

DISCIPLINARY PROCEDURE**Contents**

Section 1	Purpose and Scope	Page 2
Section 2	Key Principles	Page 2
Section 3	School Based Employees – The Role of the Governing Body	Page 2
Section 4	Disciplinary Proceedings in relation to Statutory Officers	Page 3
Section 5	Assessment of Initial Allegation	Page 3
Section 6	Informal Action	Page 4
Section 7	Mediation	Page 4
Section 8	Formal Action	Page 4
Section 9	Investigation	Page 5
Section 10	Sickness Absence	Page 5
Section 11	Raising a Grievance	Page 5
Section 12	Disciplinary Action outside of the formal Disciplinary Meeting	Page 6
Section 13	Initiating the Disciplinary Meeting	Page 7
Section 14	The Disciplinary Meeting	Page 8
Section 15	Levels of Disciplinary Penalties	Page 8
Section 16	Right of Appeal	Page 10
Section 17	Monitoring	Page 11
Section 18	Completing the Disciplinary Process	Page 11
Section 19	Equality and Diversity	Page 11
Section 20	Income Tax and National Insurance	Page 11
Appendix A	Examples of Misconduct	Page 13
Appendix B	Disciplinary Procedure FAQ's	Page 15
Appendix C	Disciplinary Procedure Flow Chart	Page 18
Appendix D	Disciplinary Procedure Action Plan	Page 19
Appendix E	Suggested Protocol at a Disciplinary/ Appeal Meeting	Page 20
Annex A	Security of Information	Page 21

DISCIPLINARY PROCEDURE

1.0 **PURPOSE AND SCOPE**

- 1.1 This procedure is designed to help and encourage all employees to achieve and maintain acceptable standards of conduct. The aim is to ensure consistent and fair treatment for all. This procedure applies to all BMBC employees including those employed in locally managed schools where the Governing Body has adopted the policy.
- 1.2 The procedure should only be used in connection with the potential misconduct of employees. It should not be used for issues relating to performance in employment, general probationary period issues, or short or long term attendance (which are covered by separate provisions).
- 1.3 The Managers Guidance Pack contains a suite of model letters and is best practice guidance for illustrative purposes to support managers through the process.

2.0 **KEY PRINCIPLES**

- 2.1 All disciplinary investigations and meetings should be carried out as quickly as possible in order to avoid unnecessary delay. Please see Appendix B - Disciplinary Procedure FAQ's and Appendix C - Disciplinary Flowchart for guidance on the disciplinary process.
- 2.2 An employee is entitled to be accompanied throughout the process at each formal meeting by a work colleague or designated Trade Union/Professional Association Official. However, this right does not extend to friends/family or professional persons such as solicitors and barristers.
- 2.3 The procedure may also apply to conduct outside of the workplace, including but not limited to criminal charges, cautions or convictions where the conduct may have a bearing on the individual's employment. Reference should be made to Section 3 of the [Council's Code of Conduct](#).
- 2.4 If the employee concerned is a Trade Union representative the case should be discussed with the Trade Union's full time Convenor after obtaining the employees agreement. In the case of a Convenor the matter should be discussed with a Regional Officer.
- 2.5 All safeguarding incidents will be investigated. If an employee resigns / retires during the investigation then as a minimum the investigation will be concluded. Advice should be sought from the HR Business Partner regarding any safeguarding allegations.

3.0 **SCHOOL BASED EMPLOYEES – THE ROLE OF THE GOVERNING BODY (SCHOOL STAFFING (ENGLAND) REGULATIONS 2009)**

- 3.1 The Governing Body has overall responsibility for staff dismissals in its school. With the exception of the dismissal of the Headteacher, where different arrangements apply, it may in accordance with the Staffing Regulations 2009, delegate these responsibilities to the Headteacher, an individual Governor, or a group of Governors with or without the Headteacher. It should be noted however, that any Governor or Headteacher hearing the case must have had no previous involvement in the process.
- 3.2 In the case of potential misconduct of the Headteacher, the Chair of Governors takes on the role of Manager as referred to throughout the procedure. The decision to dismiss a Headteacher should be taken at a disciplinary meeting of at least 3 Governors unless there are not enough Governors who have not formally been involved in any process. In this case

2 Governors may hold a disciplinary meeting and issue an appropriate disciplinary penalty which could include dismissal.

3.3 The Governing Body should ensure that all employees have the right to appeal at any of the formal stages to a panel of at least 3 Governors who have not been involved in any previous action or decision connected with the Disciplinary Procedure. Where there are not enough Governors available the appeal may be heard by 2 Governors. Where applicable there should be an equal number of Governors on disciplinary meetings and appeal meetings.

3.4 The absolute requirement under the staffing regulations is for the dismissal determinations to be delegated to the Headteacher or 1 or more Governors, but appeals against an initial determination should be delegated to at least 2 Governors as provided above.

4.0 **DISCIPLINARY PROCEEDINGS IN RELATION TO STATUTORY OFFICERS**

4.1 The Local Government Act 2000 established statutory protections for the three statutory posts of Head of Paid Service, Chief Finance Officer (often referred to as the Section 151 Officer) and Monitoring Officer. The following process would need to be followed in the event of disciplinary proceedings in relation to the above three Officers:-

- Appointment of an investigator to undertake an investigation and report to the Panel; (due to the relationship between the Council and those Officer, to ensure fairness and an independent investigation it may be appropriate to appoint an external person to carry out the investigation);
- Establishment of Disciplinary Panel including at least two Independent Persons, who will act as advisors and who are defined as persons appointed under section 28(7) of the Localism Act 2011;
- Consideration by the Panel of any views of the External Independent Investigator
- In the event that the proposed course of action would be dismissal a further recommendations to full Council to that effect;
- Consideration by Full Council. The dismissal would have to be approved by way of a vote.

