

# Disciplinary Policy including Overview and Procedures

**Introduced by NYCC in June 2010; this policy replaces NYCC's Corporate Policy dated September 2005 and previous versions of the NYCC Schools' Policy**

**For adoption by Whitby Community College Governing Body 20 September 2010**

## An Overview

**This Policy applies to** - all employees including school staff under LMS arrangements, where the Governing Body of the school has formally adopted the policy.

### **Why is it required?**

The policy is a statutory requirement, providing a framework for supporting and managing conduct issues in the workplace for managers and employees. The policy follows legislative requirements and the ACAS Code of Practice.

**Purpose** - to encourage employees to meet the standards of conduct expected in the workplace. Where relevant and necessary (ie, the misconduct appears serious enough for formal disciplinary action or informal approaches have been previously tried unsuccessfully), to investigate and, if appropriate, impose sanctions aimed at gaining an improvement in conduct, except in cases where dismissal may be appropriate.

### **How are standards of conduct established and maintained?**

Through Induction procedures, employees should be made aware of the standards, conduct and behaviours expected of them when they commence and these should be reinforced throughout employment.

**When problems arise** - problems should be resolved at the earliest opportunity. Ideally, in most cases, matters should be addressed before they reach a formal disciplinary situation. The process should be managed promptly, fairly and consistently and the employee kept informed at all stages.

### **Disciplinary situations include misconduct and gross misconduct:**

**Misconduct** – where behaviour is seen as unacceptable but not sufficiently serious to warrant dismissal without prior warning.

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**Gross misconduct** – eg, theft, fraud, misuse of the organisations property/name, violence, unlawful discrimination/harassment, causing loss or damage by negligence (not an exhaustive list). The consequence of a finding of gross misconduct is normally dismissal without notice.

**The range of sanctions** - include:

Written warning, final written warning, dismissal/action short of dismissal.

### Precautionary Action

Used where allegations indicate gross misconduct and/or where it may hamper the investigation if the employee remains at work or may make the situation unsafe for the employee or others. Precautionary action includes temporary redeployment, restriction of duties or suspension.

### Note:

Poor performance is dealt with under the [Developing Performance and Capability Policies](#)

Poor attendance issues are dealt with through the [Attendance Management Policy](#)

Where conduct is unacceptable during the probationary period, see the [Probationary Procedure](#).

### Stages of the process (summary)

Stage		Who	Timescale
1 Investigation	<p><b>1. Preliminary investigation</b> Before any formal disciplinary action is taken an initial investigation (fact finding) will take place</p> <p><b>2. Formal investigation</b> Further evidence gathered including that from any witnesses. Witnesses are required to make statements and should be aware that these may be used in any potential hearing, which they may be required to attend</p>	<p>Line manager with HR advice as required</p> <p>Nominated investigating officer with HR advice as required</p>	<p>ASAP – normally within 1 – 2 days</p> <p>Dependant upon the complexity of the case</p>
2 Disciplinary Hearing	<p>If the investigation shows that the situation needs to be addressed through a hearing the employee will be informed in writing</p>	<p>Line manager / investigating officer with HR advice as required</p> <p>Heard by a panel of at least 2 officers of appropriate seniority* not previously involved in the investigation. HR will advise the panel or may be a member of it.</p> <p>* School Hearings may be heard by the Headteacher, Headteacher plus appointed Governor(s) or a Governors' Panel, as determined by the Governing Body</p>	<p>Notification at least 10 working days in advance of the hearing</p> <p>Written notification of outcome normally within 5 working days of hearing</p>

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3 Appeal Hearing	Employee has the right to appeal against any formal disciplinary sanction and must give notice of appeal within 10 working days of receipt of outcome.	<p>Heard by a panel of at least 2 officers of appropriate seniority* not previously involved in the investigation or disciplinary hearing. HR will advise the panel or may be a member of it.</p> <p>Appeals against dismissal will be heard by a member's appeal panel* advised by HR</p> <p>* School appeals are heard by a panel of Governors</p>	<p>Notification at least 10 working days in advance of the appeal hearing</p> <p>Written notification of outcome normally within 5 working days of hearing</p>
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### Notes:

- Employees have the right to be accompanied by a work colleague or trade union representative at each stage.
- Model letters and other documents to support this process are available in the Forms, Letters and Templates section below.
- Further information on the process is available in the Policy and Procedure below and Frequently Asked Questions on the left-hand side of this page.

### More information

- [Forms, Letters and Templates](#)  
Supporting documentation eg, standard letters, templates
- Frequently Asked Questions for [Managers](#) and [Employees](#)
- [ACAS code of practice](#)
- [Staff Support Network](#)

If you would like this information in another language or format such as Braille, large print, easy read or audio, please ask the HR Shared Service Team, NYCC.

01609 798319 or 01609 79 8311 (specific to schools)  
[HRSharedServiceTeam@northyorks.gov.uk](mailto:HRSharedServiceTeam@northyorks.gov.uk)

# The Policy

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## Definitions

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In this document:

- the word 'school' denotes all schools and colleges within NYCC
- throughout this document, the words 'manager' or 'line manager' will be taken to denote the Headteacher or other College manager, as appropriate
- the words 'working days' denotes the days on which the Authority is open for normal business (ie, excludes weekends and public holidays). 'Working days' are defined as those days on which the College is open to students or for designated staff training days. For College staff who work 'all year round', it will also include those days on which they are contracted to work during the College closure periods. The number of working days is not affected by whether an employee is contracted to work full-time or part-time. However, at any time, days on which an employee is not available for work by reason of annual leave or other authorised absence will not count as 'working days' (but see paragraph 5 of the Disciplinary Procedure in respect of sickness leave).

