

## **Staff Conduct and Disciplinary Policy and Procedure**

### **Statement of Intent**

The main purpose of the conduct and disciplinary policy and procedure is to encourage an employee, who's standard of work or conduct is unsatisfactory, to improve. The procedure serves to ensure that this is done in a fair and consistent manner.

The conduct and disciplinary policy and procedure is not contractual and may be varied by the school. **Cirencester Kingshill School** expressly reserves the right to depart from the terms of the disciplinary procedure in circumstances where the employee does not have two years' qualifying service.

The conduct and disciplinary policy and procedure is strictly confidential and all aspects, including all documentation and records, shall be treated as such. In line with this policy, the following will be adhered to:

- In minor cases of alleged misconduct, the manager should initially seek to resolve the matter informally by discussion with the employee.
- The conduct and disciplinary procedure is to be used where an employee's work or conduct is alleged to be unsatisfactory.
- Each step and action under the procedure must be taken without unreasonable delay, by either the school or the employee.
- The timing and location of meetings must be reasonable.

**Please note: Disciplinary actions that relate to allegations of abuse about a member of staff will also be managed in line with the Allegations of Abuse Against Staff Policy.**

### **Legal Framework**

This policy and procedure has due regard to all relevant legislation and statutory guidance including, but not limited to, the following:

- The Education Act 2011
- The Teachers' Disciplinary (England) Regulations 2012
- DfE (2022) 'Teacher misconduct: the prohibition of teachers'
- DfE (2023) 'Keeping children safe in education 2024'
- DfE (2021) 'Teachers' Standards'
- DfE (2020) 'Teacher misconduct: disciplinary procedures for the teaching profession'
- ACAS Code of Practice on Discipline and Grievance Procedures
- ACAS guide "Discipline and Grievance at Work"
- Data Protection Act (2018)
- Equality Act (2010)

### **Linked Policies and Key Documents**

This policy and procedure should be read in conjunction with, and has been informed through, reference to:

- Data Retention Policy
- Staff Code of Conduct
- Staff Charter
- Child Protection and Safeguarding Policy
- Grievance Policy
- Allegations of Abuse Against Staff Policy

## Roles and Responsibilities

The Board of Trustees will be responsible for:

- Monitoring and reviewing this policy on an annual basis to ensure its effectiveness.
- Ensuring that all members of staff have read and understand the provisions outlined in this policy.
- Initiating disciplinary action and deciding the appropriate level of action where an allegation is made against the headteacher.
- Ensuring a culture is established where employees are supported and assisted in achieving and maintaining the required standards of conduct.
- The dismissal of staff and for delegating the hearing of appeals to a sub-committee, if necessary.

The Headteacher will be responsible for:

- The day-to-day implementation of this policy and maintaining discipline among all staff.
- Ensuring this policy and associated procedure are readily available to all employees and can be accessed in an appropriate format.
- Initiating disciplinary action and deciding the appropriate level of action.
- Ensuring records are kept of all disciplinary meetings and communications with employees.
- Ensuring that all documentation relating to disciplinary issues is retained in accordance with the schools Records Management Policy.
- If a matter progresses to a disciplinary hearing, presenting details of the employee's failure to meet and maintain the required standards of conduct.
- Communicating the outcomes of disciplinary procedures to employees.
- If a matter concerns a safeguarding issue, ensuring the DSL has been notified.

Employees will be responsible for:

- Familiarising themselves with the standards outlined in the Staff Code of Conduct.
- Adhering to the provisions outlined in this policy and cooperating with the disciplinary procedure.
- Attending all meetings, interviews and hearings that take place in accordance with this policy and its associated procedure.
- Lodging appeals to the headteacher within five working days of receiving a decision.
- If choosing to be accompanied to a disciplinary or appeal hearing, notifying the disciplinary officer who their chosen companion is, in good time before the hearing.

## Purpose and Scope of the Policy and Procedure

1. Management is responsible for maintaining and setting standards of conduct in an organisation and for ensuring that rules and procedures are in place. This policy and procedure applies to all staff employed by the school and covers conduct and safety issues. Matters relating to performance will normally be dealt with under the Capability procedure.
2. The policy and procedure is designed to help and encourage all employees to achieve and maintain high standards of conduct and to promote fairness and order in the treatment of individuals facing an allegation concerning misconduct or gross misconduct. Also to be taken into account will be any appropriate documents that relate to expected standards of conduct, e.g. Teachers' Standards, terms and conditions of employment, job descriptions, school policies, or any conduct rules.
3. **If the alleged misconduct concerns a matter of child protection (see Appendix 1 to this procedure – "Allegations of abuse made against teachers and other staff", the School will refer**

**to the appropriate Gloucestershire County Council Safeguarding Children policies and procedures and take action accordingly.**

4. The school will seek advice from its personnel advisers whenever informal or formal action is being instigated. The adviser will provide advice, support, guidance and training to the Headteacher and/or Trustees, in preparation for, and during hearings. They may advise on procedures, employment law and protocols but they must not take part in any decision-making.

## **Principles and Guidance**

These should be read in their entirety when disciplinary action is anticipated and before commencing the procedure.

### **1. Sanctions**

- a. No disciplinary sanction will take place until the case has been investigated and a hearing completed.
- b. No employee will be dismissed for a first breach of conduct except in a case found to be gross misconduct, when the penalty will be dismissal without notice or payment in lieu of notice.
- c. Where the result of a hearing is a formal warning, the school has the ability to withhold salary progression under the relevant schemes for staff.

### **2. Conduct of proceedings**

- a. The procedures should be implemented at the stage appropriate for the seriousness of the alleged misconduct.
- b. The Education Act 2002 (School Staffing Regulations 2003), and subsequent updates, provides that the delegated responsibility for disciplinary action up to initial dismissal decisions may be taken by the Headteacher, one or more Trustees, the Headteacher and one or more Trustees together, a panel of Trustees (normally 3) or, in the absence of the Headteacher, the acting Headteacher.
- c. In this school the Headteacher has the delegated responsibility for disciplinary actions up to, and including Stage 2 at the Final Warning Stage. However, where the Headteacher has conducted the investigation, or has become inextricably involved in the events leading to the investigation, the hearing should be held in front of one or more Trustees.
- d. All hearings that may result in dismissal will be held in front of a panel of 3 Trustees selected from the Trustees' Staffing Committee.
- e. There are circumstances where alternative arrangements may need to apply. These include where the Headteacher:-
  - i. is unwilling to perform this function;
  - ii. is the subject of an ongoing disciplinary investigation or action, or there is some other reason that would make it inappropriate for the Headteacher to conduct the hearing;
  - iii. is absent from school, e.g. long-term sickness or secondment.

### **3. Hearings – see also Appendix 2**

- a. At every formal stage of the procedure the employee will be advised in writing of the nature of the complaint against him or her and will be given the opportunity to state his or her case at a formal hearing before any decision is made. At least 5 school working days' notice will be given of a hearing. For hearings where the outcome could result in dismissal, at least 10 school working days' notice will be given. Dates that are re-arranged by mutual agreement of the parties need not comply

with these notice periods (*see paragraph 4 'Employee's rights'*). Wherever possible, hearings will be arranged during the normal school working day for the individual concerned.

The school will arrange for a record of the hearing to be taken, normally by the Trustees' Governance Professional.

#### **4. Employee's rights**

- a. At any formal hearing, an employee has the statutory right to be accompanied by a fellow worker, a trade union or professional association representative or an official employed by a trade union. The employee should also be encouraged to be accompanied when attending any formal interview as part of an investigation. Should the employee's representative be unavailable at the time proposed for the hearing, the employee or his/her representative must inform the employer so that an alternative date can be arranged, if possible within 5 school working days of the original date. If it is necessary for the availability of the parties, a date outside of the 5 days may be agreed but the rearranged date must not put an undue delay on the procedure.
- b. The employee's trade union or professional association representative will be allowed to address the hearing and sum up the employee's case if the employee so wishes. The employee's trade union or professional association representative may respond to any views expressed at the hearing and confer with the employee during the hearing. The employee's trade union or professional association representative does not, however, have the right to answer questions on the employee's behalf or address the hearing if the employee does not wish it or prevent the employer from explaining their case.
- c. Where the disciplinary procedure is being considered against a trade union representative, the case should be discussed, after obtaining the employee's agreement, with a senior trade union representative or permanent union official. Disciplinary action will not normally be taken against an employee in respect of alleged misconduct that arises from trade union activity or duties.
- d. At all formal stages of the procedure an employee will have the right of appeal against any penalty imposed (*see formal procedure paragraph 6 'Appeals'*).

#### **5. Sickness absence during the procedure**

- a. If during the procedure the employee becomes absent due to ill-health, the Headteacher will contact their personnel adviser as soon as possible, to ensure the best course of action is followed. The individual concerned will be advised to contact their trade union representative for further advice about absence and the procedure.
- b. Where an employee is absent at the time of a scheduled meeting, the employer will offer a suitable alternative date, and the employee has to make a reasonable attempt to attend the meeting. However, where the employee continues to be unable to attend any meetings, they may proceed in the employee's absence if delay would otherwise compromise the procedure or where the employee's absence record is also a cause for concern. The employee's representative may attend on behalf of the employee where s/he is unable to attend and alternative times have been considered. Following any meeting taken in the employee's absence, the decision and the reasons for it should be communicated in writing to the employee, along with the right of appeal and any time-scales if appropriate.

