



# **PONTEFRACT**

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## ACADEMIES TRUST

### **DISCIPLINARY PROCEDURE**

#### **ALL STAFF**

Trust Board Approval Date	31 August 2018
Implementation Date	1 September 2018
Planned Review Date	31 August 2021
Web Access	Internet
Owner	Director of Finance Business and Operations

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# 1. Introduction, Purpose & Scope

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## 1.0 INTRODUCTION

- 1.01 The Ponterfract Academies Trust (“The Trust”) is committed to giving all employees the support and encouragement they need to raise aspirations, unlock potential and work to achieve excellence through encouraging a “can do” culture, across all areas of the Trust.
- 1.02 The Trust expects all its employees to recognise their employment obligations to the Trust, their academy, the public, pupils and other employees. Employees must conduct themselves properly at all times in accordance with the Trust’s Code of Conduct and other policies and procedures.

## 1.1 PURPOSE

- 1.1.1 The Trust recognises that the majority of its employees meet or exceed the standards and levels of conduct expected of them, however, it is acknowledged that issues can and do arise. This procedure intends to:
- Promote good employment relations, along with fairness and consistency in the treatment of all employees.
  - Encourage improvements in an individual’s conduct where necessary.

It aims to do this by application of the following key principles:

- Inform employees of the standards of behaviour / conduct expected from them;
  - Provide examples of the types of behaviour / conduct which are unacceptable;
  - Inform employees of the possible consequences if they have behaved / conducted themselves unacceptably;
  - Inform employees about how an allegation against them will be dealt with and confirm that they will be provided with an opportunity to state their case before decisions are reached and an opportunity to appeal against any disciplinary sanction
  - Inform employees of the possibility of a referral being made to professional bodies
  - Ensure that allegations are dealt with thoroughly and as quickly as possible.
- 1.1.2 The Trust aims to ensure fairness and transparency in dealing with matters of discipline. It will ensure a consistent understanding of the importance of the following key elements set out in the ACAS Code of Practice:
- Managers and employees should raise and deal with issues promptly and should not unreasonably delay meetings, decisions or confirmation of those decisions;
  - Managers and employees should act consistently;
  - Managers should carry out any necessary investigations, to establish the facts of the case;
  - Managers should inform employees of the basis of the problem and give them the opportunity to put their case in response before any decisions are made;
  - Managers should allow employees to be accompanied at any formal disciplinary meeting;
  - Managers should allow an employee to appeal against any formal decision made.
- 1.1.3 Throughout the formal stages of the disciplinary process employees have a right to be accompanied to meetings by a Trade Union representative or work colleague. This right maybe extended to informal meetings, at the discretion of the Executive Director/Headteacher/Head of School.

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## 1.2 SCOPE

- 1.2.1 This policy sets out the disciplinary procedure which will be followed by the Trust and is applicable to all employees.
- 1.2.2 Where disciplinary issues arise in respect of employees who are also trade union officials, no formal action will be taken until the circumstances of the case have been discussed by the Manager or Human Resources Advisor with a full time official of the union concerned.
- 1.2.3 Where disciplinary issues arise in respect of an Executive Director/Headteacher or Head of School the matter will be dealt with by the CEO in consultation with the Chair of the School Governance Committee.
- 1.2.4 Where disciplinary issues arise in respect of the CEO the matter will be dealt with by the Chair of the Trust Board.

## 1.3 CHILD PROTECTION

- 1.3.1 Where allegations are made against staff which involves child protection or safeguarding issues, the Trust's / Academy's Child Protection Procedure must be followed irrespective of how the allegation arises.
- 1.3.2 The Trust will operate within statutory guidance when handling cases of child protection.

## 1.4 CRIMINAL CHARGES OR CONVICTIONS

- 1.4.1 If an employee is charged with, or convicted of, a criminal offence – even if this is not related to work, this may, be a reason for disciplinary action. A manager will establish the facts of the case and consider whether the matter is serious enough to warrant starting the disciplinary procedure. The main consideration will be whether the offence, or alleged offence, is one that makes the employee unsuitable for their type of work. In some cases, the nature of the alleged offence may not justify disciplinary action – for example off-duty conduct which has no bearing on employment, but the employee may not be available for work because he or she is in custody or on remand. In these cases, the Trust will decide in the light of the needs of the Trust whether the employee's job can be held open.
- 1.4.2 Where an employee, charged with or convicted of a criminal offence, refuses or is unable to co-operate with the Trust's disciplinary investigations and proceedings, this will not prevent action being taken. The employee may be advised in writing that unless further information is provided a disciplinary decision will be taken based on the information available and could result in dismissal.
- 1.4.3 All decisions following disciplinary meetings will be forwarded to the employee in writing.

