

## **SOLIHULL METROPOLITAN BOROUGH COUNCIL**

# **DISCIPLINARY PROCEDURE**

**This policy sets out the terms of agreement reached by those participating in the Council's Consultation and Negotiating Framework**

| <b>Version</b> | <b>Date</b>   | <b>Summary of changes</b>   |
|----------------|---------------|---|
| 20             | November 2015 | Organisation and process definitions<br>Fact finding stage to determine informal resolution or formal investigation.<br>Model Risk Assessment for suspension<br>Process for DBS referrals |

# Solihull M.B.C. Disciplinary Procedure

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# PART A - POLICY

## The scope and purpose

This procedure applies to all Solihull Council employees, except JNC (Chief Officer, Monitoring Officer and Section 151 Officer) staff, who will be managed under JNC terms and conditions.

This procedure aims to encourage a good working environment where employees conduct themselves appropriately to fulfil their contract of employment, and meet required Codes of Conduct (e.g. Health and Care Council Professions standards of conduct, performance and ethics). The procedure is designed to enable individual cases to be resolved fairly, consistently and in a timely manner. The policy should be used to deal with alleged breaches of standards and professional codes of conduct and should not be seen simply as a punitive procedure. The procedure will be used where employee behaviour is unacceptable or an act of misconduct has occurred.

This procedure may be used as a result of an investigation into a complaint of harm against an employee working with children and/or vulnerable adults. Initially in these cases the Managing Allegations Policy will need to be considered prior to the disciplinary procedure.

The disciplinary procedure is not intended to be used for matters that can be handled by Capability Procedure or Sickness Absence Procedure. This procedure is also not intended to cover issues of misconduct that arise during probation, for which the Probation Scheme should be applied. However, where allegations of gross misconduct arise, this should be handled under the Disciplinary Procedure.

The application of this procedure, and the standards of behaviour set out, also extends to settings outside the workplace whilst off duty e.g. work-related social events.

This document has three parts. Part A is a general policy outline of the context and definitions. Part B relates to 'Informal Resolution', providing guidance to managers on how to handle matters that may not warrant formal disciplinary action. Part C contains the formal procedure for more serious matters.

## Principles

The Employer reserves the right to implement the procedure at any stage, as set out below, taking into account the alleged misconduct of an employee.

Issues of conduct should be dealt with as they arise, informally in the first instance where appropriate, before referring matters onto the formal procedure.

Employees have a right to be accompanied by a recognised trade union representative (or a person approved by the trade union) or a nominated work colleague during any part of the **formal** stages of the disciplinary procedure.

In the event of any action being proposed under this Procedure against a Trade Union representative, HRE must be informed and the appropriate full time official of that Trade Union should be notified prior to the procedure being used. (For further information please refer to the ACAS Code of Practice).

## **Definitions**

- 'School based staff' refers to both teaching and support staff at schools.
- 'Non-schools' refers to all employees (other than school based staff) on local government terms and conditions, including catering staff. It also refers to centrally employed teachers on teacher's terms and conditions.
- 'Employer' refers to either SMBC or the school.
- 'Line Manager' refers to supervisor/Head teacher or Chair of Governors.
- 'Conduct' refers to reasonable standards of conduct and behaviour that would be expected of an employee in order to comply with their contract of employment.
- 'Misconduct' refers to behaviour or conduct that is considered unreasonable and unacceptable. It may also contravene an employee's contract of employment and/or breach some of its terms and conditions. Examples of misconduct are provided in Appendix 1.
- 'Gross misconduct' refers to conduct which is extremely serious and which, because it strikes at the very heart of the employment relationship, could result in dismissal for just one offence. Examples of gross misconduct are provided in Appendix 1.
- 'Bundle' refers to the information gathered during the course of an investigation including copies of signed witness statements and other relevant documentation.

## **Responsibilities**

### Employee

To make themselves available and to co-operate during each stage of the procedure in order to allow a full, thorough and transparent investigation to take place and ensure a timely conclusion.

### Line manager/ Head teacher/ Chair of governors

To ensure that staff have the opportunity to be acquainted with this procedure and they themselves are aware of both the procedure and their delegated responsibility within it. To undertake prompt and thorough investigations, of any matter of misconduct, in accordance with the policy. Consult with HR, as appropriate, when using the procedure.

### Human Resources (HR)

To provide on-going support to those involved in the application of this policy during each stage of the procedure. To liaise with Audit, informing them of all disciplinary matters as they arise, as soon as possible.

### Recognised trade union representative or nominated work colleague

To accompany and advise an employee throughout all stages of the formal procedure, where requested. The representative will be allowed to act in accordance with ACAS guidelines.

