

# Elliot Foundation Academies Trust Disciplinary Policy

## Document Control

Date	Revision amendment details	By whom
2012-2018	Revisions various	Trustees
Dec 2018	Review and approval by Ops group	Ops Group
Dec 2018	Adopted by TEFAT Board Trust	Trustees
Dec 2021	Proposed date for review subject to statutory update as required	Ruth Dickens

# Table of contents

<b>Table of contents</b>	<b>2</b>
<b>Related policies and documents</b>	<b>3</b>
<b>Definitions</b>	<b>3</b>
<b>Vision and values</b>	<b>4</b>
<b>Policy statement and objectives</b>	<b>5</b>
<b>Scope and principles</b>	<b>5</b>
<b>Roles and responsibilities</b>	<b>7</b>
<b>Definitions of misconduct and gross misconduct</b>	<b>8</b>
<b>Informal action</b>	<b>8</b>
<b>Formal action</b>	<b>9</b>
<b>Suspension</b>	<b>9</b>
<b>Investigation</b>	<b>11</b>
<b>Disciplinary hearing</b>	<b>13</b>
<b>Range of sanctions</b>	<b>15</b>
<b>Appeal</b>	<b>17</b>
<b>Appeal hearing</b>	<b>17</b>
<b>Protection and support for those involved</b>	<b>18</b>
<b>Appendix A: Disciplinary Rules for All Employees</b>	<b>19</b>
<b>Appendix B: Agenda for Disciplinary Hearing</b>	<b>22</b>
<b>Appendix C: Agenda for Disciplinary Appeal Hearing</b>	<b>24</b>
<b>Appendix D: Disciplinary Allegation Flowchart</b>	<b>26</b>

## Related policies and documents

- Procedure for Dealing with Allegations Against Members of Staff
- Safeguarding Policy
- Teacher Standards - [Teacher Standards](#)
- Equality and Diversity Policy

## Definitions

- Where the word 'Trust' or 'TEFAT' is used in this document it refers to The Elliot Foundation Academies Trust.
- Where the term 'CEO' is used it refers to the Chief Executive Officer.
- Where the word 'Governing Body' or term 'LGB' is used it refers to the Local Governing Body of an individual academy within the Trust.
- Where appropriate, local procedures and practices to implement Trust policies will be published by TEFAT head office or the individual academies.

# Vision and values

## Vision

The Elliot Foundation was created as a safe place for children and teachers where all are nurtured to achieve beyond even their own expectations. Our motto, "Where children believe they can because teachers know they can" reflects our conviction that raising expectations for all children and teachers is at the heart of a successful and inclusive society.

## Values

### For children

We help children to discover themselves and aspire beyond any limitations that their context might appear to place upon them. We help them understand that they can be, 'Heroes of their own lives' building the foundations for healthy and successful lives.

### For schools

In addition to the essential functional skills of reading, writing and mathematics, children need to learn how to learn and to believe that they can continue to do so. They must also possess the critical thinking skills to sift fact from fiction to be able to think for themselves, freely and creatively.

### For success

To thrive, whatever their chosen path, children need confidence, curiosity and commitment. We will nurture these attitudes across all their learning experiences.

### For communities

Children at Elliot schools will be raised with an awareness of the world around them and their role in shaping a better future through volunteering and contributing in their communities.

## **1. Policy statement and objectives**

- 1.1. The Elliot Foundation Academies Trust (“TEFAT”) is committed to ensuring formal policies and established workplace procedures are in place for dealing with staff conduct and discipline. This policy is written in line with the Trust’s statutory responsibilities and the ACAS Code of Practice.
- 1.2. High standards of staff behaviour, conduct and discipline are essential for the effective and efficient management of schools and the safety and wellbeing of all staff and pupils in the Trust.
- 1.3. This policy is designed to help and encourage all employees to understand, achieve and maintain appropriate standards of behaviour and conduct. It also aims to ensure that employees of TEFAT are treated fairly and consistently when allegations of misconduct have been raised and that proper and adequate procedures are observed before any decision is taken, particularly when an employee’s job is at risk.

## **2. Scope and principles**

- 2.1. This policy applies to all staff who are employed by TEFAT, except for those serving their formal probation period.
- 2.2. Separate policies and procedures exist to deal with ill health, appraisal, capability issues and grievances. In cases involving allegations of abuse made against employees, reference should be made to the Trust’s Procedure for Dealing with Allegations Against Members of Staff.
- 2.3. Misconduct may have occurred where it is suspected or alleged that an employee has failed to meet acceptable standards of behaviour or conduct in any way.
- 2.4. Where misconduct is proven, a range of penalties may be imposed, up to and including dismissal.
- 2.5. All cases of allegations of misconduct will be dealt with promptly, transparently, fairly and consistently based on the circumstances of each case. No-one will be treated less favourably on the grounds of their gender, disability, age, race, creed, colour, religion, nationality, ethnic or national origin, sexual orientation, gender reassignment, medical condition, marital status or trade union membership or activity.
- 2.6. TEFAT recognises its responsibility to ensure the implementation of the rules of natural justice which are integral to this policy, in particular:
  - the employee should know the nature of the allegation/s against them;
  - the employee should have an opportunity to state their case;
  - management should act in good faith.

