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## Every Child Matters Academy Trust Disciplinary Procedure

*The terms Trust and School (and levels within e.g. governors and trustees) are interchangeable and apply to all schools within the Trust.*

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### 1.0 **PURPOSE AND SCOPE**

- 1.1 This procedure is designed to help and encourage all employees to achieve and maintain acceptable standards of conduct. The aim is to ensure consistent and fair treatment for all. This procedure applies to all employees of the Trust.
  - 1.2 The procedure should only be used in connection with the potential misconduct of employees. It should not be used for issues relating to performance in employment, general probationary period issues, or short or long term attendance (which are covered by separate provisions).
  - 1.3 The Managers Guidance Pack contains a suite of model letters and is best practice guidance for illustrative purposes to support managers through the process.
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### 2.0 **KEY PRINCIPLES**

- 2.1 All disciplinary investigations and meetings should be carried out as quickly as possible in order to avoid unnecessary delay. Please see Appendix B - Disciplinary Procedure FAQ's and Appendix C - Disciplinary Flowchart for guidance on the disciplinary process.
  - 2.2 An employee is entitled to be accompanied throughout the process at each formal meeting by a work colleague or designated Trade Union/Professional Association Official. However, this right does not extend to friends/family or professional persons such as solicitors and barristers.
  - 2.3 The procedure may also apply to conduct outside of the workplace, including but not limited to criminal charges, cautions or convictions where the conduct may have a bearing on the individual's employment. Reference should be made to the [Trust's Code of Conduct](#).
  - 2.4 If the employee concerned is a Trade Union representative the case should be discussed with the Trade Union's full time Convenor after obtaining the employees agreement. In the case of a Convenor the matter should be discussed with a Regional Officer.
  - 2.5 All safeguarding incidents will be investigated. If an employee resigns / retires during the investigation then as a minimum the investigation will be concluded. Advice should be sought from the Trust's HR provider regarding any safeguarding allegations.
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### 3.0 **SCHOOL BASED EMPLOYEES – THE ROLE OF THE GOVERNING BODY (SCHOOL STAFFING (ENGLAND) REGULATIONS 2009)**

- 3.1 The Governing Body<sup>1</sup> has responsibility for staff dismissals in its academy. With the exception of the dismissal of the Headteacher, where different arrangements apply, it may, in accordance with the Staffing Regulations 2009, delegate these responsibilities to the

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<sup>1</sup> In respect of Trust level employees, the Board of Trustees acts in the same way as the Governing Body and, as such a Trustee will be classed as the Manager in this document.

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Headteacher, an individual Governor, or a group of Governors with or without the Headteacher. It should be noted however, that any Governor or Headteacher hearing the case must have had no previous involvement in the process.

- 3.2 In the case of potential misconduct of the Headteacher, the Chair of Governors (together with the Executive Head) takes on the role of Manager as referred to throughout the procedure. The decision to dismiss a Headteacher should be taken at a disciplinary meeting of at least 3 Governors unless there are not enough Governors who have not formally been involved in any process. In this case 2 Governors may hold a disciplinary meeting and issue an appropriate disciplinary penalty which could include dismissal.
- 3.3 The Governing Body should ensure that all employees have the right to appeal at any of the formal stages to a panel of at least 3 Governors who have not been involved in any previous action or decision connected with the Disciplinary Procedure. Where there are not enough Governors available the appeal may be heard by 2 Governors. Where possible there should be an equal number of Governors on disciplinary meetings and appeal meetings.
- 3.4 The absolute requirement under the staffing regulations is for the dismissal determinations to be delegated to the Headteacher or 1 or more Governors, but appeals against an initial determination should be delegated to at least 2 Governors as provided above.
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#### 4.0 **ASSESSMENT OF THE INITIAL ALLEGATION**

4.1 When the initial allegation arises, and the Manager/Headteacher considers that the employee's conduct may justify disciplinary proceedings, it is recommended that they obtain an overview of the situation promptly so that a decision can be made on whether to proceed to a formal investigation or deal with the matter informally. This may involve:

- Speaking to the employee concerned.
- Speaking to any witnesses.
- Ensuring vital corroborative evidence is secured e.g. computer evidence, statements, documentary evidence etc wherever possible.

4.2 Following this initial investigation the Manager/Headteacher should determine the appropriate course of action which could include:-

- The allegation is unfounded and no further action is required.
- The allegation is minor and as such should be dealt with through Informal Action, as outlined at Section 5.
- An investigation, as outlined in the Formal Action section 7.
- The allegation is vexatious or malicious and requires further investigation which may result in disciplinary action against the perpetrator.

