Hartismere School

Staff Discipline, Conduct and Grievance Procedures

Policy No18

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General Introduction

This policy document contains the Disciplinary Procedures for schools within the Hartismere Family of Schools Trust.

1. Application of the Procedures

1.1 This procedure applies to all teaching and support staff in the schools within the Hartismere Family of Schools Trust.

1.2 An employee working within a school but employed on another organisation's terms and conditions of employment should have any disciplinary matter managed under their appropriate policy/procedure.

2. Purpose

2.1 The overall purpose of these procedures is to promote fairness and order in the relationship between school governing bodies and the employees who come under their control. It aims to ensure that any disciplinary matter is dealt with promptly, fairly and that, if appropriate, steps are taken to establish the facts and to give the employee an opportunity to respond before taking any formal action.This includes ensuring that individuals involved in the disciplinary process are treated reasonably and equitably, with dignity and respect regardless of age, disability, gender, gender reassignment, marriage and civil partnerships, pregnancy and maternity, race, religion or belief and sexual orientation.

2.2 Every member of staff is expected to maintain high standards of professional conduct at all times. This includes times when they are not at work and in a situation where their conduct may potentially bring the school, service or profession into disrepute.

2.3 These procedures take account of the ACAS Code of Practice on Disciplinary and Grievance Procedures. They also take account of the conditions of service of the groups of employees to whom they apply and, where adopted, replace any model procedures to be found in the various conditions of service.

3. Interpretation

3.1 In these procedures the term "Governing Body" means the governing body of the school concerned and any committee of the Governing Body acting with delegated authority, or any body acting in a similar way to a governing body. The terms "Chief Executive Officer" and "Head Teacher" includes any officer acting with appropriate delegated authority on behalf of the Trust.

3.2 Any provisions of these procedures should be interpreted in the light of the applicable legislation which confers the relevant decision-making powers upon school governing bodies and determines the manner in which schools should be governed, in particular The School Standards and Framework Act 1998 (Schedules 16 and 17) and The School Staffing (England) Regulations 2009, as in force from time to time and including any successor legislation.

4. Confidentiality

4.1 All employees must treat as confidential, any information communicated to them in connection with an investigation or disciplinary matter.

4.2 Employees, and anyone accompanying them (including witnesses), must not make electronic recordings of any meetings or hearings conducted under this procedure.

4.3 Employees will normally be told the names of any witnesses whose evidence is relevant to disciplinary proceedings against them, unless it is believed that a witness's identity should remain confidential.

4.4 All proceedings and documentation will remain confidential to the parties concerned and will not be disclosed to others, with the exception of official bodies which have a right to require disclosure of information or where the school has a responsibility to report or refer a case (see paragraphs 5 and 6 below).

4.5 In particular, all parties should be mindful of the need to preserve confidentiality on matters relating to children and young people. Wherever practicable, pupil statements and other statements referring to pupils will have their details protected by redaction, to avoid pupils being identified and/or sensitive information being shared. Save in exceptional circumstances, pupils will not be asked to give evidence at disciplinary hearings.

4.6 In respect of schools, the delegated committee of the Governing Body will be notified of the outcome of any formal process, once it has concluded.

5. Safeguarding staff, children and young people

5.1 The Trust issues separate guidance on managing allegations of abuse relating to children or young people made against school staff, this is in line with Keeping children safe in education 2023 the schools acceptable use policy and the school's whistleblowing policy. Schools must refer to this in all cases in which it is alleged that a person who works with children has: behaved in a way that has harmed, or may have harmed, a child; or, possibly committed a criminal offence against, or related to, a child; or, behaved in a way that indicates s/he is unsuitable to work with children.

This also includes being aware of low level concerns regarding staff conduct.

Low level concerns

A low-level concern is any concern that an adult has acted in a way that:

- is inconsistent with the staff code of conduct, including inappropriate conduct outside of work
- doesn't meet the threshold of harm or is not considered serious enough for the school or college to refer to the local authority.

Low-level concerns are part of a spectrum of behaviour. This includes:

inadvertent or thoughtless behaviour

behaviour that might be considered inappropriate depending on the circumstances
- behaviour which is intended to enable abuse.

Examples of such behaviour could include:

- being over friendly with children
- having favourites
- adults taking photographs of children on their mobile phone
- engaging with a child on a one-to-one basis in a secluded area or behind a closed door
- using inappropriate sexualised, intimidating or offensive language.

Any concerns regarding the professional conduct and welfare of staff including low level concerns must be reported to the headteachers.

5.2 In such cases where the harms threshold has been met, appropriate and prompt consideration by relevant bodies (for example, the County Council's Local Authority Designated Officer or a Multi Agency Strategy Meeting) should be allowed for before the commencement of any processes under these procedures, usually also including the consideration of suspension. In some cases, this may require consideration of a short period of 'agreed paid leave' pending initial consideration of the allegations under safeguarding procedures.

