



# Disciplinary Procedure for all staff. (Including Managers Guidance).

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Prepared by:	Adopted by Board of Trustees
HR Manager with Union consultation	<b>Autumn 2024 (no changes to policy)</b>

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## 1. Purpose

All AET policies are written to support our schools and communities. We do this by ensuring they are always in line with our Colleague Values:

Applying these values to everything we do means always acting with integrity, in the interests of others, being honest, open and transparent and putting the safety of our children first.

We are here to make great schools and happier, stronger communities so that people have better lives. We do this by demonstrating our values in our behaviours everyday.

Our 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.

Minor misconduct will be dealt with informally wherever possible and appropriate. Where a matter requires formal investigation, this will be done 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.

## **2. Applicability**

This procedure applies to all employees within the Trust, whether permanent or on a temporary/fixed term contract.

This policy does not apply to agency workers, contractors, volunteers or staff within their probationary period

This policy does not apply where there are matters of:

- minor misconduct that should be settled informally by means of counselling or informal reprimand in order to improve conduct
- grievance which is dealt with under the Grievance (inc. Anti Bullying and Harassment) Policy.
- competence or capability which is dealt with under the Capability Policy, unless it is clear that the employee is capable of reaching the required standard and has actively not done so
- ill health which is dealt with under sickness absence procedures unless there is good reason to believe that the absence or ill health are not genuine
- bullying, harassment, discrimination and/or victimisation which are dealt with in the first instance under the Grievance (inc. Anti Bullying and Harassment) Policy.

The disciplinary procedure is to be used where an employee's work or conduct is alleged to be unsatisfactory. Separate procedures exist for dealing with matters that arise not caused by wilful misconduct, for example the Capability Procedure or absence management policies. The Trust's Allegation of abuse against staff Policy should also be referred to in relevant cases.

### **3. Roles and responsibilities**

Managers / Principals, Senior Leaders, Assistant CEO of the Trust and the CEO (or the person to whom they have delegated responsibility) are responsible for managing the conduct of employees in accordance with this statutory procedure. They must ensure that employees are aware of the expected levels of conduct as set out in the Staff Code of Conduct, other Trust policies, and any local rules or regulations specific to their job or work area. Please see below rules of authority.

Where concerns regarding conduct arise, line managers should seek advice from HR at an early stage. If a matter concerns a safeguarding issue, line managers should ensure the DSL has been notified.

Employees are responsible for adhering to the expected levels of conduct as set out in the Staff Code of Conduct, other Trust policies, and any local rules or regulations specific to their job or work area, including any reasonable management instructions.

### **4. Principles**

Misconduct is conduct that falls below the expected level; which may involve an employee breaking specific rules about behaviour or conduct. There may be occasions when negligence or failure to act amounts to misconduct or gross misconduct. Breaches of reasonable conduct at work can take many forms. Consideration will always be given to the particular circumstances. Gross misconduct is very serious misconduct that may lead to dismissal without notice or pay in lieu of notice (summary dismissal).

It is the responsibility of all employees to observe the levels of conduct, behaviour, attendance and other rules that have been established for the well-being and safety of all and the efficient running of the Trust and its academies.

It is expected that minor misconduct will be resolved informally through effective management practice by way of advice and discussion. A note of the discussion may be confirmed in writing (e.g. a management instruction) see section 5. However, where this approach has been tried and has not worked, or where the misconduct is more serious, formal disciplinary action will be considered.

Allegations of misconduct will be investigated before any disciplinary action is taken to establish the facts of the situation.

The employee will be advised of the allegations of misconduct and will be given the opportunity to state their case and present relevant evidence at a disciplinary hearing before any decision is made.

All employees will have the right of appeal against any formal disciplinary sanction.

The employee will have the right to be accompanied by a trade union representative, trade union official or work colleague not involved in the matter to any disciplinary or appeal hearing under this procedure. This employer will extend this right and allow for employees to be accompanied at all informal meetings as part of the disciplinary procedure. The companion should be allowed to address the meeting in order to:

- put forward the employee's case
- sum up the employee's case
- respond on the employee's behalf to any view expressed at the hearing
- confer with the employee privately during the meeting.

The work colleague or representative does not, however, have the right to answer questions on the employee's behalf, address the hearing if the employee does not wish it, or prevent the employer from explaining their case. A companion is allowed reasonable time off from duties, without loss of pay, but no one is obliged to act as a companion if they do not wish to.

If there are any disability or language issues affecting the employee or their representative these will be reasonably addressed so that any formal proceedings can take place fairly.

The employer will seek availability of the companion when scheduling the time and date of the hearing.

The disciplinary procedure is strictly confidential and all aspects, including all documentation and records, shall be treated as such.

