



Transform Trust

DISCIPLINARY PROCEDURE

April 2021

Introduction

This policy applies to all Transform Trust staff. It does not apply to casual workers, consultants, agency workers or any other worker who is not an employee of the school and / or Trust.

This procedure is incorporated into an individual employee's contract of employment.

All Local Governing Bodies must adopt this policy and no other variations are permitted.

References to the governing body should be taken to refer to the entity that is responsible for exercising governance functions for the school, which in the case of Transform Trust may be the Trust Board. Likewise references to governors should be taken to mean whoever is responsible for fulfilling governance functions.

Principles

A disciplinary procedure is the means by which rules are observed and standards are maintained. The procedure should be used primarily to help and encourage employees to improve rather than just as a way of imposing punishment. It provides a method of dealing with any apparent shortcomings in conduct or performance and can help an employee to become effective again. The procedure should be fair, effective, and consistently applied. An employee should be given honest and timely feedback and concerns should not be allowed to fester. Managers should raise any issues of concern as soon as possible, bringing to the employee's attention the improvements required and maintaining records at all stages.

It may not always be possible to deal with issues of concern as part of the 'normal' management process and sometimes conduct or behaviours may be so unsatisfactory that they have to be treated as disciplinary matters. In these circumstances, this procedure will apply.

Any allegations of misconduct involving the physical, emotional or sexual abuse of a pupil must be dealt with in line with the Disciplinary Procedure – Staff facing Allegations of Abuse.

This procedure does not apply to employees still in their probationary period. Management of issues will be dealt with under probationary procedures unless the

alleged failure constitutes gross misconduct in which case this policy will apply.

Roles and Responsibilities

The power to consider employees' conduct and warn them with regard to future conduct has been delegated to the Governing Body / Headteacher in collaboration with the Chief Executive Officer. In cases of dismissal, the CEO has this power. The Headteacher or Directors of the Trust will appoint the appropriate manager to investigate alleged breaches of discipline. In some circumstances the Headteacher may undertake the role of investigating officer. In such cases the matter will then be heard by the CEO, their appointed representative or a panel of governors comprising of between one and three governors.

Disciplinary matters concerning the Headteacher or the CEO will be managed in the case of the Headteacher by the CEO or their appointed representative and in the case of the CEO by the Chair of Directors of the Trust or their appointed representative.

Across the Trust, where there are insufficient governors who can participate in a disciplinary panel committee at their own school, or where the matter is considerably complex, governors from other Trust schools can be used to make up disciplinary panels. This will not impact on the validity of the decision made.

The responsibility for consideration of suspension must only be undertaken by the Headteacher, ensuring the Chair is informed, following advice from HR Director of the Trust and in consultation with the CEO.

Headteacher's and Deputy Headteacher's may only be suspended by the CEO of the Trust alongside the Chair if possible. In the absence of the CEO, a member of the Trust Executive Team will assume this responsibility.

Where there are concerns regarding the conduct of the head teacher, the Chair of the Governing Body should contact the HR Director of the Trust for guidance.

2.1 Investigating Officer

The investigating officer will be responsible for conducting the investigation and presenting the findings to the head teacher and/or disciplinary panel. The head teacher can only be the investigating officer, therefore, in circumstances where they are not

required to make any decisions about a potential staff misconduct.

Where the disciplinary decision is delegated to the head teacher, as part of the Disciplinary Panel, another appropriate member of the leadership team should take on the role of Investigating Officer. In certain cases, the services of an external investigator may be used. This does not impact on the validity of the investigation report. There is usually one lead Investigating Officer appointed, however in certain cases there may be more than one person appointed. Advice should be sought from the Transform HR Team on the necessity and relevance of using an external investigator before any decision is made.

The role of the head teacher includes consideration of the sensitivity, complexity of the situation and the welfare of the employee involved.

When an employee is notified about formal procedures/dates of hearings they should be informed at an appropriate time to ensure they have the opportunity to contact their union representative or other relevant person for support. It is advised that Head teachers do this, wherever possible, towards the end of the day and that any confirmation letters are sent during the working week to avoid notifications arriving on a weekend or during the school holidays.

Head teachers should avoid sending letters in the last three days of a term or half-term. Where this is unavoidable because of procedural timescales heads are advised to offer to alert the trade union representative that a letter is being sent and confirm the content of that letter, to enable the trade union representative to contact the employee if necessary.

2.2 Appeal Panel

All appeals against dismissal or other disciplinary outcomes must be heard by an Appeal Panel. This should consist of ideally three governors who have had no previous involvement in the case.

2.4 Note Takers

Notes should be taken at all meetings. It is the schools' responsibility to make these arrangements and the school will need to arrange a note taker. The Note Taker must understand the confidential nature of the meetings. Notes are not required to be a

verbatim account but are a detailed record of the content and decision of the meeting. It is the school's responsibility to ensure that notes from meetings are provided to those who were present. This does not prevent the individual or their representative from making their own notes, although the employee is not able to bring an additional note taker to meetings. Meetings are not to be recorded under any circumstances.

2.5 Trade union and other representatives

During the process the employee will have the right to be accompanied or represented by one person which could be a trade union official or colleague. The role of the representative is to support the individual and to provide advice, guidance and representation where appropriate. The right to be accompanied and the right to be represented are different.