6. Referral of cases

6.1 A referral to the Disclosure and Barring Service and/or the Teaching Regulation Agency (TRA) may be made by the school, upon the conclusion of disciplinary proceedings (and any appeal), in the following circumstances:

6.2 A referral to the Disclosure and Barring Service must be made if an employee has harmed, or poses a risk of harm to a child, and who has been removed from working in regulated activity, or would have been removed had they not left; or the employer becomes aware that the employee has received a caution or conviction for a relevant offence

6.3 The Trust has a legal duty to consider whether to refer to the TRA, allegations of serious misconduct by a teacher when they have dismissed that teacher for misconduct or would have dismissed them had they not resigned first.

Disciplinary Procedure

7. Scope

7.1 This procedure will be used in all cases where misconduct, omission or, in certain circumstances failure in performance is such as to warrant disciplinary action.

7.2 The term "misconduct" in this procedure covers instances of misconduct, omissions or failures in performance which may be reasonably attributed to wilful or negligent acts or omissions on the part of an employee. A non-exhaustive list of examples of the types of acts and omissions which might be considered under this procedure are contained in Schedule 1.

7.3 Where any deficiencies in performance on the part of the employee arise from a lack of aptitude or skill rather than any wilful or negligent failure to carry out his/her duties, the Staff Capability Procedure should normally be used.

7.4 Separate guidance exists for dealing with problems arising from alcohol dependence or substance abuse. However, significant problems of misconduct arising from behaviour whilst under the influence of alcohol or drugs, particularly in cases of failure to engage with support offered, may also be dealt with under this procedure.

8. Exclusions

8.1 This procedure does not apply where employment is terminated by reason of redundancy or incapability arising from ill-health.

8.2 The normal management of employees and the associated processes such as performance review/appraisal are outside the scope of this procedure. There will be occasions when it is appropriate for an employee's performance and behaviour at work to be discussed with him/her as part of the normal management arrangements. If there is any shortcoming identified, an employee will be assisted to understand the standard of behaviour or performance required. This may be confirmed by a written instruction which may be placed on the employee's personnel file. However, a written instruction will not be considered to form part of the formal disciplinary procedure and will be ignored for the purpose of deciding a sanction at any subsequent disciplinary hearing, although it may be referred to in any future investigation and subsequent disciplinary hearing to provide context to a case. Reference to a written instruction will be purely factual. In some cases, an informal verbal warning may be given, which will not form part of the employee's disciplinary records. Formal steps will be taken under this procedure if the matter is not resolved, or if informal discussion is not appropriate (for example, because of the seriousness of the allegation).

8.3 By the very nature of normal management, the employee will not normally be accompanied at any meetings or discussions, although they may seek the advice of a trade union representative. Although there is no right to be accompanied at meetings in the course of normal performance management, this may be helpful, and reasonable consideration will be given to any request for support from an employee's professional association. However, where the availability of a preferred representative would prevent a manager from dealing with concerns and providing appropriate support in a timely manner, it may not be possible to accommodate such a request.

9. Investigation

9.1 If the normal management processes do not bring about the required changes in behaviour or conduct, the next step will normally be consideration of action under the formal disciplinary procedure. If it is sufficiently serious, a single instance of misconduct may be such as to warrant immediate consideration under the disciplinary procedure. Schools should seek the advice of the Trust HR service provider before instituting formal disciplinary action or suspending an employee.

9.2 In order to establish the facts, it will normally be necessary for the Headteacher to conduct or commission a formal investigation.

9.3 The purpose of an investigation is to establish a fair and balanced view of the facts relating to any disciplinary allegations against an employee, before deciding whether to proceed with a disciplinary hearing.

9.4 The amount of investigation required will depend on the nature of the allegations and will vary from case to case. It may involve interviewing and taking statements from the employee and any witnesses, and/or reviewing relevant documents.

9.5 Investigative interviews are solely for the purpose of fact-finding and no decision on disciplinary action will be taken until after a disciplinary hearing has been held.

9.6 In cases relating to the Headteacher, the Governing Body may seek advice from the Local Authority and/or their HR service provider regarding commissioning an investigation and would be responsible for commissioning any investigation.

9.7 Whilst there is no statutory right to be accompanied at any investigation interviews, it may benefit an investigation to allow an interviewee to be accompanied by a colleague or trade union representative.

9.8 The employee and any witnesses who make statements during the course of the investigation will normally be asked to check and sign them.

9.9 It should be the decision maker and not the investigator who makes the final decision as to whether or not a disciplinary hearing will be held. This is usually the person or group who would be conducting the disciplinary process. If their decision differs from the investigator's recommendation, the reasons for this should be written down and included as an addendum to the report.

10. Consideration of suspension or redeployment

10.1 In certain circumstances it may be necessary to suspend an employee while an investigation is carried out into the situation giving rise to concern. Any decision to suspend should be taken in accordance with the Trust's scheme of delegation.

10.2 The Headteacher may suspend an employee. S/he must immediately inform the Chair of Governors.

10.3 Subject to the governing body's Decision Making Planner, if it is necessary to suspend the Headteacher, the decision must be taken by the Chair of Governors who must immediately inform the Chief Executive Officer. In circumstances where the Chair of Governors is unable to take a decision regarding the suspension of the Headteacher, for example, where s/he is indisposed or has a conflict of interests, the decision to suspend the Headteacher may be taken by the Vice-Chair.