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## Purpose

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- 1.0 This policy is designed to promote best practice and to help and encourage all employees to achieve and maintain the required standards of conduct whilst aiming to ensure consistent and fair treatment for all. These standards are outlined in the County Council's Standards of Conduct Procedure (available from the NYCC intranet via the following link: [http://intranet.northyorks.gov.uk/ICSLogin/?\"http://intranet.northyorks.gov.uk/directorate/hr/schools/Pages/Home.aspx](http://intranet.northyorks.gov.uk/ICSLogin/?\)).
- 1.1 This policy is not to be used when dealing with performance issues that result from a capability, ie, a lack of skill, aptitude, or a health related issue. Please refer to the Developing Performance and Capability Policies or Attendance Management Policy, as appropriate.
- 1.2 The policy is designed to include the principles of the ACAS Code of Practice on Discipline and to ensure the appropriate level of confidentiality throughout.
- 1.3 This policy aims to comply with the principles contained in the Authority's Equality Policy Statement.

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## Scope

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- 2.0 This policy and procedure applies to all employees of the County Council including school staff employed under LMS arrangements, where the Governing Body of the school has formally adopted the policy.

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☞ Guidance for School Governors on handling disciplinary matters is to be found at [Appendix E](#) in 'Forms, Letters and Templates'

- 2.1.1 Where conduct is unacceptable during the probationary period, a shortened procedure may be applied. Please see the Probationary Procedure for further details (Note - the Probationary Procedure does not apply to teachers).

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### Principles

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- 3.0 Line managers must ensure that employees fully understand the standards of conduct expected by the County Council and the College. Disciplinary action should only be considered where normal line management action has failed to achieve the required standards, or would be inappropriate in the circumstances.
- 3.1 The employee has the right to be accompanied by a Trade Union representative or a work colleague at various stages of the Procedure, as indicated.
- 3.2 No disciplinary action will be taken until the case has been investigated. The employee will normally be advised of the general nature of the allegations and/or concerns (see para 2.0 of the [Disciplinary Procedure](#)) and be given the opportunity during the investigation to respond fully. Witnesses or individuals who may hold relevant information will be given the same opportunity to inform the investigation.
- 3.3 No employee will be dismissed for a first breach of conduct except in the case of gross misconduct, when the sanction will normally be dismissal without notice (nor would payment in lieu of notice be made). Examples of misconduct and gross misconduct are given in the Disciplinary Procedure.
- 3.4 To ensure impartiality, those hearing the case should not have been involved previously at the investigation stage.
- 3.5 An employee will have the right of appeal against any formal disciplinary sanction imposed.
- 3.6 Employees will be provided with written reasons for dismissal.
- 3.7 The Disciplinary Policy and Procedure should be applied consistently and fairly at all times, in accordance with the Equality Policy Statement.
- 3.8 In certain circumstances it may be appropriate to implement disciplinary action short of dismissal outside the formal Disciplinary Policy and Procedure (see the Disciplinary Procedure) but only where there is genuine mutual agreement.
- 3.9 The Authority will report cases of misconduct to the appropriate national bodies in line with statutory requirements. In respect of Aided/Foundation schools this responsibility rests with the Governing Body who may delegate responsibility to the Headteacher.
- 3.10 Employees who have evidence to give regarding a disciplinary matter are expected to participate in the investigation by answering questions and providing statements. Should the matter proceed to a disciplinary hearing/appeal, providers of evidence will normally be expected to appear in person as witnesses. In some cases the written statement may suffice and, if so, it will not be necessary to appear in person. In extreme circumstances it

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may be permissible for evidence to be given anonymously. Appropriate support will be offered to witnesses.

- 3.11 Employees, other than teachers, who are eligible for incremental progression, should be made aware that formal disciplinary warnings and/or being under investigation/precautionary action will affect their incremental progression as stated in [A Guide to Incremental Progression](#). Where misconduct occurs before an increment is awarded but only comes to light afterwards, the increment may be removed from the date a disciplinary penalty is awarded. Where no disciplinary action is taken following an investigation, the increment will be awarded from the due date provided the employee qualifies for an increment on the other incremental progression criteria.

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### Line Management Action

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- 4.0 Managers are empowered to take informal management action appropriate to the circumstances where standards of conduct give cause for concern. Action to be taken is limited to drawing deficiencies to the attention of the employee and indicating that formal disciplinary action will be considered if standards do not improve. This action is outside the formal disciplinary procedure. Line managers should make a file note and provide a copy to the employee, indicating that this is not a formal warning under the Disciplinary Procedure.

# **The Procedures**

## **Contents**

- Right to be accompanied
- Pre-disciplinary investigations
- Precautionary action
- Employee support
- Sickness absence
- Disciplinary Hearing
- Levels of actions (sanctions)
- Examples of types of misconduct
- Right of Appeal
- Dismissals and Resignations
- Record Keeping

## **Appendices**

### [Appendix 1:](#)

Examples of types of misconduct and probable consequences

Examples of gross misconduct and probable consequences

### [Appendix 2:](#)

Disciplinary Hearing Procedure

### [Appendix 3:](#)

Disciplinary Appeal Procedure

### [Appendix 4:](#)

Disciplinary Action outside of the Formal Procedure

### [Appendix 5:](#)

Referrals to External Agencies following Disciplinary Action

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### Right to be Accompanied

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- 1.0 Employees have the legal right to be accompanied by a trade union representative or work colleague at Disciplinary Hearings and Disciplinary Appeal Hearings.
- 1.1 The Authority extends this right to other formal meetings of the Disciplinary Procedure, eg, investigatory interviews.
- 1.2 In cases where dismissal is being considered and where such a dismissal could lead to a statutory disbarment from future employment, the employee concerned may seek prior approval from the Chair of the Disciplinary Panel or Disciplinary Appeals Panel to be represented by a legal representative. Members of trade unions/professional associations may normally be able to access legal representation through these means.
- 1.3 The accompanying representative (of whatever status) has a statutory right to address the Hearing but no statutory right to answer questions on the employee's behalf.