#### **6. Role of the Trustees**

- a. Trustees may have a specific role to play in the procedures and for this reason are advised not to enquire into or discuss any allegations concerning the conduct of an employee. Knowledge of a situation may not constitute prejudice, however, prior involvement in a case will normally exclude any Trustee from the decision or appeals process.
- b. Where the procedure involves allegations against the Headteacher, the Chair of Trustees will ensure that there are sufficient Trustees available to carry out the functions of any disciplinary and appeals hearings with impartiality.

## 7. Investigations

- a. **Where the allegation involves a child protection issue reference must be made to Appendix 1 of this procedure – “*Allegations of abuse made against teachers and other staff*”, and to the Gloucestershire Safeguarding Children Board (GSCB) procedures available at [www.gscb.org.uk](http://www.gscb.org.uk).**
- b. When an allegation of misconduct is made, it will be necessary to investigate the circumstances relating to the allegation and an investigating officer should be nominated. Any investigation should be conducted as expeditiously as possible. Where responsibilities for disciplinary matters have been delegated to the Headteacher, consideration should be given to the investigation being conducted by a Deputy Head, an Assistant Head, or for cases involving support staff, another senior manager. However, there may be occasions where the Headteacher is already involved in the investigation, or it is felt that s/he would be in the best position to undertake it, in these cases alternative arrangements would apply if a hearing needed to be convened (*see paragraph 6 ‘Conduct of proceedings’*). If the allegation is of a sexual nature the complainant will be asked if they wish to have a person of the same sex either conducting or assisting in any investigation.
- c. The purpose of an investigation is for the school to establish a fair and balanced view of the facts relating to any disciplinary allegations against an employee, before deciding whether to proceed with a disciplinary hearing. The amount of investigation required will depend on the nature of the allegations and will vary from case to case. It may involve interviewing and taking statements from the employee and any relevant witnesses, and/or reviewing relevant documents. Investigative interviews are solely for the purpose of fact-finding and no decision on disciplinary action will be taken until after a disciplinary hearing has been held.
- d. Where, as part of an investigation, it is necessary to interview students, the school will not call students to give evidence at hearings. Arrangements will be made to take a written record of the interview with the student. Parents/Carers will be advised and their permission obtained. As the employee is not allowed to attend student interviews, it is necessary to allow him/her to be represented. However, the representative is only present as an observer to ensure the interview was conducted openly and recorded accurately. The above requirements for the recording of statements and representation will not normally apply where student interviews are conducted by external agencies e.g. Police or Social Workers, and are available to the school.
- e. The investigating officer will ensure that adults being formally interviewed are told the nature and purpose of the investigation, that written notes or statements will be taken and that these may be used at a hearing. It is advised that individuals are told that they may be required to attend as a witness at the hearing at which they would be questioned on their statement. Notes or statements should be signed and dated by the interviewee as an accurate record.
- f. As part of the investigation it will normally be necessary to interview the employee. At any formal interview the employee will be informed of the purpose of the meeting and encouraged to be accompanied by a trade union representative or workplace colleague. It must be made clear that it is an investigatory interview and not a formal disciplinary hearing. A representative may take part in the meeting but must not answer for the employee.
- g. On conclusion of the investigation, the investigating officer should make a report, written or oral, to the person considering the allegation to decide whether or not to proceed with a formal hearing. Outcomes of the investigation may result in:
  - No further action; or
  - An informal setting of standards (*see ‘Informal Action’ section following paragraph 15*); or
  - A formal disciplinary hearing (*see ‘Formal Action’ section, paragraphs 4 to 4 and paragraph 5 ‘Procedure for Gross Misconduct’*).



## 8. Suspension

- a. Suspension is a neutral act which does not imply guilt or blame; however, the decision to suspend should only be taken after considering the circumstances of the allegation. Further advice on suspension is given in Appendix 1 to this procedure – “Allegations of abuse made against teachers and other staff”, which although written for child protection purposes, promotes good practice in any circumstances involving suspension decisions.
- b. **Where the allegation is in respect of a matter involving child protection, the decision to suspend should be made only after taking account of the advice given in Appendix 1 to this procedure – “Allegations of abuse made against teachers and other staff”, and the Gloucestershire Safeguarding Children Board procedures, available at [www.gscb.org.uk](http://www.gscb.org.uk) .**
- c. The power to suspend rests with the Board of Trustees, the Headteacher or, in emergency situations or if the allegation relates to the Headteacher, the Chair of Trustees. Suspension may take place at any time before or during the course of an investigation. As it is a neutral act the employee will remain on full pay. In situations where the employee is certified as unfit to attend work owing to ill-health or takes maternity leave, payments will be made in accordance with the relevant conditions of service for these absences.
- d. A decision to suspend will only be taken after considering the circumstances of the allegation, the wider impact on the school community, particularly colleagues, and whether an alternative may be appropriate.

### **Circumstances to be considered:-**

- Where there is considered to be a risk to a child or children.
- Where the allegations are sufficiently serious that the outcome may be dismissal.
- Where this will allow a more objective examination of the circumstances or for the investigation to proceed unimpeded.
- To prevent a possible repetition of the alleged offence.
- Where there are reasonable grounds to believe that it will seriously affect the interests of the school, and/or the individual if s/he were to remain at work.

### **Alternatives to suspension include:-**

- Paid leave of absence (very short term for a few days allowing time for an initial decision to be made and with the agreement of the employee.)
  - Alternative duties/locations or removal from contact with students
  - Close supervision – e.g. providing a colleague to be present throughout student contact time.
- e. Where a decision is taken to suspend, apply special home leave or to work elsewhere, it is important to consider what support can be made available to the member of staff. Specific advice on support can be found in section 386 of Appendix 1 to this procedure.
  - f. Only the Board of Trustees may lift a suspension. This responsibility has been delegated to three members (excluding the Headteacher) of the Trustees’ Staffing Committee. However, the Headteacher may be present at the hearing to provide evidence and to discuss the arrangements for the employee to return to work if the suspension is lifted.

## 9. Documentation

- a. When a decision is made to convene a formal disciplinary hearing, the employee should be informed in writing, enclosing an additional copy of the correspondence, of the following:-
- Where and when the hearing will be conducted, giving appropriate notice.
  - The stage of the formal procedure under which the hearing will be conducted (a copy of this procedure should be enclosed). Where a possible outcome of the procedure could be dismissal, this should also be stated.
  - The purpose of the hearing.
  - Details of the complaints and/or allegations being considered.
  - Who will be attending the hearing.
  - The right to be accompanied by a trade union representative or work colleague (the additional copy of the documentation is for the representative).
- b. Copies of any supporting information, including statements already taken as part of an investigation, should accompany the letter. Other information that comes to light or was not available at the time the letter was issued should be sent as soon as possible but in advance of the date of the hearing. Wherever practical, there should be an agreed bundle of documentation available to all parties at least 3 working days prior to the hearing. In cases where the outcome of the hearing could result in dismissal, it is essential that a final bundle of documents should be made available to all parties at least 10 working days prior to the hearing. When submitting any documentation the employee is expected to follow the same time scales, allowing the school sufficient time for the documents to be collated, paginated and distributed.

## **10. Warnings**

- a. Following a hearing any formal action will be notified in writing to the employee detailing:-
- the reason for the action
  - the level of warning and its duration
  - expected improvement with time scale
  - consequences of any repetition or failure to improve satisfactorily
  - the impact, if any, on pay
  - the right of appeal
- b. Any formal warning will be considered spent after a specified period determined at the time of the issue of the warning. This period should be determined by the person(s) conducting the hearing, giving due consideration to the nature of the offence. However, as a guideline, a period of six months would normally be considered as appropriate at Stage 1 (Oral Warning) and a period of one calendar year at Stage 2 (Written Warnings).

## **11. Dismissals**

Where dismissal is with notice, the notice period will be in accordance with the employee's contractual arrangements, or the statutory period, whichever is greater. For dismissals following a decision for gross misconduct, dismissal will be with immediate effect and without notice or pay in lieu of notice.

## **12. Criminal Charges**

Where the employee's conduct is the subject of a criminal investigation, charge or conviction, the school will investigate the facts before deciding whether to take formal disciplinary action.

The school will not usually wait for the outcome of any prosecution before deciding what action, if any, to take. Where the employee is unable or has been advised not to attend a disciplinary hearing or say anything about a pending criminal matter, the school may have to take a decision based on the available evidence.

A criminal investigation, charge or conviction relating to conduct outside work may be treated as a disciplinary matter if the school considers that it is relevant to the employee's employment.

## Informal Action

Although any informal action taken is not part of this procedure, its status needs to be clarified. Cases of minor misconduct are usually best dealt with informally, normally in the form of a discussion between the manager and the employee. The manager must make clear that it is informal action but it may be followed by a note confirming the expected standards of behaviour/conduct and that any further misdemeanor may result in formal action being taken. Whilst any record of the discussion is not subject to formal warning periods (see *paragraph 2 'Warnings'*), the employer should act reasonably when considering using this information in any future formal action, taking into consideration the nature of the misconduct.

