

The STAR Multi Academy Trust

Disciplinary Policy & Procedure

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Changes made	EPM - review
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1. Scope

- 1.1 This Policy applies to all employees (all teaching and support staff) of the Academy Trust, with the exception of employees within their probationary period and those on Apprenticeship schemes.
- 1.2 The policy has been adopted by the Academy Trust Body of this Academy on the date shown on page 1.
- 1.3 The policy is to be used to deal with matters of misconduct where normal line management action has either failed to achieve the required standards or would be inappropriate in the circumstances.
- 1.4 In certain circumstances it may be appropriate to implement disciplinary action outside the formal disciplinary procedure but only where there is genuine mutual agreement. This should not be regarded as normal practice but can arise when, for example, an employee is made aware of the results of a formal investigation and is prepared to accept a formal warning without the formal hearing process. Appendix 1 provides details of action outside of the formal procedure. Members of staff should be encouraged to contact their trade union/professional association representative for advice in these circumstances.
- 1.5 If a concern or grievance is raised regarding any aspect of this Policy and the accompanying Guidance, it should be dealt with as promptly as possible within this process.
- 1.6 **Where reference is made to Manager within this policy, this could mean Headteache/Executive Headteacher, line manager, Head of Department/Faculty or Business Manager. Trustees or Local Governors may be involved where disciplinary issues relate to the Headteacher/Executive headteacher/Principal/senior managers or in Disciplinary Hearings and Appeals**
- 1.7 When reading and applying the Policy, managers should refer to the accompanying Guidance. Relevant sections of the Guidance are cross-referenced within Section 4 – Procedure.

2. Policy Statement

- 2.1. This Academy is committed to encouraging all employees to achieve and maintain high standards of conduct. As such this policy promotes best practice and is to help and encourage all employees to achieve and maintain the required standards of conduct, ensuring consistent fair treatment for all. It is an expectation that all staff will participate in and co-operate with this policy and the Guidance as required.
- 2.2. No employee will be dismissed for a first breach of conduct except in the case of gross misconduct when the sanction will normally be dismissal without notice. A fair process should always be followed in line with section 4 procedure and the accompanying Guidance. Examples of gross misconduct are also outlined in section 6.
- 2.3. The application of this policy and the accompanying Guidance complies with the ACAS Code of Practice for Disciplinary and Grievance.
- 2.4. Managers are strongly advised to take advice from the Trust HR Provider with regards the application of this policy and at all stages of the procedure.

3. Decision Making

The Disciplinary Hearing will be heard by the Disciplinary Panel (Committee A)

Stage	Level of Sanction	Authorised Officer	Appeal to	Time Limits
1	Written Warning	Headteacher/Executive headteacher, CEO, LGB and/or Board of Directors Committee 'A'	CEO, LGB, and/or Board of Directors Committee 'B'	12 months
2	Final Written Warning	Headteacher/Executive headteacher, CEO, LGB and/or Board of Directors Committee 'A'	CEO, LGB, and/or Board of Directors Committee 'B'	15 months
3	Dismissal	LGB/Board of Directors Committee 'A'	Board of Directors Committee 'B'	

4. Procedure

4.1. **Right to be accompanied** *(Please refer to Guidance – Section 2)*

Employees have the legal right to be accompanied by a trade union /professional association representative or work colleague at Disciplinary Hearings and Appeal Hearings. The Academy may choose to allow staff to be accompanied by a trade union /professional association representative or work colleague at investigatory meetings.

4.2. **Informal action** *(Please refer to Guidance – Section 3)*

Disciplinary action should only be considered where normal line management action has either failed to achieve the required standards or would be inappropriate in the circumstances. Managers are able to take informal action where standards of conduct give cause for concern.

4.3. **Pre-disciplinary investigation** *(Please refer to Guidance – Section 4)*

Where formal disciplinary action is potentially appropriate an Investigating Officer will be appointed to undertake a pre-disciplinary investigation: he/she will gather the facts, identify and interview witnesses and obtain documentary evidence. The employee will be informed that an investigation is to be undertaken.

An Investigating Officer may be the manager or an independent nominated senior member of staff not connected with the case. An external Investigating Officer may be commissioned to undertake the investigation on behalf of the Academy.

4.4. **Pre-cautionary action** *(Please refer to Guidance – Section 5)*

In some cases it may be necessary to take precautionary action (temporary redeployment or suspension) whilst an investigation takes place, and is not prejudicial in any way to the outcome of the investigation. This should be reviewed on a regular basis.

4.5. **Outcome of pre-disciplinary investigation** *(Please refer to Guidance – Section 6)*

Following a pre-disciplinary investigation and consideration of the facts and evidence obtained, a decision will be made whether no further action is required, or whether a Disciplinary Hearing needs to be convened to consider the allegations, in order to make a decision regarding disciplinary sanctions. Where no further disciplinary action is taken the investigating officer may choose to make recommendations e.g. where further training may be advisable.

- 4.6. **Disciplinary Hearing** *(Please refer to Policy section 8, also Guidance – Section 7)*
Where a Disciplinary Hearing is to be convened, the employee will be advised in writing and informed of the allegations to be heard and his/her right to be accompanied.
- The Disciplinary Hearing will be heard by a panel in line with section 3 (Committee A)
- The outcome of the Disciplinary Hearing, and any disciplinary sanction imposed and/or action must be confirmed in writing.
- 4.7. **Disciplinary Sanctions (where necessary)** *(Please refer to Guidance – Section 8)*
- Written warning:** If the misconduct is sufficiently serious a written warning can be given. The sanction will normally be disregarded for disciplinary purposes after twelve months satisfactory conduct.
- Final written warning:** If there is repeated misconduct or the misconduct is sufficiently serious to justify only one written warning but not serious enough to justify dismissal, a final written warning can be given. The warning will normally be disregarded for disciplinary purposes after fifteen months satisfactory conduct.
- Dismissal/action short of dismissal:** If misconduct continues or gross misconduct occurs, the employee will normally be dismissed. In the case of gross misconduct, dismissal will normally be without notice (no payment in lieu of notice will be made). If there are exceptional mitigating circumstances the Disciplinary Panel may take action short of dismissal where, otherwise, dismissal would occur. Action short of dismissal may include demotion/transfer to an alternative post and/or location.
- 4.8. **Appeals** *(Please refer to Guidance – Section 10)*
Employees have the right of appeal against any formal disciplinary sanction. He/she must give written notice of their decision to appeal within 10 working days of receipt of the letter confirming the sanction and set out the grounds of appeal.
- Appeals will be heard at the earliest opportunity and will be heard in line with section 3 (Committee B)
- The outcome of the Appeal Hearing must be confirmed in writing.
- 4.9. **Child Protection/criminal offences cases** *(Please refer to Guidance – Section 12)*
Where child protection and/or criminal offences are alleged, these procedures will normally take precedence. A pre-disciplinary investigation may be delayed while matters are considered under statutory/criminal procedures.
- 4.10. **Referrals to external agencies** *(Please refer to Guidance – Section 13)*
Where an employee is dismissed consideration must be given as to whether the matter should be reported to any professional bodies which require the reporting of misconduct issues e.g. Disclosure and Barring Service (DBS), National College of Teaching & Leadership (NCTL)
- 4.11. **Resignations** *(Please refer to Guidance – Section 14)*
There may be cases in which an employee offers to resign or resigns prior to a Disciplinary Hearing. In these circumstances a decision needs to be made, relevant to the context of the case, and made clear to the employee about whether the Disciplinary Hearing may still go ahead and reach a decision that:

- the outcome will need to be referred to in any references provided.
- where required, the outcome will be reported to any professional bodies which require the reporting of misconduct issues in such circumstances.

