

HCAT

Disciplinary Policy and Procedure 2020



Revised October 2020

## Contents Page

1.	Introduction	Page 3
2.	Scope	Page 3
3.	Principles	Page 3
4.	Examples of Gross Misconduct/Misconduct	Page 4
5.	Safeguarding	Page 7
6.	Financial Irregularity	Page 8
7.	Criminal Activity	Page 8
8.	Disciplinary Action Involving a Professional Association/Trade Union Representative.	Page 8
9.	Referrals	Page 8
10.	Raising a Grievance	Page 9
11.	Sickness Absence	Page 9
12.	Initial Assessment	Page 9
13.	Early Intervention/Informal Action	Page 10
14.	Suspension	Page 10
15.	Formal Action and Investigation	Page 11
16.	Conducting an Investigation	Page 11
17.	Disciplinary Action outside of a Disciplinary Hearing	Page 11
18.	Disciplinary Hearing	Page 12
19.	Outcome of the Disciplinary Hearing/Appeal	Page 13
20.	Right of Appeal	Page 14
21.	Monitoring and Review	Page 16

<b>Appendices</b>	
Appendix 1	Suspension Guidance
Appendix 2	Template Disciplinary Letters
Appendix 3	Procedure to be followed at a Disciplinary Hearing/Appeal
Appendix 4	Appeal Form

## HCAT Disciplinary Policy and Procedure

### **1. Introduction**

- 1.1.** This policy has been developed in consultation with Trade Unions and Professional Associations who are recognised by HCAT.
- 1.2.** The purpose of this Disciplinary Policy and Procedure is to set and maintain standards of conduct throughout HCAT, and in doing so, ensure that all our employees are treated fairly and consistently. It is designed to help and encourage all employees to achieve and maintain satisfactory standards of conduct.
- 1.3.** This policy and procedure does not form part of any employees' contract of employment and it may be amended at any time.

### **2. Scope**

- 2.1.** This policy applies to all employees of HCAT (the Trust) including those employed by Academies within the Trust. Conduct issues for non-teaching employees within their Probationary Period will be dealt with under the Probationary Policy.

### **3. Principles**

- 3.1.** Wherever possible, matters of misconduct should be dealt with informally, to encourage the employee to learn from their mistakes and improve their conduct.
- 3.2.** Underperformance and ill health will be dealt with under separate policies.
- 3.3.** Any disciplinary matter will be dealt with fairly and without unreasonable delay.
- 3.4.** Where an employee is subject to more than one allegation relating to their conduct, if appropriate, these issues will be dealt with together.
- 3.5.** Actions taken outside working hours fall within this policy, including but not limited to criminal charges, cautions or convictions where these may have a bearing on the employees' employment, and/or when it is considered that the employee's actions bring the reputation of the Trust or Academy or the employee into disrepute. This includes a breach of professional standards and the Code of Conduct.
- 3.6.** Employees have the right to be accompanied at investigatory meeting(s)/the hearing/the appeal by their trade union representative or a work colleague. It is the employees' responsibility to make the necessary arrangements for representation. This right does not extend to family/friends or professional persons such as solicitors and barristers.
- 3.7.** At any disciplinary hearing/appeal, including subsequent deliberations leading to a judgement, the panel will be advised by a member of the Trust's Human Resources Team.
- 3.8.** A written record of the hearing/appeal 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 the confidential deliberations of the panel.

