officer will write to confirm the outcome of the meeting (with a copy to the local authority) but the local authority must send the dismissal letter as the employee's employer within 14 working days of the hearing.

**(Include for Voluntary Aided, Foundation schools and Academies)** In the case of recommended dismissal, the outcome letter will be sent by the Chair of the Governing Body as the legal employer.

## 15 RIGHT OF APPEAL

15.1 An employee may appeal against a decision to issue them with any level of formal disciplinary penalty. The reason for appeal can be one of the following:-

- There was a defect in the procedure which had a material effect on the decision.
- Not all evidence was considered or proper account was not taken of evidence referred to at the hearing.
- The sanction/decision was too severe.
- New relevant evidence relating directly to the allegation/s has come to light since the last hearing.

15.2 An employee seeking to appeal must do so within 10 working days' of written notification of the decision. The employee should send their letter of appeal together with the grounds of appeal to the person named in the letter confirming the outcome of the hearing.

## 16 APPEAL HEARING

16.1 Once a written appeal has been received, an appeal hearing will normally be convened without unreasonable delay allowing at least 10 working days written notice to the employee (or shorter if agreed) noting their right to be accompanied (*see model letter at **appendix 15***).

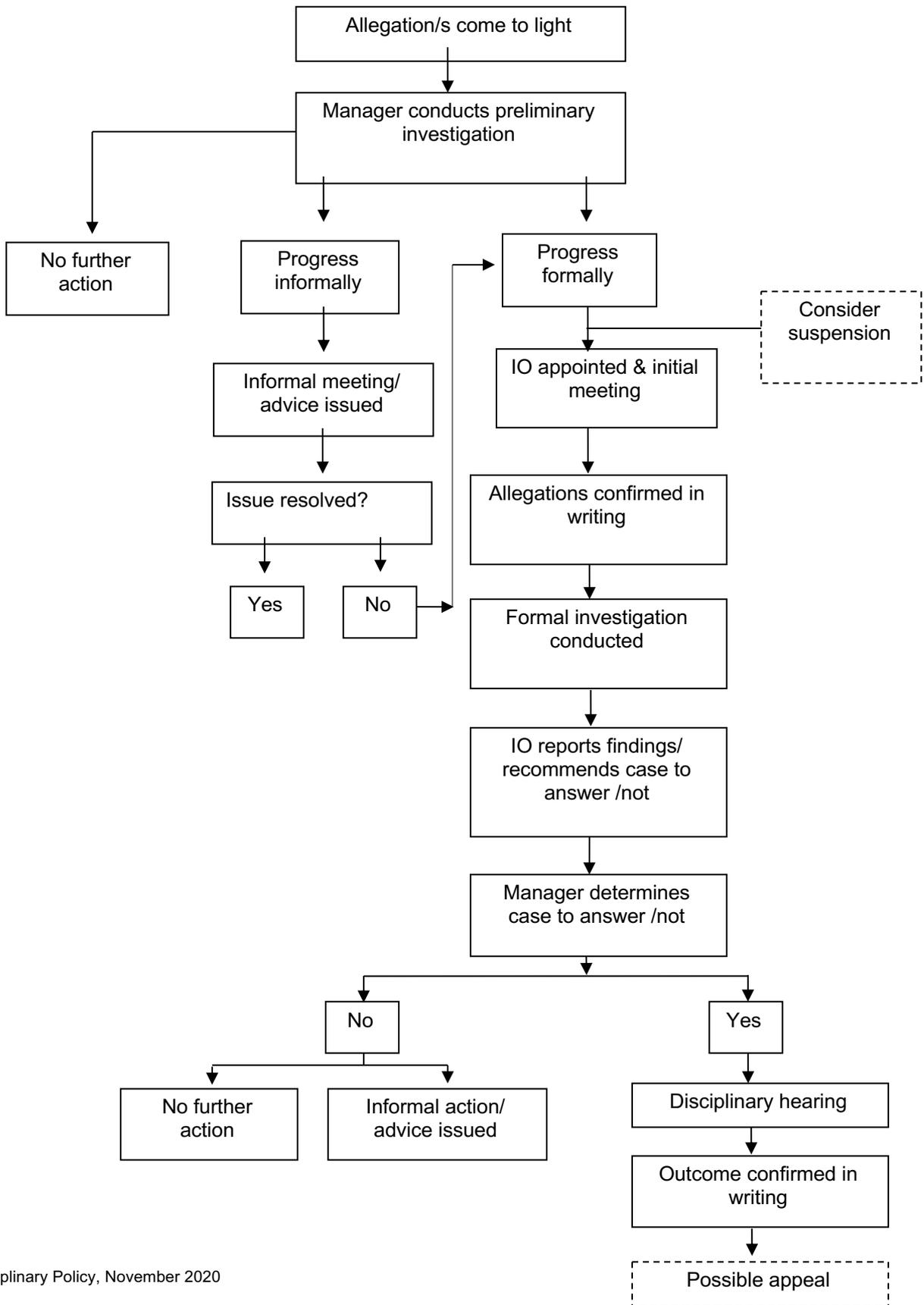
16.2 The hearing will take the form of a review of the decision and not a re-hearing of the case, unless exceptionally determined by the Appeal Hearing Presiding Officer that it will be a re-hearing. For example, in the case of a dismissal, if new information is provided which was not available to the Presiding Officer of the original hearing and which is likely to impact on the decision. Otherwise, the appeal will be concerned with whether the decision taken was reasonable in light of all of the circumstances and evidence provided at the hearing. The employee will be informed of this in the appeal invitation letter also. *See 'conduct of appeal hearing at **appendix CC** of the procedure.*

