


Disciplinary Policy and Procedure

Version 1.0

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<p>Name of Responsible Committee/Individual:</p>	<p>Trust Board</p>
<p>Implementation Date:</p>	<p>May 2020</p>
<p>Review Date:</p>	<p>May 2021</p>
<p>Target Audience:</p>	<p>All staff</p>
<p>Related Documents:</p>	<p>ACAS Code of Practice – Disciplinary and Grievance Procedures Expectations and Code of Conduct Policy for Appraising Teachers' Performance Associate Staff Performance</p>

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The Brighter Futures Learning Partnership Trust (The Trust) aims to deal with

disciplinary matters quickly, fairly, consistently and discreetly, adhering to relevant employment legislation and statutory guidance. The Trust has a talented, committed, professional workforce and it is hoped that in being clear and explicit in relation to expected standards of behaviour and conduct, employees will align their conduct to the required standards.

Staff are encouraged to seek support where required, to give and receive appropriate, honest and constructive feedback and to conduct themselves in a professional manner.

Minor misconduct will be dealt with informally wherever possible and appropriate. Cumulative misconduct can result in an escalation of levels of warning and potentially dismissal and gross misconduct can result in immediate summary dismissal.

Staff, managers, the CEO, Headteachers/ Principal, the senior leadership teams, the Trust Board and the Local Governing Bodies will work together to minimise the risk of misconduct occurring (e.g. providing staff with relevant codes of conduct, role modelling appropriate behaviours, embedding the vision and values, providing staff with learning and development opportunities and access to support and guidance).

PURPOSE

This procedure has been developed to provide a fair and consistent process for dealing with unacceptable behaviour by employees.

The procedure should be used for dealing with matters where normal day-to-day supervision is insufficient (e.g. gross misconduct or some instances of repeated misconduct).

SCOPE

The procedure applies to all employees of the Brighter Futures Learning Partnership Trust

The procedure will be applied in such a way as to comply with the Scheme of Delegation agreed by the Trust.

The procedure should not be used for issues relating to capability, or attendance problems, or failure to meet induction period standards for newly qualified teachers. (These are covered by separate provisions.) It may be applicable in the case of bullying and harassment.

ROLES AND RESPONSIBILITIES

The **Trust Board** is responsible for ensuring this policy is applied fairly and consistently across the Trust alongside holding specific responsibilities relating to the potential dismissal of employees under this policy.

The **CEO** is responsible for ensuring employees are treated fairly and consistently across the Trust. He/She will oversee the implementation, monitoring and review of this policy with support from the Central Trust HR and Trust's HR provider. The CEO also has specific responsibilities detailed within this policy regarding decision making and the issuing of sanctions.

The **Local Governing Bodies and Headteachers/Principal** are responsible for monitoring the application of this policy within their respective schools, ensuring minor misconduct is managed effectively and other related policies are shared, understood and adhered to by all employees. They are also responsible for ensuring managers, leaders and supervisors have access to appropriate training and development to enable them to apply this policy fairly, consistently and professionally.

The **Trust's HR advisers** will provide advice, guidance and support in the implementation of this policy and procedure, acting as a point of contact for Headteachers/Principal and the CEO. The Trust's HR advisers will support the CEO in ensuring this policy is consistently applied across the Trust.

Managers must operate within this policy in a fair, consistent and reasonable way; ensuring confidentiality is protected where possible. It is a manager's responsibility to manage disciplinary issues. Managers must ensure that employees are supported throughout disciplinary processes appropriately and **they must not take any formal action without speaking to the Headteacher and CEO, who will seek advice for the HR provider.**

Informal discussions, support, advice and guidance do not form part of the formal disciplinary procedure and managers must ensure that employees are advised of this. Managers are encouraged to deal with allegations of misconduct promptly, professionally and discreetly, ensuring staff dignity is maintained wherever possible, whilst also ensuring that disruption to service provision is minimised. **Managers are encouraged to seek advice from the Headteacher/Principal/CEO even when dealing with matters of misconduct informally.**

Investigating Officers will receive appropriate training and must adhere to this policy and procedure which conforms with ACAS guidelines.

Employees are expected to behave in a professional manner at work in line with the values of the Trust and the Expectations and Code of Conduct. It is also expected that staff do not place the reputation of the Trust at risk outside of work. If any member of staff is unsure about the Expectations and Code of Conduct, parameters and appropriate behaviours expected inside and outside of work they should seek clarity from their manager, the Headteacher/Principal, members of the senior leadership team, leaders and/or their trade union. The Trust encourages employees to contact their **trade unions** at the earliest opportunity when involved in or facing disciplinary allegations and processes.

EQUALITY AND DIVERSITY

The Trust is committed to:

- Promoting equality and diversity in its policies, procedures and guidelines

- Delivering high quality teaching and services that meet the diverse needs of its student population and its workforce, ensuring that no individual or group is disadvantaged

Employees' Entitlements

To be accompanied at all stages by a trade union representative or work colleague. However, there may be circumstances where a trade union representative or work colleague may not be available. In these situations, a suspension should not be unduly delayed.

