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**Summary**

This chapter describes the Disciplinary policy and procedure. Refer to the table of contents, below, for a full list of topics covered.

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## 1. Introduction

Holibrook House and Hopewell Schools expects reasonable standards of conduct from employees and will support its employees through guidance, information, advice, training or other suitable approaches to achieve acceptable standards of conduct. However, from time to time an employee's conduct/performance may fall below the required standards.

The purpose of this procedure is to provide a framework to ensure that:

- an employee can improve their conduct/performance to an acceptable level and maintain it at that level; and
- Conduct/performance issues are managed fairly and consistently.

This policy applies to all Holibrook House and Hopewell school staff regardless of grade, position, hours worked per week or whether their contract is permanent or fixed term.

This policy does not apply to alleged discrimination or harassment on grounds of gender, race, age, sexual orientation, disability (real or perceived), religion or belief, cultural and language differences or alleged bullying. These issues will be handled through the Dealing with Harassment and Bullying at Work Policy.

However, if a complaint of harassment or bullying is upheld, or if the complaint is found to be malicious or frivolous, the matter may be dealt with under this Disciplinary policy.

There are separate policies covering capability, drugs and alcohol, and whistle blowing, which may be more appropriate than this disciplinary procedure in certain circumstances. Guidance and advice should be sought from HR.

In applying this procedure, it is important to distinguish between capability and disciplinary matters. Generally, the disciplinary policy and procedure applies when a member of staff is capable but underperforming because of carelessness or lack of motivation/cooperation. The Capability Policy and procedure applies when acceptable performance standards are not met due to professional incapability, either through ill-health or the absence of necessary skills, experience and knowledge.

In most cases, disciplinary issues will be dealt with on an informal basis. However, where the matter is more serious or there has been a continued failure to meet the required standard of conduct/performance, it may be necessary to implement a formal stage under this disciplinary policy.

## 2. General Principles

Managers are responsible for addressing disciplinary matters at the appropriate stage and making the initial decision to invoke disciplinary action. It will however be for a panel to take the decision as to whether or not a case has substance, and to decide on any action to be taken.

Appeals will be heard by a disciplinary panel and advised by HR

During the disciplinary procedure the following principles will be applied in order to ensure that members of staff subject to disciplinary action will receive consistent and fair treatment:

- **EQUAL OPPORTUNITY** – Holibrook House and Hopewell Schools is committed to promoting equality in all areas of employment and ensuring that no member of staff is discriminated against or victimised for any reason. Holibrook House and Hopewell Schools will make every effort to address the needs of those members of staff with a recognised disability, and reasonable adjustments will be made to working arrangements so as to ensure that no disabled person is placed at a disadvantage.
- **OBJECTIVITY** - This procedure will be applied objectively according to the work and circumstances of the member of staff concerned and is designed to ensure that all members of staff are treated consistently and fairly, without discrimination on grounds of gender, race, disability, age, sexual orientation, religion or any other recognised grounds.
- **CLARITY** - Managers will clearly define the standards of conduct required of staff and ensure all staff are made aware of such standards.
- **INVESTIGATION BEFORE ACTION** - A decision to take formal action against any member of staff will only be taken after a full investigation has taken place. At every stage of disciplinary action the member of staff concerned will be advised of the nature of the allegation/s and given the opportunity to respond/state their case.
- **ADJOURNMENTS** - Where it is necessary to obtain further information, a hearing may be postponed or adjourned.
- **NOTICE OF DISMISSAL** - No employee will be dismissed without prior warning or for a first offence, other than in cases that result in a finding of gross misconduct (in which case the penalty will normally be dismissal without notice or payment in lieu of notice).

Disciplinary investigations and hearings under this procedure may result in any of the following:

- No further action.
- Verbal warning.
- Written warning.
- Final written warning.
- Dismissal.
- RIGHT OF APPEAL - Each member of staff has the right of appeal against any action taken against them at the formal stages of the procedure.

## **2.1. The right to be accompanied**

Each member of staff has the right, at all stages of the procedure, to choose and to be accompanied by a certified trade union official or a work colleague, provided the accompanying person does not usually have any line management responsibility for them.

Accompanying persons are entitled (with consent of the member of staff) to:

- Put the case forward on behalf of the member of staff.
- Confer with the member of staff during the hearing.
- Sum up the case for the member of staff.
- Respond on behalf of the member of staff to any view expressed at the hearing.

However, accompanying persons are **not** entitled to:

- Answer questions on behalf of the member of staff.
- Address the hearing if the member of staff does not want them to.
- Prevent the line manager from explaining the case, or any other person at the hearing making a contribution to it.

## **2.2. Confidentiality**

Confidentiality should be maintained by all those involved, including the member of staff, at all stages throughout the procedure by ensuring that only those people who need to know have access to details.

No other member of staff should be informed that a colleague is subject to action under the procedure. While respecting confidentiality, it is important that the member of staff is free to discuss issues with their trade union representative or work colleague who may be able to assist or support them through what is acknowledged to be difficult circumstances. Written records of issues will be treated as confidential and kept no longer than is necessary in accordance with the Data Protection Act 1998.

## **2.3. Sickness absence**

Reasonable steps should be taken to enable attendance at meetings and hearings, and certified absence and entitlement to sickness pay do not of themselves represent grounds for deferring this procedure.

A member of staff pleading unfitness to attend a meeting or hearing must provide a medical certificate stating physical incapability of attending and/or inability on mental or psychological grounds to participate reasonably in the proceedings. Should the member of staff be unable to provide a certificate specifically justifying their absence, failure to attend may constitute a disciplinary offence in itself.