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### Pre-Disciplinary Investigation

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- ☞ Where child protection or vulnerable adult concerns come to light and/or criminal offences are suspected, these procedures will normally take precedence over internal disciplinary procedures. As a consequence a pre-disciplinary investigation may have to be delayed while matters are considered under statutory/criminal procedures. However, this would not prevent precautionary action being taken under the disciplinary procedure, if deemed appropriate (see paras 3. 0 – 3. 5).
- ☞ Where matters of financial irregularity are suspected (or other matters within the Veritau (internal audit) remit eg., internet misuse, falsification of records, misuse of County Council equipment and resources) the Audit section must be informed and they may carry out a separate Audit investigation (or investigate jointly with the pre-disciplinary investigating officer/s) and make recommendations to the investigating officer/s and line manager.

- ☞ Where serious allegations/concerns arise, the manager, with HR advice, should consider whether a report to Members/senior management should be made under 'Sensitive Issues' Procedures. The main circumstances in which this should be considered are as follows:
  - i) the existence of risks of acute distress or physical injury to staff, pupils or other service users;
  - ii) evidence that the incident might call into question the adequacy of current Council policy or guidance;
  - iii) the possibility that there might have been a serious breach of current Council policy or guidance;
  - iv) the possibility that there might have been a breach of the law;
  - v) the likelihood of media interest.

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- 2.0 Where action under 4.0 of the Policy (Line Management Action) is not appropriate or has failed to achieve the required standard a pre-disciplinary investigation must take place (subject to the information contained in the 'grey boxes' above). An investigating officer will be appointed to carry out the investigation. The employee will be informed, and have it confirmed in writing, that an investigation is to be undertaken. They will normally be informed of the general nature of the allegations, except where a preliminary investigation takes place and concludes that there is no further cause for concern or that the matter could be better dealt with through other means such as re/training or supervision, monitoring and guidance. However, if the investigation is to proceed, the investigating officer/s will gather the facts, identify and interview witnesses and obtain relevant documentary evidence.

Within the Disciplinary Procedure, letters to employees should be sent by 'Recorded Delivery' unless delivered by hand and signed for.

- 2.1 The employee will be called to an investigatory meeting where the opportunity will be given to answer questions related to all allegation(s)/concerns and the evidence gathered. Reasonable notice of the investigatory meeting will be given. The employee has the right to be accompanied by a Trade Union official or a work colleague, who is not a witness in the case, or implicated in the allegations and who would not hinder the investigation. The same support arrangements will be available to witnesses who may be requested to supply evidence in support of the investigation.
- 2.2 Both the employee and witnesses must be made aware that what they say during the investigation will be recorded in writing and may be used as evidence in any subsequent disciplinary proceedings. Witnesses should also be made aware that they may be required to appear in person at any subsequent Disciplinary Hearing and Appeal.
- 2.3 Investigations should be concluded as quickly as possible. The employee will be informed where there is unforeseen delay. Where an employee's representative is unavailable to attend an investigatory meeting the employee must propose another date and time which should be no more than 5 working days later than the original date.
- 2.4 The employee will be informed in writing of the outcome of the Disciplinary investigation without unreasonable delay.
- 2.5 If an employee is concerned about the investigation or conduct of the investigating officer/s he/she may raise a complaint, in the first instance to the Investigating Officer's Head of Service/Headteacher or nominated senior manager who will meet with the employee, normally within 10 working days. The employee may be accompanied by a trade union representative or work colleague. If not satisfied with the outcome the employee may raise the matter again, within 5 working days of receipt of the Head of Service or nominated senior manager's response, to a more senior manager within the Directorate who will meet with the employee (and trade union representative or work colleague if requested), normally within a further 10 working days. The outcome of this meeting will be final and there is no further right of appeal under the Resolving Issues at Work Procedure.
- 2.6 The Head of Service/Headteacher/nominated senior manager and/or the more senior manager have the discretion to suspend the pre-disciplinary investigation whilst the complaint is being investigated, if deemed appropriate. Alternatively, a different investigating officer may be asked to review the case and take the investigation forward.

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☞ In schools, the concern should be raised with the Headteacher or, if against the Headteacher, to the Chair of Governors, who should take HR advice

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### Precautionary Action (suspension/temporary re-deployment)

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☞ Special care must be taken where allegations/concerns relate to criminal action or child /vulnerable adults' safeguarding issues (see boxes above para 2.0)

- 3.0 Precautionary action includes suspension from work or temporary transfer to another post/location or temporary restriction/amendment of duties.
- 3.1 Precautionary action is not disciplinary action and does not indicate any pre-judgment of the allegation/s and the employee will remain on normal pay. Where leave has been pre-booked it is expected that this will be taken within any suspension period unless, by agreement, the leave is postponed in order to expedite the investigation.
- 3.2 Suspension from work should be avoided wherever possible except where the allegation/s indicate potential gross misconduct. If there is indication that by the employee continuing in their current work it may hamper the investigation or they may commit further misconduct or they or other people may be at risk by remaining at work, then temporary transfer to another suitable post/location or restricted duties must be considered first.
- 3.3 Precautionary action, where necessary, should be carried out without delay after consultation with a Human Resources representative of appropriate seniority and a senior manager. There are no rights to representation/accompaniment at a precautionary action meeting. However, at meetings concerning precautionary action, including suspension, an employee may, upon request, be accompanied by a local trade union representative or work colleague if that person is available at the time of the meeting. The meeting will not normally be delayed, however, if a suitable person is not available.

☞ In schools the suspension decision is made by the Headteacher (or nominated deputy if unavailable) after consultation with the Chair of Governors (or other senior Governor if unavailable) and with a Senior Human Resources Adviser or HR Manager

- 3.4 Suspension/redeployment/restriction of duties must be kept under review during the course of the investigation, as a consequence of the evidence gathered. Periods of suspension should be kept to the minimum necessary.
- 3.5 Arrangements should be made to give suspended employees general updates on significant developments at work and involve them in consultations, as far as possible, within the terms of their suspension.

