

## DISCIPLINE POLICY

### PURPOSE

This document sets out the disciplinary procedure to be followed by managers/headteachers when dealing with all acts of alleged misconduct within the workforce.

### INTRODUCTION

This document sets out the disciplinary procedure to be followed by managers/headteachers when dealing with all acts of alleged misconduct within the workforce.

All decisions to implement the disciplinary procedure will be made in good faith and in a genuine belief that there has been misconduct which has had an adverse effect on the Trust/school.

The employee is entitled to be accompanied by a trade union representative or work colleague at every stage

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### SCOPE

This procedure applies to all employees of the Trust and all school-based staff for whom there is no specific procedure laid down in national or local conditions of service.

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### PRINCIPLES

The Trust has a duty to manage its employees to achieve high standards of behaviour and conduct. Where these fall short the matter will be dealt with in compliance with the law and good employment practices. This procedure will ensure that the Trust/school:

- meets all relevant legal requirements regarding any disciplinary decisions it takes in relation to employees
- resolves effectively and in a timely manner wherever possible issues which affect the standards of conduct/behaviour of an individual employee
- treats employees in a fair and consistent manner in relation to conduct and disciplinary issues
- supports managers/headteachers in carrying out their responsibilities in relation to the conduct of their employees
- ensures that all employees are aware of and understand the behaviours and conduct required by the Trust/school

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### PROCESS

1. When a potential misconduct situation occurs the first step is for the manager/headteacher to make brief preliminary enquiries to assess whether further action may be required.
2. An attempt should be made to correct a situation and prevent it from getting worse through advice or informal action.

3. The manager/headteacher may hold a fact-finding meeting with the employee, as part of their preliminary enquiries, to establish the facts, before deciding how to proceed.
4. Where alleged misconduct, if established, would be regarded as gross misconduct, consideration should be given to suspending the employee from work on normal contractual pay.
5. Where police investigations, criminal charges or convictions occur the manager/headteacher should consider whether the conduct warrants disciplinary action due to any employment implications.
6. In some cases further information than that provided by the preliminary enquiries will be needed. In these cases a disciplinary investigation will need to be carried out. The employee must be told in writing of the alleged misconduct.
7. If, following the fact finding / investigation, a decision is made to progress the matter through the formal disciplinary procedure, a disciplinary meeting will be arranged at which the employee will be given the opportunity to state his/her case. The employee's representative should be consulted on the date of the meeting.
8. The employee will be given at least 10 working days' notice of the meeting and must be told, in writing,
  - details of the allegation(s),
  - that he/she is required to attend a disciplinary meeting (giving the place, date and time)
  - that he/she has the right to be accompanied by a trade union representative or work colleague.

If the allegation, if upheld, would constitute gross misconduct this should be stated in the letter

9. Within 5 working days of the formal disciplinary meeting the manager will write to the employee confirming the outcome and outlining the next step including their right of appeal against the decision. Appeals are to be lodged in writing, clearly stating the grounds for appeal, within 5 working days.
  10. Appeals will be dealt with speedily whilst still allowing the employee reasonable time to prepare their case.
  11. The outcome of the appeal meeting will be formally notified to the employee in writing within 5 working days.
  12. There is no further right of appeal.
- Should further clarification be required please contact HR.

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## **APPENDIX 1 - GUIDANCE**

### **1. INTRODUCTION**

This guidance supports the processes outlined in the Discipline procedure for managing employee misconduct.

Minor breaches of conduct will be dealt with informally by managers as part of their responsibility to establish and maintain standards of conduct. Where the matter is more serious, or the employee's conduct continues to be unacceptable, despite the manager's informal intervention, the formal Discipline Procedure will be used.

Where unacceptable performance is not due to issues of conduct e.g. health, lack of skills or qualifications, or because the job has changed in nature, the Absence and Wellbeing Procedure or Capability Procedure should be followed.

Where employees are seconded to the Trust/school from an external organisation they will be subject to the disciplinary procedure applicable to their employer.

Where Trust/school employees are seconded to an external organisation they will be subject to the Trust's Disciplinary procedure.

