



Disciplinary Policy and Procedure Version 3

<p>Important: This document can only be considered valid when viewed on the VLE. If this document has been printed or saved to another location, you must check that the version number on your copy matches that of the document online.</p> <p>Name and Title of Author:</p>	<p style="text-align: center;">Lisa Longstaff, Director of HR and Governance</p>
<p>Name of Responsible Committee/Individual:</p>	<p>Trust Board</p>
<p>Implementation Date:</p>	<p>September 2024</p>
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<p>Target Audience:</p>	<p>All staff</p>
<p>Related Documents:</p> <p>All Trust policies and procedures referred to are located on the trust website, www.theeducationalliance.org.uk. If English is not your first language, and you require assistance/translation, please contact the HR Department. This policy and procedure has been equality impact assessed.</p>	<p>ACAS Code of Practice – Disciplinary and Grievance Procedures Trust’s Scheme of Delegation (Governance Framework) Capability Policy and Procedure Substance and Alcohol Misuse and Smoking Policy Teachers’ Standards Expectations and Code of Conduct Health and Wellbeing Policy and Procedure Performance Development Policy Whistleblowing Policy Keeping Children Safe in Education Statutory Guidance</p>

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POLICY STATEMENT

We are here to make great schools and happier, stronger communities so that people have better lives. We do this by:

- Always doing what is right
- Trusting in each other and standing shoulder to shoulder
- Doing what we know makes the difference

Doing what is right means always acting with integrity, in the interests of others and being honest, open and transparent.

Employees transferring into the trust will be subject to TUPE provisions and where employees in this situation have enhanced contractual terms the enhanced terms will continue to apply whilst they remain under the contract of employment that transferred with them.

The Education Alliance (the trust) aims to deal with disciplinary matters quickly, fairly, consistently and discreetly, adhering to relevant employment legislation, statutory guidance and relevant ACAS codes. The trust has a talented, committed, professional workforce and staff are encouraged to seek support where required, to give and receive appropriate, honest and constructive feedback and to conduct themselves in a professional manner. Misconduct will be dealt with informally wherever possible and appropriate. Where a matter requires formal investigation, the investigation team will act with integrity, sensitivity, objectivity, investigating thoroughly in a fair and balanced way. If an investigation results in a disciplinary hearing, staff will be advised that cumulative misconduct can result in an escalation of levels of warning and potentially dismissal and gross misconduct can result in immediate summary dismissal.

We will work together to minimise the risk of misconduct occurring (e.g. providing staff with relevant codes of conduct, role modelling appropriate behaviours, embedding the vision and values, providing staff with learning and development opportunities and access to support, guidance and resources). The trust is fully committed to an ethos of openness, accountability and transparency, where employees are encouraged to voice any concerns they have in a professional, responsible, effective way. It is important to the organisation that issues such as suspected fraud, misconduct or wrongdoing by workers or officers of the organisation are reported and properly dealt with. All individuals are therefore encouraged to raise any concerns they may have about the conduct of others or the way in which the organisation is run, and the Whistleblowing Policy provides further information and guidance.

1. PURPOSE

The purpose of this document is to provide employees and managers with guidance relating to employee conduct and misconduct. The policy describes the trust's approach to managing conduct related issues, encouraging informal resolution wherever possible, and ensuring there is a clearly defined process for formal investigations and meetings, should they be required. This policy and procedure is further supported by template letters, forms and other resources to ensure managers are able to address misconduct issues appropriately, fairly and consistently.

2. SCOPE

This policy applies to all employees of the trust.

3. ROLES AND RESPONSIBILITIES

The **Trust Board** is responsible for approving this policy and procedure and the **CEO** is responsible for ensuring this policy and procedure is applied fairly and consistently across the trust.

The **CEO and Executive Principal** are responsible for ensuring employees are treated fairly and consistently across the trust. They also have specific responsibilities detailed within the trust's Scheme of Delegation regarding decision making and the issuing of sanctions.

The **Local Governing Bodies and Headteachers** are responsible for monitoring the application of this policy within their respective schools, ensuring misconduct is managed effectively and other related policies are shared, understood and adhered to by all employees. They are also responsible for ensuring managers, leaders and supervisors have access to appropriate training, development and support to enable them to apply this policy fairly, consistently and professionally.