The Trust will comply with requirements to refer relevant formal disciplinary action taken under this procedure to relevant services or professional bodies. For example, if an allegation is connected to the risk of harm, or actual harm

to a child then the Disclosure & Barring Service (DBS) and Teaching Regulation Agency will be informed if the allegation involves a teacher.

Management should try to agree a mutually convenient date for the meeting with the employee and their union representative in order to ensure that meetings do not have to be delayed or rescheduled.

If an employee resigns where an investigation or formal proceedings are being considered or have commenced, the proceedings should be completed in the case of matters which may need to be referred on (e.g. fraud or safeguarding), and it may be appropriate to continue to an appropriate conclusion at the discretion of management in other instances.

Where an employee raises a grievance during the 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.

Disciplinary action and trade union representatives.

In the case where disciplinary action is being considered against an employee who is a trade union representative, the normal disciplinary policy will be followed. In accordance with the ACAS Code of Conduct, the principal will discuss the matter at an early stage with an official employed by the union, after obtaining the employee's agreement.

## **5. Dealing with misconduct informally**

Managers should monitor and evaluate conduct, behaviour and attendance of all their employees through normal day to day management. Where minor concerns occur these should be raised with the employee on an individual basis to try to restore and maintain a satisfactory level, addressing the following points:

- Set the level – the manager should bring to the attention of the employee how they are failing to meet the required level of conduct and of the concerns that exist;
- Seek an explanation - to provide the employee with an opportunity to explain why they are not meeting the required level of conduct and to discuss the acceptability of the explanation(s);
- Require improvement - to advise the employee what they are expected to do to bring about improvements in conduct or behaviour.

Outline any management action and support and give a time limit within which the employee can reasonably be expected to modify or change their behaviour;

- Warn of the consequences - of failure to improve, to meet and sustain the level of behaviour, attendance or conduct required, such as formal action under the disciplinary procedure.

The main points discussed should be noted and a copy provided to the employee; for example, this could be in a "management note of guidance" via email or a letter.

## **6. Formal Process - Informing the employee of the allegations**

In cases of alleged misconduct, the employee will be notified in writing of the allegations and that an investigation under the disciplinary procedure will occur and of the right to be accompanied. This should happen without undue delay, however, in some circumstances it may be necessary to carry out initial investigations to establish the facts of the case prior to writing to the employee.

The employee must make every effort to attend an investigative interview or disciplinary hearing and failure to attend, without good reason such as ill health or their representative is unavailable, may be treated as misconduct in itself.

The notification will inform the employee of who has been appointed as investigating officer. Different people will carry out the investigation and the disciplinary hearing.

Where disciplinary action is being considered against an employee who is a trade union representative this disciplinary procedure should be applied. Human Resources should be informed and, the matter will be discussed at an early stage (and before taking any formal action) with an official employed by the relevant trade union.

## **7. Investigation**

No disciplinary action will be taken against an employee until a reasonable investigation to establish the facts of the case has taken place. No disciplinary action or suspension will be taken until the circumstances of the case have been discussed with an appropriate trade union official. In the case of suspension, this may not be practical and should not prevent leaders



taking action. The purpose of the investigation is to establish a fair and balanced view of the facts relating to any disciplinary allegations against an employee whilst they are still clear in the minds of those involved, and to decide what further action to take.

The investigation should be carried out promptly and without unnecessary delay.

The employee must cooperate fully and promptly in any investigation. Any failure to comply may lead to disciplinary action. It is incumbent on the employee, during the investigation stage, to raise details of additional witnesses whom the school should interview during the investigation.

Where reasonable the investigation should be completed within **20 working days**. However, any delay will be agreed by mutual consent. If the investigation is not completed within this period then the employee will be informed of this, providing the reasons for delay, and given regular information as to how the investigation is progressing.

It is the role of the investigating officer to recommend **whether or not** there is a case to answer (i.e. whether or not the matter should progress to a hearing) and whether or not the matter could, based on the evidence collected, be considered as potential gross misconduct. It is **not** their role to suggest what the outcome of the hearing should be. The investigating officer will be appointed by the appropriate manager and be somebody that is independent. In the cases where the disciplinary is regarding the principal a senior leader from the trust will appoint an appropriate person from another part of the Trust.

If at the end of the investigation, it is found that there is no case to answer, the employee will be informed of this in writing and no reference to the investigation will be kept on the employee's file.

## **8. Suspension**

Suspension is a response available to remove an employee from the workplace in order to investigate the circumstances relating to any alleged misconduct, but should be used with caution. Suspension should be a last resort, not automatic, and all other alternative options should be considered (and a note of these considerations kept). If possible, a decision should not be made until advice has been taken from the Trust HR Manager or the CEO.

Whilst a decision on suspension is being taken, a colleague may be asked to go home and not attend work, or be temporarily redeployed. This must be a short term solution.