## 1.5 FRAUD BRIBERY OR CORRUPTION

- 1.5.1 Where fraud, bribery or corruption is suspected the matter should be investigated in accordance with the Pontefract Academies Trust Anti-Fraud, Bribery and Corruption Policy. Following an investigation, disciplinary action in accordance with this procedure will be considered where appropriate.

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## **1.6 MALICIOUS ALLEGATIONS OF UNACCEPTABLE BEHAVIOUR/CONDUCT**

- 1.6.1 If at any stage of this procedure, it is found that any allegation(s) made against an employee are malicious, consideration will be given as to whether it is appropriate to pursue disciplinary action against the person(s) responsible for making the malicious allegation(s).

## **1.7 GRIEVANCES**

- 1.7.1 Where an employee raises a grievance during the Disciplinary Procedure (informal or formal) they must follow the Trust's Grievance Procedure. Consideration must then be given as to the nature and the contents of the submitted grievance. Where it is connected to the disciplinary process, it may be considered concurrently. Where it is not connected to the disciplinary process it will be considered in accordance with the Grievance Procedure. Further advice should be sought from the Human Resources Manager to discuss appropriate action.

## **1.8 SICKNESS**

- 1.8.1 It is important, both for the benefit of the employee and employer, that the disciplinary process is concluded promptly, and an outcome reached without undue delay. To allow this an employee must take all reasonable steps to attend any meeting held under this policy. If they cannot attend they must, whenever possible, advise in advance.
- 1.8.2 Where an employee is absent prior to the commencement of, or during the course of, the disciplinary procedure as a result of ill-health or other reasons, they will be given the opportunity to attend any investigatory meetings and subsequent disciplinary hearing, if convened. The employee will also be given a copy of any documentation to be used at a disciplinary hearing.
- 1.8.3 In the case of absence due to ill-health a medical opinion may be requested from an Occupational Health Specialist. If the employee does not agree to the medical information being provided or fails to attend an appointment with an Occupational Health Specialist, a decision may have to be taken without the benefit of such information.
- 1.8.4 If an employee continues to be unavailable to attend a disciplinary hearing, he or she may make a written submission or be represented at the hearing by a work colleague or trade union representative who may respond on behalf of the employee. Otherwise, a decision may be taken in the employee's absence, based on the available evidence.

## **1.9 OTHER ABSENCE**

- 1.9.1 If the employee/Trade Union representative or work colleague fails to attend an arranged meeting and has notified of their absence, giving a good reason for their non-attendance (e.g. circumstances out of their control and unforeseeable at the time) then an alternative time and date should be agreed not more than 5 working days after the original date of the meeting/interview/hearing/appeal. Generally, a meeting (or hearing) will only be rearranged once.
- 1.9.2 Failure by an employee to attend a meeting, under this policy, for no good reason could constitute unacceptable behaviour/conduct in its own right and could lead to further

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disciplinary action being taken against the employee.

## **1.10 INCREMENTAL PROGRESSION**

1.10.1 The Manager, in conjunction with the Human Resources Manager/Advisor, has the discretion to withhold a pay increment for a specified period as part of any formal action taken against an employee as an alternative to dismissal. Employees have the right of appeal against any formal sanction given.

## **1.11 EQUAL OPPORTUNITES**

1.11.1 This Disciplinary Procedure must always be applied fairly and in accordance with The Trust's Equality and Diversity Policy.

## 2. Roles and Responsibilities

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### 2.0 CEO/EXECUTIVE DIRECTOR/ HEADTEACHER/ HEAD OF SCHOOL / NOMINATED MANAGER RESPONSIBILITIES

Throughout this procedure, the term “Manager” will refer to the CEO/Executive Director/Headteacher/Head of School or nominated Manager with the delegated authority to take action. The Manager may wish to seek advice from the Human Resources Manager or his/her nominee before taking action under this procedure.

Managers are responsible for ensuring that the Trust’s Code of Conduct and other related policies are available to all employees and are accessible throughout their employment. Managers are also responsible for arranging any induction or regular training around standards and expectations.