- 2.7. The policy sets out general principles which will apply to the way in which the disciplinary process will operate and aims to ensure that all employees are treated fairly and consistently during such a process. The key areas to be addressed by this policy are:
- initial assessment, including levels of seriousness of allegation;
  - informal and formal action;
  - investigations and meetings;
  - decision making, including the range of potential penalties;
  - appeal mechanisms.
- 2.8. The Board of Trustees, Chief Executive Officer (CEO), Local Governing Body, Executive Principal and Principal/Head of School have overall responsibility for promoting and maintaining standards of work conduct.
- 2.9. Those responsible for dealing with allegations of misconduct will seek appropriate HR advice from the Trust's external HR advisors and/or TEFAT's HR Team as appropriate. They will treat them seriously and attempt to resolve them as quickly as possible.
- 2.10. All parties involved in dealing with allegations of misconduct are expected to:
- conduct themselves in a professional manner during the process and show respect for others;
  - work co-operatively together to resolve the issue;
  - observe the high level of confidentiality that is required, details of the allegation/s, any investigation or hearing being disclosed solely on a "need to know" basis.
- 2.11. TEFAT recognises that employees subject to allegations relating to their behaviour or conduct may find the process outlined in this policy difficult or stressful. Those leading any such process will be expected to take active steps to ensure that support mechanisms are identified and offered as appropriate on a case by case basis, including encouraging the employee to seek advice and support from their trade union, nominating a senior member of staff to act as a pastoral contact and providing details of the Trust's employee wellbeing support package provider.
- 2.12. When an employee raises a grievance during a disciplinary process, the disciplinary process may be temporarily suspended in order to deal with the grievance. If the grievance and disciplinary cases are related it may be appropriate to deal with both issues concurrently. A discussion will therefore take place between the senior leader, the HR advisor and the employee (normally through their trade union representative or directly if they are not represented) about whether or not the disciplinary procedure should be suspended so that the grievance issues can be dealt with separately under the Grievance Policy or whether the grievance should be raised by the employee at relevant disciplinary interviews, hearing and/or appeal.

Examples of when suspension of the disciplinary procedure may be appropriate are as follows (this is not an exhaustive list):

- the investigating officer is alleged to have a conflict of interest in the case;
- it is alleged that there is bias in the conduct of the disciplinary process;
- the manner in which the disciplinary process is being conducted is possibly discriminatory.

2.13. This policy does not form part of any employee's contract of employment and it may be amended at any time following consultation with staff and recognised trade unions.

### 3. Roles and responsibilities

3.1 The table below outlines the delegated responsibilities in relation to disciplinary matters. However, advice will always be sought from the Trust's central HR Team in cases where dismissal may be an outcome.

<b>Staff Category</b> (subject to the process)	<b>Investigating Officer</b> (to gather the facts and relevant information)	<b>Staff Disciplinary Officer/Panel</b> (to take disciplinary action up to and including dismissal)	<b>Staff Disciplinary Appeal Panel</b> (to determine appeals against disciplinary action)
<b>Centrally employed staff</b>	Member of TEFAT Operations Group or externally appointed investigator	CEO	Staff Disciplinary Appeal Panel (3 Trustees)
<b>CEO</b>	A nominated Trustee or externally appointed investigator	Staff Disciplinary Panel (3 Trustees)	Staff Disciplinary Appeal Panel (3 Trustees)
<b>School based staff</b>	Senior leader or externally appointed investigator	Executive Principal/Principal, CEO or Regional Director	Staff Disciplinary Appeal Panel (3 governors of the LGB*)
<b>Executive Principals/ Principals</b>	CEO/Regional Director or externally appointed investigator	Staff Disciplinary Panel (2 members of TEFAT Operations Group and the Chair of the LGB)	Staff Disciplinary Appeal Panel (3 Trustees)

★ TEFAT reserve the right to appoint a representative of the Board of Trustees as the 3rd member of this panel

- 3.2 There may be certain circumstances in which the delegation of responsibility outlined above will not be appropriate, such as circumstances in which the postholder has been directly involved in the disciplinary process or is a witness. In these circumstances, the delegated responsibility will be escalated to those applicable to the next stage of the process.
- 3.3 TEFAT reserves the right to utilise governors from other academies within the Trust and/or representatives of the MAT Board who are suitably trained and knowledgeable about their role and the policy to convene Staff Disciplinary Panel and Staff Disciplinary Appeal Panel where necessary. Such panels will be supported and briefed on their role throughout by a suitably qualified and/or trained HR adviser.
- 3.4 Where a Staff Disciplinary Panel or Staff Disciplinary Appeal Panel is required, the Board of Trustees/governing body should nominate members who are not staff members to form the panel and who have not had prior involvement in the case.
- 3.5 In cases in which the an allegation of misconduct has been made in relation to an employee who is a trade union representative, the normal disciplinary procedure will be followed. However, the Disciplinary Officer will discuss the case with the regional trade union official of the relevant union before any action is taken, having first obtained the employee's permission to do so.