4.12. Employee Support *(Please refer to Guidance – Section 15)*

Investigating Officers should consider offering appropriate support to employees involved in the disciplinary process, which includes giving employees the details of any employee assistance scheme and advising members to contact their trade union/professional association representative.

4.13. Unavailability and Sickness Absence *(Please refer to Guidance – Section 16)*

If an employee is absent due to sickness during the disciplinary process, the Investigating Officer should determine the nature and likely duration of the absence.

Reasonable time should be allowed for the employee to recover, judged on a case by case basis. However, if it is likely that the absence will be prolonged, with the employee continuing to be unfit to take part in an investigation/hearing, the disciplinary process may proceed in his/her absence. The employee's representative may give evidence and state the case for the employee provided this is acceptable to both the employee and representative. The employee may provide a written statement.

5. Examples of types of serious misconduct and possible consequences

This is not an exhaustive list of those instances that could be construed as **serious misconduct** sufficiently serious to warrant formal disciplinary action. The list is provided to give examples of the types of behaviour that could be regarded as such.

- i) Unjustified refusal of a lawful and reasonable instruction.
- ii) Persistent lateness, unauthorised absence, failure to follow sickness absence notification procedures.
- iii) Verbal assault or threat of violence in the workplace to fellow employees or other people.
- iv) Negligence in carrying out duties in accordance with relevant policies and procedures.
- v) Negligence in the performance of duties and responsibilities not covered by iv) above (except where due to incapability).
- vi) Unauthorised use of the Academy's resources, or confidential gained whilst in the employment of the Academy (except where employees are protected by the provisions of the Whistle-blowing Policy/Public Interest (Disclosure) Act 1998).
- vii) Acceptance of gifts and hospitality in contravention of the Academy Trust's Policy.
- viii) Personal misconduct occurring outside of the workplace, which is deemed sufficiently serious to affect an employee's position at work.
- ix) Inappropriate use of electronic communications, including email or internet access facilities.
- x) Failure to abide by professional codes of conduct/standards
- xi) Discrimination, bullying or harassment.

Note: Incidences described above would normally result in a written warning (which may be a final warning). Continued/repeated incidences of misconduct may however lead to dismissal.

6. Examples of types of gross misconduct and possible consequences

This is not an exhaustive list of those incidences that could be construed as **gross misconduct**. It is provided as an example of the types of behaviour that could be regarded as such.

- i) Theft or attempted theft, fraud or fraudulent falsification of accounts, or other official records.
- ii) Deliberate damage to the property of the Academy or that of any other employee.

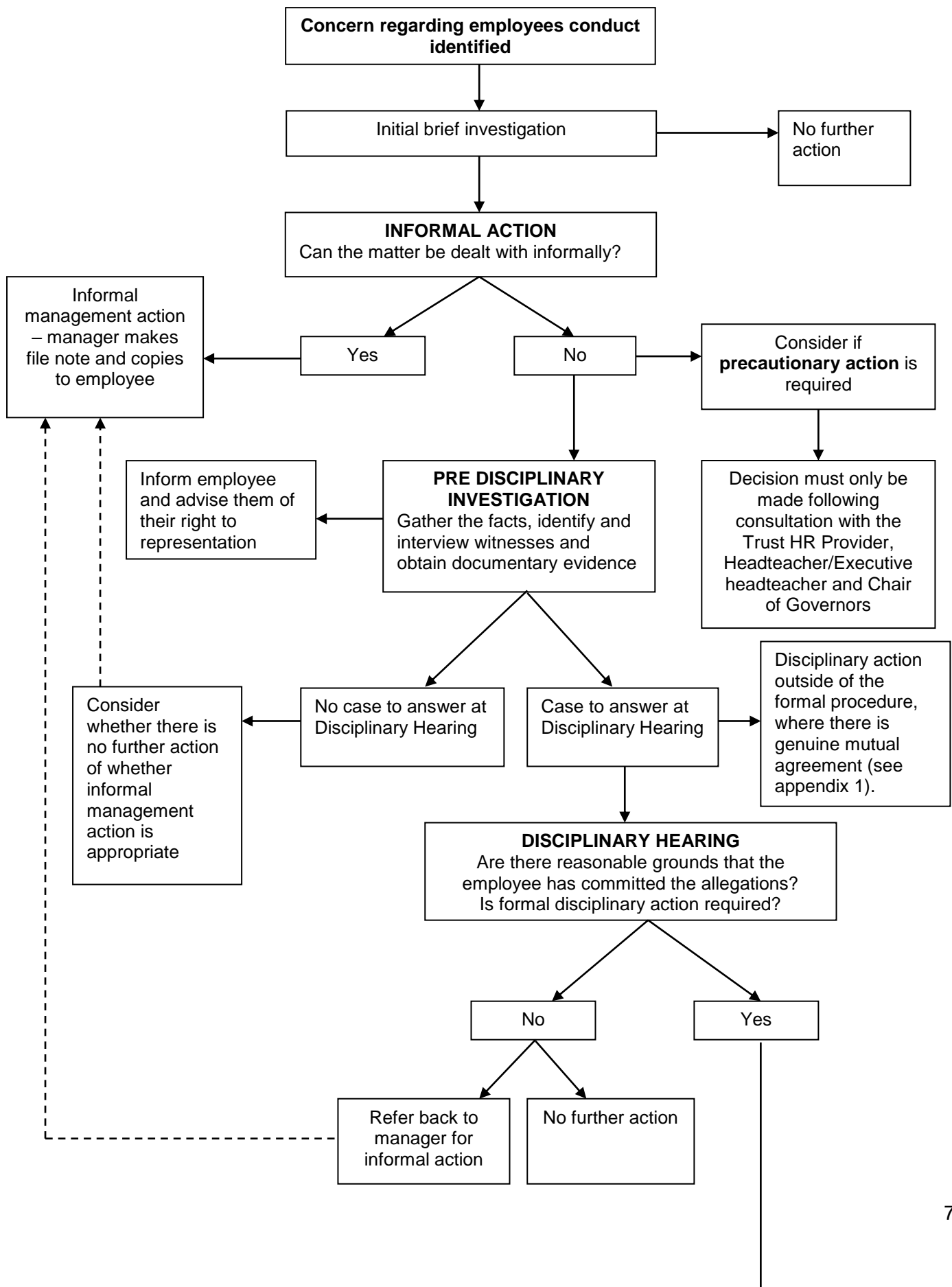
- iii) Physical or indecent assaults deemed sufficiently serious to affect an employee's position at work.
- iv) Serious breaches of the Academy Trust's Policy on the acceptance of gifts and hospitality.
- v) Serious breaches of confidentiality (unless subject to the protection afforded by the Whistle-blowing Policy/Public Interest (Disclosure) Act 1998).
- vi) Discrimination, bullying or personal harassment of a serious, wilful and/or sustained nature.
- vii) Being incapable of work, or of working safely due to the influence of alcohol or drugs (unless the Capability and/or Occupational Health Procedures are deemed to apply).
- viii) Serious negligence or wilful failure to comply with legal requirements of the Academy's various policies and procedures such as Health and Safety, Equalities, Data Protection, or any other legal or statutory requirement.
- ix) Serious negligence, which causes or might have caused unacceptable loss, damage or injury.
- x) Behaviour, which has brought the Academy or its services into serious disrepute.
- xi) Serious breach of computer security and/or information governance and/or abuse of electronic systems including the misuse of email and/or internet facilities and deliberately attempting to access pornographic, offensive or obscene material.
- xii) Personal misconduct occurring outside of the workplace, including actions which result in the employee being unable to conduct, or unsuitable for, their type of work.
- xiii) Serious and sustained insubordination.
- xiv) Serious breach of professional codes of conduct/standards.
- xv) Serious misuse of Academy property or name.