4.2 Consideration by Full Council would represent an appeal against dismissal and would address the procedural requirements under the ACAS Code of Practice.

5.0 **ASSESSMENT OF THE INITIAL ALLEGATION**

5.1 When the initial allegation arises, and the Manager/Headteacher considers that the employee's conduct may justify disciplinary proceedings, it is recommended that they obtain an overview of the situation promptly so that a decision can be made on whether to proceed to a formal investigation or deal with the matter informally. This may involve:

- Speaking to the employee concerned.
- Speaking to any witnesses.
- Ensuring vital corroborative evidence is secured e.g. computer evidence, statements, documentary evidence etc wherever possible.

5.2 Following this initial investigation the Manager/Headteacher should determine the appropriate course of action which could include:-

- The allegation is unfounded and no further action is required.
- The allegation is minor and as such should be dealt with through Informal Action, as outlined at Section 6.
- An investigation, as outlined in the Formal Action Section 8.
- The allegation is vexatious or malicious and requires further investigation which may

result in disciplinary action against the complainant.

5.3 The Manager/Headteacher may determine that the alleged misconduct relates to safeguarding of children or involves vulnerable adults. In such cases:

- The relevant guidance for dealing with such matters must be followed e.g. *Protection of Vulnerable Adults*, Child Safeguarding Procedures and immediate referrals made.
- Issues relating to child safety must be discussed with a Senior Manager/Headteacher and the Local Authority Designated Officer in accordance with 'Barnsley Safeguarding Children's Board Procedures and the DfE's Dealing with Allegations of Abuse against Teachers and other Staff - Guidance for Local Authorities, Headteachers, School Staff, Governing Bodies and Proprietors of Independent Schools.
- All issues related to Adult Safeguarding must be referred to the designated Service Manager.

6.0 **INFORMAL ACTION**

6.1 In the majority of cases an informal conversation between the Manager/Headteacher and the employee maybe all that is needed. The employee has the right to be accompanied (see Section 2.2 for guidance). The employee will need to be advised that if misconduct is repeated, formal action will be instigated. This meeting must be minuted and a copy of the notes kept on the employee's personal file. It is recommended that a letter should be sent to the employee including the agreed action points where appropriate, details of any support/training required, the standards of behaviour and improvements expected and the consequences of a repetition of the behaviour. Informal action should not be substituted for an employee accepting a formal sanction (or vice versa).

7.0 **MEDIATION**

7.1 In some cases the Manager/Headteacher may consider that mediation is an appropriate tool to assist in resolving minor disciplinary issues. Mediation is a voluntary process where the independent mediator helps two or more people in dispute to reach an agreement.

7.2 Mediation can be particularly effective when used to deal with allegations of minor misconduct that are being dealt with at the informal action stage or before matters escalate.

7.3 Further guidance about the mediation process and how it can be accessed can be found in the Council's [Mediation Policy](#).

8.0 **FORMAL ACTION**

8.1 Following the initial assessment the Manager/Headteacher may determine that the allegation is of a more serious nature or potential gross misconduct and that progression to formal action is required. In such cases it is recommended that an immediate investigation is undertaken to establish the circumstances and facts surrounding the alleged misconduct. In cases where there is potential gross misconduct, suspension should be considered. Further information regarding what constitutes misconduct/gross misconduct can be found at Appendix A.

8.2 Where external agencies are involved in the investigation the Investigator should ensure that appropriate timescales are agreed at the onset of the investigation.

8.3 If the allegation is of a serious nature it may be necessary to suspend the employee/s from work. Suspension of an employee should only be in exceptional cases where there is

evidence that there is a real risk the employee will interfere with the investigation or there is a real risk the employee's presence during the investigation will damage the Council's business interests (Guidance for managers regarding the Suspension process can be found in the Managers Guidance Pack).

9.0 **INVESTIGATION**

- 9.1 It is important that the investigation is carried out without delay. An Investigator will be appointed to undertake the investigation and he/she should be of an appropriate managerial level and have had no prior involvement in the case. The Investigator must not be an individual who is named in the allegation. The remit of the manager undertaking the investigation is to ascertain the appropriate evidence whilst maintaining an unbiased position. This usually requires the holding of investigatory meetings with the employee and where appropriate witnesses. Further guidance on how to undertake an independent investigation can be found in the Investigations Guidance.
- 9.2 At the conclusion of the investigation the Investigator should carry out an assessment of the evidence obtained and assess whether it does support the allegations and that a breach of the Council's Disciplinary Procedures has potentially occurred.
- 9.3 If it is determined that the facts of the case do evidence a potential breach of the Council's procedures and the matter cannot be dealt with informally then a formal disciplinary meeting should be arranged (Section 13).
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10.0 **SICKNESS ABSENCE**

- 10.1 If the employee becomes unfit for work during the disciplinary process it is recommended that the Manager and/or Investigator refers the employee immediately to the Occupational Health Service to ascertain their fitness to participate in both the investigation process and if appropriate a disciplinary meeting,
- 10.2 If the employee is deemed unfit to participate in the disciplinary process for a prolonged period (defined as 4 weeks or more or is expected to be absence for more than 4 weeks) or if the employee fails to attend Occupational Health and they are unable to confirm their fitness to participate in the process, a disciplinary meeting may go ahead in their absence and a decision made on the basis of the available evidence. Each case should be judged on its own merits. The employee will still retain the right to be represented at the meeting and would be provided with an opportunity to submit their written representation.
- 10.3 If the employee is unhappy with the outcome of the disciplinary meeting they will have the opportunity to address this perceived inequality at a Disciplinary Appeal Meeting.
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11.0 **RAISING A GRIEVANCE DURING THE DISCIPLINARY PROCESS**