To appeal against those outcomes of a disciplinary hearing – see section Appeals

NOTE: No disciplinary action will be taken against a representative of a recognised trade union until, subject to the approval of the representative in question, the circumstances of the case have been discussed with a full time official (i.e. a regional representative) of the union concerned. The employee has the right to be or not be represented. However, if immediate precautionary suspension is necessary, whilst every effort should be made for these discussions to take place, this should not prevent the suspension where suspension cannot reasonably be delayed. **This should be discussed with the CEO prior to action being taken.**



KEY PRINCIPLES

Headteacher/Principal's Responsibilities:

Dealing with minor instances of unsatisfactory conduct at an early stage.

Ensuring that employees clearly understand the standards of conduct expected of them and ensure staff have copies of the Trust's Employee's Code of Conduct

Carrying out, or making arrangements for, an investigation when any breach of discipline is alleged.

(Headteachers/Principals should contact the CEO who will seek guidance from the HR provider for guidance prior to any investigation being commenced)

Ensuring that the person subject to investigation is kept up-to-date with progress.

Deciding, in the most serious cases (alleged gross misconduct), or where an employee's continued presence at work may hinder an investigation, whether it may be necessary to suspend the employee concerned.

The Disciplinary Procedure

Carrying out an investigation:

Note: Data protection

The Trust processes personal data collected during the investigation stage and any subsequent stages of disciplinary action in accordance with its data protection policy. In particular, data is collected as part of the investigation stage and any subsequent stages of disciplinary action is held securely and accessed by, and disclosed to, individuals only for the purposes of completing the disciplinary procedure. Inappropriate access or disclosure of employee data constitutes a data breach and should be reported in accordance with the organisation's data protection policy immediately. It may also constitute a disciplinary offence, which will be dealt with under this disciplinary procedure.

Key Responsibilities of Investigating Officer

Identify the potential seriousness of the matter.

Determine any need to suspend the employee. The decision to suspend will be the Headteacher's/Principal's in consultation with the CEO. If the suspension.

Investigate and gather all relevant information, which will usually include one or more investigation interview.

Keep the employee informed of progress throughout the investigation.

Review the need for further investigation.

Determine how to proceed having completed a thorough investigation.

Ensure that the investigation information is appropriately documented.

Investigation Interview

This is to enable the investigating officer to decide whether or not there is a disciplinary case to answer and, if so, to establish the precise allegation. It is not a disciplinary hearing.

The employee must be given reasonable written notice (except in exceptional circumstances no less than 3 working days) of the time and date of interview(s), together with details of the issues of concern. All correspondence should be forwarded to the employee via recorded delivery, or hand delivered. The employee must also be informed of their right to be accompanied at the meeting. If the employee's work colleague or representative is not available on the scheduled date(s), they may propose an alternative date and time which falls no later than 5 working days following the scheduled date. If the work colleague or representative remains unavailable beyond this

timescale, it is reasonable to expect the employee to make alternative arrangements to be accompanied, but it is their decision whether they wish to be accompanied.

Precautionary Suspension

Where appropriate an employee will be suspended whilst investigations are conducted (e.g. where the matter is thought to be gross misconduct, or where suspension is necessary to ensure the welfare of others or to facilitate an investigation). Although not a disciplinary sanction, suspension should always be a carefully considered decision rather than an automatic response. The CEO, Chair of Trustees and Governors will be notified of the suspension immediately. **Only the Trustees** may lift a suspension.

HOW TO PROCEED AFTER THE INVESTIGATION

When the evidence has been gathered the investigating officer needs to consider how to proceed. This might be:

- that a disciplinary hearing is not warranted and there is no case to answer. In this situation the manager should write to the employee to confirm the outcome (**advice can be sought from Central HR Manager and Trust's HR Advisers after consultation with the CEO**)
- that a disciplinary hearing is not warranted but there are some issues to address (in which case the employee should be notified without delay, and any constructive guidance and instruction about the employee's behaviour, to avoid similar situations arising in future, should be provided by the investigating officer and recorded in the same way as under normal supervision); or
- that a disciplinary hearing is warranted.

ARRANGING A DISCIPLINARY HEARING

The employee is entitled to receive written notification of the arrangements for the hearing **no later than 10 working days before the hearing**, together with copies of documents to be referred to at the hearing. All correspondence should be forwarded to the employee **via recorded delivery, or hand delivered**. Within 3 working days of the hearing, the employee should submit to the investigating officer any other documents to which they intend to refer.

THE DECISION

The employee will be informed verbally of the decision at the hearing and this will then be confirmed in writing no later than 5 working days after the decision is made. This letter should be sent by recorded delivery, or hand delivered.

Outcomes available are as follows:

No Further Action: Appropriate in cases where it is concluded that misconduct has not occurred or is not of sufficient concern to warrant a caution being issued.