- 3.9. The Trust does not support the audio recording of disciplinary/appeal hearings unless there are exceptional circumstances for doing so and all parties present are in agreement to being recorded. Covert recording of the hearing/appeal is considered gross misconduct and/or a breach of the regulations contained in GDPR (General Data Protection Regulation) Article 6 and an offence contrary to Section 170 (1)c of the Data Protection Act 2018.
- 3.10. An employee will not normally be dismissed for a first act of misconduct unless the Trust/Academy decides that the conduct amounts to gross misconduct.
- 3.11. All employees have the right of appeal against any formal disciplinary sanction.
- 3.12. All documentation relating to disciplinary matters will remain confidential and will be retained on the employee's personal file for the duration of which the disciplinary sanction is live, unless when matters are of a safeguarding nature. Where disciplinary matters are of a safeguarding nature, they should not be removed from an employee's file.
- 3.13. 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.
- 3.14. In accordance with statutory requirements, cases that involve the safety and welfare of children will be referred to the Disclosure and Barring Service (DBS) and to the Teaching Regulation Agency (TRA).
- 3.15. Settlement Agreements will not be used for the termination of employment where matters are of a safeguarding nature.

**4. Examples of Gross Misconduct/Misconduct**

- 4.1. The following lists give examples of the type of conduct which may lead to dismissal (gross misconduct) and the types of conduct that may lead to disciplinary action (misconduct).
- 4.2. These lists 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.
- 4.3. It is accepted that to differentiate between general and serious breaches of discipline can be difficult, and therefore each case must be treated on its own merits. Since the examples are only guidelines, discretion will have to be exercised by the Trust/Academy in categorising breaches of discipline, having regards to all the circumstances under which the breach of discipline occurred.

<b>Behaviour</b>	
<b>Gross Misconduct</b>	<b>Misconduct</b>
<ul style="list-style-type: none"> <li>• Physical violence or bullying</li> </ul>	<ul style="list-style-type: none"> <li>• Failure to comply with a reasonable request.</li> </ul>
<ul style="list-style-type: none"> <li>• Serious verbal abuse</li> </ul>	<ul style="list-style-type: none"> <li>• Abusive, objectionable or insulting behaviour.</li> </ul>
<ul style="list-style-type: none"> <li>• Incapacity brought on by alcohol, illegal drugs or misuse of prescription drugs</li> </ul>	<ul style="list-style-type: none"> <li>• Foul or abusive language.</li> <li>• Disorderly conduct.</li> </ul>

on the Trust's/Academy's premises, in working time, or at a Trust/Academy event.	<ul style="list-style-type: none"> <li>• Unauthorised sleeping on the premises whilst on duty.</li> </ul>
<ul style="list-style-type: none"> <li>• Handling or possessing illegal drugs or substances irrespective of whether it is on the Trusts/Academy's premises, in working time, at a Trust/Academy event or whilst acting on behalf of the Trust.</li> </ul>	<ul style="list-style-type: none"> <li>• Unauthorised absence from place of work.</li> <li>• Displaying or circulating offensive material.</li> <li>• Abuse of position and power.</li> <li>• Breach of the Grievance Resolution Policy.</li> </ul>
<ul style="list-style-type: none"> <li>• Substantial abuse of position and power</li> </ul>	
<ul style="list-style-type: none"> <li>• Serious breach of the Grievance Resolution Policy.</li> </ul>	
<ul style="list-style-type: none"> <li>• Unlawful discrimination or harassment.</li> </ul>	
<ul style="list-style-type: none"> <li>• Bringing the Trust/Academy into disrepute.</li> </ul>	
<ul style="list-style-type: none"> <li>• Serious breach of professional conduct.</li> </ul>	
<ul style="list-style-type: none"> <li>• Conduct outside the workplace, including but not limited to criminal charges, cautions or convictions.</li> </ul>	
<ul style="list-style-type: none"> <li>• Actual or threatened assault upon another employee or person in the Trust/Academy.</li> </ul>	
<ul style="list-style-type: none"> <li>• Continued and repeated offenses of misconduct</li> </ul>	

