

Disciplinary Policy and Procedure



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1. Disciplinary Policy Statement

- 1.1 The City of London Academies Trust Disciplinary Procedure applies to all employees who have completed their probationary period and have been developed in accordance with the Trust's ethos and the ACAS Code of Practice.
- 1.2 This procedure is designed to help and encourage employees to maintain performance and behaviour by setting out expected standards of conduct. It aims to clarify the rights and responsibilities of the Trust and all employees, and to promote fairness and order in any disciplinary action, as well as for this to be applied in a consistent, constructive and reasonable fashion.
- 1.3 In cases where an employee fails to attain the required standard, the disciplinary procedure will be instigated, and this may result in disciplinary action.
- 1.4 The Trust reserves the right to invoke any level of sanction of the disciplinary procedures according to the seriousness of unsatisfactory conduct regardless of any management warnings. Dismissal without notice is a level of sanction that can only be applied following the disciplinary procedure if the conduct is proven to be gross misconduct.
- 1.5 Where an employee is subject to more than one allegation relating to their conduct, if appropriate, these issues may be dealt with together.
- 1.6 Actions taken by employees outside working hours may also fall within the scope of this policy if there is an impact on the employee's ability and/or suitability to do their job, or if the actions may bring the Trust into disrepute.
- 1.7 Statutory requirements make it necessary for the Trust to draw the attention of the Disclosure and Barring Service (DBS) and Teaching Regulation Agency (TRA) to certain cases involving teachers and other school/academy-based employees.

2. Diversity Policy Statement

- 2.1 The Trust willingly accepts, not only its legal responsibilities, but also wishes to embrace best practice in all areas of its work in order to secure equality of both treatment and outcome for all.
- 2.2 The Trust is committed to ensuring that no one is treated in any way less favourably on the grounds of personal differences such as race; national, ethnic or social origin; gender (including reassigned gender); sexual orientation; religious belief; age; disability; marital status; caring responsibilities or political or other personal beliefs.
- 2.3 We will implement all necessary action and training to ensure that the commitment of the Trust with regards to equality of treatment and outcome are fulfilled and will regularly monitor and review progress made in this respect.

- 2.4 We will ensure that employment and development opportunities are available to those who are, or who become, disabled on an equal footing with those without a disability, adapting jobs wherever possible to make them accessible.

This procedure should therefore be applied in accordance with this policy.

3. Scope and Purpose

- 3.1 The scope of this policy is applicable to all staff employed by the Trust, which is committed to equality and diversity and will make reasonable consideration to facilitating adjustments required in accordance with the Equality Act 2010, for example allowing an interpreter at a formal meeting.
- 3.2 The purpose of the Disciplinary Policy and Procedure is to ensure that fairness and consistency applies in all aspects of disciplinary proceedings.
- 3.2 The procedure is not to be used when dealing with lack of capability where no wilful misconduct is involved. In such circumstances, the separate procedure for dealing with lack of capability must be used.

4. Principles

- 4.1 When dealing with disciplinary matters, Trust managers are required to act in accordance with the ethos and the principles of natural justice.
- 4.2 No disciplinary action will be taken against an employee until the case has been investigated and on the balance of probabilities proven.
- 4.3 The employee will be advised in writing of any nature of the complaint against and where available an outline of the evidence against them prior to being invited to any investigation or disciplinary meeting and will be given the opportunity to state their case before any decision is made. They will also receive a copy of the procedure.
- 4.4 The employee will be informed that they have the right to be accompanied by their trade union representative, workplace representative or work colleague at the investigation meeting, formal hearing and at appeal hearing.
- 4.5 The Trust will not take disciplinary action against a trade union representative until an employed official of that trade union has been consulted.
- 4.6 Employees will be given the 10 working days' notice of any disciplinary hearing and 5 working days of any possible outcomes in writing.
- 4.7 The procedure may be implemented at any stage if an employee's misconduct warrants such action. Employees will not normally be dismissed for the first breach of discipline except in the case of gross misconduct when the sanction could be summary dismissal. Breaches of discipline need not necessarily be of the same nature to permit progression to the next stage of the procedure.

- 4.8 Each step and action taken will be taken without unreasonable delay and the timing and duration of hearings will be reasonable for all parties involved.
- 4.9 Employees must take all reasonable steps to attend the disciplinary hearing. Failure to attend without a reasonable explanation could result in the hearing continuing in the employee's absence and a decision taken on the evidence available.
- 4.10 Employees will have the right to appeal the outcome of the formal stage of the procedure within 10 working days' of receiving written notification of the decision. There is no right of appeal against the decision to start the formal disciplinary procedure by referring an allegation of misconduct or poor performance to a new hearing.
- 4.11 At all stages of the procedure, the person(s) hearing the case will be impartial and not the person who has investigated the matter. In normal circumstances, the responsibility for hearing disciplinary cases will be delegated to the Principal/Headteacher and thus a member of the academy's leadership team would be the investigating officer. For central staff, the responsibility for hearing disciplinary cases will be delegated to senior managers and thus a junior manager should investigate the matter to enable the senior manager to remain impartial.
- 4.12 Any persons that have already been directly involved in the process, or are witnesses, should not hear the case and the matter should be dealt with by another manager of at least equivalent status.
- 4.13 In the case of disciplinary matters against the CEO / Chief Officers / Principal /Headteacher, the matter will be managed by a member of the Trust Board.
- 4.14 Where child protection allegations are made, reference must be made to the procedure for dealing with allegations against a professional, and in line with the latest Keeping Children Safe in Education guidance.

