

Conduct

Summary

The governing body and Gloucestershire County Council (GCC) recognise the importance of good working relationships with employees and seek to ensure that concerns with conduct are dealt with in a fair and timely way.

Improvement may be required from employees in relation to misconduct.

This is a model policy which provides a structured process for the schools/GCC management to handle concerns when problems with employees' conduct are considered serious or a previous requirement for improvement has not been achieved or sustained.

It is based on the principles of the ACAS Code of Practice (No.1) on 'disciplinary and grievance procedures' and current employment and educational legislative requirements.

Please note if the school has purchased legal insurance which covers employment issues you should refer to the terms and follow any requirements of the policy.

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Who does this policy apply to?

It applies to the following employees:

- Support staff employed by the school where there are concerns which informal action has been unable to address or serious enough to require formal action.
- Teachers employed by the school where there are serious concerns and/or the appraisal process has been unable to address concerns informally.
Unattached teachers where there are serious concerns and/or the appraisal process has been unable to address concerns informally.

For unattached teachers, where reference is made to “governing body/management in a school” replace with “GCC management” and “GCC” for “school”.

Managers/head teachers are expected to:

- Regularly review the performance of employees and respond to any situations where an employee’s conduct is unacceptable.

- Give employees regular feedback on how they are doing.
- Have early discussions with the employee on problems, possible causes and solutions.
- Provide support, training or development where appropriate.

Employees are expected to:

What does the governing body/GCC expect of its employees and managers?

- Maintain good conduct.
- Be responsible for their own development.
- Raise with their manager any problems that are affecting their work.
- Accept responsibility for their own work performance.
- Respond constructively to advice, guidance and development provided by their manager.
- Be flexible and cooperate with changing work requirements.

What is the aim of the policy?

This policy aims to provide a framework for managers in the management of:

- An employee's conduct to an acceptable level.
- Promoting fairness and transparency in the treatment of employees.
- Ensuring that acceptable standards are sustainable and maintained.

What are the expectations regarding conduct?

Conduct relates to the behaviours and the ways in which those employed in schools act on a day to day basis. Acceptable conduct is largely based on the behaviours that others can reasonably expect of employees i.e. children, parents, governors/managers, colleagues and visitors.

Information about the behaviours and conduct expected of employees can be found in the [Teachers' Standards; Code of Conduct for Employees in Educational Establishments](#) (schools if adopted); [Code of Conduct](#) (for unattached teachers) and the job description, person specification. Please note that this list is not exhaustive.

Qualified teachers holding Qualified Teacher Learning and Skills (QTLS) status may be assessed against Teachers' Standards, against any other sets of standards issued by the Secretary of State, against any other professional standards relevant to their performance or any combination of those three.

Other teachers should be assessed against Teachers' Standards and any other sets of standards published by the Secretary of State which the head teacher or governing body (as appropriate) consider necessary.

What is misconduct?

Misconduct is when expected conduct/behaviour is not achieved or maintained. This could include when an employee:

- Does not follow rules or procedures.
- Fails to exercise reasonable care or skill, due to negligence or lack of effort.

- Fails to carry out management instructions, direction or guidance.
- Is inappropriately negative or when their behaviour is undermining of managers or colleagues.
- Has poor attendance.
- Breaches codes of conduct applicable to or adopted by the school.
- Breaches professional standards
- Is dishonest.

The above are examples of situations that could constitute misconduct. Each case will depend on the particular facts and circumstances.

What is gross misconduct?

Gross misconduct is defined as actions or omissions by the employee so serious as to completely destroy the relationship of trust and confidence necessary for an effective employment relationship to be maintained. In the absence of exceptional mitigating circumstances offences of gross misconduct will result in [summary dismissal](#).