<b>General Conduct at Work</b>	
<b>Gross Misconduct</b>	<b>Misconduct</b>
<ul style="list-style-type: none"> <li>• Theft, fraud or falsification of records.</li> </ul>	<ul style="list-style-type: none"> <li>• Allowing visitors on the premises without authorisation.</li> </ul>
<ul style="list-style-type: none"> <li>• Deliberate or serious damage to Academy/Trust property, facilities, equipment or products.</li> </ul>	<ul style="list-style-type: none"> <li>• Unauthorised distribution of written or electronic material.</li> </ul>
<ul style="list-style-type: none"> <li>• Deliberately accessing and circulating illegal, pornographic, offensive or obscene material.</li> </ul>	<ul style="list-style-type: none"> <li>• Failure to return equipment provided by the Academy/Trust.</li> </ul>
<ul style="list-style-type: none"> <li>• Serious breach of conduct – Academy/Trust's reputation brought into disrepute.</li> </ul>	<ul style="list-style-type: none"> <li>• Deliberately accessing and storing illegal documents/information.</li> </ul>
<ul style="list-style-type: none"> <li>• Serious breach of Child Protection/Protection of Vulnerable Adult Procedures.</li> </ul>	<ul style="list-style-type: none"> <li>• Negligence, carelessness or recklessness which could result in damage or misuse of Academy/Trust property, facilities, equipment or products.</li> </ul>
<ul style="list-style-type: none"> <li>• Cause loss, damage or injury through serious negligence.</li> </ul>	<ul style="list-style-type: none"> <li>• Undertaking work in conflict with the Academy/Trust e.g. working for another employer during contractual hours without approval.</li> </ul>

<ul style="list-style-type: none"> <li>• Wilful or persistent refusal to carry out a management instruction or any act of serious insubordination.</li> </ul>	<ul style="list-style-type: none"> <li>• Breach of the Computer/E Safety policies.</li> </ul>
<ul style="list-style-type: none"> <li>• Undertaking own work for financial gain during works time.</li> </ul>	<ul style="list-style-type: none"> <li>• Breach of data protection and confidentiality.</li> </ul>
<ul style="list-style-type: none"> <li>• Serious Breach of Computer/E Safety Policies including the inappropriate use of the Trust/Academy's IT, hardware, systems, email and internet.</li> </ul>	<ul style="list-style-type: none"> <li>• Consistent time wasting that has a detrimental impact on the education of children.</li> </ul>
<ul style="list-style-type: none"> <li>• Serious breach of Teachers Standards.</li> </ul>	<ul style="list-style-type: none"> <li>• Refusal to follow a reasonable instruction (please seek advice from Trust HR with reference to "reasonable").</li> </ul>
<ul style="list-style-type: none"> <li>• Serious breach of professional codes of practice.</li> </ul>	<ul style="list-style-type: none"> <li>• Smoking on the Trust's/Academy's premises.</li> </ul>
<ul style="list-style-type: none"> <li>• Serious breach of safeguarding including Safer Recruitment procedures.</li> </ul>	
<ul style="list-style-type: none"> <li>• Giving false information as to qualifications, entitlements to work (including immigration status and the disqualification from childcare requirements) or other otherwise to gain or retain employment or other benefits.</li> </ul>	
<ul style="list-style-type: none"> <li>• Serious breach of student exam procedures (exam malpractice).</li> </ul>	
<ul style="list-style-type: none"> <li>• Misappropriation of the Trust/Academy's finances.</li> </ul>	
<ul style="list-style-type: none"> <li>• Failure to adhere to Keeping Children Safe in Education requirements.</li> </ul>	
<ul style="list-style-type: none"> <li>• Serious breach of trust.</li> </ul>	
<ul style="list-style-type: none"> <li>• Using social media whether in or out of working time (e.g. blogs, Facebook, Twitter etc.) to post derogatory or offensive comments about the Trust/Academy or any of its academies, work colleagues, or third parties with which the Trust/Academy has an operational relationship.</li> </ul>	
<ul style="list-style-type: none"> <li>• Serious breach of data protection/confidentiality.</li> </ul>	
<ul style="list-style-type: none"> <li>• Covertly recording hearings, meetings or colleagues.</li> </ul>	
<ul style="list-style-type: none"> <li>• Making any sexual or other inappropriate contact or conduct including failure to maintain appropriate professional boundaries with any pupil or student.</li> </ul>	