Advisory Caution: This is a developmental outcome, rather than a disciplinary sanction, appropriate where misconduct has occurred but is not considered to be serious enough to warrant a written warning. If it arises from a hearing, the hearing officer will refer the matter back to the employee's line manager, with appropriate recommendations to help to correct the employee's behaviour through the supervisory process. The hearing officer will caution the employee that without an improvement in their behaviour, it might be necessary for consideration to be given to disciplinary action in the event of future misconduct. This will be recorded in the same way as supervision/ performance management records and the employee will sign to record their confirmation that the caution has been administered. If it arises from day to day supervision, the line manager will caution the employee and record this.

If an employee remains dissatisfied following the issuing of an advisory caution a review meeting will be convened by the hearing officer or line manager, as appropriate, for their dissatisfaction to be addressed.

Written Warning: Appropriate in cases where misconduct has occurred but which falls short of gross misconduct. The warning will have effect for 12 months from being issued. Once it has expired it will be disregarded for disciplinary purposes.

Final Written Warning: Appropriate where either

- the misconduct is so serious that it justifies a warning that dismissal would result from further misconduct (even though no previous warnings had been issued), or
- further misconduct which would normally warrant a written warning has occurred within the life of a previous written warning.

The warning will have effect for 18 months from the date of the hearing, but once it has expired it will be disregarded for disciplinary purposes.

Dismissal: Appropriate for

- gross misconduct, or
- misconduct which occurs during the lifespan of a previous final written warning and which would itself warrant at least a written warning (“cumulative misconduct”).

Dismissal for gross misconduct will be from the date of the decision and will be without notice. Dismissal for cumulative misconduct will be with due notice.

The employee will be provided with written reasons for dismissal, the date on which employment will or did terminate and details of how to exercise their right of appeal. This letter should also state if there is to be a referral to a regulatory professional body.

NOTE: Where appropriate, the circumstances will be reported to regulatory professional bodies.

APPEALS

There is a right of appeal against a written or final written warning and dismissal. The appeal must be lodged in writing no later than 15 working days after notification of the decision.

If an employee remains dissatisfied following the issuing of an advisory caution a review meeting with the hearing officer will be convened for their dissatisfaction to be addressed.

The Fact Sheet on Appeals provides further guidance and sets out the appeals procedure

LIMITS OF AUTHORITY TO TAKE DISCIPLINARY ACTION

Action	Duration	Authority	Appeal
First Written Warning	6 months	Headteacher/Principal	3 of Trustees, Members, Governors – including CEO if not involved in investigation
Second Written Warning	12 months	Headteacher/Principal	3 of Trustees, Members, Governors – including CEO if not involved in investigation
Final Written Warning	18 months	CEO or Headteacher/Principal	CEO (unless they have heard the disciplinary case) or 3 Trustees, Members of Governors
Dismissal	Not Applicable	CEO and 2 Trustees/Governors	3 Trustees, Members, Governors

Policy Agreed: May 2020

Signed CEO of BFLPT – Helen-Redford-Hernandez:

H. Redford-Hernandez

Date: 28 May 2020

Signed – Chair of BFLPT – Marus Isman-Egal:

Marcus Isman-Egal

Date: 28 May 2020

Policy to be reviewed : May 2021

Created: 28 May 2020 (Version 1)

Revised:

Appendix 1 - MANAGING BEHAVIOUR

Line managers have the right to set reasonable standards of performance and behaviour for their teams. By ensuring that an employee knows what is required of them, both in terms of the duties and the standard to which those duties must be performed, the manager will be going a long way towards preventing poor performance/behaviour.

In addition, any difficulties the employee is experiencing in meeting the required standards can be addressed at an early stage before the matter escalates to the need to consider following the disciplinary procedure.

Standards of Conduct

- Employees should be aware of the conduct expected of them.
- Managers should ensure employees are aware of policies, procedures, rules, protocols and values.

Communication

Standards will be clearly and effectively communicated to all employees. This will be achieved by –

- providing a clear explanation, at the recruitment stage and through subsequent supervision, of the standards expected in relation to job performance and general conduct
- ensuring an effective use of induction and probationary periods by providing new employees with a copy of the disciplinary rules, code of conduct, terms and conditions of their employment and details of their duties and responsibilities
- holding regular supervisory meetings (see below) where standards of conduct can be reviewed and monitored. This can provide the ideal opportunity for any issues to be discussed and resolved before they become major difficulties

Effective Supervision

- Minor breaches of discipline are best dealt with through routine supervision between an immediate line manager and the employee. In these circumstances it is advisable for the line manager to –
 - arrange a meeting to discuss the issue/s with the employee o prepare for the meeting by having the facts and any documents available
 - encourage the employee to talk about the situation by asking open-ended questions
 - listen to what the employee has to say and ensure that they stick to the facts relating to the situation
 - consider if the person requires support or more training in their role

- explore whether the employee has any personal difficulties which may be affecting their work
- ensure that the job description is clear and reasonable, i.e. not out of date and/or inappropriate for the role
- establish whether or not the person is capable of carrying out the duties (refer to capability procedure if this is appropriate)
- consider if this is a deliberate case of misconduct or wilfully negligent performance of duties, without good cause, and if this is clearly not the case –
- agree with the employee and, together, sign an improvement plan, which should include a clear explanation of the consequences should behaviour not improve monitor and review progress, recognising improvements where they have been made or taking further action when necessary

NB Such meetings are integral to the line manager/employee supervisory relationship and unless there is good reason to the contrary need only be on a one-to-one basis.

