

We are an ambitious and inclusive Trust of schools
strengthening communities through excellent education.



Disciplinary Policy

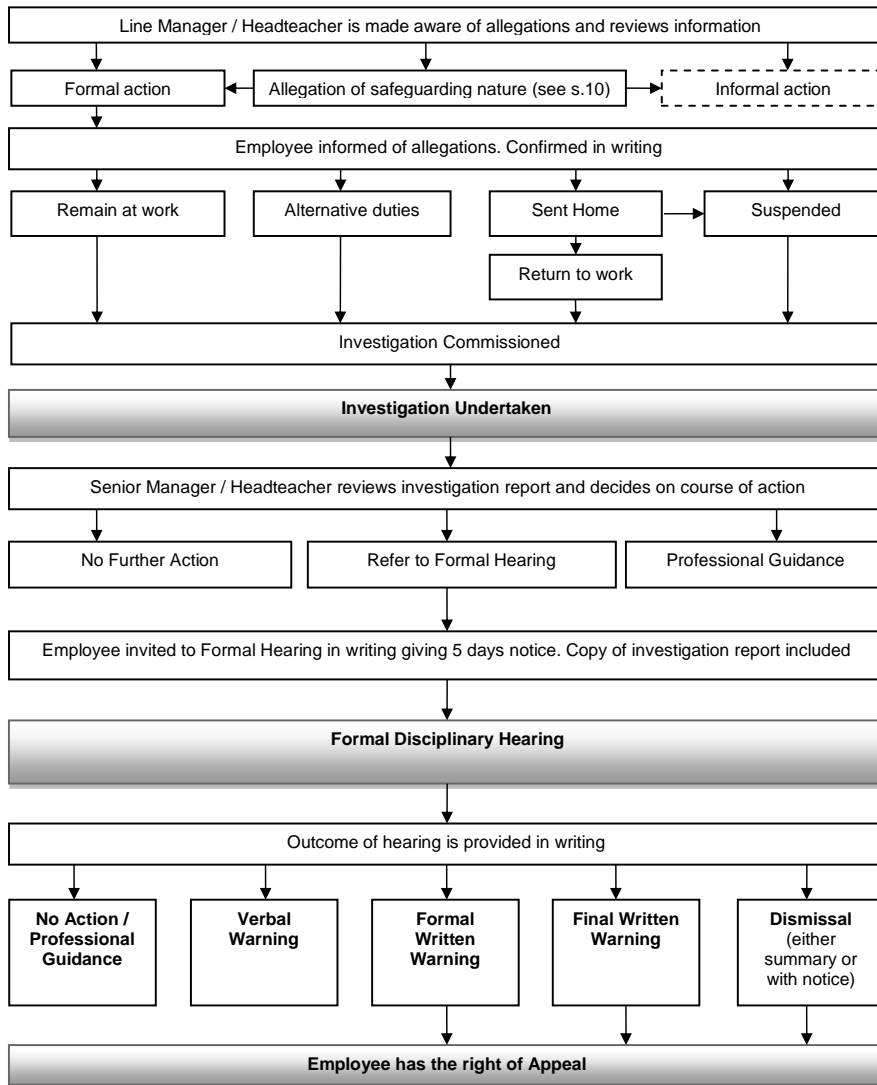
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PROCEDURE FLOW CHART



1. Policy Statement

We are an ambitious and inclusive Trust of schools strengthening our communities through excellent education. Our People Strategy aims to make our Trust the greatest place to work in the South West. To do this we will recruit, retain and develop great people.

This policy is designed to ensure that employees achieve and maintain the standards of behaviour expected of them and any failure to meet these standards is dealt with promptly, decisively and fairly. This policy is based on good practice to ensure a consistent, equitable and objective approach and will not discriminate either directly or indirectly on any grounds.

Managers are responsible for the implementation of this policy but should inform a member of the HR team if this policy is being invoked so that appropriate advice and guidance is obtained.

2. Scope

This policy:

- applies to all Trust employees including those who have transferred under TUPE
- does not apply to those employed by other organisations, casual workers or volunteers or those engaged under a secondment which identifies alternative arrangements.

3. Principles

Cases of minor misconduct can usually be dealt with informally and issuing professional advice and guidance and/or additional training may be sufficient to address the concerns. Any such action should be confirmed in writing and monitored to ensure the required improvements are made and sustained. This does not form part of the formal disciplinary procedure.