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### Employee Support

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- 4.0 The employee should be given details of the **Staff Care Network** as a source of support during the disciplinary process and encouraged to use it. Witnesses may equally require support through the disciplinary process and should also be given details of the Staff Care Network (**contact number 07885 260198**).

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### Sickness Absence

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- 5.0 If an employee is absent due to sickness during the disciplinary process, the investigating officer should determine the nature and likely duration of the absence. If the absence is likely to be prolonged and the investigation or disciplinary hearing delayed then advice should be sought from the Health and Wellbeing service regarding the employee's ability to take part in the process.
- 5.1 Where an employee is suspended and subsequently notifies management that they are unwell and unable to participate in the investigatory process, normal notification/medical certification requirements will apply. Such absence will count against the employee's occupational sick pay entitlement.
- 5.2 Reasonable time should be allowed for the employee to recover. However if it is likely that the absence will be prolonged, with the employee continuing to be unfit to take part in an investigation/hearing and informing that he/she cannot comply with 2.1 above, the disciplinary process may proceed in his/her absence. The employee's representative may give evidence and state the case for the employee. The employee may provide a written statement.


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### Disciplinary Hearing

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- 6.0 If a decision is reached that the concerns can only be addressed by a Disciplinary Hearing the employee will be informed in writing (However see Appendix 4 – Disciplinary Action Outside the Formal Procedure). The letter, giving at least 10 working days notice of the Disciplinary Hearing (unless mutually agreed otherwise), must include details of the allegation/s to be heard, the right to be accompanied as in Paragraphs 1.0 – 1.3 above, the names of the Panel members and the names of any witnesses to be called. All management documents to be referred to at the Hearing should, where possible, be submitted to the employee and the panel members 10 working days prior to the Hearing but definitely no later than 5 working days prior to the Hearing. Documentary evidence to be used by the employee and the names of any witnesses to be called by the employee should be submitted to the management representative and the panel members, where possible, 10 working days prior to the Hearing but definitely no later than 5 working days prior to the Hearing. The admissibility of late documents will be at the Chairperson's sole discretion.

 **Exchange of Documents** – Arrangements for the exchange of documents should normally be made in advance between the employee/representative and management representative. The intention should be to exchange documents 10 working days in advance of the hearing so as to give all parties, including the panel, time to read the documents and prepare for the Hearing. Where it is not possible to meet this timescale, documents must be exchanged at least 5 working days prior to the Hearing. In some cases it may be acceptable to exchange the bulk of the documents 10 working days in advance of the Hearing with the balance following within the next 5 working days.

 **Witnesses** The expectation is that witnesses will be prepared to attend hearings and appeals in person in most circumstances so that they are available to answer questions from all parties. Witness statements should normally be provided to the other party and Panel in advance of the hearing or appeal, in line with the timescales stated under paragraph 6.0.

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Where both parties accept the written statement of a witness they may agree that there is no need for the witness to attend. In these circumstances the witness statement will be submitted and the panel informed that it is an accepted document. In certain circumstances it may not be appropriate for witnesses to appear in person, eg, school children or vulnerable adults. In such cases it may be possible to arrange for questions to be put in writing so that the witness can be interviewed by a neutral party and answers provided in writing. In exceptional circumstances it may be appropriate for the identity of witnesses to be protected.

- 6.1 In the event of the unavailability of the employee due to sickness an alternative date will normally be offered, allowing a reasonable time for the employee to recover but normally within 10 working days of the original date. The timescale in para 2.3 above applies where the representative is unavailable.
- 6.2 If the employee is still unavailable for the re-arranged Hearing this may go ahead with the employee's case stated by his/her representative, if the employee agrees to this method of representation. In any event, the employee may provide a written statement of case in his/her absence.
- 6.3 A Disciplinary Panel (see grey box below for school arrangements) must consist of no less than two officers (not previously involved in the case) of appropriate seniority to take disciplinary action, normally advised by a Human Resources adviser\*. The Disciplinary Hearing Procedure is set out at Appendix 2.

\* Denotes a HR representative of an appropriate level of seniority.

☞ In schools the Governing Body may choose to delegate authority to take disciplinary action up to and including dismissal to:

- the Headteacher
- the Headteacher and one or more governors
- one or more governors

Where authority is delegated to one or more governors, the Headteacher may attend to offer advice at all relevant proceedings and such advice must be considered by the governor(s) to whom the delegation has been made.

The Director of Children and Young People's Service (or a representative) may attend and offer advice at all proceedings relating to the possible dismissal of any employee. Such advice must be considered by the governing body or any person or persons to whom such functions have been delegated when reaching any such decision.

Panels/Headteachers will normally be advised by a HR adviser\*.

\* Denotes a HR representative of an appropriate level of seniority.

- 6.4 Where a Disciplinary Hearing and/or Appeal Hearing may result in dismissal the Hearing may be tape-recorded. **This does not apply to school Hearings.**

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### Levels of Action (sanctions)

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- 7.0 All sanctions and the reasons for them will be confirmed in writing to the employee stating:

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- the stage in the Disciplinary Procedure reached
- the period after which the sanction will normally be disregarded for future disciplinary purposes, provided that there has been no further formal disciplinary action taken against the individual during this period
- that a copy will be kept on their personal file.

7.1 **Written Warning:** If the misconduct is sufficiently serious a written warning can be given. The sanction will normally be disregarded for disciplinary purposes after twelve months satisfactory conduct.

7.2 **Final Written Warning:** If there is repeated misconduct or the misconduct is sufficiently serious to justify only one written warning but not serious enough to justify dismissal, a final written warning can be given. The warning will normally be disregarded for disciplinary purposes after fifteen months satisfactory conduct.

7.3 **Dismissal/Action Short of Dismissal:** If the misconduct continues or gross misconduct occurs the employee will normally be dismissed. In the case of gross misconduct dismissal will normally be without notice (nor will payment in lieu of notice be made).

