

Disciplinary Policy and Procedure

Policy Date: 2 December 2013

Version Date: 10 November 2016

For further advice and guidance in relation to this policy, please contact HR ONE at hrdirect@devon.gov.uk or on 01392 385555.

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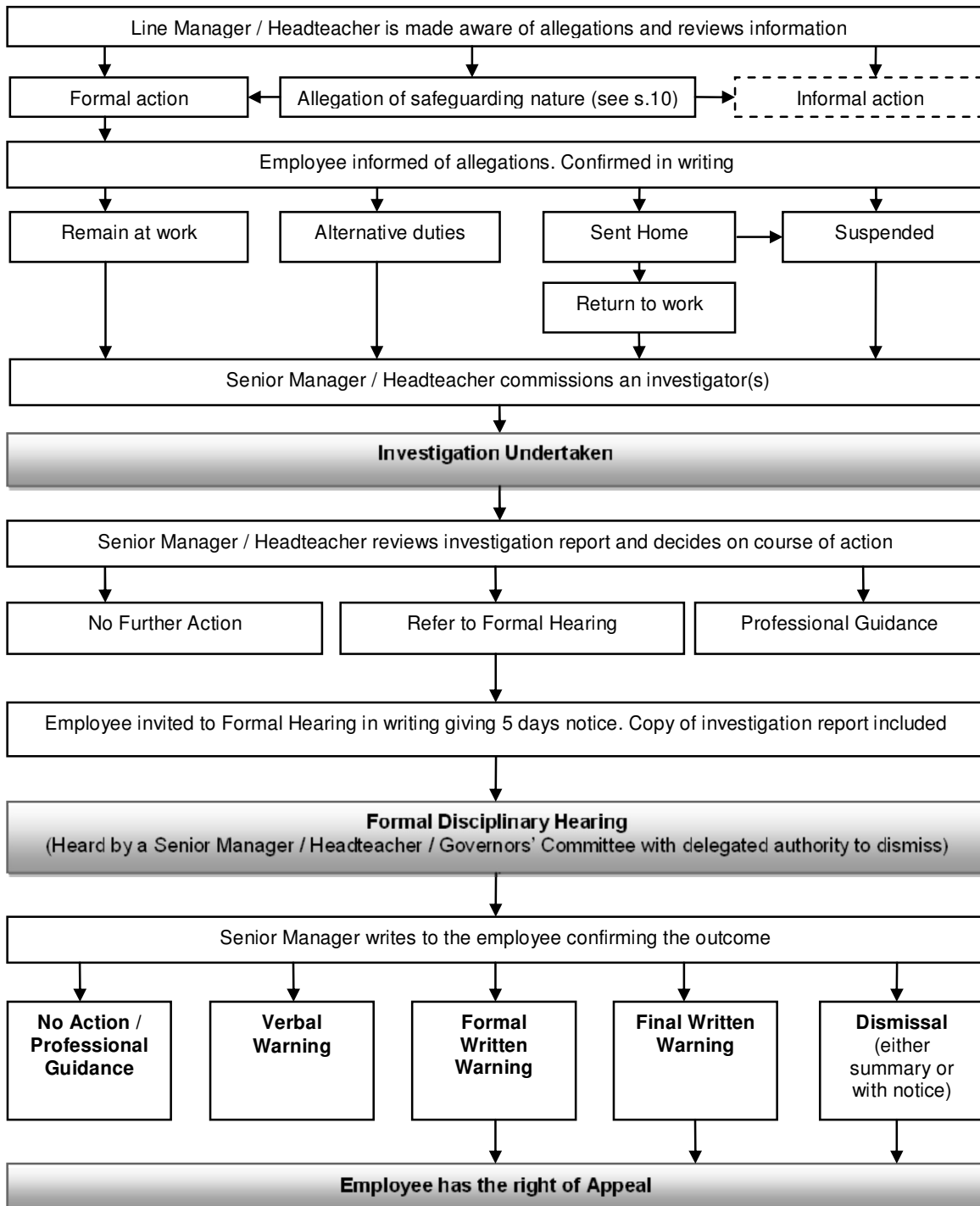
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PROCEDURE FLOW CHART



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POLICY AND PRINCIPLES


1. Purpose

This policy sets out the disciplinary procedure relating to employees.


2. Application and Exclusions


This policy is based on good practice to ensure a consistent and effective approach. The application of this policy will be fair, equitable, objective and will not discriminate either directly or indirectly on the grounds of an employee's gender, age, disability, gender re-assignment, marital or civil partnership status, pregnancy, maternity status, race (including colour, nationality and ethnic or national origins), religion or belief, sex and sexual orientation.

This policy:

 applies to all employees engaged under Devon County Council (DCC) statement of particulars including those contracted to a school (where the policy has been adopted)

 can be adopted by Voluntary Aided/Foundation/Trust/Academy schools

 does not apply to those employed by other organisations, employed under other organisations' terms and conditions of employment which include a contractual disciplinary policy, casual workers or volunteers

 excludes DCC senior officers on grades L0 - L4, where a separate procedure applies (note: These are DCC corporate grades and do not apply to school leadership grades).