- The right to be accompanied means that the employee may bring a trade union official/representative or colleague with them to support them at meetings. The individual employee must represent themselves and should answer and ask any questions themselves. They may wish to discuss their answers with their trade union representative or colleague before providing them.
- The right to be represented means that the employee may ask their trade union representative or colleague to speak on their behalf. This could include answering and asking questions, or presenting all or part of the case at any hearing.

Training

The Trust will actively encourage and offer training to head teachers and other relevant senior leaders / governors to enable understanding in the application of these procedures. The head teacher should ensure, in conjunction with the chair of Governors and the Trust, that all governors understand these procedures and their role in making disciplinary decisions.

Preliminary considerations

Before instigating disciplinary proceedings, consideration will first be given about whether or not formal action is in fact required. It may be more appropriate to resolve the matter through informal discussions with the employee concerned. Cases of minor misconduct or unsatisfactory performance are usually best dealt

with informally. A quiet word is often all that is required to improve an employee's conduct or performance. In some cases, additional training, coaching and advice may be what is needed. If informal action does not bring about an improvement, or the misconduct or unsatisfactory performance is considered too serious to be classed as minor, a clear signal of the dissatisfaction could be made by taking formal action.

3. Other Considerations

3.1 Serious Misconduct

Alleged serious misconduct must be notified, as a matter of urgency, to the HR Director who will offer immediate advice. Where the allegations relate to a possible Child Protection issue, the head teacher or chair of governors (if the complaint is against the head teacher) should inform the HR Director of the Trust and seek advice from the LADO who will undertake any necessary liaison with the police and other agencies as appropriate.

3.2 Safeguarding Children and Young People

Any allegations of misconduct involving abuse of trust or the physical or sexual abuse of a child by an employee must be dealt with in line with Part 2 of this procedure – managing allegations against staff.

Criminal Offences

An employee should not face disciplinary action solely because they have been charged with or convicted of a criminal offence. The question to be addressed in such circumstances is whether the conduct that has led to such charges or conviction warrants disciplinary action because of its employment implications. In such circumstances, the facts should be investigated and, if disciplinary action is considered appropriate, the procedures outlined in this document should be followed. If it becomes known to the senior management of a school that the police are involved in a case involving an employee, the Trust HR Team should be advised straight away.

In cases involving criminal charges or convictions, if sufficient evidence is not available to form a reasonable view on whether or not to hold a disciplinary hearing, advice should be sought from the HR Team on whether action should be deferred until further

enquiries have been made or the matter settled by a court.

Where school employees are arrested, cautioned or charged with any offence by the Police they must be aware that their employer must be notified immediately.

3.4 Mandatory duty to report known cases of female genital mutilation (FGM)

Teachers are under a mandatory duty to report known cases of FGM in under 18's to the police. Schools must consider any breach of the duty in accordance with this disciplinary procedure.

3.5 Disciplinary action against a Trade Union Official

Disciplinary action against an employee who is a trade union official may lead to difficulties if it is seen as an attack on the union's function. Although normal disciplinary standards will apply to a trade union representative's conduct as an employee, no disciplinary action should be taken following the investigation until the circumstances of the case have been discussed confidentially and with the employee's knowledge, with a senior trade union representative or a full-time officer of the trade union.

3.6 Managing the Media and other School communications

Some potential disciplinary circumstances in school may require the head teacher or Chair of Governors to communicate directly with staff, parents, governors and/or the local or national media. This requires extreme sensitivity and advice should be sought from the Trust Executive Team prior to making any verbal or written statements.

4. Suspension

A period of suspension may be considered necessary in some cases and this will be on full pay. This is a neutral act and will not prejudice the outcome of the process.

Only the Headteacher or Chair of Governing Body can suspend an employee. In all cases where suspension is being considered (including the suspension of the Headteacher) advice should be sought from the Trust HR team.

Wherever possible, the employee will be informed of the decision to suspend in a face-

to-face meeting. This will then be confirmed in writing by the Headteacher/Governor, detailing the arrangements for the period of suspension, including any relevant safeguarding considerations.

At the suspension meeting the person holding the meeting will:

- a) Explain the reasons for the decision based on the evidence known up to this point.
- b) Explain that suspension is not in itself a disciplinary sanction and does not indicate or presume the outcome of any disciplinary process.
- c) Request that the employee returns school property immediately including computer equipment/documents/mobile phone/keys as appropriate. The employee may need supervised time to locate and take home personal property.
- d) Instructed that accessing school e-mail accounts and school related information is not permitted. Passwords of accounts do not need to be changed. It is an expectation the individual fulfils the instruction not to undertake any school related activity.
- e) Acknowledge and take into account the emotional impact of the suspension process and ask the employee what support is required. The school may need to consider a referral to the counselling service or occupational health. In all cases the school should identify a contact person in school who will be expected to regularly update the employee (suggested weekly calls are made), and where necessary their representative or colleague on progress, future actions and timescales. This will usually be the head teacher or another suitably appropriate person unless they are the investigating officer.
- f) Suspension is not a disciplinary sanction in itself, therefore the employee has no right of appeal against the decision.

The suspension should be kept under regular review, initially this will be after four weeks and, thereafter, should circumstances change.

Frustration of the disciplinary procedure

Other procedures must not be used to frustrate the action already being taken under these disciplinary procedures, for example, by the employee raising a grievance or claiming harassment. It is likely that it will be appropriate to deal with the grievance as part of the original (in this case, disciplinary) procedure. Where the grievance is

unrelated to the original procedure the two procedures can run in parallel. However, there may be circumstances where there are grounds to support an employee's belief that other procedures are relevant to disciplinary procedures.