10.4 The act of suspension may be carried out by an officer of the Trust on behalf of and on the instructions of the Headteacher, Chair of Governors or Vice-Chair as appropriate.

10.5 The employee should be given a brief opportunity to respond to the allegations when the decision to suspend is conveyed. However, it is important that this does not inadvertently become a formal investigation meeting.

10.6 Suspension will normally be considered only:

(a) Where there is a reasonable belief the employee's continued presence at work may put themselves or others at risk, or risk their employer's responsibilities to other parties;

(b) Where there is a reasonable belief that the employee's continued presence at work may hamper or compromise an investigation process; or

(c) Where relationships have broken down.

10.7 In all cases, consideration should be given to alternatives to suspension (for example, additional supervision or alternative/restricted duties, work arrangements or agreed paid leave), remembering that consideration can be given to suspension at any time during the investigation. In cases of alleged gross misconduct where it is decided that suspension is not necessary, the school should record that, having considered this procedure and normal practices, it has been decided not to suspend.

10.8 Suspension does not constitute disciplinary action; it is a neutral act. If it is necessary to suspend an employee during investigations, it will be on full pay.

10.9 Suspension should not be unnecessarily protracted. The continuance of suspension should be kept under regular review and immediately lifted if the circumstances of the case no longer justify it. When suspension is lifted, it may be necessary to consider a re-integration plan before making arrangements for the employee's return to work.

10.10 The following advice with regard to suspensions in connection with allegations linked to children's safeguarding is given in the Department for Education's (DfE's) Dealing with Allegations Guidance.

10.11 Suspension must not be an automatic response when an allegation is reported. If the school is concerned about the welfare of other children in the community or the teacher's family, those concerns should be reported to the LADO or police, but suspension is highly unlikely to be justified on the basis of such concerns alone. Suspension should only be considered in a case where there is cause to suspect a child or other children at the school is or are at risk of significant harm, or the allegation warrants investigation by the police, or is so serious that it might be grounds for dismissal. However, a person should not be suspended automatically, or without careful thought being given to the particular circumstances of the case.

10.12 Schools should also consider whether the result that would be achieved by suspension could be obtained by alternative arrangements. For example, redeployment so that the individual does not have direct contact with the child concerned or providing an assistant to be present when the individual has contact with children. This allows time for an informed decision regarding the suspension and possibly reducing the initial impact of the allegation. This will however, depend upon the nature of the allegation.

10.13 Schools should consider the potential permanent professional reputational damage to teachers that can result from suspension where an allegation is later found to be unsubstantiated, unfounded or maliciously intended. Schools should also consider any communication/reason for absence provided to staff members during an employee's suspension so as to minimise the scope for unwanted questions or adverse inferences.

10.14 Where it has been deemed appropriate to suspend the person, written confirmation should be dispatched as soon as possible, clearly giving the reasons for the suspension. The person should be informed at that point who their named contact is within the organisation and provided with their contact details.'

11. Disciplinary Hearing

11.1 If it appears, after investigation, that there is a case to consider, a disciplinary hearing will be convened. In accordance with the School Staffing Regulations, a hearing may be conducted by the Headteacher or one or more governors, normally a panel of the Hearings Committee (or another authorised committee). If dismissal is a possible outcome, the hearing must be conducted by that committee of the Governing Body which is authorised to make the appropriate determination, and only by the Headteacher where the authority to dismiss has been delegated to them by the Governing Body.

11.2 Where it is proposed to hold a disciplinary hearing, the employee will be informed in writing, normally at least 10 full working days in advance of the hearing, of:

(a) the nature of the alleged misconduct and, where it is possible to state, the warning stage which the employee has already reached;

(b) the date, time and place for the hearing;

(c) the name of the person presenting the case and witnesses;

(d) the name(s) of the person(s) hearing the case

(e) a summary of relevant information gathered during the investigation

(f) a copy of any relevant documents which will be used at the disciplinary hearing

(g) a copy of any relevant witness statements, except where a witness's identity is to be kept confidential, in which case the school will give as much information as possible whilst maintaining confidentiality

(h) the employee's right to produce written statements, normally at least five full working days before the hearing, and invite relevant witnesses to give evidence on his/her behalf;

(i) the employee's statutory right to be accompanied by a trade union official or work colleague of his/her choice

(j) the possible outcome of the meeting, particularly where a possible outcome of the hearing is a determination that the person shall cease to work at the school/be dismissed.

11.3 All paperwork should be issued and received by the school as above, meaning that normally it can be circulated to all parties at least five full working days before the hearing. Paperwork presented at a later date will only be considered in exceptional circumstances, at the discretion of the Headteacher or chair of the panel hearing the case. Any request by the employee for the school to make available documents for consideration at the hearing should be made in good time, in order that the above timescales can be observed.

11.4 Foreshortened timescales for hearing dates and issue/receipt of paperwork may be mutually agreed, for example, where a matter arises close to the end of the school year and it is in all parties' interests to conclude matters before the school closure period.

11.5 The hearing will be conducted in as informal a manner as possible in accordance with the procedure laid down in Schedule 2.

