

<b>Name of Policy:</b> Disciplinary for all school staff	<b>Version/Last Review Date:</b> September 2020 (V3)
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<b>Other Policies linked to this policy:</b> Behaviour in the workplace	<b>Next Review Date:</b> December 2023
<b>Governor Committee Responsible</b>	People & Resource Management

WNA Vision: All children will achieve their full potential, with holistic support, whilst enjoying and driving their own learning, gaining self-respect, self-esteem and self-belief. Our classroom extends to rich, exciting environments within the forest, the beach, the city and the community as a whole.

## Disciplinary Policy for All School Staff

Section A: Disciplinary Policy

Section B: Procedures for the Governing Body

### Section A – The Disciplinary Policy

#### Aim of the Policy:

The aim of this policy is to provide a clear procedure for managing issues of misconduct.

This policy should be read in conjunction with the Guidance notes in the Disciplinary Policy.

#### Headteacher's Role

The headteacher is responsible for the management and discipline of the school and for ensuring that all employees are aware of the standards expected of them and any rules applying to them.

The responsibility for initiating the procedure rests with the headteacher of the school. It is expected that the headteacher will take the lead in making disciplinary decisions for staff.

In the case of dismissal it is expected that in most situations it will be for headteachers to take the lead in making initial dismissal decisions for staff, although in some circumstances the governing body may choose not to delegate this authority.

#### Headteacher Disciplinary Matters:

**The term employee includes the headteacher (throughout the policy disciplinary matters relating to the headteacher are in *italics*.) Disciplinary panels for headteachers will be made up of representatives from the Governing Body. The procedure will be initiated by a representative from the Governing Body, (usually the Chair of Governors).**

#### External Processes:

Where at any stage in the procedure it has become necessary to refer matters to external parties (e.g. The Police) further proceedings at school level will be held in abeyance until the conclusion of these processes including any court/criminal proceedings.

#### Guiding principles which govern the Discipline Policy:

- The school is committed to a consistent approach to disciplinary matters
- The school is committed to a fair and transparent process
- All disciplinary matters will be dealt with as promptly as possible to achieve a balance between timeliness and the need to ensure fair processes
- Usually, the Informal Stage would be completed before proceeding to the Formal stage; and two written warnings would have been given before dismissal is contemplated.

### Right to be accompanied

Employees have the right to be accompanied at all formal stages of the procedure, including to Investigation meetings. This does not include a right to be accompanied to meetings in the Informal stage.

A Trade Union Representative can accompany employees to Suspension meetings, providing this can be arranged quickly.

#### The employee's companion can be:

- a work colleague
- a full time Trade Union Official
- an accredited Trade Union Representative.

In addition, if the employee is attending a Final Stage Disciplinary meeting, at which the employee might be dismissed, or at a Dismissal Appeal Meeting, the employee may bring a legal representative as their companion, for example, a solicitor.

In order to exercise their right to be accompanied, the employee must notify the headteacher (*Clerk to the Governing Body*) the name of their companion before the meeting.

### The informal stage of the procedure

Cases of minor misconduct, for example, poor time keeping, are often best dealt with informally through supervision or through a "quiet word". This approach can be effective in dealing with problems quickly and confidentially.

Where a headteacher (*Chair of Governors*) has minor conduct concerns, they should speak to the employee informally about the issue.

#### The headteacher (*Chair of Governors*) should advise the employee of the following:

- Where the employee is falling short of expectations
- How the employee's conduct is expected to improve
- Timescale for improvement
- Additionally, the headteacher (*Chair of Governors*) can advise the employee that they are issuing them with a verbal or informal warning.

A written note of the meeting should be made and kept by the headteacher (*Chair of Governors*), and a copy must be given to the employee. This should include the areas of discussion, the agreed action plan, and a timescale for improvement. The employee should be offered the opportunity to add their comments to the meeting note. An example proforma is available in the Guidance Notes.

There is no specific procedure for the employee to appeal or dispute the informal stage, although the employee does have recourse to the Grievance Procedure.

