



# Disciplinary Procedure

## All Staff

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*Together, pursuing life in all its fullness*

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## Contents

1. Objective and Scope .....	1
2. Disciplinary Rules .....	1
3. Principles .....	3
4. Management Advice (Informal Resolution) .....	3
5. Definition and Separation of Roles .....	4
6. Allegations about Safeguarding Children (Child Protection) .....	6
7. Misuse of Trust Computers and Allied Equipment and software .....	6
8. Criminal Activity .....	6
9. Disciplinary Action Involving a Trade Union Representative or Relating to Trade Union Activities	6
10. The Investigation/The start of the formal stage .....	7
11. Conclusion of the Investigation .....	10
12. Ill Health .....	10
13. Arranging a Disciplinary Hearing .....	11
14. The Note-Taker at a Disciplinary Hearing .....	11
15. The Disciplinary Hearing .....	11
16. Disciplinary Sanctions .....	13
17. Appeals .....	14
18. Procedure for the Appeal Hearing .....	14
19. Difficulties that may arise during Disciplinary Hearings .....	15
20. Disciplinary Records .....	15
21. Resignations and Settlement Agreements .....	16
22. Referrals to Statutory Bodies .....	16
23. Monitoring and Review .....	17
Appendix 1: Employee Disciplinary Action Appeal Form .....	19
Appendix 2: Disciplinary Process Flowchart .....	20

## **1. Objective and Scope**

This Procedure is primarily designed to help and encourage colleagues to improve performance and behaviour rather than imposing punitive measures. It aims to clarify the rights and responsibilities of the Trust and colleagues and to promote fairness and order in any disciplinary action and for this to be applied in a consistent, constructive, and reasonable fashion.

This Procedure will be applied consistently and fairly, based on the circumstances of a case. No-one will be treated less favourably on the grounds of their gender, disability, age, race, creed, colour, religion, nationality, ethnic or national origin, trade union membership or activity, sexual orientation, gender reassignment, medical condition, or marital status. Furthermore, the Trust recognises its responsibility to recognise its responsibility to ensure the implementation of the rules of natural justice. Colleagues should know the nature of the accusation against them; colleagues have an opportunity to state their case; and management should act in good faith.

The Trust reserves the right to invoke any stage of the disciplinary procedures according to the seriousness of any unsatisfactory conduct regardless of any management warnings, however, wherever possible the Trust will seek to address situations as informally as possible through the provision of informal management advice, training and/or support.

Actions taken by colleagues outside working hours may also fall within the scope of this Procedure if there is an impact on their ability and/or suitability to do their job, or the actions may bring the Trust or colleague into disrepute. In the case of actions taken by colleagues outside of working hours, all cases must be referred to HR for advice.

Where a colleague is subject to more than one allegation relating to their conduct, these issues may be dealt with together, if appropriate.

Statutory requirements make it necessary for the Trust to refer certain cases to the Disclosure and Barring Service (DBS) and Teacher Regulation Agency (TRA) relating to teachers and other Academy-based colleagues.

Depending on the circumstances, other policies may be followed in place of, or in parallel with, the Disciplinary Procedure. In these cases, reference should be made to the Enabling Attendance Policy. Concerns about performance will be considered under the Capability Procedure and/or the Appraisal Policy (for teachers). However, absence and incapability due to ill health will not normally be addressed under this Procedure. (Exceptions may be where the Academy believe the absence is not for a genuine reason, in these cases appropriate decisions will be made in conjunction with HR).

## **2. Disciplinary Rules**

A breach of a colleague's Terms and Conditions of Employment, any conduct, which the Trust considers unsatisfactory or prejudicial to its interests, or any failure to meet the required standards of work, may render a colleague liable to disciplinary action. Concerns about performance will be considered under the Capability Procedure and/or the Appraisal Policy (for teachers).

The lists below are not exhaustive and only serve as a guide to matters the Trust may deem (depending upon the nature, circumstances, and severity of the incident) to be a breach of general discipline or gross misconduct.

It is accepted that to differentiate between general and serious breaches of discipline is difficult, therefore each case will be treated on its own merits. Since the examples are only guidelines, discretion will be exercised by the Trust in categorising breaches of discipline having regard to all the circumstances under which the breach of discipline occurred.

## **2.1 Examples of Misconduct**

- Poor timekeeping (i.e., lateness/leaving early) and attendance standards.
- Refusal to carry out a reasonable contractual instruction or series of reasonable instructions.
- Work is not of the required standard (where capability is not in question).
- Failure to follow reasonable and contractual management instructions.
- Inappropriate behaviour.
- Minor breaches of policies.