### Audit

Audit will be involved where circumstances warrant an investigation into matters of a financial or fraudulent nature. Equally, where practicable, co-investigations may be undertaken by Audit and the disciplinary investigation officer in order to progress matters.

### Investigating officer

To undertake a full, thorough, fair and objective investigation, gathering all the relevant information available at the time.

### Local Authority Designated Officer (LADO)

To liaise with Head Teachers/Senior Managers, Governors, Police and Education and Children's Services in the case of an allegation being made against an employee working with children and young people. To ensure that records relating to such allegations are maintained, and to work in partnership with the Regional Investigation and Referral Support Coordinator.

### Safeguarding Adults Manager

To take the lead responsibility for Adult Protection, reporting to the Director of the Communities and Adult Social Care.

## **Gross Misconduct**

Gross misconduct is conduct which is extremely serious and which, because it strikes at the very heart of the employment relationship could result in dismissal for a first offence. In normal circumstances, if on completion of an investigation under the disciplinary procedure, the Employer is satisfied that gross misconduct has been established, this will normally result in summary dismissal i.e. dismissal without notice.

Where there are allegations of gross misconduct the Head of service/Chair of governors shall be advised immediately. The Head of Audit must be informed by the appropriate Director or authorised officer of any disciplinary matter.

In cases of potential gross misconduct, consideration should be given to whether the employee should be suspended or transferred. Please see below for details.

## **Suspension and Transfer**

In certain cases, for example in cases of potential gross misconduct, or where relationships have broken down, consideration should be given to a temporary transfer or a period of leave. If, however, this is considered inappropriate (e.g. the employee's presence within the workplace would hinder the investigation), then after careful consideration, a period of suspension with full pay may be arranged. This must be done in consultation with HR and should be confirmed with the employee in writing within three working days from the date of suspension. Any such suspension is without prejudice and does not constitute disciplinary action. A model 'Risk Assessment for Suspension' is available to assist the manager/ head teacher in this process (Appendix 3)

Where there is cause to suspect that a child and/or vulnerable adult are at risk of harm or there is a police investigation there may be the need to suspend the employee. Consideration should first be given to alternative work with no direct contact with children or vulnerable adults.

Equally, if during the course of an investigation, evidence comes to light to suggest that gross misconduct has occurred, the employee may be;

- (i) temporarily transferred
- (ii) a period of leave arranged or
- (iii) suspended on full pay, as detailed above.

**For non-schools' staff:** Any decision to suspend must be approved by a Head of Service or any nominated senior manager.

**For school based employees:** The Head teacher, or nominated senior person, shall have the power to suspend any teacher or school based employee, in consultation with HR. In the case of a head teacher, the LA may suspend in consultation with the Chair of governors.

Any decision to suspend or transfer an employee must be kept under review, and appropriate contact must be maintained with the employee during the period of suspension.

An employee who is suspended must be available and contactable during their normal working hours. Where an employee is unavailable to attend meetings or hearings, appropriate action will be taken and may consequently impact upon pay.

Where an employee has been signed-off sick during a period of suspension, sick pay will apply in accordance with the Council's sickness absence management procedure.

In certain circumstances, employees may be suspended on full pay to allow for a 'cooling off' period. Such suspensions will by their nature, be of a limited duration (and not normally longer than five working days).

## **Absence during disciplinary proceedings**

### **Employee Absence**

Whilst it is recognised that it is natural for employees to feel concerned at being informed of disciplinary issues, this must not prevent the disciplinary process from continuing. Employees are reminded of their obligation to 'be available' to the employer, to enable the disciplinary process to proceed without undue delay.

In exceptional circumstances, where an employee is unable to attend work or make themselves available following commencement of disciplinary proceedings, consideration may be given to allow the employee to:

1. Postpone the hearing or meeting once, provided there is satisfactory evidence/ reason for the postponement.
2. Send in written representation instead
3. Send a representative in their place
4. Opt for a combination of option 2 and 3
5. Hold the meeting away from the workplace at a neutral venue
6. Have the meeting by telephone conference from their home.

Failure to comply with the above may result in withdrawal of pay, following appropriate consideration of the circumstances.

### **Recognised trade union representative or nominated work colleague absence**

In accordance with ACAS guidance where a trade union representative or work colleague (who is accompanying the employee) is unable to attend a hearing, the employee can suggest an alternative time and date, so long as it is reasonable and it is not more than five working days after the original date.