For further details: please see the Guidance notes.

### The Formal Procedure

The formal discipline procedure should be invoked if there is:

- A recurrence of the behaviour, or an escalation to a more serious breach of conduct
- A suspected serious breach of conduct.

### Investigation

Before carrying out any disciplinary action, it is necessary to undertake an investigation.

There are two types of investigation:

- A short, fact-finding investigation, which is carried out by the headteacher, which can serve as a preliminary to a full investigation.
- A full and formal investigation, which is carried out by an Investigating Officer, appointed by the headteacher. Their findings will be presented in a written report and given to the headteacher, who will decide if there is a disciplinary case to answer.
- *In cases involving the headteacher, the Representative from the Governing Body and the Director of Operations Learning will appoint an investigating officer. The Investigation Report will be given to them, and it is their role to decide if there is a disciplinary case to answer.*

The Guidance notes provide further information on the investigation procedure.

### Outcome of the Investigation

Following the conclusion of the Investigation, the employee will be notified of the next steps, in writing. The employee will be told either that:

- They are going to be invited to a formal disciplinary meeting (or some other formal procedure, e.g. Capability), and at what stage, or that:
- They are not subject to any further action under the Formal Stage of the procedure. In these circumstances, the headteacher (*representative from the Governing Body*) should arrange to meet with the employee to enable the employee to understand the reasons why the matter is not being pursued. The headteacher (*representative from the Governing Body*) may also like to consider if there is a need for any further, informal action, – for example, a 'lessons learned' meeting.

### Suspension

In exceptional cases, where a serious breach of conduct is suspected, suspension may be appropriate.

- Suspension will always be on full pay and is a "neutral act" – i.e. an employee being suspended does not presume, or have an impact on, the outcome of an investigation or a disciplinary meeting.
- The period of suspension will vary, depending on the particular circumstances, from either two or three days while an investigation is carried out, to longer periods of time to enable a more lengthy investigative / disciplinary process.

In other cases, it may be possible for the employee to be granted paid leave ('garden leave') or to be given alternative duties, to enable them to remain in work, but to be removed from the duties or place of work, which is the subject of the investigation/disciplinary.

Suspension should be considered before an investigation begins, and it may be considered subsequently, during the investigation and/or disciplinary process. Periods of suspension should be reviewed in order to ensure that no employee is suspended for periods longer than necessary.

Prior to the employee being suspended

Suspension from work can only be authorised by a headteacher, who must inform the Chair of Governors. In cases where the Headteacher is to be suspended, *a representative from the Governing Body (usually the Chair of Governors)* will authorise the decision.

### **Meeting with the Employee**

The headteacher (*representative from the Governing Body (usually the Chair of Governors)*) should meet with the employee in person to explain, in broad terms, the matters of concern. The employee may choose to respond at this time, and a Trade Union representative or some other Companion may accompany them, if one can be arranged quickly. Suspension will not be delayed because the Companion cannot attend.

The headteacher (*representative from the Governing Body (usually the Chair of Governors)*) will confirm the details of the suspension at the meeting, including providing the employee with the name and contact details of a Colleague to act as a point of contact between the employee and the school. Where appropriate the employee will also be provided with the name of a contact within the County Council

This information will be confirmed in writing, within 2 working days.

In exceptional circumstances, it is possible to suspend an employee in writing only, without holding a meeting. This would only be if there were compelling reasons, which meant that the employee was unable to attend the meeting (e.g. the employee being absent from school, in hospital or in police custody).

Further information is given in the Guidance notes.

### **Roles and Responsibilities**

At all stages in the policy and as far as possible given the size of the establishment, different people will:

- Lead the investigation
- Chair the disciplinary meeting
- Chair the appeal meeting.

The approach is set out below, and should only be deviated from where there are serious impracticalities (for example, someone being absent for a prolonged time) or because they are already involved in the case in some way.