4.3 The Manager/Headteacher may determine that the alleged misconduct relates to safeguarding of children or involves vulnerable adults. In such cases:

- The relevant guidance for dealing with such matters must be followed e.g. Child Safeguarding Procedures and immediate referrals made.
  - Issues relating to child safety must be discussed with a Senior Manager/Headteacher and the Local Authority Designated Officer in accordance with 'Barnsley Safeguarding Children's Board Procedures and the DfE's Dealing with Allegations of Abuse against Teachers and other Staff - Guidance for Local Authorities, Headteachers, School Staff, Governing Bodies and Proprietors of Independent Schools.
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## 5.0 **INFORMAL ACTION**

- 5.1 In the majority of cases an informal conversation between the Manager/Headteacher and the employee may be all that is needed. The employee has the right to be accompanied (see Section 2.2 for guidance). The employee will need to be advised that if misconduct is repeated, formal action will be instigated. This meeting must be minuted and a copy of the notes kept on the employee's personal file. It is recommended that a letter should be sent to the employee including the agreed action points where appropriate, details of any support/training required, the standards of behaviour and improvements expected and the consequences of a repetition of the behaviour.

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## 6.0 **MEDIATION**

- 6.1 In some cases the Manager/Headteacher may consider that mediation is an appropriate tool to assist in resolving minor disciplinary issues. Mediation is a voluntary process where the independent mediator helps two or more people in dispute to reach an agreement.
- 6.2 Mediation can be particularly effective when used to deal with allegations of minor misconduct that are being dealt with at the informal action stage or before matters escalate.
- 6.3 Further guidance about the mediation process and how it can be accessed is available from the Trust's HR advisers.

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## 7.0 **FORMAL ACTION**

- 7.1 Following the initial assessment the Manager/Headteacher may determine that the allegation is of a more serious nature or potential gross misconduct and that progression to formal action is required. In such cases it is recommended that a more detailed investigation is undertaken to establish the circumstances and facts surrounding the alleged misconduct and where appropriate in a case involving potential gross misconduct the employee suspended. Further information regarding what constitutes misconduct/gross misconduct can be found at Appendix A.
- 7.2 Where external agencies are involved in the investigation the Investigator will provide an indicative timescale at the onset of the investigation; however, this will be subject to variation e.g. through sickness absence.
- 7.3 If the allegation is of a serious nature it may be necessary to suspend the employee/s from work whilst the investigation is undertaken. It should be made clear that there is no assumption of guilt but a neutral act intended to protect both the employee and the Trust. (Guidance for managers regarding the Suspension process can be found in the Managers Guidance Pack).

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## 8.0 **INVESTIGATION**

- 8.1 It is important that the investigation is carried out without delay. The Investigator appointed
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to undertake the investigation should be of an appropriate managerial level and has had no prior involvement in the case and must not be an individual who is named in the allegation. The remit of the manager undertaking the investigation is to ascertain the appropriate evidence whilst maintaining an unbiased position. This usually requires the holding of management investigatory meetings with the employee and where appropriate witnesses. Further guidance on how to undertake a management investigation can be found in the Management Investigations Procedure.

- 8.2 At the conclusion of the investigation the Investigator should carry out an assessment of the evidence obtained and assess whether it does support the allegations and that a breach of the Trust's Disciplinary Procedures has potentially occurred.
- 8.3 If it is determined that the facts of the case do evidence a potential breach of the Trust's procedures and the matter cannot be dealt with informally then a formal disciplinary meeting should be arranged.

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## 9.0 **SICKNESS ABSENCE**

- 9.1 If the employee becomes unfit for work during the disciplinary process it is recommended that the Investigator refers the employee immediately to the Occupational Health Service to ascertain their fitness to participate in both the investigation process and if appropriate a disciplinary meeting.
- 9.2 If the employee is deemed unfit to participate in the disciplinary process for a prolonged period (defined as 4 weeks or more or is expected to be absent for more than 4 weeks) or if the employee fails to attend Occupational Health and they are unable to confirm their fitness to participate in the process, a disciplinary meeting may go ahead in their absence and a decision made on the basis of the available evidence. Each case should be judged on its own merits. The employee will still retain the right to be represented at the meeting and would be provided with an opportunity to submit their written representation.
- 9.3 If the employee is unhappy with the outcome of the disciplinary meeting they will have the right to appeal against the formal sanctions under Disciplinary Procedures.