5. Procedure

Formal Counselling (Informal Resolution)

- 5.1 It is part of the normal supervisory process that employees have brought to their attention the standards of conduct expected by the Trust. Where they fall short of these standards, line managers must draw any deficiencies to the attention of the employee under their supervision, as this can lessen the possibility of recourse to the formal disciplinary procedure.
- 5.2 The formal counselling stage is an informal approach and should be used where formal disciplinary action may be disproportionate to the alleged misconduct. This type of counselling is done on a one-to-one basis. Further guidance can be sought in Appendix 1.
- 5.3 In such instances, the line manager should arrange to meet with the employee to discuss the conduct of concern.

- 5.4 A record of the conversation and any action points should be made (copy for the employee), and a follow up discussion after a specified period to provide an opportunity for review (where this is required) and where the desired outcomes have been achieved and to encourage a sustained improvement.
- 5.5 Where this process has not led to the desired outcome, such as in cases of repeated occurrences of minor misconduct, or where the matter is more serious and this recommended practice is not appropriate, then progression to the formal part of the policy may be instigated.

Investigation (Formal Resolution)

- 5.6 When an allegation of misconduct arises for which it is not appropriate to use Formal Counselling, or when an issue has previously been addressed through informal resolution without necessary improvement, the relevant manager should conduct a fact-finding disciplinary investigation meeting with the employee at the earliest opportunity.
- 5.7 Following a complaint or allegation, it may be clear that a formal investigation is required, but in some cases a preliminary assessment of the available evidence will be appropriate to determine whether the allegation could have occurred. Once a decision has been made that a formal investigation is needed, the employee should be informed in writing of the nature of the allegation.
- 5.8 The manager undertaking the investigation (referred to as the Investigating Officer) must be impartial and not have had any material involvement in the conduct or behaviour that gave rise to the disciplinary allegations. The Investigating Officer will not chair or be involved as a panel member of any subsequent disciplinary hearing.
- 5.9 The Investigating Officer will collate evidence as quickly as is reasonably possible for use at any disciplinary hearing. Each case will be taken on its merits. The key standard for the Investigating Officer to consider is whether there is enough evidence to suggest that there may be a case to answer at disciplinary hearing. Other than complex cases, the Investigating Officer will aim to complete the investigation within a period of 30 working days. If the Investigating Officer feels that the investigation is likely to last for more than 30 working days, then they will inform the employee of the delay and agree a revised timeframe beyond the 30 working days.
- 5.10 The employee will be given a copy of the notes of their investigatory meeting within 5 working days, with the provision to make any amendments to be received by the investigating officer within 5 working days. Amendments made by the employee should be clearly stated on the record of the meeting as there may not be agreement. This document will form part of the evidence presented at any subsequent hearing.
- 5.11 The Investigating Officer will investigate the matter thoroughly and impartially, which should include interviewing the employee, unless their exceptional circumstances which prevent this. The employee will be informed that they have the right to be accompanied by their accredited professional association/trade union representative, or a work colleague. The Trust will not refuse accompaniment providing requests do not introduce unnecessary or unreasonable delay to the investigation process.

- 5.12 The Investigating Officer should consider whether the employee has any reason to require adjustments to be carried out or special assistance to be provided.
- 5.13 The Investigating Officer should undertake any further investigation with a view to finding other independent supporting evidence, e.g. documentary evidence, third party evidence or CCTV images. Witness statements may be required from staff members and pupils. Please refer to Appendix 2 and 3 for further guidance.
- 5.14 The circulation of images should be restricted only to those attending the disciplinary hearing and they should be reminded they are covered by confidentiality provisions.
- 5.15 The Investigating Officer's report, any supporting evidence and all other related documents will be made available to all parties concerned at least 10 working days prior to the disciplinary.
- 5.16 Once the investigation has been concluded or has reached a stage whereby the Investigating Officer feels they are able to produce an investigation report, this shall then be passed on to the appropriate manager who will decide what action should be taken. The manager's decision is final and there is no right of appeal against this decision.

The decision will fall into one of the following categories:

- To take no further action
- To deal with the matter by Formal Counselling – outside of the formal disciplinary process.
- To apply findings to an alternative policy and procedure, e.g. performance capability.
- To arrange for the matter to be dealt with in accordance with Formal Disciplinary Procedure.

Suspension

- 5.17 Suspension is not the Trust's default position and will only occur once consideration has been given to all other reasonable alternatives. The decision to suspend may be made by the Principal/Headteacher or the Trust's Strategic Leadership Team.
- 5.18 Consideration should also be given to the following short term alternatives to suspension:
- Working from home
 - Paid leave of absence
 - Working in a different location
 - Working in a more closely supervised environment
- 5.19 Such alternatives should not normally be used for more than one week to allow time for a preliminary assessment of the evidence that is readily available. The period of suspension should be as brief as possible. In all instances suspension will be reviewed periodically (normally every four weeks) to consider whether circumstances surrounding the suspension have changed.