In these situations, practical and sensible alternatives should be sought, in a timely way, which in no way offer less than the minimum levels of management set out below:

Stage	Investigation	Disciplinary chaired by:	Appeal heard by:
Stage 1	Short investigation – carried out by headteacher / their representative ( <i>representative from the Governing Body (usually the Chair of Governors)</i> )	The headteacher ( <i>representative (s) from the Governing Body</i> )	A Panel of 3 Governors
Stage 2	Short or Full investigation by appointed Investigator	The headteacher (possibly with 1 Governor) ( <i>representative (s) from the Governing Body</i> )	A Panel of 3 Governors
Stage 3 / dismissal	Full investigation by appointed Investigator	The headteacher plus at least 1 Governor ( <i>representative (s) from the Governing Body</i> )	A Panel of 3 Governors

In addition, the headteacher (*representative from the Governing Body (usually the Chair of Governors)*) will:

- Receive the Investigation Report, and decide if there is sufficient cause to bring forward a disciplinary meeting
- Appoint a Contact Officer if the employee is suspended (see Suspension)

If it is not appropriate for the headteacher to be involved in the Disciplinary – for example – if they have been previously involved in related discussions – they can appoint a representative to attend in their place.

#### Disciplinary Stages and Potential Outcomes

It would be normal to work through the stages of this policy in sequence. However, in case of more serious misconduct, it may be appropriate to initiate the Policy at Stage Two, and in cases of suspected Gross Misconduct, at the Dismissal Stage.

Stage	Applies to	Outcomes
First Stage	Allegations of misconduct	Written warning – remaining on file for 6 months
Second Stage	More serious breaches of conduct/ or repetition of first stage misconduct	Final written warning – remaining on file for up to 2 academic years. Employee is warned that the next stage of procedure if invoked could lead to their dismissal.
Dismissal	Repetition of misconduct previously warned about or Gross misconduct	Possible sanctions: - Dismissal with notice - Dismissal without notice (in cases of gross misconduct) - A final written warning, remaining on file for up to 2 academic years.

#### Additionally, at all stages:

- The allegations may be rejected if it is considered that there is no case to answer.
- A lower level of warning (than the stage the procedure was entered at) may be issued, or
- The matter may be referred to another procedure, if appropriate. (e.g. Capability.)

#### First formal Stage

#### Notification of the Meeting

**The employee will be asked to attend a Disciplinary meeting. The employee will be given at least 5 working day's notice of the disciplinary meeting. The letter will set out:**

- The allegations of misconduct
- The right to be accompanied by a companion
- The time, date and venue for the meeting, including the process to request a change if the time is significantly impractical for the employee or their Companion to attend
- The names of the people who will be present at the Disciplinary meeting, including those who will be called by management as a witness
- The stage in the procedure, and the potential sanction.

In addition, copies of the Investigation report, and any statements or documents about which the employee will be asked, should be included with the letter to the employee.

In order to exercise their right to be accompanied, the employee should notify the name and position of their companion. The employee should also provide copies of additional documentation that they wish to be considered and the names and job titles (where school employees) of any witnesses they are calling, no later than 3 working days before the meeting.

The employee may request a change of the date or time of the meeting if they, or their Companion, are unable to attend at the invited time. The employee may offer an alternative date and time, providing that it is within 5 days of the original meeting time.

#### **Failure to Attend**

**All parties should make every effort to attend the disciplinary meeting.**

- **If the employee fails to attend the meeting for reasons outside of their control, the meeting may be postponed and re-arranged. Usually only one postponement and re-arrangement will be agreed.**
- If the employee refuses to attend, the meeting can be held without the employee present. The employee should be allowed to submit documents for consideration at the meeting.
- If the employee insists on a Companion being present who continues to be unavailable, and a suitable alternative companion is available, then the Chair of the meeting may decide to proceed with the meeting.