## **2.2 Examples of Gross Misconduct**

- Bringing the Trust into disrepute.
- Unauthorised and unreasonable absence from the place of work.
- Breach of confidentiality.
- Breach of trust and confidence.
- Theft, misuse, or abuse of the property of the Trust or any other colleague.
- Assault upon another colleague or person.
- Being under the influence of alcohol or drugs on Academy premises, in working time or at a Trust event.
- Fraudulent practices.
- Falsification of any Trust records.
- Violent or threatening behaviour towards people or property on the Trust's premises or at a Trust related event.
- Gross negligence.
- Covertly recording hearings, meetings, or colleagues.
- Smoking or vaping on the Trust's premises.
- Serious breach of health and safety procedures or regulations.
- Making any sexual or other inappropriate contact with any pupil whatever their age.
- Using, handling, or possessing illegal drugs or substances on the Trust's premises, in working time, at a Trust event or whilst acting on behalf of the Trust.
- Discrimination, harassment, or victimisation on the grounds of protected characteristics as defined in the Equality Act of 2010.
- Bullying, harassment, or victimisation, whether verbal, written, photographic, pictorial, or physical.
- Serious breaches of the Trust's IT Acceptable Use Policy and Staff/Academy Governance Committee Member Social Networking and Internet Websites policies.
- Any misappropriation of files or documents belonging to the Trust of any kind or making copies, duplicates, or excerpts of these for private or any other purposes unrelated to a colleague's employment and without consent.
- Material breach of contract or of the Trust's policies and procedures.

- Criminal offences, including those committed outside the workplace, which impact on the colleague's ability or suitability to do their job.

### **3. Principles**

This Procedure is a statement of the principles and practices that the Trust will generally follow in formal disciplinary cases. The following principles will apply:

- No disciplinary action will be taken against a colleague until the case has been investigated.
- At every stage in the Procedure the nature of the allegation against a colleague will be notified to them in writing (within five working days in all instances other than below).
- Colleagues will be given no less than ten working days' notice of any disciplinary hearing unless agreed by both parties.
- Colleagues and the Trust may call witnesses as part of any hearing under the formal stages of this Procedure.
- Colleagues will not normally be dismissed for the first breach of discipline except in the case of gross misconduct when the sanction could be dismissal without notice.
- Colleagues will have the right to appeal the outcome of the formal stage of the Procedure.
- The Procedure may be implemented at any stage if a colleague's misconduct warrants such action. There will be occasions when a final written warning or dismissal is justified for a first offence.
- The notice of the hearing will always include sufficient detail of the allegations raised; details of who will be attending the hearing on the part of the Trust and in what capacity and advance notice of the possible outcomes.
- Breaches of discipline need not necessarily be of the same nature to permit progression to the next stage of the Procedure although this will be carefully considered.
- At any formal disciplinary investigation or hearing, colleagues may be accompanied by a work colleague, with their agreement, or by an accredited Trade Union Representative. Attendance of a Trade Union Representative or colleague will be allowed at informal meetings where requested.
- Each step and action taken will be taken without unreasonable delay
- The timing and duration of hearings will be reasonable for all parties involved
- Colleagues must take all reasonable steps to attend the disciplinary hearing. Failure to attend without a reasonable explanation could result in the hearing continuing in the colleague's absence and a decision taken on the evidence available
- Reasonable consideration will be given to facilitating adjustments required in accordance with the Equality Act 2010, for example allowing an interpreter at a formal meeting

### **4. Management Advice (Informal Resolution)**

The informal approach should be used where formal disciplinary action may be disproportionate to the alleged misconduct.

In these instances, the line manager should arrange to meet with the colleague to discuss the conduct. Consideration may be given to the following points:

- Explain that the meeting is informal.
- Outline that it is not formal disciplinary action and therefore not part of the formal disciplinary procedure.
- Whilst there is no statutory entitlement to representation under the informal resolution, the Trust will allow the colleague to have the support of a Trade Union

- Representative or work colleague should they request it (see section 10.1 for further details).
- Outline the conduct under review.
- Ask the colleague for an explanation.
- Explain why the conduct was considered inappropriate.
- Confirm the expectations and required standards.
- Confirm whether counselling, training or any other help or support is appropriate.
- Confirm when the matter will be reviewed (if applicable).
- Explain that formal disciplinary action may be taken if the improvement is not achieved or sustained.
- Informal resolution does not constitute formal action and will not be referred to in employment references.

The line manager should record the meeting as Resetting the Standards. This record will be kept on the colleague's personnel file for a maximum period of six months. After the expiry of the record of management advice it will be removed from the colleague's file. The colleague may respond to the record of the meeting with their comments.

Where this process has not led to the desired outcome, such as in cases of repeated occurrences of minor misconduct, or where the matter is more serious (and this recommended practice is not appropriate) then progression to the formal part of the policy may be required.

**Advice should be sought from HR before moving into the investigatory stage of the formal procedure.**

## 5. Definition and Separation of Roles

There are several, distinct roles during disciplinary proceedings. It is essential that they are clearly defined and that the person carrying out the role is clearly identified. No person can carry out two roles simultaneously within this process.