In such cases, the aggrieved employee should specify the grounds for their complaint so that the matter can be urgently investigated. This does not necessarily mean that during such an investigation, the original procedures need to be suspended or implementation delayed pending the outcome of the investigation.

4. Establishing the Facts

Investigating Alleged Misconduct

When allegations of misconduct are made, an appropriate person should be appointed to investigate the allegations - the "investigating officer". This may be the head teacher. However, the head teacher may nominate another senior member of the school staff to investigate the allegations. As a general rule, the investigating officer will present the case at any subsequent disciplinary or appeal hearing.

Any allegation of misconduct should be dealt with as a matter of urgency and no disciplinary action taken until the case has been fully investigated.

4.1 Conducting a Preliminary Investigation and Initial Meeting

The purpose of the preliminary investigation and initial meeting with the employee is to try to establish the facts and gather enough information about what has happened to enable a decision to be made about what course of action to take next.

Depending on the nature of the allegation it may be necessary for the head teacher to gather information from other sources or witnesses prior to meeting with the employee. This should not unnecessarily delay meeting with the employee. Any witnesses providing statements as part of the preliminary investigation should sign and date their statements and should be advised that they may be required to support their statements in person at any subsequent disciplinary hearing or professional conduct hearing (i.e. TRA) if required.

At the earliest practical opportunity, the head teacher should meet with the employee to let them know what has been alleged. The head should also advise the employee to

contact their trade union representative or other colleague for support and advice. The employee may request that their trade union or colleague accompany them to this initial meeting if they are immediately available. This meeting should not be postponed if the employee's chosen person is not available. The head teacher / nominated alternative should give the employee an opportunity to make an immediate response only if they wish to do so. It may be appropriate to have an adjournment to allow the employee to think over the allegations or if accompanied to discuss the allegations with them. The employee should also be informed that the next stage may involve a formal investigation and they should be directed to the school's disciplinary procedure for further information.

Notes of the meeting should be made and a copy provided to the employee for them to review and sign.

The head teacher should then consider all of the information gathered and the responses provided by the employee to determine the next course of action. Possible outcomes of this initial investigation and meeting include not taking any further action, particularly if the allegations are malicious; proceeding to a disciplinary investigatory meeting or suspension of the employee (see guidance on [suspension of an employee at section 4 above](#)).

The head teacher is strongly advised to seek immediate advice from the HR Team if considering proceeding to a formal investigatory meeting or suspending an employee, so that the employee can be informed of the decision as soon as possible.

Depending on the nature of the allegations a preliminary investigation and initial meeting may not be necessary and the head teacher may decide it is appropriate to proceed straight to a disciplinary investigatory meeting. In these circumstances preparatory advice should be sought from the HR Team. Suspension may also need to be potentially considered and planned for at this point.

5. Managing conduct short of formal action

As identified in the preliminary considerations section above, where the facts point to a less serious shortfall in conduct, the Headteacher/Governor may consider managing an improvement in the employee's conduct outside of the formal stage. Advice from the HR Team should be taken with regard to the appropriateness of this approach. Informal action will be considered where appropriate to resolve problems. As a general rule

before the formal disciplinary process is invoked, and depending on the nature of the unsatisfactory conduct, concern about the work of an employee will be expressed in the normal course of supervision. Appropriate time for improvement should be allowed and, as appropriate, guidance, supervision and training provided. It is recommended that the employee be allowed access to support from a union/professional association representative, where appropriate during the informal action.

The Headteacher/Governor should meet with the employee to:

- Inform them that there is an unacceptable shortfall in their conduct;
- Give them the opportunity to explain matters from their perspective;
- Make clear the impact that their shortfall in conduct has had; for example, in relation to colleagues, the business, the school's reputation
- Any criticism should be constructive, with the emphasis being on finding ways for the employee to improve and for the improvement to be sustained.
- It is a 2-way discussion and the Headteacher should listen to any explanation put forward by the employee.

The Headteacher/Governor should set out the required improvement and any necessary support measures for achieving and sustaining this. Copies of relevant school policies and professional standards should be provided to the employee. It should also be made clear that a failure to improve their conduct or a repeat in the future, will result in the instigation of the formal procedure.

A brief note of the Informal Intervention and Guidance discussion, along with the details of action taken, should be kept and placed on the employee's personal file. While not an agreed document, a copy of the file note should be sent to the individual for information. There is no set time for the note to remain on file but it should cease to be taken into account after 12 months has passed, if further Informal Management intervention is required. (It is good practice to adopt a schedule for the review of personal files with staff in order to identify any outdated and irrelevant items.)

6. Conducting the Disciplinary Investigation

If, following the preliminary investigation, the decision is taken to initiate the formal disciplinary process there will have to be an investigation undertaken within this policy.

6.1 Interviewing and obtaining evidence from witnesses

If a disciplinary investigation is required, witness statements obtained as part of an initial investigation should be examined and a decision taken as to whether the witness should be re interviewed again to check the facts. If the witness up to this point has only submitted a written statement they must be interviewed as part of the disciplinary policy at this stage. Interviews with and obtaining evidence from witnesses should be completed before interviewing the employee against whom allegation are made.

At this stage further consideration may need to be given as to whether or not the employee should be suspended.