Managers are responsible for ensuring that the necessary support, assistance and encouragement are provided to help employees reach and maintain acceptable standards of behaviour and conduct. Managers should ensure that all staff understand the consequences of not maintaining or not demonstrating the required levels of professional behaviour and conduct.

The CEO/Executive Director/Headteacher and Heads of School have delegated authority to chair disciplinary hearings and confirm disciplinary sanctions, up to and including, dismissal.

### 2.1 EMPLOYEE RESPONSIBILITIES

Employees are responsible for ensuring they have read and understand the Trust Code of Conduct for Employees, and other related policies and procedures. Employees are responsible for seeking clarification if required.

Employees must conduct themselves properly at all times and maintaining high levels of professionalism. This may include their actions and activities outside the workplace.

Employees should accept any reasonable offers of support or additional training in an effort to improve their conduct and behaviour. Failure to do so or wilfully refusing to perform at a satisfactory level may result in action being taken in accordance with The Trust’s Disciplinary Procedure or the formal stages of this procedure.

Employees should be aware that breaches of the law and other professional guidelines could result in criminal or disciplinary action being taken against them.

Employees are required to attend any meeting arranged in accordance with this procedure.

### 2.2 HUMAN RESOURCES MANAGER/ADVISOR ROLE

The Human Resources Manager will provide advice and assistance to Managers when operating the Disciplinary policy.

Where appropriate, the Human Resources Manager will attend meetings under this procedure. They must also be in attendance at any formal hearings which may lead to dismissal. This will ensure that advice is available on procedural issues and any employment legislation matters.

## 2. Roles and Responsibilities

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### 2.3 CONFIDENTIALITY

Confidentiality must be maintained at all times and the contents of interviews undertaken as part of this procedure must remain confidential. Employees will be reminded of the need to maintain confidentiality throughout the process.

Managers should take measures to manage speculation, leaks and gossip. Any employees' who breach confidentiality may be subject to disciplinary action.

### 2.4 RECORDS

A formal disciplinary warning will remain effective during the period of time specified. This means that it will be taken into consideration, as part of the cumulative process, when determining the level of disciplinary action warranted for any further offences which may occur during the period.

At the end of the specified period the formal warning will expire. This does not mean that the warning will be removed from the employee's personal record but that it will be disregarded when determining the level of further disciplinary action. Previous warnings form part of the employee's work history and will remain on file for reference purposes.

### 2.5 REFERRAL TO RELEVANT PROFESSIONAL BODIES

Where an employee is dismissed (or resigns prior to the conclusions of this procedure) due to standards of conduct or behaviour, the Trust will fulfil its obligations by informing the relevant professional body.

### 2.6 REFERENCES PROVIDED TO POTENTIAL EMPLOYERS

The Trust will provide a factual reference where requested to potential employers. This may include any appropriate information in regard to a formal disciplinary process.

### 2.7 TERMS USED

'Investigating Officer' – This is a nominated senior leader/manager, appointed by the Manager to conduct an investigation, to establish the facts surrounding an allegation. The Investigating Officer should not be someone who may later intend to hear the disciplinary case. They will be thorough, independent and fair. Where investigations include interviews with children, safeguarding procedures must be followed at all times.

'Contact Officer - This is a nominated senior leader/manager, appointed by the Manager, in cases involving suspension of an employee. It will normally be someone who is employed at the school site and is aware of the circumstances of the case. They will be responsible for ensuring the terms of the suspension are adhered to by both sides, and to act as the contact point for the individual.