Appendix 2 - EXAMPLES OF MISCONDUCT

It is the Brighter Futures Learning Partnership Trust policy to help and encourage all employees to adhere to standards of conduct. To achieve this a procedure has been developed to be followed when dealing with misconduct that cannot be addressed through normal supervision. The procedure aims to ensure that all employees receive consistent, fair and equal treatment, when the following examples of misconduct are being dealt with.

Managers are advised to discuss with the trust HR Advisors, how any of the following rules apply in any given situation.

The examples are divided into two types: “gross misconduct”, a single breach of which might lead to an employee’s dismissal; and “other misconduct”, a single breach of which might result in disciplinary action, but not normally dismissal. (If misconduct is repeated, however, this may ultimately lead to dismissal.)

Gross Misconduct

Unacceptable Working Practices

- Refusal to carry out a reasonable management instruction despite being advised that to continue to do so might lead to disciplinary action.
- Failure to provide acceptable standards of care and security of pupils through gross negligence.
- Deliberately sleeping on duty at inappropriate or unauthorised times.
- Misuse of confidential information, unauthorised disclosure, destruction, alteration, addition to or erasure of official documents/records.
- Driving a vehicle in the course of employment without an appropriate driving licence, adequate insurance or appropriate authorisation.
- Misuse of the Internet, as defined in the Internet Usage Policy.
- Failure to follow and uphold the safeguarding policies and practices in the Academy

Corrupt or Improper Practice

- Unauthorised acceptance of or requests for gifts, entertainment, hospitality or benefits of any kind, in contravention of the Brighter Futures Learning Partnership Trust declaration of gifts and hospitality.
- Misuse of official position with the Brighter Futures Learning Partnership Trust for personal gain, or the gain of some other party.
- Unauthorised involvement in clients’ financial affairs.
- Failure to declare a personal interest in contravention of the Brighter Futures Learning Partnership Trust Declaration Procedure.
- Engaging in activities, in or outside of work, which is seriously prejudicial or in conflict with the employee’s own function

Dishonesty

- Providing false information or conspiring to conceal information which leads to dishonest or fraudulent behaviour (e.g. deliberate falsification of expense claims, timesheets, information on application forms, aids, adaptations or other services provided or paid for by the Brighter Futures Learning Partnership Trust).
- Reporting sick (verbally or in writing) or remaining on sick leave when fit to undertake duties and responsibilities at work.
- Undertaking paid employment elsewhere whilst certified unfit to perform substantive duties.

Alcohol, Drugs and Substance Abuse

- Being on premises licensed for the sale/consumption of alcohol during working hours, or drinking alcohol at work during working hours
- Incapability at work due to the effects of alcohol, or prohibited drugs, or due to the misuse of non-prohibited drugs or other substances.

Criminal Activities

- Committing a criminal offence, whether during or outside of working hours, which renders the employee unsuitable to be employed in the Brighter Futures Learning Partnership schools and UTC.

Discrimination, Harassment and Bullying

- Discrimination, harassment or bullying when it is of a serious or unlawful nature.
- Use of Brighter Futures Learning Partnership equipment or premises to access, use, store or distribute explicit, offensive or discriminatory material.

Sexual Misconduct

- Involvement in sexual activities on the Brighter Futures Learning Partnership Schools and UTC premises during or outside working hours.
- Use of The Brighter Futures Learning Partnership equipment or premises to knowingly access, use, store or distribute explicit sexual material.

Property

- Loss or damage to the Brighter Futures Learning Partnership property or equipment through gross negligence or deliberate behaviour, whether during or outside of the working day.

Health and Safety

- Any act or omission which is grossly negligent and which seriously endangers the health and safety of self or others.

Assault and Aggressive Behaviour

- Fighting or physical assault at work.
- Serious verbal abuse, threatening or intimidating behaviour in or outside of the work place

Theft and Misappropriation

- Stealing from the Brighter Futures Learning Partnership or its employees or pupils, or the unauthorised removal of monies or property belonging to them.

Other Misconduct

The following list indicates the type of offence normally regarded as misconduct:

Attendance and Timekeeping

- Unauthorised absence from duty.

Unjustified and repeated lateness.

- Unjustified failure to comply with absence reporting procedures.
- Failure to comply with prescribed working hours (e.g. lunch breaks).
- Undertaking activities detrimental to recovery whilst on sick leave.

Behaviour

- Insubordination.
- Smoking in a prohibited area.
- Knowingly being an accessory to a disciplinary offence.
- Failure to maintain appropriate standards of dress in line with the Academies dress code

Health and Safety

- Failure to make use of protective equipment and clothing.
- Wilful disregard of safety practices, procedures and rules.

Operational Working Procedures

- Failure to comply with and observe operational policies and procedures, which the employee would reasonably be expected to be aware of.
- Frivolous or vexatious use of procedures.