- 5.20 In all circumstances the employee will be suspended from work on full pay whilst the matter is being investigated. Suspension should be considered in the following cases:
- Where a child or children are at risk of harm/breach of safeguarding regulations
 - Where there is an allegation which, if proven, may be deemed gross misconduct
 - For the protection of colleagues, property, or the employee
 - Where it is believed that the continuing presence of the employee in the workplace could interfere with the conduct of the investigation, including the taking of statements
 - There are concerns regarding Health and Safety
- 5.21 An appropriate member of staff unconnected with the disciplinary action or investigation will be allocated to the employee on suspension to act as their sole point of contact with the organisation and to keep the employee regularly informed of the progress of the case.
- 5.22 Where it is not possible to review the suspension within the normal review period (e.g. where it falls during a period of academy closure such as the summer holidays), a longer period of review should be set and the reason for this communicated in writing to the employee.
- 5.23 Where the reason(s) for suspension is considered to no longer be relevant, and no new information has come to light to otherwise justify such a measure, the review should be brought forward and steps taken to reintegrate the employee back into the workplace as soon as is reasonably practical.

Disciplinary Hearing

- 5.24 After the investigation stage, if a decision is made that there is a case to answer and that the matter should progress to a Disciplinary Hearing without delay, the employee will be informed of this in writing.
- 5.25 Hearings should be held during normal working hours within four weeks of the conclusion of the investigation. The employee must receive a minimum of 10 working days' notice in writing by recorded delivery or delivery by hand, stating:
- the purpose of the hearing
 - the allegations
 - the possible outcomes of the hearing
 - when and where the hearing will be conducted
 - who will be attending
 - the right to be accompanied by an accredited professional association/trade union representative or a work colleague
 - the requirement for confidentiality
 - the requirement for the employee, where possible, to provide, at least three working days before the hearing, all documents that they intend to present at the hearing
 - a copy of all evidence/documentation that is to be presented at the hearing in support of the allegation

- 5.26 A panel of two or more will hear the case led by an appropriate level manager (referred to as the Chair of the Disciplinary Hearing). The Chair of the Disciplinary Hearing must be impartial and must not have any prior knowledge of the case.
- 5.27 The Chair of the Disciplinary Hearing should receive the papers to be presented, including a copy of the letter inviting the employee to the hearing, no less than three working days before the hearing. The Chair of the Disciplinary Hearing must not discuss any aspect of the case with anyone before the hearing.
- 5.28 Where the employee's representative cannot attend on the date proposed, the staff member will be entitled to propose alternative times and dates to ensure the case is heard as soon as possible. If a revised proposed date causes significant delay beyond the five working days of the original date without a good reason, then the Chair of the Disciplinary Hearing can decide to hear the case in the employee's representative's absence.
- 5.29 The Investigating Officer will always attend the hearing to present the evidence and a clerk will also be present.
- 5.30 At the meeting, the Chair of the Disciplinary Hearing ensures that those present are introduced to one another and reminds them of the purpose of the hearing and procedure to be followed, as in Appendix 4.

Employee's Right to Accompaniment

- 5.31 An employee has the right to be accompanied and supported, during the investigation and at each formal stage of the disciplinary procedure where action may be taken including appeal, by a fellow employee or an accredited professional association/trade union representative.
- 5.32 The role of the professional association/trade union representative or work colleague is to:
- Confer with the employee before and after the disciplinary investigation meeting and subsequent disciplinary/appeal meetings
 - Assist the employee in preparing for the allegation/case
 - Respond on behalf of the employee to any views expressed at the disciplinary investigation meeting and disciplinary/appeal meetings
 - Present and sum up the employee's case, as agreed with the employee
 - Ask for adjournment if necessary.

The professional association/trade union representative or work colleague is not permitted to:

- Answer questions on behalf of the employee, unless the employee has expressed consent
- Address the meeting if the employee indicates that they do not wish them to prevent the case from being explained
- Prevent any other person at the meeting from making their contribution

- 5.33 The employee should provide the name of their representative in advance. If the chosen representative is unavailable at the time of the hearing, the employee may request a postponement (once except in exceptional circumstances) to a time that is convenient to all parties within a reasonable timescale not normally exceeding five working days or provide the name of an alternative representative.
- 5.34 An employee will not be subject to any detriment by the Trust for having acted as a companion in disciplinary proceedings.
- 5.35 If an employee is disabled, the employer will also allow them to be also accompanied by someone else such as a disability support worker or partner for extra support. Equally, the employer will make reasonable adjustments if the companion has a disability

Clerking at a Disciplinary Hearing

- 5.35 A written record of the proceedings must be taken. The note taker may be the Clerk to a Local Governing Body or a member of staff from within the Trust. However, any member of staff who works at the academy site who clerks must have no conflict of interests or prior involvement/knowledge of the case and must treat all records of meetings in the strictest of confidence. The clerk will make a record of the hearing, but not of the confidential deliberations.
- 5.35 The Trust does not support the audio recording of disciplinary hearings unless there are exceptional circumstances for doing so. Where exceptional circumstances exist, the agreement of all parties must be obtained.