11.6 The person or committee hearing the case may make a determination which is within their delegated powers. That determination may be communicated orally to the employee after the hearing, but will in any case be confirmed in writing, normally within five working days. The employee will be informed whether or not the allegations have been upheld. If the allegations are upheld, in full or in part, the findings and the decision will be confirmed in terms of:

(a) the nature of the misconduct;

(b) the appropriate sanction i.e. a first or final warning or determination that the employee shall cease to work at the school or be dismissed

(c) how to appeal against the decision and/or any disciplinary sanction, the length of time within which an appeal must be lodged, and whom it should be addressed to;

(d) If the determination is to issue a disciplinary warning, the employee will also be informed in writing of:

a. what improvement is expected for the future;

b. the length of time for which the warning is active (not usually less than three months nor greater than twelve);

c. any other information in respect of the improvement required e.g. any review of arrangements, and whom the employee should contact for assistance;

d. what might happen if the matter proceeds to the next stage e.g. what the possible sanction might be.

11.7 Employees will be required to sign and return a copy of any such letter confirming receipt.

12. Postponement of hearings and non-attendance

12.1 The date of the hearing will be postponed by up to five working days if the employee's representative is unable to attend on the specified date. If the employee's representative will not be available for more than five working days afterwards, the employee may be asked to choose someone else.

12.2 Employees must take all reasonable steps to attend a hearing. Failure to attend without good reason may be treated as misconduct in itself. If an employee fails to attend without good reason or is persistently unable to do so (for example for health reasons), a decision may have to be taken based on the available evidence. Separate advice should be sought in respect of employees absent from work due to pregnancy or maternity leave.

12.3 It is important that every effort is made to reach a conclusion in all cases of safeguarding allegations that have a bearing on the safety or welfare of children. If an employee tenders their resignation or refuses to co-operate with the process, this must not prevent such a safeguarding allegation being followed up in accordance with safeguarding procedures. Wherever possible, the person should be given a full opportunity to answer the safeguarding allegation and make representations about it. However, it may be necessary to conduct a hearing in their absence and reach a judgement about whether the safeguarding allegation can be regarded as substantiated on the basis of all the information available. In these circumstances, the Headteacher, Panel or manager may also make a decision regarding the sanction that would have been applied had the employee remained in employment.

12.4 In cases where it is necessary to proceed with a hearing in the absence of the employee and it is known this will be necessary in advance of the hearing, the employee will be offered the opportunity to make additional written submissions to the hearing and/or allow their representative to make statements on their behalf at the hearing. Where non-attendance is not known in advance, after consideration of the circumstances, if postponement is not considered appropriate, the hearing may proceed with consideration of any written submission from the employee already received and, where requested and available, appropriate contributions from their representative.

12.5 Similar consideration as outlined above will be given to the need to proceed with investigatory processes in the employee's absence, where this is appropriate.

13. Warning Stages and Disciplinary Sanctions

13.1 The Disciplinary Procedure provides for the employee to be given every reasonable opportunity to improve his/her conduct or performance. Unless the circumstances are exceptional e.g. gross misconduct or the employee is still in the probationary period, no employee should be dismissed without first having received at least one written warning and having had the opportunity to improve his/her conduct. Under most circumstances, this procedure provides for an employee to receive two

written warnings for misconduct of the same or similar nature, a first warning and a final warning, before dismissal is considered.

13.2 Written warnings will normally remain in force for between six and twelve months. In exceptional cases, the person or committee hearing the case may make a determination that the warning will stay in force for a longer period. This may be appropriate where there is a history of repeated breaches of the same or similar disciplinary rules, or where the misconduct is serious enough that the committee hearing the case could consider dismissal as a possible sanction. The employee may appeal against the imposition of an extended warning period.

13.3 In addition to the disciplinary sanction, the Governing Body of the school through the Headteacher or with the support of the Chief Executive Officer, may take action to recover monies or property legitimately due to it. Reporting of cases to relevant bodies may also be necessary, as described in paragraphs 5 and 6 of the General Introduction to this document.

First Written Warning

13.4 Where an employee's misconduct is such as to warrant a formal warning, and where there are no other active warnings on the employee's disciplinary record, a first written warning will normally be the appropriate sanction.

Final Written Warning

13.5 A Final Written Warning will usually be appropriate for:

(a) misconduct where there is already an active written warning on an employee's record; or

(b) misconduct that is considered sufficiently serious to warrant a final written warning even though there are no other active warnings on the employee's disciplinary record.

(c) where dismissal would be a reasonable sanction, but the committee or individual hearing the case have good reason to believe that a warning will prove to be effective.

13.6 A final written warning will contain a clear indication that any further disciplinary offence during the currency of the warning will normally, if substantiated at a hearing, result in dismissal without further warning

Dismissal

13.7 Dismissal will usually only be appropriate for:

(a) any misconduct during the probationary period

(b) further misconduct where there is an active final written warning on the employee's record. In such cases, the committee or individual hearing the case will normally determine that the employee shall cease to work at the school, unless there are strong

mitigating circumstances. The committee or individual hearing the case may alternatively, in appropriate circumstances, determine to extend the final warning for a period between three and twelve months.