#### **The Disciplinary Meeting**

**At the meeting, the Disciplinary Chairperson will outline the alleged misconduct.**

**The first witness will be the Investigation Officer. They will provide a brief summary of their findings, and then the employee, their companion and the Disciplinary Chairperson/panel can ask questions of them.**

**They will be followed by any additional witnesses called by the Employer.**

**The employee should also be allowed to present evidence and call, and question, witnesses, if they choose.**

**Further information about the disciplinary meeting, including the procedures to be followed and the role of the Companion, is covered in the supplementary Guidance notes.**

Following the meeting, the Disciplinary Chairperson/Panel will adjourn briefly to consider all the information that they have heard, and decide whether to give the employee a written warning. The normal expectation for a Stage One warning to remain current on the employee's file is 6 months.

### **Notification of the Outcome**

If at all possible, the Disciplinary Chairperson will inform the employee of the outcome in person, and this will be followed by a letter within 5 working days of the decision being taken.

The letter will include:

- The nature of the allegations
- The findings of the Disciplinary Chairperson/Panel
- Details of any improvement, which is required of the employee.
- The decision of the Disciplinary Chairperson/Panel including the nature of the sanction (i.e. a written warning) and the length of time it will be kept on their personal file.
- The likely outcome if there is no improvement by the employee.
- The date of any review of the warning (if appropriate).
- The right to appeal against the decision.

The Chair of Governors must be informed of all written warnings issued, and the outcome of any appeal meetings.

### **Follow up at the end of the review period**

The headteacher (*representative from the Governing Body (usually the Chair of Governors)*) will review the employee's conduct at the end of the review period. If there has been limited or no improvement, the headteacher (*representative from the Governing Body (usually the Chair of Governors)*) may decide to proceed to Stage Two.

If there has been sufficient improvement, a letter should be sent to the employee confirming this fact at the end of the review period.

### **Appeal against a Stage one warning**

An employee who wishes to appeal against their warning must do so in writing within 5 working days of receiving written notification of the warning.

In their letter, the employee must set out the grounds for their appeal, and this must be sent to the Clerk to the Governing Body, who will arrange for an Appeal to be heard.

The Appeal will be heard by a panel of 3 Governors, one of which will act as Chairperson.

At the appeal meeting, the employee will be asked to give their reasons for appeal. The meeting will focus on these "grounds" for appeal and will not be a re-hearing of the disciplinary.

Following a short adjournment to consider the employee's arguments, the Panel will invite the employee back into the meeting to confirm the outcome. This will be confirmed in writing to the employee within 5 working days.

The outcome of the Appeal meeting can be one of the following:

- To uphold the employee's appeal in full and revoke the warning that was awarded.

- Not to uphold the Appeal, in which circumstances, the warning will remain on file.
- To partially uphold an Appeal – whereby the Appeal panel may find certain grounds to concur with the employee. In these circumstances, the Appeal Panel may decide to reduce the length of the employee’s warning, or reduce the level of the warning (for example, reduce a Stage 2 to a Stage 1 warning)

The Appeal Panel cannot increase the level of Warning given to the employee.

If it is not possible to reach a decision immediately following the Appeal meeting, the employee will be notified in writing within 5 days of the decision being taken.

Further information about the structure and format of the appeal meeting is given in the Guidance notes.

### **Stage Two of the Disciplinary Process**

Stage two of the procedure mirrors stage one, except as detailed below:

- If a warning is given following the Disciplinary meeting, it will remain current for a maximum of two academic years.
- This is the final warning stage within the Disciplinary procedure, and employees, when notified of a Stage Two warning, should also be advised that the next stage of the procedure, if invoked, is the dismissal stage.

The Appeal Process for Stage Two

The appeal mirrors the process at stage one.

### **Third and Final stage – Dismissal / Final Warning**

Stage three of the procedure mirrors stages one and two, except that the possible sanctions following a Dismissal stage meeting are:

- Dismissal with notice
- Dismissal without notice (summary dismissal for Gross misconduct)
- A final, formal warning
- A level one warning
- No further action

As with other stages in the procedure, the employee may bring a companion to the Stage 3 meeting, which, for employees facing a possible sanction of dismissal, may be a legal representative, such as a solicitor.

Requesting an Appeal against a Stage 3 Warning / Dismissal

a. Appeal against a Stage 3 warning

If the employee wishes to lodge an Appeal against a warning, the format will follow that at other levels of the procedure.