- 11.1 During the course of a disciplinary process an employee may raise a grievance. Where the grievance is related to the disciplinary case then it is appropriate that both matters are dealt with at the same time i.e. at one meeting. However it is advisable that another manager is allocated responsibility for investigating the grievance aspects of the case.
- 11.2 In instances where the grievance has no relationship to the disciplinary matter then both procedures may be dealt with concurrently.
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- 12.0 **DISCIPLINARY ACTION OUTSIDE OF THE FORMAL DISCIPLINARY MEETING – HOLDING OF A DISCIPLINARY SANCTION MEETING AS AN ALTERNATIVE TO FULL DISCIPLINARY MEETING**
- 12.1 In circumstances where an employee admits to the alleged misconduct during the Manager’s initial fact finding investigation (Section 5) the manager can inform the employee of the option of accepting a **Written Warning** (for a period of between 6 and 12 months as outlined in Section 15) as an alternative to proceeding to a formal Disciplinary Meeting (Section 14). This acceptance of a sanction is then confirmed in a **Disciplinary Sanction Meeting**. The Investigator may also recommend this process to the Manager and should the Manager agree, he/she can adopt this alternative process.
- 12.2 The acceptance of the Written Warning under Section 12 of this policy will negate the requirement for a full investigation (Section 9) and full disciplinary meeting (Section 14) which can save a considerable amount of time and stress for all parties concerned.
- 12.3 The holding of a Disciplinary Sanction Meeting is NOT appropriate if the type of misconduct (See Appendix A for examples of misconduct) if proven, is of such a serious nature that it could likely result in a Final Written Warning or the employees Dismissal. Should this be the case, a formal Disciplinary Meeting must be convened in line with Sections 13 and 14 of this policy
- 12.4 The holding of a Disciplinary Sanction Meeting is therefore only appropriate where:-
- The allegation(s) is serious enough to be dealt with under Formal Action (Section 8) but is not considered to be Gross Misconduct (Dismissal) or misconduct that could result in a Final Written Warning **AND**
 - The employee admits to the alleged disciplinary offence during the fact finding investigation **AND**
 - The employee is prepared to accept a formal sanction of a Written Warning as an alternative to progressing the case to a full disciplinary meeting (Section 14).
- 12.5 Where the employee **does not admit** to the alleged offence during the fact finding investigation and the full investigation (Section 9), the matter must progress onto a full Disciplinary Meeting (Section 14) in the usual manner.
- 12.6 Where the employee does admit to the alleged offence during the fact finding investigation (Section 5) and is prepared to accept the Written Warning then arrangements must be made to hold a Disciplinary Sanction Meeting without undue delay.
- 12.7 The Manager will be required to organise the Disciplinary Sanction Meeting and formally invite (in writing) the employee to attend and will be expected to present a summary of the findings and recommendations (eg any training needs identified) to the assembled parties.
- 12.8 The notification to attend a Disciplinary Sanction Meeting must contain sufficient information about the alleged misconduct and acknowledge the employee’s admittance to the disciplinary offence which is being dealt with under Section 12; the suggested timescale for the Written Warning (6 – 12 months); the date/time of the meeting; who will be in attendance and a reminder about the right to representation.
- 12.9 The Disciplinary Sanction Meeting will include the fact finding Manager and/or the Investigator who will present their findings, the Service Manager (or Service Director) the employee concerned and their representative (if applicable).
- 12.10 During the Disciplinary Sanction Meeting, once the fact finding Manager and/or the Investigator has presented a summary of their findings, the employee/employee’s

representative will be given the opportunity to comment/question any facts with regard to what has been presented.

- 12.11 The Service Manager (or Service Director), after hearing the particulars of the case will confirm the Disciplinary Sanction and timescale attached to the Written Warning at the conclusion of the meeting.

The outcome must also be confirmed in writing by the Service Manager (or Service Director) within 5 working days. NB Where there is agreement at the Disciplinary Sanction Meeting by all parties involved, the outcome letter can be compiled/issued by the fact finding manager.

- 12.12 The outcome letter must include; the date of the meeting; those present, and in what capacity; the facts of the case/information presented; the process that was followed; the acceptance by the employee of the disciplinary misconduct; and details relating to the disciplinary sanction (including timescales of the Written Warning) along with any recommendations that were discussed at the meeting e.g. training.

- 12.13 The employee concerned will be required to sign and return a copy of the outcome letter to the fact finding Manager/Service Manager (as appropriate) to record their acceptance of the Written Warning including any recommendations e.g. training that were discussed at the Disciplinary Sanction Meeting.

- 12.14 A copy of the outcome letter must be retained on the employee's personal file and the Policy Monitoring Form completed/submitted by the fact finding manager to enable the disciplinary sanction to be recorded against the employee's SAP record.

- 12.15 Once the disciplinary sanction has been served, it will be disregarded for disciplinary purposes after the stipulated timescale; however, it will remain on the employee's personal file as detailed in the Council's Personal File – retention schedule, as a record of events/employment history.

- 12.16 It should be noted that there will be **no right of appeal** against a disciplinary sanction of a Written Warning issued as a result of following Section 12 of the Councils Disciplinary Procedure.

13.0 **INITIATING THE DISCIPLINARY MEETING**

- 13.1 If there is evidence that there is a disciplinary case to answer the Manager and/or Investigator must:

- Notify the employee in writing, this notification should contain sufficient information about the alleged misconduct and its possible consequences to enable the employee to prepare to answer the case at a disciplinary meeting.
- Send the employee all the documentation they intend to refer to during the meeting, along with an overview of the case. These will be provided to the employee/representative not less than 10 working days in advance of the date of the meeting.

