



HARBORNE
ACADEMY
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Disciplinary Procedure

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Disciplinary Procedure

1. Purpose and Scope

1.1 This procedure is designed to promote fairness and consistency in the treatment of misconduct.

1.2 It applies to staff employed by the Academy with the exception of the Head Teacher, where appropriate arrangements will be made by the Governing Body.

1.3 Save as required by law, the procedure is a statement of policy only and is non-contractual.

1.4 Minor misconduct will be dealt with informally, but where it continues, or, where formal disciplinary action is regarded as necessary by the Academy, this procedure will apply.

1.5 Without prejudice to the above, the procedure does not apply to:

- termination during or at the end of a probationary period of service (including any extended probationary period of employment) - where the Academy's probationary procedure will apply;
- termination by mutual consent.

1.6 The Academy reserves the right to implement the procedure at any stage as set out below taking into account the alleged misconduct of an employee, i.e. the sanctions outlined below are not required to be used sequentially. Employees will not ordinarily be dismissed for a first disciplinary offence.

1.7 Where time limits are referred to in the course of this procedure they may be varied by consent between the employee and the Academy.

1.8 Employees have the right to be accompanied at any disciplinary hearing by a trade union representative or a work colleague of their choice.

1.9 In disciplinary cases different managers will carry out the investigation and disciplinary hearing.

2. Investigation

2.1 An investigating manager will promptly and thoroughly investigate any matter that is reasonably suspected or believed to contravene any of the Academy's policies or rules or may otherwise be a disciplinary matter. The employee will be informed as soon as possible as to the fact of an investigation and when it has been concluded.

2.2 There may be instances where suspension with pay is necessary while investigations are carried out. The Academy has the right to suspend with pay

where there are reasonable grounds for concern that evidence may be tampered with, destroyed or witnesses pressurised before the disciplinary hearing, or if there is a potential risk to the business or property of the Academy or other employees or third parties in allowing the employee to remain at work, or there is a potential case of gross misconduct. The decision to suspend an employee must be authorised by the Head Teacher following consultation with the HR department. Any decision to suspend will be confirmed in writing within 3 working days of suspension. Suspension will not constitute disciplinary action in itself. Any suspension will be as brief as possible and its continuance kept under review.

2.3 Depending on the circumstances of the case, the employee may be invited to attend an investigatory interview. If such an interview is held prior to a disciplinary hearing, the employee will be informed at the outset that the interview is an investigatory interview and advised of his/her right to be accompanied to the meeting by a trade union representative or work colleague. The Academy reserves the right to dispense with an investigatory interview, for example where the facts of the case are not in dispute, and to proceed directly to a formal disciplinary hearing.

3. Procedure

3.1 Where, upon completion of an investigation, there are reasonable grounds to believe that an employee has committed an act of misconduct, the employee will be invited to attend a disciplinary hearing before an appropriate manager (see Paragraph 8 'Managerial authority to issue disciplinary warnings and hear appeals').

3.2 In the event of a disciplinary hearing taking place the Academy will:

- a) give the employee a minimum of one calendar week's advance notice of the hearing in writing;
- b) tell the employee the purpose of the hearing and that it will be held under the Academy's formal disciplinary procedure;
- c) give the employee written details of the nature of his/her alleged misconduct; and
- d) provide to the employee all relevant information (which should include statements taken from any fellow employees or other persons that the Academy intends to rely upon against the employee) not less than one calendar week in advance of the hearing.
- e) invite the employee to submit written submissions in support of his/her case in advance of the hearing.

3.3 Where the employee is unable to attend a disciplinary hearing and provides a good reason for failing to attend, the hearing will be adjourned to another date. The Academy will comply with 3.2a) above in respect of giving notice of the rearranged hearing. Unless there are special circumstances mitigating against it, if the employee is unable to attend the rearranged hearing, the rearranged hearing may take place in the employee's absence. The employee's fellow worker or trade union official may attend in such circumstances and will be allowed the opportunity to present the

employee's case. The employee will also be allowed to make written submissions in such a situation.

4. The disciplinary hearing

4.1 A disciplinary hearing will normally be conducted by an appropriate manager (see paragraph 8 'Managerial authority to issue disciplinary warnings and hear appeals) together with a representative from the Human Resources department (the panel). Any member of management responsible for the investigation of the disciplinary offence(s) shall not be a member of the panel, save to the extent that such a manager may present any supporting facts and material to the disciplinary hearing.

4.2 The employee will be entitled to be given a full explanation of the case against him/her and be given copies of any statements provided by witnesses at least 5 days before the hearing. The employee will be able to call his/her own witnesses. He/she will be permitted to set out his/her case, answer any allegations and put forward any mitigation. The employee will be given a reasonable opportunity to ask questions, present evidence and call relevant witnesses. He/she will also be given the opportunity to raise points about any information provided by witnesses. Where the Academy intends to call relevant witnesses it will give the employee advance notice of this. The employee must also give advance notice if he/she intends to call relevant witnesses.

