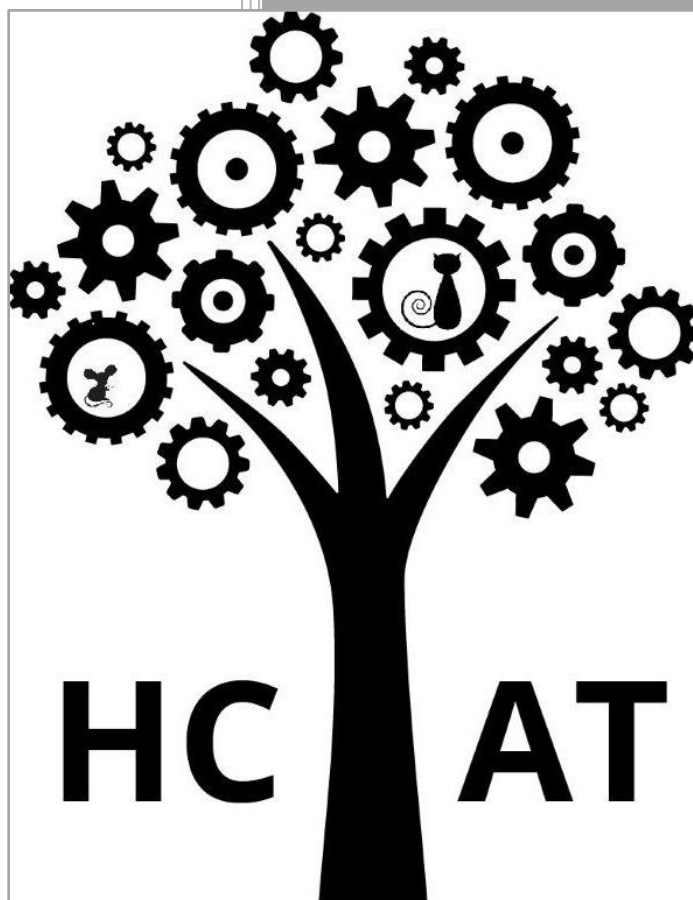


HCAT

Disciplinary Policy and Procedure

2017



## **HCAT DISCIPLINARY POLICY AND PROCEDURE**

### **Please note:**

This policy has been developed between key advisors, the trade unions represented at the school and professional associations recognised by HCAT who have been consulted in the development of this policy.

### **Introduction**

This policy and procedure is designed to clarify the rights and responsibilities of the Trust and employees and to promote fairness and order in any disciplinary action.

The policy and procedure applies to all employees except for non-teaching employees within their probationary period who are regulated by the probationary policy of the school. This policy and procedure does not form part of any employee's contract of employment and it may be amended at any time.

The Trust reserves the right to invoke this disciplinary policy and procedure at any stage according to the seriousness of any unsatisfactory conduct, regardless of any management warnings.

Actions taken by employees outside working hours may also fall within the scope of this policy. For example, where there is an impact on the employee's ability and/or suitability to do their job, or the school considers the employee's actions bring the Trust or academy or employee into disrepute. This includes a breach of professional standards and the code of conduct.

Where an employee is subject to more than one allegation relating to their conduct, these issues may be dealt with together, if appropriate.

Statutory requirements make it necessary for the school to refer the matter to the Disclosure and Barring Service (DBS) and National College for Teaching and Leadership in cases involving teachers and other school-based employees where the thresholds for referral are met. Information about making a referral can be found at <https://www.gov.uk/guidance/teacher-misconduct-referring-a-case>. For terminations involving the safety and welfare of children, settlement agreements must not be used.

### **Disciplinary Rules**

The normally accepted rules of behaviour, which apply in society as a whole, apply equally in the work situation. Any breach of an employee's contract of employment, any conduct, which the Trust considers unsatisfactory or prejudicial to its interests, or any failure to meet the required standards of work, may render an employee liable to disciplinary action.

The lists below are not exhaustive and only serve as a guide to matters that the Trust may deem (depending upon the nature, circumstances and severity of the incident) to be a breach of general discipline or gross misconduct.

It is accepted that to differentiate between general and serious breaches of discipline is difficult, therefore each case must be treated on its own merits. Since the examples are only guidelines, discretion will have to be exercised by the academy and/or Trust in categorising breaches of discipline, having regard to all the circumstances under which the breach of discipline occurred.