3. Responsibility for Taking Action

Action to suspend an employee as part of this policy can only be taken by an appropriate senior manager. In DCC, this is a Designated Officer who has delegated authority to dismiss. In schools this is a Headteacher or the Governing Body (see section 17 – Suspension). Action to remove an employee from the workplace pending the decision to suspend can be undertaken by a manager. In schools this may be a Deputy Headteacher or a Governor.

Corporate disciplinary hearings must be conducted and chaired by those with delegated authority to dismiss. In schools, disciplinary hearings can be conducted and chaired by the Headteacher or First Committee of Governors unless they may lead to dismissal (in which case see section 19 'Disciplinary Hearings').

The Chair of the disciplinary hearing will be responsible for arranging the hearing, writing to the employee and arranging for a suitable person to attend the hearing to take notes. In schools, the Clerk to Governors will normally make these arrangements.

4. Time Limits

The time limits included in this policy may be varied by mutual agreement. The policy makes reference to a number of 'days' within which certain actions/events are to occur. A 'day' is defined as any Monday to Friday excluding public holidays as defined by ACAS.

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If a concern is raised during a period of service/school closure, the timeframes indicated in the policy will commence from the first day of the service/school being open. Where a concern is raised immediately prior to a period of service/school closure, the availability of any person(s) who may need to be interviewed as part of any investigation will be taken into consideration by both parties when mutually agreeing any required extension to the timeframes.

5. Standards Expected of Employees

The standards expected of employees include but are not limited to:

- maintaining standards of behaviour in keeping with the interests and standing of the school/DCC. This includes behaviour outside of working hours and in any form that is visible to the public, including social networking or any other electronic medium
- devoting full attention while at work to the duties of their position and in doing so acting with responsibility, good judgement and in good faith
- carrying out any reasonable instructions given by those with authority to do so
- not divulging to any unauthorised person or making personal use of confidential information connected with the school/DCC, either intentionally or through negligent behaviour
- observing the rules, regulations and instructions adopted by the school/DCC
- following appropriate safeguarding procedures
- participating fully in any investigation into alleged incidents and/or allegations including attending meetings as directed
- using electronic communications appropriately
- ensuring that information brought to light as a result of any investigation is treated with discretion
- carrying out their role consistently with any standards set by their appropriate professional body
- taking steps to address any unacceptable behaviour
- treating colleagues and third parties with dignity and respect.

In addition to the above, the expectations of those employed in management roles are to:

- ensure the standards expected from employees are role-modelled, monitored and managed effectively
- effectively manage all applicable statutory and non-statutory obligations
- appropriately manage all alleged incidents and/or allegations.

5.1 Behaviour Outside Work

Unacceptable behaviour and/or criminal offences that have occurred outside of work may be dealt with under this policy if the employee's behaviour or activities:




- may make them unsuitable for the job they are employed to do, e.g. failure to protect their own children
- has the potential to cause damage to the reputation of the school or DCC. This includes written and verbal communications and covers all types of media including newspapers, internet, and social networking sites such as Facebook, Bebo, Myspace and Twitter
- identifies them as a perpetrator of domestic violence

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-  identifies them as behaving in a way that leads to a breakdown in working relationships
-  are inconsistent with the professional standards of public behaviour expected of the role e.g. lewd behaviour, being intoxicated in public, association with illegal drugs
-  identifies them as having engaged in inappropriate contact with a child, student or vulnerable adult.

The above list is not exhaustive. DCC/the school may view other behaviour as suitable for being considered under this policy.

6. Informal Action

For minor breaches and incidents, for example occasional time keeping issues, consideration should always be given to using informal action such as professional guidance and/or additional training as this may be sufficient to address the concerns. Any such action should be confirmed in writing and monitored to ensure the required improvements are made and sustained. This does not form part of the formal disciplinary procedure.




Alternatively, although unlikely, it may be appropriate for the matter to be dealt with by mediation, depending on the nature of the matter. This involves the appointment of third-party mediators, who will facilitate discussion of the issues raised. Mediation will be used only where all parties involved agree to engage in the process and DCC/the school considers it to be beneficial in order to resolve the situation.

7. Appointment of Investigator(s)

The senior manager / Headteacher / Governing Body may ask an appropriate person, or two people, to carry out an investigation. The investigator(s) should not have had any previous involvement in the circumstances of the incident/allegation, no close relationship with any party involved nor any vested interest.

8. Being Accompanied

The Employment Relations Act 1999 determines that an employee has a statutory right to request to be accompanied at any disciplinary or grievance hearing. To invoke that right an employee must make a reasonable request to the employer to be accompanied by either:

-  a paid official from a recognised trade union/professional association
-  an official of a trade union/professional association whom the union has reasonably certified in writing as having experience of, or as having received training in acting as an employee's companion at disciplinary or grievance hearings
-  an appropriate work colleague.

Friends/family members are not permitted unless they fall under the above criteria and it is agreed as appropriate. It would not normally be reasonable for an employee to be accompanied by a work colleague or trade union/professional association representative whose presence would prejudice

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the hearing and/or was from a remote geographical location if someone suitable and willing was available on site.

If an employee's chosen representative is not available on the day proposed for the hearing, the employee can propose an alternative date within the following five days of the original date proposed.

9. Non Attendance

If an employee fails to attend a meeting or hearing under this policy through circumstances beyond their control, such as certified illness, an alternative time and date may be offered. Alternatively they may submit a written statement or nominate a representative to attend on their behalf.