The chair of the panel will consider whether the meeting or hearing should go ahead in the absence of the individual. A considerate, sympathetic approach should be adopted but in general any justification for delay should be discussed with Occupational Health (OH) and HR.

If a meeting or hearing is to go ahead in the absence of the member of staff, the member of staff should be notified, giving at least 5 working days' notice of the meeting. In such circumstances a full account of the meeting or hearing should be provided to the member of staff in writing, confirming any decision taken.

If sickness absence occurs before the commencement of the **formal** stages of the procedure, the case should be referred immediately to OH to assess the person's health and fitness for continued employment. Short absences should not delay any part of the formal procedure.

## **2.4. Grievance during the Disciplinary Procedure**

During the disciplinary procedure a member of staff might raise a grievance that is related to their case. The statutory procedures in relation to this situation are complex and the procedure to be followed will primarily depend on whether the outcome of the procedure could be dismissal or action short of dismissal (excluding warnings or paid suspension).

Where a grievance is raised in direct response to the disciplinary procedure, the disciplinary procedure should be expanded to include the grievance issue, dealt with during the investigation and/or at the appeal hearing. If the findings are that the grievance issue should “stand alone” then the grievance procedure should be undertaken. Otherwise the disciplinary procedure takes priority.

As a general rule:

- Where the employee’s grievance relates to (contemplated) dismissal or action under the disciplinary procedure, the appropriate forum for addressing concerns is the investigation or appeal hearing under the disciplinary procedure.
- Where an employee claims that action under the disciplinary procedure is in itself an act of discrimination, it should be pursued under the grievance procedure as a separate course of action usually after the disciplinary hearing.

Advice should be sought from HR for the appropriate course of action in the specific circumstances.

### **3. Responsibilities**

#### **3.1. Managers**

In respect of any member of staff they manage, all managers have responsibility to:

- Establish standards of staff conduct.
- Be conversant with the disciplinary policy.
- Ensure members of staff have access to the disciplinary policy.
- Inform members of staff of their rights under the disciplinary policy.
- Apply the disciplinary policy fairly.
- Manage the disciplinary procedure when it is necessary to take disciplinary action.
- Inform the member of staff of any allegation against them, and give them the opportunity to respond and raise any mitigating circumstances before a decision is reached.
- Ensure that allegations are thoroughly investigated before taking disciplinary action.
- Determine whether it is necessary to suspend the member of staff in line with the suspension guidelines.
- Ensure that the correct procedure under the disciplinary procedure is followed.
- Ensure that any disciplinary action is appropriate and proportionate to the conduct of the member of staff.
- Make notes of all meetings and agreed actions covered by this procedure, and retain all such notes in a confidential file for the required period of time.
- Ensure that any records are held in a confidential manner and in accordance with the principles contained within the Data Protection Act 1998.
- If the member of staff is a trade union representative, inform the union's regional office if the formal stages of the procedure are invoked.

### **3.2. Members of staff**

Members of staff are individually responsible for:

- Familiarising themselves with this disciplinary policy and understanding their rights and obligations under it.
- Achieving reasonable and acceptable standards of personal conduct and behaviour at work.
- Co-operating with any disciplinary investigation and obeying all lawful and reasonable directions of the management.
- Demonstrate the level of commitment required to improve, if improvement is required.
- Attending all relevant counseling, support or formal disciplinary meetings as required.

### **3.3. Human Resources**

As The Holibrook and Hopewell Chief Executive's representative, attend any hearing which may result in disciplinary action being taken against a member of staff.

## **4. Misconduct**

When misconduct is identified, the seriousness of the misconduct will determine whether informal or formal action is appropriate.

Three types of misconduct are recognised:

### **4.1. Minor misconduct**

Minor misconduct comprises misdemeanors that are relatively minor and often first time transgressions, where the facts are self-evident and there are no existing warnings against the employee.

Minor misconduct normally warrants **informal** disciplinary action, such as a verbal or first written warning, but incidents of minor misconduct that are persistent may lead to formal disciplinary action i.e. lateness or extended breaks.

## **4.2. Serious misconduct**

Serious misconduct comprises acts of misconduct that are more serious than minor misconduct, but which could not be defined as gross misconduct.

In the event of serious misconduct it may be appropriate to issue a final written warning to the employee in the first instance.

## **4.3. Gross misconduct**

Gross misconduct comprises acts of such a serious and fundamental nature that they result in a breach of an employee's contractual terms and makes continuation of the working relationship impossible. Such behaviour may justify dismissal without notice.

Where there is alleged gross misconduct it may be necessary to suspend the employee (on full pay) pending investigation.

Examples of gross misconduct might include:

- Misuse of official position for personal gain.
- Serious misuse of Holibrook / Hopewell property.
- Fraud, theft, unauthorised removal or possession of property belonging to Holibrook / Hopewell or others.
- Acts of violence, including physical assault, threats or intimidating behaviour towards others.
- Serious sexual misconduct (behaviour at or away from work that affects the employee's suitability for employment. E.g. child protection issues).
- Deliberate or malicious damage to Holibrook / Hopewell property.
- Bringing the name of Holibrook / Hopewell into disrepute.
- Serious insubordination.
- Irresponsible or negligent behaviour likely to endanger the health and safety of others.
- Serious negligence or incompetence that causes unacceptable loss, damage or injury.
- Falsification of qualifications or information that is a statutory or essential requirement for employment or which results in additional remuneration.
- Dishonesty, including theft and deliberate falsification of records.
- Acceptance of bribes or corrupt practices.