## **4. Definitions of misconduct and gross misconduct**

### **4.1. Gross Misconduct**

Gross misconduct is a term used to describe misconduct which is so serious it may destroy the employment contract between the employer and the employee and make further working relationships and trust impossible. A list of behaviours which may be considered as forms of gross misconduct, rendering the employee liable to summary dismissal if claims are substantiated, can be found at Appendix A.

### **4.2. Misconduct**

Misconduct occurs when behaviour or conduct falls below expected standards and is usually willful. There may be occasions when negligent conduct amounts to misconduct. Breaches of reasonable conduct at work can take many forms. A list of behaviours which may be considered as forms of misconduct can be found at Appendix A.

## **5. Informal action**

- 5.1. Instances where minor misconduct is identified may not always require formal action and may be dealt with effectively through an informal approach. The senior leader, having sought advice from the HR advisor where appropriate, may be able to address the matter quickly and informally through, for example, a discussion to ensure the employee understands the expectations and standards of behaviour expected of them or through counselling, training, coaching or mentoring.

- 5.2. Such informal discussions do not form part of a formal disciplinary process and no formal warnings will be issued. Written guidance may be given about acceptable conduct and standards, how these have not been met and any support which has been identified. The purpose of this guidance is to assist the employee to ensure they meet acceptable standards in future and to evidence the academy's commitment to provide any support identified. The written guidance is not a formal sanction, will not be referred to in any internal or external references and will be removed from records after 12 months.
- 5.3. In certain instances, mediation may assist in relation to disciplinary issues. In such cases, subject to the agreement of relevant parties, mediation can be arranged to try to settle the matter.
- 5.4. Consideration should be given to any difficulties which an employee may be facing and a genuine attempt should be made to help the employee to overcome them. Where considered appropriate, managers should seek a professional medical opinion and advice when managing staff who may be suffering from mental illness, alcohol or substance abuse. Consideration should be given as to whether a referral to the Trust's occupational health advisors is appropriate and whether details of the Employee Assistance Programme should be provided to the employee.

## **6. Formal action**

- 6.1. In certain instances of misconduct, or circumstances in which informal action has not prevented further conduct of a similar nature occurring, it may be necessary to deal with an allegation of misconduct in accordance with the formal procedure.
- 6.2. In cases of alleged serious misconduct or gross misconduct, the matter must be dealt with in accordance with the formal procedure.
- 6.3. No formal disciplinary action will be taken without a prompt and appropriate investigation into the circumstances. Advice should be sought from the relevant HR advisor before invoking formal procedures.

## **7. Suspension**

- 7.1. In serious cases of misconduct or where gross misconduct is suspected, following advice from the HR advisor, it may be necessary for the Disciplinary Officer to suspend the employee whilst the alleged misconduct/gross misconduct is investigated.
- 7.2. Suspension may be appropriate immediately following an incident or later in the process, for example when new evidence comes to light as part of the investigation.

- 7.3. Suspension should be considered when the employee's continued presence:
- constitutes a potential risk to other staff, pupils, themselves or to other stakeholders or TEFAT property;
  - would potentially impede or prevent a full and proper investigation;
  - seriously undermines the reputation of the academy or TEFAT;
  - constitutes a risk of a repetition of any serious alleged misconduct, or;
  - when the allegation, if proven, may constitute gross misconduct leading to dismissal.
- 7.4. Senior leaders should always consider alternative actions as a means of avoiding suspension such as a temporary change to duties, working arrangements or a transfer of workplace.
- 7.5. The following principles apply to suspension and should be communicated with the employee:
- suspension is not a form of penalty and is not disciplinary action;
  - suspension does not assume any guilt on behalf of the employee being suspended;
  - the suspension period will be as brief as possible and kept under regular review by the Investigating Officer;
  - suspension will be with full pay;
  - where the employee holds more than one post in the academy/Trust, the suspension will apply to all posts;
  - the employee being suspended will refrain from entering the academy or usual place of work until the investigation is complete and a disciplinary hearing arranged if appropriate, or if the suspension is lifted;
  - the employee being suspended will be expected to maintain confidentiality in relation to the process and must not discuss the matter with colleagues or other stakeholders, other than those specified at the time of the suspension or subsequently agreed by the Investigating Officer;
  - the suspended employee will have access to a senior leader who is not involved in the case ("Contact Officer") for dedicated pastoral support and to TEFAT's wellbeing support package;
  - the employee will be encouraged to seek support from their trade union, if applicable;
  - an investigating officer will be appointed without delay who will be the first point of contact in relation to the process for the employee and their trade union representative, where applicable.
- 7.6. When considering the suspension of an employee, the Disciplinary Officer should inform the Director of HR or where this is not possible, an alternative member of the TEFAT HR Team, prior to doing so.