## Formal Action

It is difficult to define all the acts of misconduct which may lead to disciplinary action. As a general principle a test of reasonableness will be applied i.e. would a reasonable person be aware that disciplinary action would result from a certain act or omission?

The following list (**which is not exhaustive**) provides examples of offences which could be regarded as misconduct:-

- Inappropriate use of social media (refer to E Safety Policy and Acceptable Use Guidance)
- Failure to comply with reasonable direction
- Insubordination
- Abuse of authority
- Habitual poor timekeeping
- Unauthorised absence
- Failure to do duties
- Unacceptable hygiene at work
- Improper disclosure of information
- Improper use or care of School equipment
- Putting the security of the School at risk

### 1. The Formal Procedure

Dependent on the seriousness of the alleged misconduct, the procedures may be implemented at any stage, however, it must be made clear to the employee, the stage of the procedure at which the hearing is being conducted and that s/he has a right to be accompanied (see *paragraph 4 'Employee's rights' and paragraph 13 'Documentation'*). Details of who should conduct the hearing are given in paragraph 6 'Conduct of proceedings'.

### 2. Stage 1 – Oral Warning hearing

Where normal managerial practice has failed or the alleged misconduct demands formal action, a disciplinary hearing will be convened. The hearing will normally be held by the Headteacher but may be held in front of Trustees. Details of who should conduct the hearing are given in *paragraph 2 'Conduct of proceedings'*. The order of proceedings at the hearing is given in Appendix 2.

If following a hearing a decision is taken to issue a warning at this stage, the employee should be advised that it is an Oral warning and that any failure to improve or change behaviour sufficiently



could result in a written warning(s) and ultimately dismissal. The employee must also be informed about the right of appeal (see *paragraph 21 'Appeals'*).

### 3. Stage 2 – Written Warning hearings

When there is a failure to improve or change behaviour sufficiently in the time-scale set out in a previous warning, or where the offence is sufficiently serious, a hearing should be convened at Stage 2. The hearing will normally be held before the Headteacher but may be held in front of a panel of 3 Trustees. Details of who should conduct the hearing are given in paragraph 2 'Conduct of proceedings'. The order of proceedings at the hearing is given in Appendix 2.

If following the hearing a decision is taken to issue a written warning it should be determined whether this is a First Written warning or a Final Written warning. For a First Written warning it should be made clear that any failure to improve or change behaviour sufficiently could result in a Final Written warning and ultimately dismissal. For a Final Written warning, any failure to improve or change behaviour sufficiently will mean dismissal. The employee must also be informed about the right of appeal (see *paragraph 6 'Appeals'*).

### 4. Stage 3 – Dismissal hearing (normally only after stage 2, Final Written Warning, but see Gross Misconduct below)

- a. If the employee's conduct/behaviour still fails to improve sufficiently, or if the offence is sufficiently serious, the final stage in the disciplinary process will be to consider dismissal. All dismissal hearings will be held before a panel of 3 Trustees. If the decision is dismissal, the employee will be informed immediately and advised of the right of appeal. The decision, the reasons for it, and the appeal arrangements are to be confirmed in writing to the employee within 3 working days.
- b. Following a decision to dismiss, the notice will be issued as soon as possible (see *paragraph 11 'Dismissals'*). Should the employee be successful in his/her appeal, notice will be withdrawn.

### 5. Procedure for Gross Misconduct

- a. Gross misconduct is regarded as misconduct serious enough to breach fundamentally the employment contract between the employer and the employee, and which makes any further working relationship or trust impossible. Offences of gross misconduct will result in summary dismissal, that is, dismissal without notice or pay in lieu of notice, but only following a properly conducted hearing.
- b. When an allegation made which may constitute gross misconduct, suspension may be appropriate (see *paragraph 8 'Suspension'*). The following list (**which is not exhaustive**) provides examples of offences which could be regarded as gross misconduct:-
  - theft, fraud, deliberate falsification of records or examination results including the conduct of examinations;
  - physical violence, verbal abuse, bullying, harassment or intimidation;
  - deliberate damage to property, health and safety equipment or a serious breach of health and safety rules;
  - serious negligence which causes loss, damage, injury or endangers, persons or property;
  - incapability through alcohol or illegal drugs;
  - any illegal discrimination;

- inappropriate physical, emotional or sexual contact with a child, or an abuse of trust as defined in Sexual Offences Act (2003);
  - serious insubordination or serious undermining of School management, or a serious breach of confidentiality;
  - deliberately accessing internet sites containing pornographic, offensive or obscene material and/or being in possession of pornographic images of children;
  - inappropriate activities on the School site or whilst on School activities, e.g. sexual activities with another adult;
  - major breaches of the School's code of conduct or bringing the reputation of the School into disrepute.
- c. If following investigation it is felt there is a case to answer for gross misconduct, Stage 3 of this procedure should be applied. The employee should be informed that the hearing will be conducted under Stage 3 – Dismissal, Gross Misconduct. If it is felt that the offence would not warrant consideration as gross misconduct, a hearing should be convened at an appropriate stage and the employee advised.
- d. Where, following a hearing, the decision is taken to dismiss, this will be put into immediate effect. If the employee makes a successful appeal against the decision, s/he will be re-instated immediately without detriment to pay or loss of service.

## **6. Appeals (see Appendix 5)**

- a. At all stages of the formal procedure, employees may exercise their right to appeal against a disciplinary warning or dismissal. It should be noted that the appeal stage is part of a statutory procedure and if the employee pursues an employment tribunal claim the tribunal may reduce any award of compensation if the employee does not exercise the right of appeal.
- b. To appeal, the employee should write to the Governance Professional (or other nominated person) within 10 calendar days of the written confirmation of the outcome of the hearing. The letter should state the grounds for appeal and should enclose any supporting information. Supporting information not available at this time should be submitted as soon as possible, and in any case prior to the date of the appeal hearing, allowing time for the School to collate, paginate and distribute a bundle 3 working days prior to the hearing. Where the appeal period overlaps with a pre-determined holiday period' e.g. out of term-time for term-time only employees, the letter of appeal needs only to register the intention of appeal, however, a fully detailed letter should arrive within 5 working days following the end of the holiday period.
- c. A committee of 3 Trustees not previously involved with the case will conduct appeal hearings. Arrangements for the appeal hearing should be notified to the employee within 10 working days. The employee must be advised of the right to be accompanied by a trade union representative or workplace colleague.
- d. Appeals conducted at Stage 1 or 2 will normally be restricted to considering the reasonableness of the decision, any relevant new evidence, or any procedural irregularities. If it is considered necessary the Committee could decide to conduct the appeal as a full hearing. At an appeal hearing any disciplinary penalty imposed will be reviewed but it cannot be increased. Appeals following a decision to dismiss will take the form of a full hearing and may also consider relevant new evidence.
- e. The decision of the Appeal Committee will be final within the procedures, and should be confirmed in writing to the individual. Should a decision be taken which changes the original decision, the committee will need to make clear the terms of that decision. Should a decision be made not to dismiss, notice will be withdrawn as soon as possible or the employee will be reinstated with immediate effect without detriment to pay or loss of service.

## **Referrals to the Teaching Regulation Agency and DBS**

Allegations of serious professional misconduct by a teacher may be referred to the Teaching Regulation Agency (TRA). A referral is appropriate if the alleged misconduct is so serious, it warrants a decision on whether a teacher should be prevented from teaching.

If an individual may have harmed a child or vulnerable adult, or put a child or vulnerable adult at risk of harm, a referral to the DBS must be made by the employer. In these cases, advice should be sought from the school's HR advisor.

## **Monitoring and Evaluation**

The Board of Trustees will monitor the outcomes and impact of this policy on an annual basis and the School's continued compliance with equalities legislation.

## CIRENCESTER KINGSHILL SCHOOL

### Conduct and Disciplinary Policy and Procedure

Reviewed by: Sarah Gardiner

Date: September 2024

Adopted by Trustees (Sign): 17 September 2024

Sign: 

Date: 23.09.24

Next Review Date: September 2025

## Appendices:

### CONDUCT PROCEDURE – APPENDIX 1

DFE STATUTORY GUIDANCE KEEPING CHILDREN SAFE IN EDUCATION SEPTEMBER 2024

## Part four: Safeguarding concerns or allegations made about staff, including supply teachers, volunteers and contractors

359. Schools and colleges should have their own procedures for dealing with safeguarding concerns or allegations against those working in or on behalf of schools and colleges in a paid or unpaid capacity, i.e. members of staff, including supply teachers, volunteers and contractors.

360. This part of the guidance has two sections covering the two levels of concerns and allegations:

1. Concerns / allegations that **may** meet the harm threshold.
2. Concerns / allegations that **do not** meet the harm threshold – referred to for the purposes of this guidance as ‘low-level concerns’.