Appendix 3 - DISCIPLINARY INVESTIGATION PROCESS

The investigation will be conducted by an investigating officer. In the Brighter Futures Learning Partnership this will be an appropriate senior leader or head teacher, or their nominee.

The investigating officer will, at appropriate stages during the investigation convene one or more investigation interviews with the employee. This is the employee's opportunity to explain their actions and for the investigating officer to put questions to him/her regarding the allegations. It is important that any investigation is carried out as thoroughly and promptly as possible.

Why hold an investigation?

- To enquire into the circumstances of the alleged misconduct.
- To give the employee a chance to offer an explanation.
- To obtain a balanced view of the information that emerges.
- To enable the investigating officer to decide whether the matter should continue to be dealt with under the disciplinary procedure.
- To accurately record all relevant information arising from the investigation.

Who should conduct the investigation?

- Normally the line manager with responsibility for the employee.
- Another manager (where it is not appropriate for the immediate line manager to carry out the investigation, e.g. where the line manager has been involved in the alleged misconduct or has commitments which would delay the investigation).

The role of the investigating officer

- To gather the evidence that establishes the facts.
- To consider at the outset, and throughout the investigation, whether the matter under investigation is potentially gross misconduct or otherwise, and to make that clear to the employee.
- To decide whether or not the matter should go to a disciplinary hearing.
- To notify the appropriate senior manager of the need to convene a disciplinary hearing.
- To prepare a report on the findings of the investigation including any appropriate recommendations for consideration.
- To submit the report to the hearing officer and employee, together with any supporting documents, prior to a hearing.
- To present the case together with the appropriate evidence at the disciplinary hearing.
- To keep the employee informed of the progress of the investigation, at least every 2 weeks.

The Investigation Interview

- The investigation officer should carry out the investigation interview(s) and may have a trust HR Advisor present to assist the process. The following provides a quick checklist with regard to the interview(s):
- Managers should write to the employee, giving at least 3 working days notice of the intention to hold an investigation interview, at a date and time which is reasonably and mutually convenient. All documents to be discussed at the meeting should be enclosed, together with a copy of the Discipline At Work Procedure.
- The employee is entitled to representation at the interview (see Appendix 5: Fact Sheet on “Employee Representation”).
- At the interview the investigation officer should explain that this is not a disciplinary hearing, but an investigation interview.
- If the employee has no representation the investigation officer must confirm that they are willing to continue with the interview.
- The investigating officer and the HR Advisor can ask any relevant questions, giving the employee the opportunity to respond at the end of each question.
- The investigating officer must inform the employee whether they need to make any further enquiries and how often they will keep in touch during the process of the investigation.
- It is important, and in the interests of both the employer and employee, to keep written records during the disciplinary process. It is the investigating officer’s responsibility to arrange for notes to be taken at the investigation interview(s).
- Notes taken at any interview, during the investigation process, should be agreed, where possible, and signed as a true reflection of the meeting by the employee. However, it should be noted that if the employee refuses to sign the notes they might still be used as part of the evidence in a disciplinary hearing.

Appendix 4 - SUSPENSION FROM DUTY

Where there appears to be serious misconduct, or risk to property or other people, a period of suspension with pay should be considered while the case is being investigated. Where possible the period of suspension should be kept as short as possible.

What is suspension?

- Suspension is a neutral act, not a disciplinary penalty.
- It involves removal of an employee from the workplace.
- It is a precautionary measure and full pay will continue to be paid during the suspension period.

When is it appropriate to suspend?

- In cases of potential gross misconduct. (See Fact Sheet on “Examples of Misconduct”.)
- When it is necessary to safeguard the personal welfare of employees, children.
- In advance of a suspension employees must be given the opportunity to respond to the allegations made against them, their response must be taken into consideration as to whether they can remain in work.
- In order to allow an investigation to take place.
- It may be necessary to report allegations to the LADO and await the outcome of a strategy meeting before a suspension takes place

Who can suspend?

- Headteachers, CEO, Trust Board
- The person conducting the suspension should consult with the CEO and the trust HR Advisor before any suspension is carried out.

How to carry out a suspension

- Arrange to meet with the employee to inform them of the nature of the allegations.
- The employee may have a trade union representative or work colleague with them during the meeting at which they are suspended. (If a representative is not available, suspension should not be delayed.)

During the suspension meeting the employee should be advised:

- not to comment on the allegations made against them
- that an investigation interview will be arranged as soon as possible
- they will have an opportunity to comment on the allegations during the investigation interview

- it may be necessary to contact them during the course of the investigation and they must therefore be reasonably available during normal working hours
 - not to enter the workplace or discuss the matter with colleagues without permission during the period of suspension
 - to hand in any Academy possessions/equipment, e.g. keys, fobs, blackberry, laptop, etc. so that their remote access to e-mail will be suspended
 - to contact their trade union
 - to consider seeking support from Occupational Health (employees can self-refer for counselling)
 - who to contact and how to contact them for information on the progress of the investigation
-
- If the employee is not in work (e.g. due to annual leave or sickness) management may carry out the suspension when the employee returns to work. However, where the return to work date is not known management should contact the employee as soon as possible and attempt to undertake the suspension in person. (It would not normally be considered reasonable to do this by telephone or letter. Only in exceptional circumstances, where it is unavoidable, should this be considered.)