The following list (which is not exhaustive) gives examples of situations that could constitute gross misconduct. Each case will depend on the particular facts and circumstances:

- Theft, fraud or falsification of records.
- Physical violence, verbal abuse, bullying, harassment or intimidation.
- Damage to property, health and safety equipment or a serious breach of health and safety rules.
- Serious negligence which causes loss, damage, injury or endangers people or property.
- Misuse of alcohol or drugs.
- Any illegal discrimination.
- Inappropriate physical, emotional or sexual contact with a child, or an abuse of trust as defined in the Sexual Offences Act (2003).
- Serious insubordination or serious undermining of school management, or a serious breach of confidentiality.
- Accessing internet sites containing pornographic, offensive or obscene material and/or being in possession of pornographic images of children.
- Inappropriate activities on school site(s) or whilst on school activities e.g. sexual activities with another adult.
- Major breaches of the Code of Conduct for Educational Establishments, or bringing the reputation of the school into disrepute.
- Serious inappropriate use of social media e.g. facebook.

What is whistle-blowing (Within the Code of

[Whistle-blowing](#) (schools) [Whistle-blowing](#) (unattached teachers) are the procedures to be used for employees wishing to report, in strict confidence, their serious concerns about malpractice or conduct of other employees within GCC or an educational establishment. It also gives

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| Conduct)? | protection to employees who make an allegation and forms part of the conditions of employment. |
| When should informal action be taken? | <p>Informal action would normally be taken when the employee has:</p> <ul style="list-style-type: none">• A previous good record of conduct and the incident is of a minor nature.• A previous good record and there are mitigating circumstances. For teachers this will normally be managed through the appraisal process. |
| When should formal action be taken? | <p>Formal action should be taken when the employee has:</p> <ul style="list-style-type: none">• Repeated incidents of misconduct, or an incident of a serious nature.• An incident that may be gross misconduct.• Previous formal warnings on file for misconduct that are still current and a further misconduct occurs. <p>No formal action should commence against a trade union representative until the circumstances of the case have been discussed with the appropriate branch or full-time officer, with the prior permission of the employee. If the employee does not wish there to be any prior discussion with the branch or full-time officer then formal action will proceed in the normal way under this procedure.</p> |
| When might suspension be appropriate? | <p>Suspension does not imply in any way that the matters have been pre-judged or the outcome pre-determined, but before suspending an employee careful consideration should be taken of the circumstances of the allegation. Suspension should not be an automatic response. It may be necessary to suspend an employee, as a precautionary measure, on normal contractual pay, either pending or as a result of an investigation which could lead to a formal meeting, if:</p> <ul style="list-style-type: none">• Their presence might cause an unacceptable risk to a child or children. See What if the allegation involves harm or risk of harm to children or young people?• The allegations are sufficiently serious that the outcome may be dismissal.• Their presence may impede or influence the investigation.• To prevent a possible repeat allegation or offence.• There are reasonable grounds to believe that the impact on the interests of the school or employee would be seriously affected, if they were to remain at work. <p>Alternatives, on a short term basis where appropriate, include:</p> <ul style="list-style-type: none">• Paid leave of absence (very short term – a few days- allowing time for an initial decision to be made, and with the agreement of the |