Section 12 sets out with whom the authority to suspend rests with depending on who is involved. Suspension is on full contractual pay and should be for as short a period as possible. It must be confirmed in writing to the employee, giving clear reasons for the suspension and its expected duration. The period of suspension should be kept under review, and should be lifted as soon as circumstances permit. The colleague should be kept informed of when they may return.

An employee may be suspended where one or more of the following apply:

- an allegation of potential gross misconduct is being investigated
- an allegation of misconduct is being investigated where there is a danger that the alleged misconduct may be committed again
- the investigation into an allegation of misconduct could be compromised by the continuing presence of the employee at work (for example because they may destroy evidence or attempt to influence witnesses)
- there is a potential threat to the work of the Trust and its academies, or to pupils/students, to other employees, or to other stakeholders.

Before a suspension is made it needs to be ensured that the following has taken place/been considered:

- where an allegation of gross misconduct has been made suspension should not be automatic; a preliminary investigation should be carried out to determine whether there is enough evidence that the allegation is potentially gross misconduct. This should include talking to the colleague to establish their version of events. During this time the employee may be asked not to attend work or be temporarily redeployed.
- Following the preliminary investigation, if it is considered necessary to remove the colleague from their usual role for a longer period, the possibility of placing the employee in another work area within the academy, or within a different part of the Trust, whilst the investigation is carried out should be considered as an alternative to suspension.

Suspension does not imply wrongdoing and does not prejudice the outcome of the disciplinary investigation or hearing. Suspension does not constitute a disciplinary sanction.

Suspended employees must make themselves available for interviews under the procedure and must not take alternative employment while the contract of employment still applies. They must make themselves available for other meetings which may be required in the course of their employment, and notify the school of the intention to take holidays – in the same way they would do if attending work.

If appropriate, employees may be asked to return property belonging to the Trust / academy (e.g. keys, IT equipment), and/or have access to online systems suspended. While the employee is suspended, they should not visit the school site or contact any of its pupils, parents, governors, chair of governors, members or colleagues, unless the employee has been authorised to do so by the headteacher.

Effective support should be provided for the suspended employee, for example sign-posting to Employee Assistant Programme, advising to contact their trade union representative if they have one, providing a named contact at the academy with whom they can liaise to support them through the investigation referral to Occupational Health.

If, on completion of the investigation, the investigating officer believes it to be appropriate, having regard to the above provisions, the period of suspension on contractual pay may continue until a disciplinary hearing has been held and a decision communicated to the employee.

When returning to work following a period of suspension, appropriate support should be given to help the colleague reintegrate back in to their role.

## **9. The Disciplinary Hearing**

Following the investigation if it is considered that there is a case to answer then a disciplinary hearing will be convened. The hearing will decide what, if any, action should be taken in respect of the alleged misconduct. Further details on who should hear the disciplinary are given in section 12, and further details of the process for the hearing at appendix 2.

The employee will be given 10 working days' notice in writing of a disciplinary hearing. The chair of the hearing will write to the employee to

provide the employee with a copy of the disciplinary policy and to confirm:

- the allegations against them
- the date, time and location of the hearing
- the name of the person (or panel) chairing the hearing
- the right to be accompanied and/or represented by a trade union representative or work colleague
- the requirement to provide the chair hearing the case with a copy of the documents that he/she will be relying upon and the names of any witnesses that they will be calling at the hearing at least 2 working days before the hearing

Copies of documents that the investigating officer and line managers and/or the Trust will refer to at the hearing, and names of any witness that they will call will be included with the notification. The notification should contain sufficient information about the alleged misconduct and its possible consequences to enable the employee to prepare to answer a case at a disciplinary hearing.

The employee will be informed if the outcome of the hearing could be dismissal (normally where the allegation is of gross misconduct, or the employee is subject to a final written warning that had not expired at the time of the alleged misconduct).

At the hearing both the investigating officer/Trust and the employee and their trade union representative will be given the opportunity to state their case, call witnesses and ask questions. The head chair must ensure that the employee receives a fair and impartial hearing, is encouraged to be represented or accompanied. The school will only consider evidence presented by the employee which is relevant to the allegations. HR will attend the hearing to provide procedural advice. An order of proceedings is given at appendix 2.

The hearing will normally be adjourned whilst the chair/panel hearing the case reaches a decision. The basis of the decision should be whether on the balance of probabilities the employee committed the alleged misconduct based on the evidence presented from both sides, and if so what if any disciplinary sanction should be given. The disciplinary sanction will depend on

the seriousness of the misconduct, any current warnings and/or relevant mitigating circumstances (see section 10).

The employee will be notified in writing of the outcome within 5 working days and of their right of appeal. Where an employee is dismissed they should be dismissed with appropriate notice, unless the allegations amount to gross misconduct.

A postponement may be granted if the employee or their representative is unable to attend on the proposed date. A postponement should not be for more than 5 working days after the original date proposed, however, an extension to this time limit can be made by mutual agreement. Where a hearing is rearranged and the employee is unable to attend a second time the hearing will convene, as arranged, and a decision taken in the employee's absence based on the evidence available.