6. Levels of Disciplinary Action

a) Formal Verbal Warning

If an employee's conduct does not meet acceptable standards and informal discussions have not led to sufficient improvement, or are not considered appropriate, a formal verbal warning may be issued after a formal investigation and following a disciplinary hearing. The employee will be advised that this is the first stage of the formal disciplinary procedure or that the allegation did not warrant the imposition of a stronger penalty. The employee should also be advised that if further misconduct occurs or the misconduct is more serious, progression will lead to the next stage and a written warning will be given. This formal verbal warning will be confirmed in writing. The written confirmation will give details of the upheld allegation/complaint, the improvement required and the timescale. The formal verbal warning will be kept on the employee's file but will be spent and disregarded for disciplinary purposes after 13 calendar weeks' (three months') satisfactory conduct. The employee will be advised of their right of appeal.

b) Written Warning

The employee will be advised that this is the second stage of the formal disciplinary procedure. The employee should also be advised that if further misconduct occurs or the

misconduct is more serious, a final written warning will be given to the employee. This written warning will give details of the complaint, the upheld allegation/complaint, the improvement required and the timescale. The written warning will be kept on the employee's file but will be spent and disregarded for disciplinary purposes after 26 calendar weeks' (six months') satisfactory conduct. The employee will be advised of their right of appeal.

c) Final Written Warning

If the misconduct is sufficiently serious, or if further misconduct occurs during the period that a written warning is live, a final written warning may be issued following a formal investigation and a disciplinary hearing. The misconduct may be sufficiently serious to warrant such a warning even though no previous warning may have been issued. A final written warning will be kept on the employee's file but will be spent and disregarded for disciplinary purposes after 52 calendar weeks (12 months). In exceptional circumstances the panel may decide on a longer period. If so, this should be up to 104 calendar weeks (24 months) and confirmed in the decision/outcome letter. The employee will be advised that this is the third stage of the formal disciplinary procedure. The employee should also be advised that if further misconduct occurs or the misconduct is more serious, their employment may be in jeopardy. This final written warning will give details of the complaint, the upheld allegation/complaint, the improvement required and the timescale. The employee will be advised of their right to appeal.

d) Dismissal (including summary dismissal for gross misconduct)

Where there is further misconduct during the life of a final written warning, or where the misconduct is sufficiently serious, the employee may be dismissed with notice (see Appendix 5 regarding teachers' notice periods). If an allegation of gross misconduct is upheld, the employee would normally be summarily dismissed without notice. In all cases, any notice of dismissal will commence immediately. Any appeal will be held as soon as is practically possible and normally within the notice period. Should the appeal be successful the reinstatement would be from the original date of the dismissal in order to avoid any break in service or loss of salary and other service benefits.

A copy of the dismissal letter must always be kept on file.

Right of Appeal

6.1 Where an employee is dissatisfied with the outcome of a disciplinary hearing, the employee can appeal in writing against the decision within 10 working days of receiving written notification of the decision. The employee's appeal must clearly state their grounds for appealing.

6.2 An employee may appeal on the following grounds:

- They believe a finding or sanction is unreasonable and or disproportionate
- New evidence has come to light

- They believe the disciplinary process was procedurally flawed

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

6.4 To be quorate the Appeal Panel must consist of at least the same number of members as at the disciplinary hearing and, where appropriate, Local Governing Body members not previously involved in the disciplinary hearing, and who have no prior knowledge of the case.

6.5 If, having heard the relevant parties at the appeal, the Chair of the Appeal Panel decides to uphold the appeal, they may withdraw the warning or replace it with a different warning. The sanction must not be enhanced. The procedure for the appeal hearing is detailed in Appendix 5.

6.6 Where an appeal against dismissal is not upheld, the date of termination will be the date on which the employee was originally dismissed. During the appeal stage the employee will be treated as being continuously employed for the whole period, including the period between dismissal and reinstatement.

6.7 The decision of the appeal panel will be final. The employee must be notified in writing within five days of the appeals panel hearing.

7. Disciplinary Records

7.1 While potential disciplinary action outlined in the formal warning will expire at the end of the specified period, there may be exceptional circumstances when the warning cannot be disregarded, such as where the conduct is satisfactory throughout the period the warning is in force, only to lapse very soon thereafter. Where a pattern emerges, an employee's disciplinary record will be borne in mind in deciding how long any new warning will last.

7.2 Spent disciplinary sanctions must only be declared to a prospective employer if the reason for the sanction concerns safeguarding children in accordance with the latest Keeping Children Safe in Education. Sanctions for other reasons will not be declared to prospective employers after they are spent.

7.3 Details of allegations that are found to have been malicious should be removed from personnel records. However, for all other allegations, it is important that a clear and comprehensive summary of the allegation, details of how the allegation was followed up and resolved, and a note of any action taken and decisions reached, is kept on the confidential personnel file of the accused, and a copy provided to the person concerned.

7.4 The purpose of the record is to enable accurate information to be given in response to any future request for a reference, where appropriate. It will provide clarification in cases where future DBS checks reveal information from the police about an allegation that did not result in a criminal conviction and it will help to prevent unnecessary re-investigation if, as sometimes happens, an allegation re-surfaces after a period of time. The record should be retained indefinitely in accordance with the latest Keeping Children Safe in Education guidance.