6.2 Interviewing and obtaining evidence from the employee

A disciplinary investigatory meeting should be arranged which needs to be confirmed in writing to the employee giving 5 working days' notice of that meeting and informing them of their right to be accompanied by a trade union representative or colleague and has no right of representation at this stage of the process. The meeting will require a note taker. The letter should also confirm the nature of the allegations/investigation. This should be on the clear understanding that the employee is being accompanied and not represented as the investigating officer will need to ask questions of the employee at the meeting and will expect answers from them.

At the meeting the investigating officer will make clear to the employee exactly what misconduct is being alleged. They must also advise the employee that the matter may result in a formal disciplinary hearing at which meeting they may be represented.

6.3 Disciplinary Interviews – General

Investigation interviews with witnesses and the alleged offender should be carefully prepared in advance. This requires providing advance notice, making suitable arrangements, preparing documentation and questions (using the evidence available so far) and arranging for a note taker.

It should be acknowledged that interviewing the alleged offender and any other relevant witnesses as part of a disciplinary process may be a stressful process for all parties. For this reason, the alleged offender should be strongly advised to contact their recognised trade union or colleague for support and to be accompanied by them at all meetings. At the beginning of an investigatory meeting, the investigating officer should explain the purpose of the meeting, and confirm that, as far as possible, confidentiality will be

maintained. The purpose and process of the interview should also be explained. When interviewing the alleged offender, the investigating officer should state precisely what the complaint is, outline the case briefly and ask detailed questions based on the evidence available so far in order to establish the facts.

The main purpose of the investigation interviews is to ask detailed questions of witnesses and the alleged offender, listen carefully, and carefully record what is being said. Facts obtained from other sources/witnesses should be checked and clarified for consistency. When interviewing witnesses, it is not necessary to state all the facts of the case, only those on which the witness has something relevant to say. For all such interviews, the tone adopted by the investigating officer should not be accusatory. A list of open questions should have been prepared prior to the interview, which should be followed up with prompts as necessary, e.g. *'And what happened after that?', 'I'm not quite sure what you meant when you said'*. The questions should be used to clarify the facts and to check that what has been said is understood by all.

The investigating officer should ensure fairness to both parties in their questioning, which may need, at times, to be direct and probing in an attempt to establish the facts. Listening attentively and being sensitive to silence can be a constructive way of encouraging the interviewee to be more forthcoming. If the interviewee becomes emotionally distressed during the interview a short break should be suggested to allow them to compose themselves before continuing.

At the conclusion of each interview the investigating officer should acknowledge, where necessary, that the process may have been difficult and thank the interviewees for their time and contribution. All parties, including any witnesses, should be told what will happen next and the likely timescales. They should also be told to maintain confidentiality and, therefore, not to discuss the complaint with other parties or work colleagues, other than those providing support as agreed. After the interviews, a witness statement should be prepared based on the signed notes, and sent to each party under confidential cover to check, sign and date, verifying that it is an acceptable and accurate version of the interview. If the individuals have signed the notes during the interview, this can also be used as a verified statement. This should be confirmed as part of the investigation interview.

All records of meetings with the employee will be made available to them and their trade union representative or colleague.

Unlike a Court of Law, the disciplinary investigation and any subsequent disciplinary hearing does not need to establish guilt on the basis of “beyond reasonable doubt” but on the lower test of “the balance of probabilities” i.e. *“Is there a reasonable suspicion amounting to a belief in the guilt of the employee of the alleged complaint and are there reasonable grounds for that belief?”*

7. Disciplinary Responses

After establishing the facts through the investigation process, the head teacher or investigating officer will need to make a decision on how the case proceeds. Either way, the employee and their representative/colleague should be informed at this stage.

The investigating officer or head teacher may consider that there is no need to resort to the formal procedure and that it is sufficient to manage the outcome through discussion with the employee concerned in a counselling or non-formal verbal instruction capacity.

In some disciplinary cases, a verbal management instruction, may achieve the desired outcome without recourse to the formal procedures. Other factors to consider may include: -

- any circumstances outside of the control of the employee which may have been a contributory factor
- personal difficulties or health issues which may have affected the employee’s judgement and/or behaviour
- lack of clear procedures, policies or guidance, support and supervision which may have contributed to the situation
- the level of responsibility and/or experience of the employee involved.
- capability issues which need to be addressed separately
- whether the misconduct represents an isolated incident or follows previous incidents which have been addressed with this employee
- the level of seriousness of the offence
- any other mitigating circumstances relevant to the situation
- the School employee Code of conduct and other appropriate professional standards

8. Formal Disciplinary Action

Following the investigation, if the facts indicate that formal disciplinary action should be

taken, the employee and their trade union representative/colleague should be informed at this stage. The employee should be told that the investigation is completed and the matter will be referred to a disciplinary panel. A view should be formed on whether or not the conduct is severe enough to warrant dismissal on the grounds of gross misconduct or because the offence follows a previous disciplinary warning which has not been “spent”. In certain circumstances the governing body panel may include the head teacher providing that they are not the investigating officer and have had no previous involvement with the case. Whichever course of action is pursued, a representative from Trust HR will provide advice at the disciplinary hearing. In considering the evidence obtained at any stage it is important to note that the standard of proof in disciplinary procedures is “the balance of probability”.

Where the conduct of a head teacher is under consideration and some form of minor warning is felt to be appropriate, the CEO and / or the Chair of the Governing Body can make this decision, again advised by the Trust HR team. In more serious cases a panel of governors should be convened for the formal disciplinary hearing.