16.3 The Presiding Officer (Appeal) will not be the original Presiding Officer, have not acted as a witness in the case or have been involved in the case in any material sense.

- 16.4 Copies of any documents relevant to the case including documents which were not provided at the original hearing and which are intended for consideration at the appeal hearing will be exchanged at least 5 working days in advance of the hearing.
- 16.5 Both parties have the right to call witnesses where relevant to the grounds of the appeal. This should be confirmed with the Presiding Officer (Appeal) in advance of the Appeal hearing.
- 16.6 If the employee is unable to attend the hearing due to reasonable circumstances out of their control, a further hearing date will be offered. If the employee fails to attend without good reason or is unable to attend a re-arranged hearing, the hearing may be held in their absence based on their written submissions. Their representative may attend on their behalf in their absence.
- 16.7 The employee can opt not to attend the appeal hearing and their representative can attend on their behalf or they can make a submission in writing (to be received 5 days in advance of the hearing).
- 16.8 The Presiding Officer (Appeal) will reach findings based on documentation and the submissions from all parties. They have a broad discretion in terms of their findings. They may uphold all or part of the decision of the hearing, revoke it in its entirety, substitute a lesser penalty or may determine that a re-hearing is necessary.
- 16.9 The decision of the Presiding Officer (Appeal) will be final.
- 16.10 A successful appeal against dismissal will result in the employee being reinstated and their continuity of employment preserved. Back pay will also be applicable in such circumstances.
- 16.11 A letter confirming the outcome of the appeal hearing will be sent to the employee within 5 working days.

**APPENDIX AA – FLOW-CHART**

**Disciplinary procedure:** \* To be read in conjunction with the full procedure



## **APPENDIX BB – CONDUCTING THE DISCIPLINARY HEARING**

*For preparation see separate guidance at appendix 7*

**Advice can be sought from the HR Adviser supporting the Presiding Officer ahead of the hearing and at any stage.**

In general terms, the following format will be adopted:-

- The Presiding Officer (Chair) arranges for the parties to enter and to take their designated seats.
- The Chair conducts introductions, checks that all parties have the same documents, explains the protocol for the hearing and responds to any initial procedural questions.
- The Presiding Officer and the HR Adviser to the Presiding Officer can ask questions at any time.

