Disciplinary Policy

Model Tower Hamlets Policy

Date agreed: July 2020 **Review Date: TBD**

We are a UNICEF Rights Respecting School

1. Introduction

1.1 This code applies to all employees (teaching and support staff) with more than 26 weeks service (and not subject to a probationary period) directly employed by a school for whom the Governing Body has responsibility in respect of discipline.

1.2 The Council expects all its employees to recognise their obligations to their school, the public, pupils and other employees and to conduct themselves in a proper manner at all times. The Council's general rules of conduct are listed in Appendix 1 below, they cover misconduct and gross misconduct but are neither exhaustive nor exclusive.

2. Purpose

2.1 To achieve efficiency of the organisation, quality of service provision and good employee relations, the Disciplinary Code should:

(i) improve conduct primarily by advice and correction rather than by disciplinary measures, recognising the Code is a corrective rather than a punitive process:

(ii) provide a fair method of dealing with alleged breaches in standards of conduct;

(iii) ensure acceptable standards of conduct of work;

(iv) clarify the rights and responsibilities of management and employees under the Code's provisions

2.2 If confirmed through the disciplinary process, substantiated allegations of gross misconduct may lead to summary dismissal or a determination to dismiss for teaching staff, i.e. there is no entitlement to statutory notice.

2.3 The Governing body is responsible for ensuring that fair, consistent and objective procedures exist for matters relating to staff discipline. The Headteacher is responsible for the internal organisation, control and management of the school.

3. Informal Action

3.1 In advance of formal disciplinary action, cases of less serious breaches of conduct (i.e. first breaches of some types of misconduct) can be dealt with informally by counselling the employee. In some cases, it may be beneficial to use external mediators to resolve conflict in the workplace.

3.2 This involves drawing to the employee's attention the unsatisfactory conduct, explaining what conduct is required and allowing a reasonable period for the employee's conduct/behaviour to improve.

3.3 Consideration should be given to any difficulties which a member of staff may be facing and a genuine attempt should be made to overcome them. Where considered appropriate, managers should seek advice from the Occupational Health section when managing staff who indicate signs of mental illness or who may be suffering from alcohol or substance abuse.

4. Equality Considerations

4.1 It is important that the procedure is applied in a fair manner at all times. This means that no employee shall be subject to discriminatory practice in the administration of the disciplinary procedure. The Council actively opposes racism, sexism and all forms of discrimination against employees of any particular creed, ethnic or national origin, gender, age, disability, marital status, or sexual orientation

4.2 A regular review of cases will be undertaken to determine whether employees from any particular group seem to be subject to disciplinary action more than members of other groups.

5. Disciplinary Sanctions

5.1 The following formal stages of disciplinary action can be taken for breaches of conduct (see Appendix 1 for Disciplinary Rules).

5.2 Warnings are progressive from First to Final except for:

(i) cases of gross misconduct (which may result in summary dismissal);

(ii) cases which are less serious than gross misconduct but warrant a Final Warning being issued regardless of prior formal warnings.

Disciplinary Action	Authority to Issue	Duration of Warning on Personal File
First written warning	Headteacher	6 months
Second written warning	Headteacher	9 months
Final warning	Headteacher	1 year
Dismissal	Disciplinary Panel	-

5.3 During the term of a disciplinary warning further misconduct may occur. Where this results in a formal hearing and a further warning is issued, the duration period for both warnings must expire before cancellation takes place. For example where a second written warning is issued to an employee who has an outstanding first written warning, the period of the second warning (9 months) would be added to the remaining period of the first warning.

5.4 The total period would have to expire before cancellation of both warnings takes place. An employee must be held accountable for further misconduct if an existing warning is in force at the time the new alleged offence was committed, irrespective of when the offence comes to light or if the Hearing is arranged once the current warning(s) have expired.

5.5 Upon expiry, all disciplinary warnings will be removed from an employee's personnel file and destroyed. Records will be maintained by Education Personnel for monitoring purposes only.

5.6 An employee with a final written warning on file who is alleged to have committed a further occurrence of misconduct must be treated as if the allegation was of gross misconduct. This is because if the allegation is substantiated, the employee would be dismissed. Therefore letters to the employee should include the warning of dismissal (as per allegations of gross misconduct).

