

Disciplinary Rules and Procedures for Schools



St. Helens Council

Employee Relations
Human Resources Section
Town Hall
Victoria Square
St Helens
Merseyside
WA10 1HP

October 2018

DISCIPLINARY RULES

Disciplinary rules are necessary to set standards of conduct which are recognised as reasonable by the School, the recognised trade unions and individual employees.

The School, as a public body, must demonstrate the highest of standards in the way its employees conduct themselves when acting on behalf of, or representing the School.

Knowing and observing the rules and being aware of the consequences of contravening those rules assist employees in attaining standards of conduct and behaviour, which reflect the aspirations of the School as an employer.

Disciplinary rules cannot cover all possible incidents which may arise during employment. The omission of particular types of conduct from the rules does not mean that disciplinary action is thereby excluded; the rules give examples only and any breach of normal good conduct or standards of work may be subject to disciplinary action.

It is important that these rules are read in conjunction with:

- Code of Conduct for Employees;
- Standing Orders, Financial Procedure Rules, Financial Instructions;
- Health and Safety Policies;
- Information & ICT Security Policy Framework;
- the Guidance for Safer Working Practice for Adults who work with Children and Young People;

or any other regulation or procedure which applies to individual employees where these have been adopted by the Governing Body of each school. This includes rules and standards set by professional bodies or institutions which govern the conduct of their members.

The rules fall into two categories, examples of gross misconduct which are so serious that a single occurrence could result in summary dismissal, or misconduct for which repeated incidents, either related or unrelated, could result in dismissal following adequate warning/s.

1. Gross Misconduct

- (a) Unauthorised removal, theft or use of School, Council, clients, pupils, members of the public or fellow workers property or money.
- (b) Sexual misconduct whilst working for or on School or Council property. This includes sexual misconduct directed towards fellow workers or any person in or under the School or Council's care
- (c) Serious harassment, bullying or threats to fellow workers, members of the public, pupils or clients, either physical, verbal or written and including any protected characteristics as stipulated in the Equality Act 2010 (i.e. age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation)
- (d) Consuming alcohol or proscribed drugs, or being on licensed premises, during working hours without permission; or reporting for work in an unfit state due to alcohol or proscribed drugs.

- (e) Wilful assaults, threatening/abusive behaviour or fighting during working hours.
- (f) Serious and/or persistent breaches of agreed standards set by the School, Council and/or relevant professional bodies or institutions. This includes those relating to the care of clients, fellow workers and members of the public.
- (g) Conduct outside of work which could result in a loss of trust in an individual as an employee, or a conviction which renders it unlawful for you to carry out your duties (see also paragraph 3: Criminal Offences).
- (h) Serious and/or persistent abuse of the sickness scheme.
- (i) Serious and/or persistent misuse of computer facilities, including e-mail and internet facilities.
- (j) Conduct or action which could bring the School or Council into serious disrepute.
- (k) Intentional abuse, misuse or unauthorised destruction of, or damage to School, Council or other property, including property of pupils/clients, members of the public and fellow workers.
- (l) Wilful disregard of, or failure or refusal to adhere to, the Health and Safety Regulations or Codes of Safe Working Practices including those Safe Practices linked to working with children and young people and vulnerable adults.
- (m) Falsifying applications for employment, medical record, work records or any record associated with or completed during employment.
- (n) A serious act of insubordination or deliberate refusal to carry out a reasonable, lawful instruction.
- (o) Serious negligence which causes or might cause unacceptable loss, damage or injury.
- (p) Professional negligence.
- (q) Any comment or statement made for example via social networking sites which has the potential to bring the School / Council into disrepute or calls into question the professionalism of the employee and their suitability to continue in their role.

2. Misconduct

- (a) Unsatisfactory timekeeping.
- (b) Absence without permission.
- (c) Unsatisfactory standards of work not related to capability.
- (d) Failure to follow recognised procedures, e.g. holiday and sickness notification.

- (e) Rudeness or incivility to clients, members of the public, fellow workers or pupils.
- (f) A less serious act of insubordination and failure to follow management instruction

3. Criminal Offences

If an employee is charged with, or convicted of a criminal offence consideration needs to be given to the effect the charge or conviction has on the employee's suitability to do their job and on their relationship with their employer, work colleagues and clients. Employees are obliged to inform the School of any offence that could impact on their employment.