The **HR Department** is responsible for overseeing the introduction, implementation, monitoring and review of this policy and will report to the CEO, the Executive Principal, the Trust Board and Local Governing Bodies as required. The HR Department will provide advice, guidance and support in the implementation of this policy and procedure, acting as a point of contact for managers. The HR Department will ensure that this policy is implemented fairly and consistently, whilst also ensuring that relevant employment legislation and statutory guidance is adhered to. The HR Department will advise employees of organisations they may wish to approach for support, such as the Employee Assistance Programme, the Education Support Network and their Trade Union.

Managers must operate within this policy in a fair, consistent and reasonable way; ensuring confidentiality is protected where possible. It is a manager's responsibility to manage disciplinary issues. Managers must ensure that employees are supported throughout disciplinary processes appropriately and they must not take any formal action without speaking to the HR Department.

Informal discussions, support, advice and guidance do not form part of the formal disciplinary procedure and managers must ensure that employees are advised of this. Managers are encouraged to deal with allegations of misconduct promptly, professionally and discreetly, ensuring staff dignity is maintained wherever possible, whilst also ensuring that disruption to service provision is minimised. Managers are encouraged to seek advice from the HR Department, even when dealing with matters of misconduct informally.

Investigating Officers will receive appropriate training and must adhere to this policy and procedure which conforms with ACAS guidelines.

Employees are expected to behave in a professional manner at work in line with the values and ethos of the trust, the Expectations and Code of Conduct and (for teachers) Teachers' Standards. It is also expected that staff do not place the reputation of the trust at risk outside of work. If any member of staff is unsure about the Expectations and Code of Conduct, parameters and appropriate behaviours expected inside and outside of work they should seek clarity from their manager, the Headteacher, members of the senior leadership team, leaders/managers and/or their trade union. The trust encourages employees to contact their **trade unions** at the earliest opportunity when involved in or facing disciplinary allegations and processes.

4. EQUALITY AND DIVERSITY

The Education Alliance is committed to:

- Promoting equality and diversity in its policies, procedures and guidelines
- Delivering high quality teaching and services that meet the diverse needs of its student population and its workforce, ensuring that no individual or group is disadvantaged

The trust will collate, monitor and review equality and diversity information relating to disciplinary cases on an annual basis to ensure there is no equality and diversity bias.

5. PRINCIPLES

Prior to invoking the Disciplinary Procedure, managers must seek advice and guidance from the HR Department. They must determine whether or not the issue should be dealt with under another policy or procedure (such as capability or managing sickness absence). This decision should be reviewed throughout the investigation.

All employees must be informed in writing of their right to be accompanied or represented at disciplinary meetings (including investigatory interviews) and hearings held under the provisions of this procedure, by a trade union representative or work colleague. Employees can access a list of recognised Trade Unions from their HR Department.

Although normal disciplinary standards apply to a trade union representative's conduct as an employee, no disciplinary action should be taken against a trade union representative until the case has been discussed with a full-time trade union official, with the trade union representative's consent, as per ACAS guidance. The Director of HR and Governance must be consulted before any action is taken.

Where a conduct issue is investigated and considered at a disciplinary hearing, in considering an appropriate disciplinary sanction, the Chair of the hearing must do all they can to ensure that the decision is fair, reasonable and proportionate and that all parties behave appropriately. Factors to be considered when making a decision at a hearing should include the extent to which the rules and standards were understood and were breached, the employee's record, the seriousness of the allegation, the impact of the misconduct, the employee's length of service, any mitigating circumstances and the likelihood of re-occurrence.

6. GRIEVANCE

As per the ACAS Code of Practice, if an employee raises a grievance during a disciplinary process the disciplinary process may be temporarily suspended in order to deal with the grievance. Where the grievance and disciplinary cases are related it may be appropriate to deal with both issues concurrently. Where possible, the disciplinary and grievance elements will be undertaken by different managers.

7. AUTHORITY TO TAKE DISCIPLINARY ACTION

Authority to deal with disciplinary matters is delegated in accordance with the schedule attached at Appendix A. An appropriate senior person will be appointed to investigate allegations against a member of their staff.

Managers must seek advice from the HR Department at all stages of this procedure.