The **appropriate Senior Manager** will be the Designated Manager and Chair of a panel at each stage of the procedure. The panel will be made up of more than one member at the appropriate level of seniority. If there are any concerns, these can be raised with the Chief Executive Officer.

Due consideration will be given to the seriousness of each case (in relation to whether its Misconduct or Gross Misconduct) when assigning the appropriate Disciplinary/Appeal Manager.

Colleague Level	Investigating Officer	Disciplinary Manager	Appeal Manager
Chief Executive Officer	People & Pay Committee Member	Board Member	Chair of Trust Board
Trust Leadership Team	Chief Executive Officer	People & Pay Committee Member	Board Member
Central Team staff	Head of Department	Chief Executive Officer	Appropriate Board Committee Member
Executive Headteacher, Headteacher or Head of School	Chief Executive Officer appoints	Chief Executive Officer	Board Member

Academy SLT member, Academy/Cluster Business Manager/Partner	Headteacher	Deputy Chief Executive Officer - Education	CEO
Other teaching staff	Member of Academy SLT (or appropriate senior member of staff)	Headteacher	Deputy Chief Executive Officer - Education
Other Support staff	Academy Business Partner	Member of Academy SLT (or appropriate senior member of staff)	Headteacher

### **5.1 The Investigating Officer**

The table above outlines an appropriate investigating officer with respect to colleague levels. Advice can also be sought from HR. The Investigating Officer will normally be an appropriate member of the Trust's Leadership Team or other Manager from across the Trust who has received the appropriate training.

On receipt of the allegation(s), the Investigating Officer will set out the terms of reference of the investigation and write to the colleague setting out the allegations. Having established the terms of reference of the investigation, they will carry out an investigation to establish the facts, which will include interviewing any witnesses. This will be followed by an interview with the colleague against whom allegations have been made, giving reasonable notice of such a meeting including the outline allegation(s). The colleague will be invited to put forward any additional witnesses who have not yet been interviewed. Interview transcripts will include a summary of the questions asked and the responses provided.

When the investigation is complete, the Investigating Officer will submit a report to the Disciplinary Manager presenting all the evidence, including agreed statements from the witnesses (together with evidence collected during the investigation) and will recommend whether there is a case to answer. Any such report should be completed within 20 working days of commencing the investigation.

### **5.2 The Person or Panel who Conducts the Hearing**

Where dismissal is a possible outcome, the case will normally be heard by a panel who have no prior involvement in the case and have received the appropriate training.

Advice must be sought from an appropriate member of HR.

### **5.3 The Presenting Officer**

The management case will normally be presented at the hearing by the Investigating Officer. It is ultimately for the Disciplinary Manager to determine which person(s) shall present the case on behalf of the Trust.

### **5.4 Expert Advice at the Hearing**

At any disciplinary hearing, including during the subsequent deliberations leading to a judgement, the Panel should be advised by HR.

## **6. Allegations about Safeguarding Children (Child Protection)**

The Trust Designated Safeguarding Lead (DSL) will be informed of any allegations relating to safeguarding and protection of children by HR. Allegations about the safeguarding and protection of children must be handled in accordance with statutory guidance and the procedures for managing allegations against staff. The relevant statutory guidance of *Keeping Children Safe in Education* (DfE), and *Working Together to Safeguard Children* (DFE,). These documents can be accessed using these links:

[Keeping children safe in education - GOV.UK \(www.gov.uk\)](https://www.gov.uk/keeping-children-safe-in-education)

[Working together to safeguard children - GOV.UK \(www.gov.uk\)](https://www.gov.uk/working-together-to-safeguard-children)

Any allegation that a colleague or volunteer has conducted themselves as follows will be investigated under this Procedure:

- Behaved in a way that has, or may have, harmed a child.
- There is a possibility of a criminal offence having been committed against or related to a child. Or behaviour towards a child in a way that indicates that they are unsuitable to work with children

## **7. Misuse of Trust IT Equipment and Software**

Any allegations of a misuse of the Trust's IT equipment shall be considered under the relevant Trust policies covering IT users, social media, and internet use. Computers and allied equipment and software are the property of the Trust; therefore, examination of such equipment or software can take place without permission of the individual. Consideration of the following should be taken by a Senior Leader:

- a) If there are suspicions that a colleague is misusing Trust equipment (e.g., inappropriate communications or accessing or downloading inappropriate material), the line manager will carry out an initial assessment of the circumstances, without alerting the colleague at this stage.
- b) Where suspicions are that the misuse of equipment relates to the accessing or downloading of inappropriate material, the Local Authority Designated Officer (LADO) must be informed without delay. The LADO will also determine whether the matter should be referred to the Police.

## **8. Criminal Activity**

No internal disciplinary investigation should be initiated whilst the matter is being investigated by the Police/Internal Audit, without written authorisation from the Police/Internal Audit.