361. These procedures should be consistent with local safeguarding procedures and practice guidance.

### Section one: Concerns or allegations that may meet the harm threshold

362. This part of the guidance is about managing cases of concerns/allegations that might indicate a person would pose a risk of harm<sup>128</sup> if they continue to work in their present position, or in any capacity with children in a school or college. In this part (section one) of the guidance reference is made to ‘**allegation**’ for ease. This part of the guidance should be followed where it is alleged that anyone working in the school or a college that provides education for persons under 18 years of age, including supply teachers, volunteers and contractors has:

- **behaved in a way that has harmed a child, or may have harmed a child and/or possibly committed a criminal offence against or related to a child, and/or**

<sup>128</sup> The harm test is explained in the Disclosure and Barring service [Guidance: Making barring referrals to the DBS](#) and [Section 31\(9\) of the Children Act 1989 as amended by the Adoption and Children Act 2002](#)



- **behaved towards a child or children in a way that indicates he or she may pose a risk of harm to children, and/or behaved or may have behaved in a way that indicates they may not be suitable to work with children.**

363. The last bullet point above includes behaviour that may have happened outside of school or college, that might make an individual unsuitable to work with children, this is known as transferable risk.

364. Where appropriate, an assessment of transferable risk to children with whom the person works should be undertaken. If in doubt seek advice from the local authority designated officer (LADO).

365. It is important that policies and procedures make clear to whom allegations should be reported (as set out at paragraph 70) and that this should be done without delay. A “case manager” will lead any investigation. This will be either the headteacher or principal, or, where the headteacher is the subject of an allegation, the chair of trustees or chair of the management committee and in an independent school it will be the proprietor.

## **The initial response to an allegation**

366. Where the school or college identifies that a child has been harmed, that there may be an immediate risk of harm to a child or if the situation is an emergency, they should contact local authority children’s social care and as appropriate the police immediately as per the processes explained in Part one of this guidance.

367. There are two aspects to consider when an allegation is made:

- **Looking after the welfare of the child** - the designated safeguarding lead (or a deputy) is responsible for ensuring that the child is not at risk and referring cases of suspected abuse to the local authority children’s social care as described in Part one of this guidance.
- **Investigating and supporting the person subject to the allegation** - the case manager should discuss with the LADO, the nature, content and context of the allegation, and agree a course of action.

368. When dealing with allegations, schools and colleges should:

- apply common sense and judgement
- deal with allegations quickly, fairly and consistently, and

- provide effective protection for the child and support the person subject to the allegation.

369. Schools and colleges should ensure they understand the local authority arrangements for managing allegations, including the contact details and what information the LADO will require when an allegation is made. Before contacting the LADO, schools and colleges should conduct basic enquiries in line with local procedures to establish the facts and to help them determine whether there is any foundation to the allegation, being careful not to jeopardise any future police investigation. For example whether:

- the individual was in the school or college at the time of the allegations
- the individual did or could have come into contact with the child
- there were any witnesses, and
- there is any CCTV footage

370. These are just a sample of example questions. Schools and colleges should be familiar with what initial information the LADO will require. This information can be found in local policy and procedural guidance provided by the LADO service.

371. When to inform the individual of the allegation should be considered carefully on a case-by-case basis, with guidance as required from the LADO, and if appropriate local authority children's social care and the police.

372. If there is cause to suspect a child is suffering, or is likely to suffer significant harm, a strategy discussion involving the police and/or local authority children's social care will be convened in accordance with the statutory guidance [Working Together to Safeguard Children](#). If the allegation is about physical contact, for example restraint, the strategy discussion<sup>129</sup> or initial evaluation with the LADO should take into account that teachers and other school and college staff are entitled to use reasonable force to control or restrain children in certain circumstances, including dealing with disruptive behaviour. Further information about the use of reasonable force can be found at paragraphs 166-168 in Part Two of this guidance and on [GOV.UK](#).

373. Where the case manager is concerned about the welfare of other children in the community or the member of staff's family, they should discuss these concerns with the designated safeguarding lead (or a deputy) and make a risk assessment of the situation. It may be necessary for the designated safeguarding lead to make a referral to local authority children's social care.

<sup>129</sup> The purpose of a strategy discussion and those likely to be involved is described in Working Together to Safeguard Children

374. Where it is clear that an investigation by the police or local authority children's social care is unnecessary, or the strategy discussion or initial assessment decides that is the case, the LADO should discuss the next steps with the case manager.

### **No further action**

375. Where the initial discussion leads to no further action, the case manager and the LADO should:

- record the decision and justification for it, and
- agree on what information should be put in writing to the individual concerned and by whom.

### **Further enquiries**

376. Where further enquiries are required to enable a decision about how to proceed, the LADO and case manager should discuss how and by whom the investigation will be undertaken. The LADO will provide advice and guidance to schools and colleges when considering allegations against adults working with children. The role of the LADO is not to investigate the allegation, but to ensure that an appropriate investigation is carried out, whether that is by the police, local authority children's social care, the school or college, or a combination of these. In straightforward cases, the investigation should normally be undertaken by a senior member of the school or college's staff.

377. Where there is a lack of appropriate resource within the school or college, or the nature or complexity of the allegation requires it, the allegation will require an independent investigator. Many local authorities provide for an independent investigation of allegations for schools that are maintained by the local authority, often as part of the HR/personnel services that schools and colleges can buy in from the authority. It is important that local authorities ensure that schools and colleges in that area have access to an affordable facility for independent investigation where that is appropriate. Colleges, academies and independent schools should also ensure they secure the services of a person who is independent of the school or college.

378. The case manager should monitor the progress of cases to ensure that they are dealt with as quickly as possible in a thorough and fair process. Wherever possible, the first review should take place no later than four weeks after the initial assessment.

379. Dates for subsequent reviews, ideally at fortnightly (and no longer than monthly) intervals, should be set at the review meeting if the investigation continues.

### **Supply teachers and all contracted staff**

380. In some circumstances schools and colleges will have to consider an allegation against an individual not directly employed by them, where its disciplinary procedures do not fully apply because agencies will have their own policies and procedures; for example, supply teachers or contracted staff provided by an employment agency or business.

381. Whilst schools and colleges are not the employer of supply teachers, they should ensure allegations are dealt with properly. In no circumstances should a school or college decide to cease to use a supply teacher due to safeguarding concerns, without finding out the facts and liaising with the LADO to determine a suitable outcome. Governing bodies and proprietors should discuss with the supply agency or agencies where the supply teacher is working across a number of schools or colleges, whether it is appropriate to suspend the supply teacher, or redeploy them to another part of the school or college, whilst they carry out their investigation.

382. Agencies should be fully involved and co-operate with any enquiries from the LADO, police and/or local authority children's social care. The school or college will usually take the lead because agencies do not have direct access to children or other school or college staff, so they will not be able to collect the facts when an allegation is made, nor do they have all the relevant information required by the LADO as part of the referral process. Supply teachers, whilst not employed by the school or college, are under the supervision, direction and control of the governing body or proprietor when working in the school or college. They should be advised to contact their trade union representative if they have one, or a colleague for support. The allegations management meeting, which is often arranged by the LADO, should address issues such as information sharing, to ensure that any previous concerns or allegations known to the agency or agencies are considered by the school or college during the investigation.

383. When using a supply agency, schools and colleges should inform the agency of the process for managing allegations but also take account of the agency's policies and the duty placed on agencies to refer to the DBS as personnel suppliers. This should include inviting the agency's human resource manager or equivalent to meetings and keeping them up to date with information about its policies.

## **Organisations or Individuals using school premises**

384. Schools and colleges may receive an allegation relating to an incident that happened when an individual or organisation was using their school premises for the purposes of running activities for children (for example community groups, sports associations, or service providers that run extra-curricular activities). As with any safeguarding allegation, schools and colleges should follow their safeguarding policies and procedures, including informing the LADO.

## **Trustees**

385. If an allegation is made against a trustee, schools and colleges should follow their own local procedures. Where an allegation is substantiated, they should follow the procedures to consider removing them from office.

## **Suspension**

386. Suspension should not be an automatic response when an allegation is reported. All options to avoid suspension should be considered prior to taking that step. The case manager must consider carefully whether the circumstances warrant suspension from contact with children at the school or college, until the allegation is resolved. It should be considered only in cases where there is cause to suspect a child or other children at the school or college is/are at risk of harm, or the case is so serious that there might be grounds for dismissal. If in doubt, the case manager should seek views from their personnel adviser and the LADO, as well as the police and local authority children's social care where they have been involved.

387. Where a school or sixth form college is made aware that the Secretary of State has made an interim prohibition order, in respect of an individual who works at a school or sixth form college, they should take immediate action to ensure the individual does not carry out work in contravention of the order. This means that pending the findings of the Teaching Regulation Agency (TRA) investigation, the individual must not carry out teaching work. School and colleges should have clear policies on pay arrangements whilst the person is suspended or where there is an interim prohibition order in place.

388. In many cases, an inquiry can be resolved quickly and without the need for suspension. The employer will decide on whether the individual should continue to work at the school or college, based on consultation with the LADO who will provide relevant information received from the police or local authority children's social care on whether they have any objections to the member of staff continuing to work during the investigation of the case.