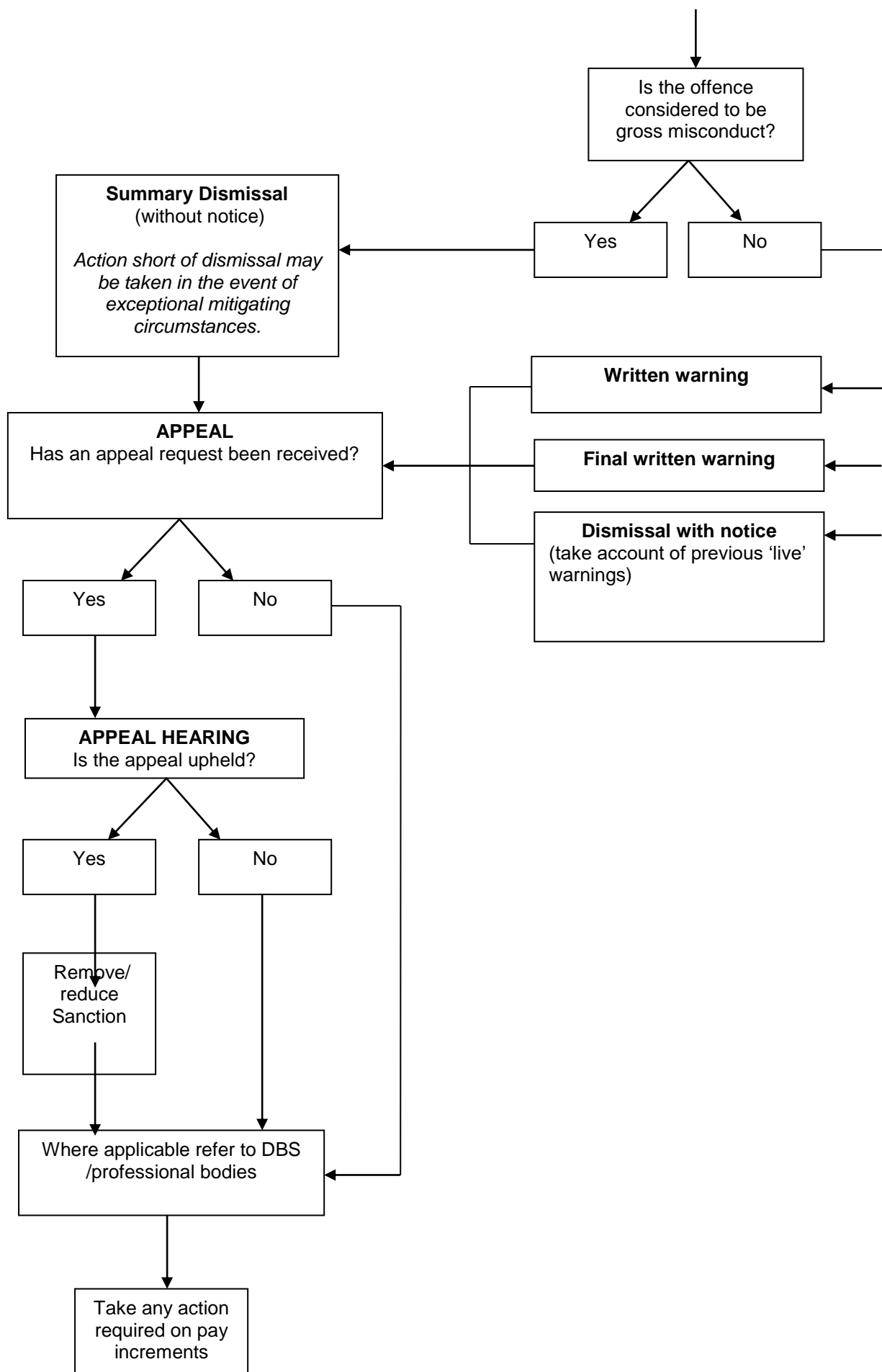
Actions or behaviours that could be construed as gross misconduct may lead the Investigating Officer to conclude that there has been a complete breakdown of trust and confidence between the Academy and the employee, even where any individual act in itself would not constitute gross misconduct.

Note: Incidences described above would normally result in dismissal without notice. Action short of dismissal may be taken in the event of mitigating circumstances.

7. Flowdiagram

This flowdiagram should be read in conjunction with the Disciplinary Procedure and accompanying Guidance.





8. Guidance Document

Section 1: Introduction

Each section of the guidance corresponds with the relevant section of the Disciplinary Policy and Procedure and is cross-referenced accordingly.

This guidance has been produced both for managers and employees.

Managers are strongly advised to take advice from the Trust HR Provider with regards the application of the Disciplinary Policy and Procedure and Guidance at all stages.

Section 2: Right to be accompanied

Employees have the legal right to be accompanied by a trade union representative or work colleague at Disciplinary Hearings and Appeal Hearings. The school extends this right to other formal meetings of the Disciplinary Procedure e.g. investigatory interviews as part of a pre-disciplinary investigation. The accompanying representative has a statutory right to address the hearing or meeting but no statutory right to answer questions on the employee's behalf.

An Investigating Officer should establish the status of the person accompanying the employee before the start of an investigatory interview. A 'work colleague' is allowed to accompany the employee unless there is a risk that the colleague may 'interfere' with the investigation, particularly if he/she is implicated in the allegations or may be needed to give a management statement. If this is the case the employee should be asked to find a suitable alternative colleague to accompany them. The role of the work colleague is to support and assist the employee through the process but not answer questions on the employee's behalf.

A work colleague who supports at an investigatory interview will be given paid time-off to undertake this.

Employees or anyone accompanying employees must not make any electronic recordings of any meetings or hearings conducted under this procedure.

Section 3: Informal action

The day to day supervision and monitoring of an employee's conduct is part of normal line management action. Line managers are able to bring to an employee's attention any concerns regarding the employee's standards of conduct. Management action is limited within informal action to advising the employee of the concern, identifying what remedies are necessary, and advising that formal disciplinary action will be considered if standards do not improve. **This action is outside of the formal disciplinary procedure.**

Managers should make a file note and provide a copy to the employee. A copy will be placed on the employee's personnel file and will not be declared for reference purposes.

The employee has no rights to representation at any meeting where informal management action is taken.

Section 4: Pre-disciplinary investigation

When is a pre-disciplinary investigation required?

If there is an allegation or suspicion of misconduct sufficiently serious that informal action is not appropriate, or where an employee's conduct has failed to improve following informal line management action, a manager should ensure a pre-disciplinary investigation is conducted.

An Investigating Officer will be appointed to establish facts, interview witnesses, take statements and gather documentary evidence.

Who can be the Investigating Officer?

An Investigating Officer may be the manager or, if this is inappropriate (e.g. if the manager may need to be called as a witness at any future potential Disciplinary Hearing), an alternative nominated senior member of staff. An external Investigating Officer may be commissioned to undertake the investigation on behalf of the school.