Where an employee is persistently unable or unwilling to attend the meeting/hearing it will proceed in their absence and a decision based on the evidence available will be made.

A failure to not attend a pre arranged meeting or hearing may also lead to action under this policy.

10. Allegations Involving Children, Students or Vulnerable Adults

All employees working with children and vulnerable adults must understand that the nature of their work and the responsibilities related to it, place them in a position of trust. Any abuse of this trust will be managed under this policy.

The Children Act 2004 places a duty on schools/services to safeguard and promote the wellbeing of children in their care. This includes the need to ensure that all adults who work with or on behalf of children are competent, confident and safe to do so.

Similar safeguards apply to adults working with vulnerable adults, that is 'a person aged 18 years or over who is, or may be in need of community care services by reason of mental or other disability, age or illness; AND who is, or may be unable to take care of him or herself, or unable to protect him or herself against significant harm or exploitation' (Dept of Health 2000).

Additionally the Sexual Offences Act 2003 covers child sex offences and has specific provisions relating to care workers for persons with a mental disorder.

If any allegation involves safeguarding concerns, especially in relation to an alleged abuse of trust, DCC's Local Authority Designated Officer (LADO)/Safeguarding Adults Team will be contacted before any further action can be taken and/or before the matter is discussed with the employee (see Appendix 1).

If there is reason to believe that evidence of inappropriate material and/or communications may be found on the employee's work computer and/or mobile phone, Devon Audit Partnership will be notified at the earliest opportunity. An employee's computer or phone will not be accessed until Devon Audit Partnership has been informed.

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Managers/Headteachers should be aware that a criminal act may have been committed, e.g. inappropriate communication with a student or vulnerable adult and therefore the evidence must be preserved.

Consideration should be given to restricting the employee's access to ICT accounts, e.g. webmail, and/or it may be appropriate for access to be blocked until appropriate action has been taken to secure data.

11. Allegations in the public interest (whistleblowing)

There may be occasions when the allegations are made by an employee about something that is in the public interest and could be constituted as a 'protected disclosure' under the Council's [Whistleblowing Policy](#). Such allegations may include matters where there may have been:

- an unlawful or a criminal offence;
- a breach of a legal obligation (but not a personal contractual breach unless such breach involves a matter of public interest);
- a miscarriage of justice;
- mistreatment or abuse of a client or a member of the public for whom the Council has a responsibility;
- in disregard of legislation governing health and safety at work;
- seeking undue favour over a contractual matter or a job application; or against the Council's Financial Regulations;
- actions which amount to improper conduct or unauthorised use of public funds;
- actions which have led to or could lead to damage to the environment; or
- deliberately covers up information tending to show any of the above.

In these circumstances it may be appropriate to invoke the Council's [Whistleblowing Policy](#) prior to or at the same time as the Disciplinary Policy. Where it appears that allegations may constitute a protected disclosure, those allegations will be referred for consideration under the Whistleblowing Policy.

12. Allegations Involving Employees with a professional registration

If there are any allegations about the practice of an employee who is required to have a professional registration (e.g. a Social Worker registered with the Health and Care Professions Council (HCPC), a Professional Lead for the service should be nominated and their advice sought. It may be appropriate for the Professional Lead to provide expert witness testimony in any subsequent investigation process and/or disciplinary hearing.

13. Criminal Offences / Police Involvement

A decision must be made whether to apply this policy as a result of any charge or conviction resulting from a criminal offence. This includes police cautions and/or warnings. This may apply in circumstances where the alleged offence may have an effect on employment or where this could bring the school/DCC into disrepute. In most cases, it is important that the internal investigation under this policy is not delayed. However, where the investigation may hamper a police investigation or has the potential to prejudice any future court

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proceedings, it is essential to liaise with the police to determine the most appropriate course of action.

14. Allegations of Financial Irregularity

If financial irregularity is suspected, the matter will be dealt with in accordance with DCC's Strategy for Dealing with Financial Irregularities (Anti-Fraud and Corruption Policy) and Devon Audit Partnership must be notified. It is particularly important not to access the employee's computer or mobile phone until Devon Audit Partnership has been informed, and this should be done before any action is taken under this policy.


15. Allegations involving Information Security Incidents


In the event that an allegation involves a breach or potential breach of data security, even if this is only suspected or is uncertain, the Information Governance Team must be notified immediately. This will ensure that actions required in line with DCCs Security Incident Management Procedure are undertaken at the appropriate stage, together with the actions required under this policy.


PROCEDURE

16. Incident Occurs / Allegation Made

When an incident occurs or an allegation is made, the details should be provided to the senior manager / Headteacher. If the allegation(s) are of a safeguarding nature, the senior manager / Headteacher should follow section 10 of this policy. If the allegation(s) are not of a safeguarding nature, the senior manager / Headteacher should ensure that:

 where it is appropriate and will not have an impact on any further investigations, that the employee is notified of the allegation(s) verbally and in writing as soon as possible

 a decision is made whether the employee can remain at work, should be temporarily transferred to suitable alternative duties, is asked to remain away from work or be suspended (see sections 16 and 17).

 an investigator(s) is appointed, if required, and an investigation commissioned.