## **9. Disciplinary Action Involving a Trade Union Representative or Relating to Trade Union Activities**

If the colleague is a Trade Union Representative or if the allegation relates to Trade Union activity, no action under the Disciplinary Procedure will be taken until the matter has been

discussed with a full time official (i.e., Regional Officer) of the relevant Union. Advice must be sought from HR when such a scenario arises.

## **10. The Investigation/The start of the Formal Stage**

Alleged instances of misconduct should be acted upon promptly.

Following a complaint or allegation, it may be clear that a formal investigation is required, but in some cases, a preliminary assessment of the available evidence will be appropriate to determine whether the allegation could have occurred. Once a decision has been made that a formal investigation is needed, the colleague should be informed in writing of the nature of the allegation within five working days.

The Investigating Officer will investigate the matter thoroughly and impartially, which will include interviewing the colleague. The colleague will be informed that they have the right to be accompanied by their accredited Trade Union Representative, or a work colleague only. The colleague will be given a copy of the record of their investigatory meeting to sign, and the provision to make any amendments. Amendments should be clearly stated on the record of the meeting. This document will form part of the evidence presented at any subsequent hearing.

The investigation should be completed as quickly as is reasonably possible in the circumstances.

### **10.1 Right to be Accompanied**

A colleague has the right to be accompanied and supported at each stage of the procedure by a recognised Trade Union Representative or work colleague.

The role of the Trade Union representative or work colleague is to:

- Familiarise themselves with the case.
- Assist the colleague in preparing for the case.
- Confer with the colleague before and after the hearing.
- Present and sum up the colleague's case, as agreed with the colleague.
- Address the hearing and ask appropriate questions, as agreed with the colleague.
- Ask for adjournment if necessary.

The Trade Union representative or work colleague is not permitted to:

- Answer questions on behalf of the colleague.
- Address the hearing if the colleague indicates that they do not wish them to do so.
- Prevent the Trust from explaining the case.
- Prevent any other person at the hearing from making their contribution.

The colleague should provide the name of their representative in advance. If the chosen representative is unavailable at the time of the hearing, the colleague may request a postponement (once) to a time that is convenient to all parties within a reasonable timescale not normally exceeding five working days.

A colleague will not be subject to any detriment by the employer for having acted as a companion in disciplinary proceedings.

## **10.2 Suspension**

Suspension should not be an automatic act when an allegation is reported and should be risk assessed and appropriate advice sought (see below re: allegations relating to children). However, a colleague may potentially be suspended on full pay in the following circumstances:

- a) Where a child or children are at risk of harm.
- b) For the protection of colleagues, property, or the colleague.
- c) Where it is believed that the continuing presence of the colleague in the workplace could interfere with the conduct of the investigation, including the taking of statements.
- d) There are concerns regarding Health and Safety.

Suspension is a neutral act and does not imply that any decision about the veracity of the allegations has been made. The decision to suspend may be made by the line manager, but as it will have a serious impact on the colleague, advice must be sought from HR before finalising the decision.

Consideration should also be given to the following short-term alternatives to suspension:

- Working from home.
- Paid leave of absence.
- Working in a different location.
- Working in a more closely supervised environment.

Where the allegation concerns the safeguarding of children, a risk assessment must be discussed with the LADO. Once this assessment has been made, a decision about suspension can be taken.

During suspension, a named contact will be assigned to keep in touch with the colleague.

Suspension will be reviewed periodically (normally every 2 weeks but this could be up to 4 weeks depending on the individual circumstances) by the Investigating Manager to consider whether circumstances surrounding the suspension have changed. If circumstances require, the Investigating Manager will recommend that the suspension be lifted. The colleague and their representative will be notified of the outcome of the review on each occasion.

Where it is not possible to review the suspension within the normal review period (e.g. where it falls during a period of Trust closure such as the summer holidays) a longer period of review should be set and the reason for this is communicated in writing to the colleague.

Where the reason(s) for suspension is considered to no longer be relevant, and no new information has come to light to otherwise justify such a measure, the review should be brought forward, and steps taken to reintegrate the colleague back into the workplace as soon as is reasonably practical.

## **10.3 Witnesses**

A 'witness' is someone who is not the subject of the allegation but can provide an account of the alleged incident(s).

During the investigation, factual witness statements will be sought from all relevant witnesses, which must be agreed. If allegations result in a disciplinary hearing, pupil names will be redacted. The questions that the witnesses were asked should be included in the statements to demonstrate that the witnesses have not been led by the interviewer. When statements are

taken, the dates and any names quoted should be written out in full and the date of the interview should be included. Testimonials regarding a colleague's character will not be accepted as witness statements, nor may witnesses be called to attend a hearing for this purpose.

