

DISCIPLINARY PROCEDURE POLICY

Issued: May 2016

1. Introduction

The main purpose of the disciplinary procedure is to address issues with an employee whose personal behaviour, attitude and conduct is unsatisfactory with an aim to improve this. The procedure serves to ensure that this is done in a fair and consistent manner.

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

- In minor cases of alleged misconduct the manager should initially seek to resolve the matter informally by discussion with the employee.
- The disciplinary procedure is to be used where an employee's conduct is alleged to be unsatisfactory.
- Each step and action under the procedure must be taken without unreasonable delay by either the Trust or the employee.
- The timing and location of meetings must be reasonable.

2. Powers

The Trust has delegated the following powers to the following levels of staff:

| Sanction | Disciplinary Officer | Appeal Officer |
|------------------------------------|----------------------------------|--|
| Level 1 - A first warning | SLT | Principal/Head of School |
| Level 2 - A written warning | SLT | Principal/Head of School |
| Level 3 - A final warning | Principal/Head of School | Chair of LGB |
| Level 4 - Dismissal. | Principal/Head of School & Chair | Chief Executive &/ or a Trust Director |

In the case of the Academy Principal/Head of School the Disciplinary officer will be the Executive Principal and or Chair of the LGB. The appeal will be the CEO (when not disciplinary officer) and /or another BDAT Director.

For allegations regarding the Chief Executive, a nominated Director(s) will have the authority to be the Disciplinary Officer and any appeal will be to the Chair of the Trust.

In a case where the person who would normally be the disciplinary officer is compromised through existing circumstances or, will need to investigate the matter/be significantly involved in the investigation or, does not have the resource to deal with the matter at that time – the case will normally be dealt with by an alternative at the same level or the next level of management. (i.e. another Vice Principal, another Principal/Head of School within the Trust, or the Chief Executive.).

Central Trust officers may also be requested to lead investigations, reporting to the Principal/Head of School or Chair of Governors. In cases where the Chief Executive is unable to deal with the matter, the matter will be discussed with the Chair of the Trust to determine the appropriate way to deal with it.

The Process

- Before any disciplinary decision is made the employee will be advised of the allegations against him/her and will be given the opportunity to state his/her case. The employee will be notified in writing of the allegations to be answered (plus any documentary evidence) before the disciplinary hearing.
- The employee must make every effort to attend an investigative interview or disciplinary hearing and failure to attend, without good reason may be treated as misconduct in itself. If the employee fails to attend without good reason, or if he/she is persistently unable to do so (for example for health reasons), the Trust may have to take a decision based on the available evidence.
- The Trust will give a minimum of 5 working days' notice of a disciplinary hearing. Supporting documents (the investigation report and witness statements) will be provided at this stage.
- At any disciplinary hearing or appeal hearing the employee will have the right to put forward his/her case. The Trust will only consider evidence presented by the employee which is relevant to the allegations. Such evidence must be provided to the Trust at least one full working day before the disciplinary hearing or appeal.
- The Trust shall be entitled to manage the time and resources allocated to a disciplinary matter including managing the time of a disciplinary hearing and allocating time within a disciplinary hearing. This may result in limiting the amount of time allocated to the parties to present their cases.
- The decision and the reasons shall be communicated in writing to the employee.
- An employee will be advised of his/her right of appeal and how to exercise that right.

3. The right to be accompanied

The employee may bring a companion to any disciplinary or appeal hearing under this procedure. The companion may be either a trade union representative or a work colleague, providing the companion is not acting in a legal capacity. The employee must tell the disciplinary officer who his/her chosen companion is, in good time before the hearing.

A companion is allowed reasonable time off from duties without loss of pay but no-one is obliged to act as a companion if they do not wish to do so.

If the choice of companion is unreasonable, the Trust may ask for the employee to choose someone else. For example:

- if in the Trust opinion the employee's companion may have a conflict of interest or may prejudice the hearing; or
- if the companion is unavailable at the time a hearing is scheduled and will not be available for more than 5 working days afterwards.

The Trust may, at its absolute discretion, allow the employee to bring a companion who is not a work colleague or union representative (for example a member of family) if this will help the employee overcome a disability.

