



DISCIPLINARY PROCEDURE

FOR ALL THE DEN EMPLOYEES

1. Purpose

- a. The Den is committed to providing quality services through its people. In order to achieve this, it is expected that the conduct of employees will reflect The Den's values.
- b. It is recognised the disciplinary procedure should not be viewed primarily as a means of imposing sanctions. It is also intended that the improvement in individual conduct should be emphasised and encouraged.
- c. This procedure is designed to encourage all employees to achieve and maintain acceptable standards of conduct and attendance, and to provide a fair, consistent and effective mechanism for dealing with disciplinary matters.

2. Principles

- a. Disciplinary issues will be dealt with fairly and effectively and with clear outcomes at all stages. At every stage of the procedure an employee will be advised of the nature of the complaint against them and will be given the opportunity to state their case before any decision is made.
- b. At all formal stages of the Disciplinary Procedure an employee will have the right to be accompanied by a Trade Union representative, an official employed by the Trade Union or a work colleague of their choice. The colleague/Trade Union representative is present in order to observe the proceedings and advise the employee. They can address the hearing to put and sum up the employee's case, respond on behalf of them to any views expressed and confer with the employee.

They do not have the right to answer questions on the employee's behalf, address the hearing if the employee does not wish it or prevent The Den from explaining their case.

c. No disciplinary action will be taken against a Trade Union Representative either in relation to their conduct whilst acting in the capacity of a Trade Union Representative or at any other time, without prior consultation with the appropriate Branch Secretary and District Officer (subject to the employee's agreement to this consultation). The Trade Union Representative also has the right to have their District Officer present at any Disciplinary Hearing.

d. Disciplinary action will only be taken after the full facts of the case have been established and the employee has been given the opportunity to state their case at a Disciplinary Hearing.

e. No employee will be dismissed for a first disciplinary offence except in the case of gross misconduct.

f. Disciplinary matters will normally be dealt with in order through the stages of the procedure, but the procedure may be started at any stage or stages if the employee's alleged misconduct requires such action. Matters of a serious nature, where dismissal is a possible outcome will be considered under Stage 3

g. The Directors will be responsible for applying this procedure in a fair and equitable way and seeking, guidance and support from the Human Resources service where appropriate.

h. All parties will ensure that investigation, hearing and appeal processes happen as quickly as is reasonably possible for the benefit of the school and the employee.

i. Employees have the right of appeal against any disciplinary action taken under this procedure.

j. Records will be treated as confidential in line with the General Data Protection Regulations.

k. Reasonable adjustments will be made to support disabled employees, where this is appropriate.

3. Scope of the procedure

a. This recommended procedure is subject to the provisions of the relevant Education Acts. It is intended to apply to all staff

b. There is a separate procedure for dealing with sickness absence, but unauthorised absence will be managed under this procedure.

c. There is a separate procedure for dealing with unsatisfactory performance.

d. Staff dismissal decisions are a matter for The Directors

4. Conduct that may lead to disciplinary action

a. It is impossible to provide a comprehensive and exhaustive list of all the issues that might lead to a disciplinary investigation and formal disciplinary action, but some of the more common are detailed at Appendix 1. These are provided for guidance only.

5. Informal discussions

a. Cases of minor misconduct are usually best managed informally by an employee's line manager. An informal discussion is usually all that is required to improve an employee's conduct. In some cases additional training, coaching and advice may be required.

b. The purpose of the informal discussion is to advise the employee that their conduct is failing to meet the required standards, to find out any explanation/reasons for the conduct and to encourage them to improve. Feedback should be clear and useful, with the emphasis being on finding ways for the employee to improve and for the improvement to be maintained.

c. During the informal discussion the line manager should listen to whatever the employee has to say about the issue. It may become clear that there is no cause for concern in which case the line manager should let the employee know this.

d. Where improvement is required the line manager should make sure that the employee understands what needs to be done, how their conduct will be reviewed and over what time frame. What has been agreed in the discussion should be confirmed in writing to the employee and their progress should be monitored during any agreed review period. This letter or document is referred to as a "management instruction".

e. If informal action does not bring about an improvement, i.e. the misconduct occurs again, or the misconduct is considered more serious after informal discussions, a formal disciplinary investigation take place in line with the formal disciplinary procedure set out below.

