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| **Central Policy:** | Trust-wide, applicable at trust and school levels. Schools may not make any changes or adaptations |

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Description automatically generatedDisciplinary Procedure 2022**

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| **Approved by:** | **Pay & Personnel Committee** |
| **Date:** | **November 2022** |
| **Next review date:** | **December 2025** |

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| **Adopted by school:** | **Banbury St Mary’s** |
| **Date:** | **7th February 2024** |

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# Statement of Intent

This disciplinary procedure sets out ODST’s policy on conduct and discipline and the procedure to be applied when an employee’s conduct or behaviour falls below normal or acceptable standards. It is designed to ensure that the ODST has a framework that provides a clear and transparent structure for dealing with disciplinary issues that may arise as part of the employment relationship.

It is intended that, when it is necessary to use the disciplinary procedure, it is applied fairly, reasonably, and as quickly but as carefully as possible, and that the employee is given every opportunity to improve.

The starting point for developing this policy was the Oxfordshire County Council model policy which had been drawn up following consultation with all the recognised Trade Unions and Associations. It has been amended to reflect the independent status of ODST as a multi academy trust, although the substantive content remains the same. It meets the requirements of relevant legislation and the ACAS Guidance. ODST intends that future changes to this policy will be subject to consultation with its schools / academies, their staff and any recognised Trade Unions and Associations.

# General Principles

**Definitions**

* The term “relevant body” has been used throughout this policy. In ODST the relevant body is the Board of Trustees of ODST,
* Unless indicated otherwise, all references to “school” include both schools and academies,
* Unless indicated otherwise, all references to “teacher” include the Headteacher,
* Unless indicated otherwise, all references to ‘staff’ include both teaching and support staff.

**Consistency of Treatment and Fairness**

The relevant body is committed to ensuring consistency of treatment and fairness and will abide by all relevant employment and equality legislation.

**Delegation**

The relevant body has chosen to delegate some of its functions to Local Governing Bodies as set out in this policy, and in particular in the ‘Responsibilities’ section below.

**Monitoring and Evaluation**

The Local Governing Body and Headteacher will monitor the operation and effectiveness of the school’s disciplinary policy. Any feedback or concerns regarding the policy should be reported to the ODST Pay and Personnel Committee.

# Responsibilities

**Responsibilities of the Governors.**

* Day to day responsibility for employee discipline is delegated to the Local Governing Body and they should formally adopt this model policy, and ensure that it is accessible to those working in the school,
* A disciplinary decision may be delegated to the Headteacher or to a group of governors or a group of governors working together with the Headteacher. Factors influencing such a decision may include the nature of the issue, the identity of the person who carried out the investigation, the size of the school and size of the Local Governing Body. Such decisions should be taken in liaison with the ODST HR team,
* The term 'Headteacher' has been used throughout this procedure, however depending on the size and structure of the school and the nature of the issue, the Headteacher’s role in the procedure may be delegated to other members of the senior leadership team, school business managers or line managers as appropriate,
* Where the disciplinary action relates to the Headteacher, the Local Governing Body will follow the guidance in this policy,
* Where a committee is required to deal with a disciplinary matter which has not been delegated to the Headteacher, it should consist of three members, ideally governors.
* Similarly, the Local Governing Body may decide to delegate part of this procedure, for example the authority to issue a first written warning to the Headteacher, but can decide that any matter that might require more serious disciplinary action should be referred to a committee of governors,
* As and when necessary, the Local Governing Body will appoint a staff dismissal appeal committee no smaller than the committee which made the original decision. It should consist of at least two governors, neither of whom should have been involved in the case in any way before the appeal hearing and a nomination from the relevant body. The Headteacher should not be a member of this panel. In certain situations, such as where there are insufficient “untainted” governors or if the appeal is from the Headteacher the appeals panel can consist of ODST nominations. There will be no further right of appeal to ODST,
* An ODST HR representative must be consulted for advice on the application of the formal stages of this procedure and must attend formal hearings to provide advice, especially when dismissal is being considered,
* Where dismissal is a potential outcome of a hearing, such a decision to dismiss should not be delegated to one governor acting alone,
* In all disciplinary matters, a record of any disciplinary action taken against an employee will remain active until it is ‘spent’ and will then retained within their personnel file,
* If a dismissal case goes to an Employment Tribunal, governors will be the joint respondents. They will need to attend in order to justify their decisions. Any costs arising will be met by the relevant body in the first instance. An appropriate amount will be re-charged to the school’s delegated budget, depending on the circumstances of the specific case,
* Governors should ensure that any individual who is the subject of disciplinary investigations or action is given sufficient and appropriate support throughout the process and kept fully informed about progress.