## **Safeguarding vulnerable groups**

In order to ensure the protection of children and vulnerable adults within the Authority, the following will apply in certain circumstances:

- If an employee resigns during the course of an investigation, the investigation must continue and have an outcome, which should be recorded.
- Whilst any sanctions awarded would only remain “live” from the period stated for the purposes of future disciplinary decisions, any sanctions from an investigation into harm to children and vulnerable adults will remain on file for 10 years.
- Details of any allegations or concerns of harm to children and vulnerable adults (including unproven allegations), the outcome of the those concerns, the conclusion reached, and how the matter was resolved, will be kept on file for 10 years and may be used in a future reference request (unless it is established that the allegations are malicious allegations).

This is to ensure that SMBC is compliant with safeguarding statutory guidance.

If an employee becomes barred by the Disclosure and Barring Service (DBS) whilst an employee of Solihull MBC, or has an unsatisfactory DBS during their employment, and they cannot legally be employed in their role, they would be subject to the Council’s disciplinary procedure, which could lead to their dismissal.

## **PART B – PROCEDURE**

Where it becomes apparent that there has been or may have been misconduct on the part of an employee, it is necessary to conduct a full investigation into the background and surrounding circumstances to gather all the relevant facts.

Before deciding whether or not there is a disciplinary case to be answered and whether a matter should be dealt with formally or informally, the line manager/ head teacher/ appropriate manager and HR will determine the scale of the investigation that is necessary to identify the facts of the event.

The decision to refer to a disciplinary investigation may have been determined where a concern has been raised and managed under another procedure, for example a Dignity at Work case, or as an outcome from a Position of Trust meeting (Managing Allegations Against Employees).

### **INFORMAL RESOLUTION**

Solihull Council recognises that in some cases of misconduct, informal counselling of the employee by their immediate line manager/ Head teacher will quickly resolve the problem, thus reducing or eliminating the need for formal disciplinary action. This section provides guidance to managers on approaching such matters in an attempt to promote consistent practice and reduce the need for formal disciplinary action.

In the first instance, managers need to consider dealing with matters through informal resolution before referring any cases onto the formal stage of the procedure

As this is an informal one to one discussion, which will not result in a formal disciplinary sanction e.g. verbal or written warning, employee representation will not normally be appropriate at this stage.

#### **Good management practice**

Managers should use this informal approach where formal disciplinary action is disproportionate to the alleged misconduct.

In these instances the manager/ Head teacher should arrange to meet with the employee to discuss the conduct. Consideration may be given to the following points:

- Explain that the meeting is informal.
- Outline that it is not formal disciplinary action and therefore not part of the formal disciplinary procedure. Representation would not normally be required at an informal meeting. However, if the employee considers that the matter discussed requires representation then further advice should be sought from Human Resources
- Outline the conduct under review.
- Ask the employee for an explanation.
- Explain why the conduct was considered inappropriate.
- Confirm the expectations and required standards.
- In certain circumstances, it may be appropriate to agree with the employee an action plan (if applicable) that provides a framework setting out the improvement required. It may be appropriate to set objectives and timescales.
- Whether counselling, training or any other help or support is appropriate.

- Confirm when the matter will be reviewed (if applicable).
- Explain that formal disciplinary action may be taken if the improvement is not achieved or sustained.
- Informal resolution does not constitute formal action and will not be referred to in employment references.

The manager should record a brief note of the conversation and any action points (copy for the employee), and ensure a follow up discussion is held after an appropriate period to provide an opportunity for review (where this is required) and where the desired outcomes have been achieved and to encourage a sustained improvement.

Where this process has not led to the desired outcome, such as in cases of repeated occurrences of minor misconduct, or where the matter is more serious (and this recommended practice is not appropriate) then progression to the formal part of the policy may be required.

**Advice should be sought from HR before moving in to the formal stage of the procedure.**

# FORMAL DISCIPLINARY PROCEDURE

This part of the procedure should be applied for cases of serious misconduct, gross misconduct and where informal resolution has not reached the desired outcome and there are repeated occurrences of minor misconduct. In these circumstances, advice must be sought from HR.

## **Investigation stage**

Purpose – to conduct a full and thorough investigation, gathering all the relevant information available at the time, ensuring the investigation remains fair and objective at all times. The investigation should be in proportion to the nature of the alleged misconduct.

The investigating officer should be someone who has not previously been involved in the matter and in most cases will be undertaken by Audit services. The investigating officer should be appointed within 5 working days of the date that the employee was first notified of the event.

The employee who is the subject of the alleged misconduct will be informed in writing of the matters to be investigated and this should reflect one (or more) of those reasons listed in Appendix 1. The employee should also be provided with a copy of this procedure and reminded of their right to be accompanied by a recognised trade union representative (or a person approved by the trade union) or a nominated work colleague.