5.7 **Warnings without a Hearing**

Where the investigation entirely substantiates an allegation of misconduct, the employee (or their Trade Union representative) can formally request the issuing of a First Written Warning without the need for a Hearing. If the Headteacher agrees that the disciplinary sanction befits the allegation, a First Written Warning may be given that will remain on the employee's record for 6 months from the date it is issued.

5.8 It is only appropriate for issues which would warrant a first written warning. If the Headteacher judges that it is not a minor incident of misconduct, or if the employee has current warnings on file, the matter must be referred to a full Disciplinary Hearing.

6. Disciplinary Investigations

6.1 **The Investigating Officer**

The Chair of Governors or Headteacher is responsible for appointing an Investigating Officer. Where the Headteacher carries out the investigation any disciplinary hearing must be heard by a panel comprising of two governors (other than the chair of governors). It is envisaged that the Headteacher will only conduct the investigation in exceptional circumstances, and advice should be sought from Education Human Resources beforehand.

6.2 Investigations should normally be carried out by the immediate line manager. If this is neither practical nor appropriate, another Investigating Officer should be chosen. Alternatives to the line manager could include an employee of equal or more senior status within the employing school, another school or from within the LEA. Advice should be sought from Education Human Resources on the appropriateness of the Investigating Officer.

6.3 The case must be thoroughly investigated, clearly written and supported by evidence. Care must be taken not to allow assumptions or stereotypical attitudes to prejudice decisions.

6.4 **Pre-Investigation Stage or Management Investigations**

In some limited cases it will be necessary to gather information regarding complaints, incidents and allegations before the start of a formal disciplinary investigation.

6.5 This type of information gathering is only appropriate for prima-facie serious allegations which are particularly sensitive or complex to determine whether:

- there is any substance to the complaint and a full disciplinary investigation is approrpriate
- the allegations warrant suspension of the employee

6.6 This is **not** a formal stage of the Code and would not be considered within the stipulated timescales of the Code, but must be carried out as speedily as possible.

6.7 Any information uncovered at this stage would be provided to the investigating officer as appropriate.

6.8 **Timescales for Investigations**

All allegations and complaints against employees must be investigated speedily (particularly in cases of potential gross misconduct). The Initiating Manager should ensure the Investigating Officer has reasonable time off from normal duties to ensure the investigation is concluded as soon as possible.

6.9 As a guide, from the time the Investigating Officer commences their investigation, the investigation report should be completed within 20 working days* for all allegations of misconduct and other instances where the fact finding is relatively straightforward. For allegations of gross misconduct and more complex cases, the investigation process should take no longer than 30* working days (unless agreed in advance). In very complex cases or cases which have exceptional circumstances, a reasonable timescale for completion will be agreed by Education Human Resources.

6.10 In all cases, these should be viewed as maximum timescales and investigations should be completed as soon as is reasonably practicable. In exceptional circumstances e.g. very complex cases or where the Investigating Officer or an important witness falls sick, the Initiating Manager can agree to extend the investigation following consultation with the individual and the Trade Unions. However a reasonable date for completion should be set.

6.11 On completing the investigation and having consulted with the Education Human Resources Section, the Investigating Officer will recommend to the Initiating Manager, (normally the Headteacher) whether or not a formal disciplinary hearing is necessary and on what basis.

6.12 **Allegations against Headteachers**

Where allegations of misconduct involve Headteachers, the chair of the governing body, or other designated governor, replaces the Headteacher in initiating any action that may be taken.

The powers for suspension will rest with the Director of Education. Investigations will be carried out by a nominated Governor or, if appropriate, an officer of the LEA appointed by the Director of Education.

7. Disciplinary Hearings

7.1 Where the results of the investigation indicate that there are reasonable grounds to suggest misconduct or gross misconduct, a Disciplinary Hearing should be arranged within **four working weeks** of completion of the investigation. Reasons for any delay in convening a Hearing must be communicated by the Initiating Manager to all interested parties.

7.2 In all cases where dismissal may result, the Corporate Director of Education (or nominee) shall attend the hearing in an advisory capacity**. Headteachers should contact the LEA's Human Resources Section whenever the possibility of such action arises.

7.3 The Investigating Officer's report and all relevant documentation should be sent with a letter notifying the employee of the date, time and place for the hearing giving **seven** working days if delivered by hand and **ten** working days **if posted** (notice periods cover working days either side of holidays).