## **2. ADDRESSING CONDUCT ISSUES INFORMALLY AND PROMPTLY**

It is the responsibility of all employees to conduct themselves in an appropriate manner and for managers/headteachers to continuously monitor this. When a potential misconduct/gross misconduct situation occurs the first step is for the manager/headteacher (or their nominee) to make brief preliminary enquiries to assess whether further action may be required.

This may include meeting with the employee and asking him/her for a response on the matter. If a preliminary meeting is to be held with the employee, it is important to inform them that they can bring a trade union representative or work colleague to the meeting to accompany them if they so wish. If the employee confirms that they are a member of a recognised Trade Union every effort should be made to have a trade union representative present. Unavailability of the representative will not however delay the meeting.

It may be appropriate, depending on the circumstances and the nature of the misconduct, to attempt to correct a situation and prevent it from getting worse through advice or informal action, without using the Disciplinary Procedure. If so, ensure that the employee understands the reason for the meeting and that if the misconduct re-occurs formal action may be taken.

A note of any preliminary meeting should be made and kept by the manager/headteacher (or their nominee) for reference purposes. This note will form part of management's case at any subsequent investigatory interview and/or formal disciplinary meeting.

Any preliminary meeting is not an investigatory interview therefore following the preliminary investigations, if it is decided that a more thorough investigation is required then a disciplinary investigation will need to take place as soon as possible and investigatory interview with the employee concerned.

## **3. FACT FINDING**

If, following initial preliminary enquiries, a further fact-finding meeting is required, the employee concerned must be given details of the complaint or incident as far as it is known.

The employee is entitled to be accompanied by a trade union representative or work colleague. The role of this person is to act as a witness as to what is said at the meeting. The meeting is not a disciplinary meeting at this stage and must not develop into one. It will be conducted by an appropriate manager, as determined by the Trust/school.

If necessary, the fact finding should include speaking to witnesses, including clients and members of the general public.

If the allegations are in relation to the Headteacher then the matter should be discussed with HR before any further action is taken.

Before any fact-finding meeting involving pupils is undertaken, advice must be sought on the conduct of the meeting from the Trust safeguarding lead and the Local Authority District Officer (LADO) [where appropriate].

In exceptional circumstances it may be that the fact finding cannot be completed because of circumstances outside the control of the Trust/school.

If, following the fact-finding meeting, the manager concludes the matter can still be resolved informally an attempt should be made to correct a situation and prevent it from getting worse through advice or informal action. A brief note should be made and kept by the manager for reference purposes.

#### **4. PRECAUTIONARY SUSPENSION**

After the preliminary fact finding where alleged misconduct, if established, would be regarded as gross misconduct, consideration must be given whether to suspend the employee from work on normal pay. For those on zero hours contracts this will be based on 12 weeks average pay. Details of the reason for suspension must be given to the employee as soon as possible. Suspension in itself is a neutral act and a precautionary measure and not a form of disciplinary action and will only apply when other alternatives have been considered. (see appendix 3).

The manager/headteacher should inform the Local Authority Designated Officer (LADO) of any complaints involving suspected child protection cases within 24 hours.

Advice must always be sought from the HR team where suspension is a possible consideration.

#### **5. POLICE INVESTIGATIONS, CRIMINAL CHARGES OR CONVICTIONS**

An employee should not be dismissed or otherwise disciplined solely because they have been or are the subject of a police investigation or have been charged with or convicted of a criminal offence.

The question to be asked in such cases is whether the employee's conduct or conviction merits action because of its employment implications. Where it is thought the conduct warrants disciplinary action the following guidance will be followed:

- the Trust/school will investigate the facts as far as possible, come to a view about them and consider whether the conduct is sufficiently serious to warrant instituting the disciplinary procedure.
- where the conduct requires prompt attention the Trust/school will not await the outcome of the prosecution before taking fair and reasonable action
- where the police are called in, they should not be asked to conduct any investigation on behalf of the Trust/school, nor should they be present at any meeting or disciplinary meeting.

In some cases, the nature of the alleged offence may not justify disciplinary action – for example, off duty conduct which has no bearing on employment – but the employee may not be available for work because he or she is in custody or on remand. In these cases, the Trust/school will decide whether, in the light of the needs of the service, the employee's job can be held open.