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## 10.0 **RAISING A GRIEVANCE DURING THE DISCIPLINARY PROCESS**

- 10.1 During the course of a disciplinary process an employee may raise a grievance. Where the grievance is related to the disciplinary case then it is appropriate that both matters are dealt with at the same time i.e. at one meeting. However it is advisable that another manager is allocated responsibility for investigating the grievance aspects of the case.
- 10.2 In instances where the grievance has no relationship to the disciplinary matter then both procedures may be dealt with concurrently.

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## 11.0 **INITIATING THE DISCIPLINARY MEETING**

- 11.1 If there is evidence that there is a disciplinary case to answer the Investigator must:
- Advise the relevant person e.g. line manager, Head, Executive Head to notify the employee in writing, this notification should contain sufficient information about the alleged misconduct and its possible consequences to enable the employee to prepare to answer the case at a disciplinary meeting.

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- Send the employee all the documentation they intend to refer to during the meeting, along with an overview of the case. These will be provided to the employee/representative not less than 10 days in advance of the date of the meeting.

11.2 The employee/representative must also provide the Investigator and panel members with copies of all the documents which the employee intends to rely on together with an overview of their case no less than 5 working days in advance of the date of the meeting. In exceptional cases i.e. where the case is complex and requires detailed analysis of evidence then a maximum of 10 days, however this should be agreed in advance and dates of any subsequent meetings take account of this extended timescale.

11.3 Although suitable notice will be given of the meeting date to ensure attendees availability, if any party e.g. the employee's representative is unable to attend on the specified date, then the meeting will be postponed. They may then offer a reasonable alternative date usually within 5 working days of the original date. This will only be accommodated once.

11.4 In normal circumstances the Panel conducting the Disciplinary Meeting should consist of:

- The Headteacher or appropriate Panel Governors who have been delegated this function in accordance with the School Staffing Regulations 2009 (refer to Section 3 and point 9.3).

The panel must consist of individuals who have not been involved in the investigation and are impartial to the process.

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## 12.0 **THE DISCIPLINARY MEETING**

12.1 A recommended protocol for use at the disciplinary meeting is at Appendix E (i).

12.2 It is expected that all internal witnesses attend the meeting to be questioned. However, in some circumstances it may be impracticable or unacceptable for the witness to be present at the meeting and in which case a copy of the signed written statement may be provided. Where witnesses are unable to attend the disciplinary meeting the circumstances for their non attendance should be assessed and other methods may be utilised to ensure their evidence is heard i.e. written questions, video links etc. These alternative methods should be discussed on a case by case basis with the Trust's HR Provider. Witnesses can be accompanied but not represented by a Trade Union representative or Professional Association Representative or work colleague.

12.3 Where either 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 the witness statement.

12.4 It is expected that the Panel will fully consider the evidence and decide, on the balance of probabilities i.e. it is more probable than less probable that the employee committed the alleged misconduct, what disciplinary action, if any, will be taken. Section 13 provides guidance on the levels of penalties. However, it should be noted that the list of examples is not exhaustive and that the level of the penalty should be determined on an individual basis taking account of all the circumstances of the case including but not limited to the severity, circumstances, corroborative evidence, mitigation, etc.

12.5 The decision should normally be given verbally to the employee at the conclusion of the meeting and confirmed in writing, within 5 working days. However in exceptional circumstances it may be necessary with the employee's agreement to communicate the

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outcome in writing rather than verbally. All parties should be advised of any changes to the method of communication and extension to timescales at the closure of the meeting.

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### 13.0 **LEVELS OF DISCIPLINARY PENALTIES**

13.1 If, after all the evidence has been presented at the Disciplinary Meeting, the Panel is satisfied that an employee's conduct is unsatisfactory; it should determine within the range of available penalties the appropriate action to be taken in the circumstances taking account of any mitigating circumstances and corroborative evidence.

13.2 Please note that no employee should be dismissed for a first breach of discipline except in the case of Gross Misconduct.

13.3 The possible penalties that the Panel could consider at the conclusion of the meeting are:

#### ***No Action***

In cases where it is concluded that misconduct has not occurred or where there is insufficient evidence on the balance of probabilities to conclude that misconduct has occurred.

#### ***Written Warning***

Written Warnings are normally issued as a result of minor acts of misconduct or where there has been a repetition of an issue that has previously been dealt with under Informal Action. Depending upon the circumstances of the case the suggested length of the written warning should be a minimum of 9 months and no more than 12 months from the date of the meeting.