- 13.2 The employee/representative must also provide the Manager and/or Investigator and panel members with copies of all the documents which the employee intends to rely on together with an overview of their case no less than 5 working days in advance of the date of the meeting. In exceptional cases i.e. where the case is complex and requires detailed analysis of evidence then a maximum of 10 days, however this should be agreed in advance and dates of any subsequent meetings take account of this extended timescale.

- 13.3 If the employee's representative is unable to attend on the specified date, the employee may request that the meeting be postponed. They may then offer a reasonable alternative date usually within 5 working days of the original date. This will only be accommodated once.

In normal circumstances the Panel conducting the Disciplinary Meeting should consist of:

- 13.4
- An appropriate Manager. For meetings where dismissal is a potential outcome or the allegations are of a complex nature this should be Head of Service or above and a Human Resources Advisor should also be available to advise the panel.
 - Schools - The Headteacher or appropriate Panel Governors who have been delegated this function in accordance with the School Staffing Regulations 2009 (refer to Section 3).

- 13.5 The panel must consist of individuals who have not been involved in the investigation and are impartial to the process.
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14.0 **THE DISCIPLINARY MEETING**

- 14.1 A recommended protocol for use at the disciplinary meeting is at Appendix E (i).

- 14.2 It is expected that all internal witnesses attend the meeting to be questioned. However, in some circumstances it may be impracticable or unacceptable for the witness to be present at the meeting and in which case a copy of the signed written statement may be provided. Where witnesses are unable to attend the disciplinary meeting the circumstances for their non attendance should be assessed and other methods may be utilised to ensure their evidence is heard i.e. written questions, video links etc. These alternative methods should be discussed on a case by case basis with the HR Business Partner/HR Provider. Witnesses can be accompanied but not represented by a Trade Union representative or Professional Association Representative or work colleague.

- 14.3 Where either internal or external witnesses do not attend for whatever reason, it is for the panel to determine the weight placed on the evidence presented in the witness statement.

- 14.4 It is expected that the Panel will fully consider the evidence and decide, on the balance of probabilities i.e. it is more probable than less probable that the employee committed the alleged misconduct, what disciplinary action, if any, will be taken. Section 15 provides guidance on the levels of penalties. However, it should be noted that the list of examples is not exhaustive and that the level of the penalty should be determined on an individual basis taking account of all the circumstances of the case including but not limited to the severity, circumstances, corroborative evidence, mitigation, etc.

- 14.5 The decision should normally be given verbally to the employee at the conclusion of the meeting and confirmed in writing, within 5 working days. However in exceptional circumstances it may be necessary to communicate the outcome in writing rather than verbally. All parties should be advised of any changes to the method of communication and extension to timescales at the closure of the meeting.
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15.0 **LEVELS OF DISCIPLINARY PENALTIES**

- 15.1 If after all the evidence has been presented at the Disciplinary Meeting and following deliberations the Panel is satisfied that an employee's conduct is unsatisfactory; it should determine within the range of available penalties the appropriate action to be taken in the circumstances taking account of any mitigating circumstances and corroborative evidence.

- 15.2 Please note that no employee should be dismissed for a first breach of discipline except in
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the case of Gross Misconduct.

15.3 The possible penalties that the Panel could consider at the conclusion of the meeting are:

No Action

In cases where it is concluded that misconduct has not occurred or where there is insufficient evidence on the balance of probabilities to conclude that misconduct has occurred.

Written Warning

Written Warnings are normally issued as a result of minor acts of misconduct or where there has been a repetition of an issue that has previously been dealt with under Informal Action. Depending upon the circumstances of the case the suggested length of the written warning should be a minimum of 6 months and no more than 12 months from the date of the meeting.

Final Written Warning

Where there has been a recurrence of misconduct which is subject to a Written Warning; an employee's conduct has not improved following a Written Warning; an employee subject to a Written Warning has committed a further unrelated act of misconduct or the misconduct is of a more serious nature, the employee may be issued with a Final Written Warning. Depending upon the circumstances of the case the suggested length of the final written warning should be a minimum of 12 months and no more than 24 months from the date of the meeting.

Where an employee is in receipt of a current Final Written Warning and commits a further act of misconduct this may result in the dismissal of the employee on cumulative grounds (see below).

Other possible penalties that could be considered are shown below; please note this list is not exhaustive.

Downgrading/Transfers

The disciplinary penalty of downgrading/transfer should only be considered where the Panel concludes that in the circumstances the dismissal of the employee is appropriate but there are mitigating factors which would support the downgrading/transfer of that employee as an alternative to dismissal. In addition to the employee being downgraded/transferred the panel should also consider issuing a Final Written Warning and where appropriate suggest training. In these circumstances the employee will then be paid the appropriate salary for the alternative post, the Protection of Earnings Policy or Teachers Safeguarding will not apply.

If the Panel wishes to consider this form of penalty then the meeting should be adjourned whilst advice is sort regarding the availability of an alternative post. If the employee has a permanent contract then only posts that are available and are on an established structure should be considered.

The meeting should be re-convened no more than 10 working days from the date of the original disciplinary meeting after the adjournment to confirm the penalty. The employee will be afforded the right of appeal against this penalty.

Cumulative Dismissal

Dismissal with notice may be considered in circumstances where the panel has determined that:

- there has been a recurrence of misconduct which is subject to a current Final Written Warning, or;
- an employee's conduct has not improved following the issuing of a Final Written Warning, or;
- an employee subject to a Written or Final Written Warning has committed a further unrelated act of misconduct,

The employee will be served with notice based on their contractual entitlement up to a maximum of 12 weeks. A payment in lieu of notice can be given and therefore the termination date would be from the date of the disciplinary outcome letter.