If there are exceptional mitigating circumstances the Panel may consider **action short of dismissal** where, otherwise, dismissal would occur. This will be to apply a final written warning, possibly valid for future disciplinary purposes for an extended period above the normal 15 month period, the loss of any incremental progression while the warning is live (up to a maximum of two years exclusion from incremental progression) and may include a demotion and/ or transfer. In exceptional circumstances (ie, where no repeat of an act of misconduct could ever be tolerated) a 'life of employment' final written warning may be issued.

Employees, other than teachers, subject to the disciplinary procedure, should be made aware that their incremental progression may be affected as per para 3.11 of the Disciplinary Policy.

☞ It should be noted that a demotion involves the ending of the existing contract and the offer of an alternative contract at a lower rate of pay, as an alternative to dismissal. There is no obligation on the employee to accept the alternative contract and therefore the offer should be discussed with the employee before the disciplinary penalty is finalised. If alternative employment can not be agreed then the dismissal will need to proceed. The same principle applies to a transfer, although a transfer may not technically count as a dismissal – depending on the circumstances.

☞ In cases of dismissal, Community and Voluntary Controlled schools will request the Local Authority to give notice to the employee to terminate their contract or, in appropriate circumstances, terminate the contract without notice and the Local Authority has 14 days in which to comply with the request. Aided/Foundation schools will dismiss directly.

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### Examples of Types of Misconduct

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8.0 Examples of misconduct and gross misconduct are set out at Appendix 1.

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### Right of Appeal

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- 9.0 There is a right of appeal against any formal disciplinary sanction. The employee must give notice of the appeal within 10 working days of receipt of the letter confirming the sanction. The employee must also set out, in writing, the specific details of the grounds for appeal, which broadly may include;
- on the sanction imposed and/or
  - on the facts of the case and/or
  - on procedural points and/or
  - through new evidence emerging.

Appeals will be heard at the earliest available opportunity but a minimum of 10 working days notice of the date will be given unless mutually agreed otherwise.

- 9.1 Appeal Hearings will normally focus upon the employee's reasons for challenging the decision of the Hearing Panel. They will not usually be a full re-hearing of the case and, as such, may not necessitate the calling of most witnesses.
- 9.2 The Chair of the Hearing Panel may be requested to attend the Appeal Hearing as a witness in order to explain how the Panel reached its decision and to answer questions.
- 9.3 Appeals (other than appeals against dismissals) will be heard by a Panel of at least two officers of appropriate seniority who have not previously been involved in the investigation or Disciplinary Hearing. The panel will normally be advised by a HR Adviser. In the case of appeals against dismissals the Appeal will be heard by a Members Appeal Panel constituted of four members, with a quorum of three. Appeals panels will be advised by a Human Resources adviser\*. The Disciplinary Appeal Procedure is detailed at Appendix 3.

\* Denotes a HR representative of an appropriate level of seniority.

☞ Disciplinary Appeals Panels in schools must comprise of a minimum of two non-staff Governors. A panel of three governors is recommended. There must not be fewer Governors on the Appeals Panel than on the Hearing Panel. The Director of Children and Young People's Service (or a representative) may attend to offer advice at all proceedings relating to the possible dismissal of any employee. Such advice must be considered by the governing body or any person or persons to whom such functions have been delegated when reaching any such decision. Panels will normally be advised by a Human Resources adviser.\*

\*Denotes a HR representative of an appropriate level of seniority.

- 9.4 The employee will be notified in writing of the Appeal Hearing arrangements, as in the process outlined in 6.0 above.

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### Dismissals and Resignations

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- 10.0 Where an employee is dismissed consideration must be given as to whether the matter is required to be reported to any professional/occupational bodies which require the reporting of misconduct issues in such circumstances, eg, Independent Safeguarding Authority, General Teaching Council, General Social Care Council.
- 10.1 There may be cases in which an employee offers to resign prior to a Disciplinary Hearing taking place in circumstances where dismissal is the likely outcome of the disciplinary process.
- 10.2 Where such offers of resignation are accepted it should be made clear to the employee:-

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- that the matter will need to be referred to in any references provided
- that the matter will need to be reported to any professional/occupational bodies which require the reporting of misconduct issues in such circumstances

10.3 Reporting requirements are detailed at Appendix 5 of this procedure.

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### Record Keeping

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11.0 Records of Disciplinary cases must be kept in accordance with the NYCC Retention Schedule.

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## Appendix 1

### Examples of type of misconduct and probable consequences

This is not an exhaustive list of those instances that could be construed as **misconduct** sufficiently serious to warrant formal disciplinary action. The list is provided to give examples of the types of behaviour that could be regarded as such.

#### Misconduct

- i) Unjustified refusal of a lawful and reasonable instruction
- ii) Persistent lateness, unauthorised absence, failure to follow sickness absence notification procedures
- iii) Verbal assault or threat of violence in the workplace to fellow employees or other people
- iv) Negligence in carrying out duties in accordance with relevant policies and procedures
- v) Negligence in the performance of duties and responsibilities not covered by iv) above (except where due to incapability)
- vi) Unauthorised use of the County Council's resources, or confidential information gained whilst in the employment of the County Council (except where employees are protected by the provisions of the County Council's Whistle-blowing Policy/Public Interest (Disclosure) Act 1998
- vii) Acceptance of gifts and hospitality in contravention of the County Council's Policy
- viii) Personal misconduct occurring outside of the workplace, which is deemed sufficiently serious to affect an employee's position at work.
- ix) Inappropriate use of electronic communications, including email or internet access facilities.
- x) Failure to abide by professional codes of conduct/standards

**Note: Incidences described above would normally result in a written warning (which may be a final warning). Continued/repeated incidences of misconduct may however lead to dismissal.**

### Examples of type of gross misconduct and probable consequences

This is not an exhaustive list of those incidences that could be construed as **gross misconduct**. It is provided as an example of the types of behaviour that could be regarded as such.