**Responsibilities of the Relevant Body**

* In the event of the Headteacher being subject to disciplinary action, the relevant body will be responsible for administering this procedure through a senior officer of the central ODST team,
* The school must consult the relevant body at all stages where dismissal may result. It is essential therefore to involve at an early stage, and throughout, any disciplinary process an ODST HR representative. They will make every effort to advise and assist the governors in the use of this procedure,
* If a disciplinary meeting determines that an individual employee should no longer work at the school, details of the dismissal will be put in writing to the employee within 5 working days.

**Responsibilities of Line managers**

* Line managers are responsible for managing the performance of their staff, ensuring they make staff aware of the standards expected, their key priorities and to promptly manage underperformance or misconduct,
* Where line managers believe formal disciplinary action is required, they must consult with their Headteacher who will, following initial enquiry, decide whether the circumstances warrant the application of this formal procedure.

# Date of Review

The policy will be reviewed as required by the Board of Trustees of ODST to take account of any legislative changes and / or national policy development as well as feedback from ODST staff and schools and in any event, by 31 December 2025 at the latest.

# Introduction

1. Each ODST school expects high standards of performance and conduct from all its employees.
2. Schools are required to have clear procedures for the regulation of the conduct and discipline of school staff. This procedure provides a fair and objective approach to handling cases of misconduct and has been developed in accordance with relevant employment law and the ACAS Code of Practice on Disciplinary and Grievance Procedures.
3. When applying this model Disciplinary policy, the school will treat the employees reasonably, consistently and fairly. It is the responsibility of the school to ensure that the employee is not discriminated against. All parties should maintain confidentiality throughout the application of this policy.
4. Employees are actively encouraged to contact their professional association/ trade union representative at the earliest opportunity to obtain advice and support at any point within this procedure.
5. This procedure applies to all employees working in the school. It should be read in conjunction with other relevant documents such as the School Teachers' Pay and Conditions Document (STPCD), Conditions of Service for School Teachers in England and Wales (Burgundy Book) and the National Agreement on Pay and Conditions of Service for support staff (the Green Book).
6. Advice on the application of this procedure is available from the ODST HR team.

# Scope and Aims

1. This policy does not apply to Volunteers, Contractors and Agency workers as they are not employees of ODST.
2. The aims of the Disciplinary policy and procedure are to:

* improve conduct and behaviour of an employee through early intervention and management,
* help employees to understand the rules and standards required,
* address disciplinary matters fairly,
* address disciplinary matters in a timely manner,
* achieve appropriate outcomes for the school to manage disciplinary matters and identify any organisational learning,

# Misconduct and Gross Misconduct

## Misconduct

1. Misconduct is an act of either wilful or negligent conduct, behaviour or omission that falls short of the school’s / ODST’s expected standards. The examples of misconduct listed here would normally, where it is a first offence, warrant formal disciplinary warnings or other action, rather than dismissal. The level of seriousness of each instance of misconduct depends upon matters including the nature of the employee’s role, the work environment and whether the misconduct has happened before. This list is not exhaustive:
   * Poor time keeping such as a pattern of lateness, taking unauthorised extended breaks (this could be gross misconduct if there is a serious risk to health & safety standards),
   * Failure to follow a reasonable management instruction without justifiable reasoning,
   * Failure to comply with ODST’s or the school's policies, procedures, and standards of behaviour- such as behaving in an improper, disorderly, unacceptable, or unprofessional manner,
   * Failure to follow safeguarding procedures (this could also be gross misconduct depending on the seriousness of matter),
   * Unauthorised absence i.e., being absent without prior permission or notification to school,
   * Inappropriate behaviour towards pupils, parents, colleagues, or members of the public,
   * Bullying / Harassment (this could also be gross misconduct depending on the seriousness of matter) – Please refer to the school’s Antibullying, Harassment and Discrimination policy,
   * Actions and behaviours that could affect the reputation of the school and/or ODST and/or the employee in the performance of their role,
   * Refusing to do work (insubordination).