** Working days refers to actual school days for term-time only staff.*

*** In the case of an aided school where this code has been adopted by the governing body, this shall constitute agreement to accord advisory rights to the Corporate Director (Education)*

7.4 **Composition of the Panel**

The Headteacher can personally hear allegations of **misconduct**. If this is neither practical nor appropriate, or where the allegations are of gross misconduct, or other misconduct which could result in the dismissal of the employee i.e. they already have a final warning on file, the Disciplinary Panel will hear the case.

7.5 The Disciplinary Panel will usually comprise of the Headteacher (who will chair the hearing) and one governor (other than the chair of governors, who will normally sit on the Appeals Committee). Appeals against decisions made by the disciplinary panel must be considered by an Appeal Committee, which consists of three governors, who have had no prior involvement in the case.

7.6 Two governors is the quorum for the Appeals Committee (Education (School Government) Regulations 1999 (SI 1999 No 2163).

7.7 In cases of gross misconduct, the clerk to the governors must attend to take minutes of proceedings. It is their role to minute the significant points of the hearing and the decision of the panel but not to produce a verbatim record.

8. Conducting the Hearing

8.1 At the Hearing, all parties present will be given an opportunity to ask questions or challenge the reports/evidence submitted and all witnesses. (See Appendix 2 for the Disciplinary Hearing Structure).

8.2 The employee should be informed of the decision of the Disciplinary Hearing immediately (unless there is an adjournment to clarify any facts) and the Chairperson hearing the allegation will confirm this in writing within **five working days**. The letter must also confirm the individual's right of appeal.

9. Appeals Procedure

9.1 Employees have the right of Appeal against all formal disciplinary action. In submitting an appeal, employees are asking the Governors Disciplinary Appeal Panel to consider the fairness and reasonableness of any disciplinary measures taken at the original Hearing.

9.2 Appeals against disciplinary action will only be considered on one or more of the following grounds:

(a) the **PROCEDURE**, – the grounds of appeal should detail how procedural irregularities prejudiced the disciplinary decision.

(b) the **FACTS**, – the grounds of appeal should detail how the facts do not support the decision or were disregarded, misinterpreted or were considered not relevant. They should also detail any new evidence to be considered.

(c) the **DECISION**, – the grounds of the appeal should state how the act(s) of misconduct did not justify the level of disciplinary action taken or the act was one of misconduct rather than gross misconduct.

9.3 Appeals must be registered with the Chair of Governors within **ten days** of the date of the letter confirming the disciplinary decision. Appeals received after this period will not be heard.

9.4 The Appeal will concentrate on the area(s) of dispute only and will not be a re-run of the whole disciplinary hearing. Accordingly, it is important that the employee (or their representative) is explicit about the grounds for appeal and must provide clear and specific reasons in writing. Such written notice of Appeal must include reference to any new facts the Appellant intends to raise at the Appeal.

9.5 Employees must present any new evidence which was unavailable at the time of submission of the appeal documentation at least **three working days** prior to the Appeal hearing so that management may have an opportunity to respond.

9.6 Appeals will be convened as soon as is reasonably practicable and the Appellant will be given **five working days** notice of the time and venue of the Appeal hearing.

9.7 The result of the Appeal and the reasons for the decision will be conveyed to the Appellant immediately after the Hearing and will be confirmed in writing within **five working days** by the Chair of the Appeal Panel.

10. Employee Representation

10.1 Where allegations are made against an employee, he/she should be informed of their rights to be represented at all meetings and related hearings by a recognised LBTH Trade Union representative, Regional Trade Union Official or other Council employee.

10.2 Unless required to attend as a witness, people who are not in the employ of the Council, agencies, groups, businesses or individuals which are not formally recognised through the Borough's employee relations process are excluded from participation in any part of the Disciplinary Code. In particular, employees are precluded from being represented by solicitors or legal practitioners.

10.3 Where disciplinary allegations involve a trade union representative, no action should be taken until the circumstances of the case have been discussed with the Branch Secretary, Area Official or other senior trade union representative.

11. Suspension

11.1 Authority to suspend will commence at Headteacher level. In maintained schools both the Head and the governing body have the right to suspend an employee (on full contractual pay) from all duties where in their opinion exclusion from the school is required.

11.2 This is normally where an act of gross misconduct is either suspected or alleged to have been committed or for "other good and urgent cause" which is normally taken as when the employee is suspected of, or been arrested for, doing something which would render him or her unsuitable to remain in school.