#### Gross Misconduct

- i) Theft or attempted theft, fraud or fraudulent falsification of accounts, or other official records.
- ii) Deliberate damage to the property of the County Council or that of any other employee.
- iii) Physical or indecent assaults deemed sufficiently serious to affect an employee's position at work.
- iv) Serious breaches of the County Council's Policy on the acceptance of gifts and hospitality

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- v) Serious breaches of confidentiality (unless subject to the protection afforded by the Whistle-blowing Policy/Public Interest (Disclosure) Act 1998.
- vi) Sexual, racial or personal harassment of a wilful and/or sustained nature
- vii) Being incapable of work, or of working safely due to the influence of alcohol or drugs (unless the Capability and/or Occupational Health Procedures are deemed to apply)
- viii) Serious negligence or wilful failure to comply with legal requirements of the County Council/Directorate various policies and procedures such as Health and Safety, Equalities, Data Protection, or any other legal or statutory requirement
- ix) Serious negligence which causes or might have caused unacceptable loss, damage or injury
- x) Behaviour which has brought the County Council or its services into serious disrepute.
- xi) Serious breach of computer security and/or abuse of electronic systems including the misuse of email and/or internet facilities.
- xii) Personal misconduct occurring outside of the workplace, including actions which result in the employee being unable to conduct, or unsuitable for, their type of work.
- xiii) Serious and sustained insubordination
- xiv) Actions or behaviours that result in a complete breakdown of trust and confidence between the County Council and the employee, even where any individual act in itself would not constitute gross misconduct.
- xv) Serious breach of professional codes of conduct/standards

**Note: Allegations of potential gross misconduct will normally result in immediate precautionary action, pending investigation. Where allegations of gross misconduct are proven dismissal without notice (and without payment in lieu of notice) will normally result unless there are significant mitigating circumstances.**

**Consideration will also be given as to whether pension rights should be affected (refer to the Pensions Liaison Officer for guidance)**

# Whitby Community College - Disciplinary Policy

## Appendix 2

### Disciplinary Hearing

North Yorkshire County Council


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#### Chairperson's Introduction

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The Chairperson should:

- Introduce all of those present and explain their roles in the Hearing.
- Explain that the Hearing will be carried out in accordance with this procedure and confirm the sequence to be followed.
- Where the employee is unaccompanied, check that he/she was informed of the right to be accompanied by a Trade Union Official or a work colleague\*.

 \*The chosen companion may be a fellow worker, a Trade Union representative, or an official employed by a trade union.

- In cases where dismissal is being considered and where such a dismissal could lead to a statutory disbarment from future employment, the employee concerned may seek prior approval from the Chair of the Disciplinary Panel or Disciplinary Appeals Panel to be represented by a legal representative. Members of trade unions/professional associations may normally be able to access legal representation through these means.
- Where the employee is accompanied, explain that the accompanying representative has a statutory right to address the Hearing but no statutory right to answer questions on the employee's behalf.
- Explain that an adjournment can be requested at any point during the Hearing and will be considered by the Chair of the Panel.
- Indicate that witnesses will only be present when giving evidence. When witnesses have given their evidence consideration will be given to the need for them to remain available (but outside the Hearing) for possible recall. Witnesses should be allowed to leave when it has been agreed that their evidence is concluded.

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#### Sequence of Hearing

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1. Management present their case, covering a description of the allegation(s), an outline of the supporting evidence, including details of the investigation. Witnesses can be called as appropriate; however a written statement may be sufficient. A written statement should support witness testimony.
2. The Employee or representative, can then question (or seek clarification) of Management and any witnesses called by management.
3. The Panel can ask questions (or seek clarification) of Management and/or any management witnesses.
4. Management has the opportunity of clarifying any points that have arisen in the questions raised by the Employee or representative or the Panel.

## Whitby Community College - Disciplinary Policy

5. The Employee or representative presents their case. Witnesses can be called as appropriate, but written statements may be sufficient. A written statement should support witness testimony.
6. Management can then question (or seek clarification of) the Employee or representative and any witnesses.
7. The Panel can ask questions (or seek clarification) of the Employee or representative and any witnesses.
8. The Employee or representative then has the opportunity of clarifying anything that has arisen in the questions raised by Management or the Panel.
9. Management should then be asked if they wish to briefly summarise their case.
10. The Employee or representative should then be asked if they wish to briefly summarise their case.
11. The Chairperson should then ensure that both parties are satisfied with the conduct of the Hearing.
12. Both parties will then be asked to withdraw to allow the Panel to consider the evidence presented to them. Should the Panel wish to recall one of the parties (to seek clarification or additional information) both parties must be called back into the Hearing.
13. Having reached a decision based on the evidence presented to them, the Panel should then take into account the employment record and any previous relevant sanctions against the employee before deciding on the appropriate sanction.

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### The final decision

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Both parties may be called back into the room at which point the Chairperson will announce the decision, which will be confirmed in writing, normally within 5 working days of the date of the Hearing. Alternatively the Panel may wish to write to the respective parties to outline their decision, normally within 5 working days of the date of the Hearing.

#### NOTE:

1. Throughout the Hearing it is essential that those giving evidence be allowed to speak without interruption. Opportunities are provided at appropriate times for those present to raise questions and seek clarification.
2. Whenever possible, recording equipment should be used in Hearings which may result in dismissal (this does **not** apply to schools operating under LMS arrangements). Where a recording is made a tape (s) will be given to the member of staff on conclusion of the Hearing and a copy will be retained by the management side. The tape will not be transcribed but will be relied upon should there be a need to clarify exactly what was said on particular points.
3. Written notes of the Hearing should also be taken and these notes will be circulated to those present as a record of the proceedings.