Summary Dismissal

Summary Dismissal is the dismissal of an employee without notice. This is appropriate in cases of gross misconduct or where the reputation of the Council/School will be severely compromised.

15.4

Copies of penalties, even when expired should be kept on the employee's personal file. It will be disregarded for disciplinary purposes after the stipulated timescale, however; it should remain on file as a record of events/employment history (as detailed in the Council's Personal File – Retention Schedule).

16.0 **RIGHT OF APPEAL**

16.1 An employee who wishes to appeal against a disciplinary decision should inform the appropriate Chair of the Disciplinary Panel, setting out in writing the grounds for their appeal within 10 working days of receipt of the letter notifying them of the decision of the disciplinary panel. Arrangements should then be made for the Appeal Meeting.

16.2 For Non Schools employees, an appeal against a penalty, with the exception of Informal Action where there is no right of appeal, will be to the next level of Management. The only exception being a sanction issued by an Executive Director. In such cases the Executive Director of another Directorate/ Department should hear the appeal.

16.3 For Schools employees, the rights of the employee and the procedure for the convening the hearing of an appeal shall be the same as for the initial Disciplinary Meeting. Section 3 details the responsibilities of the Headteacher/Governors in respect of Appeal Meetings.

16.4 All employees shall have the right of appeal against a conduct dismissal, which shall be exercisable in accordance with the criteria set out in the procedure. All such appeals shall be heard by a panel of Officers consisting of the Executive Director – Core Services; Service Director - Human Resources & Business Support together with an Executive Director who has had no prior involvement with the appeal being considered. If this is not possible, another Officer (s) from the Barnsley Leadership Team will be appointed to the panel.

16.5 The Appeal will be conducted as a review of the first instance decision, having regard to matters set out in the grounds for appeal and any new evidence (if applicable) that has become available following the outcome of the original meeting. Both parties should address the panel summarising the key aspects of their case. The panel will have received and considered the statement of case and all witness statements from both parties submitted prior to the meeting. Witnesses will not normally be required to present evidence but should be available to be questioned should this be required.

The appeal shall normally be conducted in one day except in exceptional circumstances.

HUMAN RESOURCES

- 16.6 It is recommended that the Manager and/or Investigator should make arrangements for the Appeal Meeting and inform the employee in writing, giving 10 working days notice, of the requirement to attend the Appeal Meeting.
- 16.7

A recommended protocol for use at the Appeal Meeting can be found at Appendix E (ii).

- 16.8 Where possible the decision will normally be given verbally to the employee at the conclusion of the meeting and confirmed in writing, within 5 working days. However it may be necessary to communicate the outcome in writing. All parties should be advised of any changes to the method of communication and extension to timescales at the closure of the meeting.
- 16.9

The Appeal Panel has authority to confirm, reduce, increase or revoke the original outcome.

16.10

17.0 **MONITORING**

- 17.1 The relevant Cabinet Spokesperson should be provided with a quarterly report detailing the number of Officer Appeals, reasons for the appeal and outcomes.
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18.0 **COMPLETING THE DISCIPLINARY PROCESS**

On conclusion of the case:

- The Disciplinary Procedure Action Plan should be completed where appropriate in respect of all allegations of misconduct that are investigated. A template can be found at Appendix D
 - A copy of the Plan, when the actions are complete, should be placed on the employee personal file and a copy kept securely within the Service.
 - A [Policy Implementation Monitoring Form](#) should be completed and submitted to the Policy Monitoring (HR) Inbox. [Guidance notes](#) for completing the form are available.
 - The Manager and/or Investigator must ensure that all documents/evidence relating to the investigation is placed in a sealed envelope marked 'to be opened by Human Resources only' and should indicate that the contents relate to a disciplinary investigation and should be placed on the employee's personal file. Notify Professional Body e.g. HCPCC, where applicable.
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19.0 **EQUALITY AND DIVERSITY**

- 19.1 This policy has been impact assessed by Human Resources, if on reading this policy you feel there are any equality and diversity issues, please contact your Directorate Human Business Partner who will if necessary ensure the policy is reviewed.
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20.0 **INCOME TAX AND NATIONAL INSURANCE CONTRIBUTIONS**

- 20.1 There are no tax and National Insurance implications arising from this procedure.
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HUMAN RESOURCES

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Document Control

Implementation Date	February 2019
Author	Business Advisory Service AKB/ DN – legal services
Revised/Updated	January 2019
Brief Reason for Change	Updated in line with changes to investigation guidance and ACAS guidance re suspensions. Removal of need for disciplinary meetings to be held by HOS and above.
Version Control	Final 01 February 2019

Appendix A

EXAMPLES OF MISCONDUCT

Barnsley Metropolitan Borough Council Policies and Procedures are designed to support the business and provide guidance to everyone working for the Council as to the standards and behaviour required. The following table gives examples of the type of conduct which **may** lead to dismissal (gross misconduct) and the types of conduct which **may** lead to disciplinary action (misconduct). However, it should be noted that this is not an exhaustive list and that the level of penalty will be determined on an individual basis taking account of the severity, circumstances and mitigating evidence.