<ul style="list-style-type: none"> <li>Any misappropriation of files or documents belonging to the Trust/Academy 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.</li> </ul>	
--	--

<b>Health and Safety</b>	
<b>Gross Misconduct</b>	<b>Misconduct</b>
<ul style="list-style-type: none"> <li>A serious breach of Health and Safety rules.</li> </ul>	<ul style="list-style-type: none"> <li>Failure to observe Health and Safety requirements.</li> </ul>
<ul style="list-style-type: none"> <li>Failure to disclose a medical condition either on appointment or upon diagnosis which may affect ability to undertake duties of the post resulting in a serious incident.</li> </ul>	<ul style="list-style-type: none"> <li>Neglect of safety standards.</li> <li>Failure to wear essential protective equipment.</li> <li>Failure to disclose a medical condition either on appointment or upon diagnosis which may affect ability to undertake duties of the post.</li> </ul>

<b>Absence and Timekeeping</b>	
<b>Gross Misconduct</b>	<b>Misconduct</b>
<ul style="list-style-type: none"> <li>Falsification of records to defraud the Trust/Academy.</li> </ul>	<ul style="list-style-type: none"> <li>Persistent unacceptable absence levels e.g. when absence continues without any/sufficient explanation.</li> </ul>
<ul style="list-style-type: none"> <li>Abuse of the Trust's/Academy's Managing Sickness Absence Policy.</li> </ul>	<ul style="list-style-type: none"> <li>Failure to keep management informed of reasons for absence from work whether due to ill health or other reasons.</li> </ul>
<ul style="list-style-type: none"> <li>Absence without authorisation.</li> </ul>	<ul style="list-style-type: none"> <li>Failure to submit medical certificates in accordance with the Trust's/Academies Absence due to sickness scheme.</li> </ul>
	<ul style="list-style-type: none"> <li>Regularly or persistently late for work following wellbeing intervention.</li> </ul>
	<ul style="list-style-type: none"> <li>Failure to comply with Trust/Academy's Supporting Attendance Policy including non-attendance at OHU appointments in accordance with terms and conditions of employment.</li> </ul>
	<ul style="list-style-type: none"> <li>Leaving early without permission.</li> </ul>

## 5. Safeguarding

5.1. In accordance with Keeping Children Safe in Education, Working Together to Safeguard Children, and Barnsley Safeguarding Children's Board Procedures, where it has been alleged someone who works with children (or vulnerable adults) has:

- Behaved in a way which has harmed or might harm a child
- Possibly committed a criminal offence against a child

- Behaved towards a child or children in a way that indicates he or she would pose a risk of harm if they work regularly or closely with children.
- 5.2. Advice should be sought immediately from the Local Authority Designated Officer (LADO) or the Adult Safeguarding Designated Service Officer and/or the police.
  - 5.3. The LADO and/or the police may deem it necessary to arrange for a multi-agency strategy meeting to be held before an investigation is undertaken. The meeting (or discussion) will determine the appropriate course of action.
  - 5.4. Even if an employee resigns, the disciplinary process must be completed. The employee should be given a full opportunity to answer the allegation and make representations about it. **(See point 9 for referrals).**

## **6. Financial Irregularity**

- 6.1. 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 systematic fraud must be reported regardless of value. The ESFA may decide to conduct their own investigation which may take precedence over the Academy investigation and this should be checked at an early stage.

## **7. Criminal Activity**

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

## **8. Disciplinary Action Involving a Professional Association/Trade Union Representative**

- 8.1. If an employee is a trade union representative or if the allegation relates to trade union activity, no formal action will be taken until (following agreement with the individual concerned) the circumstances of the case have been discussed with their Trade Union (Regional Representative). If the individual does not wish their Trade Union Representative to be involved, the disciplinary process can continue.