Where informal discussions have not resulted in the desired outcome, or where there is a more serious case of misconduct or unsatisfactory performance, formal disciplinary action may be necessary.

4. Standards Expected of Employees

The standards expected of employees are set out in the Code of Conduct and Appendix 1 of this document. These are not an exhaustive list but provide a guide to help individuals consider their own behaviours and gain understanding of what is acceptable in the workplace.

5. Suspension

Suspension is not a disciplinary penalty. Action to suspend will only be taken by those with delegated authority to do so as set out in the delegated authority to act guidance. A decision to suspend should not be made unless there are reasonable and justifiable grounds to do so and where all reasonable alternatives have been explored. If there are no suitable alternative duties that the employee can undertake, an employee will be suspended on normal pay and benefits.

The reasons for suspension and rationale why alternative duties are not appropriate must be stated clearly in writing to the employee as soon as possible. The suspension must be kept under review. Suspension can only be lifted by those who are authorised to suspend.

6. Procedure

6.1 Investigation

The Headteacher, or representative of the Executive Leadership Team, will commission an appropriate party to undertake the investigation. The Investigating Officer(s) should not have had any previous involvement in the circumstances of the incident/allegation, no close relationship with any party involved nor any vested interest in the outcome.

Once the investigation has concluded, the Investigating Officer(s) should write up their findings in a disciplinary report recommending whether there is a case to answer. If the Headteacher agrees with the findings and the recommendation that a disciplinary hearing should be held, a hearing should be held without delay.

6.2 Formal Disciplinary Hearing

A Formal Disciplinary Hearing will be conducted and chaired by a manager who has not been involved at an earlier stage of the process and has delegated authority to act as set out in the delegated authority to act document.

The manager will be responsible for arranging the hearing, writing to the employee to invite them to the hearing and arranging for a suitable person to attend to take notes.

An employee will be given at least 5 working days' notice of the hearing and provided with any written evidence. The employee has the right to be represented by a Trade Union Official or appropriate colleague. Where a representative is unavailable within the timescale, an alternative date within a further 5 days must be offered.

At the hearing, the Chair will explore the evidence. The employee will be able to present evidence, answer the allegations and set out their case. Either party can call witnesses to attend the hearing.

The Chair will advise the employee in writing within 5 days of the outcome of the hearing and advise the many disciplinary or other action taken.

6.3 Outcomes

Possible outcomes could be:

- **No Formal Action Taken**

Where misconduct is not confirmed or where there is a first minor act of misconduct and significant and material mitigating factors exist, the Chair may decide that no formal disciplinary action is to be taken. However, in some circumstances it may be appropriate to issue professional guidance. Professional guidance is not time limited and there is no right to appeal against this. Any note of professional guidance and support should be recorded.

- **First written warning**

A first written warning will usually be appropriate for a first act of misconduct where there are no other active written warnings on an employee's disciplinary record. A copy of the warning will be

placed on the employee's HR file for up to 12 months, usually from the date of the disciplinary hearing. After the period of warning has expired and subject to satisfactory conduct, the warning will be regarded as spent.

- **Final written warning**

A final written warning may be deemed appropriate if the case is sufficiently serious or there has been a continuing failure for conduct or behaviour to improve. A copy of the warning will be placed on the employee's HR file for 12 months, usually from the date of the disciplinary hearing. The employee will be informed that a recommendation for dismissal may result if there is not satisfactory improvement. After the period of the warning has expired, the warning will be regarded as spent and will be removed from the employee's personnel file.

- **Dismissal (with notice)**

If the case is sufficiently serious (see Appendix 3) or there is a continuing failure to improve conduct or behaviour, dismissal with notice or payment in lieu of notice may be issued.

The employee will be provided with written reasons for the dismissal, the date of termination and the right to appeal the decision to dismiss. If the dismissal is "with notice", the notice period will either be contractual or statutory notice whichever is greater. The Chair will decide how the notice should be served and may ask the employee to refrain from work or be/remain suspended in accordance with section 4 of this policy

- **Some Other Substantial Reason:**

Where evidence demonstrates that the employee's behaviour or actions have fundamentally undermined the trust and confidence in an employee or that their position has become untenable as a result of their actions, a decision can be made to dismiss the employee for 'Some Other Substantial Reason'. In these circumstances the manager should consider all other alternatives, including redeployment prior to an outcome of dismissal. Any dismissal for this reason should be with notice.