## 3. Informal Procedure

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- 3.0** The Trust believes that good management, clear expectations and appropriate support will go a long way to ensuring employees understand what acceptable standards of conduct and behaviour are, and, for cases of less serious breaches of conduct (i.e. first occurrences of some types of misconduct), will help to avoid the need for formal Disciplinary action.
- 3.1 Problems with conduct and behaviour should be identified at an early stage. Where such problems are identified, and are considered minor in nature, the Manager should arrange an informal meeting to outline the issue(s), setting out the improvement(s) required, and a clear and reasonable timescale for that improvement to take place in.
- 3.2 When matters of concern are being dealt with on an informal basis there is no requirement for the employee to be accompanied at meetings between the employee and his/her manager. There will be no appeal against the informal action.
- 3.3 If an employee disagrees with the process followed, recourse will be available through the grievance procedure.
- 3.4 NEXT STEPS**
- 3.4.1 The Manager will confirm in writing the details of the informal meeting including the issue(s) identified, the improvements required, and a clear and reasonable timescale for improvement, as soon as possible after the meeting. It will be made clear that this record is not a formal warning or any part of the formal disciplinary procedure, and it will be phrased in a constructive and helpful manner. No formal action will be taken but a written record of the discussion will be placed on the employee's file. Employees who disagree with the content of the note may ask for their written comments to be added. This will remain on file for up to 12 months working time equivalent period (i.e. excluding school holidays) from the date of the note. This is often referred to as a 'management instruction' and the employee will be made aware, that further examples of misconduct may result in formal disciplinary action.
- 3.4.2 If the informal approach has not been successful in achieving the required improvement in conduct and behaviour, then the formal part of the disciplinary procedure should commence.
- 3.4.3 The Human Resources Manager should be notified so that advice and guidance can be provided, as appropriate.
- 3.4.4 Where an employee appears to have multiple informal discussions recorded on their personnel file, consideration should be given to invoking the formal disciplinary procedure. This is on the basis that informal advice and guidance has not brought a change in the employee's behaviour (or conduct) and more formal sanctions may be appropriate.
- 3.4.5, During the informal procedure, the Manager may extend the right to representation to the employee. This is to ensure transparency and offer further support to the employee.

## 4. Formal Procedure

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**4.0** If the informal process has not been successful in achieving the required improvement in standards of behaviour and conduct, or standards of behaviour and conduct are of a serious nature, then formal disciplinary action should be taken.

**4.1** The Manager should discuss the nature of the allegations with the Human Resources Manager to consider whether precautionary actions are required and agree the arrangements for a management investigation:

- a) Suspension\*/Restricted Duties/Temporary Redeployment. See Section 4.3.
- b) Contact the Local Authority Designated Officer in matters relating to the safeguarding of pupils/students.
- c) Identify an appropriate impartial and objective leader/manager to undertake the role of Investigating Officer for the purposes of this procedure. See Section 4.4.

**4.2** Allegations

The employee will receive written notification:

- that their conduct or behaviour is in question or/and be provided, in writing, the details of allegations made against them.
- that an investigation is taking place and that they will be interviewed as part of this process to establish facts.
- the Investigating Officer will then conclude if the matter should be referred to a disciplinary hearing.
- that they have a right to be accompanied by a work colleague or recognised trade union representative who may make representations on their behalf at all formal stages of this procedure.

**4.3** **SUSPENSION**

In the event of serious allegations, the Manager or the Investigating Officer will meet with the employee for their initial response to the allegation. The employee has the right to be accompanied to this meeting. Depending on the nature of the allegation the Manager reserves the decision to suspend an employee. Advice should be sought from the Trust's HR Manager.

Suspension from duty is only appropriate after careful consideration and where there are reasonable grounds for concern that:-

- a) The allegation if substantiated could amount to **gross misconduct** (i.e. conduct which is serious enough to significantly affect further working relations and destroy trust and confidence between employer and employee and will normally lead to summary dismissal).
- b) Not to suspend would potentially interfere with the investigation.

Suspension should only be used when there are no other alternatives to suspension and the Manager should consider, and advise the employee, what alternatives to suspension they have considered. They should explain why these are not appropriate and provide a record of this discussion to the employee. Alternatives to suspension could be discussed with the Trust's HR Manager.

Employees will be suspended on normal contractual pay. Such precautionary suspension is not disciplinary action, nor a presumption of guilt.

Suspension should be reviewed at least every four weeks during the period of suspension to ensure that it is not unnecessarily protracted.

## 4. Formal Procedure

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Suspension from duty is a 'working arrangement' whereby the employee must not enter the academy building and consideration will be given to restricting contact with any Trust employee without the express permission of the Manager. Nor must the suspended employee contact pupils or their parents or anyone else with whom they would come into contact during the course of their duties including through any form of social media. Failure to observe this requirement may lead to further disciplinary action.

Where an employee is suspended and needs to contact witnesses to provide evidence at a hearing, then this may be achieved via their contact officer. This member of staff will be confirmed in writing, with details of the reason why the employee has been suspended.

### 4.4 MANAGEMENT INVESTIGATION

#### 4.4.1 Investigation meeting

The role of the Investigating Officer is to be fair and objective so that they can establish the facts of the matter and reach a conclusion on what did or did not happen. An investigator should do this by looking for evidence that supports the allegation and evidence that contradicts it. It is not an investigator's role to prove the guilt of any party but to investigate if there is a case to answer.