- Being incapable of adequately performing work duties as a result of drunkenness or unauthorised drug taking.
- Unauthorised disclosure of confidential records, including computer generated information and files.
- A criminal offence, alleged or otherwise, relevant to the employee's suitability to remain in employment.
- Performing services (paid or voluntary) that conflict with the employee's obligations to Holibrook / Hopewell.

**Note:** This list is not exhaustive.

## 5. Informal Procedure

Depending on the seriousness of the allegations, every effort will be made to resolve the matter by informal discussions with the member of staff before taking formal disciplinary action.

This may involve discussing the perceived shortfall in conduct with the member of staff concerned, and advising on what standards are expected. The aim of informal discussions is to avoid having to resort to formal action, although some forms of misconduct automatically invoke the formal stages of the disciplinary procedure.

Informal action does not constitute disciplinary action (although a repetition of the conduct or a failure to improve may lead to formal action), and there is no automatic right to be accompanied or right of appeal at the informal stage.

Should counseling or other informal action not resolve the situation, a verbal warning may be issued, or further guidance and training may be required. Whilst this does not constitute disciplinary action, the fact that the warning has been given, the date on which it was given and, in broad terms, the reason for the warning, should be confirmed with the member of staff in writing as a record of fact. All notes should be destroyed if no formal action regarding the issue under discussion is initiated.

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## 6. Formal Procedure

If informal action does not bring about the desired improvement, or the matter could constitute serious or gross misconduct, the formal procedure should be undertaken.

Before taking formal disciplinary action, a thorough investigation should be carried out (see *Investigation*, on page 16). It may also be necessary to suspend the member of staff before any formal action is taken.

### 6.1. Right to be accompanied

A member of staff has the right to be accompanied by a trade union representative or work colleague at all stages of this procedure. If the accompanying person is not available at the proposed time, the member of staff or trade union representative may request a reasonable alternative time, within 5 working days. The five day time limit may be extended by mutual agreement.

### 6.2. Suspension

In cases of alleged serious or gross misconduct it may be necessary to suspend the member of staff (usually on full pay and conditions) before a decision about disciplinary action is taken.

In certain cases, employees may be suspended without pay pending an investigation. For example, an employee may be suspended without pay where:

- The employee has been imprisoned.
- There are serious criminal proceedings which are likely to result in imprisonment.
- There may be a legal restriction on the employee's employment (e.g. immigration issues).

**Note:** This is not an exhaustive list.

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A decision to suspend should be confirmed in writing and should state that the suspension is precautionary, pending the outcome of the investigation. In particular, the letter will advise the member of staff of:

- The reasons for suspension (the allegations against them), and possible disciplinary sanction if the allegations are proven.
- The terms and expected duration of the suspension.
- That the action of suspension does not imply guilt or that a decision about the outcome has been reached.
- That the employee must be contactable, but not attend the workplace or contact work colleagues unless required to do so by management.
- That the employee should not seek to influence anyone involved in the investigation.

Whilst a member of staff is suspended:

- Management should communicate with them regularly, keeping them informed of the status of the suspension and of progress on the investigation; the member of staff must not take alternative paid employment and must be available to assist with or participate in the investigation.
- The member of staff must confirm any sickness and annual leave.

### 6.3. Investigation

**Note:** Please refer to *Appendix 1 - Disciplinary Investigation Guidelines*, on page 27 for guidelines on conducting an investigation.

All allegations of misconduct should be thoroughly investigated before formal action is taken. The purpose of the investigation is to establish the facts surrounding the alleged misconduct.

**Note:** An investigation should not be undertaken where child protection issues arise. In conjunction with Holibrook / Hopewell HR the manager will decide whether the police and/or DPCP should be called in immediately - see *Child Protection*, on page 26 of this procedure.

Investigations should usually be carried out by the line manager of the member of staff concerned. Where this is impractical or inappropriate, alternatives include another manager or more senior manager in Holibrook / Hopewell, or another independent investigator.

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An investigating officer is responsible for:

- Informing the member of staff concerned in writing, of the investigation, and inviting the member of staff to a meeting to provide information relevant to the investigation. NB: The investigation meeting is still part of the information gathering exercise and does not constitute disciplinary action.
- Collecting all documentation relevant to the investigation.
- Ensuring that the investigation is documented and the findings, if any, are supported by reliable evidence.
- Interviewing witnesses (if appropriate) and considering any other written or physical evidence that supports the case.
- Outlining to each interviewee the proposed structure of the interview and their rights to be accompanied by a work colleague or trade union official.
- Producing a final report covering the findings, any key issues that arose during the investigation, including any conflicting evidence.

The investigating office will not draw conclusions or make recommendations on action to be taken as a result of the findings. This decision will be taken by the manager.

Although the member of staff has the right to be accompanied by a trade union official or work colleague at an investigation meeting, they are not allowed to bring along a person who may be interviewed as part of the investigation or who is normally their line manager.

Persons directly involved in the investigation may present a case or appear as a witness, but may not give advice to or sit on any subsequent disciplinary panel.

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## **6.4. Formal disciplinary hearing**

A formal hearing will be convened if the findings of an investigation suggest that formal disciplinary action is required.

In the event a formal disciplinary hearing is required, the employee will be notified in writing (see *Notice of the hearing*, on page 18).

### **6.4.1. Who will conduct the disciplinary hearing?**

The investigating officer will present the management case to a more senior manager who will be advised by HR.

### **6.4.2. Notice of the hearing**

Reasonable notice in writing must be given for the hearing. The notice must advise the member of staff of:

- The grounds that have led management to take disciplinary action against them (the allegations), the reasons why the alleged conduct is unacceptable and possible disciplinary sanction/s if the allegations are proven.
- Management's intention to institute formal procedures.
- The date, time and place of the hearing (usually within normal working hours, except by agreement)
- The right to be accompanied by a trade union representative or a work colleague.
- Details and copies of any documents intended to be used as evidence.
- Details of any other persons who will be attending the hearing.