- **Summary Dismissal (Without Notice)**

If an employee commits an act of gross misconduct (See Appendix 3), the employee may be dismissed with immediate effect without notice.

The letter confirming the decision of the disciplinary hearing must outline the employee's right to appeal and the details of how they may do this.

An employee may appeal on the following grounds:

- the sanction given was too harsh given the circumstances
- the procedure was not fairly or correctly applied
- new information has come to light that would directly affect the decision made at the hearing.

The employee has 5 working days following the date of their outcome letter to submit their appeal.

7. Appeals

7.1 Appeal Hearing

Where an employee wishes to appeal against the decision of the disciplinary hearing they should submit their appeal in writing. Appeal hearings will be conducted and chaired in accordance with the delegated authority to act document.

The Clerk to the Trust will be responsible for supporting appeal process and to arrange the hearing and take notes of the proceedings.

7.2 Appeal decision

Appeals will not suspend or delay any disciplinary action, including dismissal which will remain effective from the original date unless and until the decision is replaced or overturned.

The Chair of the appeal may decide to uphold, overturn, replace or supplement the original disciplinary action.

If the appeal is successful, the warning issued may be withdrawn or reduced. In the event of dismissal, the decision will not result in a break in continuous service.

The decision of the Chair will be final. Employees will be advised in writing, usually within five working days, of the outcome of their appeal.

An appeal is not a re-hearing of all of the facts but to determine if the original decision was reasonable given the circumstances. The disciplinary process ends with the decision of the Appeal Hearing

8. Time Limits

Whilst every effort will be made to comply with timescales, due to the complexity and or specific circumstances of a case, at any stage in the procedure, subject to the agreement of all parties concerned, there may be a suspension in proceedings to facilitate mediation, fact-finding or other non-adversarial discussions with the aim of promoting resolution of the case. In such circumstances the individuals concerned will be advised of the reasons for any delay.

9 Behaviour outside work

In accordance with the Code of Conduct, employees should be aware that where their actions/behaviours outside work have a direct impact on their employment or their suitability to undertake their role, this will be managed under this policy.

10. Being Accompanied

All employees who are the subject of this procedure have the right to be accompanied at any formal meetings held under this procedure by a trade union representative or work colleague. Friends/family

members are not permitted unless they fall under the above criteria, they do not pose any conflict of interest and this is agreed as a reasonable adjustment. Where an employee's representative is unavailable to attend on the date/time of the hearing, an alternative date for the meeting/ hearing should be provided within 5 working days of the original date.

11. Non-Attendance

If an employee fails to attend a meeting or hearing under this policy through circumstances beyond their control, such as certified illness, an alternative time and date will be offered. Alternatively, they may submit a written statement or nominate a representative to attend on their behalf. Where an employee is persistently unable or unwilling to attend the meeting/hearing and reasonable attempts have been made to facilitate attendance, the meeting/hearing will proceed in their absence and a decision made based on the evidence available. If the employee resigns at any stage of the disciplinary proceedings a decision may still be taken to continue with the process.

12. Allegations Involving Children or Students

All employees working with children must understand that the nature of their work and the responsibilities related to it, place them in a position of trust. Any abuse of this trust will be managed under this policy.

The Children Act 2004 places a duty on schools/services to safeguard and promote the wellbeing of children in their care. This includes the need to ensure that all adults who work with or on behalf of children are competent, confident and safe to do so.

Additionally, the Sexual Offences Act 2003 covers child sex offences and has specific provisions relating to care workers for persons with a mental disorder.

Keeping Children Safe in Education also confirms that Local Authority Designated Officer (**LADO**) **referrals should be made if there are concerns that a person has:**

- behaved in a way that has harmed a child, or may have harmed a child;
- possibly committed a criminal offence against or related to a child;
- behaved towards a child or children in a way that indicates he or she may pose a risk of harm to children; or
- behaved or may have behaved in a way that indicates they may not be suitable to work with children

If any allegation involves safeguarding concerns the should be managed in accordance flowchart (Appendix 2). The matter should not be discussed with the employee until relevant advice has been sought.