389. Based on advice from the school or college's HR provider and/or a risk analysis drawn up with the LADO, the following alternatives should be considered by the case manager before suspending a member of staff:

- redeployment within the school or college so that the individual does not have direct contact with the child or children concerned
- providing an assistant to be present when the individual has contact with children
- redeploying to alternative work in the school or college so the individual does not have unsupervised access to children
- moving the child or children to classes where they will not come into contact with the member of staff, but this decision should only be made if it is in the best interests of the child or children concerned and takes account of their views. It should be made clear that this is not a punishment and parents have been consulted, or
- temporarily redeploying the member of staff to another role in a different location, for example to an alternative school or college or where available, work for the local authority or academy trust.

390. These alternatives allow time for an informed decision regarding the suspension, this will, however, depend upon the nature of the allegation. The case manager should consider the potential permanent professional reputational damage to employees that can result from suspension where an allegation is later found to be unfounded, unsubstantiated, malicious, or false.

391. If immediate suspension is considered necessary, the case manager should record the rationale and justification for such a course of action. This should also include what alternatives to suspension have been considered and why they were rejected.

392. Where it has been deemed appropriate to suspend the person, written confirmation should be given within one working day, giving as much detail as appropriate for the reasons for the suspension. It is not acceptable for an employer to leave a person who has been suspended without any support. The person should be informed at the point of their suspension who their named contact is within the organisation and provided with their contact details.

393. Local authority children's social care or the police may give their view to the LADO but they cannot require the case manager to suspend a member of staff or remove a volunteer, although the case manager should give appropriate weight to their views. The power to suspend is vested in the governing body or proprietor who are the employers. However, where a strategy discussion, or initial assessment, concludes that there should be enquiries by local authority children's social care,

and/or an investigation by the police, the LADO should canvass police and local authority children's social care for views about whether the accused member of staff should be suspended from contact with children. Police involvement does not make it mandatory to suspend a member of staff; this decision should be taken on a case-by-case basis having undertaken a risk assessment about whether the person poses a risk of harm to children.

## **Supporting those involved**

### **Duty of care**

394. The welfare of a child is paramount (how children should be protected and supported is set out throughout this guidance) and this will be the prime concern in terms of investigating an allegation against a person in a position of trust. However, when an allegation or safeguarding concern is being investigated it is likely to be a very stressful experience for the adult subject to the investigation, and potentially for their family members. It is important that an employer offers appropriate welfare support at such a time and recognises the sensitivity of the situation. Information is confidential and should not ordinarily be shared with other staff or with children or parents who are not directly involved in the investigation.

395. Employers have a duty of care to their employees. They should:

- manage and minimise the stress caused by the allegation
- inform the individual as soon as possible, explaining the likely course of action, guided by the LADO, and the police where necessary
- advise the individual to contact their trade union representative, or a colleague for support
- appoint a named representative to keep the person informed about the progress of the case
- provide access to counselling or medical advice where appropriate. For staff in schools maintained by the local authority this may include support via the local authority's occupational health arrangements, and
- not prevent social contact with work colleagues and friends, when staff are suspended, unless there is evidence to suggest this may prejudice the gathering of evidence.

396. Parents or carers of the child or children involved should be:

- formally told about the allegation as soon as possible.<sup>130</sup> The case manager should consult the LADO and where involved, local authority children's social care and/or the police on what information can be disclosed kept informed about the progress of the case, only in relation to their child - no information can be shared regarding the staff member, and
- made aware of the requirement to maintain confidentiality and unwanted publicity about any allegations made against teachers in schools whilst investigations are in progress as set out in section 141F of the Education Act 2002.

## Confidentiality and Information sharing

397. In an allegations management meeting or during the initial assessment of the case, the agencies involved should share all relevant information they have about the person who is the subject of the allegation, and about the alleged victim, see paragraphs 114-122 in Part two about information sharing.

398. Where the police are involved, wherever possible the school or college should ask the police to obtain consent from the individuals involved to share their statements and evidence for use in the employer's disciplinary process. This should be done as their investigation proceeds and will enable the police to share relevant information without delaying the conclusion of their investigation or any court case.

399. Local authority children's social care should adopt a similar procedure when making enquiries to determine whether the child or children named in the allegation are in need of protection or services, so that any information obtained in the course of those enquiries which is relevant to a disciplinary case can be passed to the employer without delay.

400. The school and college must make every effort to maintain confidentiality and guard against unwanted publicity while an allegation is being investigated or considered. The Education Act 2011 amended the Education Act 2002, to introduce reporting restrictions. These provisions made it an offence (except in the limited circumstance expressly permitted by the legislation), for any person to publish any material that may lead to the identification of a teacher in a school<sup>131</sup> who has been accused by, or on behalf of, a child from the same school (where that identification would identify the teacher as the subject of the allegation).

<sup>130</sup> In deciding what information is disclosed, careful consideration should be given to the provisions of the Data Protection Act 2018, the law of confidence and, where relevant, the Human Rights Act 1998

<sup>131</sup> Section 141F of the Education Act 2002 only applies to teachers in schools does not apply to colleges.

401. The reporting restrictions apply until:

- the point that the accused person is charged with a relevant offence, or
- the Secretary of State<sup>132</sup> or the General Teaching Council for Wales publishes information about an investigation or decision in a disciplinary case arising from the allegation.

402. The reporting restrictions are disapplied if the individual to whom the restrictions apply effectively waives their right to anonymity by going public themselves or by giving their written consent for another to do so or if a court lifts the reporting restrictions in response to a request to do so.

403. The legislation prevents the “publication” of material by any person that may lead to the identification of the teacher who is the subject of the allegation. “Publication” includes “any speech, writing, relevant programme or other communication in whatever form, which is addressed to the public at large or any section of the public.” This means that a parent who, for example, published details of the allegation on a social networking site would be in breach of the reporting restrictions (if what was published could lead to the identification of the teacher by members of the public). In circumstances where schools need to make parents aware about an allegation, they should make parents and others aware that there are restrictions on publishing information.

404. In accordance with the [Authorised Professional Practice published by the College of Policing](#) in May 2017, the police will not normally provide any information to the press or media that might identify an individual who is under investigation, unless and until the person is charged with a criminal offence. In exceptional cases where the police wish to depart from that rule, for example an appeal to trace a suspect, they must apply to a magistrates’ court to request that reporting restrictions be lifted.

405. The case manager should take advice from the LADO, the police and local authority children’s social care to agree the following:

- who needs to know and exactly what information can be shared
- how to manage speculation, leaks and gossip
- what, if any, information can be reasonably given to the wider community to reduce speculation and
- how to manage press interest if, and when, it should arise.

<sup>132</sup> Carried out by the Teaching Regulation Agency.

## Allegation outcomes

406. The definitions that should be used when schools and colleges determine the outcome of an allegation are set out below:

- **Substantiated:** there is sufficient evidence to prove the allegation
- **Malicious:** there is sufficient evidence to disprove the allegation and there has been a deliberate act to deceive or cause harm to the person subject of the allegation
- **False:** there is sufficient evidence to disprove the allegation
- **Unsubstantiated:** there is insufficient evidence to either prove or disprove the allegation. The term, therefore, does not imply guilt or innocence, or
- **Unfounded:** to reflect cases where there is no evidence or proper basis which supports the allegation being made.

407. Ultimately the options open to the school or college depend on the nature and circumstances of the allegations and the evidence and information available. This will range from taking no further action, to dismissal or a decision not to use the person's services in future.

## Following a substantiated allegation

408. If the allegation is substantiated and:

- the person is dismissed; resigns, or otherwise ceases to provide his or her services, or
- the employer ceases to use the person's services.

409. In the case of a member of teaching staff at any school, sixth form college, or 16-19 academy, the case manager must consider whether to refer the matter to the TRA to consider whether the individual should be prohibited from teaching (paragraph 357-358 for further information).<sup>133</sup>

410. There is a legal requirement for employers to make a referral<sup>134</sup> to the DBS where they consider an individual has engaged in conduct that harmed (or is likely to harm) a child; or if a person otherwise poses a risk of harm to a child (paragraph 353-356 for further information).

<sup>133</sup> Teacher Regulation Agency – guidance on [Referrals to the TRA](#)

<sup>134</sup> Disclosure and Barring Service – guidance on [Referrals to the DBS](#).



## **Following a criminal investigation or a prosecution**

411. The police should inform the LADO and the employer immediately when:

- a criminal investigation and any subsequent trial are complete
- it is decided to close an investigation without charge, or
- it is decided not to continue to prosecute after the person has been charged.

412. In those circumstances, during the joint assessment meeting the LADO should discuss with the case manager whether any further action, including disciplinary action, is appropriate and, if so, how to proceed. The information provided by the police and/or local authority children's social care should also inform that decision. The options will depend on the circumstances of the case and the consideration should take into account the result of the police investigation or the trial, as well as the different standard of proof required in disciplinary and criminal proceedings.

## **Unsubstantiated, unfounded, false or malicious allegations**

413. If an allegation is determined to be unsubstantiated, unfounded, false or malicious, the LADO and the case manager should consider whether the child and/or the person who has made the allegation is in need of help or may have been abused by someone else and this was a cry for help. In such circumstances, a referral to local authority children's social care may be appropriate.

414. If an allegation is shown to be deliberately invented or malicious, the school or college, should consider whether any disciplinary action is appropriate against the individual who made it as per their own behaviour policy.