Initial enquiries prior to the pre-disciplinary investigation

In some circumstances where an allegation is made that would normally be regarded as potential gross misconduct, it may be advisable to conduct urgent preliminary enquiries, in order to establish quickly whether the allegations have any real basis for proceeding further. The employee can therefore be saved the distress of knowing serious allegations have been made when they have no foundation. Any consequent damage to trust and confidence can therefore be avoided.

Informing the employee of a pre-disciplinary investigation

In normal circumstances the employee will be informed of the general nature of the allegation(s) and that an investigation is going to take place. This should be confirmed in writing.

In what order should I conduct a pre-disciplinary investigation?

Normal practice would be to gather evidence and interview witnesses first prior to interviewing the employee. This allows a reasonable basis of fact to be established and avoids the employee having to be called to interview more than once.

How to conduct an investigatory interview

An Investigating Officer will need to conduct an investigatory interview both with the employee and any potential witnesses of the alleged misconduct in order to gather facts and evidence impartially in relation to the allegation. It is an opportunity for the employee to put forward his/her version of events and to seek a response from the employee in respect of the allegations made.

Employees should be given reasonable notice of the date of an investigatory interview, and the request to attend should be made in writing.

An Investigating Officer should not carry out an investigatory interview without another person being present, such as a note-taker, to prevent any later dispute on the conduct or content of the interview.

Both the employee and witnesses must be made aware that what they say during the investigation will be recorded in writing and may be used as evidence in any subsequent disciplinary proceedings. Witnesses should also be made aware that they may be required to appear in person at any subsequent disciplinary hearing and appeal.

The Investigating Officer should ensure that notes of the interview are taken and a written statement produced. The employee should be sent a copy and asked to agree, sign and return the statement.

Witness statements should not be shared with the employee at this stage.

Any interview that becomes heated or where the employee is showing undue signs of stress should be adjourned. Also, adjournments can be requested to allow the employee to confer with their colleague/trade union representative, or for the Investigating Officer to confer with the Trust HR Provider

If the investigatory interviews produce information that requires further verification or identifies additional witnesses, there may be a need for a second or, in exceptional circumstances, a number of additional interviews with the employee concerned. This can add to the stress of the

situation and should be avoided wherever possible. The recommendation is that the investigation should be as complete as possible before the employee is interviewed.

Witnesses

Witnesses should normally be given paid time off when requested by the Investigating Officer to attend an interview or subsequent hearing, to give a witness statement. The request to attend an interview can be put in writing

Witnesses should be given a written statement of their interview response and asked to agree and sign the statement as it may be later required as part of a Disciplinary Hearing.

How long should a disciplinary investigation take?

Investigations should be concluded as quickly as possible and should normally take no longer than 4 weeks to conclude unless there are exceptional circumstances which make this impossible such as a police investigation, a Safeguarding investigation or the health/capability of the employee and/or the availability of witnesses to attend investigatory interviews or other complexities.

Section 5: Precautionary action

In some cases it may be necessary to take precautionary action (temporary redeployment or suspension) whilst an investigation takes place: this is not prejudicial in any way to the outcome of the investigation and the employee will remain on normal pay. Precautionary action should be avoided wherever possible.

Temporary Redeployment: this may involve, for example, adjustment to the employee's working pattern and/or his/her duties or, more normally, the work-base or working from home. A temporary transfer to another suitable post/location or restricted duties should be considered first as an alternative to suspension.

Suspension: the employee is not required to attend work during the investigation and any further part of the disciplinary process. The employee would continue to receive full pay and benefits.

Precautionary action may be appropriate where:

- the allegation(s) constitute potential gross misconduct
- the employee continuing their work may hamper the investigation
- the employee may commit further misconduct, or
- the employee, or other people, may be put at risk by them remaining at work.

The following should be considered when deciding which form of precautionary action is appropriate:

- Whether or not the employee's presence at work may prevent others from coming forward and giving evidence, or may influence the evidence they give.
- Whether or not the employee's presence at work may give him/her access to documents and records which have a bearing on the case and which could be amended, destroyed or tampered with.
- Whether there is a real risk that they may commit further misconduct, or where they, or other people, may be put at risk by their remaining at work.
- Whether or not the investigation could be so uncomfortable for the employee that his/her continuous presence at work would be detrimental to his/her well-being. A decision on these grounds would normally be agreed with the employee.

- Whether or not in cases of alleged gross misconduct it is considered wise to trust the employee until the investigation and any further disciplinary process is completed.
- Whether or not it would be difficult to justify dismissing an employee if they have been allowed to continue at work during the period between knowledge of the allegation and the dismissal taking place. Employment Tribunals are likely to conclude that dismissal for gross misconduct is not justified if the employee has been allowed to continue at work. This indicates that knowledge of the allegation without suspension suggests that a breakdown of trust and confidence between employer and employee has not taken place rendering gross misconduct dismissal unfair.

The decision to invoke precautionary action should only be made following full consultation by the Headteacher/Executive headteacher with the Chair of Governors and the Trust HR Provider.

Any precautionary action should be kept under periodic review during the investigation as a consequence of the evidence gathered. Periods of suspension should be kept to the minimum necessary.

What should I do if I want to suspend from duty?

The employee should be informed verbally, and without delay, that he/she is being suspended or temporary redeployment is being invoked. This should normally be face-to-face unless there are exceptional circumstances preventing this and should be confirmed in writing at the time or as soon as possible.

There is no right to be represented or accompanied when an employee is advised of suspension/precautionary action meeting but if a trade union representative or work colleague is available at the time the employee may be accompanied by such a representative.

It is good practice to inform the employee of the general nature of the allegations but to avoid entering into a discussion about matters. The employee should not be questioned at this stage.

Where schools buy into the Health Assured Service, the employee should be given the contact telephone number 0800 0305182 for Health Assured, as a source of confidential support. This confidential telephone number is available 24 hours a day.

The employee should be given a named person within work as a contact point. This should be mutually agreed. The role of the contact will be to pass on information relating to work, but not to discuss the case.

The employee should be advised that he/she must make him/herself available to be contacted for any interview that the Investigating Officer may require him/her to attend, which would normally be during the employee's contracted hours unless otherwise by mutual agreement. It should also be made clear that he/she must not visit their normal place of work unless asked to do so by the Investigating Officer, nor should he/she contact any parent, pupil or employee of the school in respect of the allegation or arrange for any documents to be forwarded without prior approval from his/her manager.

Employees subject to precautionary action may feel a sense of isolation and distress. However, normal social contact with colleagues is allowed, providing that the allegations are not discussed and the employee does not attempt to interfere in any way with the investigation. They should be made aware that any breach of those restrictions may become a further disciplinary matter to be investigated.

In some cases it may be necessary to require the return of school property (e.g. keys, identity cards and to allow the employee to remove personal effects if he/she wishes. This should be arranged discreetly and under the supervision of the line manager.

The need to regularly review precautionary action.

It is important that the Investigating Officer regularly reviews the need for precautionary action and in response to emerging evidence:

- If the evidence suggests that an allegation of potential gross misconduct is likely to be downgraded to serious misconduct with no consideration of dismissal then the employee may be allowed to return to work whilst the investigation is completed.
- The emerging evidence during the course of the investigation may suggest that the allegation(s) which were originally considered to be potentially less serious than gross misconduct may now be considered as such. In this circumstance it may be appropriate to reconsider the need for precautionary action at that stage, part-way through the investigation.
- If an employee, already under investigation but continuing at work, is found to be interfering with the investigation then this may be due cause to consider precautionary action part-way through an investigation.
- During the course of a suspension the employee should be advised that the review has taken place.
- Periods of suspension should be kept to the minimum necessary to ensure that suspension is appropriate and reasonable to the case. During such reviews temporary transfer to another post/location or restricted duties should also be assessed as potential alternatives to continuing with the suspension.