Details of the investigation and notification of any witnesses to be called will be circulated to all parties within a reasonable time before the hearing. The member of staff will be invited to submit documentation and call witnesses as appropriate. Such details must be provided to the panel within two working days of the hearing. The submission of late evidence (in particular, evidence submitted on the day of appeal) will only be admitted at the discretion of the disciplinary panel, and only under exceptional circumstances if there are mitigating circumstances.

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If the member of staff and/or accompanying person cannot attend a hearing, they should inform the manager in advance. If the member of staff fails to attend through circumstances outside their control, and unforeseeable at the time of the meeting, another meeting should be arranged. However, a decision may be taken in their absence if the member of staff fails to attend the re-arranged meeting without good reason.

### **6.4.3. The hearing**

The investigating officer, assisted by the supporting HR personnel, is responsible for arranging the hearing.

The purpose of the formal hearing is for evidence to be presented and considered. The member of staff will have the opportunity to prepare a response to the evidence presented and answer any allegations that have been made. They will also be allowed to ask questions, present evidence, call witnesses and be given an opportunity to raise points about any information provided by witnesses.

It is for the hearing panel to decide whether late evidence from either side can be admitted. If late evidence is accepted in the form of written documentation, it would be usual to allow reading time by way of a brief adjournment.

It may be appropriate to adjourn the meeting to collate further information or to consider the alleged misconduct in light of the response provided by the employee.

At the end of the formal hearing, one of the following options may apply:

- The case is not proven and no further action is required.
- Formal written warning.
- Final written warning.
- Demotion, redeployment or dismissal.
- Suspension pending further investigation.

### **6.4.4. The decision**

Before making any decision, account should be taken of any mitigating circumstances, the live disciplinary and general record of the member of staff, and whether the intended disciplinary action is reasonable under the circumstances.

Once a decision is made, the member of staff should be notified of the decision in writing, within a reasonable time after the hearing.

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## **6.5. Appeals**

The appeal meeting need not take place before the dismissal or disciplinary action takes effect. Written notice of appeal must be submitted within five working days of being notified of the disciplinary decision submitted to the Human Resources Lead. The member of staff should state the grounds for appeal.

The purpose of an appeal is for the member of staff to request the overturning of a decision, which they deem as unfair or unreasonable, for example because they believe the penalty/action was unduly severe, new evidence has come to light, or the proper procedure was not followed in the original hearing.

During an appeal hearing the member of staff may be accompanied by a trade union representative or a work colleague and shall be given a full opportunity to state the grounds for their appeal and present new evidence (if any).

An appeal hearing should comprise a more senior manager supported by a senior representative of HR (not previously connected to the case).

A representative of the dismissal hearing and the HR representative who advised that panel, should attend the appeal hearing to present evidence and the outcome of the panel's decision.

The member of staff should be given written notification of at least 5 working days before the appeal hearing is to take place and should be informed of the date, time and location of the hearing and the right to be accompanied by a trade union representative or work colleague. Both parties should present documentation and provide details of relevant witnesses 2 days prior to the appeal hearing. The submission of late evidence (in particular, evidence submitted on the day of the appeal hearing) will only be admitted at the discretion of the hearing panel, and only under exceptional circumstances if there are mitigating circumstances.

Once the relevant issues have been thoroughly explored, the appeal hearing will be adjourned in order for a decision to be taken. The decision does not need to be taken immediately if the panel requires additional time to assess all the information; however the member of staff should be notified of the decision as soon as possible after the hearing.

The appeal panel will then confirm the decision in writing to the member of staff concerned. The HR representative who advised the appeal panel will also advise on the required content of the letter.

The decision of the appeal panel will be final and binding on all parties concerned. No further appeals are allowed and there is no further recourse under this procedure.

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It is the responsibility of the HR representative who advised at the appeal hearing to retain all relevant records for a period to be determined by the panel.

## **6.6. Modified procedure (for members of staff summarily dismissed)**

As a general rule it will be unfair to dismiss an employee instantly, without first going through this procedure, even in the case of apparently obvious gross misconduct.

The modified procedure applies for gross misconduct dismissals where:

- The member of staff is dismissed without notice on the basis that gross misconduct constitutes a repudiatory breach of the contract of employment.
- The dismissal took place at the time management became aware of the gross misconduct (or immediately after).
- It was reasonable for management to dismiss before investigating the circumstances in which the conduct took place.

Under the modified procedure, Holibrook / Hopewell must notify the member of staff in writing of:

- The nature of the alleged misconduct that has led to the dismissal.
- The evidence for this decision.
- The right to appeal against the decision.

Written notice of appeal must be submitted within five working days of being notified of the disciplinary decision. The member of staff will then be invited to attend an appeal hearing (see above).

After the appeal meeting, the panel must inform the member of staff of its final decision.

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## **7. Types of Warnings and Time Limits**

Decision makers will have the authority to issue the following types of warnings where the allegation of misconduct has been proven:

### **7.1. Verbal warning**

In the case of a minor infringement, a member of staff may be given a verbal warning. The verbal warning will normally state:

- The nature of the offence.
- That any further misconduct will result in further disciplinary action.
- The period that the warning will remain “live” and any timescales for improvement.

A letter confirming the fact that the warning has been given, the date on which it was given and, in broad terms, the reason for the warning, should be sent to the member of staff. This should be a simple record of fact and is entirely confidential.