Where a criminal conviction leads, for example, to the loss of a licence so that continued employment in a particular job would be illegal, the Trust/school will consider whether alternative work is appropriate and available.

Where an employee, charged with or convicted of a criminal offence, refuses or is unable to cooperate with the Trust/school's disciplinary procedure, this will not deter it from taking action. The employee will be advised in writing that unless further information is provided a disciplinary decision will be taken on the basis of the information available and could result in dismissal.

Where there is little likelihood of an employee returning to employment within a reasonable timeframe, the Trust/school may conclude that the contract of employment has been terminated through 'frustration'.

## **6. ALLEGATIONS**

Managers must be clear and specific when allegations are being made and should, throughout the disciplinary process, be consistent about the nature of the misconduct which is being investigated. New allegations that come to light during the investigatory stage can be added to the process and brought to the employee's attention in writing. If the new allegations are subsequently found to be not relevant, they should not be referred to in the investigation report. Any disciplinary sanction must be imposed only in respect of allegations that were properly investigated and brought to the employee's attention in writing as part of the proceedings

Any complaint or incident involving financial irregularity must be immediately notified to the Head of Finance and CEO before proceeding with any disciplinary procedure or action. Serious cases may also need to be reported to the police who might then conduct a criminal investigation.

Any complaint involving suspected sexual, physical or emotional abuse against children must be investigated using the Trust's Safeguarding Procedures; this may involve a joint approach with the Police. The manager/headteacher should inform the Local Authority Designated Officer (LADO) of any complaints involving suspected child protection cases within 24 hours.

## **7. DISCIPLINARY INVESTIGATION**

The employee must be told in writing of the alleged misconduct which is to be investigated.

The purpose of the investigation is to establish the facts, to ask the employee for an explanation, to determine what happened and to obtain sufficient information for management to decide what action to take i.e. formal or informal action, welfare support, implementation of one of the Trust's other policies or to take no action at all.

Not all cases will need an elaborate investigation and it will not therefore be necessary to appoint an independent investigator(s) in straightforward cases e.g. persistent lateness. In these cases, the manager/headteacher would normally investigate.

In potential gross misconduct cases a separate Investigating Officer is likely to be required. (See Appendix 2 for further guidance on investigations). Any investigation should be completed as quickly as possible, but it should be thorough and carried out in a confidential manner. The investigation should include:

- Holding an interview with the employee concerned at the earliest possible opportunity.
- Interviewing all witnesses
- Obtaining relevant evidence

Possible Outcomes of an investigation may include:

- No case to answer – no further action to be taken.
- That the issue could be dealt with informally through management words of advice (see section 2).
- Case to answer – consideration at a formal disciplinary meeting.

## **8. TRADE UNION OFFICIALS**

Normal disciplinary procedures apply in full to trade union officials. However, no formal disciplinary action should be taken against a trade union official until the circumstances of the case have been discussed with a full-time official i.e. The Regional Officer, or Convenor of the union concerned.

## **9. OVERLAPPING GRIEVANCE AND DISCIPLINARY CASES**

A grievance raised during the course of the disciplinary procedure (including a claim of harassment) will be referred to a more senior manager who will decide whether the grievance should be considered separately, or as part of the disciplinary process.

Where the employee's grievance relates to the disciplinary case it will be investigated as part of the disciplinary process and will not suspend the disciplinary procedure.

If the grievance is not linked to the disciplinary proceeding, the grievance and disciplinary can run in parallel, there is no need to suspend the disciplinary process whilst the grievance is resolved.

Grievances raised about the disciplinary proceedings will be dealt with at appeal stage if the disciplinary proceedings have been concluded and an appeal has been received

## **10. HOLDING A FORMAL DISCIPLINARY MEETING**

Where, on completion of an investigation/fact finding meeting, there are reasonable grounds to believe that there could be a case to answer the employee will be invited to attend a formal disciplinary meeting chaired by an independent manager, at an appropriate level, in accordance with the Trust Scheme of Delegation.

The employee is entitled to be accompanied by a trade union representative or work colleague.

The employee will be given at least 10 working days' notice of the meeting to allow them reasonable time to prepare their case. Employees should make every effort to attend the meeting.