Some non-exhaustive examples are:

#### **Examples of misconduct**

- poor timekeeping (i.e. lateness/leaving early) and attendance standards
- work not of the required standard (where capability is not in question)
- disruptive behaviour
- breaches of contract
- breaches of policies
- consistent time wasting that has a detrimental impact on the education of children.
- refusal to follow reasonable instructions
- inappropriate or offensive behaviour for example foul or abusive language
- damage to, or unauthorised use of, school/Trust property/facilities for example unauthorised use of the internet or excessive personal emailing
- negligence in the performance of duties
- smoking on the school/Trust's premises

#### **Examples of gross misconduct**

- behaviour prejudicial to the good name or interests of the Trust or one of its academies or which may bring the employee or the academy or Trust into disrepute
- wilful or persistent refusal to carry out a management instruction or any act of serious insubordination
- breach of confidentiality or failure to ensure that confidential information is kept secure
- breach of trust and confidence
- theft, misuse or abuse of the school's/Trust's property
- actual or threatened assault upon another employee or person in the school
- being under the influence of alcohol or drugs on the school/Trust's premises, in working time or at an academy or Trust event
- fraudulent practices
- falsification of any school records such as expenses claims, pupils' work, examination or assessments and registration of pupils
- violent or threatening behaviour towards people or property on the school's/Trust's premises or at a school related event
- gross negligence
- covertly recording hearings, meetings or colleagues
- serious breach of health and safety procedures or regulations
- making any sexual or other inappropriate contact or conduct including failure to maintain appropriate professional boundaries with any pupil or student
- using, handling or possessing illegal drugs or substances irrespective of whether it is on the school/Trust's premises, in working time, at an school/academy event or whilst acting on behalf of the school/academy or Trust
- harassment, bullying or discrimination related to any of the Protected Characteristics, whether verbal, written, pictorial or physical whether inside or outside the school
- inappropriate use of the school's/Trust's Information Technology, hardware, systems and passwords including email or internet abuse or misuse (including accessing sites containing pornographic, offensive or obscene material)

- using social media whether inside or outside of working time (e.g. blogs, Facebook, Twitter etc.) to post derogatory or offensive comments about the school/Trust or any of its academies, work colleagues, or third parties with which the school has an operational relationship
- any misappropriation of files or documents belonging to the school/Trust of any kind or making copies, duplicates or excerpts of these for private or any other purposes unrelated to an employee's employment and without consent
- material breach of contract or of the Trust's and academy policies and procedures
- criminal offences or conduct, including those committed outside the workplace, which impact on the employee's ability or suitability to do his or her job
- giving false information as to qualifications, entitlement to work (including immigration status and the disqualification from childcare requirements) or otherwise to gain or retain employment or other benefits
- serious failure to follow child protection procedures

### **Principles**

Any disciplinary matter will be dealt with fairly and without unreasonable delay.

Employees will be given the opportunity to respond before any formal sanction is taken by the Trust in respect of which they will have a right of appeal.

An employee may bring a work colleague or an accredited professional association/trade union representative to disciplinary and appeal hearings under this policy and procedure.

Employees will not normally be dismissed for a first act of misconduct unless the school decides that the conduct amounts to gross misconduct or the employee has not completed their probationary period.

All employees must treat information communicated to them in connection with a disciplinary matter as confidential. A breach of confidentiality will be taken seriously and may lead to disciplinary action under this policy and procedure.

### **Management Advice**

It may be appropriate for minor conduct issues to be dealt with informally through management discussion rather than a formal process. Where appropriate a note of any such informal discussion will be placed on the employee's personnel file.

Further advice should be sought from the Trust's HR adviser as to when it is appropriate to refer to this in future investigations that may be required.

### **Allegations about Safeguarding Children (Child Protection)**

Allegations about the safeguarding and protection of children must be handled in accordance with statutory guidance and the Barnsley Safeguarding Children Board ("BSCB") Procedures Manual ("BSCB" Procedures") published in September 2017.

This document can be accessed at <http://www.proceduresonline.com/barnsley/scb/>. The relevant statutory guidance can be found in 'Keeping Children Safe in Education' (Statutory Guidance for Schools and Colleges) dated September 2016 and 'Working Together to Safeguard Children' dated February 2017. These documents can be accessed at

<https://www.gov.uk/government/publications/keeping-children-safe-in-education--2> and <https://www.gov.uk/government/publications/working-together-to-safeguard-children--2>

Any allegation that a member of staff has:

- behaved in a way that has, or may have, harmed a child
- possibly committed a criminal offence against or related to a child or
- behaved towards a child in a way that indicates that he/she is unsuitable to work with children

should be dealt with in accordance with BSCB procedures.