A witness should be informed that:

- Any evidence provided may be included in their statement, so they should not disclose information that is irrelevant or prejudicial; They will be given reasonable opportunity to review and amend their statement. If this involves substantial changes the original statement and final version will be included in the investigation report.
- Their statement may be presented at any subsequent disciplinary hearing and they may be called to give evidence at the hearing and to be cross examined by the colleague or their representative.
- A copy of their statement will be provided to the colleague once it has been signed and agreed if, following the investigation, a formal disciplinary hearing is held.

A witness who is not a Trust colleague may provide a witness statement (not a testimonial) but would not usually attend the disciplinary hearing.

Any witness to be called at a hearing must have submitted a written statement of their knowledge of the case in advance of the hearing which would be contained in the disciplinary investigation bundle provided to all parties.

Colleagues of the Trust may be requested by the Investigating Manager to attend a disciplinary hearing on behalf of the Trust.

The colleague must provide the Investigating Manager with the names of any witnesses they intend to call not later than three working days before the hearing. All witness statements will have already been provided to the colleague and this can be shared with their Trade Union Representative as part of the bundle that will have been provided when they were invited to the hearing (normally ten working days before).

#### 10.4 Statements from Pupils

- (i) This is a delicate area where the search for truth needs to be conducted in such a way as to avoid causing emotional harm to the pupil whose evidence is required.
- (ii) As a general principle, **children should not be interviewed more than once**. If a child has already been interviewed by the Police or by a social care agency during an investigation into the same or similar allegations, the interview statements should be requested from the other agency and used in the Trust's investigation.
- (iii) Care needs to be taken to ensure that the pupil does not, as far as possible, feel intimidated by the process. This is particularly true for a pupil who might themselves have been the subject of the alleged misconduct. Where a formal investigation is under way, the parent/carer of the pupil should always be informed and invited to attend the interview with their child. The parent/carer should be told that an incident is being investigated and that the pupil's evidence may be used if it proves necessary to hold a formal disciplinary hearing. The pupil will not be required to attend the hearing to give evidence in person.

Statements must be taken as soon as possible after the alleged incident, when recollections are likely to be clearest, and to minimise the opportunity for collusion and rumour. Pupils need to be aware that making false or malicious statements could result in action against them.

## **11. Conclusion of the Investigation**

On receipt of the investigation report, the Disciplinary Manager will consider whether there is a case to answer.

If they conclude that the allegation is without foundation, no further formal action will be taken, and the colleague will be informed of this in writing. Management advice may be issued in such circumstances which may include, where appropriate, advice, training, or a review of internal procedures to reduce the risk of similar allegations being made in the future.

If the Disciplinary Manager believes that there is a case to answer, they will arrange a disciplinary hearing.

Having considered the report and the nature of the allegation, it will be for the Disciplinary Manager to decide what the possible outcomes of the hearing could be, and the colleague will be advised of this in the letter inviting them to the hearing.

The range of possible outcomes available under this policy is:

- No further action (there may be management advice or training given where appropriate).
- Verbal/Recorded warning.
- First written warning.
- Final written warning.
- Dismissal with notice or.
- Dismissal without notice (gross misconduct).

## **12. III Health**

### **12.1 III Health and Absence During an Investigation**

Sickness absence will not necessarily prevent a colleague from attending a meeting. Where a colleague is certified as unfit to attend clarification may be requested from the colleague's doctor and/or occupational health about whether they are fit to attend a meeting. A colleague will be given up to two opportunities to attend an investigatory meeting. Should this prove to be unsuccessful, the investigation may need to be concluded without the colleague's input. The colleague should be advised of this on the second attempt to invite them to an investigatory interview. If the colleague's absence results from a disability as defined in the Equality Act 2010, appropriate adjustments to the timescales in the procedure should be considered.

### **12.2 III Health and Absence at a Hearing**

Colleagues should make every effort to attend the hearing. The Disciplinary Manager may choose to arrange another date (once) if the colleague has given prior notice that they will be unable to attend a hearing through ill health. In this circumstance there will only be one opportunity for the colleague to request another date for the hearing. A second hearing date will be arranged through consultation with the colleague and their representative, where there is one, this will be within a reasonable timescale not resulting in any significant delay to the

convening of the hearing. Advice should be sought from HR to ensure that appropriate account is taken of any disability or other possible equalities issues. If the colleague is still unable to attend, they may provide a written statement to be considered at the hearing which may be presented by a Trade Union Representative or work colleague.

### **13. Arranging a Disciplinary Hearing**

Hearings should normally be held during normal working hours.