Section 6: Outcome of pre-disciplinary investigation

Following a pre-disciplinary investigation and consideration of the facts and evidence obtained, a decision will be made as to whether no further action is required, or whether a Disciplinary Hearing needs to be convened to consider the allegations, in order to make a decision regarding disciplinary sanctions.

The employee must be informed of the outcome of the investigation and it must be confirmed in writing.

If the decision is taken not to proceed further with the investigation, the employee must be informed at the earliest opportunity and the decision confirmed in writing.

If the matter is to proceed to a hearing, the letter will ask the employee to attend the hearing when the arrangements are in place.

Section 7: Disciplinary Hearing

Whose responsibility is it to arrange the Disciplinary Hearing and where should they be held?

It is the responsibility of the school to arrange a suitable date, Disciplinary Panel and venue for a Disciplinary Hearing.

Disciplinary Hearing venues must ensure privacy, confidentiality and freedom from interruption. Separate rooms should also be provided for the employee and his/her representative and any witnesses. Sufficient time must be allowed for the Hearing to take place and to give consideration of the facts, documentary evidence to be examined, questions to be asked, summing up and deliberation and delivery of the outcome. Notices on doors should NOT state 'Disciplinary Hearing'.

Composition of Disciplinary Panel

The Disciplinary Hearing will be heard by a disciplinary panel (Committee A)

Stage	Level of Sanction	Authorised Officer	Appeal to	Time Limits
1	Written Warning	Headteacher/Executive headteacher, CEO, LGB and/or Board of Directors Committee 'A'	CEO, LGB, and/or Board of Directors Committee 'B'	12 months
2	Final Written Warning	Headteacher/Executive headteacher, CEO, LGB and/or Board of Directors Committee 'A'	CEO, LGB, and/or Board of Directors Committee 'B'	15 months
3	Dismissal	LGB/Board of Directors Committee 'A'	Board of Directors Committee 'B'	

- A governor must not sit on a Disciplinary Panel where there may be any form of conflict of interest or personal connection with the employee or have had any prior involvement in the case. Staff governors should also not take any part in formal committees considering misconduct allegations.
- In exceptional circumstances, a governor from a different school may form part of the composition of a Disciplinary Panel.
- In cases where the Headteacher/Executive headteacher requires support from the Chair of Governors during the investigation and disciplinary process, the Chair of Governors should not sit on the Disciplinary Panel in order that he/she can provide this support.
- It is advised that a representative of the Trust HR Provider will attend Disciplinary and Appeals Hearings to offer advice to the panel.
- Where there is a Disciplinary Panel, a Chairperson will be elected. It is recommended that a Governor should not accept a position of Chairperson of a Disciplinary Panel unless he/she has undertaken appropriate training or has the appropriate experience.

Notification arrangements for the Disciplinary Hearing

Where a Disciplinary Hearing is to be convened, the employee will be advised in writing (being given reasonable notice of the date of the hearing)

The letter must include details of the allegations against the employee, the date, time and venue of the Hearing, the names and job titles of the Disciplinary Panel together with the names of any witnesses to be called and notification of the right to be accompanied. The range of possible sanctions available to the Disciplinary Panel should the allegations be founded must be set out in the letter. It is also important to place emphasis on allegations that may be viewed as gross misconduct or cumulative misconduct and therefore have dismissal as a potential outcome.

If the employee notifies that the colleague/trade union representative is unavailable on the date given he/she must offer an alternative date for a re-arranged hearing to take place within 5 days of the original date.

A copy of all documentary evidence to be presented in support of the management case should be sent to be received no less than 5 working days before the Disciplinary Hearing (see *Investigating Officer preparation for Disciplinary Hearing below*).

The employee must likewise submit any documentary evidence he/she wishes to submit no less than 5 working days before the Hearing. The Chairperson of the Disciplinary Panel has the sole discretion to allow late submission of documentary evidence after considering the views of Management and the employee.

Investigating Officers' preparation for Disciplinary Hearing

The Investigating Officer should prepare all documentary evidence to be presented in support of the management case, which includes signed witness statements, signed copies of any investigation interviews. The documentary evidence should normally be presented in a paginated and indexed bundle in chronological order, for ease of reference by all parties at the Disciplinary Hearing.

The Investigating Officer should also normally prepare a statement of Management Case (a script to work from) for presentation at the Disciplinary Hearing, to enable cross reference to supporting information in the Management bundle. The statement of case should not be shared with the employee or representative before the Hearing

Where the Investigating Officer intends to call witnesses he/she should prepare questions to be put to the witnesses. To help overcome any anxiety about the process, the Investigating Officer should discuss the format of the Hearing with the witnesses beforehand.

The Investigating Officer should always consider any alternative explanations and mitigating circumstances that the employee may put forward to defend/deny/explain his/her conduct, both during the investigation and as part of their submission, in seeking an appropriate disciplinary sanction by the Panel.

How are Disciplinary Hearings conducted?

Disciplinary Hearings must be conducted in accordance with the procedure set out in the Trust [Hearing and Appeals Process](#)

The Disciplinary Hearing should be a two-way process. Both the Investigating Officer and employee or their representative should be given the opportunity to present their case regarding the alleged misconduct, and call any witnesses. The Headteacher/Executive headteacher or Disciplinary Panel will have the opportunity to ask questions to all parties, as will the Investigating Officer and employee or their representative, to clarify issues and to check that what has said has been understood. Committee members should not make personal or judgemental remarks during the course of the Hearing.

Both the Investigating Officer and employee or their representative should be given the opportunity to sum up their case following the submission of all evidence, prior to the Disciplinary Panel adjourning the hearing to consider the case.

The formality of the Disciplinary Hearing should reflect the seriousness of the allegations to encourage the employee and witness to talk freely. The parties can be allowed to call for an adjournment if the employee or witness becomes unduly stressed or emotional during the course of the Hearing, or if the Investigating Officer wishes to take advice from the member of The Trust HR provider supporting them or if the employee wishes to take advice from their trade union representative.

The Disciplinary Panel should not rush their deliberations because of time constraints. If there is insufficient time to give due consideration, the Disciplinary Panel should consider reconvening as

soon as possible thereafter to ensure the judgement is considered and based on all the evidence presented. The Disciplinary Panel must always consider any mitigating circumstances put forward by the employee, for example, previous good conduct, a lack of induction/training and personal circumstances that may affect an employee's judgement. Where the facts are in dispute, the Disciplinary Panel must decide, on the balance of probabilities, what is reasonable to believe in the circumstances. In the absence of any clear evidence a subjective judgement is allowed, provided that Disciplinary Panel members have a reasonable and genuinely held belief that the allegations are likely to be true or not, on the balance of probabilities based upon a full and fair investigation.

In exceptional circumstances, where unexpected responses/arguments occur and the Disciplinary Panel is of the view that re-investigation is needed in full or part to clarify the situation, the Panel may wish to reconvene at a later date after further investigation has taken place.

The Disciplinary Panel will call a recess, in private, to consider the case; the facts and evidence presented by both parties and come to a reasoned judgement. The final decision will normally be delivered on the day and where that is the case, all parties must be called back into the room. This must be confirmed in writing normally within 5 working days of the date of the hearing. Alternatively, the Chair may wish to write to the respective parties to outline the outcome, normally within 5 working days of the date of the hearing.