Employees who are suspended from work are not precluded from contacting their workplace colleagues. However, as with all employees under disciplinary investigation, they should ensure that they do not discuss the matter under investigation with anyone other than their nominated representative. Nor should they access their place of work. Should the employee want a workplace colleague to act as their representative, or need to access their place of work for any reason, they should inform a member of Human Resources or their line manager, or, in the case of school staff, their Head teacher, prior to making contact with the individual concerned or to arrange access to their place of work.

The investigation will include discussions with the employee and may include taking statements from any relevant witnesses and collecting any further documentary evidence.

In exceptional circumstances, such as where there is fear of reprisal, statements gathered from relevant witnesses may be given anonymously. In such cases the investigating officer must seek to gather additional evidence to substantiate the allegations or not.

An investigation will normally be completed within 20 working days of the date from which the investigating officer was appointed. Where this is not possible, the investigation will be completed as promptly as possible, and the employee will be kept fully informed on progress and future timescales by the Investigating officer.

When the investigation has been completed, the investigating officer will prepare a report.

### **Investigation report:**

The report must include a recommendation which should be as follows:

1. Where it is considered that there is no misconduct and, therefore, no case to answer the matter should end. However, this outcome may still be subject to an action plan and/or learning outcomes to avoid similar occurrences in the future;

Where it is found that there are no reasonable grounds to believe that an employee has committed an alleged act of misconduct, the appropriate manager will confirm the outcome in writing to the employee with a summary of the decision. .

or

2. There are reasonable grounds to believe that an employee has committed an alleged act of misconduct.

On completion of the investigation report, the report should be forwarded to HR, who in conjunction with the appropriate manager will review the report, determine the allegation(s) and arrange for appropriate action to be taken.

The employee will be required to attend a formal disciplinary hearing.

## **Disciplinary hearing**

Purpose - A disciplinary hearing will be convened where the investigation indicates there appears to be a case to answer.

### The panel

#### **A. For non schools:**

The hearing will be conducted by a panel consisting of no less than two officers; an appropriate senior manager to chair the hearing and a representative from HR, neither of whom will have previously been involved in the case. . In cases where the outcome could result in dismissal, the senior manager hearing the case will be a Head of service or equivalent nominee.

#### **B. For schools:**

1. Where an investigation has substantiated that the alleged act or acts are potentially matters of misconduct and do not appear serious enough to constitute gross misconduct or are unlikely to warrant dismissal:
  - A Head teacher will chair the hearing where the policy is being applied to a teacher or other school based employee.
  - The Chair of governors will chair the hearing where a policy is being applied to a Head teacher.
2. Where an investigation has substantiated that the alleged act or acts are potentially matters serious enough to constitute gross misconduct, and there is a strong possibility of dismissal, and particularly in cases where an employee has either allegedly committed an act of gross misconduct or has an outstanding 'live' final written warning:
  - A panel of three governors will be convened, one of whom will act as panel chairperson, where the policy is being applied to teachers or school based employees. Where the panel is convened in order to consider matters related to a Head teacher, the Corporate Director or appropriate designated deputy will attend to provide Local Authority advice to the panel.

A representative from HR will also attend all disciplinary hearings to provide professional advice and guidance.

## Written Notification

The employee will be given at least five working days notice of the hearing, together with written confirmation of the following:

- The purpose of the hearing and there is a case to answer
- The allegation(s) against the employee
- The date, time and location of the hearing
- The right to be accompanied by a recognised trade union representative (or a person approved by the trade union) or a nominated work colleague
- The allegation(s) against the employee
- The 'bundle' containing all relevant information (including the investigation report, any statements and other documentation that the organisation intends to rely upon)
- Any witnesses that will be called by the investigating officer
- Their right to forward written submissions and any additional information or names of witnesses to be called.
- The possible outcomes of the hearing

If the employee fails to attend the hearing, it may continue in their absence, unless a reasonable explanation for non-attendance has been provided to the panel. In such cases, arrangements will be made to reconvene the hearing within five working days. Continued non-attendance will result in the hearing being held in the employee's absence.

## Employee requirements prior to the hearing

Employees have the right to forward written submissions and any additional information or names of witnesses to be called at least two working days prior to the hearing.