(c) any gross misconduct regardless of whether there are active warnings on the employee's record. Gross misconduct will usually result in immediate dismissal without notice or payment in lieu of notice (summary dismissal). Examples of gross misconduct are set out in Schedule 1, paragraph 21. In such cases, the committee or individual hearing the case will normally determine that the employee shall cease to work at the school or for the Trust. In this case the Headteacher or Chief Executive in the case of a Headteacher will dismiss the employee without notice.

13.8 For school-based employees a decision that an employee shall cease to work at the school may only be taken by an appropriate committee (or individual) empowered to do so under the School Government Regulations in force at the time. The Chief Executive Officer (or his/her representative) is entitled to attend any meeting of a Governing Body or its committees which may determine that an employee shall cease to work at the school.

Alternatives to dismissal

13.9 In some cases, alternatives to dismissal may be considered at the Headteacher's, Panel's or manager's discretion, which will usually be accompanied by a final written warning. Examples include, but are not limited to:

(a) Demotion, which for teachers may include removal of any TLR payment(s), where appropriate

(b) Transfer to another department or job

(c) Recommendation for mediation between parties.

In all cases, advice should be taken from the school's HR service provider.

14. Appeals

14.1 An employee is entitled to appeal against any disciplinary sanction imposed. If the sanction has been imposed by the Headteacher, the appeal will be to a committee of the Governing Body. Where the sanction has been imposed by a committee of the Governing Body, the appeal will be to the Governing Body's Appeals Committee. Where the sanction has been imposed by the Chief Executive Officer, an appeal will be considered by an appeals committee of the Trustees.

14.2 An employee who wishes to appeal against a disciplinary sanction must lodge notification of his/her intention to appeal along with full grounds for their appeal (including any supporting documentation) within 14 days of the date of written notification of that sanction, as directed in the letter of notification.

14.3 If the employee raises new matters in their appeal, further investigation may be required prior to the appeal hearing being set. In such cases the usual time frames may

be adjusted. If, as a result of this, any new information comes to light, the employee will be provided with a summary including, where appropriate, copies of additional relevant documents and witness statements. The employee will have a reasonable opportunity to consider this information before the hearing and the employee or their companion may comment on any new evidence arising during the appeal before any decision is taken.

14.4 A date for an appeal hearing will normally be arranged and notified to the parties within 14 days of an appeal being registered. All parties will normally be given at least 10 days' notice of the date of the appeal. Any further submissions from those responding to the appeal should normally be provided to the school (or the manager hearing the appeal) at least five working days before the appeal hearing, to enable them to be circulated to the parties in good time before the hearing.

14.5 The main grounds for an appeal are likely to be, although are not limited to:

(a) if the employee wishes to contest the finding and/or the disciplinary sanction;

(b) if new relevant evidence not available to the original hearing becomes available;

(c) if there is an alleged lack of fairness in the original hearing.

If the appeal is against the finding and the sanction imposed by the original hearing, the appeal will normally constitute a complete re-hearing. If the appeal is against the disciplinary sanction only, the Appeal Committee (or manager in the case of "unattached teachers") may agree with the appellant and his/her representative that they will hear submissions in mitigation of the sanction.

14.6 The procedure for the conduct of an appeal is set out in Schedule 2. An Appeal Committee may uphold the original finding and sanction; uphold the original finding but modify the sanction (only in the most exceptional case will the severity of the original sanction be increased); or not uphold the finding and therefore remove the sanction.

15. Records and lapsed warnings

15.1 Advice given in the course of normal performance management and records of any allegations, complaints and subsequent investigatory or disciplinary processes all form part of an employee's employment history. As such, it is important that proper records are retained, in accordance with the data protection legislation and the recommendations within the ACAS Code of Practice. Furthermore, where an allegation relates to the safety and welfare of children, there is a requirement to retain a clear and comprehensive summary of any allegations made, details of how and who followed up the allegation and any resolution and conclusion. This record must be retained at least until the person attains normal retirement age or for a period of 10 years from the date of the allegation if that is longer. This includes people who leave the organisation.

15.2 As such, although a disciplinary warning may be deemed to have 'lapsed' after the period of the warning has expired, the record of the disciplinary matter should not be removed from the employee's employment history/personal file held by the school. This applies equally to cases where a disciplinary complaint against an employee is

withdrawn, or is found to have been mistakenly initiated, although a clear record of this outcome should be prominent in the papers retained. However, after the active period of the warning they should not be taken into account as part of any future disciplinary matters.

15.3 Allegations that are found to be malicious should be removed from the employee's employment history/personal file held by the school, and any that are unsubstantiated, are unfounded or malicious should not be referred to in employer references.

16. Headteachers

16.1 In locally managed schools, the responsibility for the conduct and discipline of employees at the school will be part of the Headteacher's responsibility. Where there is a concern or complaint about misconduct on the part of the Headteacher, it will normally be the responsibility of the Chair of Governors to initiate any necessary action. Chairs of Governors should seek the advice of the Chief Executive Officer before instigating any formal disciplinary action or suspending a Headteacher.