# Whitby Community College - Disciplinary Policy

## Appendix 3

### Disciplinary Appeal

North Yorkshire County Council


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#### Chairperson's introduction

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The Chairperson should:

- Introduce all of those present and explain their roles in the Appeal.
- Explain that the Appeal will be carried out in accordance with this procedure and confirm the sequence to be followed.
- Where the employee is unaccompanied, check that he/she was informed of the right to be accompanied by a Trade Union Official or a work colleague\*.

 \*The chosen companion may be a fellow worker, a Trade Union representative, or an official employed by a trade union.

- In cases where dismissal is being considered and where such a dismissal could lead to a statutory disbarment from future employment, the employee concerned may seek prior approval from the Chair of the Disciplinary Panel or Disciplinary Appeals Panel to be represented by a legal representative. Members of trade unions/professional associations may normally be able to access legal representation through these means.
- Where the employee is accompanied, explain that the accompanying representative has a statutory right to address the Hearing but no statutory right to answer questions on the employee's behalf.
- Explain that an adjournment can be requested at any point during the Appeal and will be considered by the Chair of the Panel.
- Indicate that witnesses will only be present when giving evidence. When witnesses have given their evidence consideration will be given to the need for them to remain available (but outside the Hearing) for possible recall. Witnesses should be allowed to leave when it has been agreed that their evidence is concluded.

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#### Sequence of the appeal

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Please note: The appeal is not necessarily intended to be a rehearing of the case presented to the disciplinary panel. Where it is not a re-hearing it is unlikely that witnesses will need to be called, other than possibly the Chair of the Hearing Panel. The following process relates to a full re-hearing of the case and may therefore be adjusted, dependent upon the format of each particular appeal hearing. If an amended process is agreed, the order of proceedings should normally follow that outlined here but omitting aspects which are not required and focussing on aspects which are felt to be key to the appeal arguments.

1. The Employee or representative, briefly explains the grounds on which the appeal has been submitted ie, whether
  - on the facts of the case and/or
  - on the sanction imposed and/or
  - due to procedural fault(s) and/or
  - new evidence has emerged.

## **Whitby Community College - Disciplinary Policy**

2. Management present their case, focusing on the basis for the Panel's decision and taking into account the grounds of appeal. It is expected that witnesses (if required) will be called in person, as appropriate, unless the employee accepts the written statements of witnesses and does not wish to cross-examine. A written statement should support witness testimony.
3. The Employee or representative, can then question (or seek clarification) of Management and any witnesses called by management.
4. The Panel can ask questions (or seek clarification) of Management and/or any management witnesses.
5. Management has the opportunity of clarifying any points that have arisen in the questions raised by the Employee or representative or the Panel.
6. The Employee or representative presents their case - covering the grounds for their appeal by elaborating on the facts of the case which are in dispute and/or reasons for challenging the sanction and/or procedural fault(s). Witnesses can be called as appropriate, but statements may be sufficient. A written statement should support witness testimony.
7. Management can then question (or seek clarification of) the Employee or representative and any witnesses.
8. The Panel can ask questions (or seek clarification) of the Employee or representative and any witnesses.
9. The Employee or representative then has the opportunity of clarifying anything that has arisen in the questions raised by Management or the Panel.
10. Management should then be asked if they wish to briefly summarise their case.
11. The Employee or representative should then be asked if they wish to briefly summarise their case.
12. The Chairperson should then ensure that both parties are satisfied with the conduct of the Appeal Hearing.
13. Both parties will then be asked to withdraw to allow the Panel to consider the evidence presented to them. Should the Panel wish to recall one of the parties (to seek clarification or additional information) both parties must be called back into the Appeal Hearing.
14. In the interests of reaching a balanced decision, the Panel can seek clarification from witnesses who were called during the initial disciplinary hearing, but did not attend the Appeal Hearing. All parties should be present if this is necessary.

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### **The final decision**

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Both parties may be called back into the room at which point the Chairperson will announce the decision, which will be confirmed in writing, normally within 5 working days of the date of the Appeal. Alternatively the Panel may wish to write to the respective parties to outline their decision, normally within 5 working days of the date of the Appeal.

## Whitby Community College - Disciplinary Policy

**NOTE:**

1. Throughout the Appeal it is essential that those giving evidence be allowed to speak without interruption. Opportunities are provided at appropriate times for those present to raise questions and seek clarification.
2. Whenever possible, recording equipment should be used in Appeal Hearings in dismissal cases (this does **not** apply to schools under LMS arrangements). Where a recording is made a tape (s) will be given to the member of staff on conclusion of the Hearing and a copy will be retained by the management side. The tape will not be transcribed but will be relied upon should there be a need to clarify exactly what was said on particular points.
3. Written notes of the Hearing should also be taken and these notes will be circulated to those present as a record of the proceedings.

# Whitby Community College - Disciplinary Policy

## Appendix 4

### Disciplinary Action outside the Formal Procedure

North Yorkshire County Council

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#### Introduction

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- 1.0 Occasions will arise when it is appropriate to take disciplinary action outside of the formal procedure. This should not be regarded as normal practice but can arise when for example an employee is made aware of the results of a formal investigation and is prepared to accept a formal warning without the formal hearing / appeal process.
- 1.1 Such action can save a considerable amount of time and stress for all the parties concerned whilst also achieving the purpose of a disciplinary warning which is to correct an employee's behaviour and move forward.
- 1.2 However it is essential that due process is followed in accordance with these guidelines to avoid accusations of unfairness or undue pressure, subsequent misunderstandings or appeals.

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#### Guidelines

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- 2.0 This process is not appropriate if the disciplinary action sought is dismissal. If however during the process an individual offers their resignation its acceptance can be considered, provided due process is followed and management are confident that they can adequately defend any subsequent accusations of unfairness or undue pressure. If in doubt a formal hearing should be arranged.
- 2.1 It is management's responsibility to establish the facts of any case before proposing a sanction and therefore a formal investigation will normally be required and / or the evidence assembled in the usual way.
- 2.2 A meeting must be arranged at which the employee can hear a full explanation of the evidence and proposed penalty and at which they can comment and question the facts of the case and level of penalty proposed.