## **9. Referrals**

- 9.1. Where an employee in a teaching role has been dismissed (or where dismissal would have been the outcome had they not resigned prior to the conclusion of the disciplinary process) they must be referred to the Teaching Regulation Agency (TRA). The TRA will consider the case and make the appropriate sanction, which may include barring the individual from teaching.
- 9.2. With regard to disciplinary action in relation to safeguarding issues involving the risk of harm, or actual harm to a child, employees (whether teaching or support employees) must be referred to the Disclosure and Barring Service (DBS) and additionally, in the case of teachers and HLTA's to the Teachers Regulation Agency (TRA).



## **10. Raising a Grievance**

- 10.1.** If an employee raises a grievance after disciplinary proceedings have started against them, where the grievance is related to the disciplinary case, it is appropriate that both matters are dealt with at the same time i.e. at one meeting. However, where there is a significant amount of evidence to be considered, it may be necessary to hold two separate meetings but ensuring that the same panel hears both the grievance and the disciplinary. It is advisable that another manager is allocated responsibility for investigating the grievance aspect of the case.
- 10.2.** In instances where the grievance has no relationship with the disciplinary process, then both procedures may run in parallel but be heard as two separate meetings with difference panels.

## **11. Sickness Absence**

- 11.1.** If an employee becomes unfit for work during the disciplinary process, they should make every effort to attend management investigation meetings and hearings. The Investigating Officer will refer the employee immediately to the Occupational Health Service to ascertain their fitness to participate in the disciplinary process.
- 11.2.** If the employee is deemed unfit to participate for a prolonged period (defined as 4 weeks or more) or if the employee fails to attend Occupational Health and is unable to confirm their fitness to participate in the process, disciplinary meetings may go ahead in their absence and a decision made based on the available evidence. Each case will be judged on its own merits. If the employee is unable to attend, the employee can be asked to submit a response in writing for consideration by the chair and/or their nominated representative may present the case on their behalf. If the employee is unhappy with the outcome of the disciplinary hearing, they will have the opportunity to address this perceived inequality at a Disciplinary Appeal meeting.
- 11.3.** It is recognised this can be a difficult time for the employee and all parties should be mindful that if matters are dealt with promptly, this could alleviate some stress felt by the employee during the process. A counselling support referral will be offered in every instance.

## **12. Initial Assessment**

- 12.1.** When an initial allegation arises, preliminary enquiries should establish whether:
  - The allegation of misconduct is unfounded and no further action is required.
  - The allegation of misconduct is minor and can be dealt with through informal action.
  - That the existing evidence, by mutual agreement, can be presented at a hearing without the need for a detailed or separate formal investigation meeting. On these rare occasions, the employee must be informed of the details of the allegation(s) and the reason why the alleged conduct is deemed unacceptable prior to the hearing taking place.
  - A formal investigatory meeting(s) into the allegation of misconduct is required.
  - The employee should be suspended from work and a formal investigation is required.
  - The allegation is vexatious and malicious which could result in disciplinary action against the employee concerned.

### **13. Early Intervention/Informal Action**

- 13.1.** An informal conversation between the Line Manager and the employee may suffice when the misconduct is evident but minor. The employee should be advised that if misconduct re-occurs, formal action may be instigated.
- 13.2.** A note of the discussion, to be entitled “management instruction” including agreed action points and the expected standards of behaviour, should be signed by both parties and placed on the employees’ personal file for a period of 6 months, after which time it should be removed.