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| | <p>employee).</p> <ul style="list-style-type: none">• Alternative duties/locations including working from home.• Close supervision e.g. a colleague to be present throughout pupil contact time. |
| What if the allegation involves harm or risk of harm to children or young people? | <p>If the allegation relates to harm or risk of harm to a child or young person, no investigation should be undertaken until a discussion has been held with the Local Authority Designated Officer (LADO). Refer to the Gloucestershire Safeguarding Children Board website and details on Allegations Management. Under the Education Act 2011, from October 2012, there are reporting restrictions related to teachers if there is an allegation that the person is or may be guilty of a criminal offence against a child and it is made by or on behalf of a registered pupil at the school. Any messages, whether, verbal or in writing, issued to the public and connected to child related allegations should be cleared through the LADO who will liaise with appropriate parties including the press office. In addition it is good practice that the reporting restrictions are applied to support staff to ensure consistency.</p> |
| What are the requirements for an investigation? | <p>An investigation is the gathering of information relating to a conduct issue. Dependent on the manager's involvement, the manager will investigate, or arrange an investigation, to establish the facts. An investigation must be carried out before calling a formal meeting and will usually include a discussion with the employee about the issue.</p> <p>The investigator will produce a report setting out the findings and conclusions. Where appropriate, copies of witness statements and any other relevant documentation will be attached to the report.</p> |
| Is there a right to representation? | <p>The employee has a right to be represented/supported during formal meetings, by a trade union representative or workplace colleague.</p> <p>The employee does not have a specific right to be accompanied at an investigatory meeting by a trade union representative or workplace colleague. However it is recommended they be given the opportunity to be accompanied if there is the possibility of formal action being taken at a later date.</p> |
| Who can conduct a formal meeting? | <p>The head teacher, a governor, the head teacher and governor(s) or a panel of governors can conduct a formal meeting. The governing body may delegate responsibility for formal action, including the decision to dismiss, to the head teacher. However, the head teacher cannot take this decision if they have been directly involved in making the decisions on previous formal warnings leading up to dismissal. For the formal stages up to stage two, the responsibility for conducting a formal meeting may be delegated to an appropriate member of the leadership team e.g. business manager for support staff. Where the head teacher is the subject of the formal meeting the governing body may delegate responsibility for formal action to a governor (normally the chair of governors) or more than one</p> |

governor. The governor(s) cannot take dismissal decisions if they have been directly involved in making the decisions on previous formal warnings leading up to dismissal.

For unattached teachers meetings which may result in dismissal must be chaired by a third-tier (or higher level) manager. This will include all managers who report directly to a second-tier manager and who are graded SMG, PMG or on the Reward Bands. The group director may also, in appropriate cases, designate another manager at SMG/PMG/Reward Band grade who is not strictly defined as “third-tier” to chair a meeting. Other formal meetings will be chaired by the manager or senior manager as appropriate.

What is the role of governors?

A panel of governors (normally three) will hear an appeal.

The school may delegate a single governor or a panel of governors to hear a formal case (see above).

Where collaborative arrangements with another governing body are in place regarding staff discipline; governors from any of the collaborative schools may be delegated to hear a formal meeting or appeal.

What is the role of GCC and the diocese?

In Community, Community Special, and Voluntary Controlled schools, a representative of GCC is entitled to attend proceedings that may result in an employee’s dismissal. GCC will confirm the decision to dismiss.

The diocese, through a representative, may be given the right to attend proceedings to give advice for Voluntary Controlled church schools.

In Foundation and Voluntary Aided schools, the governors may give GCC rights of attendance. These same rights (as those given to GCC) should be extended to the diocese in a voluntary aided church school.

The governing body or where formal action has been delegated, the head teacher, must consider any advice given by the GCC and/or diocesan representative before making a decision to dismiss.

What is formal action?

Although there is an expectation that formal action is generally progressive, formal action may start at any of the three stages, dependent on the severity of the situation and the circumstances.

At each stage a formal meeting will be arranged with the employee. See [‘What arrangements are made for the meeting’](#)? There will be an outcome from the formal meeting which may include support, training and/or an [action plan](#). If the concern is established the outcome should result in a warning and sanction (i.e. withholding an increment for support staff; preventing progression to the next pay point/grade for teachers) or dismissal. Any outcome will be confirmed in writing to the employee within three working days of the decision, including as appropriate:

- The nature of the concern.
- The required improvement.
- The monitoring arrangements and if appropriate a review date.
- The warning - what will happen if there is no, or insufficient, improvement and the formal action that could be taken.
- Any support arrangements
- How long the warning will remain in force.
- Any effect on pay.
- The right of appeal.
- An action plan.

The stages and potential sanctions are given below:

| Formal stage | Maximum level of sanction |
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| One | Oral warning and withholding an increment for support staff; preventing progression to the next pay point/grade for teachers. |
| Two | First or final written warning and withholding an increment for support staff; preventing progression to the next pay point/grade for teachers. |
| Three | Dismissal. |

Stage One

If at any point during this stage, the evidence suggests a more serious issue a decision may be taken to move directly to stage two.