#### ***Final Written Warning***

Where there has been a recurrence of misconduct which is subject to a Written Warning; an employee's conduct has not improved following a Written Warning; an employee subject to a Written Warning has committed a further unrelated act of misconduct or the misconduct is of a more serious nature, the employee may be issued with a Final Written Warning. Depending upon the circumstances of the case the suggested length of the final written warning should be a minimum of 18 months and no more than 24 months from the date of the meeting.

**Where an employee is in receipt of a current Final Written Warning and commits a further act of misconduct this may result in the dismissal of the employee on cumulative grounds.**

Other possible penalties that could be considered are shown below; please note this list is not exhaustive.

#### ***Downgrading/Transfers***

The disciplinary penalty of downgrading/transfer should only be considered where the Panel conclude that in the circumstances the dismissal of the employee is appropriate but there are mitigating factors which would support the downgrading/transfer of that employee as an alternative to dismissal. In addition to the employee being downgraded/transferred the panel should also consider issuing a Final Written Warning. In these circumstances the employee will then be paid the appropriate salary for the alternative post, the Protection of

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Earnings Policy or Teachers Safeguarding will not apply.

If the Panel wishes to consider this form of penalty then the meeting should be adjourned whilst advice is sought regarding the availability of an alternative post. If the employee has a permanent contract then only posts that are available and are on an established structure should be considered

The meeting should be re-convened no more than 10 working days from the date of the original disciplinary meeting after the adjournment to confirm the penalty. The employee will be afforded the right of appeal against this penalty.

### ***Cumulative Dismissal***

Dismissal with notice may be considered in circumstances where the panel has determined that:

- there has been a recurrence of misconduct which is subject to a current Final Written Warning, or;
- an employee's conduct has not improved following the issuing of a Final Written Warning, or;
- an employee subject to a Written or Final Written Warning has committed a further unrelated act of misconduct,

The employee will be served with notice based on their contractual entitlement up to a maximum of 12 weeks. A compensatory payment be given and therefore the termination date would be from the date of the disciplinary meeting.

### 13.4 ***Summary Dismissal***

Summary Dismissal is the dismissal of an employee without notice. This is appropriate in cases of gross misconduct or where the reputation of the Trust/Academy will be severely compromised.

Copies of penalties, even when expired should be kept on the employee's personal file. It will be disregarded for disciplinary purposes after the stipulated timescale, however; it should remain on file as a record of events/employment history (as detailed in the Trust's Personal File – Retention Schedule).

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## 14.0 **RIGHT OF APPEAL**

14.1 An employee who wishes to appeal against a disciplinary decision should inform the appropriate Chair of the Disciplinary Panel, setting out in writing the grounds for their appeal within 10 working days of receipt of the letter notifying them of the decision of the disciplinary panel. Arrangements should then be made for the Appeal Meeting.

14.2 The rights of the employee and the procedure for the convening the hearing of an appeal shall be the same as for the initial Disciplinary Meeting. Section 3 details the responsibilities of the Headteacher/Governors in respect of Appeal Meetings.

14.3 The Appeal will be conducted as a review of the first instance decision, having regard to matters set out in the grounds of appeal and a statement of the dismissing panel or officer. Both parties may address the panel summarising the key aspects of their case. The panel will have received and read the statement of case and all witness statements from both parties submitted prior to the meeting. Witnesses will not normally be required to present evidence but will be available to be questioned should this be required.

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- 14.4 The appeal shall normally be conducted in one day except in exceptional circumstances.
- 14.5 It is recommended that the Investigator should make arrangements for the Appeal Meeting (it is recommended that this is set at the same time as setting the Disciplinary Meeting and inform the employee in writing, giving 10 working days notice, of the requirement to attend the Appeal Meeting).
- 14.6 A recommended protocol for use at the Appeal Meeting can be found at Appendix E (ii).
- 14.7 Where possible the decision will normally be given verbally to the employee at the conclusion of the meeting and confirmed in writing, within 5 working days. However it may be necessary to communicate the outcome in writing. All parties should be advised of any changes to the method of communication and extension to timescales at the closure of the meeting.
- 14.8 The Appeal Panel has authority to confirm, reduce, increase or revoke the original outcome.
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15.0 **COMPLETING THE DISCIPLINARY PROCESS**

On conclusion of the case:

- The Disciplinary Procedure Action Plan should be completed where appropriate in respect of all allegations of misconduct that are investigated. A template can be found at Appendix D
  - A copy of the Plan, when the actions are complete, should be placed on the employee personal file and a copy kept securely within the Academy/Trust.
  - The Investigator must ensure that all documents/evidence relating to the investigation is placed in a sealed envelope marked 'to be opened by the Executive Head, CEO or Chair of the Board of Trustees' and should indicate that the contents relate to a disciplinary investigation and should be placed on the employee's personal file.
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Approved by the Resources Committee on \_\_\_\_\_

Chair \_\_\_\_\_ CEO \_\_\_\_\_



**EXAMPLES OF MISCONDUCT**

The Trust Policies and Procedures are designed to support the business and provide guidance to everyone working for the Trust as to the standards and behaviour required. The following table gives examples of the type of conduct which **may** lead to dismissal (gross misconduct) and the types of conduct which **may** lead to disciplinary action (misconduct). However, it should be noted that this is not an exhaustive list and that the level of penalty will be determined on an individual basis taking account of the severity, circumstances and mitigating evidence.

<b>Behaviour</b>	
<b>Gross Misconduct</b>	<b>Misconduct</b>
<ul style="list-style-type: none"> <li>• Physical violence or bullying</li> <li>• Incapacity brought on by alcohol, illegal drugs or misuse of prescription drugs</li> <li>• Substantial abuse of position and power</li> <li>• Serious breach of the Dignity at Work Procedure</li> <li>• Unlawful discrimination or harassment</li> <li>• Bringing the Trust into disrepute</li> </ul>	<ul style="list-style-type: none"> <li>• Failure to comply with a reasonable request</li> <li>• Abusive, objectionable or insulting behaviour</li> <li>• Foul or abusive language</li> <li>• Disorderly conduct</li> <li>• Unauthorised sleeping on the premises whilst on duty</li> <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 Dignity at Work Procedure</li> </ul>
<b>General Conduct at Work</b>	
<b>Gross Misconduct</b>	<b>Misconduct</b>
<ul style="list-style-type: none"> <li>• Theft or fraud</li> <li>• Deliberate or serious damage to Trust property, facilities, equipment or products</li> <li>• Deliberately accessing and circulating illegal, pornographic, offensive or obscene material.</li> <li>• Serious breach of the Trust's Code of Conduct</li> <li>• Cause loss, damage or injury through serious negligence</li> <li>• Serious insubordination</li> <li>• Serious breach of confidence</li> <li>• Serious breach of the Information Security and Computer Usage Policy</li> </ul>	<ul style="list-style-type: none"> <li>• Allowing visitors on the premises without authorisation</li> <li>• Unauthorised distribution of written or electronic material</li> <li>• Failure to return tools or equipment provided by the Trust</li> <li>• Deliberately accessing and storing illegal documents/ information</li> <li>• Failure to comply with rules regarding use of Trust vehicles</li> <li>• Negligence, carelessness or recklessness which could result in damage or misuse of Trust property, facilities, equipment or products</li> <li>• Undertaking work in conflict with the Trust</li> <li>• Breach of the Trust's Code of Conduct</li> <li>• Breach of the Information Security and Computer Usage Policy</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> <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>• Failure to observe health and safety requirements</li> <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 the 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>• Deliberate falsification of records in an attempt to defraud the Trust</li> <li>• Abuse of the Managing Attendance Procedure</li> </ul>	<ul style="list-style-type: none"> <li>• Absence without authorisation</li> <li>• Persistent and unacceptable absence levels</li> <li>• Failure to keep management informed of reasons for absence from work whether due to ill health or other reasons</li> <li>• Failure to submit medical certificates in accordance with the Trust's Absence due to sickness' scheme</li> <li>• Regularly or persistently late for work</li> <li>• Failure to comply with the Managing Attendance Procedure</li> <li>• Leaving early without permission</li> </ul>

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## **Appendix B**

### **DISCIPLINARY PROCEDURE FAQ'S**

#### **In which situations should the Disciplinary Procedure be used?**

The procedure should only be used in cases of employee misconduct. Please see Appendix A of this document for examples of misconduct/gross misconduct.

#### **Would the Disciplinary Procedure be used for sickness absence or performance issues?**

No, these issues are covered by separate policies and procedures which can be found on the Trust's shared drive or the school office.

#### **Can employees be dismissed for a first offence?**

Yes, but only in circumstances where the act of misconduct is so serious it could be deemed as gross misconduct. Examples of the types of conduct which may lead to dismissal can be found in Appendix A.

#### **Who should carry out the management investigation?**

It is advised where possible that the Investigator should be at an appropriate managerial level and must not be an individual who is named in the allegation.