16.2 If there is sufficient cause for concern, the Chair of Governors may request the Chief Executive Officer to carry out an investigation into all the material facts and circumstances of the complaint or concern through an appointed officer. This investigation will be carried out in confidence. The Chair of Governors and one other governor (who should not later be a member of a committee which hears the case) will consider the report of the investigation and any recommendations of that report and will decide what action is to be taken.

16.3 If the Chair of Governors and the one other governor decide to take no action after due consideration of the report, they will report their decision and the reason for that decision (but not the details of the investigation) to the full Governing Body.

16.4 If the governors considering the report decide that the matter should be considered under the formal disciplinary procedure, the matter will be considered by the Hearings Committee of the Governing Body. The procedure will be conducted as for all other employees.

17. Advice and Support to Employees

17.1 In most cases, employees subject to allegations or complaints being dealt with under this procedure will seek the advice and support of their trade union or professional association. However, employees may address questions about procedure, the conduct of investigations or hearings, or other related matters to the Headteacher, the Chair of Governors or the Chief Executive Officer, where they are directly responsible for those procedures.

17.2 It will normally be appropriate to make arrangements for a nominated individual to keep the employee informed of developments and to offer support, particularly in cases where the investigation is prolonged, the employee is suspended from duty, or has been offered and accepted leave of absence, pending investigations. This should be arranged through a suitable senior member of the School's staff or an officer of the Trust who is not involved in the investigation or procedure in any other way. The name of a nominated individual will normally be notified to the employee.

17.3 Employees, including witnesses, should also be encouraged to access support available through the school's participation in any well-being service, for example, the Employee Assistance Programme, or their own GP, as necessary.

18. Harassment and Bullying

Harassment and bullying at work is totally unacceptable and requires firm action by employers, employees and trade unions. It can result in difficult working conditions, undermine health and safety and produce feelings of isolation, despair and even fear. In extreme circumstances it can lead to school staff leaving a workplace or even leaving the profession altogether.

Hartismere School takes harassment and bullying at work very seriously both as an equality and health and safety issue for staff and pupils.

In many cases the behaviour of the alleged harasser or bully may not be easily linked to any specific factors and may appear to be completely arbitrary. It may, in such cases, derive from the relationship between the two people involved. Abuse of power is normally a significant element. Harassment or bullying by pupils or colleagues may be motivated by forms of prejudice such as sexism, racism, ageism, disablism or by homophobia, biphobia or transphobia.

In practice, forms of harassment and bullying may overlap. A common feature of all harassment and bullying is that it is unwanted by the person subject to those actions. Some forms of harassment are perceived by staff to be difficult to challenge and harder to report because of the acceptance of some forms of bullying behaviour as 'normal', such as sexual harassment.

For those who are harassed and bullied, the result may be stress which can involve anxiety, depression or illness. Harassment and bullying can affect work performance and cause absence from work. Harassment and bullying can have direct impact upon a person's mental and physical wellbeing and can have a detrimental impact on their ability to fulfil their potential.

At Hartismere harassment and bullying is never tolerated. Members of staff are urged to report any harassment and bullying to the leadership team and any incident is taken in the strictest confidence and acted upon.

19. Grievance complaints

18.1 If an employee wishes to raise a grievance during a disciplinary process, this should be addressed in writing to the Chair of Governors of the school. They will decide what action should be taken and their decision in this matter will be final. Depending on the nature of the grievance, this may be to temporarily suspend the disciplinary process to allow the grievance to be considered. Grievance procedures should not normally be heard whilst a capability process is underway. Complaints about the conduct of the disciplinary process will not normally be dealt with under the grievance procedure but can be raised during the disciplinary hearing and any subsequent appeal. If action taken by the Chair of Governors is the subject of the grievance, s/he will delegate the matter to another governor for consideration and decision.

18.2 In cases where the grievance raised is unconnected to the disciplinary matter, it may be appropriate for this to be considered under grievance procedure running in parallel with disciplinary procedures.

20. Criminal offences

An allegation of a criminal offence committed outside of work will not be treated as an automatic reason for disciplinary action. Consideration needs to be given to what effect any warning, caution, charge or conviction has on the employee's suitability to do their job and their relationship with their employer, work colleagues and the school community. (Speeding offences would not lead to disciplinary actions or to dismissal.) Where it is felt necessary to investigate the matter, consideration will be given to whether or not this can be completed before the outcome of any criminal investigation/prosecution is known. In all cases, advice should be taken from the school's HR provider.

SCHEDULE 1

21. Examples of potential Misconduct

It is not possible to specify all forms of behaviour that will result in disciplinary action. Each case must be judged in the light of the circumstances and context surrounding it. Varying circumstances may well allow different disciplinary actions or no disciplinary action at all to be taken for what are similar offences.

The following examples give an indication of the Governing Body's position as to the types of behaviour which constitute misconduct. The examples are not exhaustive and omissions from the list are not in themselves grounds for appeal. There is some overlap between the examples below and those listed as examples of Gross Misconduct. This allows for appropriate consideration of the seriousness of the alleged misconduct/gross misconduct. The appearance or absence of an example in one schedule or the other should not substitute proper consideration of circumstances surrounding each case or be in itself grounds for appeal.