If improvement is not achieved at this stage, or sustained thereafter, then it is likely to result in progression to stage two.

A decision can be made at this stage to withhold any incremental or salary progression at the next salary review date.

Stage Two

A first or final written warning may be issued during this stage. Depending on the seriousness of the issue a decision can be made to move directly to a final written warning.

If improvement is not achieved or sustained at this stage then it is likely to progress to stage three and may result in dismissal.

A decision can be made at this stage to withhold any incremental or salary progression at the next salary review date.

Stage Three

This stage may result in dismissal. Any notice will be in line with normal contractual arrangements or statutory notice depending on which is greater.

All formal meetings for [gross-misconduct](#) will be held at this stage, with

the potential outcome of [summary dismissal](#).

If an employee appeals against an outcome, the sanction will remain in place until the outcome from the appeal is known.

What arrangements are made for the formal meeting?

The manager should make it absolutely clear to the employee that formal action is being taken.

- The employee should be notified in writing, giving details of the meeting and the matters to be discussed at least five working days beforehand. For a formal meeting where dismissal is being considered at least 10 working days notice should be given to school staff.
- The letter should include details of the right to representation, a copy of the Conduct Policy and two copies of the documents (including the policy) to be discussed at the meeting. The second set of documents is for the representative.
- The letter must state the formal stage at which the meeting is being held and the potential formal outcome/sanction that may result.
- The employee will need to be advised that they must provide any documentation in sufficient time to allow papers to be distributed to the chairperson or panel to enable the documents to be read and understood prior to the meeting. However there may be particular circumstances where this is not possible and the employee will need to contact their manager as soon as possible to agree alternative arrangements. For a formal meeting where dismissal is being considered, the employee must ensure the school receives any documentation at least five working days before the meeting to ensure there is sufficient time for all parties to receive the final bundle of documents at least three working days before the meeting. This provides the parties with time to read and understand the content prior to the dismissal meeting. **Unattached teachers** need to submit their documentation to the relevant parties for receipt at least three working days before the formal conduct meeting.
- Any formal action taken and the reasons for the decision will be confirmed in writing to the employee, including details of how they can appeal. The employee should be informed of the consequences of failing to improve sufficiently within the set period following a final warning, including confirmation that it may result in dismissal.
- An action plan for improvement (if appropriate) should either be issued with the decision letter or follow shortly after.

What is an action plan?

Action plans are developed to suit the individual circumstances and will vary, but would normally include clear expectations regarding work standards and practices, the criteria for success, time scales for improvement and any support which has been agreed.

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| | <p>Whilst it is for the manager to determine the criteria it is important for the employee to understand what is required of them to achieve success and for them to help identify ways in which they can be supported. Any agreed support should form part of the action plan including the person responsible for making any arrangements.</p> <p>Should an action plan not be met, an employee would normally progress through the formal stages of the Conduct Policy and potentially be dismissed.</p> |
| How is the action plan reviewed and monitored? | Arrangements for monitoring and review will be agreed as part of the action plan. |
| How is an allegation of gross misconduct dealt with? | <p>If an investigation finds that there is a case for gross misconduct the employee will be required to attend a stage three formal meeting. For details of the steps that this meeting will follow go to ‘What arrangements are made for the meeting’?</p> <p>If it is decided that gross misconduct has occurred and there are no significant mitigating factors (or those factors do not sufficiently reduce concerns), the employee will be ‘summarily dismissed’.</p> <p>The decision must be confirmed in writing, setting out the grounds for dismissal and how the employee can appeal.</p> |
| What is ‘summary dismissal’? | Summary dismissal is dismissal without notice, pay in lieu of notice, or any other contractual benefit and is effective from the date of the decision. |
| What happens if the employee is dismissed? | <p>For Community, Voluntary Controlled and Special schools, the governing body will send an instruction to GCC and the dismissal notice will come from GCC.</p> <p>Foundation and Voluntary Aided schools are responsible for issuing the dismissal notice to their own employees.</p> <p>Where dismissal is with notice, any notice period will be in accordance with the employee’s contractual arrangements, or the statutory notice period, whichever is greater. The employee will receive normal pay throughout the period of notice.</p> |
| What happens if the employee goes absent? | <p>If the employee goes absent during the conduct process the head teacher is advised to contact their HR provider as soon as possible, to ensure that the best course of action is followed.</p> <p>Sickness absence should not normally delay any part of a conduct process. If the employee is signed off as medically unfit for work the employee should be referred immediately for Occupational Health assessment (if available) including in the referral details of the process</p> |