October 2018

DISCIPLINARY PROCEDURE

1. INTRODUCTION

In order to provide a fair and effective method of dealing with disciplinary matters the following procedure will be applied in all instances where disciplinary action is regarded as warranted. It has been drafted in accordance with the ACAS Disciplinary and Grievance Procedures Code of Practice (March 2015).

An informal reprimand (management instruction) may be given for a relatively minor act of misconduct. This is designed to reflect the proportionality of the misconduct and the individual's response to it i.e. their acceptance of the reprimand. If there is no acceptance, the matter will be addressed via the formal procedure. A written management instruction letter will be used to address such issues. It is recommended that a copy of any such reprimand be retained including the date of issue.

2. SCOPE OF THE PROCEDURE

- (i) This procedure applies to all employees of the School, including the Principal / Headteacher.
- (ii)(a) No formal disciplinary action will be taken against a trade union steward until the matter has been discussed with a trade union convenor.
- (ii)(b) Similarly no formal disciplinary action will be taken against a trade union convenor until the matter has been discussed with a relevant full time official
- (ii)(c) In cases of suspected gross misconduct, or where it is deemed in the better interest of any future investigation, then a trade union steward or convenor can be suspended prior to the appropriate official being notified, with the official being notified, as a matter of urgency.

3. FAST TRACK

This procedure introduces a 'Fast Track' process within the Disciplinary Rules and Procedures to help speed up the process and enable a faster resolution and closure to a disciplinary matter for the employee in certain circumstances.

This procedure can be used for cases of misconduct where the employee admits the allegations and agrees to accept a sanction up to and including a written warning. The fast track process will not be used for matters of gross misconduct.

There will be no requirement to produce a formal report or convene a disciplinary hearing under the fast track process. There will be no right of appeal against the sanction; any dispute will result in the case proceeding to a disciplinary hearing.

The use of the fast track process may need to be reconsidered if it becomes evident that the scope of the misconduct is broader or more serious than originally thought. If this is the case the employee will be informed of this in writing.

The fast track process is entirely voluntary and it is for the employee, with advice from their representative if appropriate, to agree to follow this process.

The fast track process can be requested by either the employer or employee.

The principles relating to the process are set out at Appendix 1.

4. EMPLOYMENT CONSIDERATIONS

Suspension

Where a matter arises which it is believed could be in contravention of the disciplinary rules, or may otherwise be a disciplinary matter, the issue of whether the employee is to remain in work during the investigation will need to be considered.

Suspension from duty will not be automatic, but is more likely if the matter concerned is potentially gross misconduct, or where the employee remaining at work could prejudice a thorough investigation.

Consideration of alternative to suspension

The School will consider alternatives to suspension and in any case will continually review suspensions with a view to them being lifted as soon as is practicably possible. In certain cases dependent on the circumstances it may be appropriate to provide alternative duties.

Conditions of Suspension / Alternative Duties

Suspension will be confirmed, in writing, to the employee together with any conditions placed upon them. Where the employee is not suspended they will be notified in writing of any conditions placed upon them in terms of remaining in work and any alternative duties they would be required to undertake.

During a period of suspension employees must not visit their place of work nor must they contact their work colleagues during working hours without the prior consent of a nominated officer. They should not attempt to undertake any work relating to their position with the School, or any other work relating to School business without prior consent. Access to I.T. systems and buildings will be revoked as a condition of suspension.

Contact of a personal nature may be maintained with work colleagues during the investigation however employees must not discuss or disclose information in relation to the investigation, nor should they seek to influence potential witnesses or breach any specific conditions imposed on them.

Any breach of the rules regarding suspension or other conditions imposed, or attempt to inappropriately influence the investigation or potential witnesses, would be considered as gross misconduct and will lead to a further disciplinary investigation and/or disciplinary action being warranted.

Where an obligation exists to notify an external body of a suspension such a body will be notified accordingly.

Pay

Employees under suspension or alternative duties will receive full contractual pay and allowances during this period. In cases where pay is subject to variation, payment will be based on the average of the twelve weeks prior to the suspension. Employees who report sickness whilst suspended will receive payment in accordance with their contractual entitlement, i.e. occupational sick pay and/or SSP where applicable.

Lifting Suspension / Alternative Duties

There may be situations during or on completion of the investigation that the Investigating Officer should recommend that the suspension / the requirement to carry out alternative duties be lifted. However, there may still be a case to answer of either gross misconduct or misconduct and in such cases employees will be advised of this, and any conditions placed on their return in writing.

