
SAINT NICHOLAS SCHOOL

CAPABILITY AND DISCIPLINARY POLICY

Note: This policy applies to all sections of the school including EYFS

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1. CAPABILITY AND DISCIPLINARY PROCEDURE

1.1 Rationale

The Governors believe that, for the proper education of the children at the school and for the maintenance of morale amongst its staff, it is critical that all employees carry out their duties to the highest possible professional standard.

The procedure described in this document is designed to ensure that all employees are dealt with consistently and fairly in matters relating to their performance and professional behaviour.

1.2 Definitions

Capability

A capability problem is defined as a situation in which an employee fails to perform his or her duties to a professionally acceptable standard. Capability may be in relation to skills, aptitudes, health or any other mental or physical condition. It is distinguishable from misconduct.

Misconduct

Problems of misconduct include both minor but repeated misdemeanours and serious or gross misbehaviour.

Gross misconduct

Gross misconduct may be defined as behaviour that brings about the irretrievable breakdown of the bond of trust and confidence between the School and the Employee. Usually, but by no means invariably, this will be restricted to very serious, often isolated, offences e.g. assault on a pupil, fraud or gross negligence.

The School

Throughout this policy document 'the school' refers to the board of governors who are the 'Employers' of all staff at Saint Nicholas. Usually the Head, acting on behalf of the governors, will be responsible for carrying out the procedure outlined when dealing with teaching or non-teaching staff.

1.3 Use of this procedure

This procedure will not be used in every situation where there are concerns about an employee's performance. Minor shortfalls from acceptable standards of work will be dealt with informally as part of day-to-day management. A note of any informal discussions may be made and on an employee's record, but this will not be used as a warning within this procedure.

Where the shortfall in performance is or becomes more serious the procedure outlined in this document will normally be followed.

1.4 General Principals

The aim is to ensure that the following principles are applied when dealing with any capability and/or disciplinary concerns under this procedure:

- At each stage of the procedure employees will have an opportunity to answer criticisms of their performance and will be given an explanation for any action taken and the consequences of it.
- Where it is considered that an employee may need training, support or clarification of their job and its duties in order to attain the necessary standards, the school will do what it considers is reasonable to give such training, support or clarification.
- Employees have the right to be accompanied by a colleague or a trade union representative at meetings that may result in the imposition of a warning or dismissal.

- Employees have the right of appeal at all stages of the Procedure.
- Concerns about an employee's performance will normally be dealt with separately from concerns about conduct.

2. THE PROCEDURE

2.1 Introduction

- 2.11 As a quick and fair resolution of problems of both minor but repeated misdemeanours, and serious or gross misconduct, is essential, this procedure will take over when an informal warning or advice is either no longer effective or would be inappropriate.
- 2.12 This procedure should also be used in cases of poor performance as a formal Competence Procedure, after informal support and encouragement have proved ineffective. The sanctions in Section 2.2 will be supplemented with appropriate guidance, support and/or INSET.

2.2 The sanctions

- 2.21 Normally the School would proceed through the four stages with an Employee who is at fault:
- Stage 1 - oral warning
 - Stage 2 - first written warning
 - Stage 3 - final written warning
 - Stage 4 - dismissal with notice

In more serious cases the School may enter the procedure at an intermediate stage. Similarly when the Headmaster has spoken frequently to the Employee, without apparent effect, and now wishes to formalise matters, it would be within his right to go straight to stage 2; bypassing stage 1.

- 2.22 In cases involving gross misconduct, or for other good or urgent reason, the School may suspend the Employee on full pay pending a hearing. The normal sanction for cases of gross misconduct is summary dismissal, i.e. without notice or pay in lieu of notice.
- 2.23 If appropriate the School may also remove an allowance or withhold an increment at either stage 2 or stage 3.
- 2.24 The Employee shall receive written confirmation of the sanction within 7 days and is required to acknowledge receipt in writing.
- 2.25 Warnings, at stages 1 to 3, will be active for the following periods.
- Stage 1 - oral warning – six months
 - Stage 2 - first written warning – 12 months
 - Stage 3 - final written warning – 24 months

2.3 Procedure

- 2.31 The Headmaster will hear all cases on behalf of the School before imposing a sanction, and may have appropriate assistance at the meeting
- 2.32 The Employee may always be accompanied by a friend/adviser. It is a statutory right that a trade union official or work companion may accompany an employee at a disciplinary or grievance hearing. Nonetheless the School is entitled to ascertain his/her bona fides.
- 2.33 The minimum notice required for the hearing is:
- Stage 1 – 1 working day - (NB overnight = 1 day)
 - Stage 2 – 3 working days' notice in writing
 - Stages 3 & 4 – 5 working days' notice in writing

The companion has a statutory right to propose an alternative date and time if he is unable to attend at the proposed time, provided that the altered time is both reasonable and falls within the 5 following working days. Ideally a meeting should be deferred until a Representative is available should the employee so desire to be accompanied. Meetings should normally be held during the normal school day.