At the meeting the manager should explain the allegations against the employee and go through the evidence that has been gathered. The employee should also be given a reasonable opportunity to ask questions, present evidence and call relevant witnesses. Where the manager or employee intends to call relevant witnesses, they should give advance notice that they intend to do this.

### **10.1 Organising a Formal Disciplinary Meeting**

- The disciplinary manager should notify employee in writing. This notification should contain sufficient information about the alleged misconduct and its possible consequences to enable the employee to prepare to answer the case at a disciplinary meeting as well as details of the time and venue.
- The employee can request a postponement, with the meeting to be held within five days of the original date, if their chosen representative cannot attend.

- Copies of any relevant information and witness statements should be made available to the employee at least 5 working days prior to the disciplinary meeting, or sooner if possible
- Someone who is not involved in the case should be present to take a note of the meeting
- The employee should submit any relevant papers and witness statements at least 5 working days in advance of the meeting, together with the names of any additional witnesses they wish to attend the meeting.
- Additional rooms should be available for the employee and their representative and for any witnesses
- if the employee concerned is a trade union representative the case must be discussed with a trade union full-time official.

## 10.2 Structure of the meeting

The disciplinary meeting will be conducted by an appropriate manager in accordance with the Trust Scheme of Delegation. The disciplinary meeting will be conducted as follows: -

- Introductions will take place; the purpose of the meeting will be explained, and an explanation will be given as to how the meeting will be conducted.
- The approach will be formal, but polite and the meeting will be a two-way process with the objective of ascertaining the true facts of the case.
- The allegation(s) will be outlined by the original manager/investigating officer, and the evidence presented. This will include reference to any witness statements and the calling of witnesses as required. There will then be opportunity for questions to be asked related to the evidence presented.
- The employee will be given the opportunity to state his/her case, present evidence and call witnesses. Opportunity for questions at this stage will again be given.
- The manager/investigating officer will summarise their case, followed by the employee.
- The meeting will adjourn, and a decision will be reached by disciplining manager. If necessary, the meeting may be adjourned in order to carry out further investigations. If this does occur the meeting will be reconvened as soon as possible, and the individual will be informed of the outcome of the further investigations. He/she will also be given the opportunity to comment on and/or question this.
- Following the adjournment the employee will then be recalled, will be informed of the decision and, if applicable, the penalty which is to be imposed. The employee will also be advised at this stage of his/her right of appeal and the time limit for any such appeal.
- All decisions will be confirmed, in writing, no later than 5 working days following the date of the disciplinary meeting. The letter will include (in the event of a warning being given):
  - the reason for the warning, ○ the effective time period of the warning,
  - the consequences of any further breach of discipline, ○ the right of appeal, ○ the time limit for any such appeal.

## 10.3 Absence of Individuals from Disciplinary Meetings or Appeals due to sickness

If an employee first reports sick on the day of the meeting and the employee informs the Trust/school they are unfit to attend, the meeting will usually have to be postponed. The matter

may need to be referred to Occupational Health to obtain advice on their condition/fitness. The disciplinary meeting should then be rearranged according to this information.

#### **10.4 Failure to Attend a Disciplinary Meeting**

Where an employee simply fails to attend his/her disciplinary meeting he/she should be written to and informed of the following:

- That the meeting has been rearranged for a specific later date and time.
- That if they are unable or unwilling to attend the rearranged meeting, without good cause, the meeting will proceed in their absence.
- That any written submission which the employee may wish to submit will be considered.

#### **10.5 Witnesses / Written Statements**

Witnesses may be required to attend the meeting and asked to state their evidence in front of the parties so that the employee and the manager have an opportunity to ask them questions.

In exceptional cases, however, this may be impracticable or unacceptable (e.g. in the case of children/vulnerable adults). In these circumstances the employee should be shown a copy of the witnesses' statements so that they are fully aware of what is being alleged against them.

Where evidence about an employee's alleged misconduct has been obtained in the form of written statements, either the statements themselves or a summary of their content will be given to the employee. In exceptional circumstances the Trust/school reserves the right to conceal the identity of any or all of the parties if there is a legitimate reason to do so, such as where there may be a risk to the safety of others if the identity of witnesses is disclosed. In those circumstances, consideration will be given to providing a summary of the information to the employee.