11.3 If necessary, a less senior manager can send a member of staff home pending ratification by the Headteacher the following day. Before deciding to suspend, the Corporate Director or representative should be consulted to ensure consistency of application across the Borough.

11.4 If a union member, the local trade union representative should be asked to attend the suspension meeting where practicable. Where suspension occurs, this should be confirmed in writing giving broad details of the allegation. In all cases the chair of governors needs to be informed and for community and voluntary controlled schools, so does the LEA. If the employee is not accompanied by a local rep, the regional Trade Union Official must be notified as soon as reasonably practicable following the suspension interview.

11.5 Suspensions are a precautionary measure and should not be regarded as prejudging the matter. If at any stage during or at the end of the investigation, or at any stage of the disciplinary procedure, it is considered that this suspension should be lifted, the employee will be informed immediately.

11.6 Suspension from duty is a 'working arrangement' whereby the employee must not enter any Council building or contact any Council employee without the express permission of their Headteacher or the Investigating Officer. Nor must a suspended employee contact service users with whom they would come into contact during the course of your duties. Failure to observe this requirement may render them liable to further disciplinary action.

12. Child Protection Legislation

12.1 If allegations are made against staff which involve child protection issues, the Child Protection Procedure must be followed irrespective of how the allegation arises. Employees will be suspended pending the outcome of the Child Protection Strategy Meeting. If the relevant child protection agencies decide not to pursue formal action against the employee, the matter will be referred back to the school for consideration under the appropriate procedure.

12.2 Only once the matter has been referred back to the school will action under the appropriate procedure commence. The fact external agencies have not pursued formal action should not be taken as a presumption of innocence or guilt on behalf of the employee.

APPENDIX 1: STANDARDS OF CONDUCT AND DISCIPLINARY RULES

GROSS MISCONDUCT

The following are examples of gross misconduct (the term LEA also includes any school where local work rules and/or procedures apply):

(i) Prolonged unauthorised absence from work (at least **ten working days** without contact).

(ii) Inappropriate conduct towards or contact with pupils.

(iii) Unauthorised removal and use of School/LEA property.

(iv) Serious breaches of the Council's Financial Regulations, Standing Orders, Council or school Code of Conduct or Member and Employee Protocol.

(v) While purporting to be absent sick, working or indulging in activities, which are likely to be inconsistent with the reason for absence and/or which are unlikely to be conducive to recovery.

(vi) Theft or misappropriation of, or failure to account for, or falsely claiming entitlement to, the property, assets or funds of the LEA, its employees or clients.

(vii) Failure to report or record any matter which it is the employee's contractual duty (either expressed or implied) to report.

(viii) Fighting or acts of violence at the workplace, serious threatening or abusive behaviour towards members of the public, clients fellow employees, elected Council representatives.

(ix) Criminal offences outside work (including fraudulent activities such as claiming Housing Benefit or unemployment benefit etc) which may affect the individual's employment suitability.

(x) Serious discrimination/harassment against a member of the public, or Council employee, on the grounds of sex, colour, creed, nationality, ethnic origin, age, sexual orientation or disability.

(xi) Being incapable of adequately performing duties as a result of the abuse of alcohol or drugs.

(xii) Falsification of documents likely to be of financial benefit to the employee or other persons e.g. time sheets, bonus/expense claims, qualifications etc

(xiii) Serious breaches of the Council's Health and Safety policies or practices

(xiv) Serious contravention of the Staff Computer Security Agreement or School/Council's Policy on Internet Access. Employees must not use electronic mail, the Intranet or Internet to racially, sexually or generally harass or threaten fellow employees or others.

(xv) Obtaining a job by lies or deception in the course of selection procedures.

(xvi) Making false claims under any of the Council's policies and/or procedures.