#### **As a Manager what do I do when I become aware of a potential disciplinary issue?**

It is recommended that you carry out an assessment of the allegations and obtain an overview of the situation in order to be able to determine if a formal investigation is required. (Please see the Disciplinary Procedure for further guidance).

#### **What happens if an employee has become involved with an incident that takes place outside the work place?**

If the allegation relates to a potential criminal act, or potentially affects the reputation of the Trust i.e. a potential breach of the Trust's Code of Conduct the matter may require that the disciplinary process is undertaken.

#### **How do I conduct a Management Investigation?**

Please refer to the Conducting a Management Investigation Procedure.

#### **As a Manager do I need to meet with the employee concerned?**

Yes, as part of the initial assessment you will need to meet with the employee concerned. It is advised that notes of any such meeting are taken and copies should be provided to the employee.

#### **Does the employee have the right to bring anyone to the investigation/disciplinary meeting?**

Yes, the employee is entitled to be accompanied or represented throughout the process at each formal meeting by a work colleague, or designated TU/Professional Association Official. This right does not extend to friends/family or professional persons such as solicitors and barristers. Please see the Disciplinary Procedure for further guidance.

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## **What do I need to do if I need to suspend an employee?**

Suspension is a precautionary measure and should only be carried out when there is a potential for the employee to impede the investigation or the allegation is so serious that it may result in the employee being dismissed on the grounds of gross misconduct. It should be made clear to the employee concerned that suspension is not an assumption of guilt but a neutral act designed to protect both the Trust and the Employee. Guidance Notes on the Suspension of an Employee can be found in the Managers Guidance Pack

## **When do you need to involve other services in the investigation?**

There may be occasions when you must involve other services in your investigation, examples are:-

Fraud/Theft investigations – Auditors / Police  
Child Protection Issues – Local Authority Designated Officer

## **Who should arrange the disciplinary meeting?**

Ordinarily, the Investigator would make the arrangements for a disciplinary and disciplinary appeal meeting.

## **What if it's impractical or unacceptable for witnesses to attend a meeting?**

It is expected that internal witnesses attend the disciplinary meeting to be questioned however in some circumstances it may be impracticable or unacceptable for a witness to be present. The Investigator should seek to reach agreement with the employee's representative regarding the non-attendance of the witness and the utilisation of a written submission etc. in order for their evidence to be heard.

Where external witnesses do not attend for whatever reason, it is for the panel to determine the weight placed on the evidence presented in the witness statement.

## **What if agreement cannot be reached regarding the attendance of witnesses?**

The employee/ representative may wish to submit a series of questions that they wish the witness to provide a written response to prior to the Meeting. Alternatively, consideration should be given to another suitable method to allow the witness to respond to questions during the Meeting. In instances where the witness refuses to participate, their statement can still be included. But the panel has to determine a proportionate amount of weight to attach to the statement given the witness is unable to attend the disciplinary meeting.

## **What happens if an employee raises a grievance during the Disciplinary Process?**

If the grievance relates to the disciplinary case then it is appropriate for both matters to be dealt with at the same time but the grievance should be investigated by a manager not involved in the disciplinary investigation. Where the grievance has no relationship to the disciplinary matter then both procedures are dealt with concurrently.

## **What happens if the employee is sick during the Disciplinary Process?**

The Investigator will immediately refer the employee to the Occupational Health Unit. This referral should include information about the disciplinary matter and should seek medical advice in relation to the employee's fitness to participate in an investigation and attend a disciplinary meeting/appeal. On receipt of advice from Occupational Health, the Investigator may determine that the management investigation/hearing will take place in the employee's absence.

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### **Who maintains contact with the employee under investigation?**

It is recommended that the Investigator should keep the employee up to date with the progress of the investigation. If the employee has been suspended then the suspension should be reviewed on a regular basis and the outcome communicated to the employee.

### **Can witnesses be accompanied to a disciplinary meeting?**

Yes by either a work colleague or a Trade Union representative but the employee must make these arrangements.

### **What happens if an employee who has received a disciplinary penalty goes off sick during the penalty period?**

If the employee is absent for two consecutive weeks or more this will not count as time spent towards the penalty. Consequently the expiry of the penalty will be adjusted accordingly.

### **What Penalties can be given if the misconduct is proven?**

Details of the penalties can be found at Section 13 of the disciplinary procedure.

### **Are penalties removed from personal files once they have expired?**

No the details are not removed from an employee's personal file as they form part of that employee's employment record.

