



Disciplinary & dismissal policy

1 Introduction

- The aim of this procedure is to ensure the fair and consistent treatment of employees in all matters of discipline and dismissal.
- This procedure should help and encourage all employees to achieve and maintain high standards of conduct and attendance.
- The procedure sets out a framework to enable managers to influence the conduct of employees and to deal with problems of poor attendance. This in turn will assist the School to operate more effectively.
- Best practice identified within the ACAS Code of Practice on Disciplinary and Grievance Procedures has been incorporated into this procedure.
- This Procedure is supplemented by Guidance for Head Teachers/Managers
- The Capability Procedure should be used where an employee fails to meet the standards required of them in relation to their job performance.

2 Scope

- This procedure applies to all dismissals with the exception of those on the basis of expiry of a fixed term contract and redundancy, which are not included in this procedure.
- This procedure applies to all employees of the School
- Although normal standards of conduct apply to nominated trade union officials, no formal disciplinary action should be taken without reference to the Service Lead, HR Services and the appropriate trade union full-time official.

3 Principles

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- Head Teachers and the Chair of Governors are responsible for overseeing the operation of this procedure.
 - The Chair of Governors or representative of the Council will conduct all disciplinary investigations concerning Head Teachers advised by a representative from HR Services.
 - Wherever possible minor issues of misconduct should be addressed by counselling the employee rather than through this procedure. Problems should be discussed with the employee. The employee should be encouraged and helped to improve. It is important that the employee understands what is expected of them, how conduct will be monitored and an agreed review date is set. The employee must also be informed of what action will be taken if improvements are not achieved and maintained.
 - No disciplinary action must be taken against an employee before the issues have been properly investigated, the employee has been informed of the nature of the complaint and has had the opportunity to respond and a formal interview has been conducted.
 - Except for issues deemed to be gross misconduct, an employee will not be dismissed for a first act of misconduct. The procedure identifies the stages that should be followed and gives time scales for employees to improve their conduct.
 - The full disciplinary procedure does not apply to employees within their probationary period. However, if an employee does not meet the requirements of the probationary period their employment may be terminated. This must be treated as a dismissal and the dismissal part of this procedure should be adhered to.
 - All individuals are entitled to a hearing if termination of employment is a possibility (with the exception of expiry of fixed term contract or redundancy), even in cases where dismissal is not on the grounds of capability or misconduct, for example in failed probationary situations.
 - Employees have the right to be accompanied by their trade union representative or colleague at each stage of the procedure. It is the responsibility of the employee to make his or her own arrangements for representation. If the nominated representative is an employee of the School, then reasonable time off will be allowed for a pre-meeting and to attend the hearing itself. A hearing will not be unreasonably delayed if a first choice of representative is unavailable, i.e. no longer than a few days unless there are extenuating circumstances.

4 Criminal Offences and Complaints

Any complaints concerns or information relating to possible offences received in relation to the conduct of an employee, must be referred to the designated HR Advisor in all cases, not just in circumstances where the employee provides care and support to children, young people or vulnerable adults.

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- If it is found that the employee has committed an offence, regardless of whether it was committed at a time when the employee was “off duty”, the School will consider whether the offence has any relevance to the suitability or the ability of the employee to continue at work. In some cases, the impact on employment will be very direct and the School/Council will have to take some kind of action.
 - Where there is any suspicion of theft or fraud, then this must also be referred to the designated HR Advisor.
 - Where appropriate, the School will commence its own disciplinary investigation working alongside other agencies involved in dealing with the complaint, subject to there being no conflict of interest in doing so e.g. ongoing policy/criminal investigations. The School will not be required to await the outcome(s) of those investigations before taking such action. If the School is satisfied, after a full investigation of all the facts, that the employee’s conduct in committing the offence, has a sufficiently detrimental impact upon his or her suitability or ability to continue at work, so as to justify dismissal, and that it is reasonable to dismiss the employee, the School/Council shall terminate the employment of the employee concerned. In doing so the School/Council is required to follow this procedure and the dismissal shall be on the grounds of misconduct/gross misconduct. The School/Council is not required to await the outcome of any subsequent criminal proceedings. Please also refer to the Criminal Records Bureau (CRB) Policy.