 NOTE: If the employee has admitted to the misconduct a summary of the evidence should suffice.

- 2.3 The employee must be advised of their rights to a formal hearing and be given a copy of the formal procedure with explanation as necessary. They should be asked to confirm their understanding.
- 2.4 The employee must be given the right and encouraged to be accompanied by a union representative or colleague and be given adequate opportunity to take separate advice from their representative or colleague before the meeting, in adjournment and/or following the meeting or to seek independent advice within a reasonable period of time following the meeting.
- 2.5 The manager should also arrange to be accompanied by another manager (or HR representative) who will act as a witness to what is said and agreed.

## **Whitby Community College - Disciplinary Policy**

- 2.6 If there is agreement to the proposed sanction management must confirm in writing to the employee the facts of the case and the process that has been followed including the date of the meeting, those present, the information and advice given about the employee's rights under the formal procedure and their understanding of these and the agreed penalty.
- 2.7 The employee must be given the opportunity to consider the letter and take further independent advice before formally confirming their agreement in writing to that effect. A maximum period of 10 working days should be allowed for further advice and consideration.
- 2.8 Copies of the agreement signed by both parties should be retained on the employee's personal file. The agreed warning may then be taken into account in any subsequent disciplinary process up to the time limits specified in the formal procedure. The warning period will begin from the date the employee signs the agreement and will have an effect on incremental progression.
- 2.9 Although unlikely to be required after agreement has been reached, the employee has the right of appeal against a warning issued under this procedure. In such cases the employee must write stating their grounds of appeal within 10 working days of receipt of the warning letter. In such cases the standard Disciplinary Appeals Procedure will be followed.

# Whitby Community College - Disciplinary Policy

## Appendix 5

### **Referrals to External Agencies Following Disciplinary or Capability Action**

#### **The Independent Safeguarding Authority (ISA)**

Please note that previous reporting requirements to POCA, POVA and List 99 have been superseded by the requirement that all referrals involving harm or risk of harm to a child/children (under the age of nineteen) or vulnerable adult must now be made to the Independent Safeguarding Authority (ISA) rather than the separate agencies. Guidance on making referrals to the ISA, and appropriate forms, is available at [www.isa-gov.org.uk](http://www.isa-gov.org.uk). This requirement is not affected by the Government's decision of June 2010 to put the ISA registration requirements on hold.

#### **In what circumstances must employees be referred to the ISA?**

There is a duty to refer individuals to the ISA for consideration for barring in relevant circumstances and to provide information to the ISA upon request.

The duty to refer applies when permission has been withdrawn for an individual to carry out regulated activity or controlled activity, or if the individual has left while under investigation, on the grounds either that they had caused harm or that they posed a risk of harm to a child or vulnerable adult. This is likely to apply when an employee has been investigated and disciplined under the Disciplinary Procedure.

In particular, a case must be referred to the ISA if it is thought that the individual has committed an offence that would lead them to be automatically included on a barred list under the automatic barring provisions. Failure to provide information to the ISA is a criminal offence and can result in a fine. The ISA will take into account any findings of fact in disciplinary proceedings against the individual and all relevant information relating to such proceedings should be forwarded to the ISA with the referral.

The Authority may also refer individuals if there are concerns about their conduct and it is felt that the ISA ought to be made aware of it. This will apply where, for example, a local allegation cannot be substantiated sufficiently for the duty to refer to be triggered but concerns about the individual's conduct remain. Note that referrals should not be made on the basis of allegations suspected to be unfounded or malicious.

Therefore, in any of the circumstances described above, the Authority (or school in the case of Foundation/Aided schools) must report relevant cases to the ISA. When in doubt, advice should be taken from the Authority's Safeguarding service. The ISA exists to prevent unsuitable people obtaining work with children or vulnerable adults. Admittance to the barring list will largely depend upon all the circumstances surrounding the case. All evidence and notes will need to be supplied in the event of a referral for an employee to be considered for placement on the ISA Barring List.

The address for referrals to the ISA is:

PO Box 181  
Darlington  
DL1 9FA

## **Whitby Community College - Disciplinary Policy**

### **In what circumstances must employees be referred to the General Teaching Council?**

Referral of dismissals for teacher misconduct or incapability, other than that related to the harming or risk of harm to a child/children or vulnerable adult, must be made to: -

The General Teaching Council  
Whittington House  
19 – 30 Alfred Place  
London  
WC1E 7EA

This is likely to apply when an employee has been investigated and disciplined under the Disciplinary or Capability Procedure.

Where an employee resigns in circumstances which may have led to their dismissal, the employee must be referred to the General Teaching Council.

For more detailed guidance see: [http://www.gtce.org.uk/regulation/how\\_are\\_cases\\_referred/](http://www.gtce.org.uk/regulation/how_are_cases_referred/)

### **In what circumstances must employees be referred to the General Social Care Council (GSCC)?**

As an employer of social care workers we are required under GSCC Codes of Practice to refer a registered member of staff in the following circumstances:-

- If they are dismissed
- If they resign during a disciplinary investigation
- If they are suspended pending the outcome of a disciplinary investigation
- If we become aware of a criminal charge or conviction against the employee
- If we become aware of other circumstances that may have a bearing on the employee's registration

This is likely to apply when an employee has been investigated and disciplined under the Disciplinary or Capability Procedure.

For more detailed guidance see: <http://www.gsc.org.uk/Conduct>

The contact address for referrals is:

General Social Care Council  
Conduct referrals Team  
Myson House  
Railway Terrace  
Rugby  
Warwickshire  
CV21 3HT

### **How should referrals be worded?**

This depends on the circumstances of each individual case. It should be agreed between HR and Service Management as to who will make the referral. The advice of legal services on the wording of referrals may be sought.