Suspension of the Head teacher

The Chair of Governors will normally carry out suspension of the Head teacher. The Head teacher or a member of the Senior Leadership Team would normally carry out suspension of other staff.

5. INVESTIGATION

Timescales

The primary focus of all involved (i.e. management, the employee and their representatives) must be to complete investigations in the shortest time reasonably practicable and to minimise delays in the process for the benefit of all concerned. The Employee is expected to engage in the investigation and attend meetings when requested to minimise delays.

Support for Employees

Employees can access support from their Trade Union representatives and are actively encouraged to do so. Further, employees can refer themselves to Occupational Health who may be able to provide advice and support.

Notification of issues

Where a matter arises that is to be investigated in accordance with this procedure, the employee will be given a broad indication of the concern(s) and an investigation will be carried out. Allegations will only be formulated at the conclusion of the investigation if it is determined that there is a case to answer.

Involvement of Other Agencies

Where other agencies are investigating the matter e.g. the Police, Benefits Agency etc. in the interest of natural justice the internal investigation may need to be held in abeyance pending the notification from such other investigating agencies that the School's investigation will not detriment that of the other party. If the third party investigation does not hamper the disciplinary investigation then the investigation will continue and be brought to a conclusion.

Investigation

Investigations are for the purpose of investigating the concern(s), to ascertain the facts and decide whether disciplinary action should be considered.

There will be one investigation, therefore it is in the best interests of the employee to participate and cooperate fully with the investigation, which includes providing investigating officers with any evidence or information that would support their case, to allow a fair investigation to take place. The employee will be given the opportunity to identify any potential witnesses to support their explanations and it will be for the investigating officers to consider who needs to be interviewed. On receipt of the investigation report if the employee believes that key witness evidence has not been included, they will have the opportunity to provide this in the form of a witness

statement. This must be provided in accordance with the timescales specified for the submission of documents.

The investigation will normally be undertaken by a senior member of School staff and a representative from HR who will assume the roles of joint investigating officers.

It is important to carry out necessary investigations of potential disciplinary matters without unreasonable delay to establish the facts of the case. In most cases this will require the holding of an investigatory meeting with the employee before proceeding to any disciplinary hearing. In others the investigatory stage will be the collation of evidence by the employer to inform any disciplinary hearing.

The employee may wish to be accompanied by a trade union representative or workplace colleague of his/her choice at an investigatory meeting. If this is the case it is the responsibility of the employee to ensure the representative's attendance at the meeting. The Trade Union representative / colleague are not permitted to answer questions on behalf of the employee.

Notes of Investigatory Meeting

Notes of the meeting will be taken by the Investigating Officer(s), which will constitute the employer's record and will be included in the investigation report at any disciplinary hearing. They will not be produced as a statement from the employee or a verbatim script of the meeting and therefore will not require agreement. Employees are entitled to submit a written account of their explanation/answers before, at or following any interviews which will be considered as part of the investigation.

Witness Statements

It may be necessary to interview witnesses as part of the investigation. If this is the case, witnesses will be required to sign the record of the interview or a statement to indicate their agreement. This statement will be prepared by Investigating Officers based on the information that the witness has provided. Witnesses may be accompanied by a trade union representative or work based colleague of his/her choice. This colleague or representative will not be involved in the representation of the employee or employees under investigation. The anonymity of certain witnesses may need to be maintained dependant on the circumstances of the complaint made. Anonymous witnesses will be treated in accordance with ACAS guidance.

Surveillance

Where the investigation involves surveillance the School should follow the principles in the General Data Protection Regulations (GDPR) and in accordance with the Human Rights Act 1998. Further advice on this is available from St Helens Council's Human Resources, Employee Relations Section and Internal Audit.

Anonymous Information

Occasionally the School or Council may receive anonymous information which requires further consideration. The School will consider any such information; however, care will be taken to safeguard the rights of the employee/s subject to the allegations.

6. DISCIPLINARY HEARING

This procedure introduces a pilot scheme for dealing with misconduct cases which is at appendix 2. This pilot scheme will be reviewed by January 2020.

If on completion of the investigation if the Investigating Officer(s) is of the view that on the balance of probabilities there is a case to answer, then the Investigating Officer(s) will arrange a disciplinary hearing to be chaired by an appropriate Hearing Officer / Committee, as agreed via the constitution of the School's Governing Body, who have had no substantial involvement in the matter under investigation.