The Investigating Officer should first establish the facts promptly; before recollections fade or distort and take written statements from all witnesses. Any investigation should be no more than is necessary to ascertain the full facts.

The Investigating Officer will ascertain who to gather information and witness statements from to support their investigation.

Witnesses should make written statements and will be advised that they may be required to attend a disciplinary hearing at the request of either party. Each witness should be warned that the matter is strictly confidential and must not be discussed with anyone. Each witness should also be warned that their statement will be made available to the employee involved. Any witness who breaches confidentiality may be subject to disciplinary action. Consideration will be given to witnesses who wish to remain anonymous, in the context of the reasons they have given and the seriousness of the issue.

Witnesses will be invited to an interview with the Investigating Officer and will have the right to be accompanied by a trade union representative or work colleague.

Should statements from pupils/students/children be deemed necessary, these will be taken as soon as possible after the incident and in such a way as to avoid the risk of collusion between pupils. Safeguarding procedures must be followed at all times, and if appropriate another member of staff may need to be present when conducting these interviews.

If, at any time during the investigation, the Investigating Officer believes there is no case to answer they must inform the Manager. After discussing the findings (or lack of) the Manager will make a considered decision as to whether the investigation will continue. If the decision is made that the investigation no longer needs to be undertaken, the employee must be informed of this as soon as possible. This decision

## 4. Formal Procedure

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must also be confirmed to the employee in writing as soon as is reasonably practicable.

If, during the course of the investigation, a new allegation(s) is brought to the attention of the Manager or Investigating Officer, they must review the case and consider whether it is appropriate to amend the allegations presented, to include the new allegation(s).

Once the Investigating Officer has completed their Investigation they must produce their written report and provide this to the Manager for consideration.

### 4.5 NEXT STEPS

4.5.1 The Investigating Officer will recommend what course of action should be followed. This may be that: -

- There is no case to answer and that this should be confirmed in person and in writing or that the matter will be addressed informally, in which case the employee will be given advice in writing as to areas of concern and the improvement required. The concerns will be explained in detail in a constructive manner with clear examples where possible. The employee should be left in no doubt of the improvement required and strategies for support, monitoring and a timescale should be agreed. See Section 3.
- There are reasonable grounds to suggest misconduct or gross misconduct and therefore a formal disciplinary hearing should be convened involving the HR Manager to be heard by a Manager (or disciplinary panel, if appropriate) as follows: -
  - Executive Director/Headteacher/Head of School/nominated Manager where an employee within a school is concerned
  - CEO where an Executive Director/Headteacher/Head of School is concerned or has been involved at an earlier stage, or a Central Trust employee is concerned
  - Chair of the Trust Board where the CEO is concerned.

Where the matter is referred to a disciplinary hearing the Manager must ensure that the panel/person hearing the case have not been involved in the case previously.

## 5. Formal Procedure - Disciplinary Hearing

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### 5.0 Disciplinary hearing

The disciplinary hearing should be held as soon as possible, following the conclusion of the Investigation. If there are any delays in arrangements the employee will be kept up to date in writing to explain the reasons for the delay.

5.1 The employer should give the employee at least **5 working days' notice** in writing of the disciplinary hearing. This should include the details of:

- Date, time and venue of the hearing
- The nature of the allegations to be considered
- Copies of the Disciplinary Procedure
- All evidence to be presented at the hearing\*
- Names of appropriate witnesses to be called\*\*
- The right of the employee to be accompanied by a recognised trade union representative or work colleague.
- Details of who will be chairing the disciplinary hearing (or details of the disciplinary panel).

\*the employee will be informed that they have the opportunity to provide any evidence which they wish to have considered at the hearing. This should be provided to the panel no later than **3 working days** in advance of the hearing date.

\*\*pupils/students/children will not be called to disciplinary hearings

If either side challenges a written witness statement, the chair of the panel will allow any witness to attend in person in order to clarify the matter in dispute and avoid delays.

5.2 The Investigating Officer will normally present the findings of the investigation to the hearing. This may include witness statements which may be supported by presentation of oral evidence by the witnesses themselves if appropriate and other written evidence. The employee will then have the opportunity to state their case, ask questions, present evidence and call any witnesses.