6. The formal Disciplinary Procedure

Investigation Process

a. Prior to invoking the formal Disciplinary Procedure, an investigation will be conducted to determine whether it is appropriate to pursue disciplinary action. The Directors will decide who is suitable to undertake the investigation; either themselves or a nominated officer.

b. At all stages of the investigation advice can be sought from HR.

c. It is important to investigate the allegation (s) and establish the facts promptly to ensure timely recording of events. Written, dated records should be made, including written statements from any witnesses where appropriate.

d. An investigatory meeting may be held to try to find out what happened, and to try to get factual information. The reason for the meeting should be made clear to the employee involved and they should be made aware that this meeting is not a Disciplinary Hearing.

e. In most cases the investigation will be undertaken by one person, however for more complex cases and/or those that require particular expertise, a second individual may support. If the investigation leads to a Disciplinary Hearing, the Hearing Officer should not have been involved in the investigation.

f. If the allegation may relate to Safeguarding, then the case will be referred immediately to the Council's Safeguarding Team before any disciplinary investigation is undertaken and may be referred to the appropriate external authority. A disciplinary investigation will only start once this has been agreed with the Safeguarding Team and the police, if applicable.

g. If, during the course of the investigation, it becomes apparent that there are any safeguarding concerns with regards to vulnerable children or adults, the appropriate process should be invoked. The Local Authority Designated Officer (LADO) should be contacted or another officer from the Safeguarding Team.

h. Having investigated all the facts the Investigating Officer should decide whether or not there is a case to answer. If they decide that there is no case to answer, then the employee should be informed that this is the outcome of the investigation and the matter should be considered closed. Alternatively if they decide that there is a case to answer, the Investigating Officer should arrange for the matter to be considered at a Disciplinary Hearing.

i. In this case, the Investigating Officer should write a report establishing that there is substance to the allegation(s) and include the full details of the case, witness statements and evidence. The Investigating Officer will present the case, together with relevant documents and evidence, at the Disciplinary Hearing. The Investigating Officer will not participate in making any decision at a Hearing.

j. Where an employee is unable to participate in the investigation process due to ill health and the investigating officer has determined it is necessary to interview them to ascertain the facts an immediate referral to Occupational Health should be made.

k. Disciplinary Hearing

Informing the employee

In good time before a formal hearing (at least 7 calendar days), the employee must be informed of the following in writing:-

- What they are alleged to have done wrong. The letter should contain enough information for the employee to be able to understand both what it is that they are alleged to have done wrong and the reasons why it is not acceptable.
- Confirmation that the formal procedure is being followed.
- Whether the allegation is potentially gross misconduct.
- Whether an outcome of the hearing may be dismissal.
- Their right to be accompanied at the Disciplinary Hearing.

The employee must, normally at least 7 calendar days in advance of the hearing, be given copies of any relevant documents and the names of any witnesses who will provide evidence for the Hearing. In exceptional circumstances the names of witnesses may be withheld if there are reasonable grounds for concern about the safety and well-being of these witnesses. If this happens, an anonymised witness statement will be provided to the employee.

Not less than 7 calendar days in advance of the hearing the employee shall submit copies of any documents that they intend to refer to at the hearing together with a list of witnesses they intend to call.

I. Composition of the Disciplinary Panel

The Disciplinary Panel will either be The Directors or a relevant Committee requested by The Directors. It is recommended that an HR Business Partner advises the panel.

m. Disciplinary outcomes and actions: Where, following a Disciplinary Hearing, an employee is found guilty of misconduct, The Directors can take the following forms of disciplinary action.

- First Written Warning
- Final Written Warning
- Dismissal or Action Short of Dismissal

Before making a decision, The Directors should consider the employee's 'live' disciplinary and general record, length of service, actions taken in any previous similar cases, the explanations given by the employee, including any explanation/reason for the conduct and most importantly, whether the intended disciplinary action is reasonable under the circumstances.

STAGE 1 - FIRST WRITTEN WARNING

If informal action does not correct the situation or if appropriate for the case, a First Written Warning may be issued by The Directors.

The employee will be provided with written reason(s) for the decision within 7 calendar days of the hearing. A First Written Warning will remain live for disciplinary purposes on an employee's personal file for a period of 12 months from the date the warning was issued. Once the warning has expired it will be disregarded for disciplinary purposes. There may be exceptions to this where employees have repeated lapsed warnings for similar allegations and safeguarding concerns.

STAGE 2 - FINAL WRITTEN WARNING

If an employee's conduct still does not meet the standards required by the Authority or if appropriate for the case or a further offence is committed requiring disciplinary action, a Final Written Warning may be issued by The Directors. The employee will be provided with written reason(s) for the decision within 7 calendar days of the hearing.