8. Referrals to Statutory Bodies

- 8.1 City of London Academies Trust has a legal duty to refer to the Disclosure and Barring Service anyone who has harmed, or poses a risk of harm, to a child or vulnerable adult; where the harm test is satisfied in respect of that individual; where the individual has received a caution or conviction for a relevant offence, or if there is reason to believe that the individual has committed a listed relevant offence; and that the individual has been removed from working (paid or unpaid) in regulated activity, or would have been removed had they not left, the DBS will consider whether to bar the person.
- 8.2 The Trust will make such referrals as soon as possible after the resignation or removal of the individual.
- 8.3 When the Trust dismisses or ceases to use the services of a teacher, including agency, because of serious misconduct, or might have dismissed them or ceased to use their services had they not left first, we will consider whether to refer the case to the Secretary of State, as required by sections 141D and 141E of the Education Act 2002. The Secretary of State may investigate the case, and if they find there is a case to answer, must then decide whether to make a prohibition order in respect of the person.

9. Special Cases

- 9.1 If a case involves alleged financial irregularity, corruption or fraud within the Trust, the Human Resources Director **must** be contacted at the earliest possible opportunity and kept informed, without alerting the employee. At this stage, consideration will be given to Police involvement and the Trust's CEO must be consulted before a decision is made. Any determination of whether the matter should be referred to the Police will be in line with statutory guidance from the DfE.
- 9.2 Any allegations of a misuse of the Trust's property such as IT equipment shall be considered under the relevant policies covering IT users, social media and internet use. Computers, equipment and software are the property of the Trust; therefore, examination of such equipment or software can take place without permission of the individual.
- 9.3 If there are suspicions that an employee is misusing Trust equipment, e.g. inappropriate communications or accessing or downloading inappropriate material, the Designated Officer for Child Protection will carry out an initial assessment of the circumstances, without alerting the employee at this stage.
- 9.4 Where suspicions are that the misuse of equipment relates to the accessing or downloading of inappropriate material, then the Trust's Human Resources team must be contacted immediately for advice, as should the Local Authority's Officer for Child Protection. They will determine whether the matter should be referred to the Police.
- 9.5 Certain criminal offences may affect suitability of employment with the Trust and damage reputation. If charged with a criminal offence, employees must inform their line manager as soon as possible. The Trust will not treat notification about criminal proceedings, or a

conviction including bind overs and cautions as an automatic reason for dismissal or for any other form of disciplinary action.

- 9.6 The Trust will not usually wait for the outcome of any prosecution before deciding what action to take unless specifically advised otherwise by the Police.

10. Role of the Trust's Human Resources Department

- 10.1 The Trust's Human Resources department will ensure that the treatment of disciplinary matters is consistent throughout the entire organisation.
- 10.2 The Trust's Human Resources department is responsible for promoting this consistency and will be informed of all cases where disciplinary action other than formal counselling may be contemplated. They will ensure that a representative is present at all hearings and appeals and that advice is available regarding investigations, where appropriate.
- 10.3 Where a representative of the Trust's Human Resources department is not in attendance, managers must consult with them prior to handling potential dismissals.

11. Confidentiality and keeping records

- 11.1 The need to maintain confidentiality will always be observed. Information must not be shared with anyone except those directly involved in the matter. This does not preclude a confidential discussion with a fellow work colleague or trade union representative.
- 11.2 Circulation of information will be that which is necessary, to ensure a fair process and consideration of the case. Unnecessary disclosure of confidential information at any stage may lead to disciplinary action.
- 11.3 Records must be treated in the strictest confidence and kept in accordance with Data Protection legislation.

Appendix 1 –

Procedure for Formal Counselling

- Explain that the meeting is informal, outlining that it is not formal disciplinary action and therefore not part of the formal disciplinary procedure.
- Whilst there is no entitlement to representation under the informal resolution, there may be instances when both parties agree it would be helpful for the employee to have the support of a trade union representative or work colleague. However, if the employee considers that the matter being discussed requires representation and would prefer for the matter to be dealt with under the formal procedure, it may be reasonable to agree this request. An adjournment may assist. Human Resources advice to be sought if required.
- Outline the conduct under review.
- Ask the employee for an explanation.
- Explain why the conduct was considered inappropriate.
- Confirm the expectations and required standards.
- In certain circumstances, it may be appropriate to agree with the employee an action plan that provides a framework setting out the improvement required. It may be appropriate to set objectives and timescales.
- Consider whether counselling, training or any other help or support is required.
- Confirm when the matter will be reviewed (if applicable).
- Explain that formal disciplinary action may be taken if improvement is not achieved or sustained.
- Formal Counselling does not constitute formal action and will not be referred to in employment references.

Witness Statements

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

During the investigation factual witness statements must be taken from all relevant witnesses, which must be signed and dated in confirmation that it is an accurate record. If allegations result in a disciplinary hearing, pupil names will be redacted. Only information that is directly relevant to the allegation(s) will be included. The questions that the witnesses were asked should be included in the statements to demonstrate that the witnesses have not been led by the interviewer. When statements are taken, the dates and any names quoted should be written out in full and the date of the interview should be included.

A witness must be informed that:

- Any evidence provided may be included in their statement, so they should not disclose information that is irrelevant or prejudicial; they will be given one opportunity to review and amend their statement. If this involves substantial changes to the facts, both versions of the statement will be included in the investigation report and supporting evidence.