## **10. Disciplinary Sanctions**

It may be that the outcome is that there is no case to answer, in which case the employee should be given a letter to inform them that the matter is closed.

Where an employee is found to have committed misconduct the disciplinary hearing may decide on one of the following sanctions:

- **Informal action verbal warning (management instruction)** – it is possible that the panel may determine that the misconduct is not sufficiently serious to warrant a higher level of disciplinary sanction or the circumstances of the case may be such that the panel accepts the mitigation provided and considers a lower level of disciplinary sanction is justified.
- **First written warning** – where, within 6 months, the case has already involved a first warning and insufficient improvement has been made, where further misconduct has occurred, or where the case is of sufficient importance or seriousness.
- **Final written warning** – where sufficiently serious or important misconduct has occurred, where, following a previous warning further misconduct has occurred or there is continued repetition of an offence. Also, where gross misconduct may not warrant dismissal eg due to mitigating circumstances.

- **Dismissal** – where an employee has still not reached the level required or where there are continued breaches of conduct despite previous warnings ~~or~~ when gross misconduct has occurred, or where there is some other substantial reason.

Action short of dismissal may be considered as an alternative to dismissal – for example, a final written warning and disciplinary demotion to a lower pay grade and/or transfer to an alternative role within the academy or wider Trust, subject to a suitable role being available and the individual circumstances of the case. **There would be no pay protection. It should be noted that there is no entitlement to this outcome.**

**A first or final written warning** should set out the nature of the misconduct and the improvement that is required.

The written notification will include the following information:

- the exact nature of the misconduct proven
- the basis of their decision
  - the period of time given for improvement, if appropriate, and the standard of improvement expected
- the disciplinary sanction being applied and, where appropriate, how long this will last
- notification of the likely consequences of further proven misconduct
- information about the employee's right of appeal, including how they should make it and to whom.

Warnings will be disregarded for disciplinary purposes after 3- 6 months for a verbal warning, 6 months for a first written warning and 12 months for a final written warning, from the date of the decision (excluding the Summer Break) unless otherwise stated under exceptional circumstances. If during this period similar offences or further misconduct occurs, then any 'live' warnings will be taken into account. Once spent, the disciplinary warning will remain on the file as part of the employee's overall record of employment but would not be taken into account.

### **The decision letter**

Following the outcome of the hearing, a letter detailing the decision will be given to the employee and a copy placed on their personnel file, if a warning is issued.

**\*Note any outcome of disciplinary and appeal hearing letters need to be agreed with HR\***

The letter will state;

- The course of action to be followed by the employee
  - The timescale in which improvement is required, if applicable
  - Where assistance is required, the assistance which will be made available to the employee (eg training and guidance)
  - The date on which the warning will elapse
  - That further disciplinary action will be considered if there is further misconduct or insufficient improvement within the timescale of the warning
  - The right of appeal against the decision and how to exercise that right
- If the warning is a final, it will also state that if the employee's conduct continues to be unsatisfactory or if there is further misconduct, it may lead to dismissal.

A decision to dismiss should only be taken by persons who have the authority to do so (see section 12). The employee should be informed of the reasons for the dismissal, the appropriate period of notice, the date on which the employment contract will end, and the right of appeal. Unless an employee is being dismissed for reasons of gross misconduct, they should receive the appropriate period of notice or pay in lieu of notice, even in the case of misconduct and if they have a live warning they should still receive notice.

## **11. Appeals**

An employee is entitled to appeal against the formal decision taken by the disciplinary hearing.

The appeal should be on the basis of one of the following grounds:

- the procedure - a failure to follow procedure had a material effect on the decision
- the decision - the evidence did not support the conclusion reached
- the penalty - was too severe given the circumstances of the case
- new evidence - which has genuinely come to light since the first hearing.

The appeal must be made in writing, addressed to the Chair of the disciplinary hearing, stating the specific grounds for the appeal, within **15 working days** of the decision being communicated to the employee ie usually within 15 days of the date of the outcome letter.

The appeal will be heard as soon as possible and not normally later than 20 working days after being received.

Appeal hearings may be a complete re-hearing of the matter or it may be a review of the fairness of the original decision in the light of the procedure that was followed and any new information that may have come to light. This will be at the school's discretion depending on the circumstances of the case.

The employee will be given **10 working days'** notice, in writing, of the date time and place of the appeal hearing. This notification will give the name of the person chairing the hearing, and the names of panel members. Further details on the composition of the appeal panel is given in section 12. It will remind the employee of their right to be accompanied at the hearing by either a trade union representative or work colleague. HR will attend the hearing to provide procedural advice.

Both parties must indicate at least 5 working days in advance of the appeal hearing which, if any, witnesses they wish to call and provide copies of any documentation that will be relied upon at the hearing. In exceptional circumstances an alternative time-scale may be agreed (for example holiday periods).