Where gross misconduct is alleged the hearing will be conducted by either:

- i) Head Teacher
- ii) Head Teacher with advice from a Committee of 2 Governors
- iii) a Committee of the Governing Body (minimum 3 Governors)

Notification / Documentation

If on completion of the investigation the Investigating Officer(s) is of the view that on the balance of probabilities there is a case to answer, then the employee will be notified in writing. The letter will describe the alleged misconduct and its possible consequences, including if appropriate, the risk of dismissal. Any written evidence, including the investigation report and witness statements, will be copied to the employee, no later than 10 working days in advance of the hearing. The allegation(s) will be clearly stated in writing to the individual and there will be sufficient detail provided within the documentation to enable the employee to respond at a disciplinary hearing.

The employee or representative may also wish to submit documentation. This should be provided to the Investigating Officer(s) no later than five working days following receipt of the disciplinary documentation. A complete bundle will then be submitted to the Hearing Officer prior to the hearing. It will be for the Hearing Officer to decide whether any documentation (from either side) provided later than this or on the day of the hearing will be accepted.

Witnesses

Where the Investigating Officer(s) or the employee or their representative intend to present evidence from witnesses they should give advance notice of this and provide witness statements in advance of the hearing, in accordance with the timescales stipulated in the 'Notification / Documentation' paragraph above.

Where witnesses are called to provide evidence in a case of gross misconduct, they are likely to be required to appear before management, the employee / representative and the panel and be cross examined on their evidence.

In cases of misconduct, it will be for the Hearing Officer / Panel to decide whether the witness needs to appear before the Hearing Officer / Panel to give evidence in person. The witness will only appear before the Hearing Officer / Panel and their HR adviser, however both parties will be given the opportunity to raise any points in relation to the witness evidence via the Hearing Officer / Panel.

Should any evidence be submitted on the basis that the witness legitimately wishes to remain anonymous (for example under the Confidential Reporting Policy or in very serious cases where there is a genuine reason accepted by the Hearing Officer / Panel), every effort will be made to maintain anonymity, while still providing the employee the opportunity to raise points in relation to the evidence presented.

Notes of the Hearing

Notes will be taken at the Disciplinary Hearing. These will usually be taken by the advisor to the Hearing Officer / Panel. These will constitute the employer's record;

they will not be a verbatim script and will not require agreement. These notes will be made available to any subsequent appeal, and will be provided to the employee as part of the appeal bundle.

Employees and/or their trade union representative/workplace colleague are entitled to take their own notes of the meeting, which can also be made available to any subsequent appeal if the employee wishes to do so.

7. REPRESENTATION AT FORMAL DISCIPLINARY HEARINGS

Employees have the right to be represented at a formal disciplinary hearing. The representative will be from a trade union or an official employed by a trade union (a trade union representative who is not an employed official must have been certified by their trade union as competent to accompany the worker.) Alternatively, the employee may be represented by a workplace colleague of his/her choice from within the School. The School will not permit representation by other sources or organisations.

The representative may conduct proceedings on behalf of the employee or simply accompany whilst the employee conducts his/her own case. Representatives will not be permitted to answer questions on behalf of the employee. In some cases the employee may not be in attendance. In those cases the representative may conduct the representation alone or with written statements from the employee concerned.

Postponements / Failure to Attend

Where the employee or representative requests a postponement then the hearing will be re-arranged in line with the Employment Relations Act 1999 and the opportunity provided for the employee and/or representative to attend or supply a written submission for consideration.

The Employment Relations Act 1999 only provides for one postponement due to the unavailability of a representative / workplace colleague. It is recognised that there are other reasons which may prompt a request for a postponement. Although the School will consider these, in the interests of avoiding lengthy delays multiple postponements will not normally be considered appropriate.

Failure to attend or make a submission at the rearranged hearing may result in the hearing proceeding and a decision being taken on the evidence available.

If an employee submits a GP's advice note that they are unfit, and the employee claims they are not fit to attend a disciplinary hearing, clarification may be sought from St Helens Council's Occupational Health Service.

If the subsequent advice indicates that the employee is fit to attend, the hearing will go ahead.

If the advice indicates that the employee is not fit to attend a hearing in person within a reasonable period or the employee chooses not to attend, the employee will be invited to provide a written submission for consideration at the hearing, and/or nominate their representative to attend and present the case in their absence.