- 2.34 Witnesses may be called and both sides may question them.

2.35 Both sides will be circulated with all relevant papers.

2.4 Appeal against warnings

2.41 The Employee may appeal against a warning or other sanction at stages 1-3 by writing within 14 days to the Clerk to the Governors. The Chairman (or his nominee) alone or with another 1 or 2 Governors, will hear the appeal on behalf of the School Governors.

2.42 The Employee and the Headmaster may each be assisted by a friend/adviser at any appeal hearing. The employee shall appear in person or may be represented or may submit written representations.

2.43 The appeal hearing will be arranged within 14 days of receiving the appeal and 7 days notice in writing will be given to the Employee. Not more than 28 days should elapse between the lodging of the appeal and it being heard:

2.44 Witnesses may be called and questioned by each side

2.45 Any new papers are to be circulated.

2.46 The Chairman or his nominee may confirm or reduce a sanction. The outcome of the appeal is final.

2.5 Dismissal – with notice

2.51 The Headmaster shall hear the case as under section 2.3 above.

2.52 If the Headmaster finds the case proven and dismisses the Employee with notice, the Headmaster shall immediately make a full report to the Chairman of the Governors with all relevant papers.

2.53 The Employee shall have 14 days within which to appeal against notice of dismissal by writing to the Clerk to the Governors.

2.54 Within 14 days of receiving the notice of appeal arrangements shall be made for a special meeting of the Governors to be held to hear it. The Employee will be given not less than 7 days written notice of the hearing. The employee shall appear in person and/or may be represented or may submit written representations. The Headmaster may also be assisted by an adviser.

NB Not more than 28 days should normally elapse between the lodging of the appeal and the appeal being heard.

2.55 The quorum for such a meeting shall be 5 Governors, including the Chairman or his nominee. The chairman of the meeting shall have a casting vote in the event of a tied decision.

2.56 The Governors at the appeal hearing may confirm the notice of termination or may substitute a lesser Sanction. The decision of the meeting shall be final.

2.6 Dismissal – gross misconduct

2.61 The Headmaster may suspend any employee of the School from duty on full pay on any allegation or suspicion of gross misconduct or for other good or urgent cause and shall immediately notify the Chairman of the Governors.

As soon as gross misconduct is alleged or suspected, it is usual to request the employee to leave the premises at once while an investigation is begun. The employee can then be interviewed as necessary and when convenient, and the suspension confirmed in writing prior to a full hearing by the Head being arranged.

2.62 As soon as is practicable the Headmaster will hear the case as under section 2.3 above, giving not less than 5 working days' notice in writing of the hearing.

2.63 If 16 days have elapsed since the suspension was made and the Employee has not received written notification of such a hearing s/he may request one by writing to the Clerk to the governors and the Headmaster shall be required to arrange one for within the following 14 days.

2.64 If the Headmaster finds the case proven the Headmaster may dismiss the Employee summarily, i.e. without notice or pay in lieu of notice, and shall immediately make a full report to the Chairman of the Governors together with all papers

2.65 The employee shall have 14 days in which to appeal against the dismissal by writing to the Clerk of the Governors.

2.66 Within 14 days of receiving the notice of appeal arrangements will be made to call a special meeting of the Governors to be held to hear it. The Employee must be given not less than 7 days' notice of the meeting. The Employee shall appear in person and may be represented or may submit written representations. An adviser may also assist the Head. The quorum etc for this meeting shall be 5 Governors, as in 2.55.

NB Not more than 28 days should normally elapse between the lodging of the appeal and the hearing.

- 2.67 Witnesses may be called and questioned by either side and any new papers must be circulated.
- 2.68 The Governors may confirm the dismissal, or may reinstate with or without any lesser disciplinary sanction.
- 2.69 The decision of the appeal hearing is final. Unless otherwise agreed at the hearing the effective date of dismissal will be that given by the Headmaster at the hearing in 2.62.

3. PROCEDURE AT HEARINGS

- 3.11 The Headmaster will put his/her case; the employee (or his/her companion) may then ask questions.
- 3.12 If necessary, the Headmaster may bring witnesses who will first be questioned by the Headmaster (and adviser if appropriate) and then by the employee (or companion).
- 3.13 The employee (or his/her companion) will put his/her case; the Headmaster (and adviser) may ask questions.
- 3.14 If necessary, the employee may bring witnesses who will first be questioned by the employee (and/or his/her companion) and then by the Headmaster (and adviser).
- 3.15 If the case is long or difficult first the Headmaster then the employee (or companion) may sum up.
- 3.16 Following this the employee and companion will retire while the Headmaster (and adviser) considers the case. On their return the Headmaster will deliver his/her verdict orally (from a prepared statement if necessary); there is no further discussion of the case.
- 3.17 The right and mechanics of appeal will be stated.
- 3.18 The sanction, including right of appeal, will be sent in writing to the employee as soon as possible.
- 3.19 Witnesses are only present during the hearing while they are questioned.
- 3.110 At appeal hearings the "batting order" is reversed so that the employee puts his/her case first, followed by the Head. The employee should still have the last word.
- 3.111 It is useful to have the hearing recorded, e.g. by the Head's Secretary. Taping is NOT advised for either party.
- 3.112 The Headmaster will ensure that any representatives who should be present under school procedures are present before the hearing starts.