The colleague must receive a minimum of ten working days' notice in writing by recorded delivery, delivery by hand or email which may be shared with their Trade Union Representative or work colleague, stating:

- The purpose of the hearing.
- The allegations.
- The possible outcomes of the hearing.
- When and where the hearing will be conducted.
- Who will be attending, including witnesses to be called.
- The right to be accompanied by an accredited Trade Union Representative or a work colleague.
- The requirement for confidentiality.
- The requirement for the colleague to provide, at least three working days before the hearing, all documents that they intend to present at the hearing and to indicate whether they intend to call any witnesses.
- A copy of all evidence/documentation that is to be presented at the hearing in support of the allegation.

The panel hearing the case must be impartial and must not have any prior knowledge of the case.

The Disciplinary Panel should receive the papers to be presented, including a copy of the letter inviting the colleague to the hearing, no less than three working days before the hearing.

### **14. The Note-Taker at a Disciplinary Hearing**

A written record of the proceedings must be taken. The note taker may be the Clerk to the Academy Governance Committee, a colleague of the Trust or a professional note taker. However, any member of staff at the Trust who takes the notes must have no prior involvement/knowledge of the case and must treat all records of meetings in the strictest of confidences. The note-taker will make a record of the hearing, but not of the confidential deliberations of the Panel.

The Trust does not support the audio recording of disciplinary hearings. Covert recording is considered gross misconduct.

### **15. The Disciplinary Hearing**

#### **15.1 Pre-Agreement**

It is a perfectly acceptable part of disciplinary hearings for an agreement to be arrived at prior to the hearing between both parties. Where the facts are not in dispute and both parties agree on the sanction, it may not be necessary to hold a hearing. In such circumstances a formal

meeting should be held to discuss the key findings of the investigation and issue the pre-agreed sanction. Colleagues are able to be supported by a Trade Union Representative or work colleague. This approach will **NOT** apply to safeguarding related allegations.

## **15.2 Procedure for the Hearing**

- a) The Chair of the Hearing will ensure that those present are introduced to one another and remind them of the purpose of the hearing and procedure to be followed.
- b) The Investigating Officer will present the case against the colleague, including calling any witnesses. The Investigating Officer may ask questions of any presented evidence including statements.

The colleague and/or their representative may subsequently question the witness who attends the hearing, followed by questions from members of the Panel. The Investigating Officer will be offered the opportunity to re-examine their witness.

Following questioning, witnesses will leave the room, allowing the process to continue; with any remaining presentations. When all the witnesses in support of the allegation(s) have been called, the colleague and/or their representative may ask questions of the Investigating Officer and then finally the Panel may ask questions.

- c) The colleague and/or their representative will be invited to present their case, including the calling of any witnesses.

The colleague and/or their representative may ask questions of any presented evidence including statements.

The Investigating Officer will subsequently be invited to cross-examine the witness, followed by any questions from the Panel. Finally, the colleague and/or their representative will be offered the opportunity to re-examine their witness.

Following questioning witnesses will leave the room allowing the colleague and/or their representative to continue with the rest of their presentation or otherwise confirm that they have concluded their presentation. The Investigating Officer may ask questions of the colleague and then finally the Panel may ask questions.

- d) When all the evidence has been heard, the Investigating Officer sums up, without introducing any new evidence.
- e) The colleague or representative sums up without introducing any new evidence.
- f) Both parties withdraw to enable the Panel to discuss the case.
- g) The Panel will deliberate and reach a conclusion on:
  - (i) Whether on the balance of probabilities each of the allegations is proven.
  - (ii) What sanction, if any, is appropriate, bearing in mind that this will be limited by the possible outcomes listed in the hearing letter.

The Panel's decision is normally conveyed orally by the Chair of the Hearing in the presence of both parties and will be confirmed in writing within five working days. The Panel may, particularly after a lengthy hearing, adjourn and reconvene at another time to consider its

decision. In such cases it may be agreed to communicate the outcome by telephone before confirming the decision in writing.

## **16. Disciplinary Sanctions**

### **16.1 Recorded/Verbal Warning**

If a colleague's conduct does not meet acceptable standards and informal discussions have not led to sufficient improvement or are not considered appropriate, a recorded/verbal warning may be issued after a formal investigation and hearing.

A recorded/verbal warning will be placed on the colleague's personal file normally for a maximum period of six months from the date of the decision. The colleague will be advised of their right of appeal.

The outcome letter will set out the improvement required and may recommend a meeting with the line manager as soon as possible after the hearing to discuss the outcome and recommendations and any support that may be appropriate. The letter will make it clear that failure to improve may lead to further disciplinary action.

After six months, the disciplinary record will be spent, and the colleague will be informed in writing.

### **16.2 Written Warning**

If a colleague's conduct does not meet acceptable standards and informal discussions have not led to sufficient improvement or are not considered appropriate, a formal written warning may be issued after a formal investigation and hearing.

A first written warning will be placed on the colleague's personal file normally for a maximum period of nine months from the date of the decision. The colleague will be advised of their right of appeal.

The outcome letter will set out the improvement required and may recommend a meeting with the line manager as soon as possible after the hearing to discuss the outcome and recommendations and any support that may be appropriate. The letter will make it clear that failure to improve may lead to further disciplinary action.