8. INFORMAL ACTION

Where possible, managers should deal with matters of misconduct in an informal way (unless there is a pattern of behaviour and attempts to deal with the issue or similar issues have failed). Misconduct can often be resolved through informal discussions between the member of staff and their manager, or other appropriate senior leader. The discussion may explore and clarify the reason for the misconduct, its impact, the gap between expectations and behaviour. This approach allows a manager to clearly detail expectations, to assist the member of staff to reflect on their behaviour and learn from their experiences, to assist with reflective practice and support future development. The trust welcomes trade union involvement in both formal and informal disciplinary processes and encourages staff to access their trade unions.

Informal discussions relating to misconduct are not part of the formal disciplinary procedure and do not constitute a sanction. However, where the informal stage is used, a note will be made to record the discussion and any action taken. Employees will be made aware that, if the issues discussed persist or recur, formal disciplinary action could be taken. Any reference to previous informal issues should only be made when they are relevant to the issue in question. Should it be appropriate that informal discussions are subsequently referred to in a formal process, the employee will be made aware.

Low-level safeguarding concerns, as described in the 'Keeping Children Safe in Education' guidance, will be investigated, as per this policy. This may simply involve an initial fact-finding informal investigation, followed by support and intervention and/or management advice. However, initial fact-finding can also result in a formal investigation, should the allegation be viewed as more than a 'low-level concern'. Again, this policy and procedure details initial fact-finding processes, formal investigations, management advice and formal hearings. The Headteacher should contact the LADO or Local Authority Safeguarding Team for additional advice and guidance when safeguarding allegations arise.

9. SUSPENSION

Only the Headteacher, Deputy CEO or CEO can decide on whether or not to suspend a member of staff (a Deputy Head or a member of the Executive Board can in exceptional circumstances in consultation with the Director of HR and Governance). Only the Chair of the Trust Board can suspend the CEO (or in their absence the Vice-Chair).

Suspension may be appropriate where an allegation of gross misconduct is made and/or where continued working may give rise to further misconduct or interfere with the process of a fair investigation. Suspension is not a disciplinary sanction nor is it a presumption of guilt and employees are given the opportunity to respond to allegations prior to a decision to suspend is made. It is a precautionary measure. It is important that staff are made aware of this when a suspension occurs. Prior to suspension, consideration will be given to the potential risks relating to an employee remaining at work during an investigation, and whether there are alternative options to suspension, such as restriction of duties or temporary deployment elsewhere whilst an investigation is undertaken.

Whilst suspended from duty an employee will continue to receive their normal pay and benefits and their suspension will be reviewed on a regular basis throughout the disciplinary process. The employee will regularly be kept updated of progress throughout the process. The trust will endeavour to deal with disciplinary matters swiftly and thoroughly, ensuring that staff are not placed on suspension for longer than is necessary. Staff on suspension will receive regular updates from either the HR team or the investigating officer.

If a staff member falls sick whilst on suspension, normal sickness reporting procedures apply, and they must notify their line manager on the first day of illness. The staff member will then be deemed to be on sick leave and their pay will be in accordance with the sick pay scheme pending their return to fitness.

Staff on suspension are not allowed to enter trust premises or access the trust's IT/email without the trust's consent. HR will discuss and agree with the employee which colleagues they can speak to, ensuring the investigation is not compromised and that confidentiality is maintained. It is also expected that staff make themselves available for interviews and meetings with representatives of the trust to enable a swift completion of the disciplinary process. An agreement will also be reached regarding the brief staff can be advised of in relation to the absence of the employee. The suspended employee will be encouraged to access support (e.g. their Trade Union, the employee assistance package and other external organisations). Where a suspension is lifted, the employee will be supported in preparing for their return to work by their manager and HR.

10. INVESTIGATION

When an allegation is made against a member of staff an appropriate manager must undertake a fact finding preliminary investigation (with advice and guidance from the HR Department). This preliminary investigation will determine whether the matter can be resolved informally, whether suspension is necessary and whether a formal disciplinary investigation is required.