Once the Disciplinary Panel has made a decision, the Disciplinary Hearing will be reconvened and the employee advised of the outcome, any disciplinary sanctions imposed, and their right to appeal. This must be confirmed in writing normally within 5 working days of the date of the hearing.

Notes of the Disciplinary Hearing should be taken by an appointed note-taker and retained for possible further use. See template for Disciplinary Hearing notes.

Calling witnesses to a Disciplinary Hearing

Both the Investigating Officer and the employee has the right to call witnesses to support their case at a Disciplinary Hearing. Where the employee wishes to call a witness the responsibility lies with the employee to ensure that his/her witnesses are able to attend and are briefed on the process. The employee must advise the Investigating Officer at least 5 working days before the Hearing date of the intention to call witnesses and the names and status of the individuals.

It is not normally the practice of the school to call customers, parents, pupils or members of the public as witnesses though it is permissible to submit a witness statement. Should the employee or the Investigating Officer wish to do so, this must be discussed with the Chairperson of the Disciplinary Panel and will be subject to his/her approval.

The expectation is that where a witness is an employee of the school, they will be prepared to attend hearings and appeals in person in most circumstances so that they are available to answer questions from all parties. Paid time off to attend will normally be given. However, they will only be required to attend to give evidence.

The Investigating Officer has the discretion to decide if some/all witnesses who have provided a statement should be called to support the key points of the management case. If Management do not want to call a particular witness, then a signed statement can be used in the alternative. The employee, however, may request that Management witnesses are called should he/she wish to cross examine them.

Giving evidence and attending a Disciplinary Hearing can be stressful and care must be taken that witnesses are supported throughout the process. Where a witness is likely to be unduly stressed thought must be given to providing the witness statement as an alternative to attendance. This circumstance may particularly occur in sexual harassment and bullying cases

where the witness has to confront the alleged perpetrator. Counselling support may be considered where it is felt important that the witness attends the Hearing to support the case.

In some circumstances it may be expedient to call an 'expert witness' to advise the Panel on technical/operational/legal or regulatory matters.

The role of the Chairperson at a Disciplinary Hearing

It is the responsibility of the Chairperson of the Disciplinary Panel to ensure that the outcome letter is sent following the Disciplinary Hearing. Support should be obtained from the Trust HR Provider.

Retention of documentation following the Disciplinary Hearing

The Academy complies with the retention of all documentation under the General Data Protection Regulations.

Section 8: Disciplinary sanctions

Section 4.7 of the Policy and Procedure outlines details of the disciplinary sanctions available to Disciplinary Panels: Written warning, Final Written Warning and Dismissal.

In most circumstances the Investigating Officer will make recommendations to the Disciplinary Panel as to an appropriate level of sanction, should the allegation(s) be proven. Though the Committee may wish to take note of recommendations it must come to its own independent conclusions based on the evidence presented and mitigating circumstances. The Committee has the discretion to apply whichever sanction they feel to be appropriate.

If a current disciplinary sanction is 'live', a Disciplinary Panel will normally apply the next higher sanction depending on the circumstances of the case. Care must be taken in applying dismissal where a warning is in place if the subsequent misconduct in question is relatively minor, as dismissal may be viewed as vindictive and unwarranted in these circumstances if later challenged in an Employment Tribunal. However, if the Committee finds that misconduct has been persistent over a period of time and the employee has failed to take the opportunity to improve, dismissal, where a warning is in force, may be a legitimate action.

A lapsed warning cannot be taken into account for progression on cumulative grounds to the next stage of the procedure. However, the misconduct can still be taken into account if relevant to the current allegation(s) and will form part of an employee's record (advice should be sought from the Trust HR Provider). A copy of the warning letter should be retained on the employee's personal file.

No employee will be dismissed for a first breach of conduct except in the case of gross misconduct. Dismissal without notice will normally result in cases of Gross Misconduct except where a Disciplinary Panel concludes mitigating circumstances allow Action Short of Dismissal, which can include redeployment/demotion to another post.

A Disciplinary Panel should not consider dismissal on the grounds of gross misconduct unless the employee has been advised in writing that the allegation(s) has been viewed as potential gross misconduct and that dismissal could occur as a result.

Section 9: Termination of Employment

Where a decision to terminate employment is taken by a maintained school it is the responsibility of the local authority to effect the dismissal, whether this is a dismissal with notice or without notice. Therefore the school is required to request the local authority to issue a letter of

termination to the employee and the LA then has 14 days in which to do so. The individual remains employed until the letter of dismissal is received by the individual in cases of gross misconduct or until the notice period expires in cases of dismissal with notice.

Normally, the employee will remain suspended during the interim period and the school remains responsible for payment of salary.

Section 10: Appeals

Employees have the right of appeal against any formal disciplinary sanction. They must give written notice of their decision to appeal within 10 working days of receipt of the letter confirming the sanction and set out the grounds of appeal.

The basis of an employee's appeal may include:

- The facts of the case
- The decision taken/sanction imposed
- Procedural fault(s);
- New evidence has emerged

Appeals should be heard at the earliest opportunity and will be heard by an Appeals Committee, as outlined in section 3 (decision making) of the Policy and Procedure. Reasonable notice of the date of the Appeal Hearing must be given. The timescales for exchange of documents/notification regarding witnesses are the same as they were for the original hearing.

Composition of Appeal Committee

The Appeal Hearing will be heard by an Appeal Panel (Committee B)

Stage	Level of Sanction	Authorised Officer	Appeal to	Time Limits
1	Written Warning	Headteacher/Executive headteacher, CEO, LGB and/or Board of Directors Committee 'A'	CEO, LGB, and/or Board of Directors Committee 'B'	12 months
2	Final Written Warning	Headteacher/Executive headteacher, CEO, LGB and/or Board of Directors Committee 'A'	CEO, LGB, and/or Board of Directors Committee 'B'	15 months
3	Dismissal	LGB/Board of Directors Committee 'A'	Board of Directors Committee 'B'	

- In cases which may result in dismissal with or without notice, a representative of The Director of Children and Young People's Service is entitled to attend. In all cases, the Headteacher/Executive headteacher may attend to offer advice to all relevant proceedings.
- A governor must not sit on an Appeals Panel where there may be any form of conflict of interest or personal connection with the employee, or have had any prior involvement in the case. Staff governors should also not take any part in formal committees considering misconduct allegations.

- As deemed necessary, a governor from a different school may form part of the composition of an Appeal Panel.
- It is advised that a representative of the Trust HR Provider will attend Appeals Hearings to offer advice to the panel.
- A Chairperson of the Appeals Panel should be elected. It is recommended that a Governor should not accept a position of Chairperson of an Appeal Panel unless he/she has undertaken appropriate training or has the appropriate experience.

Notification of arrangements for the Appeal Hearing

Where an Appeal Hearing is to be convened, the employee will be advised in writing (being given reasonable notice of the date of the hearing

How are Appeal Hearings conducted?

The focus of the Appeal Hearing should be the basis of the decision and sanction imposed by the Disciplinary Panel, in addition to the specific grounds of appeal. This will not under normal circumstances require a full re-hearing of the case and consideration of all of the original evidence. The remit of the Appeal Panel is to satisfy itself that the decision taken by the Disciplinary Panel was reasonable in the circumstances and that due process was followed. In doing so, the Appeal Panel must be satisfied that:

- The rules of natural justice have been applied
- There has been a thorough and fair investigation
- The Disciplinary Procedure has been followed or there are justifiable reasons if this has not happened.
- The sanction imposed was reasonable in the circumstances.