## Gross Misconduct

1. Gross misconduct is behaviour or conduct that is very serious or has serious implications that may be considered as a fundamental breach of contract and justifies summary dismissal (i.e., dismissal without notice). While not an exhaustive list, examples of gross misconduct include:

* Physical abuse or violence or threatening behaviour towards staff members, members of public and / or children,
* Sexual Harassment, victimisation, and making / sharing comments of sexual, racist or otherwise discriminatory intent whilst at work or outside work and on any social media platform,
* Acts considered in serious contravention to the safeguarding of children such as (but not limited to) sexual abuse, accessing child pornography, violence, failure to identify / escalate potential risks resulting in serious safeguarding risks for the child / children,
* Being under the influence of alcohol or prohibited substances at work or causing disrepute to the school whilst being under the influence of alcohol or other such substances,
* A serious breach of School’s Health & Safety policy and procedure,
* A serious breach of data security policies or data protection standards,
* Sabotaging school property including IT equipment deliberately or misusing school property to a significant level,
* Theft, bribes, fraud, or serious falsification of records such as exam results, pay claims and / or misusing confidential information or school’s property and finances,
* Any conduct at work or outside of work (criminal or otherwise) which could discredit the reputation of the school and/or ODST or result in a serious breach of trust and confidence,
* Actions or behaviours that fundamentally breach the relationship of trust and confidence between the school and the employee,
* Bringing the school’s reputation to a disrepute.

Where acts of gross misconduct are believed to have taken place, no decision will be taken to dismiss until appropriate procedures, as set out in this document, have been followed. This includes an investigation of the facts, holding a disciplinary hearing and giving the employee the opportunity to respond. A period of suspension may be considered in appropriate circumstances, depending on the potential risks the employee may pose when being at work.

## Child Protection allegations

1. Where allegations involve child protection issues e.g., abuse, the Headteacher must consult with the Local Authority Designated Officer (LADO) for Safeguarding *within 24 hours* of receiving the allegation and contact the ODST HR team for further support. Any further action under the Disciplinary Procedure will be subject to discussion with the LADO.

## Capability procedures

1. Separate procedures will be followed where an employee is considered incapable of doing their job to the required standard due to a lack of professional capability or as a result of ill health. Where it is not clear whether the issues are of misconduct or incapability or both, the Headteacher should seek advice from the ODST HR team.

## Matters to consider during a disciplinary process

1. It is the responsibility of the school to ensure the employee is treated fairly and consistently throughout the process and that they are kept informed of the anticipated timelines and the support available to them.
2. Information related to the disciplinary investigation/ process must be handled confidentially and shared only on a ‘need to know’ basis. This is likely to be the employee, their immediate line manager and those who are investigating or leading the investigation. Further guidance is available from the ODST HR team.
3. Going through a disciplinary procedure can be very stressful for both the employee subjected to the disciplinary investigation and the school leadership team. It is therefore very important to look out for any signs of concerns (for example any impact on mental health) and offering Occupational Health support or referring them to contact an Employee Assistance Programme. This may help in preventing sickness absence, drop in morale, refusal to engage in the process by the employee or a potential grievance. Providing a point of contact within the school, independent of any process, can also be considered. It is encouraged that an employee make contact with their union representative too.
4. It is possible that an employee may wish to resign if they fear the outcome of the investigation may result in a final written warning or dismissal and may wish to leave the organisation due to concerns about their future career prospects. In such situations, the school should try to complete the procedure, if possible, prior to the employee leaving the school.
5. If the employee were to raise a grievance at the onset or during the disciplinary process, the school must seek advice from the ODST HR team on receipt of the grievance. Wherever possible both the grievance and disciplinary will be dealt with at the same time especially where they are related.

## Establishing the Facts

1. When a disciplinary matter arises, or an allegation is made against an employee, the employee’s manager or senior manager must explore the immediate facts/ circumstances. This must be completed before commencing any further action under the Disciplinary policy. This is called an initial assessment and is not part of any formal investigation process. They should contact the ODST HR team for further advice and guidance if unsure on what needs to be done.
2. If the initial assessment identifies a safeguarding concern, then the manager must contact the area Safeguarding team or Local Authority Designated Officer (LADO) in the first instance. Advice in these incidences must be sought from the ODST HR team as well.
3. The nature of the disciplinary matter will determine the appropriate manager to undertake the initial assessment. If the allegation is against the Headteacher, the Chair of the Local Governing Body must liaise with the ODST HR team regarding conducting the initial assessment. Any initial assessment should be properly documented with clear rationale of the justification on whether to progress to formal investigation or whether to deal with matters informally.
4. The appropriate manager must look at the immediate facts/ circumstances of the case. They should therefore consider:

* whether it is a capability or conduct matter (Capability is when an employee is unable to achieve the expected performance standards due to lack of skill, ability or training. Conduct relates to employee’s behaviour or attitude towards performing their role),
* whether this is a serious matter involving safeguarding risks and therefore requires urgent escalation to LADO,
* whether this can be resolved informally by having a conversation with the employee,
* whether it warrants for a formal investigation.

*An initial assessment must be given priority. It is typically completed on the same day as the matter is identified.*

1. The outcome of the initial assessment could be:

* no further action required as there is no apparent substance to the matter,
* informal approach / mediation (If this does not work, then formal action must be taken),
* proceed to formal investigation.

The outcome of the initial assessment should be noted down clearly including justifications for why and how a particular outcome was reached. This should be retained in the employee’s HR records.

# Stages in Managing a Disciplinary Process

## The Informal Approach

1. It is recommended that for cases of minor misconduct, where possible, attempts should be made to resolve these informally in the first instance. As per the ACAS guidelines, counselling sessions or disciplinary investigatory meetings do not attract the right to be accompanied. A quiet word is often all that is required to improve an employee’s conduct or performance. In some cases, additional training, coaching and advice may be what is needed. However, there may be situations where matters are more serious or where an informal approach has been tried but is not working
2. If informal action does not bring about an improvement, or the misconduct is considered too serious to be classed as minor, the school leadership should proceed towards formal action. All conversations should be documented in detail and retained in the employee’s personnel records.

## How to undertake an informal approach

1. Talk to the employee in a private and confidential manner. This should be a two-way discussion, aimed at discussing possible shortcomings in conduct or performance and encouraging improvement. Criticism should be constructive, with the emphasis being on finding ways for the employee to improve and for the improvement to be sustained.
2. Listen actively and carefully to what the employee has to say about the issue. It may become evident there is no problem – if so, convey this to the employee.
3. Where improvement is required make sure the employee understands what needs to be done, how their performance or conduct will be reviewed, and over what period. It may be useful to confirm in writing what has been decided.
4. If, during the discussion, it becomes obvious that the matter may be more serious, the employee should be told that the matter will be continued under the formal disciplinary procedure.
5. Where it has been established that the issue warrants a formal disciplinary procedure, the school leadership must contact the ODST HR team and follow their advice. The employee will be informed in writing. The letter should include sufficient information about the next steps and will be devised by the ODST HR team in liaison with the relevant manager. A copy of the Disciplinary policy will be provided to the employee along with the letter.

## Things to consider prior to formal investigation.

1. Many investigations may be conducted without removing an employee from their typical working environment. On occasions, the school leadership may need to consider taking a temporary measure while an investigation is conducted to ensure the investigation is not adversely impacted and that having the employee attend work does not provide risk to the children or working environment. These measures could be:

* Temporary reassignment or working from home- Depending on whether the investigation is around alleged conflict or dispute between members of staff or likely to cause disruption or negative impact on the school’s environment or the investigation itself, the school leadership may decide to ask staff to work from home during investigation or reassign them to carry alternative duties that causes minimal disruption,
* Suspension- This requires the employee to stay away from workplace and not on duty whilst being paid their full contractual pay unless they become ill and are certified by a GP as unfit to work (in these circumstances normal sick pay entitlements will apply). It should be made clear to the employee(s) that suspension is temporary and not an assumption of guilt or disciplinary sanction. When considering suspension, the school leadership must consult the ODST HR team.
* Suspensions should be considered in situations where there is a serious allegation of misconduct and the employee: (this is not an exhaustive list)
  + is considered a safeguarding risk- this should be discussed with LADO immediately,
  + is considered a high risk to the wellbeing or safety of other members of staff / children,
  + could tamper with evidence, influence witnesses or misuse data,
  + may likely interfere with the investigation,
  + where relationships have broken down significantly between the school leadership and employee concerned as a result of which there is a lack of trust.
* Where suspension is being considered, the Headteacher or Chair of the Local Governing Body should complete a suspension risk assessment with support from the ODST HR Team and their School Improvement Partner (for class based roles) to establish the risks of suspending / not suspending.

## Alternatives to Suspension

1. Prior to completing the suspension risk assessment, the school leadership should consider all possible alternative options before recommending suspension. Some of the alternatives to suspension could include temporarily-

* moving member of staff to different area / duties,
* working from home,
* changing their working hours especially where is a potential risk of conflict amongst staff members,
* being placed on restricted duties,
* working under supervision.

## Decision to Suspend

1. Once a decision to suspend has been made, the employee will be notified promptly and should leave the work premises with immediate effect. The employee’s IT access may be withdrawn during suspension where there are concerns regarding the employee’s continued access to IT systems. The suspension letter should where possible, be given on the same day or within two working days. The suspension letter should state that the suspension is precautionary, pending the outcome of the investigation and advise the member of staff of:

* The reasons for suspension (the allegations against them),
* The terms and expected duration of the suspension,
* That the action of suspension does not imply guilt or that a decision about the outcome has been reached,
* That the employee must be contactable, but not attend the workplace or contact work colleagues unless required to do so by management,
* That the employee should not discuss the matter or breach confidentiality although they may seek advice from their recognised trade union representative,
* Point of contact for the employee including support during suspension.

## During a Period of Suspension

1. Every effort should be made to keep periods of suspension as short as possible and the decision to suspend should be kept under regular review.
2. Regular contact should be maintained between the employee and their manager / nominated point of contact during suspension. It is important the employee is supported during this time and can contact someone at their workplace to discuss any concerns they may have. While suspended, the employee must be reminded to keep matters confidential and not to contact work colleagues, unless authorised in advance.
3. The manager or their nominated contact should give regular updates to the employee about the suspension and inform them how long the suspension is likely to last.
4. During suspension, the employee is expected to remain contactable during normal working hours and be available to attend any meetings necessary as part of the investigation. If they are unable to do so, they should notify their manager / nominated contact person at the earliest opportunity outlining the reasons.
5. Employees should be given contact information for the school's Employee Assistance Programme and encouraged to access this support.
6. Before a suspended employee returns to work, careful planning and consideration should be given to supporting their return.

## Carrying out a Formal Investigation

1. An investigation is a fact-finding exercise designed to collect all the relevant information on a matter. A properly conducted investigation can enable an employer to fully consider the matter and then make an informed decision on it. It should take place promptly before memories fade.
2. The investigation should be carried out by an Investigating Officer who is not related to the employee or their manager and must not have any direct connection to the allegations raised i.e., they must be neutral to ensure they investigate the matter fairly, thoroughly and without prejudice.
3. The role of an Investigating Officer is to be fair and objective so that they can establish the essential facts of the matter and reach a conclusion on what did or did not happen. An Investigating Officer should do this by looking for evidence that supports the allegation and evidence that contradicts it. In potential disciplinary matters, it is not an investigating officer’s role to prove the guilt of any party but to investigate if there is a case to answer.
4. Wherever possible, a senior member of staff should act as the Investigating Officer. If the disciplinary matter relates to the Headteacher, then in such cases, the Chair of the Local Governing Body in consultation with the ODST HR Team and Deputy CEO/ Principal Schools Adviser will identify an external Investigating Officer to lead the investigation.
5. When it has been established that an investigation should take place, the Investigating Officer should determine the precise purpose and scope of the investigation
6. This will usually include:

* what the investigation is required to examine,
* the facts and matters under investigation,
* which policy applies,
* to whom the findings should be reported and to whom to contact for further direction if unexpected issues arise or advice is needed.

1. The Investigating Officer will arrange an investigation meeting with the employee. The timeframe for the meeting will consider the seriousness of the allegations and must strike a balance between being arranged promptly before memories fade with allowing time for the employee to arrange representation if desired.
2. If the employee does not wilfully participate during the investigation or refuses to attend an investigation meeting without notification to the Investigating Officer, the Investigating Officer may decide to carry on with the investigation in the employee’s absence. If this is to occur, the employee must be notified . However, if the employee is off sick or is unable to attend due to personal circumstances, all effort must be made to re-arrange the investigation meeting at a mutually convenient time.
3. Whilst there is no legal right to be accompanied in a disciplinary investigation meeting, ODST acknowledges that it can be beneficial. Where offered, the companion will be one of a workplace colleague, a workplace trade union representative or an official employed by a trade union. It should also be clarified in advance whether the employee requires any reasonable adjustments to be made in advance of the meeting.
4. Where allegations involve child protection issues e.g., abuse or safeguarding concern / risk, the Headteacher or Chair of the Local Governing Body must consult with the Local Authority Designated Officer (LADO) within 24 hours of receiving the allegation. Any further action under the school's Disciplinary procedure, will be suspended until agreement has been given by the Designated Officer for the Local Authority to proceed and in consultation with the ODST HR Team.
5. If the school becomes aware that an employee is subject to a criminal investigation, this may not in itself be a reason for disciplinary action. The school should contact the ODST HR team, School Improvement Partner and LADO (for a safeguarding incident) in the first instance. It may be possible for a disciplinary investigation to run in parallel to a criminal investigation, but the school leadership should seek advice from the Police and ODST HR team. An investigation by the school may need to be suspended where the Police advise that it may prejudice a criminal investigation. In such cases, it may be decided to suspend the employee without pay pending an investigation, however, legal / HR advice must be sought prior to any suspension without pay decision made. The employee should be kept informed. It is not always necessary to await the outcome of any court hearing before deciding on disciplinary action. The criminal justice system works based on guilt being ‘beyond reasonable doubt’ whereas under employment law an employer can decide based on the ‘balance of probability’.
6. If the employee against whom the disciplinary allegations are, cannot attend an investigation meeting, they must notify the Investigating Officer in advance setting out the reasons. All attempts should be made to reschedule the meeting at a mutually agreeable time. If the employee is off sick, Occupational Health advice should be sought to determine if the employee is well enough to participate or attend the investigation meeting. Reasonable adjustments should be considered if any, to ensure the employee is well supported and able to attend or participate in an investigation meeting. Where an employee simply refuses to engage in an investigation without giving any justifications despite attempts being made by the Investigating Officer, the Investigating Officer may decide to proceed with the investigation without the employee. However, the Investigating Officer must seek advice from the ODST HR team on this prior to proceeding in an employee’s absence.
7. On completion of the investigation, based on the evidence/facts and findings, the Investigating Officer should prepare a report. They must ensure that the report is sufficiently thorough, fact / evidence based and should not present assumptions. Their report will make a recommendation stating whether:
   * no further action is needed,
   * the disciplinary matter may be managed using an informal approach,
   * the allegation(s) under investigation requires the case to progress to a formal hearing.

The Investigating Officer will not be responsible for deciding any appropriate sanction. This will be decided at the formal hearing.

1. Where the investigation involves documented statements from witnesses, the Investigating Officer should seek consent from the witness to be able to share information where necessary. The employee subject to a disciplinary investigation should be given a copy of any written evidence, including witness statements, where the matter proceeds to a disciplinary hearing.

## Carrying out a Disciplinary Hearing

1. Where the Investigating Officer recommends that the matter progresses to a formal hearing as there is a case to answer, the school leadership must arrange to schedule the hearing as soon as possible, whilst ensuring reasonable time is given to the employee to prepare.

## Notifying the employee

1. The employee must receive an invite to the disciplinary hearing in writing giving a minimum of five working days’ notice of the hearing. Details of the alleged misconduct / gross misconduct will be provided in writing to the employee along with information regarding the possible outcomes of the disciplinary hearing and the names of those who will be present including the name of the Chair hearing the case.
2. Copies of any written evidence, which may include witness' statements, investigation report and the disciplinary policy, should be provided at the same time, along with details of the time and venue for the hearing. The employee should be notified of their right to be accompanied by a workplace colleague or a trade union representative at the disciplinary hearing.
3. The employee may submit a written response and any written evidence they would like to present at the hearing at least three working days in advance of the hearing. In exceptional circumstances the Chair will consider a request from an employee to invite a witness to attend on their behalf, or to provide a supporting statement. **The right to be accompanied**
4. The employee has the legal right to be accompanied at a formal hearing by a workplace colleague, a workplace trade union representative or an official employed by a trade union.
5. The companion (representative) can present and/or sum up the employee's case, say things to support the employee's case and confer with them during the hearing. Their role is not to answer questions on behalf of the employee.
6. Where an employee's representative cannot attend on the proposed date of the hearing, the employee can suggest an alternative time and date so long as it is reasonable, and it is not more than five working days after the original date.

## The Chair of a Disciplinary Hearing

1. The disciplinary hearing will normally be led by a senior leader with no conflict of interest and neutral to the initial investigation.
2. Where a Disciplinary Committee is formed, it would normally consist of three members.
3. Where Governors are selected for a Disciplinary Committee panel, there must be no potential conflict of interest. It is therefore not appropriate for staff governors to be members of the school's disciplinary panel/committee. A member of the ODST HR team will also be present and advise the panel on procedural matters in compliance with HR policies and procedures. Their role is not to make decisions on behalf of the disciplinary committee or be deemed as influencing them to reach a particular outcome.
4. Appropriate arrangements will be made to enable notes to be taken of the disciplinary hearing.
5. Audio or video recording of disciplinary hearings is not permitted. However, it may be permitted if the hearing is taking place virtually due to exceptional circumstances and all those attending the meeting have no objection for the recording to take place.

## Purpose and format of a disciplinary hearing

1. The purpose of a hearing is to consider the facts and circumstances of the matters to enable to decide what action to take, if any. It should ensure that any reasonable adjustments required for the employee are taken into consideration and make sure someone takes notes.
2. The Chair of the meeting should:

* outline the allegations made against the employee,
* go through the evidence making use of the investigation summary,
* in the case of a panel meeting, provide the opportunity for other panel members to ask questions and clarify information.

The employee should be given the opportunity to:

* set out their case,
* respond to the allegations,
* be able to ask questions,
* raise any mitigating circumstances.

The employee’s companion should be allowed to:

* speak for the employee but not on behalf of the employee or respond to questions on behalf of the employee,
* talk with the employee during the hearing,
* take notes.

## Absence at a Disciplinary Hearing

1. It is important to establish whether the absence is due to illness or injury or whether the absence is a deliberate act or reluctance / refusal to participate and engage in the disciplinary procedure. The panel/ Chair may decide after reasonable attempts to engage with the employee, that they will continue with the hearing in absence of the employee. However, before making this decision, HR advice should be sought. The employee should be notified in writing and be given the justification if the hearing is to take place in their absence.
2. Where the employee is unable to attend due to sickness or injury, Occupational Health advice must be sought to determine if the employee is fit enough to participate in the hearing and the meeting should be rescheduled accordingly. If the employee is unable to attend due to them feeling anxious or stressed about the actual meeting, all attempts must be made to assure the employee and explore whether the hearing can take place later, or as a last resort if the employee is able to participate virtually either by phone call or video meeting. The employee should be encouraged to speak to their union representative or workplace companion for support and assurance.

## At the End of a Hearing

1. The hearing should be adjourned to consider the case carefully before making a decision and at the end of it, the next steps should be outlined to the employee and when they are likely to hear the outcome. The decision of the hearing should be given to the employee in writing, usually within five working days. The employee will be notified of their right to appeal.

## Deciding What Action to Take and the Disciplinary Penalty

1. The hearing may decide, based on the available information, either:

* that no action is necessary,
* to issue a disciplinary warning,
* to demote the employee,
* to dismiss the employee.

1. When deciding what disciplinary penalty is appropriate and what form it should take, consideration will be given to circumstances and facts of the case including:

* the employee's work and disciplinary record including any current warnings, their position and length of service,
* any special or mitigating circumstances which might make it appropriate to adjust the severity of the penalty,
* whether the proposed penalty is reasonable and proportionate in view of all the circumstances and in legal compliance ensuring there is no bias or unfairness towards the employee,
* whether any training, additional support or adjustments to the work are necessary.

## Disciplinary Sanctions

1. Disciplinary sanctions will normally be issued in the sequence set out below. However, serious matters of misconduct may result in an immediate final written warning or the decision to dismiss, where the hearing considers it to be a reasonable response based on the circumstances and facts of the case.

**First written warning**: a first warning is normally issued in respect of less serious or a first act of misconduct. This will be in writing and set out the nature of the misconduct and the change in behaviour required and the right of appeal. The warning will also inform the employee that further disciplinary action may be considered if there is no sustained and satisfactory improvement or change. A record of the warning will remain active on the employee's record for a specified period, at least six months, at which time it will be spent and will then be retained on their personnel file.

**Final written warning**: if the offence is sufficiently serious, or if there is further misconduct or a failure to improve during the currency of a prior warning, a final written warning may be given to the employee. This will give details of the complaint, the improvement required and the timescale. It will also warn that failure to improve may lead to further disciplinary action resulting in dismissal (or some other action short of dismissal) and will refer to the right of appeal. A copy of this written warning will remain active on the employee's record for a specified period of twelve months at which time it will be spent with a record retained on their personnel file, subject to achieving and sustaining satisfactory conduct or performance.

**Dismissal with notice**: the decision to dismiss an employee may result if after examining the case at a hearing it finds that:

* despite previous formal warning/s, further misconduct has occurred or there has been a failure to improve despite support and reasonable adjustments provided to the employee,
* the misconduct is of such a serious nature that dismissal is deemed to be a reasonable response, for example a serious safeguarding breach,
* As an alternative to dismissal, depending on the circumstances, it may be decided to demote the employee or extend their final written warning to allow the employee an opportunity to improve.

**Summary Dismissal** is when an employee is dismissed instantly without notice or pay in lieu of notice (PILON), usually due to gross misconduct.

## Appeals

1. Employees have the right to appeal against disciplinary action to an Appeal Committee and must do so in writing, within 10 working days of receiving the written outcome of the disciplinary hearing. Details of whom to appeal to will be provided in the outcome letter.
2. Employees must make clear the grounds of their appeal providing full details. Examples of reasons to appeal may be the level of sanction issued was unreasonable; a serious flaw or a fault in the findings or procedures followed.
3. The appeal will be a review of the disciplinary decision and not a rehearing. It will examine the grounds of the appeal, the procedures followed and the reasonableness of the outcome.
4. Appeals should be arranged promptly. The employee will be invited to attend the appeal meeting in writing and will usually be given a minimum of five working days' notice. The employee has the right to be accompanied by a work colleague or trade union representative.
5. At the appeal the employee will be given the opportunity to state their case and provide any supporting evidence.
6. The appellant, and appeal panel, will be given the opportunity to ask questions. Witnesses would not normally attend an appeal hearing where it is a review of the disciplinary decision.
7. The decision of the appeal panel will be put in writing to the employee usually within three working days of the appeal hearing. The decision of the appeal panel is final.
8. The Appeal Committee must be made up of Governors or individuals appointed by ODST with no previous involvement with the case.

## Avoiding Delays

1. It is in everyone’s interests for matters to be resolved as quickly as possible as prolonged, unresolved disciplinary matters can be stressful for employees and other parties and can cause a great deal of disruption to the school and pupils.
2. The Headteacher and school leaders will make every effort to deal with matters promptly and without unreasonable delay. If the employee’s representative cannot attend on a proposed date, the employee must provide alternative times and dates of their availability, so long as these are reasonable and not more than five working days after the original date. Alternatively, employees can nominate another representative.
3. Employees and their representatives must take all reasonable steps to avoid delays, make every effort to attend the meetings required under this procedure and to provide any information requested, promptly and in advance of any meetings. If an employee is unable to attend a meeting because of circumstances beyond their control, they should inform the school as soon as possible.
4. Employees will be expected to participate and attend all meetings, unless a GP or Occupational Health Physician advises that that they are not fit to do so. In these circumstances other arrangements may be agreed with the employee to ensure matters can still proceed such as for them to provide a written statement and/or for a representative to act on their behalf. The employee’s absence will be managed in accordance with the school's Managing Sickness Absence Procedure.
5. A decision to proceed in the employee’s absence can be made if:

* the meeting has already been rearranged once and the employee fails to attend for a second time without reasonable justification and notification provided in advance,
* the employee fails to attend without explanation, or there is evidence that the employee has not made sufficient attempts to attend,
* the employee is on long-term sick leave and medical opinion is that they will be unable to attend meetings in the near future. In these circumstances alternative arrangements will be discussed with the employee e.g., the employee can supply written information instead, virtual meeting or ask a representative to attend on their behalf.

## Referrals to the Disclosure and Barring Service

1. Schools are required to refer to the DBS anyone who has harmed or poses a risk of harm to a child and who has been removed from working (paid or unpaid) in regulated activity or would have been removed had they not left. The DBS will consider whether to bar the person.

## Regulation of Teacher Misconduct

1. In cases of serious teacher misconduct the school will make a referral to the Teacher Regulation Agency (TRA)which is an executive agency of the Department for Education. The employee will be notified that such a referral will be made. The TRA is responsible for regulating the teaching profession in England and will investigate cases of serious teacher misconduct and decide whether to refer a case to a professional conduct panel. The panel then investigates whether a prohibition order should be issued.

## Grievances and the Disciplinary Process

1. Where an employee who is subject to formal disciplinary proceedings, wishes to raise a grievance about any related matters, this will not lead to the disciplinary process being postponed as they will have the opportunity to raise their concerns at the formal hearing. If an employee wishes to raise a grievance or whistleblowing matter that is unrelated to the disciplinary proceedings, it will be dealt with separately and concurrently in according with the school's grievance or whistleblowing procedure.

# Appendix 1

## Aspects of a Disciplinary Hearing are likely to include:

1. The Chair introduces those present.
2. Referring to the investigation documentation, the Chair will outline details of the case against the employee to identify the areas of alleged default.
3. The Chair will invite the employee and/or representative to respond in full to the allegations.
4. The Chair, and any other members of the hearing panel, will have the opportunity to ask questions and seek clarification from the employee.
5. The Chair will adjourn the meeting while they give consideration to the case and come to a conclusion. If clarification on any point is needed, the employee and their representative should both be recalled.
6. The Chair will announce the decision or advise that a decision will be communicated in writing within three working days.

The process above captures the general principles within a disciplinary hearing. Whilst the specific details may well vary from case to case- e.g., a hearing may be chaired by a Headteacher rather than a panel- the general principle of evidence being presented and the employee having an opportunity to respond will always be applied.

# Appendix 2

## Aspects of an Appeal Hearing are likely to include:

1. The Chair introduces those present.
2. The Chair invites the employee to present their case for appeal.
3. The Chair invites members of the appeal panel to ask questions of the employee.
4. The Chair invites the employee to ask questions.
5. The employee and their representative withdraw leaving the panel to reach a decision.
6. All parties reconvene for the decision to be communicated, or if necessary, informed that the decision will be communicated in writing within three working days.