



# OLD BUCKENHAM HALL

*A leading co-educational preparatory school for children aged 2-13 years*

## **Discipline and Capability Policy**

**OBHP40**

Policy owner: Headmaster  
Date of issue: November 2018  
Date last reviewed: June 2023  
Next review due: August 2024

## **Discipline and Capability Policy**

### **Disciplinary Procedure**

The code of conduct and the disciplinary procedure, with which all employees have a responsibility to familiarise themselves, are designed to promote fairness and consistency in the treatment of all employees and to assist the school to function effectively. This procedure will apply to any disciplinary situation which includes misconduct and also poor performance (in conjunction with the capability procedure). It is not contractual but applies to all employees who should familiarise themselves with its provisions.

The code of conduct sets standards of required conduct at work.

The disciplinary procedure is designed to ensure that these standards are adhered to and provides a fair method of dealing with any alleged failures to observe them. The procedure does not preclude minor disciplinary situations from being dealt with informally.

In cases other than gross misconduct or during an employee's probationary period, an employee whose conduct or performance does not meet the standards will normally first be counselled in an attempt to achieve the required improvement. However, the School reserves the right to commence the procedure at any stage if the circumstances warrant such action.

No disciplinary action will be taken until the case has been investigated and the employee has had the opportunity to respond to the allegations in accordance with the procedure set out below. All disciplinary situations will be dealt with without unreasonable delay.

In the event of absence of any of those involved, except for the employee who is the subject of the procedure, a deputy may take their place provided that this will not jeopardise the likelihood of a fair outcome.

### **Suspension**

Where an employee is accused of an act of serious or gross misconduct, or where the circumstance otherwise warrant it, after careful consideration he/she may be suspended from work on full pay pending the outcome of the disciplinary procedure. Such suspension is not a form of disciplinary action.

Where appropriate, during any disciplinary investigation or suspension, the Headmaster or Director of Finance and Operations will appoint a senior member of staff, who is not involved in the disciplinary procedure, to provide guidance and support to the member of staff under investigation or suspension.

### **Formal Disciplinary Procedure**

#### **Investigation**

When a disciplinary situation arises a member of the Senior Management Team (SMT) will, as soon as reasonably practicable, carry out an investigation into the matter. The investigation will be confined to establishing the facts and gathering any relevant documentation. Where necessary, the investigating officer will obtain statements from any relevant individuals. An investigatory meeting with the employee may take place if considered appropriate by the investigating officer.

Policy owner: Headmaster  
Date of issue: November 2018  
Date last reviewed: June 2023  
Next review due: August 2024

## Notification

If, as a result of the investigation, it is decided that there is a disciplinary case to answer, the employee will be invited to attend a disciplinary hearing.

The employee will be informed in writing of the nature of the complaint and where appropriate, will be provided with copies of any written evidence gathered during the investigation.

Where either party intends to call any relevant witnesses at the disciplinary hearing, advance notice of their intention to do so must be given.

## Disciplinary Meeting

A disciplinary meeting will be conducted by the Headmaster or Director of Finance and Operations (or an appropriate senior member of staff appointed by them, who has no prior involvement). The employee may be accompanied by a trade union representative or colleague if desired. Legal representation is not suitable at this stage. The employee and their companion should make every effort to attend the disciplinary hearing. In the event that the employee fails to attend the disciplinary meeting this will usually be rearranged once, but should they fail to attend the rearranged meeting then a decision may be reached in their absence.

The employee will be given the full opportunity at the disciplinary hearing to explain the matter and respond to the allegations.

A note taker will usually be present but will not be involved in the decision-making process.

If following the meeting it is decided that the disciplinary action is warranted, the employee will be advised of the decision which will subsequently be confirmed in writing and will specify the details of:

- the failure to meet the required standard
- any action required by the employee to remedy the situation
- any relevant review period /duration of warning and the consequences of continued or subsequent failure to reach and sustain the required standard of performance or conduct
- the right of appeal

In the event that disciplinary action is warranted one of the sanctions below may be issued. A sanction may be imposed at any level including summary dismissal depending on the circumstances.

- Written Warning

In the case of more serious offences or under performance, a further offence or a repetition of earlier minor offences or a failure to improve the employee will be given a written warning, setting out the precise nature of the offence, the likely consequences of further offences and specifying, if appropriate, the improvement required and over what period.

- Final Written Warning

In the case of a sufficiently serious offence or under performance, or a repetition of earlier offences the employee will be given a final written warning, setting out the precise nature of the offence, the likely consequences of further offences and specifying, if appropriate, the

Policy owner: Headmaster  
Date of issue: November 2018  
Date last reviewed: June 2023  
Next review due: August 2024

improvement required and over what period. This may include a statement that any recurrence or no improvement may lead to a dismissal or to some other action short of dismissal.

- Dismissal

This stage will normally result from continued failure by the employee to act on previous warnings or an act of gross misconduct. In the case of gross-misconduct the employee will normally be dismissed without notice or payment in lieu of notice. If the decision to dismiss is made the employee will be informed in writing of the reason for dismissal, the date on which the contract between the parties will terminate and the appropriate period of notice.