### **11. WHAT TO CONSIDER BEFORE DECIDING ON ANY DISCIPLINARY ACTION?**

When deciding whether a disciplinary penalty is appropriate and what form it should take, consideration should be given to

- Whether the rules of the Trust/school indicate what the likely penalty will be as a result of the particular misconduct
- The penalty imposed in similar cases in the past
- Whether standards of other employees are acceptable, and if this employee is being unfairly singled out
- The employee's disciplinary record (including current warnings), general work record, work experience, position and length of service
- Any mitigating circumstances which might make it appropriate to adjust the severity of the penalty
- Whether the proposed penalty is reasonable in view of all the circumstances
- Whether any training, additional support or adjustments to the work are necessary

Each case must be looked at on its own merits and any relevant circumstances taken into account. Such relevant circumstances may include health or domestic problems, provocation, justifiable ignorance of the rule or standard involved or inconsistent treatment in the past.

## 12. DISCIPLINARY PENALTIES

Other than in the case of gross misconduct, employees should not normally be dismissed for a first breach of discipline.

Where, following a disciplinary meeting the manager establishes that no misconduct has taken place; the employee will be informed that there is no case to answer and that no disciplinary action will be taken.

Where it is established that an employee has committed a disciplinary offence, depending on the seriousness of the offence, any of the following disciplinary sanctions may be taken:

### **Stage 1 – Oral Warning**

In cases of first minor breaches of discipline the employee should be given a recorded oral warning which will remain live for a period of 6 months.

### **Stage 2 – Written Warning**

In cases of repeat / further misconduct following a formal oral warning, or as a first stage for more serious offences, employees may receive a written warning which will remain live for 12 months.

### **Stage 3 – Final written warning**

Where either a more serious disciplinary offence has been committed or further minor offences have been committed by an employee following a previous warning that remains "live", the employee will receive a final written warning which will remain live for 24 months.

If a Stage 1, 2 or 3 warning is issued the manager/headteacher will:

- set out the nature of the misconduct and the change in behaviour required
- inform the employee that further warnings may be considered / may lead to their dismissal if there is further misconduct
- confirm how long the warning will remain "live"
- state that during the period the warning is live the Trust/school may rely on the warning in the event of further misconduct on the part of the employee
- state that the employee may appeal against the warning within 5 working days, and confirm who they should submit their appeal to

### **Final stage – Dismissal / Summary Dismissal or other sanction**

Where further misconduct occurs following a final written warning that remains "live" the employee may be dismissed with notice or with pay in lieu of notice.

Additionally, where, the offence involves children or is so serious as to be verging on gross misconduct, the warning shall not be automatically disregarded in accordance with the above timescales. There may be circumstances where the final written warning can never be removed, and any recurrence will lead to dismissal. In these cases, the period for which the warning may continue to be taken into account shall be decided **at the time the warning is issued**.

A decision to dismiss should not be based on an expired warning but the fact that there has been a previous warning that has expired may explain why a lesser sanction may not be appropriate.

There may also be occasions when, having taken into account all appropriate circumstances, it is decided that another sanction is appropriate. This may include:

- Transfer
- Demotion/Loss of seniority

The above sanctions may be imposed in conjunction with other forms of disciplinary action, or as an alternative to dismissal.

The employee may appeal against any sanction imposed on them within 5 working days.

### **13. GROSS MISCONDUCT**

Some acts, termed gross misconduct, are so serious in themselves or have such serious consequences that they may call for dismissal without notice for a first offence. The following examples of gross misconduct are not exhaustive or exclusive