Documentation regarding verbal warnings will normally be destroyed after 6 months.

There is no right of appeal against a verbal warning, as this does not constitute part of the formal procedure.

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## **7.2. Formal written warning**

If the infringement is regarded as more serious, the member of staff may be issued with a formal written warning. A letter confirming the decision will be issued and will set out:

- The nature of the misconduct.
- The likely consequences of further misconduct under this disciplinary procedure.
- The change in behaviour required and timescales for improvement.
- That a written formal warning has been given.
- That note has been taken of previous warnings (if appropriate).
- That the warning will be recorded on their personal file.
- The period for which the warning will remain “live”.
- The right of appeal against the decision and how it should be made.

The letter will also advise the member of staff that failure to address their behaviour may result in further disciplinary action.

This letter will be sent to the member of staff within a reasonable time after the hearing. A copy of this letter should be sent to the relevant trade union representative or work colleague, if appropriate.

Formal written warnings will normally be removed from personal files and destroyed after 12 months.

After 12 months management will determine whether or not the required improvements have been achieved. If so, the member of staff will be advised in writing of the outcome of the review, and that the record of the formal action will be destroyed.

## **7.3. Final written warnings**

Where there is failure to improve conduct, or a serious infringement occurs, the member of staff may be given a final written warning. A letter confirming the decision will be issued and will set out:

- The nature of the offence.
  - That any further misconduct may result in dismissal.
  - The right to appeal and how it should be made.
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The letter will make it clear that failure to address misconduct may result in further disciplinary action. Final written warnings will normally be removed from personnel files and destroyed after 2 years. In exceptional cases it will be at the panel's discretion to determine the period of which the warning will remain "live".

After 2 years management will determine whether or not the required improvements have been achieved. If so, the member of staff will be advised in writing of the outcome of the review, and that the record of the formal action will be destroyed.

#### **7.4. Time limits and outcomes**

The recommended time limits for warning periods are detailed above. Management is responsible for the satisfactory monitoring of conduct during the period of the warning.

Warnings should be disregarded for future disciplinary purposes once the relevant timescale has elapsed.

#### **7.5. Dismissal with notice**

Where there is still no improvement in conduct, despite the issuing of a final written warning, or a serious infringement occurs, the member of staff may be dismissed with the relevant notice period. A letter confirming the decision will be issued and the member of staff will be advised of their right of appeal. The letter will also advise the member of staff why this decision was taken. The notice will be effective from the date of dismissal.

A member of staff may be paid in lieu of notice, at the discretion of management.

#### **7.6. Dismissal without notice**

Where a disciplinary panel proves a charge of gross misconduct, the member of staff may be dismissed without notice. The dismissal will be effective from the end of the disciplinary hearing. A letter confirming the decision will be issued and the member of staff will be advised of their right to appeal. The letter will also advise why this decision was taken.



## 8. Criminal offences

A member of staff charged with or convicted of a criminal offence should notify management immediately, as this may lead to disciplinary action. Failure to notify a criminal conviction or charge may be deemed gross misconduct.

Management undertakes to treat any such information on a confidential basis, but will need to decide whether the offence has breached the mutual trust that exists between management and the member of staff, or is a clear breach of the statutory rules concerning the employment of staff.

Where disciplinary action is appropriate, a formal disciplinary hearing will be conducted. If the member of staff is unable to attend because of imprisonment/detainment, the procedure may be applied in their absence.

A member of staff who is unable to report for work due to imprisonment as a result of a conviction or who is on remand, will be suspended without pay until the conclusion of the disciplinary procedure (unless they have been dismissed in accordance with this procedure). **In such cases a member of staff may be dismissed due to breach of contract as they are unable to fulfill the duties of the post.**

**Note:** Under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, persons who work with children or vulnerable adults need to declare all convictions even though they may be deemed as 'spent' under the above Act. All staff working for Holibrook House / Hopewell Schools are expected to declare all convictions.

## 9. Child Protection

Where Holibrook House / Hopewell Schools receives an allegation of an offence that may be covered by the remit of legislation dealing with the protection of children, consideration should be given to the suspension of any member of staff under investigation in accordance with DfE guidance in “Safeguarding Children and Safer Recruitment in Education”.

If the alleged offence is within Holibrook / Hopewell’s remit, a disciplinary investigation should be carried out in accordance with normal procedure, even if other external agencies, (e.g. police, social services) are carrying out investigations. It is important that the management investigation does not compromise the work of the external investigation. For example, this may mean it would not be appropriate to interview and take statements from some witnesses.

External procedures in matters of this type are, by their very nature, extensive and are unlikely to meet the deadlines normally set within the disciplinary procedure. Cases need to be viewed on their merits, with advice taken from the external agencies and an appropriate timetable set. A disciplinary hearing may, if sufficient information is available, take place before external agencies have concluded their case. In these instances it is not unusual for the member of staff to decline to attend.

In all cases in this area it is essential that excellent communication is maintained between Holibrook / Hopewell management, HR and the Service Manager at Holibrook / Hopewell, Social Services, Child Protection Officers, the Police and other external agencies.

Where a member of staff is dismissed as a result of the disciplinary procedures, or might have been dismissed but has resigned during the disciplinary procedure, Holibrook / Hopewell must report the case to the DfE where it raises questions relating to the ability of the individual to work with children and young people for reasons relating to safety and welfare.

## Appendix 1 - Disciplinary Investigation Guidelines

The purpose of this guidance note is to assist investigating officers in carrying out an investigation.