#### Alternatives to Dismissal

In exceptional circumstances, the following actions short of dismissal may be considered:

- suspension without pay
- demotion
- transfer

#### Gross Misconduct

In exceptional circumstances, employees may be dismissed without notice if it has been established, after investigation and after hearing the employee's explanation at a disciplinary hearing, that there has been an act which constitutes gross misconduct.

Examples of actions which constitute gross misconduct include (but are not limited to):

- gross insubordination
- serious breach of health and safety rules
- serious breach of the School email and internet use policy
- theft or fraud from either the School or co-workers or deliberate damage to School property or that of co-workers
- being under the influence of drink or illegal drugs at work
- disorderly or threatening conduct on school premises
- contravention of the equal opportunities and discrimination policy
- negligence resulting in serious loss, damage, or injury
- assault or attempted assault
- falsification of records
- conviction on a criminal charge
- breach of School policies or procedures
- bullying or harassment of colleagues, pupils or parents
- abuse or suspected abuse of your position of trust in relation to pupils at the School
- bringing the School into disrepute

Policy owner: Headmaster  
Date of issue: November 2018  
Date last reviewed: June 2023  
Next review due: August 2024

## Appeals

An employee may appeal against a disciplinary decision within five working days of receipt of the written decision. Such appeals are to be made in writing to the Headmaster or Director of Finance and Operations.

The appeal hearing will be convened as soon as is reasonably practicable. The appeal hearing will be held by the Headmaster or Director of Finance and Operations, or a Governor (following appointment - who have had no prior involvement). The Headmaster or Director of Finance and Operations will not hear the appeal if they held the disciplinary meeting. Where new evidence arises prior to or during the appeal the employee will be given access to any relevant information or evidence and will have the opportunity to make representations. The employee will have the right to be accompanied at any appeal hearing by a colleague or trade union representative. Legal representation is not suitable. The employee will be informed in writing of the decision of the appeal hearing following the conclusion of the hearing. Such decision will be final. In the event of an unsuccessful appeal against a decision to dismiss, the original dismissal date shall stand.

## Record Keeping

A copy of all formal warnings will be retained on an employee's personal file but will be considered spent after a period of twelve months.

## **Capability Procedure**

This procedure applies where a member of staff is failing to carry out their responsibilities or duties in a satisfactory manner, due to a lack of ability, experience or qualifications, or on health grounds.

This procedure aims to ensure fairness and consistency throughout the School and provides for warnings to be given for failure to meet our standards of job performance. The procedure is non-contractual in nature; but applies to all members of staff except those who are in their probationary period of employment. All members of staff should familiarise themselves with its provisions.

Most performance improvement procedures will follow the course set out below. However, we may vary the process to suit individual circumstances; such a variation will not amount to a breach of this procedure. The procedure will be invoked when performance issues arise or are identified either following an appraisal process or otherwise.

The School will normally address performance informally and offer appropriate training and support to an employee before progressing under this procedure.

The procedures set out in this document aim to ensure that there is:

- Openness and awareness for staff when they are not meeting the required levels of performance.
- A means of monitoring performance and establishing performance criteria.
- A degree of consistency in how staff are given opportunities to attain satisfactory levels of performance.

Policy owner: Headmaster  
Date of issue: November 2018  
Date last reviewed: June 2023  
Next review due: August 2024

- Assistance in identifying the most appropriate form(s) of support and providing that support

The School will consider what training and support it can give the employee to help them meet the performance requirements.

### Suspension

Where you are accused of an act of serious or gross negligence, you may be suspended from work, on full pay and benefits, pending the outcome of the capability procedure. Where appropriate, during any investigation or suspension, the Headmaster or Director of Finance and Operations will appoint a senior member of staff, who is not involved in the capability or disciplinary procedure, to provide guidance and support to the member of staff under investigation or suspension.

### Formal hearing

If we consider that it is necessary to invoke the formal procedure we will inform you in writing. In so doing, we will give you reasonable notice of a capability hearing and set out details of the alleged shortfall or failure in performance, together with any evidence relied upon if practicable and available.

At all stages of the procedure, you will be allowed to attend a capability hearing with a colleague or a trade union official as a representative and you will be given an opportunity to state your case. You must take all reasonable steps to attend the hearing. In the event that you fail to attend the hearing this will usually be rearranged once, but should you fail to attend the rearranged hearing then a decision may be reached in your absence.

Following the hearing, we will write to you to confirm our decision. You will also be informed of your right to appeal the decision if you are not satisfied with it.

### Appeal

An employee may appeal against a decision within five working days of receipt of the written decision. Such appeals are to be made in writing to the Director of Finance and Operations.