9. Disciplinary Hearing

In cases of misconduct, it is common practice for the Headteacher to exercise their delegated responsibility for managing the disciplinary process and decision making. However, Transform Trust consider a panel should make any decisions relating to conduct and therefore a Headteacher will make these decisions alongside one or more governors.

In cases of gross misconduct which may result in dismissal, the case should be heard by a panel, chaired by a proficient governor.

In gross misconduct cases, it is recommended that the following arrangements are observed:-

- The panel will be impartial, chaired by a proficient governor and supported by ideally two other governors. A panel will proceed with 2 governors where it is not possible to continue with 3.
- Where there are insufficient governors available within that school governing body, the Trust may be called upon for support and will involve governors from another school across the Trust.

For both misconduct and gross misconduct, a member of the Trust’s HR Team will

support at the hearing stage of the process.

The Chair of the panel will write to the employee giving 10 working days' notice to attend a disciplinary hearing. The notification will include:

- The purpose of the hearing;
- The allegation(s) against them;
- Copies of any reports and/or documentary evidence relating to the allegation(s);
- The right to be accompanied by a trade union representative or work colleague;
- Details of what to do if the employee or their companion cannot make the hearing (see below);
- The details of any witnesses to be called to attend the hearing by the panel;
- The process for letting the Chair know of any witnesses that they may wish to attend the hearing to substantiate the facts – character witnesses will not be permitted;
- Clarity around the maximum sanction possible as an outcome.

The employee has a right to be accompanied by a trade union representative or work colleague. If the employee's preferred companion cannot attend the hearing on the date provided, the hearing must be postponed. The employee has a duty to propose an alternative time within 5 working days of the original date and, providing this is reasonable, the hearing will be re-arranged for this time or another mutually agreed date.

If the companion remains unavailable to attend, the employee will be expected to attend alone or to arrange for another companion. Alternatively, the employee may be offered the opportunity to submit a written submission, or any additional evidence, to the panel or to their chosen companion, who may present their case on their behalf. If the employee fails to attend without good reason, or is unable to do so (for example, for health reasons), the panel may have to take a decision in their absence, based on the available evidence.

The Chair will conduct the hearing in accordance with Appendix 1 – Order of Proceedings for Disciplinary Hearings.

All those involved in the process are expected to maintain confidentiality and should be

instructed that they must not discuss the case with anyone, outside the hearing. Additionally, all documentation relating to the case must be stored securely in compliance with the General Data Protection Regulations.

Chairs should ensure that accurate and good quality notes are recorded at the hearing. These should be retained securely by the school and may be required as evidence of their decision in case of future challenge, such as internal appeal, employment tribunal or other enquiry. Schools should liaise with the Trust to organise an appropriately experienced clerk.

After the hearing is concluded, the Panel will carefully consider the evidence presented at the hearing and decide on an appropriate outcome. The employee may be informed verbally of the decision and the reasons for it. However, the Chair of Panel will always confirm the disciplinary outcome in writing within 5 working days, unless there are exceptional circumstances which delay the decision. The employee must be advised of their right of appeal in the outcome letter.

8. Disciplinary outcomes

Possible outcomes of a disciplinary hearing may be: -

- No disciplinary sanction necessary
- Written Warning
- Final Written Warning
- Dismissal with notice
- Summary dismissal without notice for Gross Misconduct
- Other Disciplinary Action (see below)
- Some other substantial reason (SOSR)

The disciplinary action will depend on the severity and/or repetition of a misconduct/gross misconduct (see Section 15 for examples of these) and any mitigating circumstances.

An employee cannot be dismissed for a first disciplinary offence, except in cases of gross misconduct.

Where live warnings exist for previous misconduct/gross misconduct, further occurrences of misconduct are likely to result in a more serious sanction.

In certain cases, consideration may be given to previous disciplinary history. This will particularly apply in relation to safeguarding concerns, possible criminality, fraud or financial irregularities (see section 11 below).

9. Disciplinary outcomes

No disciplinary sanction

Where the decision panel have decided that there is no case to answer, the reason for the decision will be communicated in writing.

Written warning

In the case of more serious offences or where there is an accumulation of minor offences, the employee should be given *a written warning*. A copy of the written warning and any evidence presented to the disciplinary hearing should be kept in a sealed envelope on the employee's personal file. A copy of the warning should be sent to the employee for his/her retention. A record of the warning will be kept on file but considered spent after 6 months as long as satisfactory conduct has been sustained.

Final written warning

Following an earlier warning for misconduct or in response to serious misconduct, the employee may be issued with a *final written warning* which will contain a statement that any further incidents may lead to dismissal. There may be occasions when misconduct is regarded as being insufficiently serious to justify consideration of dismissal but sufficiently serious to warrant only one written warning which, in effect, is both a first and final warning. Again, a copy of the warning and any evidence presented to the disciplinary hearing should be kept in a sealed envelope on the employee's personal file. A record of the final warning will be kept on file but considered spent after 12 months as long as satisfactory conduct has been sustained.

Dismissal with notice

Dismissal with notice may be considered in certain, specific circumstances and HR advice should always be sought.