Each academy should appoint a designated safeguarding lead (DSL) from the school's senior leadership team who has appropriate authority and is given the time for training and resources in order to provide support and advice to other staff on child protection matters. There should always be cover for this role should the DSL be away for any reason.

Schools should ensure they are familiar with their designated officer, also known as 'Local Authority Designated Officer' (LADO) from the local authority who handles child protection/safeguarding allegations. The LADO has a statutory duty to ensure that allegations about safeguarding are handled properly and expeditiously.

The key points for all responsible individuals (typically the Head of School, Chair of the Governing Board and DSL) to follow when made aware of a safeguarding allegation are:

- read and be familiar with "Managing Allegations Against Adults Who Work with Children And Young People" of the BSCB Procedures;  
[http://www.proceduresonline.com/barnsley/scb/p\\_alleg\\_against\\_staff.html](http://www.proceduresonline.com/barnsley/scb/p_alleg_against_staff.html)
- if it is believed or suspected that a child is suffering or is likely to suffer significant harm, a referral must be made immediately to the Children's Services Assessment Team and/or the police.
- inform the LADO within one working day of any allegation meeting the criteria above that comes to the school's attention and any referral made to the Children's Services Assessment Team and/or the police. Whilst a preliminary assessment of the available evidence can be made in order to inform the LADO, no attempt should be made to carry out an investigation
- a strategy meeting should be arranged within two working days in circumstances where the child is suffering or is likely to suffer significant harm which will then determine whether the allegation should be investigated by the police or by some other agency or by the school under this disciplinary policy and procedure
- in circumstances where significant harm is not suspected to be suffered or likely to be suffered by the child, an evaluation meeting may be called with the LADO to ascertain next steps
- if the matter is handed back to the academy, whether at the first strategy meeting, an evaluation meeting or at some later stage, consideration should be given to any recommendations from the strategy/evaluation meetings

The BSCB procedures contain clear timelines for management of safeguarding cases. Where it is clear straightaway that the allegation is unsubstantiated or malicious, these should be resolved within one week. If a disciplinary hearing is required in relation to a safeguarding case and can be

held without further investigation, the hearing should be held within 15 working days. If further investigation is required, an investigation report should be aimed to be produced within 10 working days. On receipt of the investigation report, the school should decide within two working days if a disciplinary hearing is needed, and, if so, it should be held within fifteen working days. If formal disciplinary action is not required, the school should still consider any other appropriate action within three working days. These time limits apply only to safeguarding disciplinarys.

Allegations concerning the safety and welfare of children must be investigated and heard where the harm test is met, even if the employee has resigned. The employee should be given a full opportunity to answer the allegation and make representations about it. It may be difficult to reach a conclusion and it may not be possible to apply any disciplinary sanctions if a person leaves employment before the process is complete. However, the disciplinary process should still be completed. If the decision is that the member of staff would have been dismissed or a sanction imposed had they still been in employment, there is a legal duty to make a referral to the DBS.

### **Financial Irregularity**

In the case of investigation of fraud, theft and/or irregularity within academies, the financial handbook governs how the situation must be addressed. The Education and Skills Funding Agency (ESFA) must be notified of any fraud, theft or irregularity which singly or cumulatively exceeds £5K. Any unusual or systemic fraud must be reported regardless of value. The ESFA may decide to conduct their own investigation which may take precedence over the schools and this should be checked at an early stage.

### **Criminal Activity**

No internal disciplinary investigation should be initiated in relation to child protection/fraud whilst the matter is being investigated by the police/Internal Audit/ESFA/Child Protection/Social Services, without authorisation being given to do so.

### **Disciplinary Action involving a Professional Association / Trade Union Representative of relating to Trade Union activities.**

If the employee is a trade union representative or if the allegation relates to trade union activity, no action under this disciplinary policy and procedure will be taken until the matter has been discussed (with the employee's consent) with a full time official of the relevant union. If consent is withheld the Trust may proceed in any event.

### **Overlapping Disciplinary and Grievance Issues**

If an employee raises a grievance after disciplinary proceedings have started against them the Trust will consider suspending the disciplinary proceedings for a short period to consider the implications of the grievance (if any) on the disciplinary process. If the grievance and disciplinary issues are unrelated, they can be heard separately.

### **Suspension**

There may be circumstances when an employee has to be suspended on full pay. Suspension is a neutral act and does not imply that any decision about the veracity of the allegations has been made. The decision to suspend may be made by the CEO, Head of School, LGB or Board of Trustees after serious consideration of the case. Suspension is not automatic and depending on the circumstances, it may be possible that alternative arrangements are made such as work location or reorganisation of duties.