The employee may be accompanied, as at other stages in the formal procedure.

b. Appeal against Dismissal

If the employee is appealing a dismissal, the format will be a re-hearing of the case, and may involve witnesses attending.

The employee may be accompanied, as at other stages in the procedure, who, in addition to the categories of Companion outlined above, may also be a legal representative, for example, a solicitor.

For both types of Appeal, the employee must write to the Clerk to the Governing Body within 5 working days of receiving written notification of the outcome.

In their letter requesting an Appeal, the employee should cite their reasons for Appeal.

This is the final stage in the Disciplinary Procedure.

### **General Points**

#### **Timescales**

As a general rule, it is in all parties' interest for disciplinary matters to be dealt with promptly, and all those involved with a disciplinary matter have a responsibility in this regard.

In the associated Guidance document there are expected timescales given, in which it would normally be reasonable for a disciplinary meeting or investigation, to be carried out in.

Any changes to the timescales set out in the Policy will need to be agreed by all parties.

#### **Record Keeping**

Records of disciplinary matters should be treated as confidential and kept securely.

Notes will be made of all formal meetings held under the Disciplinary policy, (including Investigation meetings) and copies will be given to the employee for information. It is the responsibility of the headteacher / Chairperson/Clerk to the Governing Body to arrange for a note taker.

In some limited circumstances, information may be withheld to protect the identity of a witness, for example, whistle blowing, severe harassment, safeguarding or criminal matters.

If any Safeguarding issues have arisen during the disciplinary, the documentation will need to be kept securely in accordance with Safeguarding Procedures.

#### **Overlapping Procedures**

Where an employee raises a Grievance during the disciplinary process that is relevant to the matter concerned, the disciplinary process can be temporarily held in abeyance until the outcome of the grievance is known.

However, where the two procedures are about related issues, it may be possible to deal with the two concurrently.

Where another procedural policy applies, such as the Sickness or Capability procedure, it may be possible to cover the essential elements of the procedures at a single meeting, with a view to minimising the number of letters and meetings required.

### Trade Union Officials

No action will be taken against an accredited Trade Union representative without prior discussion with a full time official of the Trade Union concerned, except in cases of Gross Misconduct where immediate action is required. In these cases, discussion with a full time Trade Union Representative will be undertaken as soon as possible afterwards.

### Employees with Disabilities

If an employee requires any reasonable adjustments to be made to enable them to fully participate in the process, they should notify the headteacher as soon as possible (and providing a minimum 4 working days' notice).

See the Guidance for further information

### Legal Framework

The School Staffing (England) Regulations 2009 provides that schools shall have power to appoint, suspend and dismiss staff as it thinks fit (in accordance with their Articles of Government).

### Section B – Procedure for the Governing

#### Rules of Conduct for a Dismissal Hearing and Appeal

Each governing body should have a procedure to deal with the consideration of dismissals. It is suggested that the Rules of Conduct of Disciplinary Hearings set out here should form the basis of this, subject to the following amendments:

- a) At **least** 5 clear working days' written notice shall be given to the employee of the date, time and place of the disciplinary or the appeal hearing advising of his/her right to be represented. The notice calling the employee to the disciplinary hearing shall include a statement of any allegation, complaint or adverse report concerning the employee's conduct or capacity which is to be considered
- b) The allegation will be presented by a person approved by the governing body/headteacher
- c) The headteacher or panel of governors may be advised by a Legal and that person, may retire with the panel for the purpose of giving advice (they do not, however, have any role in making the decision);
- d) Persons presenting evidence shall not retire with the panel of governors when it considers its decision, but the panel may recall anyone to clarify evidence previously given, provided that the two parties are also in attendance when that evidence is given;
- e) At the conclusion of the hearing, if it is considered that dismissal should take effect the employee will be informed orally if possible and in any event the decision will be confirmed in writing within 5 working days.
- f) The Governing Body shall issue notice of dismissal. The letter giving notice of dismissal will include the individual's right of appeal.
- g) In the case of an appeal, the employee shall set out in writing the grounds for the appeal, to be lodged with the clerk to the governing body, within 5 working days of receipt of written confirmation of the dismissal;

- h) The panel hearing the appeal may uphold the original disciplinary decision, or modify it, by substituting a lower level of disciplinary action or dismiss the allegation(s) altogether. The panel may not make any award of compensation to the employee or vary unilaterally the employee's contract of employment. Once the decision has been reached, it should be given orally at the hearing if possible and confirmed in writing to the employee within 5 working days.