## **Returning to work**

415. Where it is decided on the conclusion of a case that a person who has been suspended can return to work, the case manager should consider how best to facilitate that. Guidance and advice are usually provided via HR or the LADO. Most people will benefit from some help and support to return to work after a stressful experience. Depending on the individual's circumstances, a phased return and/or the provision of a mentor to provide assistance and support in the short term may be appropriate. The case manager should also consider how the person's contact with the child or children who made the allegation can best be managed if they are still attending the school or college.

## **Managing the situation and exit arrangements**

## Resignations and ‘settlement agreements’

416. ‘Settlement agreements’ (sometimes referred to as compromise agreements), by which a person agrees to resign if the employer agrees not to pursue disciplinary action and both parties agree a form of words to be used in any future reference, should not be used, where there are allegations that indicate the person is a risk or poses a risk of harm to children or deemed not suitable to work with children. Such an agreement will not prevent a thorough police and/or school or college investigation where that is appropriate.

417. Schools and colleges should not cease their investigations if the person leaves, resigns or ceases to provide their services. It is important that every effort is made to reach a conclusion in all cases of allegations with a bearing on the safety or welfare of children, including any in which the person concerned refuses to cooperate.

418. Wherever possible, the accused should be given full opportunity to answer the allegation and make representations about it. The process of recording the allegation and any supporting evidence and reaching a judgement about whether it can be substantiated or otherwise on the basis of all the information available, should continue even if the accused does not cooperate. It may be difficult to reach a conclusion in those circumstances, and it may not be possible to apply any disciplinary sanctions if a person’s period of notice expires before the process is complete, but it is important to reach and record an outcome wherever possible. The person concerned should be notified of the conclusion of the allegations and sanctions that might be posed.

419. Other than where allegations are false, malicious, unsubstantiated, or unfounded, the outcome should be made clear when providing references to prospective employers. This is particularly important where the person moves into another position involving working with children.

420. It is not appropriate to reach a settlement/compromise agreement if the person subject to the allegation resigns or their services cease to be used. However, in limited circumstances schools and colleges sometimes use settlement agreements to end the employment relationship on agreed terms, but not where there is an allegation that the individual poses a risk to children.

421. Where a settlement/compromise agreement is used, schools and colleges should not let it prevent the employer from:

- fulfilling their legal duty to refer cases to the DBS where the referral criteria are met – see paragraph 353. Non-compliance of this duty is a criminal offence, or
- providing a reference to potential employers when requested, or
- considering whether to make a referral to the TRA where the criteria are met - see paragraph 357.

## Record keeping

422. Details of allegations following an investigation that are found to have been malicious or false should be removed from personnel records unless the individual gives their consent for retention of the information. However, for all other allegations, i.e. substantiated, unfounded and unsubstantiated it is important that the following information is kept on the file of the person accused:

- a clear and comprehensive summary of the allegation
- details of how the allegation was followed up and resolved
- a note of any action taken, decisions reached and the outcome i.e. substantiated, unfounded or unsubstantiated
- a copy provided to the person concerned, where agreed by local authority children's social care or the police, and
- a declaration on whether the information will be referred to in any future reference.

423. The purpose of the record is to enable accurate information to be given in response to any future request for a reference. It will provide clarification in cases where future DBS checks reveal information from the police about an allegation that did not result in a criminal conviction and it will help to prevent unnecessary re-investigation if, as sometimes happens, an allegation re-surfaces after a period of time.

424. All other records should be retained at least until the accused has reached normal pension age or for a period of 10 years from the date of the allegation if that is longer.

425. The Information Commissioner has published guidance on employment records in its [Employment Practices Code and supplementary guidance](#), which provides some practical advice on record retention.

## References

426. Cases in which an allegation was found to be false, unfounded, unsubstantiated or malicious should not be included in employer references. Any repeated concerns or allegations which have all been found to be false, unfounded, unsubstantiated or malicious should also not be included in any reference. See paragraph 229 for further information on references. Substantiated safeguarding allegations that meet the harm threshold should be included in references, provided that the information is factual and does not include opinions.

## Learning lessons

427. Throughout the process in handling allegations and at conclusion of a case in which an allegation is substantiated, the LADO should review the circumstances of the case with the case manager to determine whether there are any improvements to be made to the school or college's procedures to help prevent similar events in the future. This should include issues arising from any decision to suspend the member of staff, the duration of the suspension and whether or not suspension was justified. Lessons should also be learnt from the use of suspension when the individual is subsequently reinstated. The LADO and case manager

should consider how future investigations of a similar nature could be carried out without suspending the individual.

428. For all other cases, where the allegation concluded to be either, unfounded, false, malicious or unsubstantiated the case manager (and if they have been involved the LADO) should consider the facts and determine whether any lessons can be learned and if improvements can be made.

## Non recent allegations

429. Where an adult makes an allegation to a school or college that they were abused as a child, the individual should be advised to report the allegation to the police. Non recent allegations made by a child, should be reported to the LADO in line with the local authority's procedures for dealing with non-recent allegations. The LADO will coordinate with local authority children social care and the police. Abuse can be reported no matter how long ago it happened.

## Section Two: Concerns or allegations that do not meet the harm threshold

430. Governing bodies and proprietors should have policies and processes to deal with **any** concerns or allegations which **do not** meet the harm threshold, referred to in this guidance as 'low-level' concerns. It is important that schools and colleges have appropriate policies and processes in place to manage and record any such concerns and take appropriate action to safeguard children.

### Low-level concerns

431. As part of their whole school or college approach to safeguarding, schools and colleges should ensure that they promote an open and transparent culture in which all concerns about all adults working in or on behalf of the school or college (including supply teachers, volunteers and contractors) are dealt with promptly and appropriately.

432. Creating a culture in which all concerns about adults are shared responsibly and with the right person, recorded and dealt with appropriately, is critical. If implemented correctly, this should:

- enable schools and colleges to identify inappropriate, problematic or concerning behaviour early
- minimise the risk of abuse, and
- ensure that adults working in or on behalf of the school or college are clear about professional boundaries and act within these boundaries, and in accordance with the ethos and values of the institution.

### What is a low-level concern?

433. The term 'low-level' concern does not mean that it is insignificant. A low-level concern is any concern – no matter how small, and even if no more than causing a sense

of unease or a 'nagging doubt' - that an adult working in or on behalf of the school or college may have acted in a way that:

- is inconsistent with the staff code of conduct, including inappropriate conduct outside of work, and
- does not meet the harm threshold or is otherwise not serious enough to consider a referral to the LADO.

Examples of such behaviour could include, but are not limited to:

- being over friendly with children
- having favourites
- taking photographs of children on their mobile phone, contrary to school policy
- engaging with a child on a one-to-one basis in a secluded area or behind a closed door, or
- humiliating children.

434. Such behaviour can exist on a wide spectrum, from the inadvertent or thoughtless, or behaviour that may look to be inappropriate, but might not be in specific circumstances, through to that which is ultimately intended to enable abuse.

435. Low-level concerns may arise in several ways and from a number of sources. For example: suspicion; complaint; or disclosure made by a child, parent or other adult within or outside of the organisation; or as a result of vetting checks undertaken.

436. It is crucial that all low-level concerns are shared responsibly with the right person and recorded and dealt with appropriately. Ensuring they are dealt with effectively should also protect those working in or on behalf of schools and colleges from becoming the subject of potential false low-level concerns or misunderstandings.

### **Staff code of conduct and safeguarding policies**

437. As good practice governing bodies and proprietors should set out their low-level concerns policy within their staff code of conduct and safeguarding and child protection policies as set out in Part two of this guidance. They should make it clear what a low-level concern is and the importance of sharing low-level concerns, and an explanation of what the purpose of the policy is – i.e., to create and embed a culture of openness, trust and transparency in which the school or college's values and expected behaviour set out in the staff code of conduct are lived, monitored and reinforced constantly by all staff.

438. As set out in Part two of this guidance, the governing body or proprietor should ensure their staff code of conduct, behaviour policies and safeguarding policies and procedures are implemented effectively and ensure that appropriate action is taken in a timely manner to safeguard children and facilitate a whole school or college approach to dealing with any concerns.



439. Schools and colleges can achieve the purpose of their low-level concerns policy by:

- ensuring their staff are clear about what appropriate behaviour is, and are confident in distinguishing expected and appropriate behaviour from inappropriate, problematic or concerning behaviour, in themselves and others
- empowering staff to share any low-level safeguarding concerns (see below)
- addressing unprofessional behaviour and supporting the individual to correct it at an early stage
- handling and responding to such concerns sensitively and proportionately when they are raised, and
- helping identify any weakness in the school or colleges safeguarding system.

### **Sharing low-level concerns**

440. Schools and colleges should ensure that their low-level concerns policy contains a procedure for sharing confidentially such concerns which is clear, easy to understand and implement. Whether all low-level concerns are shared initially with the DSL (or a nominated person (such as a values champion)), or with the headteacher/principal is a matter for the school or college to decide. If the former, then the DSL should inform the headteacher/principal of all the low-level concerns and in a timely fashion according to the nature of each particular low-level concern. The headteacher/principal should be the ultimate decision maker in respect of all low-level concerns, although it is recognised that depending on the nature of some low-level concerns and/or the role of the DSL in some schools/colleges, the headteacher/principal may wish to consult with the DSL and take a more collaborative decision making approach.