Next Steps

- All suspensions will immediately be confirmed in writing. In schools, the Chair of Governors and the CEO will be notified.
- The matter should be investigated without delay.
- At regular intervals the need for suspension to continue will be reviewed.

Lifting the Suspension

- If the suspension is lifted, sensitive and supportive arrangements will be put in place to manage the return to work. • In schools, only the Governing Body may lift the suspension.

Appendix 5 - EMPLOYEE REPRESENTATION

Employee Representation

Employees have a statutory right to be accompanied by a work colleague or trades union official at disciplinary or grievance hearings. Representation at other meetings relating to employment issues is encouraged where it is seen as a positive way of moving things forward and negotiating a mutually satisfactory outcome.

Role of Representative

A representative can:

- support the employee during the hearing/meeting by responding on the employee's behalf, if the employee requests this.
- attend meetings to support an employee who is to be suspended. However, it should be noted that a suspension would not be delayed if a representative were unavailable.
- liaise with a line manager, or investigating officer, with regard to the employee they are representing.
- take reasonable time off work without loss of pay to fulfil the role.

A representative cannot:

- answer any questions on behalf of an employee who is required as a witness under the proceedings in question.
- act as a trades union representative unless they are either a full-time official or accredited by their own trades union to perform such a role.

Appendix 6 - APPEALS

Appeals

An appeal hearing provides the employee or former employee with the opportunity to have the facts of the case and the outcome of the original hearing reconsidered. The appeal will be a rehearing of the case. The appeal will be heard by a panel in accordance with the scheme of delegation.

Appeal hearings are an integral part of a fair disciplinary process. To ensure a fair and sensitive process is followed, managers governors and councillors hearing appeals will at all stages before, during and after proceedings

- conduct themselves impartially
- show due respect and courtesy to all parties
- recognise the uncomfortable, unfamiliar and stressful nature of proceedings for all concerned (including witnesses)
- be mindful of the consequences of their decisions
- ensure that an appropriate record of proceedings is taken
- carefully record their decision and the reasons for their decisions.

PROCEDURE:

An appeal must

- be submitted in writing in accordance with the letter confirming the disciplinary decision - be received within 15 working days of receipt of the letter confirm the disciplinary decision
- be heard no sooner than 10 working days after the appellant is notified of the arrangements for the appeal (unless the appellant agrees to a shorter timescale).

The appeal will follow the same format as the original hearing as set out at Appendix 7: “Fact Sheet on Structure and Conduct of Hearings”. This comprises

- introductions and explanation of process - presentation of management case (with reference to documents and witnesses as appropriate)
- questioning of management case and witnesses (by appellant, appellant’s representative, and appeals body and adviser)
- presentation of appellant’s case (with reference to documents and witnesses as appropriate)
- questioning of appellant’s case and witnesses (by Management Presenting Officer, appeals body and adviser)
- final summaries from Presenting Officer and appellant (in that order) - adjournment for appeals body to make decision.

The appeals body will determine whether to

- uphold the original finding and outcome; or - uphold the original finding but modify the outcome (by, for example, substituting it for a lesser sanction or outcome); or
- not uphold the original finding and in doing so remove the original sanction or outcome, or substitute for a lesser sanction or outcome.

The outcome of the appeal will be given orally at the end of, or as soon as possible after, the hearing, and will be confirmed in writing (by recorded delivery) within 5 working days.

Subject only to any statutory rights the appellant may wish to exercise, the decision of the appeal hearing will be final and no further rights of appeal or hearing will be allowed under this procedure.

There are circumstances in which an employee who is dismissed considers the dismissal unfair and they may apply to take their case to an Employment Tribunal. If an Employment Tribunal claim is received please contact the CEO and the Trust HR Advisor immediately for advice.

Appendix 7 - STRUCTURE AND CONDUCT OF HEARINGS

Structure of the Hearing

1. Introductions and explanation of the hearing process by the Hearing Officer/Chair of the hearing.
2. **Presentation of the alleged misconduct** by the Investigating Officer (termed, “Presenting Officer” for the purpose of this fact sheet). (At appeal hearings the Presenting Officer might be the original Hearing Officer rather than the Investigating Officer.)
3. Witnesses to be called as necessary, by the Presenting Officer, and to leave after
 - questioning by the Presenting Officer
 - questioning by the employee/appellant and their representative
 - questioning by the Hearing Officer/ members of the hearing and HR Consultant
4. Employee/appellant and their representative to ask questions of the Presenting Officer.
5. Hearing Officer/members of the hearing and HR Consultant to ask questions of the Presenting Officer *
6. Employee/appellant and their representative to respond to the allegation, calling witnesses if necessary.
7. Witnesses to be called as necessary, by the employee/appellant, and to leave after
 - questioning by the employee/appellant and their representative
 - questioning by the Presenting Officer
 - questioning by the Hearing Officer/members of the hearing and HR Consultant.
8. Presenting Officer to ask questions of employee/appellant and their representative.
9. The Chair/members of the hearing and HR Advisor to ask questions of the employee/appellant and their representative.
10. Summing up (with no new information introduced)
 - Presenting Officer first, then employee/appellant and their representative.