A Final Written Warning will remain live for disciplinary purposes on an employee's personal file for a period of 18 months from the date the warning was issued. Once the warning has expired it will be disregarded for disciplinary purposes. There may be exceptions to this where employees have repeated lapsed warnings for similar allegations and safeguarding concerns.

STAGE 3 – DISMISSAL OR ACTION SHORT OF DISMISSAL

If conduct is still unsatisfactory, or the offence is regarded as sufficiently serious, the employee may be given notice of dismissal, demotion or action short of dismissal. Only The Directors can take the decision to dismiss at a Disciplinary Hearing. The employee will be provided with, within 7 calendar days of the decision, written reasons for dismissal, the date on which the employment contract was terminated, as well as information relating to the right of appeal.

Action Short of Dismissal

Where dismissal would normally be the decision, but there are exceptional circumstances, action short of dismissal may be considered and applied with the agreement of the employee. The following penalties can be given in conjunction with a final written warning.

- Transfer to equivalent work
- Demotion to another job with loss of pay (after 12 weeks eligible to apply for suitable vacancies).

If one of these penalties is given, the employee must be told that any reassignment of, or change to their contract must be based on there being a suitable post, which they have the skills, knowledge and experience to undertake and takes into account

the circumstances of the case. The Directors should inform the employee of their decision and agree a reasonable timescale to try to find a suitable post(s).

Where such a post is found, the employee must agree to the terms of their assignment/change. If no appropriate post can be found, or the employee will not accept the post, then the original sanction of dismissal will apply.

There is no requirement to create a post where one does not exist.

Identification of an alternative post in these circumstances is outside of the scope of the Redeployment Procedure.

Cases where the employee is dismissed

- Dismissal will take effect from the date the dismissed employee is in receipt of the dismissal notification letter. If the individual is successful in appealing against the decision the employee will be immediately reinstated to their original position.
- In the case of teachers, all dismissals under the Disciplinary Procedure are reported to the Teaching Regulation Agency.
- Cases involving misconduct towards children or young will be reported if required to the Disclosure and Barring Service.
- In the case of gross misconduct being alleged and established on the balance of probabilities, the employee may be liable to summary dismissal.

7. Suspension

a. Suspension should only be considered after all reasonable alternatives have been explored. There are a number of circumstances where it may be appropriate to consider precautionary suspension to remove an employee from the workplace until the conclusion of the investigation and a disciplinary hearing (if this is the outcome). Examples of these circumstances may include.

- Following any allegation of gross misconduct.
- Where the employee being in work could put other employees or other service users/customers at risk.
- Where criminal investigations or proceedings are taking place or due to take place.
- Where the employee being in work might prejudice or obstruct the investigation.

This list is for guidance only and is not exhaustive.

b. Precautionary suspension will be on full pay. Suspension is not a disciplinary act and does not imply that there has been any misconduct. It is a precautionary measure to allow for an effective investigation to take place, in the interest of all or any of the parties concerned.

c. Where appropriate an alternative to removing the employee from the workplace may be considered (e.g. the temporary transfer to another role)

Where such a temporary transfer takes place, the decision not to suspend must be formally reviewed before the case goes to a formal hearing.

d. Suspensions should for as short a period as possible therefore any investigation or further action required should be undertaken as soon as possible.

e. All precautionary suspensions will be confirmed in writing and will be reviewed to ensure that the period of suspension is not unnecessarily long. In some cases as an investigation progresses it may become necessary to suspend an employee who wasn't suspended at the beginning. In some cases it may be necessary to end a suspension and to bring an employee back to work before an investigation has concluded.

f. If the employee does not comply with the conditions of suspension then payment of salary may be withheld.

8. Appeals

a. An employee has the right of appeal against any disciplinary action taken against them.

b. The appeal form (Appendix 3) should be completed, stating the grounds/reasons for the appeal. It should be sent to The Directors, within 14 calendar days of the effective date of the sanction.

c. Where the sanction is not given verbally to the employee, i.e. it is received via a written communication, the date of the sanction is the date that the communication is received and the 14 days will start from this date.

d. An appeal will be heard as soon as is reasonably possible and subject to the availability of The Directors. The employee will be given at least 7 calendar days' notice of the date of the appeal hearing and the right to representation.

e. The Appeal panel will consist of a relevant committee of Local Authority SEND Team employees

In exceptional circumstances, Governors from a school can be included in the Disciplinary Appeal Panel. It is recommended that the panel is advised by an HR Business Partner.

f. Unless there has been any new evidence submitted, or a significant change in circumstances affecting the case, the Appeal Panel will decide whether the previous decision was appropriate given all the circumstances and the evidence heard. In most cases an appeal hearing will be appropriate, however occasionally, where significant new evidence is available, a re-hearing may be required.

g. The Appeal Panel may uphold the appeal, substitute a lesser disciplinary sanction or confirm the disciplinary action taken.