If the Council's Occupational Health Unit indicates that the employee may be fit to attend a hearing in a specified period of time the hearing may be postponed for a maximum period of 4 weeks. If the employee disputes their fitness to attend at this point the matter may be referred back to the Council's Occupational Health for an

opinion but will not negate the right for the hearing to proceed by consideration of a written submission and/or the employees nominated representative to attend and present their case.

8. DISCIPLINARY ACTION

All levels of disciplinary action and reasons for the action will be confirmed in writing as soon as reasonably practicable.

The Hearing Officer / Panel will arrive at a decision after giving due consideration to the evidence and any relevant mitigating circumstances that may be submitted. If the decision is that the allegation(s) is/are proven, the following sanctions may be imposed. These sanctions will take effect from the date the decision is communicated to the individual unless this is otherwise specified.

Oral Warning

For a minor offence the employee will be issued with a formal oral warning making it clear why the warning is being issued and that further misconduct will lead to more serious disciplinary action. The warning will normally be current for a period of not more than six months.

The issuing of a formal oral warning will be confirmed by letter and will be recorded on the employee's personal file. It will remain current until expiry.

Written Warning

For a more serious offence or in the case of a lesser offence whilst a formal oral warning remains in existence, then a written warning will be issued.

The warning will remain current for a minimum period of 12 months up to a maximum of 24 months from the date of issue and the time period will be specified at the time of issue. It will explain why the warning is being given and that any further incidents of misconduct within that period will lead to further more serious disciplinary action.

The warning will be recorded on the employee's personal file. It will remain current until expiry.

Final Written Warning

Where a serious offence of misconduct, or in the case of a lesser offence which is committed during the period of a written warning occurs, a final written warning can be issued. The warning will explain the nature of the misconduct and the reasons why the warning has been issued and will explain that further misconduct during the warning period could lead to dismissal.

The warning will be issued for a minimum period of 12 months up to a maximum of 24 months, and will be specified at the time of issue. Again, the warning will be recorded on the employee's personal file. It will remain current until expiry.

Dismissal with Notice

Dismissal where an employee is entitled to a notice period usually occurs following disciplinary action for an offence, other than gross misconduct, where a final written warning is in place.

In the case of an employee who appeals against dismissal (other than dismissal for gross misconduct) the employee will be paid contractual notice pay and every effort will be made to convene an appeal prior to the dismissal date. Should the appeal be successful resulting in reinstatement after the period of notice has expired then all relevant payments will be made to the individual.

Summary Dismissal

Dismissal without notice occurs in cases of gross misconduct regardless of whether any disciplinary action has been taken against the employee previously.

In a case of dismissal for gross misconduct, if the appeal is successful and results in reinstatement, all relevant payments will be made to the individual. This will be subject to any alternative disciplinary action which may be imposed by the Appeal Panel.

Action as an Alternative to Dismissal

In cases where gross misconduct is proven, suspension without pay, demotion, disciplinary transfer, loss of increments or other penalty short of dismissal may be sanctions that could be considered in conjunction with a final written warning as an alternative to dismissal. This would be the case where the employee acknowledges the breach of the disciplinary rules and the Hearing Officer / Panel hearing the case considers there to be valid reason for doing so.

If the decision is to offer any of the above with a final written warning as an alternative to dismissal and the employee accepts this, there will be no right of appeal. If the alternative to dismissal is not accepted by the employee the dismissal will be implemented and the employee will be entitled to appeal against their dismissal.

9. APPEAL AGAINST DISCIPLINARY ACTION

Appeals under this procedure in respect of warnings or dismissal will take the form of a review. This constitutes the Appeal Hearing Officer / Panel reviewing the Disciplinary Hearing Officer's / Panel's decision based on the evidence before them at the original hearing and whether this fell within a band of reasonable responses open to an employer. The Hearing Officer/ Panel will be accompanied and advised by a HR Adviser, who will also take notes as the employer's record of the hearing.

The appeal must be submitted using the appeal document and must be signed by the employee stating whether the employee is appealing against the findings (that the allegation(s) were proven) or the level of sanction imposed. The documentation must be completed providing full written reasons and detail supporting the grounds of appeal including any new evidence that may have emerged.

The notice of appeal must be submitted to the manager or officer specified in the disciplinary confirmation letter within ten working days of receipt of written notification of the decision.

If any new evidence from either party emerges after the submission of the appeal form and prior to the appeal hearing then this will be for the Appeals Panel / Appeal Hearing Officer to decide the relevance of this evidence and whether it should be

accepted and, if accepted, whether this should be remitted back to the original Disciplining Officer / panel for their consideration. The appellant must show why the evidence is new, relevant and why it was not possible to produce this evidence at the original hearing.