Appeal Hearings should be conducted in accordance with the procedure set out in the Trust Hearings and Appeals Procedure. The employee or their representative will present the case focussing on the grounds for appeal.

Once the Appeal Panel has made a decision, the Appeal Hearing will be reconvened and the employee advised of the outcome. This must be confirmed in writing, normally within 5 working days of the date of the hearing.

Notes of the Appeal Hearing should be taken by an appointed note-taker and retained for possible further use.

The role of the Chairperson from the Disciplinary Panel at an Appeal Hearing

The only Disciplinary Panel member who will normally have a role to play as part of the Appeal Process would be the Chairperson, who will normally act as a witness at the Appeal to explain why the Disciplinary Panel came to the decision it did, or provide a response to the specific grounds for appeal. The Chairperson will have the same role as other witnesses and will only remain in the Appeal Hearing to give their evidence and answer questions.

The role of the Investigating Officer at the Appeal Hearing

If an appeal is lodged, the Investigating Officer will normally be expected to undertake the same role at an Appeal Hearing as he/she undertook at the original Disciplinary Hearing.

If the Appeal Hearing is limited to specific grounds only, the Investigating Officer may need to re-focus and limit the documentary evidence, statements and witnesses to be referenced or called as necessary/

If the grounds for appeal are that new evidence has emerged since the original hearing, the Investigating Officer may use the opportunity to conduct further enquiries in support of the Management case. A postponement may have to be sought in such circumstances, particularly if witnesses have to be interviewed or re-interviewed.

Calling witnesses to an Appeal Hearing

At an Appeal Hearing, where the appearance of a witness is fundamental to the management case and is relevant to the grounds of appeal, the witness should be called. If, based on events at the Disciplinary Hearing, the Investigating Officer wishes to re-focus the presentation of the witnesses' evidence and ask different questions the witness should be informed of what to expect at the Appeal Hearing.

The role of the Chairperson at an Appeal Hearing

It is the responsibility of the Chairperson of the Appeal Panel to ensure that the outcome letter is sent following the Appeal Hearing. Support should be obtained from the Trust HR Provider. A copy of the letter should be placed on the employee's personal file.

Retention of documentation following the Appeal Hearing

The school should retain all relevant documentation from the Appeal Hearing including a copy of the bundles and hearing notes until the deadline for lodging Employment Tribunal Claims has passed. All other copies of documentation should be confidentially shredded.

Section 12: Child protection/criminal offences/financial irregularity cases

Child protection

Where child protection offences are suspected, these procedures will normally take precedence. A pre-disciplinary investigation may be delayed which matters are considered under statutory procedures.

Criminal offences

Where criminal offences are suspected, these procedures will normally take precedence. A pre-disciplinary investigation may be delayed which matters are considered under statutory/criminal procedures.

Special attention should be paid to situations involving employees who are alleged to have committed criminal offences, whether connected to employment or not.

If a criminal offence is suspected in the workplace, a decision needs to be taken as to whether the Police should be informed. The matter should be reported immediately to a senior manager with the delegated authority to make a decision. However, if a case is the subject of a strategy meeting under safeguarding procedures, that will determine how the case is progressed.

If an alleged criminal offence in the workplace is of a financial nature, the ESFA should be informed at the earliest opportunity (see financial irregularity cases below).

Precautionary action should always be considered if the evidence suggests that the criminal charges/sanctions and the resulting impact will lead to a breakdown of trust and confidence in the employment relationship.

If the matter is reported to the Police, who indicate that a criminal investigation will take place, the employer is not obliged to wait for the outcome of that investigation or a Court hearing before commencing a disciplinary investigation. However, extreme care needs to be taken to not allow an internal investigation to interfere with a criminal investigation. In most circumstances internal disciplinary processes will be set aside until the criminal investigation has been concluded.

Advice should be taken from the school's legal services provider on the advisability of pursuing a disciplinary investigation concurrent with a Police investigation. Liaison should take place with the Police so that both parties are aware of the approach being taken.

A disciplinary investigation, concurrent with or subsequent to a Police investigation and/or prosecution, must be carried out independently and in accordance with the Disciplinary Policy & Procedure, and draw its own conclusions with regard to any appropriate disciplinary sanction.

If a decision is taken in a criminal court not to prosecute or the defendant is acquitted, this does not mean that disciplinary action against the individual is unfair, unjustified or unreasonable. The standard of proof required to justify disciplinary action is less than in criminal proceedings and if the employer can establish a reasonable belief, on the balance of probabilities, that the allegations are founded after a thorough and fair investigation, then any subsequent action would be likely to be seen as fair.

Where a custodial sentence is imposed, special care must be taken not to assume that the contract of employment can safely and immediately be brought to an end due to the employee being unavailable for work. The concept of 'frustration of contract' does not automatically apply in the case of custodial sentences. Each case should be taken on its merits and investigated in the normal way and a decision taken in accordance with the Disciplinary Policy & Procedure. Advice should be taken from the Trust HR Provider, and from the Legal Services provider, where necessary, in such cases.

Offences unconnected with Employment

Offences outside the workplace whilst the employee is not on duty would normally be regarded in the first instance as 'unconnected'. Offences unconnected with employment should not normally be a matter of concern for the school. The Human Rights Act, article 8, establishes a right to privacy, where an employer should not interfere with its employees private lives. Disciplinary action taken against an employee because of a criminal sanction for an offence outside of the workplace can be seen to be a breach of Article 8 unless the rights and protections of others have to be considered. The main considerations would be where the offence is one that makes the employee unsuitable for his/her type of work or puts other employees and/or service users at risk, or whether he/she has genuinely brought the school into disrepute or harmed the trust and confidence the school has in the employee.

Criminal charges/sanctions that allegedly bring the school into disrepute must be treated with the utmost care. If a disciplinary case is to be established on these grounds it is insufficient to justify a case solely on the basis of media publicity of the employee/event and the related offences and sanctions. There must be evidence that real and substantial damage has been done to the reputation of the school, the service provided and/or the relationship with partner agencies to justify bringing such a disciplinary allegation. In the absence of evidence to this effect Article 8 could apply.

Financial irregularity cases

The board of trustees must notify ESFA, as soon as possible, of any instances of fraud, theft and/or irregularity exceeding £5,000 individually, or £5,000 cumulatively in any financial year. Unusual or systematic fraud, regardless of value, must also be reported. The following information is required:

- full details of the event(s) with dates
- the financial value of the loss
- measures taken to prevent recurrence
- whether it was referred to the police (and if not why)
- whether insurance or the RPA have offset any loss.

ESFA may conduct or commission investigations into actual or potential fraud, theft or irregularity in any academy trust, either because of a notification from the trust itself or from other information received. ESFA may involve other authorities, including the police.

A formal interview with the employee may be required to establish facts and gather information. Such an interview would normally form part of the Disciplinary Policy and Procedure and the same rights to representation would occur. An audit interview may be undertaken jointly with an Investigating Officer if one has been appointed at that stage. If Veritau conduct an interview under the Police and Criminal Evidence Act an employee is entitled to be accompanied by a solicitor.

Section 13: Referrals to external agencies

Where an employee is dismissed consideration must be given as to whether the matter should be reported to any professional bodies which require the reporting of misconduct issues e.g. Disclosure and Barring Service (DBS), Teaching Regulation Agency. Referrals should not be made until all internal procedures have been exhausted.