The chair of the disciplinary hearing will attend the appeal.

Details of the process for the appeal hearing is given at appendix 2. The employee will be able to present evidence that is directly relevant to the grounds of the appeal. The Chair of the disciplinary hearing / representatives of the Trust if relevant will have the opportunity to respond. The appeal hearing may be adjourned if necessary. Eg if further investigations are needed in the light of new points the employee raised at the hearing. If any new information comes to light, the appeal officer will provide the employee with a summary including, where appropriate, copies of additional relevant documents and witness statements.

The appeal hearing may confirm or overturn the decision or may recommend some alternative action/substitute a different penalty.



The employee will be informed of the appeal decision in writing, as soon as possible. The decision of the appeal hearing is final.

If the employee is appealing against dismissal, the date on which dismissal takes effect will not be delayed pending the outcome of the appeal. In cases where an appeal against a dismissal is upheld and a decision is made to reinstate/reengage, the employee shall suffer no loss under their previous contract of employment from the date of the dismissal up to the date of re-employment.

## **12. Authority to act under the procedure**

These levels of authority are in line with the Trust's Scheme of Delegation.

It is expected that those acting at each level of the procedure will not have previously been involved.

<b>Who</b>	<b>Suspend the employee and end the suspension</b>	<b>Investigate the allegations</b>	<b>Hear the disciplinary</b>	<b>Hear the appeal</b>
All academy based employees except those listed below	Principal/  Chair of LAC/Assistant CEO the Trust/CEO	Person nominated by principal or Assistant CEO of the Trust (or principal themselves in some cases)	Where dismissal is not a possible outcome Principal or another senior leader of the trust (HR will support)  Where dismissal is a possible outcome a panel of three including Principal or Trust Assistant CEO	Panel of three senior leaders of the Trust and where possible a member of the LAC (HR will support)
Principal	Assistant CEO/CEO/Member of the Trust Board	Person nominated by Assistant CEO of the Trust or	Where a dismissal is not a possible outcome a	Panel of three including Assistant CEOs of the

		CEO or Chair of the Board	<p>Assistant CEO of the Trust</p> <p>Where dismissal is a possible outcome a panel of three including Assistant CEO of the Trust and a member of the Trust Board</p>	Trust/CEO/Trust Board
All Central Trust Team Employees except Assistant CEOs and CEO	Assistant CEO	Independent person directed appointed by the Assistant CEO	<p>Where dismissal is not a possible outcome Assistant CEO</p> <p>Where dismissal is possible outcome Assistant CEO of the Trust and a member of the Trust board (ideally a panel of 3)</p>	Panel of three including Assistant CEO or CEO of the Trust and a member of Trust Board
Assistant CEO of the Trust	CEO or Chair of the Board	Independent person appointed by the CEO or Chair of the Board	<p>Where dismissal is not a possible outcome CEO or Member of the Trust Board appointed by the Chair</p> <p>Where dismissal is a possible outcome Panel of Three from the Trust Board</p>	Panel of three from the Trust Board

CEO	Chair of the Trust Board or nominated person	Independent person appointed by the Chair of Trust Board	Where dismissal is not a possible outcome member of the Trust Board nominated by the Chair  Where dismissal is a possible outcome panel of three from the Trust board	Panel of three from the Trust Board
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### **13. Records**

Records of disciplinary hearings and disciplinary appeal hearings will be kept in accordance with the schools Records Management Policy detailing:

- the nature of any allegations
- the employee's defence or mitigation
- the action taken and the reasons for it
- whether an appeal was lodged and its outcome
- any subsequent developments.

These records will be kept confidential and retained in accordance with the Data Protection Act and Freedom of Information Act, which require the release of certain data to individuals on their request.

Records will be disregarded for disciplinary purposes after a set period of time depending on the level of penalty given (see 10), and will be retained for six years after employment ceases, after which time they must be destroyed as confidential waste.

### **14. Criminal Conduct**

The case of an employee charged with, or convicted of, a criminal offence should not normally in itself be a reason for disciplinary action. Consideration must be given to what affect the charge or conviction has on the employee's suitability to do the job and their relationship with the

school/academy and work colleagues. The disciplinary policy will only be instigated where there are reasonable grounds for believing that the nature of the activities is sufficiently serious to have an adverse effect on the ability of, or confidence in, the employee to carry out his/her duties properly. Where an employee is alleged to have committed a criminal offence and police investigations are underway, disciplinary proceedings must be handled carefully and in accordance with police instructions so as not to interfere in the police investigation.

Advice should be sought from Human Resources, and action taken in light of the particular circumstances of a case.

