



## **STAFF DISCIPLINARY AND CAPABILITY POLICY**

References:

A. Staff Behaviour Policy

### **Introduction**

The Staff Behaviour Policy and the Disciplinary and Capability Policy, with which all employees have a responsibility to familiarise themselves, are designed to promote fairness and consistency in the treatment of all employees and to assist the School to function effectively. This policy sets out the procedures that will apply to any disciplinary situation which includes misconduct and also cases of poor performance that result from misconduct. It is not contractual but applies to all employees (save for those in their first two years of service) who should familiarise themselves with its provisions. Performance issues that do not relate to misconduct will be dealt with in accordance with the Capability Procedure. However, the two procedures may be run in parallel at first in order to investigate the underlying cause of the concern.

The Staff Behaviour Policy sets out standards of required conduct at work.

This Disciplinary and Capability Policy is designed to ensure that these standards are adhered to and provides a fair method of dealing with any alleged failures to observe them. The procedure does not preclude minor disciplinary situations from being dealt with informally.

In cases other than gross misconduct or in the first two years of employment (as noted above), an employee whose conduct does not meet the standards will normally first be counselled in an attempt to achieve the required improvement. However, the School reserves the right to commence the procedure at any stage if the circumstances warrant such action.

No disciplinary action will be taken until the case has been investigated and the employee has had the opportunity to respond to the allegations in accordance with the procedure set out below. All disciplinary situations will be dealt with without unreasonable delay.

In the event of absence of any of those involved, except for the employee who is the subject of the procedure, a deputy may take their place provided that this will not jeopardise the likelihood of a fair outcome.

### **Suspension**

Where an employee is accused of an act of serious or gross misconduct, or where the circumstance otherwise warrant it, after careful consideration he/she may be suspended from work on full pay pending the outcome of the disciplinary procedure. Such suspension is not a form of disciplinary action.

## **FORMAL DISCIPLINARY PROCEDURE**

### **Investigation**

When a disciplinary situation arises or the Headmaster has a serious concern about the conduct of an employee, either he or a senior member of staff will, as soon as reasonably practicable, carry out an investigation into the matter. The investigation will be confined to establishing the facts and gathering any relevant documentation. Where necessary, the investigating officer will obtain statements from any relevant individuals. An investigatory meeting with the employee may take place if considered appropriate by the investigating officer.

### **Notification**

If, as a result of the investigation, it is decided that there is a disciplinary case to answer, the employee will be invited to attend a disciplinary meeting.

The employee will be informed in writing of the nature of the complaint and where appropriate, will be provided with copies of any written evidence gathered during the investigation.

Where either party intends to call any relevant witnesses at the disciplinary meeting, advance notice of their intention to do so must be given.

### **Disciplinary Meeting**

A disciplinary meeting will be conducted by the Headmaster or Bursar (or an appropriate senior member of staff appointed by them, who has had no prior involvement). The employee may be accompanied by a trade union representative or colleague if desired. The employee and their companion should make every effort to attend the disciplinary meeting. In the event that the employee fails to attend the disciplinary meeting this will usually be rearranged once, but should they fail to attend the rearranged meeting then a decision may be reached in their absence.

The employee will be given the full opportunity at the disciplinary meeting to explain the matter and respond to the allegations.

A note taker will usually be present but will not be involved in the decision making process.

If, following the disciplinary meeting, it is decided that disciplinary action is warranted, the employee will be advised of the decision in writing and will specify the details of:

- the failure to meet the required standard.
- any action required by the employee to remedy the situation.
- any relevant review period /duration of warning and the consequences of continued or subsequent failure to reach and sustain the required standard of performance or conduct.
- the right of appeal.

In the event that disciplinary action is warranted one of the sanctions below may be issued. A sanction may be imposed at any level including summary dismissal depending on the circumstances.

- **Written Warning**

In the case of a first act of misconduct, or a repetition of earlier minor offences or a failure to improve, the employee will be given a written warning, setting out the precise nature of the offence, the likely consequences of further offences and specifying, if appropriate, the improvement required and over what period.

- **Final Written Warning**

In the case of a sufficiently serious offence, or a repetition of earlier offences the employee will be given a final written warning, setting out the precise nature of the offence, the likely consequences of further offences and specifying, if appropriate, the improvement required and over what period. This may include a statement that any recurrence or no improvement may lead to a dismissal or to some other action short of dismissal.

- **Dismissal**

This stage will normally result from continued failure by the employee to act on previous warnings or an act of gross misconduct. In the case of gross misconduct the employee will normally be dismissed without notice or payment in lieu of notice. If the decision to dismiss is made the employee will be informed in writing of the reason for dismissal, the date on which the contract between the parties will terminate and the appropriate period of notice.