4.3 The Academy may adjourn the disciplinary proceedings if it appears necessary or desirable to do so (including for the purpose of gathering further information). The employee will be informed of the period of any adjournment. If further information is gathered, the employee will be allowed a reasonable period of time, together with his/her fellow worker or trade union official, to consider the new information prior to the reconvening of the disciplinary proceedings.

4.4 The employee will be given the opportunity to make any plea of mitigation before the manager conducting the appeal adjourns to consider his/her decision

4.5 The manager conducting the hearing will convey his/her decision to the employee and will also inform the employee what disciplinary action, if any, is to be taken. The decision will be communicated in writing within one calendar week. The employee will be notified of his/her right of appeal under this procedure.

5. Disciplinary Action

5.1 Where, following a disciplinary hearing, the Academy establishes that the employee has committed a disciplinary offence, the following disciplinary action may be taken:

Recorded Oral Warning

5.2 Where a minor offence or offences have been committed, a recorded oral warning may be given. The warning will ordinarily state that any further misconduct

will render the employee liable to further, more severe disciplinary action. The employee will be informed that the warning will remain 'live' for a period of 6 months from its date of issue. During this period, the Academy may rely on such a warning in the event of further misconduct on the part of the employee.

First Written Warning

5.3 Where either a more serious disciplinary offence has been committed or further minor offences have been committed by an employee following a recorded oral warning that remains 'live', the employee will receive a first written warning. The warning will:

- a) set out the nature of the offence committed;
- b) inform the employee that further misconduct is liable to result in further disciplinary action under this procedure;
- c) specify that the warning will remain 'live' for a period of 12 months from its date of issue, after which period it will be spent and disregarded for disciplinary purposes subject to satisfactory conduct; and
- d) state that the employee may appeal against the warning.

Final Written Warning

5.4 Where a serious disciplinary offence has been committed that warrants only one written warning but insufficiently serious to justify dismissal, or, where an employee commits further disciplinary offences after a first written warning has been issued and remains 'live', a final (or combined first and final) written warning may be given. Such a warning will:

- a) set out the nature of the offence committed;
- b) inform the employee that further misconduct is likely to result in his/her dismissal;
- c) specify that the warning will remain 'live' for a period of 18 months from its date of issue, after which period it will be spent and disregarded for disciplinary purposes subject to satisfactory conduct; and
- d) state that the employee may appeal against the warning.

Dismissal

5.5 Where the employee has committed further acts of misconduct (these being acts of misconduct other than gross misconduct) following a final written warning given, the employee may be dismissed with notice or with pay in lieu of notice.

5.6 The sanction of dismissal can only be imposed by the Head Teacher in consultation with the Chair of Governors.

6. Gross Misconduct

6.1 Gross misconduct is misconduct of such a serious and fundamental nature that it breaches the contractual relationship between the employee and the Academy. In the event that an employee commits an act of gross misconduct, the Academy will be entitled to terminate summarily the employee's contract of employment without notice or pay in lieu of notice.

6.2 The sanction of dismissal can only be imposed by the Head Teacher in consultation with the Chair of Governors.

6.3 Matters that the Academy views as amounting to gross misconduct include (but are not limited to):

- stealing from the Academy, members of staff or the public;
- other offences of dishonesty;
- falsification of a qualification that is a stated requirement of the employee's employment or results in financial gain to the employee;
- falsification of records, reports, accounts, expense claims or self-certification forms whether or not for personal gain;
- sexual misconduct at work;
- fighting with or physical assault on members of staff, students or the public;
- deliberate damage to or misuse of the Academy's property;
- serious damage to the Academy's property;
- drunkenness or being under the influence of illegal drugs whilst at work;
- possession, custody or control of illegal drugs on the Academy's premises;
- serious breach of the Academy's rules, including, but not restricted to, health and safety rules and rules on computer use;
- gross negligence;
- conviction of a criminal offence that is relevant to the employee's employment;
- conduct either inside or outside of the Academy that brings the Academy's name into disrepute;
- conduct either inside or outside of the Academy that causes an irrevocable breach of trust and confidence; and
- discrimination or harassment of a fellow worker, student or other visitor to the Academy on the grounds of sex, sexual orientation, race, disability, age or religion or belief.

Other acts of misconduct may come within the general definition of gross misconduct.

7. Appeals

7.1 An employee may appeal against any formal disciplinary sanction imposed against him/her. Any appeal must be made in writing within one calendar week of the written notification of the disciplinary sanction.

The appeal will be heard by a more senior manager who has not been involved in the decision to impose the disciplinary sanction on the employee (see paragraph 8 'Managerial authority to issue disciplinary warnings and hear appeals).

7.2 The senior manager is obliged to consider any representations made by the employee, the employee's fellow employee or trade union official and those of the manager who conducted the investigation and the manager who conducted the disciplinary hearing and imposed the disciplinary sanction.

7.3 The senior manager hearing the appeal must decide on the basis of both sets of representations, together with any subsequent facts that may have come to light, whether to:

- Uphold the decision to impose the disciplinary sanction and the level of disciplinary sanction.
- Uphold the decision to impose a disciplinary sanction but to reduce the level of the disciplinary sanction. The disciplinary sanction may not be increased following appeal.
- Uphold the appeal, i.e. find for the employee, in which case the senior manager will arrange for the removal of all records of the disciplinary sanction from the employee's record.