### **15. Equality Monitoring**

To ensure that we are meeting our public sector equality duty, we will monitor annually the impact of this policy by reference to the protected characteristics of staff (age, disability, gender reassignment, marriage or civil partnership, pregnancy or maternity, race, religion or belief, sex and sexual orientation). The results will be shared (anonymised where appropriate) with the recognised trade unions.

### **16. Review**

This procedure will be reviewed to respond to any changes in the employment legislation.



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# **Disciplinary : Managers Guidance.**

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**Management Guidance:**

**Examples of misconduct and gross misconduct**

**Misconduct**

This is a breach of discipline which on its own is not sufficiently serious to warrant dismissal, but will warrant action being taken under this procedure. In cases where misconduct takes place and live warnings for this or another type of misconduct are still in force, then unless mitigating circumstances are proven, the employee may be dismissed without notice.

Examples of misconduct are listed below. This list is not intended to be exclusive or exhaustive and there may be other incidents of misconduct of a similar gravity:

- Poor timekeeping including unauthorised absence
- Failure to comply with the Trusts Supporting Attendance Policy
- Failure to observe reasonable instructions
- Failure in duty of care towards pupils/parents or colleagues
- Failure in protecting the health, safety and wellbeing of pupils and colleagues
- Minor instances of neglect of duties and responsibilities
- Inappropriate behaviour which impacts negatively on the running of the academy, e.g. wilful failure to work in harmony with colleagues
- Deliberate breaches of the Trust's or academy's policies and procedures
- Misuse of the Trust's facilities (e.g. telephone, smart phone, watches and the internet)
- Inappropriate use of social media
- Failure to adhere to the requirements of the Trust's Staff Code of Conduct
- Conduct inconsistent with an employee's contract and/or conditions of service
- Improper disclosure of confidential information
- Breach of the Trusts approach to equality
- Failure to demonstrate the trusts values and ethos

### **Gross Misconduct**

This is a grave breach of discipline which may be serious enough to destroy the employment contract between the Trust and the employee making any further working relationship and trust impossible.

Gross misconduct would normally lead to dismissal or a final written warning, even first incidents of gross misconduct. The list is not intended to be

exhaustive and there may be other incidents of gross misconduct of a similar gravity which could result in dismissal.

- Theft, fraud or deliberate falsification of records
- Serious breaches of the Trust's Staff Code of Conduct & other Professional Codes of Conduct
- Refusal to register with mandatory professional bodies (including persistent failure)
- Failure in duty of care to protect pupils by placing them at significant risk
- Physical violence or bullying
- Unlawful discrimination or harassment
- Serious and deliberate damage to property
- Serious insubordination
- Serious incapability during working hours brought on by alcohol or illegal drugs
- Serious abuse of the Trust's Electronic Communications (e.g. in relation to accessing pornographic internet sites or sending and receiving offensive or obscene material)
- Serious misuse of school's facilities, property or name
- Bringing the Trust or its academies in to disrepute
- Causing loss damage or injury through serious negligence
- Serious breaches of health and safety rules
- Serious breach of confidence
- Serious sexual misconduct

## **Appendix 2 – Managers Guidance**

### **Order of proceedings for Disciplinary Hearing or Appeal**

#### **Introduction**

- Introduce those present, and explain why they are there. Someone who is not involved in the case should be appointed to take notes on the proceedings and Human Resources may be present throughout the hearing.

- If they have not chosen to be accompanied, the employee will be reminded of their right to be accompanied
- Explain the purpose of the meeting i.e. to establish as fully as possible the facts of the case, and to consider whether disciplinary action should be taken in accordance with the Trust's disciplinary procedure.
- Explain how the meeting will be conducted
- State precisely what the complaint is and outline the case by going through the evidence that has been gathered.
- Ensure that the employee and his/her companion are allowed to see any statements made by witnesses and to raise questions.

### **Employee's reply**

- Give the employee the opportunity to state their case and answer any allegations that have been made. They should be able to ask questions, present evidence (including witness statements). The employee and their companion should be given the opportunity to confer privately.

### **General questioning and discussion**

The person/panel hearing the disciplinary should:

- Use this stage to establish all the facts
- Ask the employee if they have any explanation for the alleged misconduct, or if there are any special circumstances to be taken into account
- Keep the approach formal and polite, and encourage the employee to speak freely; it should be a two-way process.
- Use questions to clarify the issues and check that what has been said is understood.
- If new facts emerge, it may be necessary to adjourn the hearing to investigate.
- If the employee is prepared to accept that they may have done something wrong, agree the steps which should be taken to remedy the situation. If it becomes clear that the employee has provided an adequate explanation, or there is no real evidence to support the allegation, bring the proceedings to a close.

### **Decision**



Once the employee has been afforded an opportunity to explain their position, the disciplinary officer will do either of the following:

- Give the decision and explain the reasons for the decision, and confirm as soon as possible in writing
- Inform the employee that the decision will be given in writing as soon as possible

The disciplinary officer may adjourn the disciplinary hearing if the school needs to carry out any further investigation in light of any new points the employee has raised at the hearing. The employee will be given a reasonable opportunity to consider and comment on any new information obtained before a decision is given.