Appeal against Formal Warnings

An appeal against a formal warning will be heard by a more senior leader than the Disciplining Officer or by an appeal committee of the Governing Body. The officer / committee hearing the appeal will have had no substantial involvement in the disciplinary investigation or hearing. All documentation submitted to, and accepted by, the first hearing will be provided to the chair of the appeal in advance.

These appeals will take the form of a review by way of oral submissions from the management side and employee side, with reference to any documentation submitted to the original hearing, as appropriate. The format for such appeals is attached at Appendix Four.

Appeal against Dismissal

Appeal against dismissal will be heard by an appeal committee of the Governing Body. This appeal will also take the form of a review of the decision by way of oral / written submissions from the management and employee, with reference to notes of the hearing and documentation submitted to, and accepted by, the disciplinary hearing.

The Panel may, at their discretion, substitute other disciplinary action. Such other action will be determined with regard to the seriousness of the offence, the employee's record and other relevant factors. The appeal decision is final and concludes the internal process.

The format for such appeals is at Appendix Five.

10. MONITORING DISCIPLINARY ACTION

The Council has a statutory obligation to undertake monitoring in respect of race, gender and disability. Disciplinary actions undertaken are one of the items that must be monitored under this obligation to ensure that they are free from discriminatory bias in respect of their content and handling.

The Council is required to record and monitor any reported hate incidents involving its staff. Any action that is founded, and concerns discrimination in matters of racism, disablism, sexism, religious discrimination, homophobia, discrimination related to gender reassignment or to ageism must be recorded using the Council's agreed reporting form.

11. REFERRAL TO APPROPRIATE BODIES

The School or Council will refer cases as required to relevant bodies including the Police, Disclosure and Barring Service, Teacher Regulation Agency, other professional regulatory bodies etc.

Date: October 2018

Principles for Fast Track Procedure

An investigatory meeting will take place with the employee to establish facts and determine if there is a case to answer. Where there is a case to answer and there is the possibility that the Fast Track procedure could apply the employee will receive a letter outlining the allegations and offering them the opportunity to proceed under the Fast Track procedure.

The employee will be given 5 working days to either agree or decline to fast track the case. If agreement is obtained, the employee will be required to complete a consent form which will contain the information obtained from the investigatory meeting. Once received an appropriate sanction up to and including a Written Warning will be issued.

Process for Misconduct Hearing

***(For the procedure in relation to Gross Misconduct Hearings, see Appendix 3)**

This is a pilot process agreed with Trade Unions. This will replace the traditional approach to misconduct hearings.

- All documentation will be provided to the Hearing Officer / Panel and nominated HR Adviser at least three working days in advance of the hearing date. This should be one investigation bundle which will incorporate any evidence submitted by the employee.
- It is the responsibility of the Hearing Officer / Panel to ensure they have a full understanding of the case before them.
- At the hearing, the Hearing Officer / Panel and nominated HR Adviser will meet with the employee (and their representative if they are accompanied). The employee will be given the opportunity to respond to the allegations and the investigation report. This will be the employee's opportunity to raise any points about any information provided by witnesses and highlight any concerns with witness evidence they wish the Hearing Officer / Panel to explore.
- The Hearing Officer / Panel will determine who they also wish to hear from in respect of the investigation. This could include the Investigating Officers, any witnesses who have provided witness statements or any person the Hearing Officer / Panel deems to hold information/evidence relevant to the case.
- Following this, the Hearing Officer / Panel may wish to hear from the employee again to seek points of clarification.
- Once the Hearing Officer / Panel is satisfied that they have obtained all relevant information in respect of the allegations, they deliberate in private with their HR Adviser and will arrive at a decision having given due consideration to the evidence and any relevant mitigating circumstances.
- The decision will be confirmed in writing to the employee as soon as is reasonably practicable.
- Any appeal against sanctions issued under the above process will be conducted in the same manner with the employee invited to articulate the reasons for appeal to an Appeal Hearing Officer / Panel who will be accompanied by a HR Adviser. The Appeal Hearing Officer / Panel will subsequently arrange to meet with the Hearing Officer from the original disciplinary hearing who will provide their rationale for the decision taken.
- The Appeal Hearing Officer / Panel will also determine who else they wish to hear from in respect of the appeal, which could include the Investigating Officers or any original witness(es).
- Having considered all of the information available the Appeal Hearing Officer / Panel will deliberate in private with their HR Adviser and decide if the findings of the Hearing Officer / Panel were reasonable based on the information available to them. In addition if a disciplinary sanction has been issued the Appeal Hearing Officer / Panel will decide if the sanction is a reasonable response based on the circumstances of the case.