7.4 Appeals against dismissal will be heard by a panel of at least three Governing Body members. Therefore, the appeal should be made to the Clerk to the Governing Body. The procedure to be followed at an appeal against dismissal is attached at Annex 1.

7.5 When lodging an appeal, the employee should state:

- a) the grounds of appeal; and
- b) whether he/she is appealing against the finding that he/she has committed the alleged act or acts of misconduct, or against the level of disciplinary sanction imposed.

7.6 The employee must provide written notice of the appeal within one calendar week of being informed of the disciplinary sanction being imposed against him/her.

7.7 Every endeavour will be made to ensure that Appeal hearings will take place within two calendar weeks of receipt of the employee's written notice of appeal. In the case of appeals against dismissal and the necessity to convene a panel of Governing Body members, every endeavour will be made to ensure the appeal hearing takes place within four calendar weeks of receipt of the employee's written notice of appeal.

7.8 Upon completion of the appeal, the senior manager conducting the hearing will convey his/her decision to the employee. The decision at the appeal is final. The decision will be confirmed in writing within one calendar week.

7.9 Where an appeal lies against dismissal, the decision to dismiss will have had immediate effect and, therefore, if the dismissal is by notice, the period of notice will already have commenced on the date that the decision was given. If the decision was to dismiss the employee summarily without notice, the Academy will be under no obligation to pay the employee for any period between the date of the original dismissal and the appeal decision and the original date of termination will stand.

8. Managerial authority to issue disciplinary warnings and hear appeals

8.1 The manager conducting the formal disciplinary hearing and, therefore, authorised to issue a disciplinary warning under this procedure will always be a member of the senior leadership team (SLT).

8.2 The manager hearing an appeal against a disciplinary warning will always be the Deputy Head Teacher or Head Teacher OR a member of the BMET Executive Team should it be the Head Teacher or Deputy Head Teacher.

8.3 The sanction of dismissal can only be imposed by the Head Teacher in consultation with the Chair of Governors.

8.4 Appeals against dismissal will be heard by a panel of at least three Governing Body members, the staff Governor will never be a part of this panel.

9. Miscellaneous

9.1 Where disciplinary action is being considered against an employee who is a trade union representative, the normal disciplinary procedure will be followed. Depending on the circumstances, however, the Academy may discuss the matter at an early stage with an official employed by the union, after obtaining the employee's agreement.

9.2 This procedure will be periodically reviewed in consultation with the trade unions. Any amendment to it will be advised to employees in writing by the Academy and such written advice will inform employees as to the date when any amendment comes into effect.

Annex 1

Appeal against dismissal

Procedure for the appeals hearing

1. The Chair of the Appeals panel ('the panel') will introduce those present to each other and explain the purpose of the hearing, the powers that the panel have, and, how the hearing will be conducted.
2. The purpose of the hearing will be for the panel to hear and consider any representations made by the employee, the employee's fellow employee or trade union official and those of the Head Teacher or member of the BMET Executive team designated as a senior post holder under the Corporation's Article of Government who conducted the disciplinary hearing and imposed the sanction of dismissal.
3. The panel will decide, on the basis of both sets of representations, together with any new or subsequent evidence/facts that have come to light, whether to:
 - a) Uphold the decision to dismiss.
 - b) Uphold the decision to impose a disciplinary sanction but to substitute the sanction of dismissal with a lower level of disciplinary sanction, i.e. a warning, in which case the employee will be re-instated.
 - c) Uphold the appeal and find fully for the employee, in which case the employee will be re-instated and all records of the disciplinary case and the dismissal will be removed from the employee's record.
4. If the decision is to uphold the dismissal, the Academy will be under no obligation to pay the employee for any period between the date of the original dismissal and the appeal decision and the original date of termination will stand.
5. If the employee is re-instated the effect will be that the employee was never dismissed and service and salary for the period between the original dismissal and the appeal decision will be re-instated.

Conduct of the hearing

(Please note that reference to the Head Teacher includes the senior post holders)

6. The Head Teacher will put forward the case for dismissal and explain his/her reasons for deciding to dismiss the employee.
7. The panel may ask any questions of the Head Teacher and/or seek clarification on any matter.
8. The employee or his/her representative may ask any questions of the Head Teacher and/or seek clarification on any matter.

9. The employee and/or the employee's representative will be asked why he/she is appealing and state his/her case against the decision to dismiss.

10. The panel may ask any questions of the employee and/or seek clarification on any matter.

11. The Head Teacher may ask any questions of the employee and/or seek clarification on any matter

12. Once all the relevant issues have been explored the Chair of the panel will invite the employee or his/her representative to summarise his/her case against the decision to dismiss and give him/her the opportunity to make any final representations.

13. The Chair will adjourn the hearing to enable the panel to consider their decision.

14. The Chair will communicate the decision of the panel with its reasons to the employee in writing within 5 working days of the hearing. The decision of the panel will be final.