5.3 Notes of the hearing will be taken and will be distributed to all parties.

5.4 Where the employee, recognised trade union representative or chosen work colleague is unavailable, an alternative date should be offered, as soon as possible. If it is still not possible for the employee, or their representative to attend, then the chair of the panel may conduct the hearing, in their absence, drawing their conclusions from the written information provided.

5.5 A Disciplinary Hearing should be conducted in accordance with the procedure shown at Appendix B.

### 5.6 Disciplinary hearing outcomes

At the end of the Disciplinary Hearing the panel should determine which of the following actions are appropriate:

- **No Further Action** – where the allegation(s) are considered to be unfounded the Manager must confirm their decision without delay to the employee in writing.

## 5. Formal Procedure - Disciplinary Hearing

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- **Written Warning** – If the conduct and behaviour is of a more serious nature, or if a further occurrence arises within the duration of previous informal action, a written warning may be given to the employee. This will give details of the concern, the improvement required and the consequences of future misconduct. It shall warn that further action will be considered if there is no satisfactory improvement or any further breach of conduct occurs and will advise of the right of appeal.

A copy of this Written Warning will remain in the employee's file and remain valid for a period of 12 months from the date of the letter confirming the Written Warning. Copies of the Written Warning will be sent to the employee along with the notes of the hearing.

- **Final Written Warning** – If there is a failure to improve conduct or behaviour is still unsatisfactory within the duration of the Written Warning, or if the misconduct is sufficiently serious, a Final Written Warning may be issued to the employee. This will give details of the concerns, will warn that dismissal may result if there is no satisfactory improvement or a further breach of conduct and will advise of the right of appeal.

A copy of this Final Written Warning will remain in the employee's file and remain valid for a period of 18 months from the date of the letter confirming the Final Written Warning. Copies of the Final Written Warning will be sent to the employee along with notes of the hearing.

- **Alternative to dismissal** – The disciplinary hearing may decide that the misconduct warrants dismissal but having regard to extenuating circumstances may substitute alternative action short of dismissal. If the employee agrees, this may include demotion to a lower graded post without protection of salary, provided there is scope within the Trust's staffing structure, a period of suspension from duty without pay, or other financial penalty. Such action will be accompanied by a Final Written Warning.
- **Dismissal** – If the conduct or behaviour is still unsatisfactory and the employee still fails to reach acceptable standards of conduct or behaviour after the receipt of a Written Warning/and or Final Written Warning, dismissal with notice may apply. Dismissal without notice (i.e. summary dismissal) may apply in cases of gross misconduct regardless of any, or the absence of, Written Warnings.

Where a formal warning has been issued the employee will be advised of their right of appeal against the disciplinary action and where to address their notice of appeal.

## 6. Right of Appeal & Holding an Appeal

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### 6.0 RIGHT OF APPEAL

An employee has the right of appeal against any formal action taken under this procedure. Appeals against the outcome of any disciplinary action may only be considered by the appeals panel in relation to one or more of the following grounds:

- **The procedure** – the grounds of appeal should detail how any procedural irregularities prejudiced the disciplinary decision
- **The facts** – the grounds of appeal should detail how the facts do not support the decision or were misinterpreted or disregarded. They should also detail any new evidence to be considered.
- **The decision** – the ground of the appeal should state how the act(s) of misconduct did not justify the level of disciplinary action taken or the act was one of misconduct rather than gross misconduct.

6.1 Appeals must be submitted in writing to the specified person identified in the Disciplinary outcome letter within **5 working days** from the date of written notification of the decision. Appeals received after this period without reasonable justification will not be heard.

6.2 Employees have no right of appeal beyond the Appeals Panel.

6.3 An Appeals Panel will be a panel of three representatives of the Trust, none of whom have been involved in the issue previously. The Trust may use Governors or leaders from across the Trust to form an appeal panel. This is in the interests of impartiality and to ensure the appeal is heard without unreasonable delay. No member of the Appeals Panel will have been involved in any part of the disciplinary action to which the appeal refers.

6.4 Appeal hearings will be convened as soon as is reasonably practicable, normally within three working weeks of receipt of the appeal. The employee/appellant will be given no less than **5 working days' notice** in writing of the time and place of the Appeal hearing.

6.5 Both parties may present any new evidence which was unavailable at the time of submission of the appeal documentation at least **5 working days** prior to the Appeal Hearing so that each party has an opportunity to respond.