## During the disciplinary hearing

(NB: In schools, 'panel' may refer to the Head teacher or Chair of governors)

1. The investigating officer will present the evidence gathered and call any witnesses as appropriate.
2. The employee and/or their representative will have the opportunity to question any witness and the investigating officer.
3. The panel may also question the witnesses and the investigating officer.
4. The employee (or their representative) will then present their case and call any witnesses.
5. The investigating officer will have the opportunity to question any witnesses and the employee.
6. The panel may also question witnesses and the employee.
7. The investigating officer and employee (or representative) will each be given the opportunity to make a brief concluding statement.
8. Both parties will then withdraw and the panel will consider the information presented and decide on whether the allegations have been substantiated. This decision will be based on the balance of probabilities.
9. The panel may also choose to recall both parties to clarify points of uncertainty before making a final decision.

10. All parties will be then be recalled and informed of the panel's decision.
11. Where the allegation(s) have been established, full or in part, HR will confirm whether the employee has any live warnings for the panel's consideration. If applicable, a further adjournment will take place whilst the panel decide on the appropriate sanction.
12. The hearing will then be reconvened and the chair person will confirm the outcome, including:
  - The sanction (if any)
  - The reason/s for the decision
  - The period any sanction will remain 'live' (if appropriate)
  - That further misconduct is liable to lead to further disciplinary action and may result in their dismissal, and
  - Their right of appeal
13. There may, however, be exceptional circumstances where the panel will be unable to make an immediate decision, and an adjournment may be required, in which case the decision may be confirmed in writing at the earliest opportunity without the need to reconvene the disciplinary panel.
14. No electronic devices to record the hearing will be permitted.

### Possible Sanctions

At the conclusion of the hearing, the panel will decide on the most appropriate course of action from the list below:

1. The allegations are not substantiated.
2. The allegations are substantiated (in full or part) but no formal action is appropriate. The case may be referred back to the informal stage.
3. The allegations are substantiated (full or in part) and that formal action is appropriate. The panel will then consider the most appropriate course of action in light of all relevant information. The decision can be:
  - Verbal warning (which will normally remain 'live' on file for six months).
  - First written warning (which will normally remain 'live' on file for twelve months).
  - Final written warning (which will normally remain 'live' on file for twenty-four months), although in exceptional circumstances the panel may choose to reduce or extend this period).
  - Where acts of gross misconduct are proven the employee may be summarily dismissed (dismissal with immediate effect where pay in lieu of notice is not paid). However as an alternative to dismissal the panel may issue a final written warning and also impose one or more of the following:
    - a) Disciplinary suspension (without pay).
    - b) Permanent transfer to a job of a lower status; or
    - c) Demotion;
  - Where the employee has committed a further act of misconduct (this being an act other than gross misconduct) following a final written warning the employee may be dismissed with notice or with pay in lieu of notice.

If it has been found during the course of the investigation that an employee has taken or been in receipt of monies they were not entitled to, they must repay the monies owing.

### After the hearing

The employee will be informed of the outcome of the hearing by the Chair person in writing within five working days of the hearing (unless this is not practicable), informing them of the following:

- The sanction (if any)
- The reasons for the decision
- The period any sanction will remain 'live' (if appropriate)
- That further misconduct is liable to lead to further disciplinary action and may result in their dismissal,
- Their right of appeal.
- That the Disclosure and Barring Service and/or relevant professional body will be informed in order to make the necessary decision about barring (please see additional advice on page 16).

### Right of appeal

Where employees are dissatisfied with the outcome of the disciplinary hearing they can appeal in writing against the decision within five working days of receiving written notification of the decision, using the form in appendix 2. The employee's appeal, must clearly state their grounds for appealing.

An employee may choose to appeal, for example, because:

- They believe a finding or sanction is unreasonable
- New evidence has come to light
- They believe the disciplinary process was procedurally flawed

Appeals should be sent to:

#### **A. For non schools:**

The Head of Human Resources or, in the case of an appeal against dismissal, this should be sent to the Head of Democratic Services.

#### **B. For schools:**

The chair person of the school governing body. If the Corporate Director of Children's Services chaired the Disciplinary hearing then the appeal should be sent to a Senior Manager nominated by the Corporate Director.

### Appeal hearing

Purpose: To hear the grounds for appeal and review the original decision and establish its fairness. The appeal hearing is not intended to be a 're-run' of the original hearing, unless the person hearing the appeal believes there is some exceptional justification for doing so.

To note: The option to run a 'fresh' hearing is provided as an option for exceptional situations that justify this course of action, at which point appropriate arrangements will be made.

### The Panel

#### **A. For non schools:**

The appeal will be heard by a panel consisting of not less than two officers including one representative from Human Resources, neither of whom will have been previously involved in the case.

Where the appeal is against dismissal, the appeal will be heard by the Appeals Sub-Committee of the Governance Committee.