Behaviour	
Gross Misconduct	Misconduct
<ul style="list-style-type: none"> • Physical violence or bullying • Incapacity brought on by alcohol, illegal drugs or misuse of prescription drugs (refer to Substance Misuse Policy) • Substantial abuse of position and power • Serious breach of the Dignity at Work Procedure • Unlawful discrimination or harassment • Bringing the Council into disrepute 	<ul style="list-style-type: none"> • Failure to comply with a reasonable request • Abusive, objectionable or insulting behaviour • Foul or abusive language • Disorderly conduct • Unauthorised sleeping on the premises whilst on duty • Unauthorised absence from place of work • Displaying or circulating offensive material • Abuse of position and power • Breach of the Dignity at Work Procedure
General Conduct at Work	
Gross Misconduct	Misconduct
<ul style="list-style-type: none"> • Theft or fraud • Deliberate or serious damage to Council property, facilities, equipment or products • Deliberately accessing and circulating illegal, pornographic, offensive or obscene material. • Serious breach of the Council's Code of Conduct • Serious breach of the Council's Child Protection/Protection of Vulnerable Adult Procedures • Cause loss, damage or injury through serious negligence • Serious insubordination • Serious breach of confidence • Serious breach of the Information Security and Computer Usage Policy * 	<ul style="list-style-type: none"> • Allowing visitors on the premises without authorisation • Unauthorised distribution of written or electronic material * • Failure to return tools or equipment provided by the Council • Deliberately accessing and storing illegal documents/ information • Failure to comply with rules regarding use of Council vehicles • Negligence, carelessness or recklessness which could result in damage or misuse of Council property, facilities, equipment or products * • Undertaking work in conflict with the Council • Breach of the Council's Code of Conduct • Breach of the Information Security and Computer Usage Policy *
Health and Safety	
Gross Misconduct	Misconduct
<ul style="list-style-type: none"> • A serious breach of Health and Safety rules 	<ul style="list-style-type: none"> • Failure to observe health and safety

HUMAN RESOURCES

<ul style="list-style-type: none"> • Failure to disclose a medical condition either on appointment or upon diagnosis which may affect ability to undertake duties of the post resulting in a serious incident. 	<p>requirements</p> <ul style="list-style-type: none"> • Neglect of safety standards • Failure to wear essential protective equipment • Failure to disclose a medical condition either on appointment or upon diagnosis which may affect ability to undertake the duties of the post.
Absence and Timekeeping	
Gross Misconduct	Misconduct
<ul style="list-style-type: none"> • Deliberate falsification of records in an attempt to defraud the Council • Abuse of the Managing Attendance Procedure 	<ul style="list-style-type: none"> • Absence without authorisation • Failure to keep management informed of reasons for absence from work whether due to ill health or other reasons • Failure to submit medical certificates in accordance with the Council's Absence due to sickness' scheme • Regularly or persistently late for work • Failure to comply with the Managing Attendance Procedure • Leaving early without permission

- * Refer to Information Security Incident Reporting Policy and Procedures.

Appendix B

DISCIPLINARY PROCEDURE FAQ'S

In which situations should the Disciplinary Procedure be used?

The procedure should only be used in cases of employee misconduct. Please see Appendix A of this document for examples of misconduct/gross misconduct.

Would the Disciplinary Procedure be used for sickness absence or performance issues?

No, these issues are covered by separate policies and procedures which can be found on the HR Intranet site.

Can employees be dismissed for a first offence?

Yes, but only in circumstances where the act of misconduct is so serious it could be deemed as gross misconduct. Examples of the types of conduct which may lead to dismissal can be found in Appendix A.

Who should carry out the independent investigation?

It is advised where possible that the Investigator should be at an appropriate managerial level and must not be an individual who is named in the allegation.

As a Manager what do I do when I become aware of a potential disciplinary issue?

It is recommended that you carry out an assessment of the allegations and obtain an overview of the situation in order to be able to determine if a formal investigation is required. (Please see the Disciplinary Procedure for further guidance).

What happens if an employee has become involved with an incident that takes place outside the work place?

If the allegation relates to a potential criminal act, or potentially affects the reputation of the Council i.e. a potential breach of the Council's Code of Conduct the matter may require that the disciplinary process is undertaken.

How do I conduct an independent investigation?

Please refer to the Conducting an Investigation Procedure.

As a Manager do I need to meet with the employee concerned?

Yes, as part of the initial assessment you will need to meet with the employee concerned. It is advised that notes of any such meeting are taken and copies should be provided to the employee.

Does the employee have the right to bring anyone to the investigation/disciplinary meeting?

The employee is entitled to be accompanied or represented throughout the process at each formal meeting by a work colleague, or designated TU/Professional Association Official. This right does not extend to friends/family or professional persons such as solicitors and barristers. Please see the Disciplinary Procedure for further guidance.

What do I need to do if I need to suspend an employee?

Suspension of an employee should only be in exceptional cases where there is evidence that there is a real risk the employee will interfere with the investigation or there is a real risk the employee's presence during the investigation will damage the Council's business interests. Guidance Notes on the Suspension of an Employee can be found in the Guidance Pack [[insert hyperlink](#)].

When do you need to involve other services in the investigation?

There may be occasions when you must involve other services in your investigation, examples are:-

Fraud/Theft/Corruption investigations – Internal Audit
Child Protection Issues – Local Authority Designated Officer
Vulnerable Adults - Designated Service Manager
Information Security / Data Protection breaches – Information Governance

The involvement of other services is to assist the Manager and Investigator in collating and understanding the evidence during their respective investigations. It is the Manager and Investigator's responsibility to conduct their respective investigations and obtain the evidence first hand to enable the Manager and Investigator to reach his/her own findings.

Who should arrange the disciplinary meeting?

Ordinarily, the Manager and/or Investigator would make the arrangements for a disciplinary and disciplinary appeal meeting.

What if it's impractical or unacceptable for witnesses to attend a meeting?

It is expected that internal witnesses attend the disciplinary meeting to be questioned however in some circumstances it may be impracticable or unacceptable for a witness to be present. The Investigator should seek to reach agreement with the employee's representative regarding the non attendance of the witness and the utilisation of written submissions etc. in order for their evidence to be considered.