### Conducting a Disciplinary Meeting (Including Appeal Meetings)

- a Copies of this Procedure will be held in every school and be freely available to all employees.
- b Those involved in disciplinary proceedings need to be fair, impartial and reasonable throughout.
- c The following rules of conduct shall apply to all formal disciplinary meetings including appeal meetings under this Procedure.
- d A governor is ineligible to serve on a disciplinary committee where he/she is related to the employee in question, or has made allegations, or has been a witness to an alleged incident, which results in disciplinary proceedings.
- e Where a panel of governors is required to determine an appeal against disciplinary action short of dismissal or a determination relating to the dismissal of a member of staff or any appeal against such a determination, that committee or panel will include no fewer than three governors and no governor who has had prior involvement in the case shall consider an appeal against that decision. The membership of an appeal committee shall include no fewer members than the committee whose decision is the subject of appeal (where this is relevant).
- f Meetings will be held at a time and place, which, as far as possible, are acceptable to all parties. A meeting should be adjourned to another date after 5 hours or at 6 p.m.; whichever is the earlier, unless both parties agree otherwise.
- g Copies of all documentary evidence will be available to both parties as early as possible in advance of the meeting.
- h Accommodation will be provided for the employee and his or her representative or friend/work colleague to meet in private before, during and after the meeting.
- i The headteacher, any governor(s) and the employee and his or her representative will attend throughout the meeting. Witnesses will be present only for their submission to the meeting.
- j During the meeting, the headteacher, or the employee, may request one or more short adjournments. Such requests will not be unreasonably refused.
- k Witnesses will be instructed not to discuss their evidence with other witnesses during the meeting.
- l The Chair of the Disciplinary Panel/h should start the proceedings by introducing himself/herself and others present to the employee, explaining the role of each of those present. The employee should introduce any person who is accompanying him/her. The chairman/headteacher should then establish with both parties the names of any witnesses they intend to call to the meeting.
- m The headteacher/ will first present the allegation(s) against the employee/*headteacher*, as appropriate, providing such evidence, documentary or by oral statements of witnesses, as necessary.

- n The employee or his/her representative will then be asked to give an explanation of the circumstances which led to the convening of the disciplinary meeting, providing such evidence, documentary or by oral statements of witnesses, as appropriate.
- o All witnesses may be questioned by the headteacher, the employee or his/her representative and any governor immediately following their submission to the meeting. The headteacher or presenting officer and the employee may be similarly questioned. Following the completion of both parties' submissions, witnesses may be recalled - but only to clarify evidence previously given, not to introduce any new material.
- p The headteacher or presenting officer and the employee or his or her representative may sum up following the conclusion of statements by both parties. The employee will be given the opportunity to speak last. Neither summary may introduce any new material.
- q The headteacher or chair of a disciplinary meeting, having given the employee the opportunity to state his/her case, may adjourn the meeting for further investigations before a decision is made.
- r At the conclusion of the meeting, all those present except the panel and adviser should leave the room to allow them to deliberate in private. The headteacher/chair, may recall the headteacher or presenting officer and the employee/representative, to clarify points of uncertainty on evidence already given. If recall is necessary, both parties must return even if only one is concerned with the point giving rise to doubt.
- s In coming to a conclusion on the facts of the case, the panel will need to decide "on the balance of probabilities" whether the employee concerned carried out the alleged misconduct. Once a determination has been reached, both parties should be recalled to the meeting. The headteacher/chairman should inform the employee of the determination and right of appeal. In exceptional circumstances, it may not be possible to reach a decision on the day of the meeting. In this case, both parties should be recalled to the meeting and so advised. The headteacher/chairman should explain the reasons and inform the employee when the determination is likely to be reached. This must be no later than two working days after the meeting.