ORDER OF PRESENTATION

DISCIPLINARY HEARING – GROSS MISCONDUCT CASES

1. The Chair introduces the participants and outlines the procedure to be used.
2. The Management Representative(s) present the management's case.
3. Witnesses may be called to support management's case and be questioned by the following:-
 - (a) Management Representative(s).
 - (b) The Employee or Representative.
 - (c) The Chair / Committee and Adviser.
 - (d) Management Representative(s) have the right of re-examination.

At the conclusion of the management case the Management Representative(s) may be questioned by (a) the Employee or Representative (b) The Chair / Committee and Adviser.

4. The Employee or Representative presents the case in defence.
5. Witnesses may be called to support the employee's case and be questioned by the following:-
 - (a) The Employee or Representative.
 - (b) Management Representative(s).
 - (c) The Chair / Committee and Adviser.
 - (d) The Employee or Representative has the right of re-examination.

At the conclusion of the employee's case the Employee or Representative may be questioned by (a) Management Representative(s), (b) the Chair / Committee and Adviser.

6. Management Representative(s) summarise the Management's case.
7. The Employee or Representative summarises the employee's case.
8. The Chair of the Hearing requests both parties to withdraw, but may call upon either party, in the presence of the other, for a point of clarification. In certain cases, an adjournment may be made and another date set for reconvenement, particularly in lengthy cases where there is a great deal of information to consider.

9. The Chair of the Hearing recalls both parties and conveys the decision orally in the presence of both parties. Where this is not possible, a decision may be conveyed in writing as an alternative.
 10. Full written reasons for the decision will be confirmed in writing to both parties as soon as is reasonably practicable.
- * Should any evidence be submitted on the basis that the witness wishes to remain anonymous (e.g. under the Confidential Reporting Policy), then the Chair / Committee will interview those persons providing the information privately with their HR Adviser. When the evidence is presented to the Disciplinary Hearing, the Chair / Committee may wish to adjourn to re-question the witnesses regarding any points raised by the employee or their representative. This will be carried out in accordance with ACAS guidance.

Date: October 2018

DISCIPLINARY APPEALS

Disciplinary Action other than Dismissal

1. The Chair introduces the participants and outlines the procedure to be used.
2.
 - (a) The Management Representative(s) present the management's case by way of oral submission with the Disciplining Officer in attendance.
 - (b) The Management Representative(s) may question the Disciplining Officer
 - (c) The Employee or Employee's Representative may question the Disciplining Officer
 - (d) The Chair / Committee and Adviser may question the Disciplining Officer
 - (e) The Management Representative(s) have the right to re-examination.
3.
 - (a) The Employee or Employee's Representative presents the case
 - (b) The Management Representative(s) may question the Employee
 - (c) The Chair / Committee and Adviser may question the Employee
 - (d) The Employee or Employee's Representative has the right to re-examination
4. The Management Representative(s) summarise the management case
5. The Employee or Employee's Representative summarises the employee's case
6. The Chair of the Hearing requests both parties to withdraw, but may call upon either party, in the presence of the other, for a point of clarification.
7. The Chair of the Hearing recalls both parties and conveys the decision orally in the presence of both parties. Where this is not possible, a decision may be conveyed in writing as an alternative.
8. The decision will be confirmed in writing to both parties as soon as is reasonably practical.

Date: October 2018

DISCIPLINARY APPEALS

Dismissal

1. The Chair introduces the participants and outlines the procedure to be used.
2.
 - (a) The Management Representative(s) present the management's case by way of oral submission with the Dismissing Officer in attendance.
 - (c) The Management Representative(s) may question the Dismissing Officer
 - (c) The Employee or Employee's Representative may question the dismissing officer
 - (d) The Chair / Committee and Adviser may question the Dismissing Officer
 - (e) The Management Representative(s) have the right to re-examination.
3.
 - (a) The Employee or Employee's Representative presents the case
 - (b) The Management Representative(s) may question the Employee .
 - (c) The Chair / Committee and Adviser may question the Employee .
 - (d) The Employee or Employee's Representative has the right to re-examination
5. The Management Representative(s) summarise the management case
5. The Employee or Employee's Representative summarises the employee's case
6. The Chair of the Hearing requests both parties to withdraw, but may call upon either party, in the presence of the other, for a point of clarification.
7. The Chair of the Hearing recalls both parties and conveys the decision orally in the presence of both parties. Where this is not possible, a decision may be conveyed in writing as an alternative.
8. The decision will be confirmed in writing to both parties as soon as is reasonably practical.