### 1. Role of an Investigator

The role of an investigating officer is to **establish the facts of the case** by:

- Interviewing the employee/s subject to the allegations and any witnesses.
- Obtaining any other relevant documentary evidence.
- Preparing a comprehensive report that contains all the relevant factual information, copies of statements received and any other relevant documentary evidence.
- Providing the manager with a list of issues and factors to be considered, and any contradictory evidence.

An investigating officer should use the standard report contained in Appendix A as the basis for preparing the investigation report.

An investigating officer is NOT responsible for making a decision about what course of action should be followed at a disciplinary hearing or justifying action by the manager.

### 2. Key Points for Investigators

1. Only deal with the allegation/s – don't include irrelevant information.
2. Act impartially, objectively and confidentially at all times.
3. Act promptly and in line with the timescales.
4. Interview the employee/s who are subject to the allegation/s first.
5. Gather all information, even if it does not support or contradicts the allegation.
6. Stop when they feel they have the complete picture.

## **2.1. Only deal with the allegations**

- Always be clear about precisely what the allegations are. The evidence that needs to be collected should be relevant to the specific allegations/complaint.
- You are not dealing with the criminal law, so there is no formal presumption of innocence. All matters are relevant and Holibrook / Hopewell can consider opinion and hearsay as well as proven fact. The test for substantiating an allegation is based on the “balance of probabilities” test (i.e. whether it is “more likely than not” that the alleged conduct happened).

## **2.2. Act impartially, objectively and confidentially**

It is the person/s chairing the disciplinary hearing to decide whether the allegation should be upheld or dismissed. The investigator’s role is to present a report of what was found in the course of the investigation.

- Unfairness tends to creep into the process if the investigator makes a judgment about the guilt or innocence of the relevant employee, so it is crucial for an investigator to remain impartial and keep an open mind.
- Any information that transpires during an investigation is confidential. An investigator should only give information about the investigation to those who need to know, and when they interview witnesses, should tell them that they must treat this matter confidentially.

## **2.3. Act promptly**

- An investigator must arrange to interview all relevant people as soon as possible. This is important as people’s memories of events can fade.
- Delays in investigating will lessen the effectiveness of the procedure and make it harder to obtain the evidence.
- Delays can cause unnecessary concern and resentment for the person under investigation.
- However, thoroughness should not be sacrificed for speed. If delays occur, keep the employee or their representative fully informed.

## **2.4. Interview with the employee/s subject to the allegations first**

- A preliminary interview gives the relevant employee/s a chance to admit, explain, or deny involvement in the matter under investigation.
- An investigator should explain why the interview is being held, and that it is a preliminary enquiry that does not constitute disciplinary action.
- At this stage the employee should be given the opportunity to respond to the allegations and elaborate when asked. If the employee is unwilling to explain or the explanation is unsatisfactory, the employee should be informed that further enquiries will be made and that a disciplinary hearing may follow.
- If the employee wishes to be accompanied by a work colleague or trade union representative, a short period of time should be allowed to arrange this (up to 5 working days).
- Call for specialist help if necessary. For example, an auditor may be involved in any investigations that involve financial irregularities (however it is ultimately the responsibility of management to decide what action should follow in the case of financial irregularities).

## **2.5. Gather all information, even if it does not support the allegation(s)**

- An investigator's role is not to "convict" the employee, it is to discover as many of the facts surrounding the allegation as possible. The person/s hearing the case will weigh up all that is presented and make the final decision.
- An investigator should not present a distorted picture of the facts. It is helpful for an investigator to consider whether there are some other way in which the occurrence being investigated could have happened. For example; how reliable is the information from the internal system? Is there any other paperwork or computer data that could corroborate or refute the allegations?

## **2.6. Stop investigating when you feel you have a complete picture**

- An investigator only has to do as much of an investigation as is reasonable. Keep a sense of proportion: exhaustive detail is only needed where there is a particularly complex or major issue.
- The person/s considering the final investigation report is going to decide on the basis whether they reasonably believe misconduct has been committed by the employee, not whether the employee has been proved guilty of an offence.
- Therefore, when an investigator feels they know what happened, and that possible further enquiries will yield only trivial or repetitive information rather than anything material and new, conclude the investigation and complete the report.

## **3. Investigation Interviews**

### **3.1. Preparation for the interview**

- An investigation interview should be conducted in a private setting, away from interruptions.
- As mentioned above, the first investigation interview should be with the employee/s against whom the complaint has been raised before interviewing any other witnesses/individuals.
- An investigating officer may need to make special provisions for witnesses whose first language is not English, or who have disabilities or learning difficulties.
- An investigation officer should prepare a list of the core questions before commencement of the interview process, although other questions can be asked throughout the course of the interview based on information given by the interviewee.

### **3.2. Right to be accompanied**

- The person who is being interviewed has the right to be accompanied by a trade union representative or work colleague. The employee is responsible for notifying their accompanying person of the interview and only in exceptional circumstances should the interview be postponed to allow for representation. If there is no accompanying person an investigating officer should confirm with the employee that they have chosen not to be accompanied at the interview.
- However, an accompanying person cannot be someone who may be interviewed independently as part of the investigation.
- If the person is accompanied, the interviewer should also have someone with them, usually a note-taker.

### **3.3. The interview**

#### **3.3.1. Commencement**

At the commencement of the interview, an investigating officer should initially advise the interviewee:

- The format for the interview:
- That notes will be taken:
- That they will receive a written statement of the information they provide and will have the opportunity to make any corrections before it is finalised.
- That they will need to sign and date the statement when it has been finalised:
  - That their evidence may form part of the management case and they may be required to give evidence at a disciplinary hearing.
  - That all discussions during the interview are confidential, and must remain so.