- 7.7. If the decision is taken to suspend an employee, the Disciplinary Officer should inform the employee of the decision and allegation/s. This should be done in person where at all possible. The employee should be asked to leave the premises and there may be a need to escort them off the site if appropriate in the circumstances. They should not be permitted to make representations or discuss the matter at this stage and instead, an investigation meeting will be convened providing the employee with the right to be accompanied by a trade union representative or workplace colleague as soon as possible. In the case of the Executive Principal/Principal being suspended, this action can only be taken by the Chair of the Local Governing Body or nominated TEFAT representative and the Director of HR must be kept fully informed at all stages of the process.
- 7.8. Written confirmation of the suspension should be provided at the point of suspension or sent as soon as possible afterwards and no later than within two working days.
- 7.9. The Investigating Officer (see paragraph 8 below) will review the suspension at regular intervals, usually every 2 weeks and will ensure that they advise the employee of progress with the case.
- 7.10. Where a suspension has taken place, it may only be lifted by the Disciplinary Officer after consultation with the HR Director, or as a decision of any dismissal or appeal hearing.
- 7.11. Suspension should not be confused with management action to temporarily remove the employee from their current place of work; this removal may be required immediately following an incident in order to diffuse a conflict situation. An example of this type of management action might be asking people to work in a separate area of the Trust or asking the employee to remain at home for the rest of the working day.

## **8. Investigation**

- 8.1. The aim of a disciplinary investigation is to gather and record the facts necessary to determine whether there is a case to answer or not.
- 8.2. A senior member of staff will be nominated to conduct the investigation (hereafter known as the Investigating Officer). The Investigating Officer will have received appropriate training and/or guidance and will be supported by a nominated member of the HR Team or another HR adviser appointed for this purpose during the course of the process. In serious cases or where it is necessary to secure impartiality, an external Investigating Officer may be appointed.

- 8.3. The Disciplinary Officer will write to the employee to advise that an allegation/s of misconduct/gross misconduct has/have been made and provide the following:
- an outline of the allegation/s;
  - the name and job title of the individual they have appointed to act as Investigating Officer;
  - the name and job title of the individual they have identified to act as a pastoral support for the employee (“Contact Officer”);
  - a copy of the Disciplinary Policy;
  - details of the employee wellbeing support package.
- 8.4. The Investigating Officer will write to the employee at the earliest opportunity to request their attendance at an investigation meeting providing at least 5 working days notice of the meeting (unless otherwise agreed between the parties) and notifying the employee of:
- details of the allegation/s;
  - time and date of an investigation meeting;
  - confirmation of their right to representation by a trade union representative or work colleague, at all meetings;
  - details of any support to be provided to the employee.

If the employee or their trade union representative is unable to attend the meeting for a valid reason, they should confirm this to the person conducting the meeting at the earliest opportunity and an alternative date should be arranged. This will normally be within five working days of the original date proposed by the employer.

- 8.5. The Investigating Officer will promptly carry out a full and thorough investigation into the allegations in as timely manner as the circumstances will allow. Normally investigations will be completed within 20 working days, except for exceptional circumstances. Care will be taken to ensure that all relevant evidence is gathered from the relevant parties, including from the employee who is the subject of the investigation.
- 8.6. The investigation may require employees and witnesses to be interviewed to establish the facts. If this is the case, the importance of confidentiality will be emphasised to them. Any staff member who deliberately provides false information or otherwise acts in bad faith as part of an investigation may themselves be subject to action under this policy. Witnesses should be given sufficient notice of any investigation meetings/interviews and offered the opportunity to be accompanied by a trade union representative or workplace colleague. In circumstances in which both the employee subject to the disciplinary process and a witness are members of the same trade union, they must be supported by different representatives.
- 8.7. Minutes of the investigation meeting will be taken and a copy provided to the employee and their representative where appropriate, with a view to agreeing them as an accurate record.

- 8.8. It may be necessary for the Investigating Officer to pursue further lines of enquiry before being able to conclude their investigation. If this is the case, the Investigating Officer should give an indication of what further steps are necessary and when the investigation is likely to be completed.
- 8.9. On conclusion of their investigation, the Investigating Officer will prepare a report summarising their investigation and making a recommendation to the Disciplinary Officer as to whether there is a case to answer or not. The conclusion will be confirmed to the employee in writing.
- 8.10. If there is deemed to be a case to answer, the matter will normally progress to a disciplinary hearing in accordance with paragraph 9 below. The Disciplinary Officer must notify the Director of HR, or a member of the TEFAT HR Team, prior to arranging a hearing in circumstances in which dismissal is one of the possible hearing outcomes.
- 8.11. If it is determined that there is no case to answer, no further formal action will be taken and the matter will be closed and all documentation removed from the employee's file. However, the Investigating Officer may make recommendations and should consider the need for any other supportive mechanisms such as additional training or counselling which may be appropriate.
- 8.12. **Pre-Agreement**  
It is acceptable for an agreement to be reached by both parties in relation to not proceeding to a formal hearing and instead for the employee to accept a specific sanction. This will only apply when the relevant facts are not in dispute and both parties are in agreement about the outcome of the procedure. If agreement is not reached, the normal process must be followed.