5 Safeguarding

5.1 Allegation Management in relation to employees or volunteers who work with Children and Young People

- Where allegations have been made about an employee or volunteer who has:-
Behaved in a way that has harmed a child/young person, or may have harmed a Child/young person;
- Possibly committed a criminal offence against or related to a child/young person; or
- Behaved towards a child/children in a way that indicates s/he is unsuitable to work with children;
- Behaved in a manner that raises concerns about the persons suitability to work with Children/young people, e.g. abuse of alcohol, threatening or aggressive behaviour or dishonesty;
- Abused a position of power or trust;

The process of dealing with these types of concerns is called Allegation Management.

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- Any allegation should be recorded and reported without delay to the Head Teacher or appropriate member of staff with responsibility for Allegation Management, or if the allegation relates to the Head Teacher to the Chair of Governors.

A written record of the report must be prepared which is timed, dated and includes a clear name or signature. The Head Teacher will consult with the Local Authority Designated Officer (LADO) and HR Services without delay and in all cases within one working day.

The LADO will advise on how to proceed, whether the matter can be dealt with within the Council's own structure (discipline/supervision) or whether a multi-agency approach is required (Allegation Management Meeting).

After consultation, the LADO decides that the allegation can be dealt with internally by the Head Teacher without an Allegation Management Meeting. The Head Teacher must inform the LADO of the outcome of any actions taken. However, this does not prevent an investigation continuing under the Disciplinary and Dismissal Procedure. Your HR Advisor will be able to provide the appropriate advice at this point.

OR

After consultation, the LADO decides the criteria for an Allegation Management Meeting (AMM) has been met. The AMM will be convened within agreed timescales, and further meetings will be held until the enquiry is completed.

The LADO will provide South Tyneside Safeguarding Children Board with regular updated information regarding Allegations Management Meetings and compliance with procedures.

- Should the employee be deemed as an immediate risk to service users and the safeguarding issues so serious that the matter is referred to a multi-agency approach then the Head Teacher/Senior Manager should liaise with the LADO/HR Services in the first instance to consider whether the employee should be suspended prior to the multi-agency meeting. Your HR Advisor will be able to provide the appropriate advice at this point.

6 Suspension of Employment

- Suspension is not disciplinary action. It is usually necessary in all cases of alleged gross misconduct.
- When there is any doubt as to the suitability of an employee to continue to work, where suspension may assist in the completion of the investigation, or where there is a risk of destruction of available evidence, or unduly influencing witnesses, the individual may be

suspended whilst investigations are being made, or pending the outcome of a disciplinary hearing.

- During the period of the suspension, the employee will receive full basic contractual pay.
- Suspension will also be considered where criminal or other offences committed outside of the workplace give cause for concern over an employee's honesty or integrity.
- As an alternative to suspension, consideration may be given to moving the employee to another establishment so that they can remain at work whilst investigations are carried out.
- If a recognised trade union official is suspended, a senior branch officer or full-time official of the appropriate union must be informed as soon as possible. That can be done either by the Head Teacher/manager or by reference to the Service Lead, HR Services.
- Throughout the period of suspension an employee must not undertake any other form of employment, paid or otherwise.
- An employee who is suspended must be available to attend meetings at the request of the School.

An employee must be kept up-to-date of the investigation during the period of suspension. An officer should be nominated to the employee to provide support and maintain contact during the period of suspension.

7 The Procedure

7.1 Investigation and hearing

- Following an allegation, before any decision is taken to hold a disciplinary hearing and possibly impose a disciplinary warning, a management interview/investigation must be conducted. At that interview, the employee must be given an opportunity to respond to the allegations and give explanations as appropriate. If the employee does not provide a satisfactory explanation(s) they will be informed that they will be required to attend a disciplinary hearing.
- The employee must be informed of the arrangements for the disciplinary hearing, i.e. time, date and venue, in writing at least 5 days in advance of the hearing. The letter must also clearly state the allegation(s) to be considered.
- Statements and supporting documents prepared for the disciplinary hearing should be issued to the employee or the nominated representative prior to the hearing and no later than 2 working days before.
- In consultation with HR Services, Head Teachers have the discretion to request witnesses to attend any disciplinary hearing.