Where a formal investigation is required an investigating officer will be identified (which may be the individual's line manager or another appropriate manager) and they will work with a member of the HR Department to ascertain the facts of the case. In sourcing an appropriate investigating officer the HR team and the Headteacher will jointly consider a number of factors, including workload, capacity, expertise, impartiality and the complexity of the case. The investigation may involve undertaking fact finding meetings and reviewing evidence, and any statements taken (including witness statements if necessary) will be shared with the individual for checking and signing. Once the investigation is complete the investigating officer will produce a report which details their investigation and their findings and this will be shared with the person that commissioned the investigation, who can then decide on the necessary course of action (which may include no case to answer, informal supportive action, management advice or progress to a disciplinary hearing). The template used for reports ensures the report includes the allegations and findings, a chronology and any additional considerations/mitigations. The report may be presented to a panel and the member of staff and their representative if the case progresses to a hearing.

If at any stage of the investigation the decision is made that there is no case to answer, the employee and their representative will be informed immediately and in writing.

Managers undertaking an investigating role must act in accordance with the values and ethos of the trust throughout the disciplinary process, ensuring the investigation is balanced and fair, that employees facing potential disciplinary action, their representatives and any witnesses are treated with dignity and respect. Investigation interviews will normally take place during the employee's normal working hours, unless agreed.

Wellbeing support is available to everyone involved in disciplinary processes, including the employee, witnesses, investigators, staff hearing cases and HR colleagues.

Where there is a safeguarding allegation, the investigating officer, HR and the Headteacher will work with the Local Authority's Designated Officer (LADO). They may also be required to work with the police and other external agencies and attend multi-agency meetings. The trust will work closely with

those external agencies and will ensure it meets its legal and statutory responsibilities, whilst also keeping the employee and their trade union representative updated (e.g. writing to the employee to provide updates following multi-agency meetings with the LADO). There may be occasions where investigations are delayed due to police investigations, and the investigating team will do all they can to progress with cases and update employees and their trade unions throughout investigations.

The trust is duty bound to continue to investigate a safeguarding allegation where a member of staff resigns, and every effort will be made to conclude the investigation. Where an employee resigns, they will be provided with the same opportunities as employed staff to engage in the investigation and any subsequent hearing, to ensure they are able to respond to the allegations. They will be informed of the conclusion and any sanctions and/or outcomes.

11. AGREED SANCTION

Where an employee acknowledges or accepts the disciplinary allegation(s), they may request to reach an agreed sanction with the Headteacher (or equivalent senior manager with appropriate authority) without progressing to a formal hearing. If the Headteacher accepts the request, this will be confirmed in writing including the level of sanction to be applied and giving the employee 5 working days to confirm acceptance. If the employee does not respond, or declines the proposed sanction, the case will progress as normal.

The request will be the choice of the employee, and will be made without undue pressure from other parties.

In considering a request for an agreed sanction, the Headteacher/senior manager will ensure that:

- The individual accepts responsibility for the allegation(s);
- The allegation is not deemed potential gross misconduct;
- Dismissal is not considered a potential outcome;
- The level of sanction is fair and consistent;
- They have the authority to apply the level of sanction;
- Sufficient information has been gathered as part of either a preliminary or formal investigation to make an informed decision.

12. DISCIPLINARY HEARING

Before any disciplinary action is taken a disciplinary hearing must be convened at which the investigating officer will present the management case and the employee will have an opportunity to state their case. Wherever possible, the hearing should be arranged at a mutually convenient date, time and place. The arrangements must be confirmed in writing with the allegations confirmed and the evidence to be presented by the investigating officer enclosed. The relevant documentation should be circulated at least 10 working days in advance of the hearing and if an employee wishes to submit a written response they should do so at least 1 working day before the hearing (the employee may ask their Trade Union representative to do this on their behalf).

If witnesses are to be called they must be prepared for the hearing by the person requesting they attend (e.g. the employee or the investigating officer) and they should be advised that they are

entitled to bring a trade union representative or work colleague with them for additional support (not to answer questions or speak on their behalf) .

13. DISCIPLINARY SANCTIONS

Disciplinary sanctions must be reasonable and proportionate, taking into account factors such as the severity of the misconduct, the employee's understanding of expectations, the employee's active disciplinary record, mitigating circumstances and the impact of the misconduct.

Depending on the circumstances of the case the panel for the hearing may also consider a change to:

- the employee's place of work (e.g. their team or the area in which they work)
- the employee's line management structure
- the employee's learning and development plans and training needs

Disciplinary sanctions must be explained to the employee along with the rationale for the sanction and future expectations.