Disclosure and Barring Service

Where a case involves abuse of children (up to age 18) or Vulnerable Adults and the case is proven and the employee is dismissed or has resigned, steps must be taken to refer the employee to the Disclosure & Barring Service and to provide information upon request. The duty to refer applies when two main conditions have been met:

One: permission is withdrawn for an individual to engage in regulated activity due to:

- Dismissal
- Redeployment
- Retirement/Redundancy
- Resignation

Two: referring party thinks that the person has either

- Engaged in relevant conduct or
- Satisfied the harm test or
- Received a caution for or been convicted of a relevant offence

This is likely to apply when an employee has been investigated and dismissed under the Disciplinary Policy and Procedure. For most cases, the DBS only has the power to bar a person who is, has been, or might in future, engage in regulated activity.

All disciplinary evidence and notes will need to be supplied in the event of a referral. Any referral will be made by the Line Manager with support from the Trust HR Provider.

In any of the circumstances described above, the Authority (or school in the case of Foundation/Aided schools) must refer relevant cases to the DBS. When in doubt, advice should be taken from the Authority's Safeguarding service. The DBS exists to prevent unsuitable people obtaining work with children or vulnerable adults. Admittance to the barring list will largely depend upon all the circumstances surrounding the case.

The DBS has no investigatory powers.

The address for referrals to the DBS is:

Disclosure & Barring Service

PO Box 181
Darlington
DL1 9FA

Helpline:01325 953795

Teaching Regulation Agency (TRA)

Where a teacher is dismissed as a result of the disciplinary process on the grounds of serious professional misconduct or resigned in advance of a likely dismissal, steps should be taken to refer the individual to the Teaching Regulation Agency

For more detailed guidance see “teacher misconduct: the prohibition of teachers” www.gov.uk/nctl/teachermisconduct.

Referral of dismissals for teacher serious misconduct, must be made to: -

Cheylesmore House
5 Quinton Rd
Coventry
CV1 2WT

Section 14: Resignations

There may be cases in which an employee offers to resign or resigns prior to a Disciplinary Hearing. In these circumstances it should be made clear to the employee that the Disciplinary Hearing may still go ahead and reach a decision that:

- the outcome will need to be referred to in any references provided
- where required, the outcome will be reported to any professional bodies which require the reporting of misconduct issues in such circumstances.

The Trust HR Provider should be contacted for guidance in such instances.

Section 15: Employee support

It is important to recognise and be sensitive to the concerns and feelings of all those involved in the disciplinary process. Consideration must be given to the implementation of support arrangements and all those involved should be given details of Health Assured [Tel:0800 0305182](tel:08000305182) (applies only to schools that buy in to this service). The allocation of an appropriate contact person not involved in the investigation should be offered to an employee

Section 16: Unavailability and sickness absence

Sickness Absence

If an employee is absent due to sickness during the disciplinary process (either when required to attend an investigatory interview or a Disciplinary Hearing) a first postponement should be considered. An explanation and supporting medical evidence may be sought. An alternative date will normally be offered, allowing a reasonable time for the employee to recover.

Where it is apparent that the sickness absence will be for a prolonged period, advice should be sought from the Health and Wellbeing service (normally via an Occupational Health referral) to enquire if the employee is fit or when they are likely to be fit to take part in the disciplinary process.

Reasonable time should be allowed for the employee to recover. However if it is likely that the absence will be prolonged, with the employee continuing to be unfit to take part in an investigation/hearing, the disciplinary process may proceed in his/her absence. The employee's representative may give evidence and state the case for the employee. The employee may provide a written statement.

Where an employee is suspended and subsequently notifies Management that they are unwell, normal notification/medical certification requirements will apply. Such absence will count against the employee's occupational sick pay entitlement and their absence record.

Unavailability

If the employee notifies that he/she cannot attend an investigatory interview due to sickness the interview should be re-arranged. The employee may be asked to supply a sickness certificate to confirm the reason for non-attendance.

If the employee notifies that the colleague/trade union representative is unavailable on the date given he/she must offer an alternative date for a re-arranged interview to take place within 5 days of the original date. The same would apply to a Disciplinary Hearing or appeal date.

If the Investigating Officer/s cannot comply with the re-arranged date the employee must be informed of a further interview/hearing/appeal date to take place at the earliest opportunity.

What happens if an employee wants to take annual leave during an investigation?

The employee should be informed that any pre-arranged and approved holiday can be taken as normal and will count against annual leave entitlement. During a suspension period an employee may wish to take further holiday. The employee should be informed that further annual leave should be booked through the school but subject to the needs to interview the employee

Section 17: Disciplinary action against a trade union official

No disciplinary action should be applied to a Trade Union Official until the circumstances of the case have been discussed with a Senior or Full-time Trade Union Official. Although an investigatory interview or precautionary action is not disciplinary action, management should still consult with the Senior or Full-time Trade Union Official as soon as possible.

9. Appendix 1: Action outside of the formal disciplinary procedure

- 9.1. Occasions may arise when it is appropriate to take disciplinary action outside of the formal procedure. This should not be regarded as normal practice but can arise when for example an employee is made aware of a formal investigation and is prepared to accept a formal warning without the formal hearing/appeal process.
- 9.2. Such action can save a considerable amount of time and stress for all the parties concerned whilst also achieving the purpose of a disciplinary warning which is to correct an employee's behaviour and move forward.
- 9.3. However it is essential that due process is followed in accordance with these guidelines to avoid accusations of unfairness or undue pressure, subsequent misunderstandings or appeals.
- 9.4. This process is not appropriate if the disciplinary action sought is dismissal. If however during the process an individual offers his/her resignation its acceptance can be considered, provided due process is followed and management are confident that they can adequately defend any subsequent accusations of unfairness or undue pressure. If in doubt a formal hearing should be arranged.
- 9.5. It is management's responsibility to establish the facts of any case before proposing a sanction and therefore a formal investigation will normally be required and/or the evidence assembled in the usual way.
- 9.6. A meeting must be arranged at which the employee can hear a full explanation of the evidence and proposed penalty and at which they can comment and question the facts of the case and level of penalty proposed. If the employee has admitted to the misconduct a summary of the evidence should suffice.
- 9.7. The employee must be advised of their rights to a formal hearing and be given a copy of the formal procedure with explanation as necessary. They should be asked to confirm their understanding.
- 9.8. The employee must be given the right and encouraged to be accompanied by a union representative or colleague and be given adequate opportunity to take separate advice from his/her representative or colleague before the meeting, in adjournment and/or following the meeting or to seek independent advice within a reasonable period of time following the meeting.
- 9.9. The manager should also arrange to be accompanied by another manager or Trust HR Provider who will act as a witness to what is said and agreed.
- 9.10. If there is agreement to the proposed sanction, management must confirm in writing to the employee the facts of the case and the process that has been followed including the date of the meeting, those present, the information and advice given about the employee's rights under the formal procedure and his/her understanding of these and the agreed penalty.
- 9.11. The employee must be given the opportunity to consider the letter and take further independent advice before formally confirming his/her agreement in writing to that effect. A maximum period of 10 working days should be allowed for further advice and consideration.
- 9.12. Copies of the agreement signed by both parties should be retained on the employee's personal file. The agreed warning may then be taken into account in any subsequent disciplinary process up to the time limits specified in the formal procedure. The warning period will begin from the date the employee signs the agreement..
- 9.13. Although unlikely to be required after agreement has been reached, the employee has the right of appeal against a warning issued under this procedure. In such cases the employee must write

stating their grounds of appeal within 10 working days of receipt of the warning letter. In such cases the standard Disciplinary Appeals Procedure will be followed.