441. Low-level concerns which are shared about supply staff and contractors should be notified to their employers, so that any potential patterns of inappropriate behaviour can be identified.

442. If schools and colleges are in any doubt as to whether the information which has been shared about a member of staff as a low-level concern in fact meets the harm threshold, they should consult with their LADO.

443. Schools and colleges should ensure they create an environment where staff are encouraged and feel confident to self-refer, where, for example, they have found themselves in a situation which could be misinterpreted, might appear compromising to others, and/or on reflection they believe they have behaved in such a way that they consider falls below the expected professional standards.

### **Recording low-level concerns**

444. All low-level concerns should be recorded in writing. The record should include details of the concern, the context in which the concern arose, and action taken. The name of the individual sharing their concerns should also be noted, if the individual wishes to remain anonymous then that should be respected as far as reasonably possible.

445. Schools and colleges can decide where these records are kept, but they must be kept confidential, held securely and comply with the Data Protection Act 2018 and the UK General Data Protection Regulation (UK GDPR).

446. Records should be reviewed so that potential patterns of inappropriate, problematic or concerning behaviour can be identified. Where a pattern of such behaviour is identified, the school or college should decide on a course of action, either through its disciplinary procedures or where a pattern of behaviour moves from a low-level concern to meeting the harm threshold, in which case it should be referred to the LADO (as per Part four, Section one). Consideration should also be given to whether there are wider cultural issues within the school or college that enabled the behaviour to occur and where appropriate policies could be revised, or extra training delivered to minimise the risk of it happening again.

447. It is for schools and colleges to decide how long they retain such information, but it is recommended that it is retained at least until the individual leaves their employment.

## References

448. Part three of this guidance is clear that schools and colleges should only provide substantiated safeguarding concerns/allegations (including a group of low-level concerns about the same individual) that meet the harm threshold in references. Low-level concerns should not be included in references unless they relate to issues which would normally be included in a reference, for example, misconduct or poor performance. It follows that a low-level concern which relates exclusively to safeguarding (and not to misconduct or poor performance) should not be referred to in a reference.

## Responding to low-level concerns

449. The school or college low-level concerns policy should set out the procedure for responding to reports of low-level concerns. If the concern has been raised via a third party, the headteacher/principal (or a nominated deputy) should collect as much evidence as possible by speaking:

- directly to the person who raised the concern, unless it has been raised anonymously, and
- to the individual involved and any witnesses.

450. The information collected will help them to categorise the type of behaviour and determine what further action may need to be taken. This information needs to be recorded in writing along with the rationale for their decisions and action taken.

451. A good low-level concerns policy will simply be a reflection and extension of the school or college's wider staff behaviour policy/code of conduct.

452. More detailed guidance and case studies on low-level concerns can be found in: Developing and implementing a low-level concerns policy: a guide for organisations which work with children ([farrer.co.uk](http://farrer.co.uk)).

## **CONDUCT PROCEDURE - APPENDIX 2 GUIDANCE ON FORMAL HEARINGS UP TO AND INCLUDING STAGE 2**

Under normal circumstances the Headteacher will appoint an Investigating Officer (normally a member of the SLT) who will investigate the alleged misconduct and will present their findings at the Hearing. In such cases the hearing can be held in front of the Headteacher rather than Trustees. The Headteacher will take the decisions about any disciplinary actions that may be applied on the basis of the evidence presented to them.

In the event that the Headteacher conducts the investigation, s/he cannot both present the evidence and conduct the Hearing impartially. Any judgement made this way may well be viewed as tainted.

If the Head conducts the investigation then s/he becomes the Investigating Officer and it will be necessary for the Hearing to be held in front of one or more Trustees. Normally a panel of 3 Trustees would be used, usually selected from the Trustees' Staffing Committee, but other Trustees could be used if necessary. In principle, one Trustee could hear the case at stages 1 and 2, but it may be problematic finding one confident to do so.

As only Trustees can hear Appeals, regardless of the stage of the procedure, and as there are a limited number of Trustees available to sit on Appeals panels, it's generally advisable for the Headteacher to conduct the Hearings and to keep the Trustees in reserve for Appeals. That is the reason for the Head appointing another member of the SLT as Investigating Officer.

Trustees specifically excluded from sitting on any Disciplinary/Appeal Panel are those who:

- are employed by the School; or
- related to staff employed by the School; or
- have been involved in the case.

The Chair of Trustees would also not normally be a member of the Panel as s/he has a close working relationship with the Headteacher and may be regarded as tainted. However, if the Head has not conducted the investigation, and has not shared the evidence with the Chair of Trustees in advance of any Hearing/Appeal, then that caveat would not apply.

The Head of Personnel should be available to provide advice to all parties on the procedures being followed.

In the event that the hearing is held in front of a Trustees' Panel, a Chair of the Panel will need to be elected before the hearing commences.

### **Order of proceedings:-**

1. The Headteacher/Head of Personnel shall arrange a formal interview/hearing. The employee shall be notified of this in writing with at least 5 working days notice.
2. Minutes of the interview/hearing should be taken by the Governance Professional.
3. The employee has the right to be represented/supported by either their trade union representative or a work colleague.
4. Introductions by the Head/Trustee/Chair of the Trustees' Panel whoever is hearing the case.
5. Investigating Officer states the case against. Witnesses may be called.
6. Questions to witnesses by the employee and/or representative.
  
7. Questions to witnesses by the Head/Trustee/Trustees' Panel.

8. Questions to the Investigating Officer by the employee and/or representative.
9. Questions to the Investigating Officer by the Head/Trustee/Trustees' Panel.
10. Employee makes their response. Witnesses may be called.
11. Questions to witnesses by the Investigating Officer.
12. Questions to witnesses by the Head/Trustee/Trustees' Panel.
13. Questions to the employee by the Investigating Officer.
14. Questions to the employee by the Head/Trustee/Trustees' Panel.
15. Investigating Officer sums up.
16. Employee and/or representative sums up.
17. Interview/hearing adjourns for Head/Trustee/Trustees' Panel to consider whether or not to issue a warning.
18. Head/Trustee/Trustees' Panel may recall the Investigating Officer and the employee and their representative in order to clear points of uncertainty. All parties should be recalled even if the point of uncertainty concerns only one party.
19. Employee returns and Headteacher/Trustee/Chair of Trustees' Panel states their decision with reasons.
20. Where a Formal Oral warning is issued it will normally remain on the employee's file for 6 calendar months and must be included in any reference during that period. However, the Head/Trustee/Trustees' Panel are at liberty to vary the time limit. The employee shall be advised of their right of appeal.
21. Where a first or final written warning is issued it will normally remain on the employee's file for 1 calendar year and must be included in any reference during that period. However, the Head/Trustee/Trustees' Panel are at liberty to vary the time limit. The employee shall be advised of their right of appeal.
22. The Headteacher/Trustee/Chair of the Trustees' Panel will confirm all these details, in writing, after the meeting, within 3 school working days. The letter should contain:-
  - i) The reason(s) for the decision.
  - ii) The level of warning and its duration.
  - iii) Consequences of a failure to improve or change behaviour.
  - iv) The right of Appeal within 10 calendar days of the written confirmation.

### **CONDUCT PROCEDURE - APPENDIX 3 GUIDANCE ON APPEALS AGAINST FORMAL WARNINGS AT STAGES 1 AND 2 OF THE PROCEDURE**

The Headteacher may have appointed an Investigating Officer (normally a member of the SLT) to investigate the alleged misconduct. However, because the Appeal is against the original decision taken by the Head or by a panel of Trustees to issue a formal warning, the Head or the Chair of the Trustees' Panel will be responsible for presenting the relevant evidence and giving the reasons for their decision. If the Chair of the Panel is unavailable it is acceptable for another Trustee member of the panel to fulfil this role instead.

At Stages 1 and 2, the Appeal Hearing is normally restricted to considering whether the decision by the Headteacher/Trustees' Panel to issue formal warning was reasonable or whether there were any procedural irregularities. However, if relevant new evidence is forthcoming and is to be presented by the appellant, then the Appeal should be heard as a full hearing and witnesses may need to be called.

All Appeal hearings against formal warnings will be held in front of a Panel of 3 Trustees not previously involved in the case. Trustees specifically excluded from hearing Appeals are those who:

- are employed by the School; or
- related to staff employed by the School; or
- have been involved in the case.

The Chair of Trustees would also normally be excluded from any Appeals panel as s/he has to have a close working relationship with the Headteacher and may be regarded as tainted. However, if the Head did not conduct the investigation, and has not shared the evidence with the Chair of Trustees in advance of the Appeal Hearing, then that caveat would not apply.

The Head of Personnel should be available to all parties to provide advice on the procedures to follow.

The Appeals Panel will need to elect one of them to act as Chair before the hearing commences.

The employee should be notified in writing of the hearing and provided with two copies of all the documentation to be presented at the hearing at least 10 working days in advance. The second copy is for their chosen representative.

The Governance Professional is responsible for circulating the documentation to be used at the Appeal to all parties involved and making the arrangements for the Appeal Hearing.