### 3.3.2. During the interview

During the interview an investigating officer should:

- Make the purpose of the interview clear (fact finding).
- **Not** ask leading questions (questions that attempt to guide the interviewee's answer).
- Separate fact from opinion.
- Separate direct observation from third party comment.
- **Not** be accusatory.
- Allow allegations to be put forward and responses noted.
- Use open questions (questions that don't have a yes or no answer) to gain an overall picture of events.
- Used closed questions (questions that have a yes or no answer) to obtain specific facts.
- Query and probe in order to clarify and obtain accurate and full information.
- Challenge the interviewee where necessary, but in a non-adversarial manner.

### 3.3.3. Conclusion of the interview

At the conclusion of the interview an investigating officer should:

- Ask the interviewee if there is anything else that they would like to add.
- Explain you may need to meet with them again depending on the outcome of any other interviews.
- Tell the interviewee what will happen next and when, e.g. *"I intend to complete the investigation by \_\_ (date) and I will let you know if you will be needed to give further evidence at a disciplinary hearing"* or *"I will now be completing my report regarding the investigation and [name of manager] will be in touch with you shortly."*
- Provide the interviewee with a copy of the notes of the meeting, and require the interviewee to sign and date them. If the interviewee does not agree to the contents of the notes, they should be asked to make amendments, signing against the changes made. If the changes that the interviewee makes do not match the notes of the interviewer/note taker, discuss these matters with the interviewee. If the interviewee insists on the changes being made, this should be referred to in the report.

## **4. Witnesses and witness statements**

### **3.4.1. Interviewing witnesses**

As part of the disciplinary investigation, an Investigating Officer may need to meet employees who were witnesses to the alleged misconduct, or who are able to help establish the facts.

Employees invited to an interview will be advised of the requirement to attend an interview and the right to be accompanied by a trade union official or work colleague. An employee invited to a formal interview will normally be given 24 hours notice before their attendance is required. An Investigating Officer will record a formal note of this invitation to an interview.

It is useful to prepare the questions to ask witnesses in advance, especially if it is known that some issues will be contentious. When asking questions an investigator should:

- Ask questions that are as succinct as possible, one question at a time.
- Ask open questions wherever possible.
- Only ask questions that will produce facts.

### **3.5. Witness statements**

A witness statement should include:

- The witnesses name, position and duration of employment.
- The date, time and place of the incident(s).
- Where the witness was at the time of the incident, and how was it that he or she could see or hear what happened.
- Information about the nature of the working relationship between the witness and the employee, and the length of time the person has worked there in that capacity.
- When other people are identified in a statement, their full name and position should be included.

Circumstantial evidence (evidence that is drawn not from direct observation of a fact at issue but from events or circumstances that surround it), should be used only if the statement includes details of why the witness came to the particular conclusion from the circumstances.

If a witness wants to remain anonymous, take a statement regardless. It may be necessary later to erase parts of the statement if there is good reason to preserve anonymity.

Check as far as you can whether the witness has some ulterior motive, and other evidence corroborating the statement is clearly desirable.

The following format for statements should be followed:

- All statements should be typed.
- Hand written statements, which are subsequently typed, must be retained.
- The exact words spoken by the investigating officer and the witness should be recorded, without editing or paraphrasing.
- Audio recordings of interviews are allowed but are subject to the agreement of both parties.
- Amendment to statements should be made by the employees themselves and be initialled accordingly.
- On completion of a typed statement, the employee will be asked to read it and will be asked to sign the following statement at the end.
- “I ... (Name)..... have read the above statement and I have been able to correct, alter or add anything as I wish. The statement is true. I have made it of my own free will.”
- All statements are confidential and should only be circulated to authorised personnel.
- Individual witnesses are entitled to a copy of their statements, but these are still covered by the need for confidentiality.

When all the interviews have been completed, prepare the report.

An investigator will also be responsible for re-interviewing if necessary to explore inconsistencies in evidence or to demonstrate contradictions with the findings of the investigation report.

## **4. Physical investigations of property**

### **4.1. Searching of desks and cupboards for evidence**

Before conducting a search of desks and/or cupboards belonging to the employee under investigation, an investigating officer should invite the employee and any accompanying person to be present during the search. Where for some reason this is not practical, the manager should be present to witness the search.

Where the search reveals that a possible criminal offence has been committed, the search should automatically be suspended and the matter reported to the police. The desk or cupboard should be kept secure from interference until the police have arrived.

### **4.2. Searching employee e-mails and computers**

An investigation officer may search and monitor an employee's work e-mails as part of its disciplinary investigations, if this is deemed necessary. Any such search will be in accordance with Holibrook / Hopewell Internet and E-mail Usage Policy, and investigators should be mindful that any method used to extract information about suspected breaches of the disciplinary policy must be lawful. E.g. must not contravene data protection laws.

### **4.3. Suspected criminal or fraudulent activity**

Holibrook / Hopewell do not have the authority to undertake a search of personal belongings; or detain an employee against their wishes.

If the manager believes a criminal offence has been committed, Holibrook / Hopewell may be under a duty to notify the police. Further advice from Human Resources should be obtained. An investigator should carry out an independent investigation for the purposes of disciplinary procedure, even if the police are involved in investigating the same subject matter the employer is investigating. The police have their own responsibilities under criminal law and these responsibilities are different from those of an investigator for the purposes of a disciplinary procedure. In this situation it is advisable to contact HR and to seek the advice and guidance of the police on how best to continue internal enquiries without prejudicing any potential criminal case.

It would not be appropriate for the Investigating Officer to await the outcome of criminal proceedings which may take in excess of 12 months to reach court before deciding what action should be taken in a particular case. Therefore it would be appropriate to obtain advice from Human Resources.