At a hearing, the companion may make representations to the Trust and ask questions, but should not answer questions of the employee's behalf. The employee may confer privately with his/her companion at any time during a hearing.

4. Trade Union Officials

Although normal disciplinary standards will apply to their conduct and performance as employees, no disciplinary action or suspension will be taken until the circumstances of the case have been discussed with an appropriate full-time official. In the case of suspension this may not be practical and should not prevent Management taking action.

5. Suspension

- In certain circumstances consideration may be given to suspending the member of staff from their place of work at the outset of the investigation or at any stage during the course of the investigation.
- The suspension will be for no longer than is necessary and the Trust will confirm the arrangements to the employee in writing.
- The decision to suspend may only be taken by a Principal/Head of School or Chief Executive. In the unavailability of a Principal/Head of School or Chief Executive the decision may be delegated to a nominated Vice Principal/Head of School who must make every effort to contact the Principal/Head of School or Chief Executive to discuss the case and be authorised to make the decision. Where the Principal/Head of School is suspended the Chief Executive or Chair of Governors only has the power to do so and must notify the full Board of Directors. Where the Chief Executive is suspended the Chair of the Trust only has the power to do so and must notify the full Board of Directors.
- While the employee is suspended, he/she should not visit the Campus or contact any of its students, parents, governors, Chair of Governors or Trust Directors, members or colleagues, unless the employee has been authorised to do so by the Principal/Head of School.
- Suspension is a neutral act and does not imply that any decision has already been made about the allegations. The employee will continue to receive his/her salary during the period of suspension.

- Every effort will be made to avoid lengthy periods of suspension. The decision to suspend and the conditions of suspension will be reviewed periodically and the employee will be updated as and when necessary (normally monthly).

6. Investigations

The purpose of an investigation is for the Trust to establish a fair and balanced view of the facts relating to any disciplinary allegations against an employee, before deciding whether to proceed with a disciplinary hearing. The amount of investigation required will depend on the nature of the allegations and will vary from case to case. It may involve interviewing and taking statements from the employee and any relevant witnesses, and/or reviewing relevant documents.

Investigative interviews are solely for the purpose of fact-finding and no decision on disciplinary action will be taken until the investigation has been concluded.

An employee does not have the statutory right to bring a work colleague or trade union representative to an investigative interview. However, the Trust would allow an employee to bring a work colleague or trade union representative to attend.

The employee must co-operate fully and promptly in any investigation. This will include informing the Trust of the names of any relevant witnesses, disclosing any relevant documents to the Trust and attending investigative interviews if required. A failure to comply may lead to disciplinary action.

7. Criminal Charges

Where the employee's conduct is the subject of a criminal investigation, charge or conviction the Trust will investigate the facts before deciding whether to take formal disciplinary action.

The Trust will not usually wait for the outcome of any prosecution before deciding what action, if any, to take. Where the employee is unable or has been advised not to attend a disciplinary hearing or say anything about a pending criminal matter, the Trust may have to take a decision based on the available evidence.

A criminal investigation, charge or conviction relating to conduct outside work may be treated as a disciplinary matter if the Trust considers that it is relevant to the employee's employment.

8. Procedure at Disciplinary Hearings

At the beginning of the hearing, the disciplinary officer will introduce those present and the purpose of the meeting. The employee will be reminded of his/her right to be accompanied (if the employee has not chosen to be accompanied by a trade union representative or a work colleague).

The disciplinary officer will go through the allegations against the employee and the evidence that has been gathered. The employee will be able to respond and present any relevant evidence.

Management and the employee may ask relevant witnesses to appear at the hearing. Cross-examination of witnesses by all parties must be conducted in a professional and courteous manner. The Chair of the meeting will ensure that this takes place and will intervene should s/he be concerned that this requirement is not being followed by any questioner and will advise on how future questioning will take place.

Should the employee wish to question the evidence provided by another witness in the investigation then this should be raised by the employee during the investigation or upon receipt of the investigation documents.

The employee will be given a full opportunity to ask questions and put forward any mitigating factors which he/she believes are relevant to the allegations.