#### **B. For Schools:**

The appeal will be heard by a panel consisting of three governors, none of whom will have been previously involved in the case. The panel shall be assisted by a HR representative, who has not previously been involved in the case, to act as a technical advisor to the panel.

Where possible, all appeal hearings should be convened within fifteen working days of receiving notification from the employee. Where this is not possible the employee will be kept informed of future timescales.

### Written notification

The employee will be notified in writing giving at least five working days notice of the date, time and venue for the appeal hearing and inform them of their statutory right to be accompanied by a recognised trade union representative (or a person approved by the trade union) or a nominated work colleague during any part of the formal stages of the disciplinary procedure.

### During the appeal hearing

The following points will be covered during the appeal hearing; although this list is not exhaustive:

1. The disciplinary hearing chair person who issued the warning shall outline the details of the allegation and explain the reasons behind their decision.
2. The appellant (or their representative) and the appeal hearing panel will have the opportunity to question the chair person of the disciplinary hearing.
3. The appellant (or their representative) will outline the grounds of their appeal.
4. The chair person of the disciplinary hearing and the appeal hearing panel will have the opportunity to question the appellant or their representative.
5. The chair of the appeal hearing will then invite the chair person of the disciplinary hearing and the appellant to each make a concluding statement.
6. Both parties will then withdraw whilst the panel considers the evidence.

### Possible outcomes

Following the appeal hearing the chair person of the appeal hearing must inform both parties of the appeal decision, and the reasons for it, as soon as possible. The decision can be:

1. Appeal upheld in full (and disciplinary action withdrawn)
2. Appeal upheld in part (and disciplinary action reduced)
3. Appeal not upheld (and disciplinary action confirmed)

4. That there will be a re-run of the original hearing at which a decision will be reached in line with options 1 to 3 as above.

The decision should also be confirmed in writing by the chair person within five working days of the appeal hearing (unless this is not practicable). The chair person must make it clear to the employee that the decision is final and that their right of appeal under the procedure has now been exhausted.

## **Referral to the Disclosure and Barring Service and professional body**

There is a legal requirement for employers to make a referral to the DBS where an individual has engaged in conduct that harmed (or is likely to harm) a child or vulnerable person(s); or if a person otherwise poses a risk of harm to a child or vulnerable person(s) (Appendix 4).

A referral to DBS must be made where both of the following conditions have been met

### **Condition one**

Permission is withdrawn for a person to work in regulated activity with children and/or adults either through dismissal or by moving the person to another area of work that is not regulated activity.

This includes situations where an employer/volunteer manager **would or may** have dismissed the person or moved them to other duties, if the person had not resigned, retired, or otherwise left their work – for example, a teacher resigns when an allegation of harm to a student is first made. The head teacher establishes that harm did occur, or was at risk of occurring, and decides that they may have dismissed the person had they not left and so makes a referral to the DBS.

### **AND**

### **Condition two**

There is evidence to suggest that the person has carried out one of the following:

- been cautioned or convicted of a relevant (automatic barring) offence; or,
- engaged in relevant conduct in relation to children and/or adults (i.e. an action or inaction (neglect) that has harmed a child or vulnerable adult or put them at risk or harm); or,
- satisfied the “harm test” in relation to children and / or vulnerable adults. (i.e. there has been no relevant conduct (i.e. no action or inaction) but a risk of harm to a child or vulnerable still exists).

Where the Council (or Head teacher/ Governing body) believes that this criteria has been met, the evidence should be presented to the Head of Human Resources and the relevant Assistant Director who will then take the decision to refer. This process does not prevent a referral being made in good faith and in the interests of safeguarding children or vulnerable adults, but where the legal duty has not been met. For example, where there are strong concerns but the evidence is not sufficient to justify dismissing or removing the employee from working with children or vulnerable adults.

It is an offence to **fail** to make a referral without good reason.

The Council (or Head teacher) will also be required to refer the matter to the employee's relevant professional body. In the case of a member of teaching staff to refer the matter to the National College for Teaching and Leadership (NCTL) or the Health and Care Professions Council (HCPC) for health, psychological and social work professionals to consider prohibiting the individual from teaching or practising.

# APPENDICES

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## Appendix 1

### **A. Misconduct**

The following is a non-exhaustive list of potential misconduct issues, some of which, depending on severity, could constitute gross misconduct (please see section B within appendix 1 for more details).