### **14. Suspension**

- 14.1.** There may be circumstances where an employee has to be suspended. Before any suspension is made, contact should be made with Trust Human Resources.
- 14.2.** Where possible, contact should also be made with the employees Trade Union Representative (if known) and arrangements should be made for the employee to be supported by a work colleague or member of the Trade Union (this could be the school based representative), provided this does not unduly delay the meeting **(see Appendix 1 – Suspension Guidance)**.
- 14.3.** Suspension is a neutral act and does not imply that any decision about the veracity of the allegations has been made.
- 14.4.** The decision to suspend may be made by the CEO, (Executive) Principal, Headteacher or Board of Trustees (in the case of the CEO) after serious consideration of the initial assessment.
- 14.5.** Suspension is not automatic and depending on the circumstances, it may be possible that alternative arrangements can be made such as a temporary transfer to alternative duties/location, providing the employee can be supervised.
- 14.6.** Suspension should only be carried out where there is a potential for the employee to impede the investigation, the allegation is so serious that it may result in the employee being dismissed on the grounds of gross misconduct or if allowing the employee to remain at work would present too great a risk to students, other employees or themselves.
- 14.7.** The suspension will be on full pay whilst a formal investigation takes place.
- 14.8.** During the suspension period a named contact not involved with the investigation will be assigned to keep in touch with the employee.
- 14.9.** If the employee falls sick whilst suspended, the normal sickness absence (including pay) arrangements will apply.

**14.10.** The reason(s) for suspension will be confirmed in writing (see template letters in Appendix 2)

**14.11.** Suspension will be reviewed every 4 weeks to consider whether circumstances surrounding the suspension have changed. If circumstances require, the suspension can be lifted.

## **15. Formal Action and Investigation**

**15.1.** When an allegation of misconduct arises, and it is inappropriate to be dealt with informally, or if the matter has already been dealt with informally without the required improvement (cumulative), formal action will be considered.

**15.2.** An Investigating Officer of appropriate seniority with the academy staffing structure will be appointed to establish the facts.

## **16. Conducting an Investigation**

**16.1.** A member of the Trust's Senior Management Team/the (Executive) Principal, Headteacher, Head of School will determine who will undertake the role of Investigating Officer (IO). The IO will be of appropriate managerial level who has had no previous involvement in the matter and is not conflicted.

**16.2.** The IO will:

- Ascertain the facts. This usually involves the holding (and documenting) of management investigatory meetings with the employee and where appropriate, witnesses. This includes the collation of formal witness statements.
- Assess the facts, taking into consideration mitigating factors.
- In cases where there is no requirement to proceed to a formal disciplinary hearing, communicate the outcome to the employee concerned.
- Determine whether the evidence gathered supports the allegations and there is a requirement to proceed to a disciplinary hearing.
- Make the necessary arrangements for the disciplinary hearing.
- Present the management case at the hearing.

**16.3.** The employee will have the right to be accompanied as set out in the Principles (Section 3).

**16.4.** Every reasonable effort should be made by the employee and representative to be available for the meeting. If the employees' representative is unable to attend on the specified date, the employee may request that the meeting be postponed. Provided that the new date and/or time is reasonable i.e. within working hours, and within 5 working days of the original date this will be accommodated.

## **17. Disciplinary Action outside of a Disciplinary Hearing**

**17.1.** 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 (i.e. the employee has admitted the misconduct during the investigation) 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 misconduct or where dismissal is a possible outcome or where the allegations concern the safeguarding and protection of children (or vulnerable adults). Because the employee has been prepared to accept a formal sanction as an alternative to progressing the case to a full disciplinary meeting, there will be no right of appeal.

## **18. Disciplinary Hearing**

**18.1.** Where dismissal is a possible outcome, the case will be heard by a panel of three Governors drawn from across the Trust, which will also apply in the following circumstances:

- Where the (Executive) Principal, Headteacher has been directly involved in the case either as investigating officer or as a witness.
- Where the (Executive) Principal, Headteacher is the subject of disciplinary action.

**18.2.** Where disciplinary action is taken against a central Trust employee, the case will normally be heard by the COO or CEO (or in the case of the COO or CEO, the Board of Trustees).