Summary dismissal without notice for gross misconduct

Except for cases of *gross misconduct*, an employee shall not be dismissed for a first breach of discipline. Where potential gross misconduct is being investigated, the school must notify the HR team at the earliest possible stage and seek advice. To ensure the

decision of the disciplinary panel is reasonable in all the circumstances of the case, account should be taken of:

- the employee's previous disciplinary record
- the employee's general record, position, age, length of service and state of health
- the penalty imposed in similar cases in the past
- any mitigating circumstances which might make it appropriate to lessen the severity of the penalty

In addition, before any decision to dismiss is communicated to the CEO for final determination, the disciplinary panel or head teacher must address the following questions:

- Has there been as much investigation as is reasonable in the circumstances?
- Does the disciplinary panel/head teacher genuinely believe “on the balance of probability” that the employee has committed the misconduct? It should be noted that the civil test of guilt on the balance of probability also contains a clause which says that the level of probability should be proportionate to the severity of the sanction being considered i.e. if the recommendation is to dismiss then the level of probability must be proportionately greater.
- Has the disciplinary panel/head teacher reasonable grounds on which to sustain that belief?
- Is the misconduct sufficiently serious to justify the disciplinary decision being contemplated?
- Is the decision within the band of reasonable responses of a reasonable employer in the circumstances?

Other Disciplinary Action

Other disciplinary action may be considered and this will usually be accompanied by a warning. Examples of such action may include recommendations for training/development, consideration of alternative working arrangements or other appropriate measures. A record of any other disciplinary action will also be kept on file for the duration of the warning, after which time it will cease as long as satisfactory conduct has been sustained. In cases of alternative working arrangements/lower graded work, records will be retained for the duration of employment.

Warnings should be regarded as spent following the specified period, subject to satisfactory conduct, and should be disregarded for future disciplinary purposes unless relating to serious concerns

A copy of the disciplinary outcome letter, together with all notes and statements, will be kept securely on the staff member's employment file until considered spent, with a further copy retained by the Trust HR team.

Some other substantial reason (SOSR)

Use of SOSR as a disciplinary outcome will be rare and only used in exceptional circumstances. It is usually appropriate where there has been a breakdown in contractual relationship for a significant period of time such as failure to return following a period of absence with no notification or contact. Only following advice from the Trust HR Director will this be considered.

10. Disciplinary Employment History

The Headteacher/Panel should take account of any current live disciplinary warnings.

In certain cases, consideration may be given to previous disciplinary history, for example, in relation to safeguarding concerns, possible criminality, fraud or financial irregularities. Consideration of disciplinary history should only take place after taking advice from the Trust HR team.

10.1 Record of Warnings

Warnings will always be kept confidentially on personnel files but will be considered 'spent' following the specified period, subject to satisfactory conduct and/or performance and disregarded for future disciplinary purposes (conduct or performance will be regarded as satisfactory where no new disciplinary offence has been committed or where there are no continuing concerns about performance within the specific period of the warning.

Further disciplinary action in respect of such offences or concerns will require a further hearing). This does not mean, however, that an employee's past conduct and performance (both positive and negative instances) should not be considered by decision-makers when deciding upon the appropriate disciplinary action to take as mentioned above.

There may be occasions where an employee's conduct is satisfactory throughout the period a warning is in force but lapses soon after. Where a pattern emerges and there is reasonable evidence of abuse, the employee's disciplinary record can then be borne in mind and the duration of any further warning or final warning may be given for a longer period.

11. Referral to External Groups and Professional Bodies

The school/Trust is under a legal obligation to keep appropriate records and pass on information to the Disclosure and Barring Service (DBS) or other regulatory bodies as appropriate, about any employee who is currently working or may in the future work with vulnerable groups and who has harmed or may harm a child or vulnerable adult.

The school/Trust may share other relevant information where it believes the DBS may consider it appropriate to bar the individual from working with vulnerable groups. This applies even where the employee resigns and leaves employment during the course of an investigation.

12. Appeal

The employee has a right of appeal against any disciplinary sanction including dismissal. The appeal must be registered within 10 working days of receipt of the disciplinary outcome letter.

The appeal will be heard by an impartial Governing Body Appeal Panel, who have had no previous involvement in the case. Where there are insufficient governors available, Governors from other Trust Governing Bodies may be utilised. The Appeal Panel will be advised by a member of the Trust HR team at the appeal hearing.

The appeal hearing will be carried out in accordance with Appendix 2 – Conducting an Appeal Hearing.

The appellant will have a right to be accompanied by a trade union representative or work colleague at the appeal hearing.

The appellant will be given 10 working days' notice in writing of the appeal hearing date. If the employee's companion cannot attend on the date provided, the hearing must be postponed. The employee has a duty to propose an alternative time within 5 working

days of the original date. Providing this is reasonable, the hearing will be re-arranged for this time or another mutually agreed date.

The purpose of an appeal hearing is not to repeat the process followed at the Disciplinary Hearing or to rehear the case in full. The appellant will be expected to focus on specific factors that they feel have been dealt with unfairly, or which have received insufficient consideration, such as:

- New evidence coming to light since the Disciplinary Hearing.
- An inconsistent, inappropriate or excessively harsh penalty
- Alleged bias of the decision maker
- Alleged unfairness in the conduct of the hearing

The appellant can request that witnesses attend the appeal hearing and should provide reasonable notice to the chair of the Appeal Panel of who they intend to call; however, these should be present to substantiate the specific factors as outlined above and should not be character witnesses.

Witnesses may also be required to attend by the Headteacher/Chair of Disciplinary Panel, who issued the original sanction, and by the Appeal Panel.