- Persistent bad timekeeping
- Unauthorised absence
- Misuse of Council facilities
- Damage to Council property
- Failure to follow instructions
- Abusive behaviour
- Breaches of confidentiality
- Insubordination (non-compliance)
- Failure to adhere to Council/ Governors policies and procedures (e.g. Health and safety policy, IT user policy, Sickness absence management policy, Information security policy)

### **B. Gross misconduct**

This list is neither exclusive nor exhaustive and there may be other conduct as serious, which is considered to constitute gross misconduct. Such considerations will take into account the nature of the allegation and the nature of the employee's duties and responsibilities. Examples of gross misconduct might include:

- Continued unauthorised absence
- Causing harm or abuse towards children or vulnerable adults
- Theft, fraud or bribery
- Disclosure of confidential information
- Physical violence, assault, bullying or harassment
- Deliberate and serious damage to property
- Serious misuse of the council's property or name
- Accessing internet sites containing pornographic, offensive or obscene material
- Repeated or serious insubordination (non-compliance)
- Unlawful discrimination or harassment
- Bringing the organisation into serious disrepute
- Serious incapability at work brought on by alcohol or illegal drugs
- Causing loss, damage or injury through serious negligence
- A serious breach of health and safety rules
- A serious breach of confidence
- Sexual misconduct
- Acts of dishonesty

## Disciplinary Appeal Form

**Section 1: Your details**

|                           |  |
|---------------------------|--|
| 1. Your name              |  |
| 2. Your job-title         |  |
| 3. Your workplace address |  |
| 4. Your address           |  |
| 5. Your e-mail address    |  |

**Section 2: Grounds of appeal**

**Please indicate your grounds for appeal for sections A to D and provide further detail in the section at the end.**

**A) Breach of procedure**

I am appealing on the grounds that the procedure was applied unfairly. **YES      NO**

If you ticked “yes”, please explain:

- how and where the procedure was not followed
- what effect this had on the outcome of the disciplinary process
- any evidence not available at the original hearing that supports this aspect of your appeal, and
- what prevented you from presenting it

**B) The facts of the case**

I am appealing on the grounds that the findings at the hearing were unfair. **YES      NO**

If you ticked “yes”, please explain:

- the parts or facts you dispute
- the evidence that you believe was given too much or too little weight (would they know?)
- if you are disputing the conclusions that were arrived at by the chair/panel, please details these.
- any evidence not available at the original hearing that supports your appeal

**C) The action taken was disproportionate**

I am appealing on the grounds that the action taken was disproportionate to the circumstances of the case: **YES      NO**

If you ticked yes, please explain:

- the sanction or warning that was applied
- the aspect of the sanction or warning that you believe is disproportionate
- the reason why you believe it is disproportionate
- any evidence not available at the original hearing that supports this aspect of your appeal; and
- what prevented you from presenting it

**D) Any other substantial grounds of appeal**

I am appealing for another substantial reason: **YES      NO**

If you ticked yes, please explain:

- the grounds on which you are appealing

- its effect on the procedure followed
- its effect on the findings of fact at the original hearing
- its effect on the sanction applied
- any evidence not available at the original hearing that supports this aspect of your appeal; and
- what prevented you from presenting it

**PLEASE PROVIDE FURTHER DETAIL FOR YOUR GROUNDS OF APPEAL** (continue on another sheet if necessary)

**Signature of appellant**

Your signature \_\_\_\_\_

Print Name \_\_\_\_\_

Date of signature \_\_\_\_\_

**Section 3: Administration**

This section is to be completed by the person the appeal has been sent to (Head of HR, Chairperson of the School Governing Body or a nominated Senior Manager where applicable).

Date the appeal was lodged: \_\_\_\_\_

Was the appeal lodged in time?                      **YES**                      **NO**

## Disciplinary Procedure

### Model risk assessment for suspension

Suspension should only be considered if one or more of the following apply:

- Customers or colleagues are at risk of intimidation or significant harm.
- The employee's presence may prejudice the investigation and redeployment to mitigate this is not possible.

Suspension is not normally appropriate in cases of minor misconduct

The following factors need to be considered:

| Alternatives to Suspension  | Impact of Transfer |
|---|--------------------|
| <ul style="list-style-type: none"> <li>- Assess other options, including a suitable alternative role or temporary transfer.</li> </ul>  |                    |
| Nature of the Allegation  | Consideration      |
| <ul style="list-style-type: none"> <li>- Duration and frequency</li> <li>- Degree of threat or coercion</li> <li>- Extent of pre-meditation</li> <li>- Degree and nature of allegation</li> </ul> |                    |
| Investigation   |                    |
| <ul style="list-style-type: none"> <li>- Possibility of the investigation being impeded should the employee remain at work.</li> </ul>  |                    |
| Information re: Employee/Volunteer who is accused of the allegations  |                    |
| <ul style="list-style-type: none"> <li>- Previous concerns.</li> <li>- Previous allegations.</li> <li>- Contact with customers (i.e. needs and vulnerability).</li> </ul>                         |                    |
| Health & Safety   |                    |
| <ul style="list-style-type: none"> <li>- Potential risks to the employee's health and safety should they remain at work.</li> </ul>   |                    |