### **Alternatives to Dismissal**

In exceptional circumstances, the following actions short of dismissal may be considered as an alternative to dismissal:

- Suspension without pay
- Demotion
- Transfer

### **Gross Misconduct**

In exceptional circumstances, employees may be dismissed without notice if it has been established, after investigation and after hearing the employee's explanation at a disciplinary meeting, that there has been an act which constitutes gross misconduct.

Examples of actions which constitute gross misconduct include (but are not limited to):

- gross insubordination
- serious breach of health and safety rules
- serious breach of the School email and internet use policy
- theft or fraud from either the School or co-workers or deliberate damage to School property or that of co-workers
- being under the influence of drink or illegal drugs at work
- disorderly or threatening conduct on school premises
- contravention of the equal opportunities and discrimination policy
- negligence resulting in serious loss, damage, or injury
- assault or attempted assault
- falsification of records
- conviction on a criminal charge
- acceptance of a police caution

- breach of School policies or procedures
- bullying or harassment of colleagues, pupils or parents
- abuse or suspected abuse of the employee's position of trust in relation to pupils at the School
- bringing the School into disrepute

## **Appeals**

An employee may appeal against a disciplinary decision within five working days of receipt of the written decision. Such appeals are to be made in writing to the Head or Bursar.

The appeal hearing will be convened as soon as is reasonably practicable. The appeal hearing will be held by the Headmaster or Bursar, or a Governor or panel of up to three Governors (who have had no prior involvement). The Headmaster or Bursar will not hear the appeal if they held the disciplinary meeting. Where new evidence arises prior to or during the appeal the employee will be given access to any relevant information or evidence and will have the opportunity to make representations. The employee will have the right to be accompanied at any appeal hearing by a colleague or trade union representative. The employee will be informed in writing of the decision of the appeal hearing following the conclusion of the hearing. Such decision will be final. In the event of an unsuccessful appeal against a decision to dismiss, the original dismissal date shall stand.

## **Record Keeping**

A copy of all formal warnings will be retained on an employee's personnel file but will be considered spent after a period of twelve months.

## **CAPABILITY PROCEDURE**

This procedure applies where an employee is failing to carry out their responsibilities or duties in a satisfactory manner, due to a lack of ability, experience, or qualifications or on health grounds.

This procedure aims to ensure fairness and consistency throughout the School and provides for warnings to be given for failure to meet the School's standards of job performance. The procedure is non-contractual in nature but applies to all members of staff except that this procedure will not apply during the first two years of employment. All employees should familiarise themselves with its provisions.

Most performance improvement procedures will follow the course set out below. However, the School may vary the process to suit individual circumstances; such a variation will not amount to a breach of this procedure. The procedure will be invoked when performance issues arise or are identified either following an appraisal process or otherwise.

The School will normally address performance informally and offer appropriate training and support to an employee before progressing under this procedure.

The procedures set out in this document aim to ensure that there is:

- Openness and awareness for staff when they are not meeting the required levels of performance.
- A means of monitoring performance and establishing performance criteria.

- A degree of consistency in how staff are given opportunities to attain satisfactory levels of performance.
- Assistance in identifying the most appropriate form(s) of support and providing that support

The School will consider what training and support it can give the employee to help them meet the performance requirements.

### **Suspension**

Where a staff member is accused of an act of serious or gross negligence, they may be suspended from work, on full pay and benefits, pending the outcome of the capability or disciplinary procedure.

### **Formal Meeting**

If the School considers that it is necessary to invoke the formal capability procedure the School will inform the employee in writing. In so doing, the School will give the employee reasonable notice of a capability meeting and set out details of the alleged shortfall or failure in performance, together with any evidence relied upon if practicable and available.

At all stages of the procedure, the employee will be allowed to attend a capability meeting with a colleague or a trade union official as a representative and the employee will be given an opportunity to state the employee's case. The employee must take all reasonable steps to attend the hearing. If the employee fails to attend the meeting, this will usually be rearranged once, but should the employee fail to attend the rearranged meeting then a decision may be reached in the employee's absence.

Following the meeting, the School will write to the employee to confirm the School's decision. The employee will also be informed of the employee's right to appeal the decision if the employee is not satisfied.

### **Appeal**

An employee may appeal against a decision within five working days of receipt of the written decision. Such appeals are to be made in writing to the Bursar or the Headmaster.