Where external witnesses do not attend for whatever reason, it is for the panel to determine the weight placed on the evidence presented in the witness statement.

What if agreement cannot be reached regarding the attendance of witnesses?

The employee/ representative may wish to submit a series of questions that they wish the witness to provide a written response to prior to the Meeting. Alternatively, consideration should be given to another suitable method to allow the witness to respond to questions during the Meeting. In instances where the witness refuses to participate, their statement can still be included. But the panel has to determine a proportionate amount of weight to attach to the statement given the witness is unable or refuses to attend the disciplinary meeting.

What happens if an employee raises a grievance during the Disciplinary Process?

If the grievance relates to the disciplinary case then it is appropriate for both matters to be dealt with at the same time but the grievance should be investigated by a manager not involved in the disciplinary investigation. Where the grievance has no relationship to the disciplinary matter then both procedures are dealt with concurrently.

What happens if the employee is sick during the Disciplinary Process?

The Manager and/or Investigator will immediately refer the employee to the Occupational Health Unit. This referral should include information about the disciplinary matter and should seek medical advice in relation to the employee's fitness to participate in an investigation and attend a disciplinary meeting/appeal. On receipt of advice from Occupational Health, the Investigator may determine that the investigation/disciplinary meeting will take place in the employee's absence.

Who maintains contact with the employee under investigation?

It is recommended that the Investigator should keep the employee up to date with the progress of the investigation. If the employee has been suspended then the suspension should be reviewed on a regular basis and the outcome communicated to the employee.

Can witnesses be accompanied to a disciplinary meeting?

Yes by either a work colleague or a Trade Union representative but the employee must make these arrangements.

What happens if an employee who has received a disciplinary penalty goes off sick during the penalty period?

If the employee is absent for two consecutive weeks or more this will not count as time spent towards the penalty. Consequently the expiry of the penalty will be adjusted accordingly.

What Penalties can be given if the misconduct is proven?

Details of the penalties can be found at Section 15 of the disciplinary procedure.

Are penalties removed from personal files once they have expired?

No the details are not removed from an employee's personal file as they form part of that employee's employment record.

If an employee has not been suspended from work can they still be dismissed at a disciplinary meeting?

Yes if the allegation is of such a serious nature that if proven could constitute gross misconduct or is a cumulative dismissal. See section 15 of the Disciplinary Procedure.

HUMAN RESOURCES

When initial allegation arises and the Manager/Headteacher considers the employee's conduct may justify disciplinary proceedings, it is recommended they obtain an overview of the situation promptly and establish the facts of the case.

It is then advisable for the Manager/Headteacher to determine the appropriate course of action.

The allegation is unfounded and no further action required.

The employee admits to the disciplinary offence so a Disciplinary Sanction Meeting should be arranged.

The allegation is minor and should be dealt with through Informal Action.

An investigation should be undertaken in line with Formal Action and if determined necessary the employee suspended.

The allegation is vexatious or malicious and requires further investigation against the perpetrator.

Formal Action – It is recommended that the Investigator will write to the employee to advise them of the allegations against them. The employee will either be required to attend an Investigatory Meeting or will be invited to attend a Disciplinary Meeting to discuss the allegations.

Initiating the Disciplinary Meeting – it is recommended the Manager and/or Investigator should:

- Send the employee all documentation they intend to refer to during the meeting along with a brief statement of case.
- See section 13.0 of the procedure for further details.

The Disciplinary Meeting – It is recommended that:

- The Panel conducting the meeting should consist of an appropriate Manager. For meetings where the dismissal is a potential outcome or of a complex nature this should be Head of Service or above and a HR Advisor should also be available to advise the panel. A recommended protocol for use at the meeting is included at Appendix E (i).
- The employee is notified of their entitlement to be accompanied by a Trade Union Representative/Work Colleague at the Meeting if they wish.
- The employee is notified of the Panel's decision verbally at the meeting and this is then confirmed in writing within 5 working days or in exceptional cases the outcome is confirmed in writing.
- The employee must be notified of his right of appeal.

- Right of Appeal – It is advised that if an employee wishes to appeal against a Written/Final Written Warning and/or Downgrading/Transfers they should inform the appropriate Chair of the Panel in writing within 10 working days of receipt of the letter notifying them of the decision and the grounds for their appeal.
- The Manager and/or Investigator should make arrangements for the Appeal Meeting and inform the employee in writing. Please refer to section 16.0 of the Procedure for further information.
- A recommended protocol for use at an Appeal Meeting is included at Appendix E (ii)
- The employee is notified of the Panel's decision verbally at the Meeting and this is then confirmed in writing within 5 working days or in exceptional cases the outcome is confirmed in writing.
- Right of Appeal Against Dismissal will be heard by a panel of Officers consisting of the Executive Director – Core Services; the Service Director – Human Resources and Business Support together with an Executive Director who has had no prior involvement with the appeal being considered. If this is not possible another Officer(s) from the Barnsley Leadership Team will be appointed to the panel. The Employee should follow the above procedure if they wish to appeal and the Manager and/or Investigator should contact their HR Business Partner for further advice.

Appendix D



Disciplinary Procedure – Action Plan

The table below should normally be completed by the Chair of the Panel following the Disciplinary Meeting detailing identified actions in respect of employee and/or service related issues that require addressing. The pro-forma must also be utilised when the Investigator has determined no action or, informal action is required and has identified the need for employee and/or service issues to be addressed. In such instances the Investigator should complete the table below.