### **If an employee has not been suspended from work can they still be dismissed at a disciplinary meeting?**

Yes if the allegation is of such a serious nature that if proven could constitute gross misconduct or is a cumulative dismissal. See section 13 of the Disciplinary Procedure.



When initial allegation arises and the Manager/Headteacher considers the employee's conduct may justify disciplinary proceedings, it is recommended they obtain an overview of the situation promptly and establish the facts of the case.



It is then advisable for the Manager/Headteacher to determine the appropriate course of action.



The allegation is unfounded and no further action required.



The allegation is minor and should be dealt with through Informal Action.



An investigation should be undertaken in line with Formal Action and where appropriate the employee suspended.



The allegation is vexatious or malicious and requires further investigation against the perpetrator.



Formal Action – It is recommended that the Investigator will write to the employee to advise them of the allegations against them. The employee will either be required to attend a Management Investigatory Meeting or will be invited to attend a Disciplinary Meeting to discuss the allegations.



Initiating the Disciplinary Meeting – it is recommended the Investigator should:

- Send the employee all documentation they intend to refer to during the hearing along with a brief statement of case.
- See section 12.0 of the procedure for further details.



The Disciplinary Meeting – It is recommended that:

- The Panel conducting the meeting should consist of a Headteacher/ Governors (and a Human Resources Advisor where the outcome could potentially be dismissal or the allegations are of a complex nature) and who are impartial to the process.
- A recommended protocol for use at the hearing is included at Appendix E (i).
- The employee is notified of their entitlement to be accompanied by a Trade Union Representative/Work Colleague at the Meeting if they wish.
- The employee is notified of the Panel's decision verbally at the Hearing and this is then confirmed in writing within 5 working days (letter should be sent on the same day by registered post).



- Right of Appeal – It is advised that if an employee wishes to appeal against a Written/Final Written Warning and/or Downgrading/Transfers they should inform the appropriate Chair of the Panel in writing within 5 working days of receipt of the letter notifying them of the decision and the grounds for their appeal.
- The Investigator should make arrangements for the Appeal Meeting and inform the employee in writing. Please refer to section 15.0 of the Procedure for further information.
- A recommended protocol for use at an Appeal Hearing is included at Appendix E (ii)
- The employee is notified of the Panel's decision verbally at the Hearing and this is then confirmed in writing within 5 working days (letter should be sent on the same day by registered post).
- Right of Appeal Against Dismissal will be heard by a panel of Governors who has no prior involvement with the appeal being considered. If this is not possible another Governor from within the Trust will be appointed to the panel. The Employee should follow the above procedure if they wish to appeal and the Investigator should contact the Trust's HR provider for further advice.

## Appendix D

## Disciplinary Procedure – Action Plan

The table below should normally be completed by the Chair of the Panel following the Disciplinary Meeting detailing identified actions in respect of employee and/or service related issues that require addressing. The pro-forma must also be utilised when the Investigator has determined no action or, informal action is required and has identified the need for employee and/or service issues to be addressed. In such instances the Investigator should complete the table below.

### Section A - To be Completed in Respect of Employee Related Issues

Name: \_\_\_\_\_  
Chair of the Panel/Investigator

Date: \_\_\_\_\_

Immediate Actions	Responsible Officer	Date Implemented
Medium Term (3 - 6 months)	Responsible Officer	Date Implemented
Longer Term (6 - 12 months or beyond)	Responsible Officer	Date Implemented

### Section B to be completed in Respect of Service Related Issues:

Immediate Actions	Responsible Officer	Date Implemented
Medium Term (3 - 6 months)	Responsible Officer	Date Implemented
Longer Term (6 - 12 months or beyond)	Responsible Officer	Date Implemented

On completion of all of the above identified actions the form should be signed off by:

Employee \_\_\_\_\_ Date \_\_\_\_\_

Manager \_\_\_\_\_ Date \_\_\_\_\_

### **Appendix E (i)**



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## **SUGGESTED PROTOCOL AT A DISCIPLINARY MEETING**

- i) The Chair of the Panel will perform introductions, clarify roles, and outline the procedure that will be followed.
- ii) Management will present their case making reference to any supporting evidence and calling witnesses should this be required. At the conclusion of which the Panel should be made aware of any current penalties.
- iii) The employee and/or representative may question management and any witnesses should this be required.
- iv) The Panel including the Advisor may question management and any witnesses should this be required.
- v) The employee shall respond to the Management's case making reference to any supporting evidence and calling witnesses should this be required.
- vi) Management may question the employee and/or their representative and any witnesses should this be required.
- vii) The Panel including the Advisor may question the employee and/or representative and any witnesses should this be required.
- viii) Prior to the summing up either side shall have a right to request an adjournment of the proceedings in the event of new allegations being presented.
- ix) Management will summarise their case
- x) The employee or their representative will summarise their case.
- xi) Once the meeting is complete, both parties will then withdraw. If the panel members require further information on the evidence presented both sides must be recalled to allow clarification to be sought. Before a decision is reached the Advisor to the panel may be required to withdraw. A decision shall then be reached by the Panel based on an unbiased consideration of the evidence as to whether on the balance of probabilities the potential misconduct is proven.
- xii) Both parties shall be recalled and the outcome of the meeting conveyed. This will be confirmed in writing, normally within 5 working days, with details of the nature of the misconduct and the implications. All parties will be advised of any changes to the method of communication and extension to timescales at the closure of the meeting.

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### **Appendix E (ii)**

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## **SUGGESTED PROTOCOL AT A DISCIPLINARY APPEAL MEETING**

- i) The Chair of the Panel will perform introductions, clarify roles, and outline the procedure that will be followed.
- ii) The employee/and or representative will present their case making reference to any supporting evidence. At the conclusion of which the Panel should be made aware of any current penalties.
- iii) Management may question the employee/and or their representative.
- iv) The Panel may question the employee/and or their representative.
- v) Management shall respond to the employee's case making reference to any supporting evidence.
- vi) The employee/and or their representative may question management.
- vii) The Panel may question management.
- viii) The employee/and or their representative will summarise their case.
- ix) Management will summarise their case.
- x) Once the meeting is complete, both parties will then withdraw. If the panel members require further information on the evidence presented both sides must be recalled to allow clarification to be sought.
- xi) A decision shall then be reached by the Panel based on an unbiased consideration of the evidence as to whether on the balance of probabilities the potential misconduct is proven.
- xii) Both parties shall be recalled and the outcome of the meeting conveyed. This will be confirmed in writing within 5 working days, with details of the nature of the misconduct and the implications. In exceptional circumstances it may be necessary for the outcome to be communicated in writing. All parties will be advised of any changes to the method of communication and extension to timescales at the closure of the meeting.

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## **1.0 PURPOSE AND SCOPE**

- 1.1 All employees are required to ensure the integrity and security of Trust information in accordance with the Trust's Information Security and Computer Usage Policy, associated policies, protocols, guidance and relevant legislation.
- 1.2 The Policy and associated policies, protocols and guidance set out in detail the responsibilities and operational issues to be adhered to by all who handle and/or have access to information and computer related equipment provided by the Trust including:
  - familiarisation and compliance with the Policy and associated policies, protocols and guidance.
  - security of all information which is written, spoken, electronic, sent across networks and/or visual
  - security of computers, mobile devices and computer information
  - notification procedures relating to perceived or actual breaches of the Policy.
- 1.3 The Policy provides a framework within which all those accessing information can do so safely in fulfilling their role within the Trust. Additionally, the Policy sets out the arrangements that the Trust will utilise with regard to the monitoring of the Policy.

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## **2.0 NON COMPLIANCE WITH THE INFORMATION SECURITY AND COMPUTER USAGE POLICY**

- 2.1 All breaches of the Information Security and Computer Usage Policy will be treated with utmost concern and, in respect of employees, investigated as an allegation of potential misconduct/gross misconduct in accordance with the Trust's Disciplinary Procedure.
- 2.2 Investigations in respect of a breach of the Policy by a contractor, agency worker, supplier or partnership organisation will be investigated in accordance with the conditions of the individual service contract.

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## **3.0 DISCIPLINARY IMPLICATIONS**

- 3.1 A deliberate and knowing breach of the Policy, where an information loss occurs which may potentially affect the reputation of the Trust, confidence of the public in the Trust to manage information securely or potentially cause financial loss, or where the user is found to be abusing information/data systems may constitute gross misconduct which may lead to dismissal. In the case of agency staff or contractors this will lead to the termination of the contract.
- 3.2 A deliberate and knowing breach of the Policy which results in criminal charges against the Trust and/or Officers of the Trust may be deemed gross misconduct within the terms of the Trust's Disciplinary Procedure.
- 3.3 Other cases of misuse or non-compliance will be reviewed within the context of the policy and the extent of the effect on the provision of Trust services and reputation.