In cases of fraud, it is the responsibility of Holibrook / Hopewell to contact Finance team / Audit who will carry out an inquiry. The police should only be contacted following approval by the Chief Executive Officer or the Head of Human Resources at Holibrook / Hopewell.

If the police investigation concerns fraud and the police decide to prosecute the employee implicated, Holibrook / Hopewell will always seek restitution.

## **5. The report**

An investigating officer should base the report on the standard form report attached in *Appendix 2 – Model Investigation Report*, on page 38.

The report should be prepared immediately after the investigation has been completed and must contain all relevant issues (including any conflict of evidence) as this will form the basis of the case put forward on behalf of Holibrook / Hopewell at the disciplinary hearing.

When the report has been completed, it should be given to the manager who asked you to investigate and a copy should be provided to HR.

## **6. An investigator's role at the hearing**

### **6.1. Responsibilities**

At a hearing an investigator should:

- Make an opening statement to set the scene, explaining how it is intended to substantiate the case and indicating that the witnesses will be called. This should be brief and to the point.
- Present the case to the Panel on behalf of Holibrook / Hopewell.
- Explain how the investigation was conducted, what (if anything) was said by the member of staff and how the statements from anyone not attending the hearing were obtained.
- Sum up the investigation findings. This needs careful preparation. It is not an opportunity to introduce new evidence. It is a gathering of the points of the case that were set out in the introduction. It should be short and to the point giving areas recommended for consideration in coming to a decision.

## Appendix 2 – Model Investigation Report

### 1. Introduction

I was requested by [name and position] on [date] to conduct an investigation into whether [name] had committed [details of alleged misconduct] in breach of the Disciplinary Procedure. This report sets out the findings of my investigation.

I am employed by Holibrook / Hopewell as [position] and I work within [department/section]. **OR** I have been engaged by Holibrook / Hopewell in order carry out the above investigation.

My day-to-day work does not involve any day to day contact with [name].

### 2. Procedure

Before commencing my investigation, I was provided with a copy of the Disciplinary Procedure together with a copy of the Guidance for Investigators.

The process I have adopted is in accordance with the above Procedure **OR**

The process I have adopted is in accordance with the above Procedure although it was necessary to [insert details of where the procedure was not followed and why].

In carrying out the investigation, I needed to apply for an extension of [10 days] to allow me to complete my report. I informed [name], [their representative] and [name of Human Resources representative] of this in writing on [date].

### 3. Background

At the time I was carrying out the investigation, I was provided with:

- A copy of the letter dated [date] sent by [name], [position] to [name] that an investigation would be taking place under the Disciplinary Procedure into [details of allegation]; and
- [List of other papers, documentation, policies that were provided]

I was informed by [name], [position] that in light of the information provided by [name], [position] that it was necessary to carry out the investigation.

I have prepared a history setting out the principal dates and events relevant to the Investigation, the more significant dates and events are in bold typeface. The history is in Section 6.

### 4. People Involved/Witnesses

I have prepared a list of all the people who, it appears to me; have an involvement in this matter. For ease of identification that list is in Appendix 1. [If individuals listed have not been interviewed, an explanation should be provided]

I have also prepared a structure chart which shows the positions of the people involved in this matter. This is set out in Appendix 2.

During the course of my Investigation I have interviewed the following witnesses, whose statements are attached in Appendix 3:

| Name | Position | Location |
|------|----------|----------|
|      |          |          |
|      |          |          |
|      |          |          |

*In addition, I interviewed a number of witnesses who declined to make a statement. In these circumstances I have set aside and ignored for the purposes of this report the information I have received from those witnesses.*

***Or, in exceptional circumstances*** In view of the exceptional circumstances I have concluded that balancing the interests of [name] to know the evidence against him/her in order to evaluate and respond to it, on the one hand and on the other hand, the interests of the School/Employer in comprehensive access to all the relevant information, the interests of fair process require reference to the material even though the witnesses are, certainly at this stage, anonymous. I have summarised, at the conclusion of Appendix 3, the information gained in a manner designed to preserve the anonymity of the witness.

## **5. Documentation**

During the course of the investigation I have acquired additional documentation [and other items]. Appendix 4 consists of a list of all documentation and other items, together with copies of all the documentation acquired by me.

## **6. Summary of Events and Findings**

[Set out as briefly as possible a summary of the relevant events including, where appropriate, details of where the information was obtained (e.g. from a witness statement, from a document etc).]

## **7. Next Action**

From the evidence I have found, it is my opinion that there is a case to answer, and I am presenting this to you in order for you to confirm this decision and to determine an appropriate sanction (or to set up a panel to hear this case).

**OR**

I acknowledge that it is not my responsibility to decide whether or not there is a case to answer into any specific issue.

From the evidence I have found, it is my opinion that there is no case to answer, and I am presenting this to you in order for you to confirm this decision.

**Appendix 1 – List of Individuals Involved**

[List witnesses and other people involved in this investigation]

| Name | Position | How Involved |
|------|----------|--------------|
|      |          |              |
|      |          |              |
|      |          |              |

(if individuals listed have not been interviewed, an explanation should be provided)

**Appendix 2 – Structure Chart of Individuals Involved**

The following people were involved in the investigation:

**Appendix 3 – Witness Statements**

This section provides details of the witness statements.

**Appendix 4 – List of Documentation**

The following were used in this investigation:

- [List documentation and other items relevant to the investigation. Attach copies.]

Policy Reviewed on: 30<sup>th</sup> May 2018

Policy Reviewed by: Susan Mayo

Ratified by Governors: *Date to be confirmed*