11. Hearing adjourned for the Chair/ members of the hearing to consider the case.

All parties will withdraw, with the exception of the Human Resources Advisor, to allow the Chair/members of the hearing to come to a decision. The Human Resources Advisor will remain to provide advice. However, the decision is the responsibility of the Chair /members of the hearing.

12. Hearing to be reconvened and the Chair/Chair of the hearing to verbally announce the decision.

Conduct During a Hearing

The role of the Chair/Chair of the hearing is to:

- Chair the hearing.
- Be responsible for the proper conduct of the hearing.
- Ensure both parties are provided with adequate opportunity to fully state their case.
- Take notes and ask questions, as appropriate.
- Decide what action to take, based on the evidence presented.
- Inform the employee of his/her decision, which is subsequently confirmed in writing. The letter should be sent via the post by recorded delivery.

The Committee's Role is to:

- Listen to the evidence presented by all parties
- Ask questions of parties as appropriate
- Decide whether or not misconduct has been committed by the employee and whether this warrants dismissal

The Committee can only consider the allegation(s) submitted and no other matter will be considered. The Committee may only ask questions during the course of the hearing, they should refrain from making comments or judgements until the adjournment.

The HR Consultant's role is to:

- Clarify any procedural matters raised during the course of the hearing
- Provide professional advice to the Chair/Committee during the hearing and during the decision-making process
- Ask any relevant questions of any parties as appropriate

Standards of Behaviour

- All those involved in the hearing are expected to be respectful and courteous.
- Any behaviour from any party deemed to be inappropriate, offensive, intimidating, malicious, insulting or abusive and/or intended to undermine, humiliate, or injure the other party will not be tolerated.

Witnesses

- Witnesses should provide relevant evidence and respond only to questions they are asked.

Documentation

- It is the responsibility of each party to ensure that all evidence they wish to refer to is included in the bundle, which is circulated to all parties prior to the hearing.
- New documentary evidence can only be submitted at the discretion of the Chair/Chair of the hearing.
- It is felt that the relevance of any submission is questionable the Chair/Chair of the hearing will look for clarification from the HR Advisor prior to proceeding on that point. It is important to consider the General Data Protection Act 2018 when submitting any information personal to other parties, and again clarification must be obtained from the HR Consultant if personal information is supplied without the express consent of the individual concerned. If consent is not given, the documents will need to be either anonymised, or not supplied to maintain the duty of confidentiality to other employees.
- Witnesses can be provided with necessary/appropriate documentary evidence to refer to during the hearing.

Adjournments

- An adjournment may be sought at any time during the hearing process where appropriate.
- The decision to adjourn rests with the Chair/Chair of the hearing.

Appendix 8 - REFERRALS TO REGULATOR PROFESSIONAL BODIES

If an employee is dismissed or resigns before a disciplinary process is completed and the Trust considers that it may have dismissed the employee at the outcome of the process, there may be a statutory duty to report the case to an appropriate regulatory professional body. (This is applicable in cases of incompetence as well as misconduct.)

Teacher Regulation Agency (TRA)

The Teacher Regulation Agency (TRA) acts on behalf of the Secretary of State for Education and is responsible for investigating allegations of serious misconduct against teachers and headteachers in schools in England.

If appropriate the TRA can prohibit a teacher from teaching in schools.

Employers have a statutory duty to consider referral of cases involving serious professional misconduct to TRA. Where a teacher's employer has dismissed the teacher for misconduct or would have dismissed them had they not resigned first, they must consider whether to refer the case to TRA.

The Academy must refer to the Teacher misconduct referral form for employers and seek advice from the Trust HR.

Allegations of serious misconduct against a teacher may be referred to TRA by any of the following:

- a teacher's employer, including an employment or supply agency
- members of the public who think that a case of misconduct by a teacher is serious enough to warrant a prohibition order
- the police
- the Disclosure and Barring Service (DBS) and other regulators who are aware of relevant information

A referral is appropriate if the alleged misconduct is so serious that it warrants a decision on whether the teacher should be prevented from teaching. Cases of less serious misconduct, and all cases of incompetence, should be dealt with locally by employers.

TRA can put an interim prohibition order in place to prevent a teacher from teaching until their case has been fully investigated. The Prohibition of Teachers document explains (available on the Government Website) provides advice on the factors relating to decisions leading to the prohibition of teachers from the teaching profession, the types of misconduct and relevant offences that may lead to prohibition.