Section A - To be Completed in Respect of Employee Related Issues

Name: _____
Chair of the Panel/Investigator

Date: _____

Immediate Actions	Responsible Officer	Date Implemented
Medium Term (3 - 6 months)	Responsible Officer	Date Implemented
Longer Term (6 - 12 months or beyond)	Responsible Officer	Date Implemented

Section B to be completed in Respect of Service Related Issues:

Immediate Actions	Responsible Officer	Date Implemented
Medium Term (3 - 6 months)	Responsible Officer	Date Implemented
Longer Term (6 - 12 months or beyond)	Responsible Officer	Date Implemented

On completion of all of the above identified actions the form should be signed off by:

Employee _____ Date _____
 Manager _____ Date _____

Appendix E (i)

SUGGESTED PROTOCOL AT A DISCIPLINARY MEETING

- i) The Chair of the Panel will perform introductions, clarify roles, and outline the procedure that will be followed.
- ii) Management will present their case making reference to any supporting evidence and calling witnesses should this be required. The Investigator will present his/her findings as part of the Management's case. At the conclusion of Management's case the Panel should be made aware of any current penalties.
- iii) The employee and/or representative may question management and any witnesses should this be required.
- iv) The Panel including the Advisor may question management and any witnesses should this be required.
- v) The employee shall respond to the Management's case making reference to any supporting evidence and calling witnesses should this be required.
- vi) Management may question the employee and/or their representative and any witnesses should this be required.
- vii) The Panel including the Advisor may question the employee and/or representative and any witnesses should this be required.
- viii) Prior to the summing up either side shall have a right to request an adjournment of the proceedings in the event of new allegations being presented.
- ix) Management will summarise their case
- x) The employee or their representative will summarise their case.
- xi) Once the meeting is complete, both parties will then withdraw. If the Panel members require further information on the evidence presented, both sides must be recalled to allow clarification to be sought. Before a decision is reached the Advisor to the Panel may be required to withdraw. A decision shall then be reached by the Panel based on an unbiased consideration of the evidence as to whether on the balance of probabilities the potential misconduct is proven and the decision of the Panel confirmed.
- xii) Both parties shall be recalled and the outcome of the meeting conveyed. This will be confirmed in writing, normally within 5 working days, with details of the nature of the misconduct and the implications. All parties will be advised of any changes to the method of communication and extension to timescales at the closure of the meeting.

Appendix E (ii)

SUGGESTED PROTOCOL AT A DISCIPLINARY APPEAL MEETING

- i) The Chair of the Panel will perform introductions, clarify roles, and outline the procedure that will be followed.
- ii) The employee/and or representative will present their case making reference to the grounds for appeal and any supporting evidence*.
- iii) Management may question the employee/and or their representative.
- iv) The Panel may question the employee/and or their representative.
- v) Management shall respond to the employee's case making reference to any supporting evidence*. At the conclusion of which the Panel should be made aware of any current penalties.
- vi) The employee/and or their representative may question management.
- vii) The Panel may question management.
- viii) The employee/and or their representative will summarise their case.
- ix) Management will summarise their case.
- x) Once the meeting is complete, both parties will then withdraw. If the panel members require further information on the evidence presented both sides must be recalled to allow clarification to be sought.
- xi) A decision shall then be reached by the Panel based on an unbiased consideration of the evidence as to whether on the balance of probabilities the potential misconduct is proven and the decision of the Panel confirmed.
- xii) Both parties shall be recalled and the outcome of the meeting conveyed. This will be confirmed in writing within 5 working days, with details of the nature of the misconduct and the implications. In exceptional circumstances it may be necessary for the outcome to be communicated in writing. All parties will be advised of any changes to the method of communication and extension to timescales at the closure of the meeting.

* including any new evidence that has become available following the outcome of the original meeting.

1.0 PURPOSE AND SCOPE

- 1.1 All employees are required to ensure the integrity and security of Council information in accordance with the Council's Information Security and Computer Usage Policy, associated policies, protocols, guidance and relevant legislation.
- 1.2 The Policy and associated policies, protocols and guidance set out in detail the responsibilities and operational issues to be adhered to by all who handle and/or have access to information and computer related equipment provided by the Council including:
 - familiarisation and compliance with the Policy and associated policies, protocols and guidance
 - security of all information which is written, spoken, electronic, sent across networks and/or visual
 - security of computers, mobile devices and computer information
 - notification procedures relating to perceived or actual breaches of the Policy.
- 1.3 The Policy provides a framework within which all those accessing information can do so safely in fulfilling their role within the Council. Additionally, the Policy sets out the arrangements that the Council will utilise with regard to the monitoring of the Policy.

2.0 NON COMPLIANCE WITH THE INFORMATION SECURITY AND COMPUTER USAGE POLICY

- 2.1 All breaches of the Information Security and Computer Usage Policy will be treated with utmost concern and, in respect of employees, investigated as an allegation of potential misconduct/gross misconduct in accordance with the Council's Disciplinary Procedure.
- 2.2 Investigations in respect of a breach of the Policy by a contractor, agency worker, supplier or partnership organisation will be investigated in accordance with the conditions of the individual service contract.
- 2.3 Members of the Council will be subject to the provisions of the Member Code of Conduct and jurisdiction of the local Standards Committee and the National Standards Board for England.

3.0 DISCIPLINARY IMPLICATIONS

- 3.1 A deliberate and knowing breach of the Policy, where an information loss occurs which may potentially affect the reputation of the Council, confidence of the public in the Council to manage information securely or potentially cause financial loss, or where the user is found to be abusing information/data systems may constitute gross misconduct which may lead to dismissal. In the case of agency staff or contractors this will lead to the termination of the contract.
- 3.2 A deliberate and knowing breach of the Policy which results in criminal charges against the Council and/or Officers of the Council may be deemed gross misconduct within the terms of the Council's Disciplinary Procedure.
- 3.3 Other cases of misuse or non compliance will be reviewed within the context of the policy and the extent of the effect on the provision of Council services and reputation.