Appendix 2 –

- Their statement may be presented at any subsequent disciplinary hearing.
- A copy of their statement will be provided to the employee once it has been signed and agreed if, following the investigation, a formal disciplinary hearing is held.

Witnesses who are employees of the Trust may be called to disciplinary/appeal hearings to clarify their statement of evidence.

All witness statements will be provided to the employee as part of the bundle of information that is provided at the same time as they were invited to a formal disciplinary meeting.

Statements from Pupils

This is a delicate area where the search for truth needs to be conducted in such a way as to avoid causing emotive harm to the pupil whose evidence is required. When dealing with such matters, careful consideration needs to be taken of the age and emotional development of the child.

As a general principle, **children should not be interviewed more than required**. If a child has already been interviewed by the Police or by a social care agency in the course of an investigation into the same or similar allegations, the interview statements should be requested from the other agency and used in the investigation if release is agreed.

Care needs to be taken to ensure that the pupil does not, as far as possible, feel intimidated by the process. This is particularly true for a pupil who might themselves have been the subject of the alleged misconduct. Where a formal investigation is underway, the parent/carer of the pupil should always be informed and invited to attend the interview with their child. The parent/carer should be told that an incident is being investigated and that the pupil's evidence may be used if it proves necessary to hold a formal disciplinary hearing. Signed consent from the parent/carer and a confidentiality agreement is required.

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

Where the Investigating Officer is not well-known to the pupil, for example if they are from another academy, consideration should be given to asking the relevant Designated Officer for Child Protection to attend this part of the investigation. The pupil should feel able to speak frankly and as far as is possible, in a situation that is not intimidating.

When interviewing pupils, the Investigating Officer must be accompanied by a note taker, whose role is to ensure that a complete and accurate record is taken.

The Investigating Officer, considering the age and capabilities of the pupil, should ask the pupil to write down an account of what happened. Where this is not practicable, the Investigating Officer

Appendix 3 –

must detail the pupil's account and check carefully that they have recorded accurately what the pupil has said. It is essential for the Investigating Officer to prepare questions in advance.

The Investigating Officer should seek clarification of what the pupil saw and experienced. Leading questions must be avoided, but it is important to record the pupil's account of what happened, where and when and who else might have been present during the incident.

The pupil's account should, like any witness statement, indicate the time, date and place at which the account was written, the questions asked, plus the names and roles of all those present at the interview.

Pupils/students must never attend a disciplinary/appeal meeting.

Procedure for the Disciplinary Hearing

The Chair of the Disciplinary Hearing explains the order of the hearing:

- The Investigation Officer will present the allegation(s) and case against the employee.
- The Chair of the Disciplinary Hearing will ask questions of the Investigation Officer.
- The Chair of the Disciplinary Hearing invites the panel (if applicable) and the employee to also ask questions of the Investigation Officer.
- The employee will state their case.
- The Chair of the Disciplinary Hearing asks questions of the employee/representative.
- The Chair of the Disciplinary Hearing invites the panel (if applicable) and the Investigating Officer to also ask questions.
- The Chair of the Disciplinary Hearing invites both parties to make a concluding statement and then sum up and adjourns the meeting for deliberation/careful consideration or further investigation.

Presentation of the Allegations and Case

The Investigating Officer will present the management case, detailing:

- What the allegation(s) is/are.
- Background information and chain of events (if necessary).
- What is evidence that proves each allegation.
- Where the evidence is (must not present any new information that the employee has not already seen).
- Introduces any witnesses if prior notice has been given.

The Chair of the Disciplinary Hearing will open questioning of the case before allowing the panel (if applicable) and the employee to ask questions. The Chair of the Disciplinary Hearing should remind the employee and their representative that their questions are not an opportunity to state their

Appendix 4 –

case. When questions are concluded the Chair of the Disciplinary Hearing will move on to the employee's case.

Employee's Case

The employee and their representative present the case detailing:

- What their response is to the allegation.
- Presents the evidence in support of their case.
- Introduces any witnesses if prior notice has been given.

The Chair of the Disciplinary Hearing will open questioning of the case before allowing the panel (if applicable) and the Investigating Officer to ask questions. The Chair of the Disciplinary Hearing should remind the Investigating Officer that their questions are not an opportunity to state their case. When questions are concluded, the Chair of the Disciplinary Hearing will move on to invite both parties to make a concluding statement.

Adjournment

When both sides have had opportunity to present their cases and to question the other side, the Chair of the Disciplinary Hearing should draw things to a close. If appropriate the Chair of the Disciplinary Hearing will sum up key points for both parties.

The Chair of the Disciplinary Hearing then ends the meeting and agrees with the employee the method of communication of the decision within a specified time frame. The Chair of the Disciplinary Hearing advises the employee of their right to appeal the decision, the timescale in which to appeal and who their letter of appeal should be sent to.

The note taker will detail the start and finish time of the meeting and allow all parties to review the minutes.

The Disciplinary Hearing Panel will deliberate and reach a conclusion on:

- whether on the balance of probabilities the allegation(s) is proven.
- what sanction, if any, is appropriate, bearing in mind that this will be limited by the possible outcomes listed in the hearing letter.

In such cases it may be agreed to communicate the outcome by telephone before confirming the decision in writing. The decision of the Disciplinary Hearing Panel will normally be conveyed orally in the presence of both parties and will be confirmed in writing within five working days.