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

- give the decision and explain the reasons for the decision ,and confirm as soon as possible in writing; or
- inform the employee that the decision will be given in writing as soon as possible.

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

9. Levels of Disciplinary Action

There are four stages, each of which is designed to cover the varying seriousness of the cases. The stages give a proper sequence for persistent cases. Where the case is of sufficient importance or seriousness to use the procedure, disciplinary action will be taken at whatever stage appears appropriate to the circumstances.

No employee will be dismissed for a first breach of discipline except in the case of gross misconduct when the penalty may be dismissal without notice and without pay in lieu of notice

The following decisions will be confirmed in writing:-

The decision to issue no warning

Level 1 - A first warning may be given where the case is of sufficient importance or seriousness to bring to the attention of the employee formally.

Level 2 - A written warning may be given where the case has already involved a first warning and insufficient improvement has been made, where further misconduct has occurred, or where the case is of sufficient importance or seriousness.

Level 3 - A final warning may be given where the case has already involved a written warning and insufficient improvement has been made, where further misconduct has occurred or where the case is of sufficient importance or seriousness. Also where gross misconduct may not warrant dismissal for example due to mitigating circumstances.

Level 4 - Dismissal. An employee is likely to be dismissed where the case has already involved the final warning and insufficient improvement has been made or where further misconduct has occurred or where the case is so serious as to constitute gross misconduct or where there is some other substantial reason.

10. Alternatives to dismissal

In some cases, the Trust may at its discretion consider alternatives to dismissal. These will usually be accompanied by a final written warning. Examples include:

- demotion;
- transfer to another department or job;
- loss of seniority;

11. The Decision Letter

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

Following the outcome of the hearing the decision letter will state:-

- The decision (i.e that there is no case to answer or the findings and the appropriate level of disciplinary sanction).
- The reason for the decision.
- The course of action to be followed by the employee.
- Time scale in which improvement is required, if applicable.
- Where assistance is required, the assistance which will be made available to the employee (e.g. training and guidance).
- The date on which the warning will elapse.
- That further disciplinary action will be considered if there is further misconduct or insufficient improvement within the timescale of the warning.
- The right of appeal against the decision and how to exercise that right.

- **If the warning is a final warning** it will also state that if the employee's conduct continues to be unsatisfactory or if there is further misconduct it may lead to dismissal.

12. Time Limit for Warnings

First warning, the time limit shall be 6 months (excluding the Summer Break) from the date of the decision.

Written warning the time limit shall be 9 months (excluding the Summer Break) from the date of the decision.

Final warning the time limit shall be 12 months (excluding the summer break) from the date of the decision. However in exceptional circumstances misconduct may be so serious that if repeated at any time in the future the likely consequence is dismissal. The person/s making the decision may impose a final written warning and specify that such a warning will remain in force for a longer period of time.

Breaches of discipline will be disregarded after the specified period of satisfactory conduct, but will remain permanently on the employee's personnel file.

13. Right of Appeal

All employees have the right of appeal.

Appeals must be lodged in writing to the Principal/Head of School within five working days of the decision being communicated to the employee (i.e. usually within five days of the date of the outcome letter). In the case of the Principal//Head of School appealing, the Chief Executive needs to receive a logged appeal in writing within 5 working days.

If the employee is appealing against dismissal, the date on which dismissal takes effect will not be delayed pending the outcome of the appeal. However, if the appeal is successful the employee will be reinstated with no loss of continuity of pay.

If the employee raises any new matters in his/her appeal, the appeal officer may need to carry out further investigation. If any new information comes to light the appeal officer will provide the employee with a summary including, where appropriate, copies of additional relevant documents and witness statements. The employee will have a reasonable opportunity to consider this information before the hearing.

The Trust will give the employee written notice of the date, time and place of the appeal hearing.

The appeal hearing may be a complete re-hearing of the matter or it may be a review of the fairness of the original decision in the light of the procedure that was followed and any new information that may have come to light. This will be at the Trust discretion depending on the circumstances of the case. In any event the appeal will be dealt with as impartially as possible.