Date: October 2018

ROLES AND RESPONSIBILITIES DURING THE DISCIPLINARY PROCESS

Investigating Officers will:

- Approach the investigation objectively
- Complete the investigation within a reasonable timeframe
- Consider whether introducing temporary measures such as suspension from work / other conditions are necessary
- Attempt to collect all relevant information on the matter being investigated, both inculpatory and exculpatory
- Consider any mitigation put forward by the employee
- Usually interview the employee about the matter being investigated
- Interview relevant witnesses and produce witness statements, giving consideration to those witnesses put forward by the employee
- Consider the evidence obtained and on the balance of probabilities reach a conclusion on what most likely did or didn't happen
- Decide whether there is a case to answer at a Disciplinary Hearing
- If there is a case to answer produce a report detailing their findings, and bundle of supporting documentation, incorporating evidence submitted by the employee and provide this to the Hearing Officer
- Not be involved in making any subsequent decisions in terms of the outcome of any the Disciplinary Hearing.

Hearing Officers / Panels will:

- Approach the Hearing objectively
- Ensure all parties conduct themselves appropriately during the hearing
- Ensure they have a full understanding of the case before them, seeking clarification from either party, witnesses or specialist experts where necessary
- Consider all of the evidence available to them
- Consider whether additional evidence is necessary for them to reach a conclusion
- Give the employee the opportunity to respond to the allegations

- Decide whether the allegations facing the employee are proven and, if so, decide on an appropriate level of sanction
- Provide full written reasons for any action taken
- Inform the employee in writing of their right to appeal against their findings and/or level of disciplinary sanction imposed

Appeal Officers / Panels will:

- Approach the Appeal objectively
- Have had no previous involvement in the disciplinary meeting.
- Review the findings / sanction of the original Hearing Officer / Panel
- Decide whether the sanction imposed by the original Hearing Officer / Panel was within the range of reasonable responses available to them
- Consider how to deal with any new evidence which has become available since the original Hearing
- Provide a written response to the appeal

HR Advisers to Disciplinary Hearings / Appeal Hearings will:

- Approach the Hearing objectively
- Take non-verbatim notes of the meeting, which will constitute the employer's record.
- Provide advice and procedural assistance including, at the request of the Hearing Officer / Panel Chair, ensuring that all parties conduct themselves appropriately during meetings
- Have the opportunity to ask questions of those involved including Investigating Officers, witnesses and the employee to assist the Hearing Officer / Panel in reaching a conclusion
- Make the Hearing Officer / Panel aware of previous cases of similar alleged misconduct to ensure consistency
- Any other actions as agreed by the Hearing Officer / Panel Chair with the intention of ensuring a fair process
- Not make any decision in terms of culpability
- Draft the outcome letter for the Hearing Officer / Panel based on their deliberations

The Employee will:

- Ensure that they contribute fully to the investigation, including making Investigating Officers aware of any witnesses or other evidence which can support their explanations and providing this in the timescales set out within the procedure
- Make all reasonable efforts to attend meetings as required
- Respond openly and honestly to questions during the investigation and hearing process
- Be specific when raising issues or concerns with the investigation report / supporting evidence explaining your reasons and if applicable providing evidence to support this

Trade Unions / Representatives will have the opportunity to:

- Accompany the employee to any investigatory interview / disciplinary hearings with management
- Not answer questions on their member's behalf
- present any relevant information and/or evidence to support their case but will not answer questions on the employee's behalf
- Take notes on the employee's behalf
- Confer with the employee during the hearing provided this does not distract or interfere with the conduct of the Hearing

Professional Conduct:

All parties will be aware of other people's rights to be treated with courtesy. No party should feel bullied or insulted or be verbally attacked by another party. Should one party disagree with another, then there is a professional and courteous way to disagree without the need to shout or otherwise act in an inappropriate manner.

The Chair has a duty to ensure that the above standards of conduct are maintained throughout the process. The Chair can and will first **warn** any party in breach of the above and then, should the inappropriate behaviour persist, may ask the party to leave the hearing. This would always be a last resort.

October 2018