The Chair of the Disciplinary Hearing may challenge the relevance of any evidence if it is not apparent. Wherever possible this should be investigated prior to the hearing. If no justification can be given or it is tenuous, the Chair of the Disciplinary Hearing may instruct the person presenting to make their point and/or move on.

Appendix 5 – Procedure for the Appeal Hearing

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

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

The decision will be confirmed in writing to the employee within five working days. There will be no further right of appeal following the decision of the Appeal Panel.

Appendix 6 – Examples of Misconduct and Gross Misconduct

Misconduct

- A disregard to Trust or academy standards, instructions, policy and procedure
- Persistent and unacceptable absence levels
- Absenteeism, including unauthorised absence from work during the working day.
- Failure to comply with the sickness absence policy without good reason.
- Regular or persistent poor time keeping
- Failure to exercise proper control or supervision of pupils
- Insolence and/or insubordination.
- Making unauthorised telephone calls
- Sending personal mail at the Academy's expense.
- Unauthorised use of the internet • Breach of contract of employment
- Violation of safety rules.
- Failures to follow reasonable line management instructions.
- Foul/abusive language.
- Breach or violation of teaching standards.
- Unprofessional or inappropriate conduct towards another person, student, staff member, parent, or visitor.
- Any matter which involves a breach or omission of a safeguarding issue.

Gross Misconduct

The following list of examples of gross misconduct is not exhaustive but gives general guidance to the types of offence that will normally be considered gross misconduct by the Trust and may consequently lead to summary dismissal:

- any activities which may disqualify you from working with children in accordance with national safeguarding provisions
- any conduct, whether during working hours or outside of work, which in the reasonable opinion of the Trust brings you or the Trust into disrepute
- dishonesty, theft, fraud, embezzlement or any action calculated to assist others in such activities
- unauthorised possession of, or malicious damage to, the Trust's property or goods entrusted to the Trust's care
- fighting, assault or attempted assault on any person during working hours
- wilful refusal to carry out a reasonable request or series of reasonable instructions
- reduced capacity to carry out your duties due to the influence of illegal drugs or alcohol*
- using, handling or possessing illegal drugs or substances on Trust premises, in working time, at a Trust event or whilst acting on behalf of the Trust
- consuming alcohol during office hours
- gross carelessness or neglect of duty risking serious consequences to the health and/or safety of any of the Trust's students, employees or third parties or to the Trust's property or business reputation

- discrimination, harassment or victimisation on the grounds of protected characteristics as defined in the Equality Act of 2010
- bullying, harassment or victimisation, whether verbal, written, photographic, pictorial or physical
- serious breaches of the Trust's IT user and social media and internet related policies
- using social media (e.g. blogs, Facebook, Twitter etc.) to post derogatory or offensive comments about the Trust, the Trust's sites, work colleagues, or third parties with which the Trust has an operational relationship
- serious email or Internet abuse
- any misappropriation of files or documents belonging to the Trust of any kind or making copies, duplicates or excerpts of these for private or any other purposes unrelated to an employee's employment and without consent
- material breach of contract or of the Trust's policies and procedures
- criminal offences, including those committed outside the workplace, which impact on the employee's ability or suitability to perform their duties

* notwithstanding support for those that have a dependency use

Appendix 7 – Teachers’ Notice Periods

The Burgundy Book national conditions of service agreement for teachers provides that classroom teachers, deputy headteachers and assistant headteachers are under two months' notice and in the summer term, three months' notice, terminating at the end of that academic term.

For the purposes of resignations and notice periods, the dates of the three academic terms are deemed to be:

- for the autumn term, from 1 September to 31 December inclusive
- for the spring term, from 1 January to 30 April inclusive
- for the summer term, from 1 May to 31 August inclusive

Therefore, it is imperative that teachers who are dismissed from their post with notice that the following deadlines are observed:

- to leave on 31 December, give notice by no later than 31 October • to leave on 30 April, give notice by no later than 28 February
- to leave on 31 August, give notice by no later than 31 May.

It is important to note that these provisions only allow teachers to be dismissed from their posts with effect from the end of term.