Where the allegation concerns the safeguarding of children, a risk assessment must be discussed with the DSL. Once this assessment has been made, a decision about suspension can be taken.

Wherever possible, a meeting with the employee and their accredited professional association/trade union representative should be held, at which the allegations and reasons for considering suspension will be discussed. Discussion should include the arrangements for keeping in contact with the employee. The decision will be confirmed in writing as soon as possible.

During suspension a named contact will be assigned to keep in touch with the employee.

Suspension will be reviewed periodically to consider whether circumstances surrounding the suspension have changed. If circumstances require, the suspension can be lifted by the CEO.

### **Definition and Separation of Roles**

There are several distinct roles to be taken during disciplinary proceedings. It is essential that they are clearly defined and that the person carrying out the role is clearly identified.

#### **The commissioning manager**

The commissioning manager, normally the Head of School, will decide whether an allegation is sufficiently serious as to warrant the possible instigation of this policy and procedure and whether a formal investigation under this policy procedure is necessary. If so, s/he will appoint an investigating officer to carry out an investigation. If the Head of School faces an allegation or has had any prior involvement in the matter under investigation, including as a witness, the role of commissioning manager will be assumed by the LGB or the CEO. If the CEO is involved in the case, the Chair of the Trustees will be the commissioning manager.

#### **The investigating officer**

The investigating officer will normally be an appropriate member of the academy or Trust staff or a member of the Trust's HR advisory service provider. Care must be taken to ensure that the investigating officer is able to carry out the investigation impartially. The investigating officer cannot also have the role of commissioning manager. The purpose of the investigation is to establish a fair and balanced view of the facts. Dependant on the case this may involve interviewing the employee and any witnesses or reviewing relevant documents and other information.

When the investigation is complete, the investigating officer will submit a report to the commissioning manager presenting all the evidence.

#### **The person or panel who conducts the hearing**

Where dismissal is a possible outcome, the case will normally be heard by a panel of three governors, which will also apply in the following circumstances:

- where the Head of School has been directly involved in the case, either as investigating officer, commissioning manager or witness
- where the Head of School is suspended or subject to disciplinary or capability action the case will normally be presented at the disciplinary hearing by either the commissioning manager, investigating officer or both

It may be necessary to co-opt governors from other academies within the Trust where it is not possible to form a panel from the school's own LGB.

### **Expert advice at the hearing**

At any disciplinary hearing, including during the subsequent deliberations leading to a judgement, the panel may be advised by a member of the Trust's HR service provider.

### **Right to be accompanied**

An employee has the right to be accompanied and supported at any investigatory meeting, disciplinary hearing and appeal hearing by a work colleague or an accredited professional association/trade union representative.

The employee would arrange representative in advance and inform the school if they are to be represented. If a representative is unavailable at the time of the meeting/hearing, the employee may request a postponement (once) to a time that is convenient to the school within a reasonable timescale which should not normally exceed five working days.

### **Witnesses**

Any witness to be called at a hearing must have submitted a written statement of their knowledge of the case in advance of the hearing, which has been exchanged, with all parties in accordance with the normal rules for exchanging paperwork.

Testimonials regarding an employee's personality and character will not be accepted as witness statements, nor may such witnesses be called to attend a hearing for this purpose.

A witness who is not a Trust employee may provide a witness statement (not a testimonial) but would not usually attend a disciplinary hearing unless they are willing and able on a case by case basis.

### **Conclusion of the Investigation**

On receipt of the investigation report, the commissioning manager will consider whether there is a case to answer. If s/he concludes that the allegation is without foundation, no further formal action will be taken and the employee will be informed of this in writing. Management advice may be provided and noted on the employee's file, which may include, where appropriate, advice to reduce the risk of similar allegations being made in the future.

If the commissioning manager believes that there is a case to answer, s/he will arrange a disciplinary hearing at which the employee will be invited to attend.

Having considered the report and the nature of the allegation, the commissioning manager will decide what the possible outcomes of the hearing could be and the employee will be advised of this in the letter inviting them to the hearing.

If the employee cannot attend the hearing, the employee should inform the commissioning manager immediately and an alternative date will be arranged within reason. The employee must make every effort to attend the hearing and failure to attend without good reason may be treated as misconduct in itself. If the employee fails to attend without good reason, or is persistently unable to do so, (for example due to health reasons) a hearing may be convened and the decision taken based on the available evidence.