Where possible, the appeal hearing will be conducted impartially by a more senior manager who has not been previously involved in the case. The employee may bring a companion to the appeal hearing.

The appeal officer may adjourn the appeal hearing if the Trust need to carry out any further investigations in the light of any new points the employee has raised at the hearing. The employee will be given a reasonable opportunity to consider any new information obtained before a decision is given.

The appeal officer may:

- confirm the original decision;
- revoke the original decision;
- or, substitute a different penalty.

The appeal officer will inform the employee in writing of the final decision as soon as possible.

There will be no further right of appeal.

Appendix 1

Examples of Misconduct

- 1.1** Persistent poor timekeeping
- 1.2** Unauthorised absence from work
- 1.3** Failure to comply with a reasonable management instruction
- 1.4** Failure to comply with sickness absence procedures
- 1.5** Acting in an aggressive or threatening manner or using foul or abusive language towards customers, colleagues or managers
- 1.6** Misuse or unauthorised use of school facilities, equipment or resources
- 1.7** Inappropriate use of school time, e.g. excessive use of time for personal conversations, correspondence, telephone calls, emails/internet use etc.
- 1.8** Knowingly being an accessory to, condoning or failing to report a serious disciplinary offence
- 1.9** Dishonesty, deliberate misinterpretation of information or falsification of records
- 1.10** Unauthorised use or disclosure of confidential information gained through employment with the school or failure to protect such information
- 1.11** Being unfit for duty through use of illegal substances or alcohol
- 1.12** Smoking in any school owned premises and grounds
- 1.13** Use of e-cigarettes in any school own premises
- 1.14** Failure to observe Health and Safety rules by act or omission, or negligence that threatens health and safety
- 1.15** General conduct in the workplace that has a negative impact on the work of the section, on colleagues, or on service delivery
- 1.16** Failure to declare any other work undertaken while being employed by the school
- 1.17** Damage to property
- 1.18** Failure to comply with the companies policies and procedures
- 1.19** Deliberate failure to reach required standards of performance
- 1.20** Deliberate failure to carry out duties and responsibilities
- 1.21** Inappropriate behaviour/conduct towards management or colleagues

Examples of Gross Misconduct

- 2.1** Dishonest acts and deliberate falsification of records which result in or could result in serious consequences
- 2.2** Falsification of qualifications which are a stated requirement of employment or which resulted in financial gain
- 2.3** Serious insubordination
- 2.4** Conduct that is a serious abuse of position
- 2.5** Bringing the school/MAT into serious disrepute or causing a serious loss of confidence in the school/MAT
- 2.6** Theft or fraud
- 2.7** Undertaking other paid employment whilst receiving sick pay or other benefits from the school during a period of sickness or unauthorised absence without prior management agreement
- 2.8** Deliberate disregard of the MAT's financial procedures and rules
- 2.9** Physical or verbal assault or violence
- 2.10** Deliberate and serious damage to school property
- 2.11** Unauthorised removal of school property
- 2.12** Serious breach of Health and Safety rules and/or regulations
- 2.13** Breach of Equal Opportunities Policy. Offensive or abusive behaviour towards others, including harassment, bullying or victimisation
- 2.14** Making defamatory statements in the course of employment (e.g. making statements that are or could be slanderous or libellous). (A defamatory statement is a statement that will injure the reputation of another in the estimation of members of society generally).
- 2.15** Being unfit for duty through use of illegal substances or alcohol in circumstances where it could constitute a health and safety hazard or where it would be in breach of a position of responsibility and trust
- 2.16** Loss of confidential or sensitive data through negligence, loss of important or expensive equipment through negligence.
- 2.17** Deliberately accessing internet sites containing pornographic, offensive or obscene material
- 2.18** Criminal offences committed at work
- 2.19** Criminal offences and other conduct outside employment which would prevent an employee from continuing to do their job or which affects their suitability to perform their work or is liable to damage the school/MAT.
- 2.20** Serious negligence which causes or might cause unacceptable loss, damage or injury
- 2.21** Serious breach of confidence (subject to the Public Interest (Disclosure) Act