9. Support

A free, confidential and external counselling service is available to all employees of schools on 08000562561.

10. Review

a. This policy will be periodically reviewed in order that that it remains appropriate, is best practice and meets legal requirements.

Appendix 1

Acts of Gross Misconduct

The following list is not intended to be comprehensive or exhaustive and provides examples of gross misconduct, which could, dependent on the seriousness of the offences, result in summary dismissal

- Theft or incitement to steal
- Fraud and Corruption, which may include acts of fraud/corruption against the School or Local Authority not directly related to the employee's job role
- Corruption
- Physical violence, bullying or harassment
- Unlawful discrimination or harassment on the grounds of gender, race (including colour, nationality and ethnic origin or national origins), disability, age, sexual orientation, religion or belief
- Abuse of vulnerable persons in the care of the school
- Deliberate and serious damage to property
- Serious misuse of the school's property or name
- Deliberately accessing internet sites containing pornographic, offensive or obscene material
- Abuse of e-mail or other communication systems used and/or owned by the provision
- Serious insubordination
- Bringing the provision 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
- Grossly offensive behaviour
- Fraudulent timekeeping
- False and misleading statements e.g. on application forms, on medical questionnaires or at medical examination, at an accident investigation or at a disciplinary investigation
- Bringing firearms or offensive weapons on The Den's premises

- Accepting profits or bribes for personal gain, including the inappropriate acceptance of certain gifts and hospitality
- Allowing one's private interests or duty to conflict with the interests of The Den
- Failure to account for, report or record any matter for which it is the employee's duty to do so.

Appendix 2

Protocol for Disciplinary Hearings

The procedure below is to be followed at a Disciplinary Hearing held as part of the Disciplinary Procedure for all school based staff.

The Hearing

1. The Investigating Officer will present the case
2. Witnesses may be called and evidence produced
3. The employee or their representative may ask questions about the evidence produced by the Investigating Officer and any witnesses called
4. The employee or their representative will present their case. Witnesses may be called and evidence produced
5. The management representative may ask questions about the evidence produced by the employee and their representative and any witnesses called
6. The Hearing Officer may ask questions at any time of party, their representatives or any witnesses called
7. The employee, or their representative, and the management representative will have the opportunity to sum up their case, if they so wish.
8. Following summing up, both parties together with their representatives and any witnesses called will leave while the Hearing Panel/Director considers the facts.
9. The Directors/Panel will bring both parties back in and give the outcome of the hearing and the reasons for the decision. In some cases they may be unable to make a decision on the day and will agree with the employee how they will make contact with the outcome. The decision will be confirmed in writing within 7 calendar days of the hearing, or the date the outcome was communicated.
10. The decision shall be one of the following:
 - To exonerate the employee and direct that all reference to the matter be removed from their disciplinary record.
 - To find that the alleged allegation(s) are proven in whole or part and resolve that no further action be taken.
 - To find that the alleged allegation(s) proven in whole or part and impose one of the disciplinary sanctions available to them,

Appendix 3

Appeal against disciplinary action

Please complete this form in full if you have been disciplined and wish to appeal against this decision.

Please return this form, together with any new supporting documents to The Directors, within 14 calendar days of the effective date of the disciplinary sanction.

You must clearly state why you wish to appeal and detail why you disagree with the Disciplinary Panel's decision. Please indicate below the grounds for your appeal:

- a) Appeal against the facts
- b) Appeal against the decision
- c) Appeal on procedural grounds
- d) New information is available

In all cases, you must clearly detail your reasons on Page 2 of this document. If you are appealing on the grounds that new information is available, you should also explain why this information has only just become available.

EMPLOYEE NAME:

Address:

Job Title:

Phone Number:

Name/Address of Representative:

Contact Tel No:

Appeal Against:

Decision of (name):

Nature of Decision (e.g. written warning, dismissal etc.)

What was the effective date of the disciplinary sanction?

I wish to appeal against the decision because...

Please provide the names of the witnesses you wish to call

Name

Contact no.

Name

Contact no.

Signature of Employee:

Date: