



# **SOLIHULL METROPOLITAN BOROUGH COUNCIL**

# **DISCIPLINARY POLICY**

**Revised December 2024**

**This policy sets out the terms of agreement reached by those participating in the Council's Consultation and Negotiating Framework**

**For School's (e.g. some Academies) not participating in the Council's Consultation and Negotiation Framework The school must undertake negotiation and consultation with relevant Trade Union/ Staff Association representatives before this policy is adopted by the School Governing Body. Advice is available from your HR provider on how to undertake this if required.**

SMBC can provide information in a range of different ways, for example via the use of audio tape, summarising large documents, interpretation, translation and British Sign Language interpreting services.

If you require this information in an alternative format or need assistance because English is not your first language, please contact your nominated Human Resources Advisor in the first instance for further support.

## DISCIPLINARY POLICY

**Current version:** 23.1

**Document type:** Final

**Prepared by:** H Flinter – HR Business Manager  
P Sharma – HR Advisor (Policy)

**Approved by:** SMBC’s Consultation and Negotiating Framework

**Review date:** May 2024

**Circulation:** All employees, Intranet & Schools’ Extranet

### Document revision dates

Version	Date	Summary of changes
22	April 2018	GDPR statement included in policy and appeal form. Amended wording on p17 due to the NCTL disbanding and replaced by DfE and Teaching Regulation Agency.
22.1	January 2019	Revised investigation stage section (p11) – new process of audio recording investigation meetings added (for Audit investigations only).
22.2	November 2020	Reference to new Resolution Policy and removed Dignity at Work policy.
23	March 2022	Updated in line with Hybrid Working and Smarter Ways of Working requirements. Introduced offer of mediation at informal stage and revised the detail around sanctions that may be applied. Transferred explanatory information to the guidance document for managers.
23.1	August 2022	Clarified policy to state that audio recordings of investigation interviews will be made and that all parties will be notified accordingly.
23.2	December 2024	Clarified that recordings of investigation interviews will be undertaken when the Councils Audit Team undertakes the process on behalf of schools which will only be in exceptional cases, or where schools choose not to use a minute taker for hearings or interviews and have the meeting recorded and use the transcript to produce the minutes or statements.

# Solihull M.B.C. Disciplinary Policy

## CONTENTS

	Page/s
The Scope and Purpose	4
Principles	4-5
Data Protection	5
Definitions	6
Responsibilities	6-7
Misconduct	7
Gross Misconduct	7
Suspension and Transfer	7-8
Safeguarding Vulnerable groups	8
Agency Workers	9
Informal Approach	9
The Investigation	9
Disciplinary Hearing	10-12
Right of Appeal	12-13
Appeal Hearing	13
<b>Appendices</b>	
Appendix 1 – Examples of misconduct and gross misconduct	14
Appendix 2 – Disciplinary Appeal form	15-16
Appendix 3 – Model Risk Assessment for Suspension	17-18
Appendix 4 - Flowchart	19

# **DISCIPLINARY POLICY**

## **The Scope and Purpose**

This policy applies to all Solihull Council employees, except JNC (eg the Monitoring Officer and Section 151 Officer) employees, who will be managed under JNC terms and conditions.

This policy aims to encourage a good working environment where employees conduct themselves appropriately to fulfil their contract of employment, and meet required Codes of Conduct (e.g. Health and Care Council Professions standards of conduct, performance and ethics). The policy is designed to enable individual cases to be resolved fairly, consistently and in a timely manner. The policy should be used to deal with alleged breaches of standards and professional codes of conduct and should not be seen simply as a punitive measure. The policy will be used where employee behaviour is unacceptable or an act of misconduct has occurred.

This policy may be used as a result of an investigation into a complaint of harm against an employee working with children and/or vulnerable adults. Initially in these cases the Managing Allegations Policy will need to be considered prior to the disciplinary procedure.

The disciplinary policy is not intended to be used for matters that can be handled by the Capability or Sickness Absence Management policies. This policy is also not intended to cover issues of misconduct that arise during probation, for which the Probation policy should be applied. However, where allegations of gross misconduct arise, these should be handled under this policy. All policies can be found on the Council's [Intranet](#)/ School [Extranet](#).

The application of this policy and the standards of behaviour set out also extends to settings outside the workplace whilst off duty e.g. work-related social events. Guidance on how to interpret the clauses or apply the information contained within this policy should be obtained from Human Resources.

Additional information that provides advice for managers on the procedural aspects that should be applied can be found in the 'Disciplinary Procedure Guidance Notes for Line Managers/Headteachers' document which supplements and supports the detail within this policy.

## **Principles**

The employer reserves the right to implement the policy at any stage, as set out below, taking into account the alleged misconduct of an employee.

Issues of conduct should be dealt with as they arise, informally in the first instance where appropriate, before referring matters onto the formal procedure.

Employees have a right to be accompanied by a recognised and accredited trade union representative (or an official employed by the trade union) or a nominated work colleague during any part of the **formal** stages of the disciplinary procedure. Exceptions to this requirement may be acceptable in particular circumstances in order to accommodate a reasonable adjustment. Guidance should be sought from Human Resources beforehand.

In the event of any action being proposed under this policy against a Trade Union representative, HR must be informed and the appropriate full time official of that Trade Union should be notified prior to the process being instigated.

No disciplinary action will be taken against an employee until the case has been fully investigated and the decision to proceed has been made by the relevant senior manager, and a sanction will not be issued without a robust investigation and subsequent hearing. The only exception to this would apply in misconduct cases where the employee acknowledges that misconduct has been

committed, after being notified of the allegations and presented with conclusive evidence during an initial investigation or fact-finding meeting, and, after seeking advice from their nominated representative, where appropriate, is prepared to accept a sanction without a full investigation and hearing. This step would need to be agreed by all parties involved and approved by the Head of HR and relevant Assistant Director. Disciplinary proceedings would ensue if the employee reconsidered their position within five working days. The above will not apply in Safeguarding cases.

Disciplinary action would not necessarily be invoked if an employee is charged with or convicted of a criminal offence outside of their employment, though consideration will be given to the nature of the alleged offence and its relevance to and effect on the employee's job role as well as the extent to which a relationship exists between the matter in question and potential reputational harm to the Council.

In cases where an employee raises an issue pertaining to Formal Resolution under the Resolution policy, it may be appropriate due to the circumstances in certain cases to suspend the disciplinary process temporarily. If the issues are unrelated both cases may run in parallel and be addressed simultaneously. Each situation will be different, therefore advice should be sought from HR in the first instance.

Wherever it is considered that aspects of an employee's hybrid working arrangement are contributing towards unacceptable standards of behaviour, the facility for hybrid working may be amended or temporarily withdrawn until an improvement has been sufficiently demonstrated.

Audio or visual recordings of proceedings by the employee or their representative are not acceptable at any stage of this process. The employee, or any person acting on their behalf, is not permitted to covertly record any informal or formal meeting held by the Council. Any breach of this provision may lead to disciplinary action against the employee, up to and including dismissal. This is on the basis that we expect employees to be open and honest and to treat colleagues with dignity and respect, and making secret recordings undermines trust between individuals. Anyone making such recordings in contravention of this would also be personally responsible for any breach of Data Protection legislation. There is a potential that the use of non-covert audio recording devices may be allowed as a reasonable adjustment to accommodate a health condition or disability where previously deemed appropriate by Occupational Health or an employee's GP/Medical Practitioner; this will be with the express consent of everyone present. Please also refer to the Council's [Video Conferencing guidance](#) and [Electronic Communications and Guidance](#).

The Council's policy has been compiled in accordance with the ACAS Code of Practice on disciplinary and grievance procedures.

The Council is obliged to review the application of this policy in relation to protected characteristics under the Equality Act 2010.

## **Data Protection**

The Council processes personal data collected during the investigation and any subsequent stages of disciplinary action in accordance with its data protection policy. In particular, data collected as part of these stages is held securely and accessed by, and disclosed to, individuals or professional bodies only for the purposes of completing the disciplinary process. Inappropriate access or disclosure of employee data constitutes a data breach and should be reported in accordance with the Council's data protection policy. It may also constitute a disciplinary offence, which will be dealt with under this policy.

## **Definitions**

- 'School based staff' refers to both teaching and support staff at schools.
- 'Non-schools' refers to all employees (other than school-based staff) on local government terms and conditions, including catering staff. It also refers to centrally employed teachers on teachers' terms and conditions.
- 'Employer' refers to either Solihull MBC or the school.
- 'Line Manager' refers to supervisor/Headteacher or Chair of Governors.
- 'Conduct' refers to reasonable standards of conduct and behaviour that would be expected of an employee in order to comply with their contract of employment.
- 'Misconduct' refers to behaviour or conduct that is considered unreasonable and unacceptable. It may also contravene an employee's contract of employment and/or breach some of its terms and conditions. Examples of misconduct are provided in Appendix 1.
- 'Gross misconduct' refers to conduct which is extremely serious and which, because it strikes at the very heart of the employment relationship, could result in dismissal for just one offence. Examples of gross misconduct are provided in Appendix 1.
- 'Bundle' refers to the information gathered during the course of an investigation, including copies of signed witness statements and other relevant documentation, that will be presented or referred to during a formal hearing.

## **Responsibilities**

### Employee

To make themselves available and to co-operate during each stage of the process in order to allow a full, thorough and transparent investigation to take place and ensure a timely conclusion.

### Line manager/ Headteacher/ Chair of Governors

To ensure employees have the opportunity to be acquainted with this policy and that they themselves are aware of both the content and their delegated responsibility. To undertake prompt and thorough investigations, of any matter of misconduct, in accordance with the policy. Consult with HR, as appropriate, when using this document.

### Human Resources (HR)

To provide ongoing support to those involved in the application of this policy during each stage of the process. To liaise with Audit, informing them of all disciplinary matters as they arise, as soon as possible. To provide technical and procedural advice during any formal disciplinary or appeal hearings.

### Nominated and Approved Individual Accompanying the Employee

To accompany, advise and support an employee throughout all stages of the formal procedure, where requested. The representative will be expected to act in accordance with this policy and ACAS guidelines.

### Audit

Audit will be involved where circumstances warrant an investigation into matters of a financial or fraudulent nature. Equally, where practicable, co-investigations may be undertaken by Audit and the disciplinary Investigation Officer in order to progress matters.

### Investigating Officer

To undertake a full, thorough, fair and objective investigation, gathering all the relevant information available at the time.

### Local Authority Designated Officer (LADO)

To liaise with Headteachers/Senior Managers, Governors, Police and Education and Children's Services in the case of an allegation being made against an employee working with children and young people. To ensure that records relating to such allegations are maintained, and to work in partnership with the Regional Investigation and Referral Support Coordinator.

### Safeguarding Adults Manager

To take the lead responsibility for Adult Protection, reporting to the Director for the area.

## **Misconduct**

Misconduct occurs when an employee's behaviour potentially breaches the necessary standards required, such as the implied term of mutual trust and confidence between the employer and employee within the employment contract, or a code of professional conduct or specific organisational rules and protocols (for example IT security or data protection regulations).

## **Gross Misconduct**

Gross misconduct is conduct which is extremely serious and which because it strikes at the very heart of the employment relationship could result in dismissal for a first offence. In normal circumstances, if on completion of an investigation under the disciplinary procedure, the employer is satisfied that gross misconduct has been established, this will normally result in summary dismissal i.e. dismissal without notice.

Where there are allegations of gross misconduct the Head of Service/Chair of Governors shall be advised immediately. The Head of Audit must be informed by the appropriate Director or authorised officer of any disciplinary matter.

In cases of potential gross misconduct, consideration should be given to whether the employee should be suspended or transferred. Please see below for details.

## **Suspension and Transfer**

In certain cases, for example in cases of potential gross misconduct, or where relationships have broken down, consideration needs to be given to a temporary transfer or a temporary restriction of duties. If, however, this is deemed inappropriate (e.g. the employee's presence within the workplace would hinder the investigation or evidence has been tampered with) and prima facie evidence of potential gross misconduct exists, then after careful consideration, a period of suspension with full pay may be arranged. This step must be taken as a last resort and undertaken in consultation with HR. The terms related to the suspension should be confirmed to the employee in writing by no later than three working days. Any suspension will be enacted without prejudice and does not constitute disciplinary action. A model 'Risk Assessment for Suspension' is available to assist the line manager/Headteacher in this process (Appendix 3).

Where there is cause to suspect that a child and/or vulnerable adult are at risk of harm or there is a police investigation, there may be the need to suspend the employee. Consideration should first be given to alternative work with no direct contact with children or vulnerable adults.

Equally, if during the course of an investigation, evidence comes to light to suggest that gross misconduct has occurred, the employee may be:

- (i) temporarily transferred;
- (ii) allocated alternative work with restricted duties; or
- (iii) suspended on full pay, as detailed above.

**For non-schools' staff:** Any decision to suspend must be approved by a Head of Service or equivalent senior manager.

**For school-based employees:** The Headteacher, or nominated senior person, shall have the power to suspend any teacher or school-based employee, in consultation with HR. In the case of a Headteacher, the Local Authority may suspend in consultation with the Chair of Governors.

Any decision to suspend or transfer an employee must be kept under regular review, and appropriate contact must be maintained with the employee during the period of suspension.

An employee who is suspended must be available and contactable during their normal working hours. Whenever an employee is unavailable to attend meetings or hearings, appropriate action will be taken which may consequently impact upon pay.

If an employee has been signed-off sick during a period of suspension, sick pay will apply in accordance with the Council's Sickness Absence Management policy.

In certain exceptional circumstances, employees may be suspended on full pay to allow for a 'cooling off' period. Such suspensions will by their nature, be of a limited duration (and not normally longer than five working days). Guidance should be sought from Human Resources to ascertain whether this would be acceptable in the circumstances.

### **Safeguarding Vulnerable Groups**

In order to ensure the protection of children, young people and vulnerable adults within the Authority, the following will apply in certain circumstances:

- If an employee resigns during the course of an investigation, the investigation must continue to completion and the outcome will need to be recorded.
- Whilst any sanction imposed would only remain live from the period stated for the purpose of future disciplinary decisions, any sanction from an investigation into harm against children and vulnerable adults may remain on an employee's file for 10 years.
- Details of any allegations or concerns around harm to children or vulnerable adults (including unproven allegations); the outcome of the investigation into those concerns; the conclusion reached; and how the matter was resolved, will be kept on file for 10 years and may be used in a future reference request (unless the outcome from the Position of Trust process established that the allegations were false or malicious). A record will be kept for 10 years of all other allegations that are substantiated (proven), unsubstantiated (neither proven nor disproven due to a lack of sufficient evidence) or unfounded (no evidence or sound basis to back up an allegation).

This is to ensure that SMBC is compliant with safeguarding statutory guidance. Please refer to the Managing Allegations Against Employees – Children and Young People for further information.

If an employee is barred by the Disclosure and Barring Service (DBS) or receives an unsatisfactory DBS check during the course of their employment and cannot legally be employed in their role, they would be subject to the Council's disciplinary policy, and may ultimately be dismissed by the organisation.



## **Agency Workers**

Where a conduct or behavioral issue has been identified involving an agency worker, the matter should be immediately referred to the agency, who will investigate accordingly and manage the incident under their own disciplinary procedures.

Managers/Headteachers are also required to inform HR of any conduct or behavioural incidents involving agency workers. This is to ensure that any risks or implications associated with the agency contract, affected employees or other operational concerns or potential reputational damage can be addressed.

## **Informal Approach**

Solihull Council recognises that in some cases of misconduct, informal counselling of the employee by their immediate line manager/Headteacher may quickly resolve the problem, thus reducing or eliminating the need for formal disciplinary action.

As part of the informal process, the manager may seek to introduce mediation as a way of resolving matters that arise (for example, through personality clashes). Mediation involves a neutral third party invited to work towards a constructive resolution for a specific issue. Mediation can be used to rebuild working relationships, and all parties can be left satisfied with the outcome. For further information, please refer to the Resolution policy.

In the first instance, managers need to consider dealing with matters through informal resolution before referring any cases on to the formal stage of the procedure. As this constitutes an informal one to one discussion, which will not result in a formal disciplinary sanction e.g. written warning, employee representation or an accompaniment will not be appropriate at this stage. A follow up discussion/s may be held after an appropriate period to provide an opportunity to review whether the desired outcomes have been achieved and to encourage sustained improvement.

If informal action does not result in the employee demonstrating acceptable standards of behaviour or if the misconduct is deemed serious then formal disciplinary action will need to be instigated.

Advice should be sought from HR before progressing to the formal stage.

## **The Investigation**

The employee who is the subject of the alleged misconduct will be informed in writing of the matters to be investigated and these should reflect one or more of those reasons listed in Appendix 1 of the policy.

The employee should also be provided with a copy of this policy and reminded of their right to be accompanied by a recognised and accredited trade union representative (or an official approved by the trade union) or a nominated work colleague. Exceptions to this requirement may be acceptable in particular circumstances in order to accommodate a reasonable adjustment. Guidance should be sought from Human Resources beforehand.

The Investigating Officer will aim to complete the investigation within 20 working days of being allocated the case. Where this cannot be achieved the investigation will be completed as soon as it is possible to do so, and the employee will be kept fully informed of the progress made and timescales being worked to by the Investigating officer. Interviews undertaken by the Councils Audit Team will be conducted via an audio recording made by the Investigating Officer. All parties will receive prior notification that audio recording will take place. When the investigation has been completed, the Investigating Officer will prepare a report. On completion of the investigation report, the report should be forwarded to HR, who in conjunction with the appropriate manager will review the report, determine if the allegation(s) can be substantiated and arrange for appropriate action to be taken. Within schools, audio recordings will only be undertaken if the Council's Audit Team

undertake the investigation. Where schools arrange for an Investigating Officer outside of audit services then the school can choose whether to take an audio recording and to use the transcript from this recording to produce minutes or statements.

## **Disciplinary Hearing**

A disciplinary hearing will be convened if there is a case to answer following the completion of the investigation. Relevant documentation will be emailed securely wherever possible, and the employee will be given at least five working days' notice of the hearing. They will also be informed of their right to be accompanied by a recognised and accredited trade union representative (or an official employed by the trade union) or a nominated work colleague. Exceptions to this requirement may be acceptable in particular circumstances in order to accommodate a reasonable adjustment. Guidance should be sought from Human Resources beforehand.

A disciplinary hearing may take place in person or remotely via video conferencing. It is acceptable to conduct a hearing remotely if: the employee has access to and is comfortable using the technology being adopted; and the employee's representative and all other relevant parties are able to join the hearing.

## **The panel**

### **A. For non-schools:**

The hearing will be conducted by a panel consisting of at least two officers; an appropriate senior manager to chair the hearing and a representative from HR, neither of whom will have previously been involved in the case. An additional panel member with sufficient operational knowledge of the service area or a specialist who understands the nature of the issue/s being addressed may also participate. The panel Chair will have the overall responsibility of reaching any decision or confirming any penalty following the conclusion of the hearing. In cases where the outcome could result in dismissal, the senior manager hearing the case will be a Head of Service or equivalent nominee with the authority to sanction the termination of an employee's employment contract.

### **B. For schools:**

1. Where an investigation has substantiated that the alleged act or acts are potentially matters of misconduct and do not appear serious enough to constitute gross misconduct or are unlikely to warrant dismissal:
  - A Headteacher will chair the hearing where the policy is being applied to a teacher or other school-based employee.
  - The Chair of governors will chair the hearing where a policy is being applied to a Headteacher.
  
2. Where an investigation has substantiated that the alleged act or acts are potentially matters serious enough to constitute gross misconduct, and there is a strong possibility of dismissal, and particularly in cases where an employee has either allegedly committed an act of gross misconduct or has an outstanding live final written warning:

A panel of three governors will be convened, one of whom will act as panel chairperson, where the policy is being applied to teachers or school-based employees. The panel of governors may decide on matters that could potentially result in a dismissal. Where the panel is convened in order to consider matters related to a Headteacher, the Corporate Director or appropriate designated deputy will attend to provide Local Authority advice to the panel.

A representative from HR will also attend all disciplinary hearings to provide professional advice and guidance.

### **Absence During Disciplinary Proceedings**

Whilst it is recognised that it is natural for employees to feel concerned about being informed of disciplinary issues, this must not prevent the disciplinary process from continuing accordingly. Employees are reminded of their obligation to 'be available' to the employer and to enable the disciplinary process to proceed without undue delay.

In exceptional circumstances, where an employee is unable to attend work or make themselves available following the commencement of disciplinary proceedings, consideration may be given to allow the employee to:

1. Postpone the hearing or meeting once, providing there is satisfactory evidence or justification. The hearing may be rearranged to take place no longer than five working days after the original date specified if the employee or their representative cannot attend.
2. Send in written representation to be taken into account instead
3. Send a representative in their place
4. Opt for a combination of options 2 and 3

Failure to comply with the above may result in withdrawal of pay, following appropriate consideration of the circumstances.

### **Absence of Individual Accompanying Employee**

In accordance with ACAS guidance where an individual who is accompanying the employee during the process is unable to attend a disciplinary or appeal hearing, the employee can suggest an alternative time and date, so long as it is reasonable and not more than five working days after the original date. The Chair of the panel will need to authorise any extensions beyond this.

### **Possible Sanctions**

At the conclusion of the hearing, the panel Chair will decide on the most appropriate course of action from the list below:

1. The allegation/s cannot be proven.
2. The allegations are proven (in full or part) but no formal action is appropriate. The case may be referred back to the informal stage.
3. The allegations are proven (full or in part) and a formal sanction is appropriate. The panel will then consider the most appropriate course of action in light of all relevant information. The Chair's decision can be a:
  - First written warning (which will normally remain live on the employee's HR file for twelve months); or
  - Final written warning (which will normally remain live on the employee's file for twenty-four months, although in exceptional circumstances the panel may choose to extend the period as an alternative to dismissal)

Where acts of gross misconduct are proven the employee may be summarily dismissed (dismissal with immediate effect where pay in lieu of notice is not paid). However, as an alternative to dismissal

the panel may issue a final written warning and also impose a permanent transfer to a different job. This will constitute an offer of a single, specified and available post that will usually be a demotion to a lower graded role. There will be no protection of pay; the employee will automatically serve a probationary period; and a final written warning will be retained on file for a period of 2 years after which time it will be disregarded for disciplinary purposes provided there have been no further incidents.

Where the employee has committed a further act of misconduct following a final written warning the employee may be dismissed with notice (though will not be required to attend work during their notice period) or with pay in lieu of notice,

If, during a live warning, an employee commits further misconduct which could result in a warning at the same level, the sanction enforced should ordinarily be escalated one level higher. For example, an employee with a current 12 month written warning for misconduct would not receive a second warning of this type during the live period but a final written warning that would remain on file for 24 months.

Due regard will be given to the employee's previous employment record and dismissal will not normally be enforced for a first offence unless the employee is found to be blameworthy of gross misconduct.

Alongside the confirmation of a formal warning, the satisfactory completion of a training course or development activity may be required in order to evidence an improvement in behavioural standards.

If it has been found during the course of the investigation that an employee has taken or been in receipt of monies they were not entitled to, they must repay the monies owing.

### **Right of appeal**

Where employees are dissatisfied with the outcome of a disciplinary hearing, they can appeal in writing against the decision within five working days of receiving written notification using the form in Appendix 2. The employee's appeal must clearly state their grounds for appealing.

An employee may choose to appeal, for example, because:

- They believe a finding or sanction is unreasonable
- New evidence has come to light
- They believe the disciplinary process applied was procedurally flawed

Appeals should be sent to:

#### **A. For non-schools:**

The Head of Human Resources or in the case of an appeal against dismissal this should be sent to the Head of Democratic Services.

#### **B. For schools:**

The Chairperson of the school governing body. If the Corporate Director of Children's Services chaired the Disciplinary hearing, then the appeal should be sent to a Senior Manager nominated by the Corporate Director.

## **Written notification**

Relevant documentation will be emailed securely wherever possible, and the employee will be notified in writing giving, at least five working days' notice of the date, time, venue and format of the appeal. They will also be informed of their right to be accompanied by a recognised and accredited trade union representative (or an official employed by the trade union) or a nominated work colleague. Exceptions to this requirement may be acceptable in particular circumstances in order to accommodate a reasonable adjustment. Guidance should be sought from Human Resources beforehand.

## **Appeal Hearing**

The purpose is to hear the grounds for appeal and review the original decision to establish its fairness. The appeal hearing is not intended to be a 're-run' of the original hearing, unless in exceptional cases the Chair of the appeal panel feels strong justification has been put forward to warrant this. If this course of action is deemed necessary, appropriate arrangements will be administered accordingly.

If the employee fails to attend the hearing, it may continue in their absence, unless a reasonable explanation for non-attendance has been provided to the panel and approved by the Chair. In such cases, arrangements will be made to reconvene the hearing within five working days. A second occurrence of non-attendance will result in the hearing being held in the employee's absence unless sufficient justification for not doing so has been authorised by the Chair.

## **The Panel**

### **A. For non-schools:**

The hearing will be conducted by a panel consisting of at least two officers; an appropriate senior manager to chair the hearing and a representative from HR, neither of whom will have previously been involved in the case. An additional panel member may also participate. The panel Chair will have the overall responsibility of reaching any decision following the conclusion of the appeal.

Where the appeal is against dismissal, the appeal will be heard by the Appeals Sub-Committee of the Governance Committee.

### **B. For Schools:**

The appeal will be heard by a panel consisting of three governors, none of whom will have been previously involved in the case. The panel shall be assisted by a HR representative, who has not previously been involved in the case, to act as a technical advisor.

Where possible, all appeal hearings should be convened within fifteen working days of receiving notification from the employee. Where this is not possible the employee will be kept informed of future timescales.

## **Possible Outcomes**

Following the appeal hearing the Chair must inform both parties of the appeal decision, and the reasons for it within five working days. The Chair must state clearly that the decision is final and that no further internal right of appeal is available to the employee. The decision can be:

1. Appeal upheld in full (and disciplinary action withdrawn)
2. Appeal upheld in part (and disciplinary action reduced with the awarding of a lower-level sanction)
3. Disallowing the appeal and upholding the original sanction

4. That there will be a re-run of the original hearing at which a decision will be reached in line with options 1 to 3 as above.

# APPENDICES

## Appendix 1

### **A. Misconduct**

The following is a non-exhaustive list of potential misconduct issues, some of which, depending on severity, could constitute gross misconduct.

- Persistent bad timekeeping
- Unauthorised absence
- Misuse of Council facilities
- Damage to Council property
- Refusal to follow reasonable management requests and instructions
- Abusive behaviour
- Breaches of confidentiality and data protection
- Insubordination (non-compliance)
- Failure to adhere to Council/ Governors' policies and procedures (e.g. Health and safety policy, IT user policy, Sickness absence management policy, Information security policy)
- Providing false or misleading information in an application for employment
- Unprofessional behaviour/abusive gestures/obscene language

### **B. Gross misconduct**

This list is neither exclusive nor exhaustive and there may be other conduct as serious, which is considered to constitute gross misconduct. Such considerations will take into account the nature of the allegation and the nature of the employee's duties and responsibilities. Examples of gross misconduct might include:

- Continued unauthorised absence
- Causing harm or abuse towards children or vulnerable adults
- Theft, fraud or bribery
- Disclosure of confidential information
- Threats of or actual physical violence, assault, bullying or harassment, whether this takes place in person or online
- Deliberate and serious damage to the employer's property
- Criminal activity affecting the ability to undertake the job role
- Serious misuse of the council's property or name
- Deliberate and/or serious falsification of records
- Accessing internet sites containing pornographic, offensive or obscene material
- Repeated or serious insubordination (non-compliance)
- Unlawful discrimination or harassment, whether this takes place in person or online
- Bringing the organisation into serious disrepute
- Incapability at work brought on by alcohol or drugs
- Causing loss, damage or injury through serious negligence
- A serious breach of Council's policies which enforce its statutory obligations
- A serious breach of confidence
- Sexual misconduct
- Acts of dishonesty
- Undertaking unauthorised employment when contracted to work or during periods of designated sickness leave
- Smoking (including e-cigarettes) in designated Council areas
- Possession of offensive weapons

## **Disciplinary Appeal Form**

### **Section 1: Your details**

Name:	
Job title:	
Workplace address:	
Your address:	
Your email address:	

### **Section 2: Your grounds of appeal**

**Please indicate your grounds for appeal for sections A to D and provide further detail in the section at the end.**

**A) Breach of procedure**

I am appealing on the grounds that the procedure was applied unfairly. **YES / NO**

If you ticked "yes", please explain:

- how and where the procedure was not followed;
- what effect this had on the outcome of the disciplinary process;
- any evidence not available at the original hearing that supports this aspect of your appeal; and
- what prevented you from presenting it

**B) The facts of the case**

I am appealing on the grounds that the findings at the hearing were unfair. **YES / NO**

If you ticked "yes", please explain:

- the parts or facts you dispute;
- the evidence that you believe was given too much or too little weight (would the panel have known?);
- if you are disputing the conclusions that were arrived at by the chair/panel, please details these and
- any evidence not available at the original hearing that supports your appeal

**C) The action taken was disproportionate**

I am appealing on the grounds that the action taken was disproportionate to the circumstances of the case: **YES / NO**

If you ticked yes, please explain:

- the sanction or warning that was applied;
- the aspect of the sanction or warning that you believe is disproportionate;
- the reason why you believe it is disproportionate;
- any evidence not available at the original hearing that supports this aspect of your appeal; and
- what prevented you from presenting it



**D) Any other substantial grounds of appeal**  
I am appealing for another substantial reason:

**YES / NO**

If you ticked yes, please explain:

- the grounds on which you are appealing;
- its effect on the procedure followed;
- its effect on the findings of fact at the original hearing;
- its effect on the sanction applied;
- any evidence not available at the original hearing that supports this aspect of your appeal; and
- what prevented you from presenting it

**PLEASE PROVIDE FURTHER DETAIL FOR YOUR GROUNDS OF APPEAL:**

(continue on another sheet if necessary)

**Signature of appellant:**

**Print Name:**

**Date of signature:**

**Section 3: Administration**

This section is to be completed by the person the appeal has been sent to (Head of HR, Chairperson of the School Governing Body or a nominated Senior Manager where applicable).

Date the appeal was lodged:

Was the appeal lodged in time? **YES** **NO**

Signature:

Print name:

**DATA PROTECTION  
FAIR PROCESSING NOTICE**

All information supplied on this form may be held and used as detailed:

The form is to also be completed by the person the appeal has been sent to (Head of HR, Chairperson of the School Governing Body or a nominated Senior Manager where applicable) and retained until the disciplinary process has been exhausted. A copy of the form will also be shared with Human Resources to ensure the appeal process is correctly followed, and with members of the independent appeal panel (SMBC senior employees/school governors) as part of a confidential 'bundle' of evidence heard at an appeal meeting, or to an Employment Tribunal and legal representatives should a case progress that far.

The information you provide may also be shared with third parties of professional bodies such as the Disclosure & Barring Service, the Department for Education, Teaching Regulation Agency or the Health and Care Professions Council should there be a need for the Council/school to make a referral.

For further information about how we use your information please refer to the Council's Data Protection Policy on the [Intranet](#) / School's [Extranet](#) and Privacy Statement on [www.solihull.gov.uk](http://www.solihull.gov.uk).

## Disciplinary Procedure

### Model Risk Assessment for Suspension

#### **STRICTLY PRIVATE & CONFIDENTIAL**

Suspension should only be considered if one or more of the following apply:

- Customers or colleagues are at risk of intimidation or significant harm.
- The employee's presence may prejudice the investigation and redeployment to mitigate this is not possible.

Suspension is not appropriate in cases of minor misconduct.

The following factors need to be considered:

<b>Alternatives to Suspension</b>	<b>Impact of Transfer</b>
- Assess other options, including a suitable alternative role or temporary transfer.	
<b>Nature of the Allegation</b>	<b>Consideration</b>
- Duration and frequency - Degree of threat or coercion - Extent of pre-meditation - Degree and nature of allegation	
<b>Investigation</b>	
- Possibility of the investigation being impeded should the employee remain at work.	
<b>Information re: employee who is accused of the allegations</b>	
- Previous concerns. - Previous allegations/incidents. - Contact with customers/pupils (i.e. needs and vulnerability).	
<b>Health &amp; Safety</b>	
- Potential risks to the employee's health and safety should they remain at work.	

**Risk identified and action plan (including support and point of contact for employee):**

**Decision to suspend: YES/NO**

**Date of decision:**

**Name of Manager/Headteacher responsible for decision and HR Manager giving advice:**

**RATIONALE:**

**N.B: Keep the period of suspension under review and ensure that the circumstances of the case require its continuance. Do not allow the suspension to become unnecessarily protracted.**

## APPENDIX 4 – FLOWCHART