The appeal should not be used as an opportunity to punish the employee for appealing the original decision and it should not result in an increased sanction.

The appeal decision and reasons will be confirmed to the appellant in writing within 5 working days, unless there are exceptional circumstances, in which case this will be communicated to the appellant.

There is no further right of appeal.

15. Disciplinary rules and standards of performance

There are two types of disciplinary offence: misconduct and gross misconduct. The lists of disciplinary offences below are examples only and are neither exclusive nor exhaustive. In addition, there may be other offences of a similar gravity which will constitute misconduct or gross misconduct. Headteacher/Disciplinary Panel will determine the severity of each case in the light of the circumstances and available evidence, and will take advice from the Trust HR team.

The aim of the Disciplinary Rules and Disciplinary Procedure is to set out the standards of conduct expected of all staff and to provide a framework within which the Head Teacher can work with staff to maintain those standards and encourage improvement where necessary.

If any employee is in any doubt as to their responsibilities or the standards of conduct expected they should speak to their Head Teacher.

Rules of conduct

While working for the Trust / School you should at all times maintain professional and responsible standards of conduct. In particular you should: observe the terms and conditions of your contract, particularly with regard to:

- hours of work;
- confidentiality;
- observe all of the School's policies, procedures and regulations which are available from the school office or notified to you from time to time by means of notice boards, e-mail, or otherwise;
- take reasonable care in respect of the health and safety of colleagues, pupils and third parties and comply with our Health and Safety Policy;
- comply with all reasonable instructions given by the Head Teacher / CEO; and
- act at all times in good faith and in the best interests of the School / Trust and those of our pupils and staff.

Failure to maintain satisfactory standards of conduct may result in action being taken under the Disciplinary Procedure.

Misconduct

Certain types of offences will warrant the issue of a warning and examples of those offences are listed below. Where a final written warning remains live for a previous offence and further misconduct is committed the employee may be dismissed, unless there are acceptable mitigating circumstances.

Harassment, Discrimination, Victimisation and Bullying (HDVB)

HDVB is considered a serious disciplinary offence and would usually be considered as a gross misconduct matter; however, there may be occasions when a lesser offence has occurred which could be considered to be misconduct. HR advice should always be sought in HDVB cases.

This is defined as the harassment, discrimination, victimisation or bullying of a colleague, pupil or member of the public on the grounds of a protected characteristic, including: sex, transgender status, marital status, civil partnership status, pregnancy, colour, race, nationality, national origins, ethnic origins, religion or belief, religious practices, sexual orientation, disability, age, previous criminal convictions or trade union membership.

Breaches of rules, regulations and procedures, such as:

- Unsatisfactory timekeeping including taking excessive break;
- Abuse of attendance records, or failure to follow rules on recording attendance
- Less serious breach of health and safety rules
- Less serious breaches of the Trust's policies, procedures or regulations, for example, Data Protection legislation, sickness policies, smoking policy, financial regulations, etc.
- Less serious misuse of computer facilities including misuse of email and Internet access.
- Refusal or failure to obey legitimate instructions
- Less serious safeguarding, e.g. an uncharacteristic, seemingly minor, oversight which could have had potentially serious impact

Less serious negligence, such as:

- Carelessness in the performance of duties.
- Failure to take proper care of the property of the school/Trust, a colleague, child or member of the public, including misuse of property
- Failure to follow operating procedures set by the Trust which by doing so poses a possible financial risk to the Trust eg. recruitment, pay, financial regulations, audit.

Other misconduct, including:

- Rudeness or offensive behaviour including the use of abusive language to colleagues, pupils or members of the public.
- Using the School's / Trust's time and resources for personal purposes

Gross Misconduct

Gross misconduct is so serious that it would result in you being summarily dismissed (immediately and without notice), unless there are exceptional mitigating circumstances.

Gross misconduct might include:

Theft and wilful damage

- Unauthorised removal, possession or theft of property belonging to the school/Trust, a fellow colleague, child or member of the public.
- Deliberate, wilful or malicious damage to property belonging to the school/Trust, a colleague, child or member of the public, including misuse of property.

Acts of violence, abuse or inappropriate behaviour

- Breaches of the school and/or Trust's safeguarding policies.
- Acts of violence or abuse, including the physical assault or threat of physical assault against anyone.
- Rudeness or offensive behaviour including the use of abusive language

Harassment, Discrimination, Victimisation and Bullying (HDVB).

- Serious or repeated bullying or intimidation, including threatening behaviour.
- Acts of incitement or deliberate/malicious acts of harassment or discrimination of a colleague, pupil or member of the public on the grounds of sex, transgender status, marital status, civil partnership status, pregnancy, colour, race, nationality, national origins, ethnic origins, religion or belief, religious practices, sexual orientation, disability, age, previous criminal convictions or trade union membership.

Fraud and deliberate falsification of records

- Deliberate falsification of time recording methods, mileage or other expense claims etc.