6.6 The result of the Appeal and the reasons for the decision will be conveyed to the employee immediately after the hearing and will be confirmed in writing to the employee within **5 working days** by the Chair of the Appeals Panel.

6.7 An appeal will be conducted in accordance with the procedure shown in Appendix C



# APPENDIX A: Examples of Misconduct

This list is not intended to be exhaustive. Decisions on the extent of misconduct will comply with the principle of “reasonableness” following a thorough investigation and disciplinary hearing in accordance with the Disciplinary Procedure.

<b>Gross Misconduct</b>	<b>Misconduct</b>
<ul style="list-style-type: none"> <li>• Serious breach of the Trust’s Code of Conduct</li> <li>• Physical violence or bullying</li> <li>• Being under the influence of alcohol, illegal drugs or incapacitated through misuse of prescription drugs</li> <li>• Substantial abuse of position and power</li> <li>• Repeated refusal to comply with a reasonable management instruction/request</li> <li>• Serious breach of the Equality &amp; Diversity Policy and Codes of Practice</li> <li>• Unlawful discrimination or bullying/harassment</li> <li>• Bringing the Trust /School into disrepute</li> <li>• Theft or fraud</li> <li>• Deliberate or serious damage to Trust/School property, facilities, equipment or products</li> <li>• Deliberately accessing and circulating illegal, pornographic, offensive or obscene material.</li> <li>• Serious breach of Safeguarding or Child Protection Policy &amp; Procedures</li> <li>• Serious breach of access/usage/sharing/releasing of Trust/School information</li> <li>• Serious breach of the Trust’s Computer Security/Use of Internet &amp; Email Policy</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 Health and Safety Policy/Procedures</li> <li>• Deliberate falsification of records in an attempt to defraud the Trust/School</li> <li>• Abuse of Attendance Management Procedures</li> <li>• Absence without leave</li> </ul>	<ul style="list-style-type: none"> <li>• Breach of the Trust’s Code of Conduct</li> <li>• Failure to comply with a reasonable management instruction/request</li> <li>• Abusive, objectionable or insulting behaviour</li> <li>• Foul or abusive language</li> <li>• Disorderly conduct</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 Trust and/or Academy Policies and Procedures</li> <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/School</li> <li>• Deliberately accessing and storing illegal documents/ information</li> <li>• Negligence, carelessness or recklessness which could result in damage or misuse of Trust/School property, facilities, equipment etc</li> <li>• Undertaking work in conflict with the Trust/School</li> <li>• Unauthorised or inappropriate access/usage/sharing/releasing of Trust/School Information</li> <li>• Breach of Computer Security/Use of Internet &amp; Email Policy</li> <li>• Failure to observe health and safety requirements</li> <li>• Neglect of safety standards</li> <li>• Failure to wear essential protective equipment</li> <li>• Misrepresentation of self on application for employment</li> </ul>



## APPENDIX B: Procedure for Disciplinary Hearing

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1. The Disciplinary Chair will be responsible for ensuring appropriate introductions are made to all parties in the room and will include the HR Manager/Advisor and could include also include a note taker.
2. The Chair will confirm that the Disciplinary Hearing is being held in accordance with the Trust's agreed Formal Disciplinary Procedure and ask if there are any points of order which should be considered.
3. If the employee does not have a Trade Union representative or a work colleague present, the Chair must confirm with the employee that they know of their right to be accompanied / represented and have chosen not to be accompanied / represented. If they were not aware of the right to be accompanied / represented, the Chair may determine that a postponement is appropriate to enable the employee to seek accompaniment / representation.
4. The Chair checks that all parties have the relevant documents and identifies the specific allegation / complaint.
5. The Investigating Officer will present the case on behalf of management and may call appropriate witnesses in respect of their case.
6. The employee or their representative can ask questions of the Investigating Officer on the evidence given at the hearing by them and any of their witnesses.
7. The Chair can ask questions about the evidence presented by the Investigating Officer and any of their appropriate witnesses.
8. The Chair will remind any witnesses of the need to maintain confidentiality and, following clarification that they are no longer needed; the witnesses will be asked to leave the Disciplinary Hearing.
9. The employee or their representative will present their case and may call appropriate witnesses in respect of their case.
10. The Investigating Officer will have the opportunity to ask questions of the employee and / or their representative and any of their appropriate witnesses.
11. The Chair will have the opportunity to ask questions about the evidence presented by the employee and / or their representative and any of their witnesses.
12. The Chair will advise any witnesses of the need to maintain confidentiality and, following clarification that they are no longer needed, the witnesses will be asked the leave the Disciplinary Hearing.
13. The Investigating Officer will have the opportunity to summarise their case.
14. The employee or their representative will have the opportunity to summarise their case.
15. The Chair will advise both parties to withdraw from the Disciplinary Hearing.
16. The Hearing will be adjourned for consideration.