### **Arranging a Disciplinary Hearing**



The employee must receive at least five working days' notice in writing by recorded delivery or delivery by hand.

Those hearing the case must be impartial and must not have any prior knowledge of the case.

Panel members should receive the papers to be presented, including a copy of the letter inviting the employee to the hearing, in reasonable time before the hearing.

### **The minute taker at a Disciplinary Hearing**

A written record of the hearing must be taken. The note taker may be the clerk to the governors / trustees or a senior member of staff (with no conflict of interest) at the academy or the Trust. The note taker will make a record of the hearing, but not of the confidential deliberations of the panel.

The Trust does not support the audio recording of disciplinary hearings unless there are exceptional circumstances for doing so. Covert recording is considered gross misconduct.

### **Pre-Agreement**

It is perfectly acceptable for an agreement to be arrived at prior to the hearing between both parties and unions in circumstances where the facts are not in dispute and both parties agree on the sanction. A formal meeting should be held to discuss the key findings of the investigation and issue the pre-agreed sanction. This approach will not apply to allegations of gross misconduct or where dismissal is a possible outcome or where the allegation concerns the safeguarding and protection of children. There will be a right of appeal within seven calendar days of the receipt of the decision letter.

### **Hearing Outcome**

The panel's decision is normally conveyed orally by the chair of the panel in the presence of the parties and will be confirmed in writing as soon as reasonably practicable, usually within five working days. The panel may, particularly after a lengthy hearing, adjourn and reconvene at another time to consider its decision. In such cases, it may be agreed to communicate the outcome by telephone before confirming the decision in writing.

### **Disciplinary Sanctions**

#### **No case to answer**

If the panel concludes that there is no case to answer, the case will be closed, and the employee will be informed in writing. Steps may need to be taken to restore reasonable working relationships between the parties.

#### **Written warning**

If an employee's conduct does not meet acceptable standards, and informal discussions have not led to sufficient improvement or are not considered appropriate, a formal written warning may be issued. A written warning will remain active for within a period of a minimum of 6 months and a maximum of 12 months, unless the employee is notified to the contrary and will be recorded on the employee's personnel file. After the expiry of the warning period, the warning will remain permanently on the personnel file but will be disregarded in deciding the outcome of future disciplinary proceedings. The employee will be advised of their right of appeal.

The employee will need to be at work throughout the relevant warning period. If they should be absent from work for any reason, e.g. sickness, this period will not count for the purposes of the warning period.

### **Final written warning**

If the misconduct is sufficiently serious, or if further misconduct occurs during the period that a written warning is live, a final written warning may be issued.

A final written warning will normally remain active for a period of 12 months or in exceptional circumstances up to 24 months and will be recorded on the employee's personnel file. After the expiry of the warning period the warning will remain permanently on the personnel file but will be disregarded in deciding the outcome of future disciplinary proceedings. The employee will be advised of their right of appeal.

The employee will need to be at work throughout the relevant warning period. If they should be absent from work for any reason, e.g. sickness, this period will not count for the purposes of the warning period.

### **Dismissal (including summary dismissal for gross misconduct)**

Where there is further misconduct during the life of a final written warning, the employee may be dismissed with notice or payment in lieu of notice. If an allegation of gross misconduct is upheld, the employee will be summarily dismissed without notice.

### **Appeals**

Employees have the right of appeal against any disciplinary sanction. At the discretion of the Trust it may be a review of the fairness of the original decision in the light of the procedure that was followed and any new information that may have come to light or in some extenuating circumstances there may be a complete re hearing of the appeal. At an appeal, any disciplinary penalty may be reconsidered but it cannot be increased.

New evidence will be considered if relevant and there is a good reason why this had not been included as part of the original hearing.

Any employee who wishes to appeal a sanction should do so in writing within seven calendar days of the receipt of a decision letter to the person named in the letter. The employee's letter to lodge the appeal should include the grounds for appeal.

The appeal will be heard by a panel of three governors or Trustees not previously involved in the disciplinary hearing, who have no prior knowledge of the case.

To be quorate, the appeal panel must consist of at least the same number of governors as at the previous hearing.

Where an appeal against dismissal is not upheld, the date of termination will be the date on which the employee was originally dismissed. During the appeal stage the employee will remain dismissed from the school. If an employee is reinstated following dismissal, he/she will be treated as being continuously employed for the whole period, including the period between dismissal and reinstatement.

The decision of the appeal panel will be final and must be reported to the LGB. It will be confirmed in writing as soon as reasonably practicable, usually within five working days.