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- The right to be accompanied by a recognised trade union representative or colleague must be made clear to the employee. This must be done in advance of the hearing and again at the hearing itself if an employee attends unaccompanied.
 - A solicitor may only accompany an employee who is registered with a Professional Body at the disciplinary hearing if the conduct, if proven, could result in the employee's dismissal and if, as a result of a dismissal, the employee could be prevented from working in that field of employment again. This would only apply to professions where they are regulated by a professional body and the regulated body relies on South Tyneside Council's conclusions to a particular case. Legal advice should be obtained if a request of legal representation is made. However, where the regulated body carries out its own investigation into the facts, independently of any decision reached by South Tyneside Council, then the employee may not be entitled to legal representation.
 - The employee should take all reasonable steps to attend the hearing. Persistent failure to attend disciplinary hearings, without good cause, may result in the School holding the hearing without the employee being present and making a decision based on the evidence available.
 - Where an employee produces a fit note indicating that they are unfit for work, the hearing date may be postponed whilst medical advice is obtained to ascertain whether the employee could attend the hearing without any detriment to their health. Following medical advice, should the employee be prevented from attending the hearing, this may still take place with a trade union representative or work colleague in attendance on the employee's behalf.
 - Where an employee is suspended from their duties but produces a fit note, the hearing may still go ahead with a trade union representative in attendance on the employee's behalf.
 - The member of staff who has investigated the allegation must have an HR Advisor present at all stages of the procedure. The Governors Support Officer will take notes and keep a record of the hearing. Where practical, a different HR Advisor will attend and provide advice to the Chair of the disciplinary hearing.
 - In reaching a decision, consideration should be given to the employee's employment record, position and length of service.
 - Where disciplinary action other than summary dismissal appears appropriate, the formal stages of the procedure must be followed. Depending upon the serious nature of the misconduct, action at the stages listed below may be appropriate.

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- The outcome of a disciplinary hearing must be confirmed in writing to the employee within 5 working days.
 - An employee has the right of appeal against disciplinary action taken at any stage of the procedure. The relevant committee of the governing body will hear appeals against a formal disciplinary warning or appeals against dismissal.
 - In the case of a failure to meet the requirements of the probationary period, where dismissal is the likely outcome, the correct process should have been followed prior to the hearing (see below).

7.2 Outcome

- **Stage 1 – written warning**

In situations of misconduct, employees may be issued with a formal written warning. Employees must be advised that this is the first stage of the procedure and of their right of appeal. Employees must also be advised of the consequences of further misconduct or failure to improve attendance. A record of the warning must be retained for 6 months during which the employees conduct and attendance must be monitored. After the 6 month period, the warning must be disregarded for further disciplinary purposes.

- **Stage 2 – final written warning**

If an employee fails to achieve the required improvement in attendance or the misconduct is regarded as more serious, or the employee commits a further act of misconduct during the period of the written warning, then a final written warning should be issued. Employees must be advised that this is the second stage of the procedure and of their right of appeal. Employees must be advised that if further misconduct occurs during the period of the warning or if attendance does not improve then dismissal will be considered. A record of the warning should be retained for a period of 12 months during which the employee's conduct and attendance must be monitored. After the relevant period, the warning must be disregarded for further disciplinary purposes.

- **Stage 3 - dismissal**

- If an employee fails to achieve the required improvement, or the employee commits a further act of misconduct during the period of the final written warning, or the employee commits a very serious act of misconduct, then the employee should be dismissed.

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- Dismissal for repeated misconduct occurs when an employee has been repeatedly warned about their poor attendance or acts of misconduct. In most cases the above stages will have been followed before dismissal is considered. Where an employee has been dismissed because of repeated misconduct, they have an entitlement to a notice period dependent upon their length of service. Normally, an employee will be paid a payment in lieu for the notice period.
 - Dismissal for gross misconduct is immediate and without notice. It is misconduct so serious as to destroy the contractual relationship between the employee and employer. The employee must be suspended if the alleged misconduct is considered to be so serious. Examples of behaviour deemed to be gross misconduct include:
 - Theft, fraud and deliberate falsification of records
 - Physical violence
 - Deliberate damage to property
 - Serious incapability through alcohol or drug abuse
 - Serious negligence leading to loss, damage or injury
 - Serious acts of insubordination
 - Serious acts of sexual/racial harassment
 - Serious breaches of health and safety regulations
 - Criminal offences outside of the workplace, which impact upon the trust and confidence, placed in an employee by the employer
 - Serious conduct issues breaching the Council's Code of Conduct.