## **Appendix 3**

### **MODEL INVESTIGATION REPORT**

**Report Author**

**Date:**

**Employee Name:**

**Job Title**

**Academy:**

#### **Introduction**

- Outline service delivered, employment history etc

#### **Incident**

- Outline what has happened; what the allegation/issue is and which procedure it comes under; outline how the allegation/issue was raised

#### **Investigation:**

- Outline what action the Investigating Officer has taken
- Refer to witness statements, and clarify why these are relevant
- What other sources of information were accessed

#### **Detail of Key Issues:**

- Sub sections should be used to detail background information, contextual information etc

#### **Consideration:**

- Summary of critical issues and supporting evidence in determining prima facie case

#### **Conclusion:**

- Recommendation of whether the case should proceed

#### **Appendices:**

- All documentary evidence that supports your investigation (e.g. witness statements, training records) should be included as appendices and cross referenced throughout the report

**N.B. It is not the responsibility of the Investigating Officer to recommend sanctions or to uphold allegations.**

## **Appendix 4 – Sample letters**

### **Invite to investigation hearing**

Dear

#### **FORMAL INVESTIGATORY INTERVIEW**

I refer to our recent conversation informing you that an investigation would be undertaken in accordance with the Trust's Disciplinary Procedure, a copy is enclosed for your information.

I now need to ask you to attend a formal investigatory interview. I should make it clear that you do have the right to be accompanied (but not represented) by a Trade Union officer or work colleague of your choice. The reason for this is that the purpose of the interview is to ascertain facts and it is not therefore possible for someone to speak on your behalf.

The interview will take place on DATE at TIME and VENUE.

During the interview you will have the opportunity to state your case. I should make it clear that this interview is not part of a formal hearing under the disciplinary procedure.

At the interview I/**Insert name of Investigating Officer** will be investigating the incident/allegation that **Insert details /Insert Date.** I/**Name of Investigating Officer** will be accompanied by NAME JOB TITLE.

At the conclusion of the investigation, consideration will be given to an appropriate way forward, which could, if it is believed there are sufficient grounds, lead to a formal disciplinary / dismissal hearing.

Yours sincerely

### **Framework for Suspension**

I am speaking to you regarding a grievance we have received alleging you of Give a brief overview of the allegation (seek HR advise)

In view of this, I am advised that I have no alternative but to suspend you from duty with immediate effect, pending a formal investigation into this allegation, which may amount to Gross Misconduct.

If you have any personal belongings left on the site you can arrange to collect them before you leave but somebody will need to accompany you.

During suspension you will remain on full pay.

Suspension is not in itself a disciplinary measure – it has been effected because of the nature of the allegation made against you and in order for a full and proper investigation to be undertaken.

The matter is serious enough to be considered as Gross Misconduct. It is therefore possible that it could lead to your dismissal.

During suspension – you should not contact **anyone** from work. This includes contact with anyone outside of business hours regarding work. Failure to adhere to this may in itself result in disciplinary action. You must remain contactable by the Trust.

You will be formally invited to an investigatory interview in accordance with the Trusts disciplinary procedure in due course. Details will follow including your right to be accompanied/represented .

The school will, if you wish to avail yourself of this facility, make available to you a Confidential Support Officer. (depending on the situation seek HR advice)

A formal letter confirming all this information has been prepared and is here for you. I now need to escort you from the premises.

Our aim is to manage this process as fairly as possible and hope that you understand this and will cooperate us in the process by making yourself available for interviews where you will have an opportunity to provide your sides of events.

I understand this is very distressing and would like to support you throughout the process, NAMED PERSON will be available to answer any questions relating to the process and support you. The investigation will be conducted by an independent person NAME of Investigating officer who will contact you to arrange a formal interview, you will be entitled to Trade Union representation or appropriate work colleague during these meetings to support you.

**Invite to disciplinary following suspension**

Date:

Dear

**DISCIPLINARY INVESTIGATION – Academy Name**

I refer to our meeting at school on **DATE**, when you were suspended from duty.

*Include details of the allegation/advice taken such as LADO/LA/ andy initial fact finding investigations.*

After consideration I have taken the decision, to investigate the matter formally in accordance with the Trust's disciplinary Procedure.

You will therefore need to make yourself available to formally discuss the matter with me in a formal investigatory interview. You will appreciate I am keen to progress the matter as soon as I can in the interests of all parties, and I have therefore arranged for this meeting to take place at **Time and Date** at Venue. You have already received a copy of the Trusts Disciplinary Procedure. I will act as

Investigating Officer and will report my findings to the **Principal/ manager/Chair of Board. During the meeting I will be accompanied by note taker/HR support.**

At the interview you will have the opportunity to state your case. I should make it clear that this interview is not part of a formal hearing under the disciplinary procedure.