17. Remain Away from Work / Sending Home

An employee may be instructed by their line manager or another manager (including a Deputy Headteacher or a member of the Governing Body in a school) to remain away from the workplace or leave the workplace immediately and stay away on normal pay until further notice. This will only be done in circumstances when there appears to be an issue which may place the employee or others at risk or where there may be a detrimental impact if the employee remains in the workplace.

The manager will consider if it is necessary to ask for work equipment (keys, phones, premises access 'smartcards' etc) to be returned or access to ICT systems etc restricted. When sending home, the manager will ensure that the employee can get home safely.

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The decision and reasons for sending home should be confirmed to the employee in writing as soon as possible.

Following a review of the information available, a decision about whether to formally suspend the employee should then be made by those with appropriate authority as soon as possible and confirmed to the employee in writing.

18. Suspension

Suspension is not a disciplinary penalty and should be regarded as a neutral act. Action to suspend an employee can only be taken by an appropriate senior manager who has delegated authority to dismiss. In schools this is a Headteacher or the Governing Body.

A decision to suspend should not be made unless there are reasonable grounds to do so. It is important that any decision to suspend an employee can be justified and that evidence of considerations of alternatives to suspension, and why they were thought not appropriate, can all be demonstrated.

If there are no suitable alternative duties that the employee can undertake, an employee may be suspended on normal pay when:

- a. this may facilitate a more objective investigation
- b. the allegation(s), if found, is sufficiently serious that the outcome may be dismissal
- c. the employee is the subject of investigation by the police and the alleged offence is considered relevant to the duties of the employee
- d. it could be prejudicial to DCC's/the school's interests if the employee remains at work
- e. there may be a detrimental impact on colleagues
- f. there is a need to prevent access to any records or systems
- g. there will be media interest / publicity that may negatively affect DCC / the school / client group / children.

The reasons for suspension must be stated clearly to the employee and confirmed in writing as soon as possible and the suspension must be kept under review. Suspension can only be lifted by the senior manager / the full governing body in schools. Maintained schools are required to notify DCC if they suspend any of their employees.

19. Investigation

Any investigation carried out under this policy will be thorough, unbiased and reasonable in the circumstances.

The nature and extent of the investigation will depend on the seriousness of the matter and should be proportionate to the allegation that has been made. The senior manager will confirm the timescale and scope of any investigation required and produce an investigation remit.

Where it is necessary to interview witnesses during an investigation, the interviews and discussions undertaken should follow a standard format and any

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interview or witness statements produced should be signed and agreed by the witness.

If evidence of further instances or further allegations arise during the investigation process, these will be added to the initial investigation and will be considered at the same time as the original allegations.

The findings of any investigation, together with any relevant evidence, including witness statements etc, should be provided to the senior manager / Head teacher in a report together with written recommendation as to the next steps. In a school, where the Headteacher has undertaken the investigation, the findings should be provided to the Chair of Governors. An investigation report template is available from HR ONE.

The investigator(s) will recommend whether:



no action is necessary



the matter should be dealt with outside this policy



the matter should be referred to a disciplinary hearing.

19.1 Interviewing Children / Students / Vulnerable Adults

If children are to be interviewed as part of an investigation, their parents/carers should be advised and consent obtained in advance. Interviews should not take place with children unless they are accompanied by a suitable person or parental consent has been given to them being interviewed unaccompanied. Vulnerable adults should be accompanied by a suitable person.

The employee's trade union/professional association representative may be present during any interview if this does not jeopardise the integrity of the investigation. This will preclude the child/vulnerable adult being interviewed more than once and negate the requirement for them to attend a disciplinary hearing. If the matter does proceed to a hearing, the employee will be provided with notes of the meeting as part of the investigation report.

20. Disciplinary Hearing

Where it is determined that an employee is required to attend a hearing, the senior manager, or the Clerk to Governors where appropriate, will notify the employee in writing giving at least 5 days notice, stating the details of the disciplinary hearing, the possible outcomes of the hearing, the employee's right to request to be accompanied and that the hearing may take place in the employee's absence if they fail to attend without providing a satisfactory explanation. A template letter is available from HR ONE. A copy of the investigation report and a copy of this policy must be included with the letter.

At the hearing, the employee will be given the opportunity to respond to the allegation(s), question any witnesses and present their case to the senior manager / Headteacher / First Committee.

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Following consideration of all the evidence, the senior manager / Headteacher / First Committee will adjourn the hearing to make their decision. They will come to a view regarding the validity or otherwise of the allegation(s) and decide what action should be taken.

The senior manager / Headteacher / First Committee should act in good faith. In disciplinary cases the standard of proof required is the balance of probability, i.e. a judgment of whether it is more probable than not that misconduct (or gross misconduct) took place. The senior manager / Headteacher / First Committee should take into account any mitigating circumstances given by the employee.

The courses of action available are as follows:

Non-Formal Action

take no action

Offer professional guidance as to the required standard of behaviour and inform the employee of the consequences of not achieving the required standard. Professional Guidance is not a formal disciplinary sanction

Formal Action

issue a verbal warning

issue a formal written warning if there has been either a repeated minor breach of conduct, or a first but more serious breach of conduct.

issue a final written warning if there has been an insufficient response to previous warnings and conduct is still unsatisfactory or in the case of a first but sufficiently serious breach of conduct.

issue the employee with notice of dismissal if, following a final written warning, conduct remains unsatisfactory and the employee still fails to reach or maintain the prescribed standard; or in the case of a first but sufficiently serious breach of conduct or if the circumstances of the matter justify dismissal for some other substantial reason.

dismiss the employee because a statutory bar results in the employment being unable to continue.

dismiss the employee summarily without notice and without there having been any previous disciplinary warnings when there has been gross misconduct.