The statutory process must still be followed requiring the Trust to notify the employee in writing of the outcome of the investigation, a meeting must be held and the employee must be afforded the opportunity to appeal the decision.

A pre-agreement is not permitted in the following circumstances:

- allegations of gross misconduct
- where dismissal is a possible outcome

## **9. Disciplinary hearing**

- 9.1. A formal disciplinary hearing will be convened to be heard by either the Disciplinary Officer/Panel, as appropriate, who have not previously been involved in the investigation stage.
- 9.2. Those conducting the hearing may be advised by a member of the Trust's HR Team or other suitable HR advisor. If dismissal is a potential outcome, a representative from the Trust's HR Team or other suitable advisor must be present to advise the Disciplinary Officer/Panel.

- 9.3. The employee will be notified of the hearing in writing at least 5 working days in advance of the hearing (unless otherwise agreed between the parties). If the employee or their trade union representative is unable to attend this hearing for a valid reason, a new date will be agreed within 5 working days.
- 9.4. The written notification of the hearing will include the following:
- the date, time and venue of the hearing;
  - the name/s of who will be conducting the hearing;
  - the specific nature of the allegation/s;
  - the right to be accompanied by a trade union representative or workplace colleague;
  - the names of any witnesses to be called by those presenting the management's case;
  - that an independent note-taker will be present;
  - copies of all supporting documents to be used as evidence by those presenting the management's case;
  - the employee's entitlement to submit additional relevant documentation in advance of the hearing and to identify any additional witnesses they wish to call to attend, provided they do so to be received no later than 2 working days in advance of the hearing.
  - the possible/likely outcome of the hearing if the allegations are considered proven i.e. warnings, dismissal etc;
  - a copy of the Disciplinary Policy.
- 9.5. Those conducting the hearing will make provision for any reasonable adjustments to accommodate the needs of a person with disabilities at the meeting. However, they must be informed of requirements at least 2 working days before the hearing.
- 9.6. Save for exceptional circumstances, the Investigating Officer will be asked to attend the hearing to present their report and they may be accompanied by a separate member of the Trust's HR Team or other suitable HR advisor.
- 9.7. If the employee fails to attend the hearing, the case will be heard in their absence, unless acceptable reasons have been presented in advance and it has been agreed to postpone the hearing to a later date.
- 9.8. The purpose of the hearing will be to consider the Investigating Officer's report and for this to be considered, alongside any other additional evidence, including that presented by the employee and their representative. The hearing will also be used to clarify any facts or details necessary to inform the decision outcome of the hearing.
- 9.9. It is for the Disciplinary Officer/Panel to decide whether late evidence from either side is acceptable. The views of both parties should be sought when considering the late admission of evidence, and the Disciplinary Officer/Panel should consider the fairness and reasonableness when making their decision. If the late evidence accepted is in written form, then it would be usual to allow a brief adjournment for reading the document/s.

- 9.10. The procedure to be followed at a hearing is at Appendix B.
- 9.11. The Disciplinary Officer/Panel must ensure that the employee receives a fair and impartial hearing, is encouraged to be represented or accompanied, is allowed to present his/her case or have it presented, and is allowed to bring witnesses and to question the individual presenting the management case and any witnesses in attendance.
- 9.12. The Disciplinary Officer/Panel must decide whether the allegation is, in their genuine belief and on the balance of probabilities, substantiated or not. When making a decision, they must consider the principles of natural justice and the evidence objectively.
- 9.13. If the allegation/s is deemed to be substantiated, prior to any decision being made in relation to what sanction, if any, to impose they take into account any mitigating factors which the employee or their representative wish to be considered and whether there are any current warnings on the employee's file as a result of previous disciplinary processes.
- 9.14. The decision of the hearing will be announced at the close of the hearing whenever possible. The Disciplinary Officer/Panel should confirm the decision in writing within three working days of the hearing, unless further investigation is needed.

## 10. Range of sanctions

- 10.1. **No further action** - applicable in cases in which the allegation/s has been deemed to be unsubstantiated. All allegations and documentation will be removed from the employee's file.
- 10.2. **Strong Management Advice** - this can be used for more minor breaches of conduct and does not constitute a formal sanction. It will be confirmed in writing to the employee but the written guidance will not be referred to in any internal or external references and will be removed from the employee's record after 12 months.
- 10.3. **First Written Warning** - This may be issued when an employee's conduct has been found to constitute misconduct. This written warning will set out:
- the nature of the misconduct/reasons for the warning;
  - any improvements and the change in behaviour required;
  - that the warning constitutes part of the formal disciplinary process and that the consequences of any further misconduct of a similar nature during the life of the warning could be a further written warning, final written warning and ultimately dismissal;
  - that they have a right of appeal and how to do so; and
  - that a record of the warning will be kept on file and the date it will be removed from records and disregarded for disciplinary purposes (usually after 12 months), subject to continuous satisfactory conduct during this period.