**18.3.** Where an employee is required to attend a Disciplinary Hearing, the following process must be followed:

**18.4.** The decision to progress to a Disciplinary Hearing will be confirmed in writing (**Appendix 2**) and must include:

- details of the allegation(s)
- the potential outcome of the case
- all evidence and documentation gathered during the investigation, including a summary of the Investigating Officers case
- witness statement(s) (where relevant)
- the date/ time/ location of the meeting, giving 10 days-notice, unless a mutually agreeable earlier date can be agreed
- the name(s) of the person(s) hearing the case
- the employee's right to be accompanied

**18.5.** In some cases, the employee may wish to submit documentation for consideration by the panel. This should be provided no later than 5 working days prior to the date of the hearing. Where relevant, the employee must also confirm which witnesses they wish to call and in liaison with the IO, make the necessary arrangements for their attendance.

**18.6.** It is expected that all witnesses employed at the academy attend the meeting to be questioned. However, in some circumstances it may be impracticable or unacceptable for the witnesses to be present at the meeting. Where internal or external witnesses do not attend for whatever reason, it is for the panel to determine the weight placed on the evidence presented in their witness statement.

**18.7.** Should the employee request their representative attend on their behalf or if they wish to provide a written submission, the person/panel hearing the case will consider this.

**18.8.** Every reasonable effort should be made by the employee and representative to be available for the hearing. If the employees' representative is unable to attend on the specified date, the employee may request that the meeting be postponed. Provided that the new date and/or time is reasonable i.e. within the working day, and within 5 working days of the original date this will be accommodated. Where no agreement can be reached the hearing date will be set by the Investigating Officer.

**18.9.** Should the employee and/or their representative fail to attend without any reasonable explanation, the person/panel hearing the case will decide whether to proceed in their absence.

**18.10.** The hearing will be conducted as detailed in **Appendix 3**.

**18.11.** If an employee attends with a TU representative or work colleague, the chosen representative does not have the right to answer questions on the employees' behalf or address any meeting without the employees' consent. They will be allowed to address the panel and present the employees' case.

## **19. Outcome of the Disciplinary Hearing/ Appeal**

**19.1.** The possible outcomes of the Disciplinary Hearing are:

- **No Action**

No action is appropriate where there is reasonable belief the evidence is insufficient to confirm the misconduct allegations.

- **Management Instruction**

Management Instruction may be appropriate where there is reasonable belief that the evidence is insufficient to confirm the misconduct allegations, but the panel determine that the employees' behaviour warrants improvement. In such cases, it is appropriate to issue the employee with a letter that details what is expected of the employee going forward.

- **Written Warning**

A written warning will be relevant in instances of minor acts of misconduct or where there has been repetition of the same action that has warranted previous informal action (cumulative).

The length of a written warning should be 6 months.

- **Final Written Warning**

A final written warning is relevant where there is a re-occurrence of misconduct or where misconduct is sufficiently serious but does not warrant dismissal.

The length of the final written warning should be 12 months.

In extreme circumstances, including where a written warning or a final written warning has been issued, the panel may conclude it appropriate to issue the sanction for a longer period of time. In these rare cases, a written warning should remain on file for no more than 12 months and a final written warning for no more than 24 months.

- **Cumulative Dismissal**

Cumulative dismissal is relevant in circumstances whereby there has been a re-occurrence of misconduct which has been subject to a written and/or final written warning, or misconduct has not improved following a final written warning, or the employee subject to a final written

warning and has committed a further act of misconduct. Following a further formal hearing the employee can be served notice based on their contract of employment.

- **Summary Dismissal**

Summary dismissal without notice is appropriate in instances of gross misconduct and/or where the reputation of the Trust/Academy will be severely compromised.

- **Recommendations**

In addition to any of the outcomes listed above, the panel may also conclude that it is necessary to make some recommendations. These should be recorded and passed to the most appropriate member of SLT/Management to take forward.

**19.2.** The employee will, where possible, be notified verbally of the outcome by the person that heard the case. The decision will also be confirmed in writing within 5 working days wherever possible, informing the employee of their right of appeal.

**19.3.** The written record of the hearing should be completed as quickly as possible after the date of the hearing.

**19.4.** Copies of disciplinary sanctions will be kept on the employee's personal file as a record of events/employment history but will be disregarded for disciplinary purposes after the stipulated timescale and destroyed, unless the case was of a safeguarding nature.