and the stage reached in the procedure.

Where the employee continues to be unable to attend meetings relating to their conduct the meetings may proceed in the employee's absence. It is advised that further guidance is obtained from your HR provider if there are difficulties in arranging for an employee to attend meetings.

In addition the absence will be dealt with in accordance with the school's [Attendance Policy](#).

If an employee is absent during the period of any formal warning being in force the warning will be extended by a period equivalent to the total absence from work. Any such extension must be confirmed in writing to the employee.

When would the Teaching Agency be informed?

The Teaching Agency's disciplinary functions require the employer to consider referring cases to the [Teaching Agency](#) when the employer:

- has dismissed a teacher on the grounds of serious misconduct
- or might have done so if the teacher had not already resigned

When would the Disclosure & Barring service be informed?

Where employment finishes due to a child protection allegation, whether a resignation, dismissal or non renewal of a fixed term contract; the matter should be referred to the [DBS](#). This would also be necessary if the employee is removed from working with children.

However, where the employee has resigned, non renewal of a fixed term contract, or removed from working with children the employer will still need to continue the formal procedure in order to reach a formal decision in respect of the allegations.

Is there a right of appeal?

Yes, at each formal stage.

Employees who wish to challenge the outcome of a formal meeting have the right of appeal as specified in the warning or dismissal letter. Whilst the outcome of the appeal is pending, an action plan, warning or dismissal will remain in force.

The appeal letter must be received within five working days of the date of the outcome letter and clearly specify the full grounds of the appeal including why and in what respects the decision of the original meeting was unreasonable. The appeal needs to be set out with sufficient clarity to enable the manager/governor(s) whose decision is being appealed (those who conducted the formal meeting) to know what they will need to respond to at the appeal meeting. The appeal meeting is a review of the reasonableness of the decision and is not a rehearing of the case.

Any supporting documents or information should be provided with the appeal letter. If this is not possible, documents should be submitted to allow reasonable time for the employer to prepare their case and collate, paginate and distribute the bundle for receipt by all parties at least three working days before the appeal meeting.

Where the appeal period overlaps with a pre-determined holiday period i.e. out of term-time for term-time only employees, the letter of appeal needs only to register the intention of appeal. However a fully detailed letter should arrive within five working days following the end of the holiday period.

A panel of three governors not previously involved with the case will conduct appeal meetings. Where there has been an appeal at an earlier stage of the procedure, the same governors may conduct the appeal.

Arrangements for the appeal meeting should normally be notified to the employee within ten working days of receipt of the request for an appeal. The employee should be reminded of the right to be accompanied by a trade union representative or workplace colleague.

Appeals will be restricted to considering the reasonableness of the original decision. They are not conducted as a rehearing of the case.

At an appeal, the original outcome imposed will be reviewed and may be amended or withdrawn but it cannot be increased.

The decision of the appeal panel will be final, and will be confirmed in writing to the individual together with the reason for the decision. Should the outcome of the appeal change the original decision, the panel will need to make clear the terms of that revised decision.

If an appeal is successful at any of the stages, any outcome will be amended or withdrawn without any detriment to the employee. In the case of dismissal, there will be no detriment to pay or service; and in the case of dismissal for gross misconduct, the individual will be reinstated with no break in service.

For unattached teachers appeals will be to:

- A panel of senior managers in the case of dismissal.
- A senior manager who has not been previously involved in the matter in all other cases.