Formal Action (Some Other Substantial Reason)

There may be occasions, following a fair procedure, where a dismissal for some other substantial reason (SOSR) is considered. In these circumstances the senior manager / Headteacher / First Committee will ensure that they act reasonably in dismissing the employee taking into account all of the circumstances.

There is no set definition of what is an SOSR reason however common examples can include (but are not limited to):

A breakdown in trust and confidence

Personality clashes

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Conflict(s) of interest/ Protection from competition

Reputational risk

Where there are concerns relating to the safeguarding of children or vulnerable adults, but where the employer does not have grounds for a misconduct dismissal.

The senior manager / Headteacher / First Committee will reconvene the hearing and confirm their decision verbally, unless valid reasons exist not to do so, and will write to the employee within five days to confirm their decision.

Where action results in the issue of a warning of any type, there should normally be a specified period that the warning remains current, e.g. 6 months for a verbal warning, 12 months for a written/final written warning. It should be made clear to the employee that further unsatisfactory conduct may result in further disciplinary action which could lead to dismissal.

After the specified period the warning will be considered spent for disciplinary purposes. However, if the warning relates to safeguarding children or vulnerable adults this sanction may be referred to in employment or other references that Devon County Council are required to provide - if the role involves responsibility or contact with children or vulnerable adults. This may be the case even where the warning is spent, as DCC's safeguarding responsibilities would take precedence, although discretion will be applied to determine if this is appropriate.

Where a warning/final written warning or dismissal is the outcome, the employee must be informed of their right of appeal and where to send the appeal.

21. Appeal

An employee has the right to appeal against the decision made at the disciplinary hearing, if that decision is to issue the employee with any sanction other than a verbal warning. If an employee wishes to appeal against the decision, they must do so in writing, stating the grounds for their appeal, within five days of receiving the written outcome.

An employee may appeal on the following grounds:

the sanction given was too harsh given the circumstances

the procedure was not fairly or correctly applied

new information has come to light that would directly affect the decision made at the hearing.

The appeal should be sent to the Head of Human Resources for DCC employees or to the Clerk to Governors for school employees. The Head of Human Resources or Clerk to Governors will then arrange for an appeal to take place.

In schools, a Governor's Appeal Committee will be convened and will hear the appeal. In DCC, the right of appeal against a formal written warning and final written warning will be to a Chief Officer (which is a Head of Service or their

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nominated representative). The employee has the right to choose who hears an appeal against dismissal. This may be heard by either a Chief Officer or by Members.

The appeal should be heard without unreasonable delay. A minimum of five days notice will be given to allow for preparation.

The outcome of an appeal hearing may be to:

- adjourn and refer the matter back to the senior manager / Headteacher / First Committee if significant new information/evidence is provided, which was not available previously, and may change the original decision
- conclude a procedural irregularity occurred and determine whether this had an impact on the decision-making process and outcome. If so, determine an appropriate sanction and make a recommendation to rectify the situation
- uphold the appeal and determine an alternative sanction/appropriate course of action
- reject the appeal and confirm that the original decision stands.

The decision will be given verbally to all parties at the end of the appeal hearing unless valid reasons exist not to do so. The decision will be confirmed in writing to the employee within five days. An appeal is not a re-hearing of all of the facts but to determine if the original decision was reasonable given the circumstances. The process ends with the decision of the Chief Officer, Members or the Appeal Committee.

ADDITIONAL INFORMATION

22. HR Advice

HR ONE can provide advice and support to any manager or governor involved in the application of this policy at any stage. This includes attendance at meetings/hearings where required. A representative of DCC should be present to give advice at any hearing where dismissal may be considered at any Community or Voluntary Controlled school.

23. Reporting Obligations

23.1 Professional Bodies

Where there are cases which could potentially call into question an employee's professional registration, e.g. a Social Worker registered with the Health and Care Professions Council (HCPC), managers should ensure that they follow the appropriate procedure for reporting concerns to the relevant Registered Body. This will ensure that the body can investigate the individual's ability to carry out their professional duties or take other appropriate action in the circumstances. Further information on making a referral can generally be found on the professional body's website. Where a referral is necessary, this should be made at the start of the formal process.

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In addition, e.g. for employees registered with the Care Quality Commission (CQC) or HCPC, employees are responsible for ensuring that they adhere to the individual reporting requirements of their professional body, where they are subject to formal disciplinary procedures.

Cases of unacceptable professional conduct by a teacher should be reported to the National College for Teaching and Leadership. 'Unacceptable professional conduct' is defined as 'conduct which falls short of the standard expected of a registered teacher...and is behaviour which involves a breach of the standards of propriety expected of the profession.'

23.2 Disclosure and Barring Service (DBS) (Previously the ISA)

The primary role of the Disclosure and Barring Service (DBS) is to help employers make safer recruitment decisions and prevent unsuitable people from working with vulnerable groups, including children.