APPENDICES

The following appendices clarify some of these procedures outlined above. They are not a formal part of the 'Capability & Discipline Procedure' policy.

4. CAPABILITY & DISCIPLINARY PROCEDURE: NOTES

4.1 Procedure

- 4.11 This procedure is suitable for all staff - not just teachers.
- 4.12 In stages 1 - 4 the Headmaster is both "prosecutor" and "judge"; this is usual. What is important is that the Employee has the right:
- to hear the case against him/her
 - to answer that case and speak in his/her own defence before the Headmaster makes a decision re- any sanction.
- 4.13 At appeal the Chairman would usually hear the Employee, as the one appealing, before the Headmaster who is there to defend the decision.
- 4.14 The atmosphere at all hearings needs to be firm without being intimidating. Adjournments may be necessary for a few minutes to let tempers cool or composure to return. It is essential that the employee has every chance to appreciate that he/she is having a fair hearing, including at appeal.
- 4.15 To avoid overburdening hearings with paper, both sides should circulate only those papers that will actually be referred to. At appeal only new papers need to be circulated.
- 4.16 The effective date of termination of a contract of employment will be the date specified by the Headmaster following the hearing in 2.62 unless the appeal meeting determines otherwise.

4.2 Companions

- 4.21 The presence of the companion is essential (and now has statutory force) and will not be circumvented. The role of the companion is to:
- give the Employee confidence and support in what can be a stressful occasion. This may include comforting the Employee; allow a brief adjournment to allow composure to be regained;
 - speak for the Employee, as many can be tongue-tied in this stressful situation and not do themselves justice;
 - keep the proceedings calm (on either side), preventing browbeating, aggressive or hysterical behaviour, and ensuring that the Employee's interests are not prejudiced by disregarding appropriate procedures.
- 4.22 At stages 1-4 the Employee and companion would retire while the Headmaster reaches a decision; at appeal hearings, the Headmaster also retires.
- 4.23 The companion has an implied obligation to keep the proceedings confidential.
- 4.24 Experience shows that it is preferable at disciplinary hearings and appeals if the companion is a colleague or representative of a union/professional association (as now provided for by law) rather than spouse or lawyer. The presence of a union official at a hearing does NOT imply recognition.

5. GROSS MISCONDUCT EXAMPLES

These examples of gross misconduct are not exhaustive and there may be other offences of a similar gravity that would in the circumstances constitute gross misconduct. The procedure for handling gross misconduct is set out in the disciplinary procedure.

- wilful refusal to obey a proper and reasonable instruction with respect to the teaching of pupils in the school;
- serious or repeated neglect of duty;
- bringing the School into disrepute;
- a serious breach of safety requirements likely to endanger other people or yourself, or to cause damage to School property;
- unprofessional disclosure of confidential information;
- being unfit for work due to the influence of alcohol or proscribed drugs;
- unauthorised use of alcohol or proscribed drugs within the school premises or whilst in the company of pupils or parents of pupils or during any extra curricular activities organised by the School at any time;
- false claims as to qualifications experience or previous employment;
- unauthorised removal of the School's property;
- stealing from the School, employees of the School, or from pupils and other offences of dishonesty;
- intentional damage to the School's property, including ICT systems;
- abuse of the company's computer system and of the Internet and non-compliance with any policy issued by the School addressing these matters specifically;
- sexual misconduct at work or involving pupils of the school;
- physical assault or fighting at work;
- bullying and/or harassment;

6. DISCLOSURE OF CRIMINAL CONVICTIONS

- A criminal offence committed outside the School's employment will not automatically be treated as reason for dismissal. The main consideration will be whether the offence is one that makes you unsuitable for your type of work or unacceptable to parents of pupils or other employees. You will not be dismissed automatically because a charge against you is pending or because you are absent through having been remanded in custody.
- As this post involves contact with children, the Rehabilitation of Offenders Act 1974 does not apply so all criminal convictions and cautions must be disclosed. Failure to do so, or falsification of qualifications or employment history, will render you liable to summary dismissal as explained in the relevant paragraph above.
- Employees declare any Court or Police action taken whilst you are in the employment of the School. Such disclosure will not necessarily make you liable for dismissal under the terms above, as the main consideration will be whether the offence makes you unsuitable for work in a school or unacceptable to other employees. Failure to disclose will make you liable to summary dismissal as explained in the relevant paragraph above.