The appeal hearing will be convened as soon as is reasonably practicable. The appeal hearing will be held by the Headmaster or Director of Finance and Operations, or a Governor (who have had no prior involvement). The Headmaster or Director of Finance and Operations will not hear the appeal if they held the disciplinary meeting. Where new evidence arises prior to or during the appeal the employee will be given access to any relevant information or evidence and will have the opportunity to make representations. The employee will have the right to be accompanied at any appeal hearing by a colleague or trade union representative. Legal representation is not appropriate. The employee will be informed in writing of the decision of the appeal hearing following the conclusion of the hearing. Such decision will be final. In the event of an unsuccessful appeal against a decision to dismiss the original dismissal date shall stand.

If your performance shortfall or failure is dealt with under the formal performance improvement procedure, a record will be kept of the shortfall or failure, your defence or mitigation, minutes of the performance disciplinary hearing, the action taken and reasons for it, whether an appeal was lodged, its outcome and any subsequent developments. These records are confidential and will be retained on your personal file in accordance with GDPR regulations

Policy owner: Headmaster  
Date of issue: November 2018  
Date last reviewed: June 2023  
Next review due: August 2024

## Performance Warnings

### Written warning

In the case of serious shortfall, or failure or a repetition of earlier shortfall or failure, you will be given a written warning, setting out the precise nature of the shortfall or failure, the likely consequences of further shortfall or failure and specifying, if appropriate, the improvement required and over what period. Objectives, timescales and measures for the performance improvement should be set. Your Head of Department should offer help with training and supervision as required. A written warning will be kept on your record but will be considered expired after 12 months. Your performance may be appraised, at intervals to be determined by your Head of Department, at any time during this period.

### Final written warning

In the case of a further repetition of earlier shortfall or failure, if you still fail to improve or if the shortfall or failure, whilst falling short of gross negligence, is serious enough to warrant only one written warning, you will be given a final written warning setting out the precise nature of the shortfall or failure containing a statement that any recurrence or failure to improve will lead to dismissal or whatever other penalty is considered appropriate and specifying, if appropriate, the improvement required and over what period. A final written warning will be kept on your record but will be considered expired after 12 months.

Objectives, timescales and measures for the performance improvement should be set. Your Head of Department or direct line manager (normally one of the Deputy Heads, Director or Studies or Director of Finance and Operations) should offer help with training and supervision as required. Your conduct and performance will be appraised, at intervals to be determined by your Head of Department (or any of the above where relevant), at any time during this period.

Depending upon the seriousness of the matter and all the circumstances, any of the above stages may be omitted.

### Dismissal

In the case of gross negligence, or if all of the appropriate stages of the warning procedure have been exhausted, you will normally be dismissed.

We reserve the right to consider other possible disciplinary action, including (but without limitation): demotion or transfer; loss of seniority or salary increment; suspension (without pay).

If you are dismissed, you will be provided with a written statement detailing the reasons for dismissal, the date on which employment will terminate and the right of appeal.

### *Examples:*

The following are non-exhaustive and non-exclusive examples of the sort of performance shortfalls or failures, which will normally lead to action being taken.

Minor offences (informal oral warning)

Policy owner: Headmaster  
Date of issue: November 2018  
Date last reviewed: June 2023  
Next review due: August 2024

- Occasional poor job performance involving sub-standard work or application.

Serious offences (written or final written warning)

- Consistent poor performance or application.
- Failure to improve performance following an appraisal meeting or performance review, within the timescale specified within such a meeting or review.
- Failure to perform duties or roles to an acceptable standard for reasons which it is within your power to rectify.

You should be made aware that if there is no adequate improvement following the issue of warnings, such issues may result in dismissal.

Capability and consistent performance offences (dismissal with notice):

- Incapable and/or unsuitable of performing role or main job functions/duties as set out in job description and which could not be rectified by training or coaching.
- Consistent failure or unable to improve performance to required or reasonable standards or to the level of other members of staff carrying out the same, similar or equivalent work.
- You are unable satisfactorily to do or do not have the qualifications, aptitude and/or ability for the job.

Gross negligence (dismissal without notice):

- In the most serious cases of gross negligence, normally (but not necessarily) resulting in significant financial loss or loss of reputation to the School, where our continued trust and confidence in you has been destroyed as a result, dismissal may be without notice or payment in lieu of notice.

#### Long term sickness absence

Where an employee's underperformance is as a result of long-term sickness absence then the School will always seek medical advice prior to making a decision about an employee's ongoing employment. The School will also consider whether there are any reasonable adjustments which can be made to assist the Employee to perform their role. In cases where the School has concerns about the Employee's long-term ability to perform their job as a result of health grounds the School will normally move to dismissal stage without prior warnings.

#### Relationship with Disciplinary Procedure

You may be dismissed following exhaustion of the formal performance improvement procedure and have no separate right to have the disciplinary procedure followed prior to dismissal.

Live warnings issued under the disciplinary procedure may, if appropriate, be taken into consideration when considering the level of warning to be given under the performance improvement procedure, and vice versa.

Policy owner: Headmaster  
Date of issue: November 2018  
Date last reviewed: June 2023  
Next review due: August 2024