The Safeguarding Vulnerable Groups Act (SVGA) 2006 places a duty on employers of people working with children or vulnerable adults to make a referral to the DBS where an employer has dismissed or removed a person from working with children or vulnerable adults (or would or may have if the person had not left or resigned etc) because the person has:

- been cautioned or convicted for a relevant offence; or
- engaged in relevant conduct in relation to children and/or vulnerable adults, i.e. an action or inaction (neglect) that has harmed a child or vulnerable adult or put them at risk of 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 adult still exists.

The referral will enable the DBS to consider whether or not the individual should be barred from working with children and/or vulnerable adults and should be made as soon as possible after an employee has been dismissed or removed from working with children or vulnerable adults (or would have been if they had not resigned). Further information about making a referral can be found at

http://staff.devon.gov.uk/dbs_referral_process_and_guidance.doc

24. Management Responsibilities

Managers are required to ensure that each employee is aware of this policy and understands both the professional conduct that is required of them and the consequences of not meeting the required standards of behaviour. Action should be taken consistently to identify concerns and reinforce standards of behaviour before it becomes necessary to take formal action. Managers are required to manage the process effectively, fairly and reasonably if it is necessary to use this policy.

25. Employee Responsibilities

Employees are required to conduct themselves appropriately and to observe the rules, regulations and instructions adopted by their employer and carry out their

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role consistently with any standards set by their appropriate professional body. Employees have a responsibility, where necessary, to take any steps required to address their behaviour.

26. Professional Standards

In this policy where there is reference to “relevant professional standards” this refers to any standards applicable to the post(s) and the career stage of the post holder (e.g. the Teachers Standards 2012 are applicable to all teachers including the Headteacher).

27. Formal Disciplinary Action against Trade Union/Professional Association Representatives

Although the usual standards of conduct expected must apply to trade union/professional association representatives, no formal action within this policy will be taken against an employee who is an accredited representative, nor will suspension normally be applied, until the circumstances of the case have been discussed with a paid official nominated for such purposes by the trade union/professional association concerned.

28. Raising a Grievance during the Application of this Policy

If an employee is currently being managed under this policy and has a complaint related to either the person applying it and/or its application, the employee will raise a complaint under this policy which will be investigated. It may be necessary to suspend the application of the policy while the complaint is being looked into. Any delay to the application of this policy to deal with an employee’s complaint should not exceed 10 days.

If an employee raises an unrelated complaint, then the employee should use the Grievance Policy and Procedure. As the matter is unrelated, there will be no need to put any process currently being applied on hold as the complaint can be dealt with in parallel.

29. Confidentiality

Any parties affected by or involved in the application of this policy will be expected to maintain an appropriate level of confidentiality. Breaches of confidentiality will be taken seriously, especially if they hinder the application of the policy. Failure to maintain confidentiality may result in action being taken under this policy. Disclosure of information may also be a breach under the Data Protection Act (1998) and may lead to action being taken under the provisions of that Act, in addition to action being taken under this policy.

30. Recording of Information

A written record must be made of all interviews and meetings held during the application of this policy. Those involved in each meeting will be provided with a copy of any records made.

The investigator(s) will ensure there is a full and comprehensive file of the process which should include all statements, records and evidence. At the end of the process the file should be passed to the senior manager / Clerk to

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Governors who should ensure that it is stored confidentially (corporate files are returned to HR Admin for filing).

All records will be kept confidentially and retained in accordance with the Data Protection Act (1998).

31. Support for Employees

Employees are encouraged to seek support from their trade union/professional association in the first instance. Procedural guidance relating to this policy is available from HR ONE at hrdirect@devon.gov.uk or by telephoning 01392 385555.

There are a number of different places where employees can access support, including the Employee Assistance Program (EAP) which offers free, confidential and independent support that is available 24 hours a day, 7 days a week, 365 days a year. DCC employees can request help with a range of issues including up to 6 sessions of face-to-face counselling, structured telephone counselling and cognitive behaviour therapy. To contact the EAP, telephone 0800 030 5182 or go on line at www.healthassuredeap.co.uk (username: Devon, password: Council).

There is additional internal DCC support available through Occupational Health referrals, the Acceptable Behaviour Helpline (01392 385555) and the Mediation Service (01392 385555).

Where a referral to Occupational Health is necessary, this should be made by the employee's line manager.

INFORMATION FOR SCHOOLS ONLY

32. Adopt the Policy

This policy was adopted by the Governing Body ofschool on(insert date).

33. Consultation

This policy is provided following consultation with trade unions/professional associations and will apply to all employees. This policy is also for the Governing Body of schools to consider for adoption. Should the Governing Body wish to make changes to this model Policy, the required consultation must be undertaken with the County Officers of the recognised trade unions/professional associations.

This policy supersedes all previous disciplinary policies including any previous conduct policies for schools.

34. Delegated Responsibilities

In line with School Staffing (England) Regulations 2009, the Governing Body must determine who has delegated responsibility for Hearings, which may lead to dismissal, as part of this policy:

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Hearings will be delegated to:
The Headteacher Yes/No
The First Committee of Governors Yes/No

Appeal Hearings will be heard by a Governors' Appeal Committee regardless of the delegation above. If delegation is given to the Headteacher, the First Committee will hear the matter if the Headteacher has carried out the role of the line manager.

Date agreed.....