Employees should, so far as is reasonably practicable, be familiar with the working rules and procedures relating to their own school/department and their particular area of work. These rules may be in the form of codes of practice, school policies and procedures, induction material, manuals, posters, notices and periodic memoranda and failure to have due regard to these may be grounds for disciplinary action in relation to general misconduct or professional negligence.

<u>Examples of potential Misconduct</u>

(a) Professional negligence, misconduct, omission or, in certain situations, failure in performance to a reasonable and acceptable standard.

Examples include: serious breaches of safeguarding procedures; failure to report or properly comply with school procedures for reporting allegations of abuse; failure to observe proper professional boundaries in staff-pupil relationships; failure to exercise reasonable care for the safety and welfare of oneself, other employees, pupils,

governors, members of the public or others on school premises; actions causing loss, damage or injury through serious negligence

(b) Failure to observe school/department rules and procedures or those relating to the employee's area of work

Examples include: those relating to time-keeping, attendance, signing in/out, proper reporting of sickness absence, smoking

(c) Persistent lateness or absence

(d) General misconduct

Examples include: rudeness, insolence, drunken or aggressive behaviour, use of foul or abusive language, racist or other offensive behaviour.

(e) Expressing personal beliefs in ways which exploit pupils' vulnerability or might lead them to break the law

(f) Cases of harassment or bullying, including cyber bullying

(g) Cases of discrimination, harassment or victimisation contrary to the law and/or the school's equalities policies, including giving instructions or bringing pressure to bear on others to do so or malicious complaints against or victimisation of employees using school procedures e.g. harassment, disclosure of malpractice etc.

(h) A significant breach of health and safety rules, failure to observe health and safety policies and procedures, or endangering self or others

(i) Misuse of school's property or that belonging to others while in the course of work

(j) Taking unauthorised leave

(k) Insubordination, non-compliance, failure to obey a reasonable and lawful instruction or direction, or conduct intended to otherwise undermine

(l) Bringing the school or profession into serious disrepute, including failure to observe reasonable standards of ethics and behaviour (or appropriate professional standards) within and outside work, or to have proper and professional regard for the ethos, policies and practices of the school.

(m) Misuse of the internet or inappropriate use of electronic mail

(n) Wrongful sharing of security passwords in connection with building security and computer systems

(o) Unauthorised or inappropriate disclosure of confidential information, failure to observe data protection principles or the use of such information or official contacts for personal interest or gain

(p) Misuse of the school's name, equipment, materials or information.

(q) Deliberate failure to disclose unspent criminal convictions

22. Examples of potential Gross Misconduct which may justify dismissal without notice

As stated above, it is not possible to specify all forms of behaviour that will result in disciplinary action. Each case must be judged in the light of the circumstances and context surrounding it. Varying circumstances may well allow different disciplinary actions or no disciplinary action at all to be taken for what are similar offences.

The following examples give an indication of the Trust's position as to the types of behaviour which constitute gross misconduct. The examples are not exhaustive and omissions from the list are not in themselves grounds for appeal. There is some overlap between the examples below and those listed as examples of Misconduct. This allows for appropriate consideration of the seriousness of the alleged misconduct/gross misconduct. The appearance or absence of an example in one schedule or the other should not substitute proper consideration of circumstances surrounding each case or be in itself grounds for appeal.

In addition, employees should, so far as is reasonably practicable, be familiar with the working rules and procedures relating to their own school/department and their particular area of work. These rules may be in the form of codes of practice, school policies and procedures, induction material, manuals, posters, notices and periodic memoranda.

<u>Examples of potential Gross Misconduct</u>

a) Serious professional negligence, misconduct, omission or, in certain situations failure in performance to a reasonable and acceptable standard.

Examples include: serious breaches of safeguarding procedures; failure to report or properly comply with school procedures for reporting allegations of abuse; failure to observe proper professional boundaries in staff-pupil relationships; abuse of a position of trust; serious failure to exercise reasonable care for the safety and welfare of oneself, other employees, pupils, governors, members of the public or others on school premises; actions causing loss, damage or injury through serious negligence; serious failure to use public funds in a proper and lawful way

b) Threatened or actual physical assault or violence towards employees, pupils, governors, or others on school premises or in the course of work.

c) Serious sexual misconduct

d) Abuse against children or young people

e) Expressing personal beliefs in ways which exploit pupils' vulnerability or might lead them to break the law

f) Serious cases of harassment or bullying, including cyber bullying

g) Serious cases of discrimination, harassment or victimisation contrary to the law and/or the school's equalities policies, including giving instructions or bringing pressure to bear on others to do so or malicious complaints against or victimisation of employees using school procedures e.g. harassment, disclosure of malpractice etc.

h) Malicious or vexatious complaints against colleagues or other members of the school community

i) Serious offences involving the misuse or illegal possession of drugs at any time, and/or serious cases of being under the influence of alcohol or drugs at work.

j) A serious breach of health and safety rules, failure to observe health and safety policies and procedures, or endangering self or others

k) Deliberate and serious damage or misuse of school property or that belonging to others while in the course of work

l) Theft or misappropriation of cash or property belonging to the school, the County Council, fellow employees, pupils and others at school

m) Fraud or dishonesty, including falsely reporting sickness absence, falsification of work records, timesheets, travelling and subsistence or similar claims, or serious use of paid time or the school's materials or facilities for purposes unrelated to the job.