- 10.4. **Final Written Warning** - This warning will be given where misconduct is not sufficient to justify dismissal, but is sufficiently serious that it warrants only one warning, or where the misconduct is considered serious enough to justify dismissal, but where a lesser sanction is appropriate in the particular circumstances. A final written warning may also be issued in circumstances in which misconduct has been proven to have taken place whilst a previous warning was still live.
- The written notification will include the following information:
- the nature of the misconduct/reasons for the warning;
  - any improvements and the change in behaviour required;
  - that the warning constitutes part of the formal disciplinary process and that the consequences of any further misconduct of a similar nature during the life of the warning could be dismissal;
  - that they have a right of appeal and how to do so; and
  - that a record of the warning will be kept on file and the date it will be removed from records and disregarded for disciplinary purposes (usually after 12 months), subject to continuous satisfactory conduct during this period.
- 10.5. In addition and where appropriate, there are a number of supplementary instructions which a Disciplinary Officer/Panel may consider to accompany a formal warning. Such sanctions may include, for example the necessity to attend specified training.
- 10.6. **Dismissal** - If a further allegation/s is/are made about the employee's conduct within the period specified in the first and final or final written warning, the same procedure to that in paragraphs 6 to 9 above will be followed.
- 10.7. If the further allegation/s is/are deemed to be substantiated, the Disciplinary Officer/Panel will have the full range of sanctions available, including dismissal. If the employee is dismissed, this will be confirmed in writing and whether the decision to dismiss was with or without notice, or with pay in lieu of notice and the effective date of dismissal.
- 10.8. The employee has the right to appeal the decision to dismiss and details of how to do so will be included in the letter of dismissal. Please refer to paragraph 11 for further details.
- 10.9. **Gross Misconduct Dismissal** - If the allegation is considered so serious that it may amount to gross misconduct, justifying dismissal without previous warning and without notice, the employee will be informed by the Disciplinary Officer/Panel that s/he is suspended on full pay pending further investigation of the allegation/s, please refer to paragraph 7 for further details.
- 10.10. If, following an investigation and hearing in accordance with paragraphs 6 to 9 above, the allegation/s is/are deemed to be substantiated, the Disciplinary Officer/Panel, may decide to dismiss the employee. This will be confirmed in writing, together with confirmation of the effective date of dismissal and that it will be without notice.

- 10.11. The employee has the right to appeal the decision to dismiss and details of how to do so will be included in the letter of dismissal. Please refer to paragraph 11 for further details.

## **11. Appeal**

- 11.1 The employee has a right of appeal against strong management advice issued following a formal disciplinary process, a first written warning, first and final written warning, final written warning or decision to dismiss within 15 working days of receipt of the written confirmation of the warning or decision to dismiss.
- 11.2 The employee's wish to appeal should be submitted in writing and should confirm the grounds for their appeal which should be one or more of the following:
- a. process irregularity;
  - b. the Disciplinary Officer/Panel took into account irrelevant evidence;
  - c. the Disciplinary Officer/Panel failed to take into account relevant evidence;
  - d. the Disciplinary Officer/Panel misinterpreted evidence; the sanction imposed was disproportionate to the offence established; and/or
  - e. new evidence has come to light which the parties were not aware of at the time of the hearing.
- 11.3 The letter of appeal should be submitted to the relevant individual identified in the letter confirming the warning or the decision to dismiss.

## **12. Appeal hearing**

- 12.1 An appeal hearing will be convened as soon as possible following receipt of the written appeal to be heard by the Disciplinary Appeal Panel.
- 12.2 The employee will be given at least 5 working days' notice of the hearing (unless otherwise agreed between the parties) and may be accompanied by a recognised trade union representative or workplace colleague. If the employee or their trade union representative is unable to attend this hearing for a valid reason, a new date will be agreed within 5 working days.
- 12.3 The Disciplinary Appeal Panel may be accompanied by a member of the HR Team or other suitable HR advisor who has not previously been involved at an earlier stage of the formal process.
- 12.4 The purpose of the appeal hearing will be to:
- allow the employee the opportunity to restate their appeal;
  - enable the Disciplinary Officer/Panel to outline the process they followed in determining the original sanction and the reasons;
  - enable the Disciplinary Appeal Panel to clarify any facts or details necessary to inform their considerations.
- 12.5 The procedure to be followed at an appeal hearing is at Appendix C.

- 12.6 The Disciplinary Appeal Panel may:
- confirm the original sanction; or
  - withdraw any formal sanction; or
  - reduce the sanction to a lesser sanction.