### **Management case**

- The Presenting Officer presents the case against the employee.
- The employee/representative may question the Presenting Officer.
- The Presiding Officer/HRA in attendance may question the Presenting Officer.
- The Presenting Officer calls in and questions any witnesses or reads from any witness statements.
- The employee/representative may question the management witnesses.
- The Presiding Officer/HR Adviser in attendance may question the management witnesses.
- Each management witness withdraws after their questioning has been completed.

### **Employee's response**

- The employee/representative presents their case in response to the allegations.
- The Presenting Officer may question the employee.
- The Presiding Officer/ HR Adviser in attendance may question the employee.
- The employee/representative calls in and questions any witnesses or reads from any witness statements.
- The Presenting Officer may question the employee's witnesses.
- The Presiding Officer/HR Adviser in attendance may question the employee's witnesses.
- Each employee witness withdraws after their questioning has been completed.

### **Summing up**

- The Presenting Officer summarises the management position.
- The employee/representative summarises their position.
- Both parties withdraw.
- The Presiding Officer will make their decision with procedural advice from the HR Adviser.
- Both parties are recalled.
- The Presiding Officer reads out their decision. This is confirmed in writing to the employee and should be recorded in the transcript of the hearing.

- The Presiding Officer brings the hearing to a prompt close, without further discussion or debate.
- The employee will be advised of their right of appeal against the decision and the timescales for its submission.

## APPENDIX CC - GUIDANCE ON CONDUCTING AN APPEAL HEARING

*For preparation see separate guidance at appendix 7.*

**Advice can be sought from the HR Adviser supporting the Presiding Officer ahead of the hearing and at any stage.**

In general terms, the following format will be adopted:-

- The Appeal Presiding Officer (Chair) arranges for the parties to enter and to take their designated seats.
- The Chair conducts introductions, checks that all parties have the same documents, explains the protocol for the hearing and checks/responds to any initial procedural questions.
- The Presiding Officer (Appeal) and the HR Advisor to the Presiding Officer (Appeal) can ask questions at any time.

**The governors' panel should not meet with either the employee or management side before the appeal hearing, nor discuss the case, to avoid any allegations of collusion.**

### **Summary of procedure**

Confirm that the **purpose** of the hearing is to review the decision taken on <date> to XXXXXXXXXXXXXXXXXXXXXXXX and whether that was a reasonable decision to take in the light of the evidence presented at the disciplinary hearing. Due regard will be taken of the grounds for appeal as set out in the individual's letter of <date>.

### **Employee's case**

- Presiding Officer Chair will ask the employee/representative to present their case to the panel including calling witnesses. (Note that witnesses must be relevant to the appeal and introduce no new information. They can be asked to wait and may be called back).
- The Presenting Officer (Appeal) will have the opportunity to ask any questions of the employee.
- The Presiding Officer (Appeal)/HRA will have the opportunity to ask questions of the employee/representative.

### **Management response**

**The Presenting Officer for the appeal will lead the management response. If this is not the Chair of the original hearing panel, they can be called as a witness.**

- Chair will ask Presenting Officer (Appeal) to present management's case including calling witnesses. (Note that witnesses must be relevant to the appeal and introduce no new information. They can be asked to wait and may be called back).
- The employee/representative will have the opportunity to ask any questions of the Presenting Officer (Appeal).
- The Presiding Officer/HRA will have the opportunity to ask any questions of The Presenting Officer (Appeal).

## **Summing up**

- Chair will ask Presenting Officer (Appeal) to sum up management's case.
- Chair will ask employee/representative to sum up the employee's case; the employee/representative should have the last word.

### **Adjourn for decision**

- Chair will then ask all parties except Presiding Officer/ HR Advisor to leave the room in order for the Presiding Officer to deliberate.
- Should the Presiding Officer need to recall any party to clarify any points, both parties will be invited to return.
- Both parties will be asked to return where a decision will be given verbally if this is possible – decision then confirmed in writing within 5 working days.
- The individual should be told that they have no further right of internal appeal.