- Theft or fraud
- Deliberate falsification of record
- Fighting at work, physical violence
- Physical conduct/inappropriate physical contact
- Assault on/abuse of another person
- Deliberate serious damage to Trust/school property
- Deliberately accessing internet sites containing pornographic, offensive or obscene material
- Serious/persistent incapability through alcohol or illegal drugs
- Negligence causing/with the potential to cause unacceptable loss, damage or injury
- Serious infringement of health and safety rules
- Conduct prejudicial to the Trust/school's interests or which may damage or prejudice the Trust/school's reputation or integrity or bring the Trust/school into serious disrepute
- Discrimination, harassment or bullying directed towards other employees, students or members of the public
- Serious misuse of the Trust/school's property or name
- Serious breach of confidence (e.g. serious breach of Data Protection, or the Trust/school's Code of Practice on Computer Security, or the Trust/school's Code of Conduct or appropriate Professional Codes)
- Conduct outside of work which makes the employee unsuitable for their type of work or is calculated or likely to destroy the Trust/school's trust and confidence in the employee taking into account the nature of the offence, the nature of the work to be done, the extent to which it involves contact with employees, partner agencies and the general public, and the status of the employee
- For those employees working with children, failing to comply with any obligation to inform or disclose any matter to your employer which may lead to a disqualification from you working with children.

If an employee is dismissed for gross misconduct managers have a statutory duty to refer to the Disclosure and Barring Service and/or the relevant Professional Body.

## 14. APPEALS

All employees have the right of appeal against any disciplinary sanction imposed on them. Appeals will be held in accordance with the Trust's Scheme of Delegation.

The appeal will be heard by an impartial appropriate senior manager / Trust Board Appeals panel, who will have the authority to overturn the original decision. In the case of a decision by the CEO the appeal shall be to an Appeals Panel of the Trust Board

Appeals should be lodged in writing within 5 working days of being informed of the disciplinary sanction. When lodging an appeal the employee should state the grounds upon which they seek to appeal. These may be:

- There was a defect in the procedure
- Not all evidence was considered
- The sanction/decision was too severe
- New evidence has come to light since the last meeting

In most cases an appeal hearing will take place as a review, however, exceptionally, in the event that the grounds of appeal relate to a defect in the original procedure/disciplinary meeting the Appeal Manager/CEO/Appeals Panel may decide that a rehearing should be held in place of an appeal hearing. The decision whether to hold an appeal review hearing or a rehearing would be full and final and there would be no further appeal process.

The employee will be informed whether the appeal will be a review or a rehearing, based on the grounds of their appeal, to enable to them to prepare.

### 14.1 Appeal Hearing

An appeal hearing will usually be conducted as a review. The Appeal Manager/CEO/Appeals Panel will look at the fairness of the decision, to determine if the decision was reasonable based on the evidence available at the original disciplinary meeting. The employee will state their case and the hearing panel will respond to the points raised. The whole case is not reheard, only the points which are pertinent to the appeal e.g. the sanction was too harsh.

New evidence may be considered in the Appeal Hearing providing that it has been included in the documents submitted before the hearing. Where new evidence is submitted the employee should clearly state what the evidence is and why it is believed that it would alter the original decision.

In an appeal hearing the person who dealt with the misconduct at the formal meeting will present the case to the CEO/Appeals Panel. They may decide to call the investigating officer as a witness.

Appeals will be dealt with speedily whilst still allowing the employee reasonable time to prepare their case. Employees should submit their statement of case and any supporting documents not less than 5 working days in advance of the appeal.

The Appeal Manager/CEO /appeals panel will consider any representations made by the employee, the employee's representative or work colleague and those of the manager who imposed the original disciplinary sanction.

The Appeal Manager/CEO/appeals panel must decide, on the basis of both sets of representations, together with any subsequent facts that may have come to light, whether or not to uphold the disciplinary sanction.

## 14.2 Structure of the Appeal Hearing

The Appeal will be conducted as follows: -

- Introductions will take place; the purpose of the meeting will be explained, and an explanation will be given as to how the meeting will be conducted.
- The approach will be formal, but polite and the meeting will be a two-way process with the objective of ascertaining the true facts of the case.
- The employee will be given the opportunity to state his/her case. This will include presenting any evidence, reference to any witness statements and the calling of witnesses as required. There will then be the opportunity for questions to be asked related to the evidence presented.
- The disciplinary manager will then respond to the points raised, present evidence and call witnesses. Opportunity for questions at this stage will again be given.
- Both parties will be given the opportunity to summarise their case.
- The meeting will adjourn, and a decision will be reached by the Appeal Manager/CEO / Appeals Panel.
- Following the adjournment the employee will be recalled and will be informed of the decision.
- The decision will be confirmed in writing within 5 working days.