**13. Protection and support for those involved**

- 13.1 Employees who co-operate with the procedure in this policy in good faith must not suffer any form of retaliation or victimisation as a result. However, employees who are deemed to have made malicious allegations are themselves likely to be subject to proceedings under this policy.
- 13.2 Employees who believe they have suffered any such treatment, should inform the Investigating Officer.
- 13.3 Anyone found to have retaliated against or victimised someone for co-operating with the procedure in good faith will themselves be subject to disciplinary action or further disciplinary action under this policy.

## Appendix A: Disciplinary Rules for All Employees

These Disciplinary Rules are intended to outline the standards of conduct and behaviour which are likely to be deemed as gross misconduct or misconduct. The list of examples is not an exhaustive list and conduct of a similar nature or gravity will be dealt with in a manner that is consistent with the examples below. In determining a case of gross misconduct or misconduct, mitigating circumstances and any relevant employer duties under equality legislation will be considered.

### Gross Misconduct

1. Dishonesty associated with place of work or job being undertaken:
  - a) Theft of property belonging to the Trust, contractor, an employee or pupil, or member of the public;
  - b) Deliberate falsification of timesheets, expenses claims or other documentation for pecuniary or other advantage;
  - c) Demanding or accepting monies or other considerations as a bribe for the use of Trust property, provision of Trust service or the showing of favour on behalf of the Trust;
  - d) Falsification of any information given on an application form for a post to gain advantage whether pecuniary or otherwise;
  - e) Failure to disclose criminal convictions cautions, convictions, bindovers or warnings either on appointment or those that occur during the course of employment;
  - f) Falsification of registration of pupils or students for pecuniary or other gain.
2. Deliberate refusal to carry out a reasonable, lawful and safe instruction or the normal agreed defined duties of the post.
3. Gross negligence in failing to attend to or carry out the agreed duties of the post.
4. Wilfully ignoring responsibilities/instructions thus placing other employees/pupils/students or stakeholders in danger, e.g. ignoring handling instructions/safety regulations in respect of chemicals, machinery, equipment, food.
5. Being unfit to perform duties associated with the post as a result of taking drugs, other than in accordance with medical advice, or taking alcohol.
6. Wilful unauthorised disclosure of information (classified as confidential), by employees who, in the course of their duties, have access to such information which, by its release, could be harmful to pupils/students, other employees, governors or the reputation of the school (save for instances in which a disclosure is legitimately made under the Trust's Whistleblowing Policy).

7. Acts of violence or vandalism in the course of employment:
  - a. Malicious damage to Trust, contractor, other employees', pupils', students' property;
  - b. Physical violence towards pupils, students, staff, governors, parents, volunteers or members of the public.
8. Sexual misconduct at work:
  - a. Sexual misconduct whether criminal or not;
  - b. Sexual or inappropriate behaviour towards or relations with students.
9. Off-duty misconduct:
  - a. An act of criminal sexual misconduct by an employee:
  - b. Drug offences committed by employees whose job brings them into contact with young people;
  - c. Sexual or inappropriate behaviour towards or relations with students, or young persons.
10. Misuse of the internet or email or phone facilities of the school:
  - a. Using the internet to access unseemly or sexually explicit material;
  - b. Using email for communicating unseemly or sexually explicit material;
  - c. Using phones for communicating unseemly or sexually explicit material.
11. Serious acts of discrimination, whether unlawful or not, in the course of duty against pupils, other employees, volunteers, governors or contractors on the grounds of age, sex, marital or civil partnership status, race, disability or sexual orientation, gender reassignment, pregnancy or maternity, religion, faith or belief.
12. Serious acts of bullying, harassment or victimisation of pupils, other employees, volunteers, governors or contractors in the course of duty.

## Misconduct

1. Absenteeism and lateness not related to the employee's own ill health, for example:
  - a. failure to remain at the place of work during normal working hours without permission or sufficient cause for absence;
  - b. frequent failure to attend work punctually;
2. Failure to follow Trust/academy procedures, for example persistent failure to comply with the sickness absence reporting procedure or failure to notify the Trust of additional employment outside normal working hours which would be detrimental to the work to be performed as an employee of the Trust.
3. Dishonesty and repeated petty wrongs
4. Neglect of duty.
5. Abusive behaviour/offensive language which arises directly out of or in connection with work and which is directed at pupils, colleagues, governors, contractors, volunteers or members of the public.
6. Bullying harassment or victimisation of pupils, other employees, volunteers, governors or contractors in the course of duty.
7. Discrimination, whether unlawful or not, in the course of duty against pupils, other employees, volunteers, governors or contractors on the grounds of age, sex, marital or civil partnership status, race, disability or sexual orientation, gender reassignment, pregnancy or maternity, religion, faith or belief.