#### **Order of proceedings:-**

If a full hearing is to be held then the proceedings follow the same order as for a Dismissals hearing (see Appendix 4).

Otherwise the order of proceedings should be as follows:

1. Minutes of the interview/hearing should be taken by the Governance Professional.
2. The employee has the right to be represented/supported by either their trade union representative or a work colleague.
3. Introductions by the Chair of the Appeal Panel.
4. Headteacher/Trustee presents their reasons for issuing the formal warning to the employee.
5. Questions to the Headteacher/Trustee by the employee and/or representative.
6. Questions to the Headteacher/Trustee by the Appeals Panel.
7. Employee makes their response.
8. Questions to the employee by the Headteacher/Trustee.

9. Questions to the employee by the Appeals Panel.
10. Headteacher/Trustee sums up.
11. Employee and/or representative sums up.
12. Interview/hearing adjourns for Appeals Panel to consider its decision.
13. The Appeals Panel may recall the Headteacher and the employee and their representative in order to clear points of uncertainty. All parties should be recalled even if the point of uncertainty concerns only one party.
14. The Appeals Panel should review the reasonableness of the original formal warning imposed. The Appeals Panel is not empowered to increase it.
15. The Headteacher/Trustee, the employee and their representative return and Chair of the Panel states the decision giving their reasons.
16. The Chair of the Panel will confirm the decision, in writing, after the meeting, within 3 school working days. The letter should contain:-
  - i) The decision; and
  - ii) The reason(s) for the decision

The Appeal Panel's decision is final and binding on all parties.

## **CONDUCT PROCEDURE - APPENDIX 4 GUIDANCE ON DISMISSAL HEARINGS**

These guidance notes can be used for all Dismissal Hearing, including gross misconduct. Normally, allegations of gross misconduct will be investigated by the Headteacher.

The Headteacher may have appointed an Investigating Officer (normally a member of the SLT) who investigated the alleged misconduct at any of the earlier stages of the procedure but, by the time it reaches the dismissal stage, the Head will have become heavily involved in the case, either having heard the case at stages 1 and/or 2 or having acted as the Investigating Officer. It is therefore entirely appropriate at the Dismissal Hearing for the Headteacher to present the evidence. Any other member of the SLT who may have acted as the Investigating Officer earlier in the procedure can, if necessary, be called as a witness.

All misconduct hearings that may result in dismissal will be held in front of a Panel of 3 Trustees. It is essential that the Trustees hearing the case have had no previous involvement with the case although they may be aware of its existence.

Trustees specifically excluded from sitting on the Panel are those who:

- are employed by the School; or
- related to staff employed by the School; or
- have been involved in the case.

The Chair of Trustees would also normally be excluded from the panel as s/he has a close working relationship with the Headteacher, would probably have discussed the case with the Head at earlier stages of the procedure, and thus may be regarded as tainted.

The employee should be notified in writing of the hearing and provided with two copies of all the documentation to be presented at the hearing at least 10 working days in advance. The second copy is for their chosen representative.

The Governance Professional is responsible for circulating the documentation to be used at the Hearing to all parties involved and making the arrangements for the Hearing.

The Head of Personnel should be available to all parties to provide advice on the procedures to follow.

One of the Panel members will need to be elected to act as Chair before the hearing commences.

### **Order of proceedings:-**

17. The Headteacher shall arrange a formal interview/hearing. The employee shall be notified of this in writing with at least 10 working days notice and informed that dismissal may be an outcome of the hearing.
18. Minutes of the interview/hearing should be taken by the Governance Professional.
19. The employee has the right to be represented/supported by either their trade union representative or a work colleague.
20. Introductions by the Chair of the Trustees' Panel.
21. Headteacher presents the case against the employee. Witnesses may be called.
22. Questions to witnesses by the employee and/or representative.
23. Questions to witnesses by the Trustees' Panel.
24. Questions to the Headteacher by the employee and/or representative.
25. Questions to the Headteacher by the Trustees' Panel.



26. Employee makes their response. Witnesses may be called.
27. Questions to witnesses by the Headteacher.
28. Questions to witnesses by the Trustees' Panel.
29. Questions to the employee by the Headteacher.
30. Questions to the employee by the Trustees' Panel.
31. Headteacher sums up.
32. Employee and/or representative sums up.
33. Interview/hearing adjourns for Trustees' Panel to consider their decision.
34. The Trustees' Panel may recall the Headteacher and the employee and their representative in order to clear points of uncertainty. All parties should be recalled even if the point of uncertainty concerns only one party.
35. Headteacher, the employee and their representative return and Chair of Trustees' Panel states their decision with reasons.
36. Where the decision is dismissal the employee will be informed immediately and advised of their right of appeal. In cases of gross misconduct the dismissal is with immediate effect without notice or pay in lieu of notice. In cases which are not gross misconduct the dismissal is with notice or pay in lieu of notice.
37. Where the decision is not dismissal the employee will be informed that warnings previously issued will or will not be renewed and for what duration.
38. The Chair of the Trustees' Panel will confirm all these details, in writing, after the meeting, within 3 school working days. The letter should contain:-
  - i) The reason(s) for the decision.
  - ii) If the decision is to dismiss the notice period.
  - iii) If the decision is not to dismiss the level of warning and its duration and the consequences of a failure to improve or change behaviour.
  - iv) The right of Appeal

## **CONDUCT PROCEDURE - APPENDIX 5 GUIDANCE ON APPEALS AGAINST DISMISSAL**

The Headteacher may have appointed an Investigating Officer (normally a member of the SLT) to investigate the alleged misconduct. However, because the Appeal is against the original decision taken by a panel of Trustees to dismiss the employee, the Chair of the Trustees' Panel will be responsible for presenting the relevant evidence and giving the reasons for their decision. If the Chair of that Panel is unavailable it is acceptable for another Trustee member of that panel to fulfil this role instead.

Following a dismissal, the Appeal hearing must be heard as a full hearing and witnesses may need to be called.

All Appeal hearings against dismissal will be held in front of a Panel of 3 Trustees not previously involved in the case. Trustees specifically excluded from hearing Appeals are those who:

- are employed by the school; or
- related to staff employed by the school; or
- have been involved in the case.

The Chair of Trustees would also normally be excluded from any Appeals panel as s/he has a close working relationship with the Headteacher and may be regarded as tainted.

The employee should be notified in writing of the hearing and provided with two copies of all the documentation to be presented at the hearing at least 10 working days in advance. The second copy is for their chosen representative. The Governance Professional is responsible for this.

The Governance Professional should circulate the documentation to all parties involved and make the arrangements for the Appeal Hearing..

The Head of Personnel should be available to all parties to provide advice on the procedures to follow.

One member of the Appeals Panel will need to be elected to act as Chair before the hearing commences.

### **Order of proceedings:-**

1. The Head of Personnel is responsible for making the arrangements for the hearing. If this is not possible or appropriate then this responsibility passes to the Governance Professional.
2. The employee shall be notified of this in writing with at least 10 working days notice and informed that dismissal may be an outcome of the hearing.
3. Minutes of the interview/hearing should be taken by the Governance Professional.
4. The employee has the right to be represented/supported by either their trade union representative or a work colleague.
5. Introductions by the Chair of the Appeals Panel.
6. Headteacher/Trustee presents the case against the employee. Witnesses may be called.
7. If witnesses were called, questions to witnesses by the employee and/or representative.
8. If witnesses were called, questions to witnesses by the Appeals Panel.
9. Questions to the Headteacher/Trustee by the employee and/or representative.
10. Questions to the Headteacher/Trustee by the Appeals Panel.
11. Employee makes their response. Witnesses may be called.

12. If witnesses were called, questions to witnesses by the Headteacher/Trustee.
13. If witnesses were called, questions to witnesses by the Appeals Panel.
14. Questions to the employee by the Headteacher/Trustee.
15. Questions to the employee by the Appeals Panel.
16. Headteacher/Trustee sums up.
17. Employee and/or representative sums up.
18. Interview/hearing adjourns for Appeals Panel to consider their decision.
19. The Trustees' Panel may recall the Headteacher/Trustee and the employee and their representative in order to clear points of uncertainty. All parties should be recalled even if the point of uncertainty concerns only one party.
20. Headteacher/Trustee, the employee and their representative return and the Chair of the Appeals Panel states their decision with reasons.
21. Where the decision is to confirm the dismissal the employee will be informed immediately. In cases of gross misconduct the dismissal is with immediate effect without notice or pay in lieu of notice. In cases which are not gross misconduct the dismissal is with notice or pay in lieu of notice.
22. Where the decision is to overturn the dismissal the employee will be informed that they will be reinstated to their post without any loss of pay.
23. The Chair of the Trustees' Panel will confirm all these details, in writing, after the meeting, within 3 school working days. The letter should:-
  - v) Give the decision;
  - vi) Give the reason(s); then either
  - vii) Confirm the dismissal and the notice period or the pay in lieu of notice; or
  - viii) For gross misconduct, confirm the decision to dismiss and that the dismissal is without notice or pay in lieu of notice.
  - ix) If the decision is not to dismiss, state that the employee will return to work without loss of pay; and
  - x) State the conditions upon which the employee may return to work and the arrangements being put in place to facilitate this.