This list is not exhaustive and similar offences may be deemed to amount to gross misconduct.

- Safeguarding Allegations – Where an employee is dismissed or removed from working with children and or vulnerable adults (in what is legally defined as regulated activity) as a result of safeguarding concerns with a child or vulnerable adult you have a legal duty to inform the Independent Safeguarding Authority (ISA). Please liaise with your HR Advisor and the LADO to do this.
- Where an employee has been dismissed and they are registered with a Professional Body, e.g. General Social Care Council for Social Workers, The Teaching Agency for Teachers and Instructors, please liaise with your HR Advisor and the LADO to ensure a referral is made to the appropriate Professional Body
- When an employee is dismissed they must be advised of their right of appeal (see section 5 below)

Dismissal may also be due to a failure to meet the requirements of the probationary period. There are also occasions when early retirement should be considered under the dismissal procedure.

- **Dismissal in relation to:**

- **Failed Probationary Period.**

The purpose of a probationary period is to determine an employee's suitability for the post. During probationary periods managers should meet regularly with employees to discuss performance. If it becomes evident that the employee is failing to meet the requirements of the probationary period they should be informed, given any necessary support and the required improvement made clear. If towards the end of the probationary period the required standards are still not met the correct dismissal procedure should be followed.

The employee should be sent a written statement setting out how he/she has failed to meet the requirements of the probationary period and therefore consideration is being given to terminate their employment.

The individual has the right to be accompanied by either their trade union representative or colleague at the hearing. They must be informed in writing of the decision made and of their right of appeal.

- **Failed induction Period - Newly Qualified Teachers**

Head Teachers must follow the statutory guidance issued by the Department for Education in relation to any dismissal during the Induction Period for Newly Qualified Teachers. Head Teacher's should liaise with the NQT Co-ordinator should they have any concerns about an NQT's induction.

- **Retirement**

The Employment Equality (Repeal of Retirement Age Provisions) Regulations 2011 came into force on 6th April 2011. As a result of this legislation the Council no longer has a default retirement age of 65 and employees need not apply to work beyond this age. Therefore, an employee cannot be dismissed from their employment because of their age/retirement.

- **Demotion**

Permanent demotion to another post is an alternative to dismissal. The post, if one is available, will be at a lower level of responsibility and with no pay protection arrangements. Confirmation of demotion must include a final written warning with terms as outlined in Stage 2 of the procedure.

8 Right of Appeal

- Employees have the right of appeal against decisions taken at all stages of the procedure.
- If an employee wishes to appeal against a formal warning, they must do so in writing, to the appropriate Governors Support Officer within 10 working days upon receipt of the letter confirming the warning. The appeal letter must also include the grounds upon which the employee is appealing.
- Employees have the right to be accompanied at the appeal meeting by either their trade union representative or colleague.
- An employee should take all reasonable steps to attend the appeal hearing.

8.1 Appeals against a Disciplinary Sanction, including formal warning/demotion

- An appeal against a Disciplinary Sanction, including a formal warning/demotion will be conducted as a full re-hearing by the appropriate Committee of the Governing Body. The decision reached is final.

8.2 Appeals against Dismissal

- If an employee wishes to appeal against dismissal, they must do so in writing, to the relevant Governor's Support Officer within 10 working days upon receipt of the letter confirming the dismissal. The appeal letter must also state the grounds of appeal. The Governors Support Officer will arrange a meeting of the relevant Committee of the Governing Body to hear the appeal.
- The Appeals Panel will conduct a full re-hearing.
- After an appeal meeting, the employee will be notified in writing of the final decision.
- The decision of the Appeals Panel, is final, but does not remove the right of an employee to make application to an Employment Tribunal if applicable.

9 Equality and Diversity Statement

South Tyneside Council and the Governing Body are committed to promoting equality and valuing diversity in everything they do including service delivery and employment. Further details can be obtained by referring to the Equality and Diversity in Employment Policy Statement available on the Council's Intranet.

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