## APPENDIX B: Procedure for Disciplinary Hearing

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If there is no clear view about the facts presented by both parties, i.e. they are disputed; the Chair will decide on the balance of probability what version of the facts they accept.

17. If any new facts emerge during the presentation of either statement, the Chair should decide whether further investigation is required and if so, adjourn the hearing and reconvene when the investigation is completed.
18. Before deciding upon the outcome of the hearing, the Chair should consider: the gravity of the offence and whether further guidance is needed; the employee's disciplinary record and general service; any mitigating circumstances; whether a sanction if any, is to be imposed and how reasonable this is given the circumstances.
19. The Hearing will be reconvened and the employee advised of the outcome from the Disciplinary Hearing. In some cases, the Chair may wish to take more time to consider their decision and may therefore reconvene the Disciplinary Hearing at a later date.
20. The decision of the Chair, together with their reasons, and the notification of the right of appeal will be confirmed in writing to the employee as soon as practicable, but not later than **5 working days** after the conclusion of the Disciplinary Hearing unless otherwise notified to the employee and any representative.

## APPENDIX C: Procedure for Disciplinary Appeal Hearing

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1. The Chair of the Appeal Panel is responsible for ensuring appropriate introductions are made to all parties in the room and will include the HR Manager/Advisor and a note taker if the Chair of the Appeal Panel determines this is necessary.
2. The Chair of the Appeal Panel will confirm that the Disciplinary Appeal Hearing is being held in accordance with the Trust's agreed Formal Disciplinary Procedure and ask if there are any points of order which should be considered. It will be made clear to the employee that the Appeal Hearing is not a 're-hearing' of the Disciplinary Hearing, but is to consider their grounds for appeal (see Section 6.0 of this procedure). A decision will be taken prior to the appeal on what form the appeal hearing will take. A re-hearing may be appropriate if there have been any procedural flaws in any of the earlier stages.
3. If the employee does not have a Trade Union representative or a work colleague present, the Chair of the Appeal Panel must confirm with the employee that they know of their right to be accompanied/represented and have chosen not to be accompanied/represented.
4. The employee will be invited to present their case, during which it would be helpful if they directed the panel to the issues that they would like the Appeal Panel to consider.
5. Where previously notified, witnesses may be called.
6. The Appeal Panel will ask questions/seek clarification as necessary.
7. The Management representative (usually the Investigating Officer) from the original hearing will be given an opportunity to respond to each of the points raised by the employee and make representation to the panel.
8. The employee to be given an opportunity to make a closing statement. The Management representative will be given same opportunity.
9. The Panel will adjourn for the Appeal Panel to consider the decision and the Chair will advise both parties to withdraw from the Disciplinary Appeal Hearing.
10. The Panel will deliberate in private, with advice from the Human Resources Manager/Advisor, only recalling the two parties to clarify points of uncertainty on evidence already given. If recall is necessary, both parties will be recalled. If there is no clear view about the facts presented by both parties, i.e. they are disputed, the Panel will decide on the balance of probability what version of the facts they accept.
11. If any new facts emerge during the presentation of either statement, the Panel should decide whether further investigation is required; if so, adjourn the appeal hearing and reconvene when the investigation is completed.
12. Before deciding upon the outcome of the appeal hearing, the Panel should consider: the gravity of the offence and whether further guidance is needed; the member of staff's disciplinary record and general service and any mitigating circumstances;
13. The Hearing will be reconvened, and the employee advised of the outcome from the Disciplinary Appeal Hearing. In some cases, the Appeal Panel may wish to take more time to consider their decision and may therefore reconvene the Disciplinary Appeal

## APPENDIX C: Procedure for Disciplinary Appeal Hearing

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Hearing at a later date or confirm in writing.

14. The decision of the Appeal Panel, together with their reasons, and the notification that there is no further right of appeal will be confirmed in writing to the employee as soon as practicable, but not later than **5 working days** after the conclusion of the Disciplinary Appeal Hearing unless otherwise notified to the employee.