35. Issuing/Retracting Notice of Dismissal

Where a decision to dismiss an employee is taken under this policy, in Community or Voluntary Controlled Schools, the Chair should formally notify HR ONE in writing within five days of the hearing, giving the reasons for the determination. HR ONE will issue notice of dismissal on behalf of DCC within 10 days of receipt of the notification. In Voluntary Aided or Trust Schools, the Chair of Governors will issue notice of dismissal.

Where an appeal against dismissal is upheld, the notice issued to the employee will be retracted and the employee will be reinstated. In a Community or Voluntary Controlled School, the Chair of the Committee should write to HR ONE within five days giving the reason for the determination and DCC will retract the notice. In the case of Voluntary Aided or Trust Schools, the Chair of Governors will retract the notice.

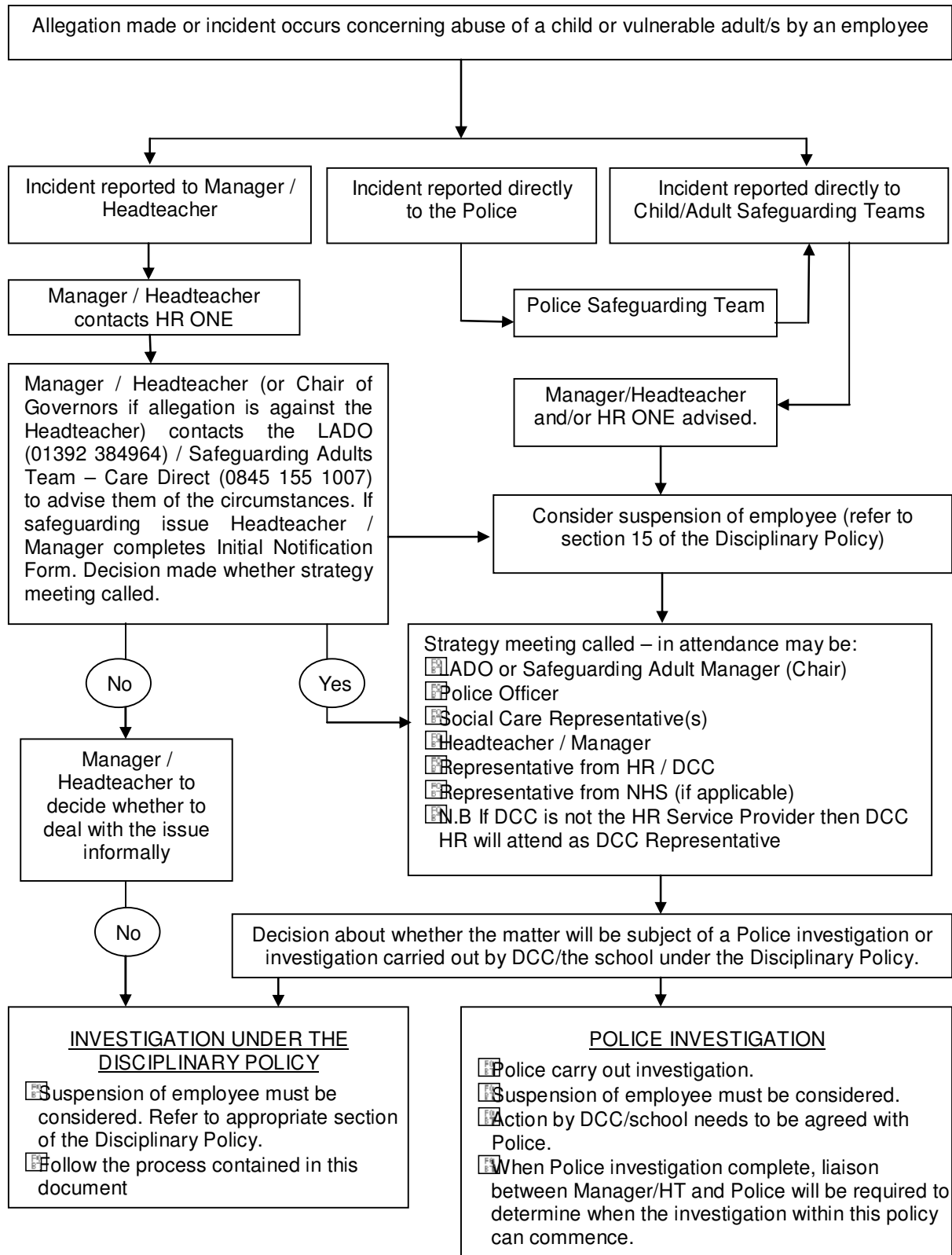
36. Costs

The Financial Intervention Panel for Schools (FIPS) has determined the conditions and circumstances for meeting the costs of defending tribunal claims.

37. Devon County Council Representation where Dismissal is Being Considered

In maintained schools, DCC has the right to give advice at any meeting where the dismissal of an employee is being considered. This role is usually undertaken by a DCC HR Adviser and schools should ensure that HR is in attendance. Any advice given must be considered by the Governing Body or any person or persons to whom such functions have been delegated when reaching any such decision.