## Appendix B: Agenda for Disciplinary Hearing

### 1. PRESENTATION OF THE TRUST'S CASE

- a. The Trust's representative presenting the management case may make an opening address outlining the case.
- b. The Trust's representative calls each witnesses in turn so that:
  - the witness is asked questions by the Trust's representative;
  - the employee's representative has the opportunity to ask the witness questions;
  - the Trust's representative may ask the witness questions of clarification; and
  - the Disciplinary Officer/Panel has the opportunity to question the witness.
- c. Each witness withdraws after giving evidence, except the Trust's representative who is a witness and presents the outcome of the disciplinary investigation.

### 2. PRESENTATION OF THE EMPLOYEE'S CASE

- a. The employee's representative may make an opening address outlining the employee's case.
- b. The employee's representative calls each witness in turn so that:
  - the witness is asked questions by the employee's representative;
  - the Trust's representative has the opportunity to ask the witness questions;
  - the employee's representative may ask the witness questions of clarification;
  - the Disciplinary Officer/Panel has the opportunity to question the witness;
- c. Each witness withdraws after giving evidence, except that the employee who has been a witness to his/her own case has the right to remain throughout the hearing procedure.

### 3. SUMMING UP

- a. The Trust's representative and then the employee's representative shall have the opportunity to sum up their case if they so wish, with the employee's representative having the last word.
- b. Both parties then withdraw.

### 4. THE STAFF DISCIPLINARY OFFICER/PANEL'S DECISION

- a. The Disciplinary Officer/Panel, together with an appointed adviser(s), are to deliberate in private, only recalling the parties to clarify points of uncertainty on evidence already given. If recall is necessary both parties are to return, notwithstanding that only one may be concerned with the point under clarification.
- b. The Disciplinary Officer/Panel is to announce the decision to both parties at the close of the proceedings whenever possible. The decision will be confirmed in writing soon afterwards. Where the decision is to dismiss or to issue a written warning the employee will be advised of his/her right of appeal against the decision of the Disciplinary Officer/Panel.

## **NOTES ON THE PROCEDURE**

1. The Trust's case may be presented by someone other than the Investigating Officer and the Investigating Officer may remain in the hearing throughout as or with the Trust's representative.
2. The employee may choose to represent him/herself. In such a situation the employee may be questioned as a witness.
3. The Disciplinary Officer/Panel will normally have access to an adviser to advise him/her/them on the law and on procedure. The Disciplinary Officer/Panel will make the decision. No adviser shall vote on the matter being considered by the Disciplinary Officer/Panel.

## Appendix C: Agenda for Disciplinary Appeal Hearing

### 1. PRESENTATION OF THE EMPLOYEE'S APPEAL

- a. The employee's representative may make an opening address outlining the employee's case.
- b. The employee's representative calls each witnesses in turn so that:
  - the witness is asked questions by the employee's representative;
  - the Trust's representative has the opportunity to ask the witness questions;
  - the employee's representative may ask the witness questions of clarification;
  - the members of the Disciplinary Appeal Panel have the opportunity to question the witness.
- c. Each witness withdraws after giving evidence, except that the employee who has been a witness to his/her own case has the right to remain throughout the hearing.

### 2. PRESENTATION OF THE MANAGEMENT RESPONSE

- a. The Trust's representative may make an opening address outlining the case.
- b. The Trust representative calls each witness in turn so that:
  - the witness is asked questions by the Trust's representative;
  - the employee's representative has the opportunity to ask the witness questions;
  - the Trust's representative may ask the witness questions of clarification; and
  - the members of the Disciplinary Appeal Panel have the opportunity to question the witness.
- c. Each witness withdraws after giving evidence, except the Trust's representative who has been a witness and is bringing the Trust's case to the Disciplinary Appeal Panel has the right to remain throughout the hearing.

### 3. SUMMING UP

- a. The Trust's representative and the employee's representative, have the opportunity to sum up their case if they so wish; the employee's representative to have the last word.
- b. Both parties then withdraw.

### 4. THE STAFF DISCIPLINARY APPEAL PANEL'S DECISION

- a. The Disciplinary Appeal Panel, together with an appointed adviser(s), are to deliberate in private, only recalling the parties to clarify points of uncertainty on evidence already given. If recall is necessary both parties are to return, notwithstanding that only one may be concerned with the point under clarification.
- b. The Panel is to announce its decision to both parties at the close of the proceedings whenever possible. The decision will be confirmed in writing soon afterwards.

## NOTES ON THE PROCEDURE

1. The Trust's response may be presented by someone other than the Disciplinary Officer/Chair of the Disciplinary Panel and they may remain in the hearing throughout with their representative.
2. The employee may choose to represent him/herself. In such a situation the employee may be questioned as a witness.
3. The Disciplinary Appeal Panel will normally have access to an adviser to advise the panel on the law and on procedure. The Disciplinary Appeal Panel will make the decision. No adviser shall vote on the matter being considered by the Disciplinary Appeal Panel.
4. In exceptional circumstances, where it is considered appropriate the appeal hearing may be conducted as a re-hearing, the procedure used at the Disciplinary Hearing (Appendix B) will be used.

## Appendix D: Disciplinary Allegation Flowchart