During an investigation or following a hearing, it may be deemed appropriate to manage the concerns in line with the informal stage of this policy, see section 8.

First Written Warning

If the employee's conduct does not meet acceptable standards and evidence presented at the hearing supports the allegation(s) the employee may be given a first written warning. They must be advised that it will remain active on their file for 6 months (in that if a further offence occurs within 6 months this warning would be considered by the panel). They must also be advised of their right of appeal. The employee must receive written confirmation of the sanction, the rationale for the sanction and their right of appeal within 5 working days of the disciplinary hearing. A copy of the letter will be retained on the employee's personal file.

Second Written Warning

If the disciplinary offence is a serious one, or if there is a pattern of behaviour or a further offence, a second written warning may be issued to the employee. They must be advised that the warning will remain active on their file for 12 months (in that if a further offence occurs within 12 months this warning would be considered by the panel). The employee must also be advised of their right of appeal. The employee must receive written confirmation of the sanction, the rationale for the sanction and their right of appeal within 5 working days of the disciplinary hearing. A copy of the letter will be retained on the employee's personal file.

Final Written Warning

If the misconduct is sufficiently serious, or if there is a pattern of cumulative behaviour, a final written warning may be given to the employee. They must be advised that the warning will remain active on their file for 12 months (in that if a further offence occurs within 12 months this warning would be considered by the panel). The employee must also be advised of their right of appeal. The employee must receive written confirmation of the sanction, the rationale for the sanction and their right of appeal within 10 working days of the disciplinary hearing. A copy of the letter will be retained on the employee's personal file.

Dismissal

In cases of gross misconduct the outcome may be summary dismissal with immediate effect without notice. Alternatively, if there is a pattern of cumulative behaviour, where previous warnings have not been heeded, the employee may be dismissed with paid notice (which might be paid in lieu of notice).

The employee must receive written confirmation of the decision, the rationale for the decision and their right of appeal following the disciplinary hearing. A copy of the letter will be placed on the employee's file.

There may be occasions where, as an alternative to dismissal, the trust proposes a move to another role within the trust, which may include an offer of demotion. If the trust wishes to offer an alternative role rather than dismiss an individual, they may suggest this to the employee and their trade union. An alternative role can only be established if agreed by the trust and the employee.

The trust has a legal duty to make a referral to the Disclosure and Barring Service (DBS) where an employee is removed from regulated activity, or where the employee would have been removed had they not left the organisation, and the Trust believes that the employee has:

- Engaged in relevant conduct in relation to children and/or adults
- Satisfied the harm test in relation to children and/or vulnerable adults, or
- Been cautioned or convicted of a relevant offence

Where a teacher or a member of staff who delivers teaching and learning is dismissed, or would have been dismissed had they not left, due to a serious safeguarding issue, the Trust should also make a referral to the Teaching Regulation Agency (TRA).

14. ABSENCE DURING THE DISCIPLINARY PROCESS

If an employee reports sickness absence during the course of the disciplinary process the trust's Health and Wellbeing Policy and Procedure will be invoked.

If an employee is unable to attend a meeting under this policy due to ill health, all reasonable attempts will be made to reconvene and facilitate the employee's attendance. This may include taking occupational health advice regarding their fitness to attend the meeting, which may be particularly important if the process is a contributing factor to any stress related absence. Where the employee does not engage, or it becomes unreasonable to postpone the meeting further after making such efforts, the disciplinary process may continue in their absence. This will not occur without the employee having the opportunity to make alternative representation either in writing or through their trade union representative or work colleague.

15. RIGHT OF APPEAL

If an employee feels that the disciplinary action taken against them is unfair, or that the disciplinary process was not adhered to, they can submit an appeal against the decision. At each stage of the

Disciplinary Procedure where a sanction is given, the employee will be advised of their right of appeal. An appeal must be submitted by the individual or their Trade Union representative on their behalf and received by the Director of HR and Governance within 10 working days of the date of the letter which issues the sanction. Details of authority to hear appeals can be found in Appendix A. The employee will receive confirmation of the appeal meeting, providing them with 10 working days' notice of the meeting.