RULES OF MISCONDUCT

(i) Regular lateness for work

(ii) Regular failure to follow employment rules e.g. reporting absence

(iii) Refusal to obey a reasonable instruction of the Supervisor

(iv) Negligence at work leading to loss, damage or wastage of schools/LEA or public property

(v) Discrimination/harassment against a member of the public or Council employee on the grounds of sex, colour, creed, nationality, ethnic origin, age, sexual orientation or disability

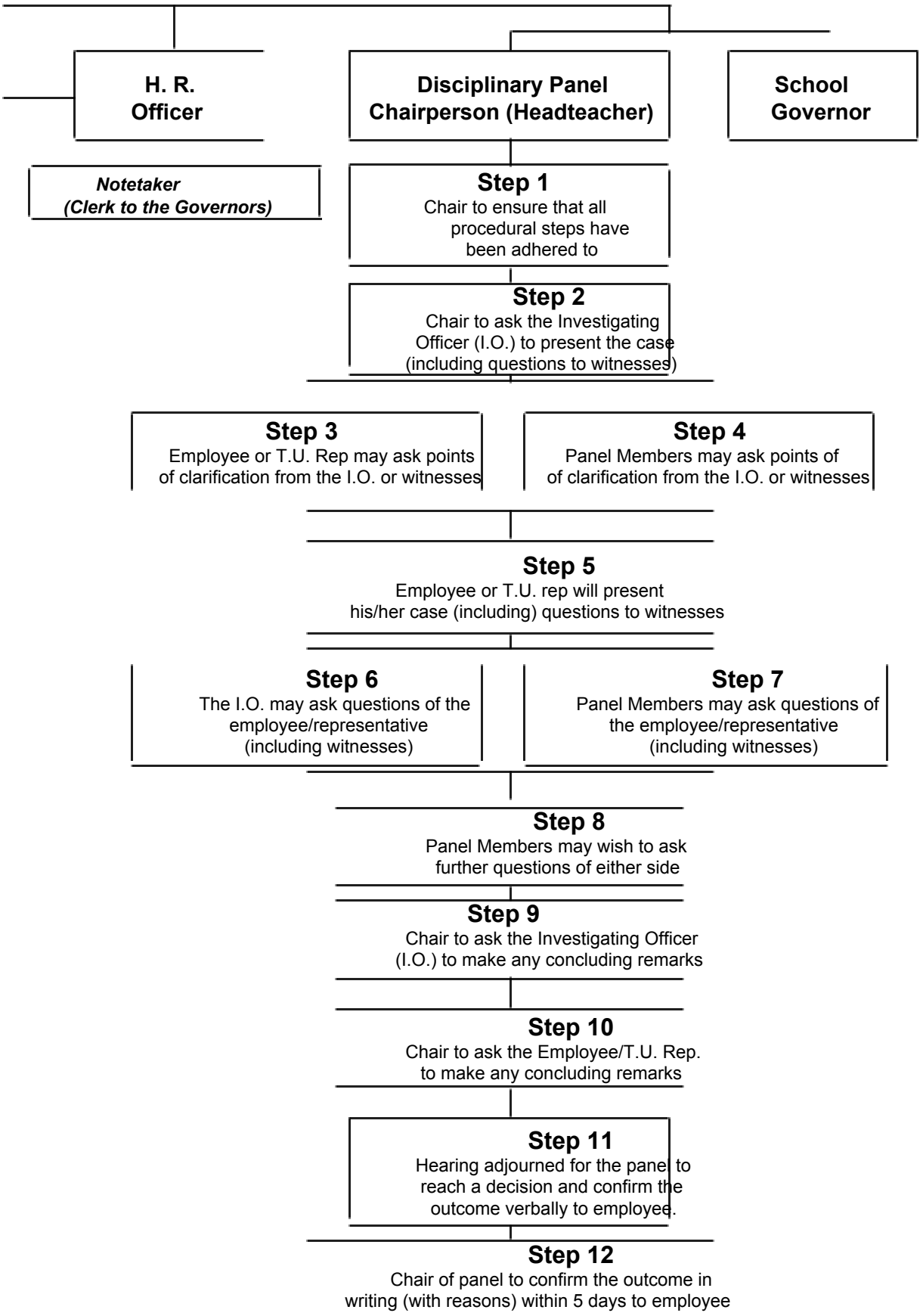
(vi) Improper, disorderly or unacceptable conduct at, during or when arriving for work.

(vii) Inappropriate drinking of alcohol at work (i.e. this would exclude special occasions such as day centre open days)

(viii) Wilfully inadequate work performance (poor performance or lack of capability will normally be the subject of Capability procedure)

(ix) Abusive or threatening behaviour towards a member of the public, clients, fellow employees, elected Council representatives

(x) Breaches of the Council's Standing Orders and Financial Regulations

(xi) Contravention of the Staff Computer Security Agreement

APPENDIX 2: DISCIPLINARY HEARING STRUCTURE (GROSS MISCONDUCT)