APPENDIX 1 - ALLEGATIONS RELATING TO CHILDREN OR VULNERABLE ADULTS



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APPENDIX 2 - EXAMPLES OF WHAT MIGHT CONSTITUTE MISCONDUCT OR GROSS MISCONDUCT

Misconduct

The following list is not exhaustive but gives examples of behaviour that may be dealt with under this policy. It should be noted that depending on the seriousness of the circumstances, any of these actions may be treated as gross misconduct:

- refusal to comply with reasonable and lawful instructions
- timekeeping, including failure to remain at work during contracted hours and being absent without permission
- negligent actions or behaviour
- failure to disclose relationships which may compromise the integrity of the school/DCC
- failure to disclose a personal relationship with a colleague/service user which impacts on professional duties
- inappropriate use of work equipment/property
- breach of confidentiality
- failure to comply with Health and Safety requirements
- actions that may bring the school or DCC into disrepute
- undertaking unnecessary personal activities during working hours
- failure to report any concerns regarding the health, safety and welfare of children / student / vulnerable adults
- misuse of social media.

Gross Misconduct

The following list is not exhaustive but gives examples of behaviour that could be regarded as gross misconduct:

- any of the listed items from the above 'misconduct' list
- physical, sexual, emotional, financial or verbal abuse of children, vulnerable adults, colleagues, parents, customers or volunteers
- a criminal offence applicable to the work performed
- inappropriate conduct and/or contact with a child and/or pupil aged 17 years or under
- inappropriate contact with a child/vulnerable adult, either physical or non physical e.g. via a social network
- grooming - actions deliberately undertaken with the aim of befriending and establishing an emotional connection with a child, in order to lower the child's inhibitions in preparation for abuse or exploitation, by a person who is in a position of trust in relation to a person under 18 who is receiving education in an education institution. Grooming is illegal.
- abuse of position of trust
- perpetrator of domestic violence
- taking or distributing indecent photographs or publications, possession of such documents where children/vulnerable adults present
- breach of security, financial procedures or confidentiality
- inappropriate use of computer, laptop and/or communications systems, including but not limited to inappropriate communications using technology i.e. texts, social networking websites
- making of vexatious and/or malicious allegations

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- discrimination, including harassment and victimisation on the grounds of gender, age, disability, gender re-assignment, marital or civil partnership status, pregnancy, maternity status, race (including colour, nationality and ethnic or national origins), religion or belief, sex and sexual orientation.
- dishonesty, theft, bribery, fraud (including corruption), misuse of DCC or school property or resources, or deliberate falsification of records
- bullying and/or harassment, including cyber bullying
- providing false information in relation to applications for employment, qualifications, etc
- fighting with, or assault or any violent behaviour towards children, vulnerable adults, colleagues, parents, customers, volunteers, contractors or members of the public
- deliberate damage to property or equipment
- sleeping or carrying out inappropriate activity e.g. using Facebook, during working hours
- a criminal conviction inconsistent with the standards expected for the role
- failure to disclose any conviction, caution, reprimand, bind over, warning, pending criminal proceedings for which an arrest or a formal charge is made
- being under the influence of alcohol, illegal substances or drugs at work
- being in possession of illegal substances or drugs
- serious negligence which causes unacceptable loss, damage or injury
- refusal to follow a reasonable formal management instruction
- engaging in unauthorised employment during hours contracted to work for the school/DCC or during periods of specially designated leave e.g. sick leave, special leave etc.
- abuse of the sick pay scheme
- failure to uphold the professional standards of the role the employee is employed to perform
- misconduct and/or displays of lack of professionalism which leads to the employee deliberately absenting him/herself from work
- breach of the Data Protection Act (1998) or DCC/school Data Protection Policy

Additionally, in the case of Headteachers or Senior Managers in schools:

- deliberate failure to meet reporting responsibilities to the Governing Body
- failure to uphold the professional standards expected
- negligent conduct which leads to poor provision of education to children
- undermining the Headteacher/Governing Body
- failure to comply with Safeguarding of Children requirements
- failure to maintain appropriately checked records of employees e.g. DBS, Eligibility to Work in the UK etc.

Some examples of behaviour at work may also constitute a criminal matter, e.g. bribery may fall under the Bribery Act 2010.

The above lists are not exhaustive and there may be several other breaches of conduct that may be deemed to be misconduct or gross misconduct.

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POLICY HISTORY

Policy Date	Summary of change	Contact	Version/ Implementation Date	Review Date
27 November 2013	New Policy Date of consultation with recognised Trade Unions – November 2012 and September 2013	HR ONE	27 November 2013	
	Removed reference to Counselling service and replaced with Employee Assistance Programme with contact details	HR ONE	25 April 2014	
	Paragraph added. 13. Allegations involving Information Security Incidents		12 November 2014	
	Remove reference to 'good cause' for delays to hearings. Clarity on Professional Guidance Addition about using warnings in employment references	HR ONE	17 December 2014	
November 2014	New section 11 - to clarify links between Disciplinary and Whistleblowing policies	HR ONE	18 December 2014	
July 2015	Clarification in Responsibility for Taking Action in Schools, Section 3 Paragraph 2.	HR ONE	28 July 2015	
Feb 2016	Replace and Update of Occupational Health Information due to new provider.	HR Direct	01 April 2016	
Mar 2016	Minor amendments to sections 3 and 15 re. references to other sections.	HR Direct	01 April 2016	
November 2016	Paragraph added to section 19 re dismissals for Some Other Substantial Reason Addition added to section 12 Allegations Involving Employees with a professional registration	HR ONE	10 November 2016	

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