**Risk identified and action plan (including support and point of contact for employee):**

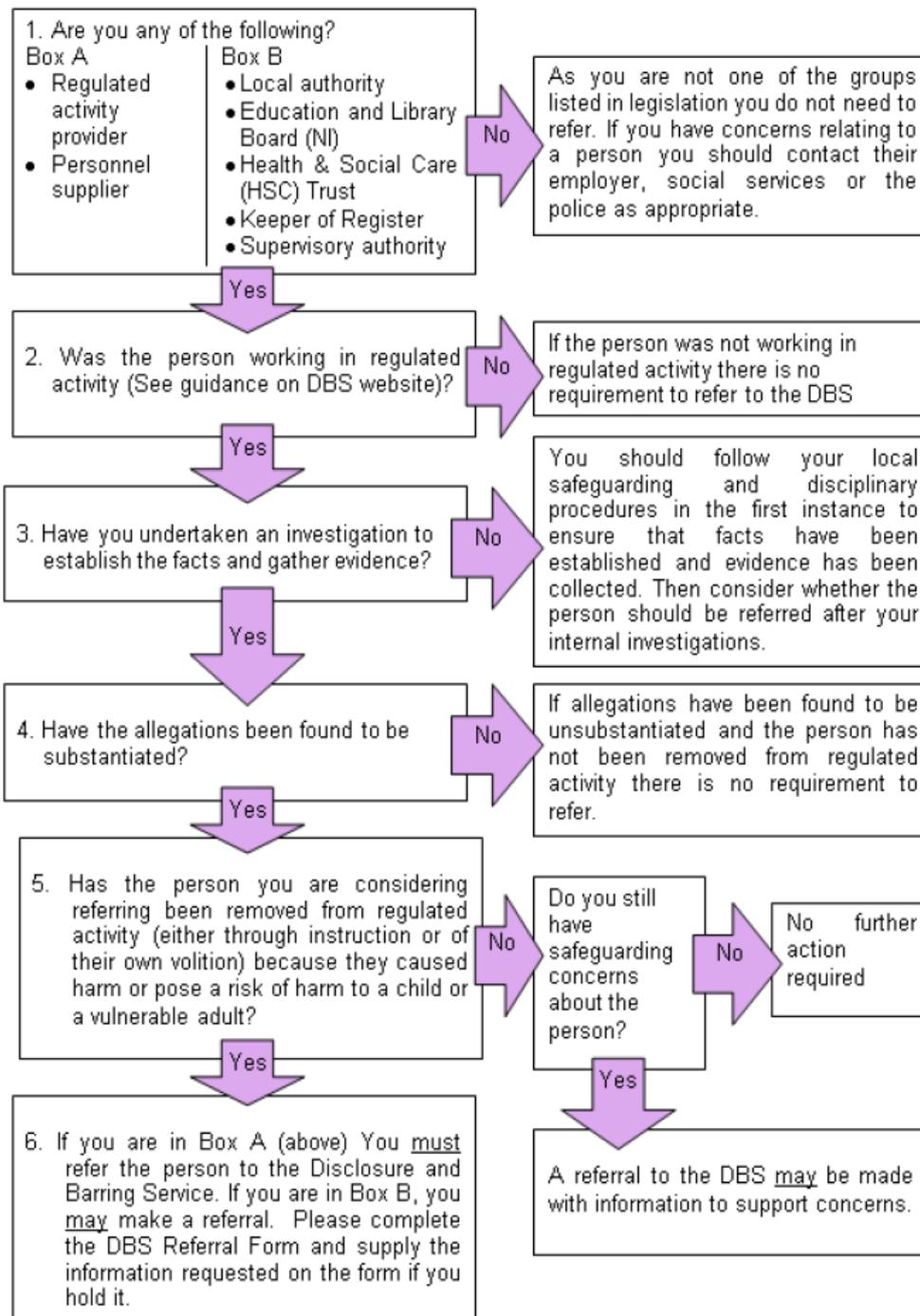
**Decision to suspend: YES/NO**

**Date of decision:**

**Name of Manager/Head teacher responsible for decision and HR Manager giving advice:**

# Appendix 4 – Referral to DBS Flowchart

V3.0 - August 2013



**Appendix 5**