There is no further right of appeal.

## 14.3 Rehearing

For a rehearing the Appeal Manager/CEO/Appeals Panel will repeat the process for a disciplinary meeting in accordance with the disciplinary procedure and come to their own decision. If an investigation has not already been carried out, the Appeal Manager/CEO /Appeals Panel should consider whether one is necessary.

## 14.4 Potential outcomes

The outcome will be either:

- The employee's appeal is upheld; in this case the sanction may be removed or replaced with a lesser penalty, such as demotion or another form of warning. Any records relating to the matter on which the appeal has been successful will be removed from the employee's records.
- The employee's appeal is not upheld, and the original decision will stand. The appeal must not result in any increase in penalty

## 15. KEEPING WRITTEN RECORDS

Notes should be taken of all key points raised during disciplinary meetings and appeals and a copy given to the employee. In certain circumstances (for example to protect a witness) some information may be withheld. This information may be required at an Employment Tribunal.

Managers/headteachers are advised to keep a record of all disciplinary cases. This record should include:

- the complaint against the employee
- the employee's defence

- findings made and actions taken
- the reason for actions taken
- whether an appeal was lodged
- the outcome of the appeal
- any grievances raised during the disciplinary procedure
- any subsequent developments
- notes of any formal meetings

These records are to be kept confidential and retained in accordance with this procedure and the General Data Protection Regulations 2016.

## **16. EQUALITY**

Managers/headteachers should be aware of their personal responsibility in ensuring that discrimination in any form does not impact on their handling of a case of misconduct.

Managers/headteachers should consider providing flexibility in arranging the date and venue of a meeting or appeal.

Reasonable adjustment may be needed for a worker with a disability (and possibly for their companion if they are disabled) e.g. the provision of a support worker or advocate with knowledge of the disability and its effects.

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## **APPENDIX 2 - INVESTIGATIONS**

The Trust/school is committed to ensuring that where necessary, disciplinary investigations are carried out without delay.

The manager/headteacher should inform the Local Authority Designated Officer (LADO) of any complaints involving suspected child protection cases within 24 hours.

In most cases preliminary / fact finding enquiries will be carried out by the manager/headteacher of the employee who is the subject of disciplinary action. They will gather all relevant evidence and prepare a report which is clear and contains a summary of their findings based on the evidence seen. The report must contain an indication of whether there is any evidence to support the allegation.

The manager/headteacher must give their enquiries the highest priority and carry them out without undue delay whilst ensuring that the facts are investigated thoroughly. Whilst there is a need to ensure that the facts of a case are thoroughly investigated, there are obvious benefits for the employee and for managers/headteachers if disciplinary issues are dealt with quickly and effectively.

### **1. Appointment of an Investigating Officer**

In some cases the manager/headteacher may consider it necessary to appoint an independent investigating officer (IO) who has not been connected in any way with the case. The IO may be a manager of sufficient seniority to reflect the importance of the matter and to ensure credibility or they may be external, e.g. an external HR Consultant. It is not the IO's responsibility to come to a final conclusion.

## 2. Carrying out an investigation

The employee/witnesses are required to co-operate with the investigation and any subsequent meeting. They have a duty to:

- i. Meet with the investigator
- ii. Put forward their own account and explanation of the events at issue
- iii. Answer the investigator's questions about the events at issue

The investigation should include:

- Holding a preliminary interview with the employee concerned at the earliest possible opportunity.
- Interviewing all witnesses, including clients and members of the public and obtaining appropriate statements. It is important that relevant information such as dates, times, witnesses and other basic facts are incorporated into the statement. The statement should then be signed and dated by the witness and the witness informed that their statement could be used at any subsequent disciplinary meeting, appeal or Employment Tribunal.
- Obtaining relevant documentary evidence e.g.: time sheets, notes of meetings, photographs, policy documents, relevant memoranda etc.