At the meeting you have the right to be accompanied (but not represented) by a trade union representative or other person of your choice. The reason for this is that the purpose of the interview is to ascertain facts and it is not therefore possible for someone to speak on your behalf.

It is also important that the investigation is carried out in a fair and unhindered way. In these circumstances, I require that you do not talk to your colleagues about the matter or any issues related to this investigation. If you do discuss this matter and your actions compromise the investigation, this could in itself be grounds for disciplinary action to be taken.

Please confirm your attendance at the above meeting. In the meantime your suspension will continue on the terms which have already been confirmed to you in my letter of the **Date.**

Yours sincerely

Investigating officer

### **Verbal Warning**

*(School Headed paper)*

Date

Dear

### **RE: MANAGEMENT INSTRUCTION**

I am writing to you because of my concerns as discussed in our meeting held on Date , regarding the incident on DATE in which you:

At this meeting I informed you that I would issue you with a written management instruction, as to your future conduct.

As an **(Job Title)** you are expected to uphold professional standards/conduct in the execution of your duties in accordance with the Academy's policies and procedures.

If you encounter any difficulties or foresee any potential problems pertaining to these instructions you must contact me, or a senior member of staff immediately for further advice.

I should inform you that failure to adhere to this management instruction may result in formal disciplinary action.

A copy of this letter will be placed on your personal file.

Yours sincerely

Name

Address

Date:

Your Ref:

Our Ref:

Dear

**Re Disciplinary Hearing –**

I am writing to you following the investigatory interview with **Insert Name** on **Date**, regarding his investigation of the allegation made against you that:-

**Insert Allegation**

Following receipt of **Insert Name** investigation report, **Insert Name** has requested that I convene a Disciplinary Hearing to consider the case. A hearing has been arranged and will be heard **Insert names of all attendees** to whom the matter is being referred in line with the Trusts Disciplinary Procedure (copy enclosed).

The Hearing will held on **Insert Date/Time**

The Hearing will take place at **Insert address** and a room will be made available for you and your representative prior to the meeting from **Insert Time**. On the day please ask for **Insert name and job title** (Advisor to the Manager/ Principal/Assistant CEO/LAC).

The following people will serve on the schools/Academy's staff Dismissal committee:

**INSERT NAMES** (indicate who is Chair)

The Hearing will be conducted in accordance with Appendix 3 of the enclosed Disciplinary procedure.

You should be aware that possible outcomes of the Hearing include:

- Case dismissed
- Written warning
- Dismissal
- Other outcome, for example demotion or informal action



I must point out to you that you have the right to be accompanied at the Hearing by a Trade Union Official or work colleague. I am aware that you have previously been represented by **INSERT UNION NAME/OFFICER** on this matter and will ensure that your representative is provided with all appropriate documentation in advance of the hearing.

A copy of all supporting papers are included in the report. Please would you let me know if you intend submitting any further documentation to the Hearing. If you do, then please can you ensure that I receive it by no later than 5 working days before the hearing

We are not intending to call any witness to the hearing or we intend to call the following witnesses to the Hearing **Insert name**; if you intend to do so I would be grateful if you would let me know.

If you should need to contact me regarding the submission of any documentation please contact me on the number below  
Yours sincerely

Chair of the Hearing

## Invite to Appeal

Name

Address

Date:

Dear

### Re Disciplinary Appeal Hearing –

I am writing to you following receipt of your appeal dated **Insert Date** and received on **Insert Date** against the decision of the **Chair of Hearing**, at the hearing on **Insert Date**.

A Dismissal Appeal Panel, has been convened to consider your appeal against the decision of **NAME** that you be dismissed or **insert sanction**

The Hearing will held on **Insert Date/Time**

The Hearing will take place at **Insert address** and a room will be made available for you and your representative prior to the meeting from **Insert Time**. On the day please ask for **Insert name and job title** (Advisor to the panel).

The following people will serve on the Academy's Appeal panel:

**INSERT NAMES** (indicate who is Chair)

The Hearing will be conducted in accordance with the Disciplinary procedure previously sent to you.

Possible outcomes of the Appeal Hearing include:

- Uphold the appeal
- Reject the appeal in full
- Partly uphold the appeal which may result in a lesser sanction

The papers for the Appeal hearing are the same as the ones distributed for the original hearing. These will be distributed to the appeal panel in advance of the Appeal hearing.

Also enclosed for all parties is a copy of your letter of Appeal dated **Insert Date**

Finally, once again, I must point out to you that you have the right to be accompanied at the Hearing by a Trade Union Official or work colleague of your choice. An additional copy of this letter has been sent to your representative, **Insert Name**

Yours sincerely

**\*Note any outcome of disciplinary and appeal hearing letters need to be agreed with HR**