## **20. Right of Appeal**

**20.1.** Employees have the right of appeal against any sanction given as a result of a hearing (not a Disciplinary Sanction Meeting) within 10 working days of receiving their confirmation letter and (where appropriate) should provide supporting evidence (for example, if new evidence has come to light). **The Appeal Form in Appendix 4** should be used for this purpose but a letter outlining the grounds for appeal is also acceptable.

**20.2.** The appeal will be heard by a panel of three Governors or Trustees drawn from across the Trust not previously having been involved in the disciplinary hearing, who have no prior knowledge of the case.

**20.3.** At any disciplinary appeal hearing, including subsequent deliberations leading to a judgement, the panel will be advised by a member of the Trust's HR team (who was not present at the original hearing).

**20.4.** The employee will be given 10 days-notice of the Appeal Hearing and be informed of: -

- The name(s) of the person(s) who will hear the case.
- The date, time and location of the hearing.
- The right to representation.
- A copy of the relevant policy.

- 20.5.** At the discretion of the Trust, the appeal will be conducted as a review of the first instance decision, having regard to the matters set out on the Appeal Form and/or letter from the employee, and the outcome letter of the disciplinary hearing. In some extenuating circumstances there may be a complete re-hearing of the case.
- 20.6.** 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.
- 20.7.** The person(s) hearing the appeal will receive the Appeal Form and/or letter, relevant documents referred to in the disciplinary hearing and a copy of the letter confirming the outcome of the disciplinary hearing.
- 20.8.** At the appeal stage, either party may decide that it is relevant for witnesses to attend the meeting. In circumstances whereby it is impracticable or unacceptable for witnesses to attend, the person hearing the appeal will determine the weight placed on the evidence provided.
- 20.9.** Every reasonable effort should be made by the employee and representative to be available for the appeal hearing. If the employees' representative is unable to attend on the specified date, the employee may request that the hearing be postponed. Provided that the new date and/or time is reasonable i.e. within the working day, and within 5 working days of the original date, this will be accommodated.
- 20.10.** If following reasonable attempts to arrange a suitable date for all to attend and the employee/their representative is still unavailable, the person hearing the appeal may determine that the appeal is withdrawn.
- 20.11.** The appeal should normally be conducted in one day except in exceptional circumstances.
- 20.12.** If an employee attends with a TU representative or work colleague, the chosen representative does not have the right to answer questions on the employees' behalf or address any meeting without the employees' consent. They will be allowed to address the appeal panel and present the employees' case.
- 20.13.** The process for the Appeal Hearing will be as outlined in the Process at a Formal Appeal Hearing **(see Appendix 3).**
- 20.14.** The panel hearing the appeal has authority to confirm, reduce, or revoke the original outcome. The decision of the panel hearing the appeal is final.
- 20.15.** 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 academy. If an employee is reinstated following dismissal, they will be treated as being continuously employed for the whole period, including the period between dismissal and reinstatement.
- 20.16.** Where possible the decision will be given to the employee at the conclusion of the meeting and confirmed in writing no more than 5 working days after the hearing.
- 20.17.** The written record of the appeal hearing should be completed as quickly as possible after the date of the hearing.

**20.18.** All documents pertaining to this procedure should be retained on the employee's personal file as per point 3.9.

## **21. Monitoring and Review**

**21.1.** The Equality Act 2010 requires public bodies, in carrying out their functions, to have due regard to the following:

- to eliminate discrimination and other conduct that is prohibited by the Act
- to advance equality of opportunity between people who share a protected characteristic and people who do not share it
- to foster good relations across all characteristics - between people who share a protected characteristic and people who do not share it.

**21.2.** In the development of this policy due regard has been given to achieving these objectives.

**21.3.** This procedure will be reviewed to respond to any changes in the employment legislation, and at least every three years, in conjunction with the Trust's recognised trade unions.