- Deliberate falsification of qualifications or information which is a statutory or essential requirement of employment or which results in additional remuneration.
- Engaging in work or activities which are in conflict or competition with the school/Trust business.
- Engaging in work or activities which are incompatible with absence whilst receiving sick pay

Breaches of rules, regulations and procedures

- Deliberate unauthorised disclosure of confidential information (including serious breaches of data protection legislation)
- Serious breaches of health and safety rules
- Deliberate, repeated or serious failure to follow the school/Trust's policies procedures and regulations, for example, safeguarding policies, code of conduct, attendance policies, smoking policy, recruitment and pay, financial regulations, etc.
- Serious misuse of IT infrastructure and computer facilities including the misuse of email and Internet access or any other breach of the IT Acceptable Use policy.
- Refusal, failure or persistent failure to obey legitimate instructions

Gross negligence

- Failure to apply safeguarding standards
- Gross negligence in the performance of duties
- Sleeping whilst on wakeful duty
- Failure to comply with health and safety law – putting self and/or others at risk

Serious breaches of trust and confidence

- Serious safeguarding concerns
- Serious or repeated breach of the Code of Conduct for school
- Being under the influence of drink, drugs or illegal drugs at work.
- Absence from the work place without permission, for a significant amount of time, without a reasonable explanation
- Any absence which amounts to dereliction of duty and results in service provision being compromised.
- Acceptance of bribes or other corrupt practices.
- Criminal conduct, including that which is committed outside of work that is

relevant to the employee's employment.

- Failure to inform the school of any changes to circumstances which may have a bearing on their employment, including criminal allegations, convictions or cautions which may affect their professional status, disqualify them by association, or affect their DBS (or other) status.
- Failure to register and/or maintain registration with regulatory or governing bodies where this is a statutory or essential requirement for employment, for example, teachers' professional registration.
- Serious breach of a Code of Conduct as stipulated by a relevant regulatory body, for example teachers' professional registration.
- Bringing the school or Trust's image, name or service into disrepute.
- Making a malicious or untruthful allegation/complaint against the school/Trust or its employees.

Appendix 1 – Order of Proceedings for Disciplinary Hearings

Headteachers/Chairs of Panels (referred to as 'Chairs') should use this Order of Proceedings as a guide to help set out the process to be followed during formal disciplinary hearings.

- The Chair will introduce the hearing, explain its purpose and how it will be conducted. The purpose of the hearing is to establish the facts and determine whether formal disciplinary action needs to be taken against the employee and, if so, the level of disciplinary action.
- The Chair will introduce the persons present and explain their respective roles in the hearing. The employee is entitled to be accompanied by a trade union representative or a work colleague if they wish.
- The Chair will confirm that tape recordings will not be permitted and ask that all mobile phones are switched off for the duration of the hearing. This instruction will be repeated to all witnesses who are to be in attendance at the hearing.
- The Chair will confirm the names of any witnesses who have been asked to attend the hearing in person.
- The Chair will set out the nature of the allegations to be considered at the hearing.
- The Chair may ask the fact finder or investigator ('investigator') if in attendance/if applicable to set out the key facts arising from the investigation.

- Witnesses will be called in turn where there is a discrepancy in the evidence and may be questioned by the Chair, the HR Advisor, the employee or their chosen companion on the content of their statement.
- The employee will be allowed a full and fair opportunity to state their side of events, the employee may do this personally, or the employee's chosen companion (if applicable) may do this on the employee's behalf.
- The Chair and the HR Advisor will question the employee on their evidence and raise points about any information provided by witnesses. Although the employee may confer with their chosen companion (if applicable) at any time during the hearing on request, the Chair has the right to ask the employee personally to answer any question put to them.
- The Chair will ask the investigator to confirm whether any substantial or relevant information has been presented that was not part of the initial investigation.
- The employee (or their chosen companion on their behalf) will be given the opportunity to sum up their case and make any final points they wish to have considered.
- The Chair will sum up the key points of the hearing and confirm with the employee that all substantial and relevant information has been presented at the hearing.
- The Chair will inform the employee on when a decision will be made.
- The Chair will adjourn to consider their decision in private with the HR advisor. All other persons (including the investigator) will be asked to leave the room.

The Chair will reconvene the hearing to inform the employee of their decision and what disciplinary action, if any, is to be taken.

- The Chair will inform the employee that they have the right of appeal against any disciplinary action.
- The decision will be confirmed in writing within a reasonable timescale (usually within five working days).

NB At any point during the hearing, the Chair may adjourn the hearing if it appears necessary or desirable to do so (including for the purpose of gathering further information).

Appendix 2 - Conducting an Appeal Hearing – Guidance document

The format below provides a framework for the appeal process that will normally be followed; however, the Chair of the Appeal Panel ('Appeal Chair') does have the discretion to vary this format if it is considered necessary and appropriate.

- a) The appellant or their representative will present their grounds for the appeal and introduce any witnesses.
- b) The Disciplinary Representative (DR) (Headteacher or Governor representing the Disciplinary Panel) may ask questions of the appellant and their witnesses.
- c) The Appeal Panel and the HR Advisor may ask questions of the appellant and their witnesses.
- d) The DR will provide a response to the grounds for the appeal, based on their decision making at the original Disciplinary Hearing.
- e) The appellant and their representative may ask questions of the DR and their witnesses.
- f) The Appeal Panel and HR Advisor may ask questions of the DR and their witnesses.
- g) The appellant or their representative will provide a summary of their appeal.
- h) The DR will provide a summary of their response.

2 The Decision

At the completion of the hearing, the Appeal Panel will adjourn to consider their decision. The Appeal Panel, supported by the HR Advisor, will consider their decision in private, only recalling the appellant or the DR to clarify points of uncertainty. The appeal decision and the reasoning behind it will be confirmed in writing to the appellant as soon as possible.

3. Further right of Appeal

There will be no further right of appeal.