The appeal meeting will be convened as soon as is reasonably practicable. The appeal meeting will be held by the Head or Bursar, or a Governor or panel of up to three Governors (who have had no prior involvement). The Head or Bursar will not hear the appeal if they held the capability meeting. Where new evidence arises prior to or during the appeal, the employee will be given access to any relevant information or evidence and will have the opportunity to make representations. The employee will have the right to be accompanied at any appeal meeting by a colleague or trade union representative. The employee will be informed in writing of the decision of the appeal meeting following the conclusion of the meeting. Such decision will be final. In the event of an unsuccessful appeal against a decision to dismiss, the original dismissal date shall stand.

### **Performance Warnings**

#### **Written warning**

In the case of serious shortfall, or failure or a repetition of earlier shortfall or failure, the employee will be given a written warning, setting out the precise nature of the shortfall or failure, the likely consequences of further shortfall or failure and specifying, if appropriate, the improvement required

and over what period. Objectives, timescales, and measures for the performance improvement should be set. The employee's Head of Department should offer help with training and supervision as required. A written warning will be kept on the employee's record but will be considered expired after 12 months. The employee's performance may be appraised, at intervals to be determined by the employee's Head of Department, at any time during this period.

### **Final written warning**

In the case of a further repetition of earlier shortfall or failure, if the employee still fails to improve or if the shortfall or failure, whilst falling short of gross negligence, is serious enough to warrant only one written warning, the employee will be given a final written warning setting out the precise nature of the shortfall or failure containing a statement that any recurrence or failure to improve will lead to dismissal or whatever other penalty is considered appropriate and specifying, if appropriate, the improvement required and over what period. A final written warning will be kept on the employee's record but will be considered expired after 12 months. Objectives, timescales, and measures for the performance improvement should be set. The employee's Head of Department should offer help with training and supervision as required. The employee's conduct and performance will be appraised, at intervals to be determined by the employee's Head of Department, at any time during this period.

Depending upon the seriousness of the matter and all the circumstances, any of the above stages may be omitted.

### **Dismissal**

In the case of gross negligence, or if all the appropriate stages of the warning procedure have been exhausted, the employee will normally be dismissed.

The School reserves the right to consider other possible formal action, including (but without limitation): demotion or transfer; loss of seniority or salary increment; suspension (without pay).

If the employee is dismissed, they will be provided with a written statement detailing the reasons for dismissal, the date on which employment will terminate and the right of appeal.

### **Examples**

The following are non-exhaustive and non-exclusive examples of the sort of performance shortfalls or failures, which will normally lead to action being taken.

#### **Minor offences** (informal oral warning)

- Occasional poor job performance involving sub-standard work or application.

#### **Serious offences** (written or final written warning)

- Consistent poor performance or application.
- Failure to improve performance following an appraisal meeting or performance review, within the timescale specified within such a meeting or review.
- Failure to perform duties or roles to an acceptable standard for reasons which it is within the employee's power to rectify.

The employee should be made aware that if there is no adequate improvement following the issue of warnings, such issues may result in dismissal.

### **Capability and consistent performance offences (dismissal with notice)**

- Incapable and/or unsuitable of performing role or main job functions/duties as set out in job description and which could not be rectified by training or coaching.
- Consistent failure or unable to improve performance to required or reasonable standards or to the level of other members of staff carrying out the same, similar, or equivalent work.
- The employee is unable satisfactorily to do or do not have the qualifications, aptitude and/or ability for the job.

### **Gross negligence (dismissal without notice)**

- In the most serious cases of gross negligence, normally (but not necessarily) resulting in significant financial loss or loss of reputation to the School, where the School's continued trust and confidence in the employee has been destroyed as a result, dismissal may be without notice or payment in lieu of notice.

### **Long term sickness absence**

Where an employee's underperformance is because of long-term sickness absence then the School will always seek medical advice prior to deciding about an employee's ongoing employment. The School will also consider whether there are any reasonable adjustments which can be made to assist the employee to perform their role. In cases where the School has concerns about the employee's long-term ability to perform their job because of health grounds, the School would normally move to dismissal stage without prior warnings.

### **Relationship with Disciplinary Procedure**

The Capability Procedure is not intended to apply to cases where poor performance results directly from misconduct, in which case the Disciplinary Procedure should normally apply. It may not, however, always be immediately clear whether poor performance results from misconduct or capability and the procedures may, initially, be run in parallel whilst the concerns are being investigated.

The employee may be dismissed following exhaustion of the formal capability procedure and have no separate right to have the disciplinary procedure followed prior to dismissal, and vice versa.

Live warnings issued under the disciplinary procedure may, if appropriate, be taken into consideration when considering the level of warning to be given under the capability procedure, and vice versa.

<b>Reviewed By:</b>	<b>Headmaster</b>
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