After nine months, the disciplinary record will be spent, and the colleague will be informed in writing.

### **16.3 Final Written Warning**

If the misconduct is sufficiently serious, or if further misconduct occurs during the period that a first written warning is live, a final written warning may be issued following a formal investigation and hearing. The colleague will be advised of their right of appeal.

A final written warning will remain live for a period of eighteen months from the date of the decision.

The outcome letter will set out the improvement required and may recommend a meeting with the line manager as soon as possible after the hearing to discuss the outcome and recommendations and any support that may be appropriate. The letter will make it clear that failure to improve may lead to further disciplinary action up to and including dismissal.

After eighteen months, the disciplinary record will be spent, and the colleague will be informed in writing.

#### **16.4 Dismissal (Including Summary Dismissal for Gross Misconduct)**

Where there is further misconduct during the life of a final written warning, or where the misconduct is sufficiently serious, the colleague may be dismissed with notice. If an allegation of gross misconduct is upheld, the colleague will be summarily dismissed without notice. A letter confirming the outcome will be sent within 14 days of notification of the outcome.

### **17. Appeals**

Where colleagues are dissatisfied with the outcome of the disciplinary hearing, they can appeal in writing against the decision within ten working days of receiving written notification of the decision, ***using the form in Appendix 1***. The colleague's appeal must clearly state their grounds for appealing.

A colleague may choose to appeal, for example, because:

- They believe a finding or sanction is unreasonable or is disproportionate to case precedents.
- New evidence has come to light.
- They believe the disciplinary process was procedurally flawed.

The appeal hearing will not be a re-hearing but will be before a new panel.

If, having heard the relevant parties at the appeal, the chair of the appeal hearing/panel decides to uphold the appeal, they may withdraw the warning and replace it with a different warning and investigate further considering new evidence.

The appeal will be heard, where possible, by a panel not previously involved in the disciplinary hearing, who have no prior knowledge of the case. The appeal hearing will be arranged within ten days of receipt of the colleague's appeal.

Where an appeal against dismissal is not upheld, the date of termination will be the date on which the colleague was originally dismissed. During the appeal stage the colleague will remain dismissed from the Trust. If a colleague is reinstated following dismissal, they will be treated as being continuously employed for the whole period, including the period between dismissal and reinstatement.

The decision of the Appeal Panel will be final.

### **18. Procedure for the Appeal Hearing**

The procedure for the appeal hearing will be as set out as follows, although this list is not exhaustive:

1. The appellant (and/or their representative) will outline the grounds of their appeal.

2. The Chairperson of the Disciplinary Hearing and the appeal hearing panel will have the opportunity to question the appellant or their representative.
3. The Disciplinary Hearing Chairperson who issued the warning shall outline the details of the allegation and explain the reasons behind their decision.
4. The appellant (and/or their representative) and the appeal hearing panel will have the opportunity to question the Chairperson of the Disciplinary Hearing.
5. The Chair of the appeal hearing will then invite the Chairperson of the Disciplinary Hearing and the appellant to each make a concluding statement.
6. Both parties will then withdraw whilst the panel considers the evidence.

The decision will be confirmed in writing to the colleague within three working days. There will be no further right of appeal following the appeal hearing and the matter may not be pursued through any other procedure, such as the Grievance or Dignity at Work procedure.

## **19. Difficulties that May Arise During Disciplinary Hearings**

Listed below are some examples, with suggestions on how they might be handled:

**a) Failure to attend by the colleague**

If no adequate reason is given, consider whether the case can be heard in the colleague's absence with reference to Section 12 of this policy.

**b) New evidence presented at the hearing**

- (i) One of the parties presents new evidence at the start of or during the hearing. The Panel should accept new evidence only if there are compelling reasons that prevented the exchange of evidence in the normal timescale. If the evidence is admitted, depending on the complexity, then it might be necessary to allow an adjournment (to reconvene later that day or possibly another day) to allow time to read and for the other party to consider and prepare a response.
- (ii) A witness reveals a crucial piece of evidence that is not known to anyone else present. The Panel should adjourn the hearing to consider whether to admit the new evidence. If the new evidence is so significant as to affect the likely fairness of the outcome of the hearing, then the Panel may adjourn the hearing to another day to allow the Investigating Officer to extend their investigation and/or to enable the colleague to prepare their response.

## **20. Disciplinary Records**

Spent disciplinary sanctions must only be declared to a prospective employer if the reason for the sanction concerns safeguarding children. Sanctions for other reasons will not be declared to prospective employers after they are spent.

Details of allegations that are found to have been malicious should be removed from personnel records. However, for all other allegations, it is important that a clear and comprehensive

summary of the allegation, details of how the allegation was followed up and resolved, and a note of any action taken, and decisions reached, is kept on the confidential personnel file of the respective colleague, and a copy provided to them. The record can only be kept for the length of time determined by the warning, after this time the warning is spent and the record will be removed from the file.