At the appeal hearing the disciplinary sanction imposed will be reviewed. An appeal pack submitted to the panel will include information presented at the hearing, any submissions made by the member of staff and/or their representative and notes of the hearing to ensure the panel understands the case fully. It is the decision of the Appeals Panel whether or not new information can be introduced at the appeal hearing, and the panel will consider the reasons for the information not being submitted at an earlier stage. The Appeals Panel will consider specific factors which the employee expresses have been dealt with unfairly, such as:

- an inconsistent, inappropriate or excessively harsh sanction
- extenuating circumstances
- unfairness in the conduct of the hearing
- new evidence subsequently coming to light

The outcome of an appeal can either be an upholding of the original decision or a lesser sanction. Where an appeal against dismissal fails, the effective date of termination will be the date on which the employee was originally dismissed. Where an appeal against dismissal is successful and the employee is reinstated, the employee will be paid any lost wages since the original dismissal date and will not suffer from any break in service arising from the original decision.

The appeal hearing is the final stage of the Disciplinary Procedure therefore the Appeals Panel decision is final.

16. DISCIPLINARY RULES

Appropriate and professional standards of behaviour and conduct are expected of all employees. Any breach of the disciplinary rules may lead to disciplinary action. Staff should ensure they are aware of the trust's Expectations and Code of Conduct and they should seek advice if they are unsure from their line manager in the first instance. Staff that witness misconduct are encouraged to report it as to ignore it is to condone the behaviour. Misconduct can be reported to managers, the senior leadership team or executive board members.

Examples of gross misconduct include the following (this list is not exhaustive):

- serious safeguarding issues
- theft, fraud or deliberate falsification of records
- possessing, using or selling illegal drugs in the workplace and/or being convicted of any criminal offence connected with drugs, regardless of whether the offence took place inside or outside the workplace
- serious breaches of the trust's Expectations and Code of Conduct

- unlawful discrimination or harassment
- a criminal offence which in the trust's opinion may affect its reputation or relationship with pupils or staff
- serious deliberate damage to property
- serious insubordination/non-compliance/serious misuse of school property and/or name
- bringing the trust into disrepute
- reporting to work having consumed non-prescribed drugs or alcohol rendering the employee unfit or unsafe for work; consumed or be under the influence of drugs or alcohol whilst on duty; consuming alcohol during working hours or at break times
- serious negligence which causes or might cause unacceptable loss, damage or injury
- serious infringement of health and safety rules
- serious breach of trust and confidence
- negligence and/or ill treatment of pupils
- inappropriate relationships with pupils
- serious breach in confidentiality of data

The trust's Substance and Alcohol Misuse and Smoking Policy aims to help and support employees who are experiencing problems as a result of substance and alcohol misuse and to assist those who demonstrate determination to deal with their problem and who co-operate fully with the support offered to them.

Examples of misconduct include (this list is not exhaustive and in some cases they may be viewed as gross misconduct):

- wilful unsatisfactory work performance
- bullying/harassment
- poor timekeeping
- unauthorised absence
- failure to follow reasonable instructions

Conduct outside work may be considered to be misconduct affecting the workplace and it could therefore be managed via this policy. Where it is decided that incidents that have occurred outside of work mean that an employee is unsuitable to continue employment with the trust, the incident may be viewed as an act of gross misconduct and the employee may be summarily dismissed.

17. WITNESSES

Staff may be called upon as witnesses. Witnesses may be asked to attend a fact finding meeting where they will be asked specific questions pertaining to the case under investigation.

Witnesses will be asked to check and sign a copy of their statement and if the case progresses to a disciplinary hearing, appeal or tribunal they may be asked to attend to clarify evidence.

18. MONITORING COMPLIANCE WITH AND EFFECTIVENESS OF THE POLICY

Effectiveness and compliance of this Policy will be monitored on an annual basis.

19. REVIEW

This Policy and Procedure will be reviewed within two years of the date of implementation via the trust's trade union forum.

Authority to Take Action under the Disciplinary Procedure

Action	Duration	Authority	Appeal
First Written Warning	6 months	CEO, Deputy CEO or Headteacher	Deputy CEO/CEO
Second Written Warning	12 months	CEO, Deputy CEO or Headteacher	Deputy CEO/CEO/As per scheme of delegation
Final Written Warning	12 months	CEO, Deputy CEO or Headteacher	As per the scheme of delegation
Dismissal	Not applicable	As per the scheme of delegation	As per the scheme of delegation

Only people not involved in the disciplinary hearing can be on the appeal panel.