## **The Decision Making Process**

### **The Balance of Probabilities**

In coming to a conclusion on the facts of the case, the panel will need to decide 'on the balance of probabilities' whether the employee concerned carried out the alleged misconduct. This is not as stringent a test as in a criminal court of law where the test of 'beyond reasonable doubt' applies, but it nevertheless requires the panel to come to a conclusion based on evidence rather than 'gut feeling'.

In most meetings, evidence is put forward that is in some ways contradictory and the panel will need to come to a conclusion as to where the truth lies. To do so, the panel will need to use their common sense and management experience to balance the evidence for and the evidence against. The panel should consider how likely it is that the act or omission happened, e.g. how unusual would it be for the alleged act to have occurred? Does any of the evidence sound more far-fetched than the rest? If two people are directly contradicting one another, who is more likely to be telling the truth and is there any corroborating evidence that adds weight to one or other of them?

Generally, the less likely the act or omission is to have occurred, the greater the burden of proof required. The panel will need to identify evidence that corroborates one side or the other.

### **Making Findings of Fact**

If the panel finds it cannot come to a judgement about where the truth lies because it does not have sufficient evidence to do so, it will be unable to make a finding that the act or omission did occur as alleged. In this case, the panel would not be able to take any disciplinary action, whatever panel members' private view about whether the employee was guilty or not.

If the panel concludes that the alleged misconduct did occur in full or in part, it should record its findings and then move on to considering the appropriate disciplinary penalty

### Imposing Disciplinary Penalties

In many cases, the employee concerned will have offered an explanation about what happened and why. In some cases, the misconduct may be admitted and the only evidence put forward by the employee relates to mitigating circumstances. Based on the facts the panel has found, it will then need to consider any mitigation put forward by the employee to decide what penalty should apply. The panel will also need to take account of the employee's previous disciplinary record in deciding what level of action is appropriate.

**The panel is not able to impose a penalty higher than the level at which meeting was convened**, i.e. if the meeting was set up as a Stage 2 meeting, the panel cannot, at this stage, impose a higher level penalty such as a dismissal. The options are to impose no penalty at all, or to issue a Stage 1 or a Stage 2 warning.

Having considered mitigation, the panel also needs to consider the seriousness of the misconduct in the context of the employee's previous record and the circumstances of the case.

The panel will also need to decide how long any disciplinary penalty should remain 'live' and any arrangements that may need to be put in place to assist the employee to improve and/or be monitored.

At this stage, it may be useful to run through the following checklist to satisfy panel members that they have reached a fair decision:

### The Test of Reasonableness

- Has there been as much investigation as is reasonable in the circumstances?
- Have the requirements of the disciplinary procedure been properly complied with up to this point, including advance notice to the employee of the matter(s) to be considered at this meeting?
- Has there been sufficient regard paid to any explanation put forward by or on behalf of the employee?
- Is there a genuine belief that the employee committed the misconduct
- Are there reasonable grounds for sustaining that belief on the balance of probabilities?
- Is the misconduct sufficiently serious to justify the disciplinary decision being contemplated?
- Has there been regard paid to any mitigating circumstances put forward by, or on behalf of, the employee?
- Is the decision within the band of reasonable responses of a reasonable employer in the circumstances?

### Summary of Key Points

- Focus on the evidence and ensure findings can be substantiated by the evidence
- Approach decision-making as a two-stage process: decide whether the allegations are substantiated before deciding on the appropriate penalty
- The panel may only decide whether to take disciplinary action and, if so, the level of disciplinary action that is appropriate

- The panel may not impose any other penalties such as redeployment, stoppage of pay, demotion
- The panel cannot impose a disciplinary penalty at a higher level than that set for the meeting.

**In all cases, the headteacher/chair of the panel, shall confirm the determination in writing within 5 working days of the meeting.**