## 3. Conducting the Investigation Interview(s):

The manager / IO should:

- Ensure that the employee /witness has been given reasonable written notice of the meeting and that they are aware of the reason for the meeting
- Ensure the meeting place is appropriate – comfortable, private, free from interruptions. It may be useful for the interview to take place at a 'neutral' location
- Consider making any reasonable adjustments as necessary
- Consider using a note taker
- Explain the purpose of the interview
- Ensure the employee has had the opportunity to be represented
- Ensure that the employee/witness understands the purpose of the interview
- Give the opportunity for the employee to describe their version of events
- Ask clarification questions and summarise events
- Ask the employee if they can identify any witnesses or documentary evidence
- Make the employee aware of support available to them
- If it becomes apparent during the course of investigation that a person is at risk e.g. victimisation or intimidation, inform the appropriate Manager immediately
- If any losses involving cash, property, store or other financial or potentially fraudulent matters are suspected or alleged during the course of the investigation, inform the Manager/headteacher and Head of Finance immediately

Following the investigation interviews a statement should be prepared for the employee/witness to agree. The statement is not intended to be a verbatim record. Amendments can be made to the statement by mutual agreement, and it may be possible for reasonable additions to be added in after the investigatory interview, where they serve the purpose of clarifying events. Once agreed, the statement shall then be included in the Investigation Report. Employees/witnesses will be required to sign copies of their statements. Email confirmations of accuracy will suffice. If there is a need to go back to the employee to clarify events or ask further questions after the interview has

ended, this can be via phone or email if appropriate, as long as a written summary is agreed and included with the Investigation Report.

Recording equipment is not permitted in investigation interviews.

An investigation report should be prepared summarising the findings of the investigation in order for a decision to be made on the appropriate next stages of the process.

#### **4. Attendance at Meetings**

The Investigating Officer may be called to attend disciplinary meetings to present their report and to answer questions on the report. The Investigating Officer does not form any part of the decisionmaking process

#### **5. Maintaining Contact**

The Manager/headteacher must keep the employee informed of progress on the case. If the investigation is likely to be delayed the Manager/headteacher must make the employee aware as soon as possible.

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### **APPENDIX 3 – SUSPENSION**

When suspending an employee, he/she should be given the opportunity to be accompanied by a trade union representative or work colleague at all meetings. However, the non-availability of such a person should not delay the process.

If the employee requests to be accompanied it must be made clear to the union representative or work colleague that he/she should not take an active part in the suspension interview, they are there to act as a witness.

The employee should be told that a serious complaint has been received/incident reported that could potentially lead to an allegation of gross misconduct. A brief outline of the complaint or incident should be given to the employee to allow them the opportunity to respond. Once the employee has given a response the interview should be adjourned for the response to be considered.

If a satisfactory explanation is not given at the interview the employee may be suspended, pending full investigation however before deciding to suspend the manager should consider whether it is possible to manage the potential risks to pupils, other employees, evidence or the Trust/school in any way other than suspension e.g. through temporary redeployment or a temporary amendment to duties.

It should be made clear to the employee that as a precautionary measure under the Disciplinary Procedure, suspension is necessary, why, what alternatives to suspension have been considered and any restrictions which will be in place for the period of suspension. The manager should stress that suspension is not a form of disciplinary action but should also explain that any breaching of the conditions of the suspension as outlined in the suspension letter will be dealt with immediately and as a serious matter.

If the employee is absent from work due to sickness it may be appropriate in certain circumstances to delay the suspension until the employee is fit enough to return to work.

**The decision to suspend must only be taken by the appropriate senior manager/headteacher following advice from HR as appropriate.**

In all cases of suspension all Trust/school property, keys, fobs, mobiles, access to ICT equipment should be returned and ICT accounts suspended. Supervised access can be arranged via the line manager/headteacher if required.

Employees who are suspended should be offered appropriate support and reminded of the employee helpline. Contact should be maintained with them through their line manager/headteacher or through a designated support officer. Suspension should be kept under regular review, a minimum of once per month is recommended.

Any employee who is signed off as sick during a period of suspension will have their suspension rescinded until such time as they become fit for work.

Consideration should be given to any information which should be provided to colleagues/parents/service users to explain the absence of the individual. It is important that a need-to-know approach is adopted when carrying out this process in order to maintain confidentiality. A suggested approach to this would be to bring the team together and simply inform them that the employee is absent from work at present and the arrangements that may be put in place to cover their work. They should also be informed that when asked by parents/service users about the employees' absence to relay the same information.

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