For serious offences, the purpose of the record is to enable accurate information to be given in response to any future request for a reference, where appropriate. It will provide clarification in cases where future DBS checks reveal information from the police about an allegation that did not result in a criminal conviction and it will help to prevent unnecessary re-investigation if, as sometimes happens, an allegation re-surfaces after a period of time. The record should be retained at least until the subject of the alleged behaviour has reached normal retirement age or for a period of 10 years from the date of the allegation if that is longer.

The Information Commissioner has published guidance on employment records in its Employment Practices Code and supplementary guidance, which provides practical advice on employment retention.

## **21. Resignations and Settlement Agreements**

Paragraphs 5.8 and 5.9 of “Safeguarding Children and Safer Recruitment in Education” set out specific requirements in relation to handling allegations concerning the safety and welfare of children and young people. In summary these are:

- a) Allegations concerning the safety and welfare of children must be investigated and heard **even if the colleague has resigned**. The Trust must reach a conclusion of the investigation (for making a referral see 22.1 and 22.2) whether or not the ex-colleague co-operates in the proceedings.
- b) “Settlement Agreement” is a legal device to terminate the colleague’s contract in which an employer agrees not to pursue a disciplinary process and a colleague agrees not to pursue any legal claim against the employer. Where there are allegations concerning the safety and welfare of children, a Settlement Agreement must not be used.

## **22. Referrals to Statutory Bodies**

There are statutory duties on employers to refer individual cases to national bodies in the event of a dismissal or resignation when dismissal was a likely outcome. These are explained in sections 22.1 and 22.2.

### **22.1 Disclosure and Barring Service (DBS)**

The Safeguarding Vulnerable Groups Act (SVGA) 2006 places a duty on employers of people working with children or vulnerable adults to make a referral to the DBS in certain circumstances. This is when an employer has **dismissed or removed** a person from working with children or vulnerable adults (or would or may have if the person had not left or resigned etc.) because the person has:

1. Been cautioned or convicted for a relevant offence; or

2. Engaged in relevant conduct in relation to children and/or vulnerable adults (i.e., an action or inaction (neglect) that has harmed a child or vulnerable adult or put them at risk of harm); or
3. Satisfied the Harm Test in relation to children and/or vulnerable adults. (i.e., there has been no relevant conduct (i.e., no action or inaction) but a risk of harm to a child or vulnerable adult still exists).

Further guidance on DBS referrals can be found at:

[DBS barring referral form - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/publications/apply-for-a-dbs-barred-list-referral-form)

Once referred and having followed their process the DBS will make decisions as to whether it is appropriate for a person to be placed on a barred list preventing them from working with children, vulnerable adults or both in England, Wales and Northern Ireland.

## **22.2 Referrals for Teachers to The Teacher Regulation Agency**

The Education Act 2011 gives responsibility to the Secretary of State to regulate the teaching profession and to hold a list of teachers who have been prohibited from teaching.

The Teachers' Disciplinary (England) Regulations 2012 provide information about the arrangements. The Teacher Regulation Agency operates the arrangements on behalf of the Secretary of State.

The regulatory arrangements cover cases of serious misconduct, where it is appropriate to decide whether a teacher should be prohibited from teaching.

If a teacher has been dismissed for serious misconduct or would have been dismissed for that reason if they had not resigned, the employer must consider whether to refer the case to the Secretary of State. Referrals may also be made by the Police, the Disclosure and Barring Service (DBS), other regulators or members of the public. Before a referral is made by a member of the public, all local procedures for complaint resolution should have been exhausted. More information about making a referral can be found at:

[Report serious teacher misconduct - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/publications/report-serious-teacher-misconduct)

The regulatory arrangements apply to anyone undertaking teaching work in all Schools, in England. This includes Headteachers and their Assistants and Deputies.

## **23. Monitoring and Review**

The Trust will review the outcomes of disciplinary cases to check that the proper procedures have been followed and to identify any points that can be learned from those cases and implement any necessary changes.

The procedure will be monitored to ensure consistency of application and adherence to equalities legislation, to ensure it operates in accordance with the duties to promote equality, to eliminate discrimination and to promote good relations for all colleagues and those with protected characteristics as required under the Equality Act 2010.

When carrying out any reviews or monitoring, the organisation will ensure that individuals' personal data is handled in accordance with the Data Protection Act 2018. Records will be treated as confidential.

This policy will be reviewed every three years via the People and Pay Committee and feedback from Trade Unions.



## Appendix 1. Forms

### Colleague Disciplinary Action Appeal Form

Available from *Information Hub/Form Policies and Templates/Central Forms/HR*

## Appendix 2. Disciplinary Process Flowchart