n) Taking significant unauthorised leave

o) Serious insubordination, non-compliance, failure to obey a reasonable and lawful instruction or direction, or conduct intended to otherwise undermine

p) Bringing the school, service or profession into serious disrepute, including failure to observe reasonable standards of ethics and behaviour (or appropriate professional standards) within and outside work, or to have proper and professional regard for the ethos, policies and practices of the school.

q) Serious misuse of the internet or inappropriate use of electronic mail, including deliberately accessing or sharing pornographic, offensive or obscene material

r) Deliberate and wrongful disclosure of security passwords in connection with building security and computer systems

s) Serious unauthorised or inappropriate disclosure of confidential information, failure to observe data protection principles or the use of such information or official contacts for personal interest or gain

t) Serious misuse of the school's name, equipment, materials or information.

u) False statements or failure to disclose relevant information in applications for employment, including any personal incapacity which may be incompatible with the satisfactory discharge of the duties and responsibilities of the job.

v) Deliberate failure to disclose unspent criminal convictions or, in respect of employment exempt from the terms of the Rehabilitation of Offenders Act

23. Some Reasons Which Might Justify Dismissal With Notice

As distinct from gross misconduct, for which the normal sanction is dismissal without notice, dismissal will normally only take place after due warning through the disciplinary procedure. However, there are a limited number of circumstances which fall short of gross misconduct where the governing body may determine that an employee shall cease to work at the school without prior warning being issued. These are circumstances where the action of the employee has broken the mutual trust and confidence necessary to sustain the employment relationship. The following is a non-exhaustive list of circumstances which may give rise to such a determination:

(a) Behaviour of a serious or criminal nature outside employment, the nature of which makes continued employment impossible.

(b) Committal to prison for an offence which is of such a kind, or entails a sentence of such length, as to make continued employment impossible.

Depending on the seriousness of such matters, dismissal without notice may also be considered.

SCHEDULE 2

24. Procedure for a Hearing

Hearings will be held in as informal a manner as possible and the employee will be afforded every reasonable assistance to put his/her case. The conduct of the hearing is at the discretion of the Headteacher, Chair of the committee or manager hearing the case, but s/he will allow the parties every reasonable opportunity to present their case.

At a hearing, an employee's companion may make representations and ask questions but should not answer questions on the employee's behalf. The employee may confer privately with their companion at any time during the hearing.

In the case of an appeal, the order of presentation set out below would normally be reversed, with the employee as appellant presenting his/her case first. However, by prior agreement or where the appeal constitutes a re-hearing of the full case, the case

against the employee may be presented first as at the initial hearing. Chairs of appeal committees or managers hearing appeals should ensure that all parties have a common understanding and agreement on the order of presentation.

1. Introduction

The Headteacher, Chief Executive or Chair of the appropriate committee or manager hearing the case will ensure that those present are introduced to each other and that they are aware of the procedure to be followed.

2. Presentation of the Investigation Findings

The investigator may make an opening statement outlining their findings. The person or committee hearing the case and the employee responding to it may ask questions to which the investigator will respond in a fact giving capacity.

S/he will then call any witnesses, if relevant and ask them to give their evidence. The employee or his/her representative may then ask questions of each witness. The person or committee hearing the case may also ask questions of any witness.

Where evidence is presented in the form of documents, the investigator or an appropriate witness will explain the nature and significance of the documents.

3. The Employee's Case

The employee or his/her representative may make an opening statement. The person or committee hearing the case may ask questions.

S/he may call any further witnesses and invite them to give their evidence. The person or committee hearing the case may then ask questions. The person presenting the employer's case and the investigating officer may also ask questions. The employee or his/her representative may ask the witness final questions.

Where there is any documentary evidence, the employee or any witness on his/her behalf will explain its significance

4. Re-examination

The employee or his/her representative will be asked if they wish to re-examine any evidence. The person or committee hearing the case may also do so at its discretion.

5. Final Statements

The person presenting the case against the employee may make a final statement, which may include the investigating officer making a brief statement about their findings. The employee or his/her representative may then make a final statement. Final statements will only contain information that has already been examined during the hearing. Neither the person presenting the case nor the employee is entitled to introduce new or fresh evidence at this stage.

6. Adjournment

Either party may ask for an adjournment at any stage. The decision to adjourn is at the discretion of the Chair, who will consider a request in the light of the reason given for it.

7. Consideration of the Case

All parties will withdraw. The Headteacher, Chief Executive or the committee will deliberate. The Chief Executive may be present at these deliberations to advise on legal and procedural matters. In any case where dismissal is proposed, the representative of the Chief Executive will advise the committee as to whether s/he concurs with the committee's decision where appropriate.

If it is necessary to recall either party or any witnesses, to resolve a point of uncertainty, both parties will be invited to be present, whether or not the point of doubt concerns one party or both.

8. Decision

If possible, the decision will be communicated orally to the employee after the hearing. The decision will be confirmed in writing to the parties involved as soon as possible after the hearing.