Referral to Disclosure and Barring Service (DBS)

Employers have a legal duty to make a referral to the DBS where:

- An individual has harmed, or poses a risk of harm, to a child or vulnerable adult;
 - The harm test is satisfied in respect of that individual;
 - The individual has received a caution or conviction for a relevant offence, or if there is reason to believe that individual has committed a listed relevant offence; and
 - That individual has been removed from working (paid or unpaid) in regulated activity, or would have been removed had they not left
 - The DBS will then consider whether to bar the person. You should make a referral as soon as possible and ordinarily on conclusion of an investigation, when an individual is removed from working in regulated activity.
 - The DBS sets out the circumstances where a child care organisation must refer names to the Secretary for State for consideration of inclusion in the Barred List
- .
- The Trust will refer on to the Teacher Regulation Agency (TRA) misconduct cases relating to registered teachers,

Making Referrals

- A line manager will be responsible, with the assistance of the Trust HR Advisor, for ensuring that a referral has been made.
- Misconduct referrals will be made promptly within one month of the termination of employment (or, where applicable, suspension) and be accompanied by supporting evidence.

Appendix 9 - ALLEGATIONS INVOLVING CHILD PROTECTION

ALLEGATIONS INVOLVING CHILD PROTECTION ISSUES

1. When an allegation is received within the academy (anonymous or otherwise), which indicates that an employee may be unsuitable to continue to work with children in their present position or in any capacity, disciplinary action may not be the priority.
2. The following course of action should be used in respect of all cases in which it is alleged that an employee of the academy has:
 - Behaved in a way that has harmed a child, or may have harmed a child;
 - Possibly committed a criminal offence against or related to a child;
 - Behaved towards a child or children in a way that indicates s/he would pose a risk of harm if they work regularly or closely with children.
3. Whilst not subject to any formal disciplinary action the principles outlined in this appendix should similarly be applied to volunteers working on behalf of the academy.
4. On receipt of an allegation it should be reported to the senior manager (child protection coordinator) identified in the academy's child protection procedure immediately, unless that person is the subject of the allegation, in which case it should be reported directly to the Local Authority designated officer (LADO) for child protection issues.
5. The child protection coordinator in the academy **should not** investigate the incident by interviewing either those directly involved or any witnesses, but should take steps:
 - to establish when and where the incident is alleged to have occurred and;
 - what led up to it, and who was involved, including whether anyone else was present.
6. If initial enquiries confirm the allegation is likely to meet any of the criteria set out in paragraph 2 above, the academy should report it to the LADO at the earliest opportunity, at the latest within one working day.

Multi-agency involvement

7. The LADO and in most circumstances a HR representative will discuss the matter with the academy and, where necessary, obtain further details of the allegation and the circumstances in which it was made.
8. Initial discussions with the LADO should take place in advance of an employee being informed of an allegation, in order for agreement to be

reached on what information can be disclosed to the individual. The discussion should also consider whether there is evidence/information that establishes that the allegation is false or unfounded.

9. If the allegation appears to be with some foundation, discussions will take place which determine whether there is cause to suspect that a child is suffering, or is likely to suffer, significant harm, and appropriately refer the matter to children's social care and ask for a 'strategy meeting' to be convened straightaway.
10. If there is no cause to suspect that 'significant harm' is an issue, but a criminal offence might have been committed, the LADO will immediately inform the police and convene a similar discussion to decide whether a police investigation is needed.

Strategy meeting

11. The strategy meeting will include as appropriate, children's social care and/or the police. The strategy meeting will also normally involve the LADO, a senior member of the HR service team, a representative of the academy and any other agencies involved with the child.
12. The purpose of the strategy meeting will be to evaluate the allegation and decide how it should be dealt with. Available information about the allegation, the child and the person against whom the allegation has been made, will be shared to consider whether a children's social care/police investigation is needed and, if so, agree the timing and conduct of that.
13. Strategy meeting discussions will also inform the consideration of any recommendation for a disciplinary suspension, although the decision to suspend can only be made by the academy.
14. In circumstances where the parents/carers of the child are not aware of the allegation, the strategy discussion will decide how and by whom they should be informed.
15. In cases where a police investigation is necessary, discussions will also consider whether there are matters that can be taken forward in accordance with the disciplinary procedure, in parallel with the criminal process, or whether any disciplinary action needs to wait for completion of the police enquiries and/or prosecution.

Action following initial consideration

16. Where initial evaluation or the strategy meeting indicates an allegation does not appear to warrant police investigation or enquiries by children's social care, but professional misconduct may still have occurred the initial joint evaluation will also consider whether the allegation is more appropriately dealt with through the formal disciplinary procedure.
17. Where further investigation is required to inform consideration of disciplinary action, this should be conducted in accordance with the formal disciplinary

procedure. The LADO in consultation with the HR representative and the academy should discuss who will conduct the disciplinary investigation and how to proceed.

18. If the nature of the allegation does not require formal disciplinary action, appropriate action should be implemented without delay. If a disciplinary hearing is required, the employee should be provided with the appropriate notice and be invited to attend a hearing in accordance with the disciplinary procedure.
19. The LADO will continue to liaise with the HR representative and the academy to provide support and guidance as necessary. Any relevant information obtained in the course of enquiries by children's social care or the police will be made available where possible, to assist disciplinary action.
20. Whilst volunteers will not be subject to any formal disciplinary action it is vital that every effort is made to achieve a conclusion in all cases of allegations bearing on the safety or welfare of children.