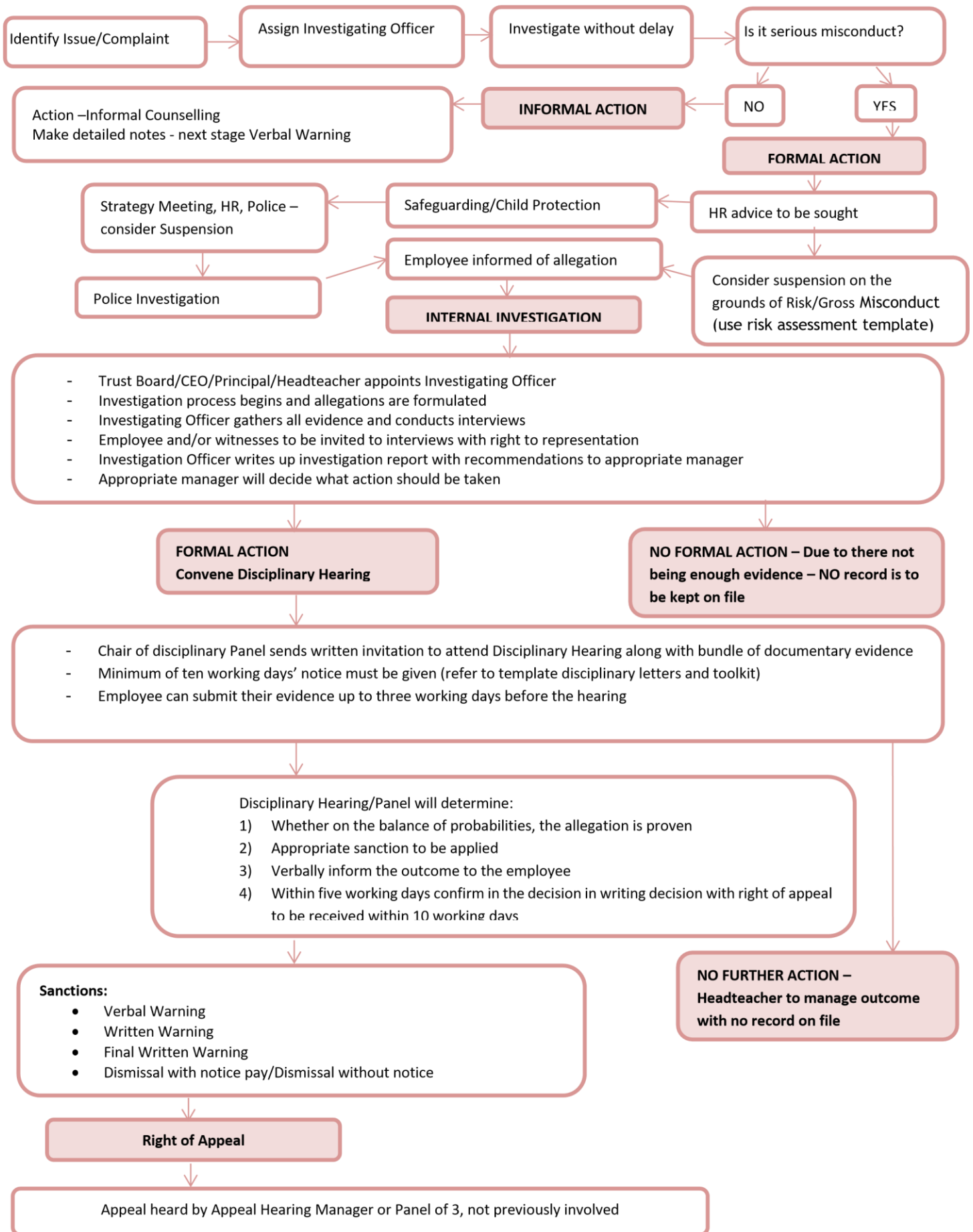
Please note that Principals/Headteachers are under three months' notice and in the summer term, four months' notice. They must therefore give notice one month earlier than the above dates.

Teachers’ notice pay should not be rolled up into one payment. They should remain on payroll until the end of the notice period. This is due to them being entitled to pensionable pay during notice periods.

Please note that where a teacher has over eight years’ service and they are dismissed from post with notice pay in the autumn or spring term, then under the Employment Rights Act 1996 they are entitled to a maximum 12 weeks’ notice.

Please ensure you seek further advice from the Trust’s Human Resources team.

Appendix 8 – Disciplinary Process Flowchart



Identify Issue/Complaint

Assign Investigating Officer

Investigate without delay

Is it serious misconduct?

Action – Informal Counselling
Make detailed notes - next stage Verbal Warning

INFORMAL ACTION

NO

YES

FORMAL ACTION

Strategy Meeting, HR, Police – consider Suspension

Safeguarding/Child Protection

HR advice to be sought

Police Investigation

Employee informed of allegation

Consider suspension on the grounds of Risk/Gross Misconduct (use risk assessment template)

INTERNAL INVESTIGATION

- Trust Board/CEO/Principal/Headteacher appoints Investigating Officer
- Investigation process begins and allegations are formulated
- Investigating Officer gathers all evidence and conducts interviews
- Employee and/or witnesses to be invited to interviews with right to representation
- Investigation Officer writes up investigation report with recommendations to appropriate manager
- Appropriate manager will decide what action should be taken

FORMAL ACTION
Convene Disciplinary Hearing

NO FORMAL ACTION – Due to there not being enough evidence – NO record is to be kept on file

- Chair of disciplinary Panel sends written invitation to attend Disciplinary Hearing along with bundle of documentary evidence
- Minimum of ten working days’ notice must be given (refer to template disciplinary letters and toolkit)
- Employee can submit their evidence up to three working days before the hearing

Disciplinary Hearing/Panel will determine:

- 1) Whether on the balance of probabilities, the allegation is proven
- 2) Appropriate sanction to be applied
- 3) Verbally inform the outcome to the employee
- 4) Within five working days confirm in the decision in writing decision with right of appeal to be received within 10 working days

- Sanctions:**
- Verbal Warning
 - Written Warning
 - Final Written Warning
 - Dismissal with notice pay/Dismissal without notice

NO FURTHER ACTION – Headteacher to manage outcome with no record on file

Right of Appeal

Appeal heard by Appeal Hearing Manager or Panel of 3, not previously involved