If there is reason to believe that evidence of inappropriate material and/or communications may be on an employee's computer and/or mobile device, the Head of IT and Infrastructure will be informed at

the earliest opportunity. An employee's computer or mobile device will not be accessed until the Headteacher or member of the Executive Leadership Team has been informed.

Managers should be aware that a criminal act may have been committed, e.g. inappropriate communication with a student or vulnerable adult and therefore the evidence must be preserved and consideration should be given to restricting the employee's access to IT accounts.

13. Reporting obligations

A referral to the DBS and/or the TRA will be made to consider if an individual should be barred from working with children where an employee has been dismissed or removed from working with children (or would have been if they had not resigned) because the employee has:

- been cautioned or convicted for a relevant offence; or
- engaged in relevant conduct in relation to children, i.e. an action or inaction (neglect) that has harmed a child or put them at risk of harm; or
- satisfied the Harm Test in relation to children i.e. there has been no relevant conduct (i.e. no action or inaction) but a risk of harm to a child still exists.

14. Allegations in the public interest (whistleblowing)

There may be occasions when allegations made by an employee are in the public interest and could be constituted as a 'protected disclosure' under the Trust's Whistleblowing Policy and it may be appropriate to invoke the Trust's Whistleblowing Policy prior to or at the same time as the Disciplinary Policy. Where it appears that allegations may constitute a protected disclosure, those allegations will be referred for consideration under the Whistleblowing Policy.

15. Criminal Offences / Police Involvement

A decision must be made whether to apply this policy as a result of any charge or conviction resulting from a criminal offence. This includes police cautions and/or warnings. This may apply in circumstances where the alleged offence may have an effect on employment or where this could bring the Trust into disrepute. In most cases, it is important that the internal investigation under this policy is not delayed. However, where the investigation may hamper a police investigation or has the potential to prejudice any future court proceedings, it is essential to liaise with the police to determine the most appropriate course of action.

16. Allegations of Financial Irregularity

If financial irregularity is suspected, the Executive Director of Finance and Estates and the Trust Audit and Finance Committee must be notified.

17. Allegations involving Information Security Incidents

In the event that an allegation involves a breach or potential breach of data security, even if this is only suspected or is uncertain, the Trust Data Protection Officer and relevant manager must be notified immediately. The manager should follow all actions required in line with the Trust's Data Protection Policy, together with the actions required under this policy.

APPENDIX 1 - Standards Expected of Employees

The standards expected of employees include but are not limited to:

- maintaining standards of behaviour in keeping with the interests and standing of the Trust. This includes behaviour outside of working hours and in any form that is visible to the public, including social networking or any other electronic medium
- devoting full attention while at work to the duties of their position and in doing so acting with responsibility, good judgement and in good faith
- carrying out any reasonable instructions given by those with authority to do so
- not divulging to any unauthorised person or making personal use of confidential information connected with the Trust, either intentionally or through negligent behaviour
- observing the rules, regulations and instructions adopted by the Trust
- following appropriate safeguarding procedures
- participating fully in any investigation into alleged incidents and/or allegations including attending meetings as directed
- using electronic communications appropriately
- ensuring that information brought to light as a result of any investigation is treated with discretion
- carrying out their role consistently within the standards set by their appropriate professional body
- taking steps to address any unacceptable behaviour
- treating colleagues and third parties with dignity and respect.

In addition to the above, the expectations of those employed in management roles are to:

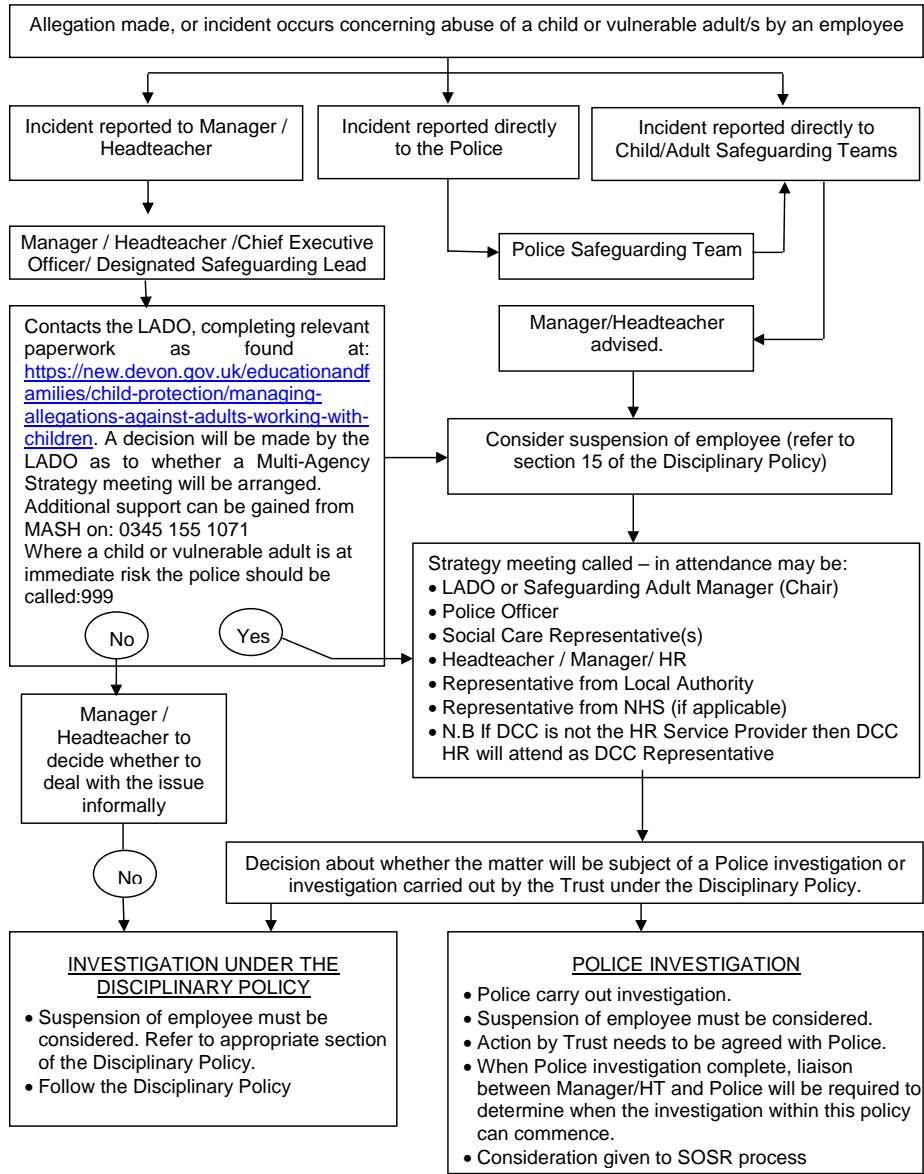
- ensure the standards expected from employees are role-modelled, monitored and managed effectively
- effectively manage all applicable statutory and non-statutory obligations
- appropriately manage all alleged incidents and/or allegations.

Behaviour Outside Work

Unacceptable behaviour and/or criminal offences that have occurred outside of work may be dealt with under this policy if the employee's behaviour or activities:

- may make them unsuitable for the job they are employed to do, e.g. failure to safeguard their own children
- has the potential to cause damage to the reputation of the Trust. This includes written and verbal communications and covers all types of media including newspapers, internet, and social networking sites.
- identifies them as a perpetrator of domestic violence
- identifies them as behaving in a way that leads to a breakdown in working relationships
- are inconsistent with the professional standards of public behaviour expected of the role e.g. lewd behaviour, being intoxicated in public, association with illegal drugs
- identifies them as having engaged in inappropriate contact with a child, student or vulnerable adult.

APPENDIX 2 - ALLEGATIONS RELATING TO CHILDREN OR VULNERABLE ADULTS



APPENDIX 3 - EXAMPLES OF WHAT MIGHT CONSTITUTE MISCONDUCT OR GROSS MISCONDUCT

Gross Misconduct

The following list is not exhaustive and only provides examples of behaviour that could be regarded as gross misconduct, other concerns not contained within this list may still constitute gross misconduct or result in a lesser sanction than dismissal depending on the severity of the matter and any mitigating circumstances:

- lack of compliance with safeguarding requirements, including abuse of position of Trust
- inappropriate contact (in person, online or by other means of communication) with a young person
- theft
- sexual misconduct
- being on duty under the influence of drinks or drugs, other than those that have been medically prescribed
- breach of security, financial procedures or confidentiality
- fraud
- criminal conduct
- breaches of the school's equal opportunities including racial and sexual discrimination/harassment
- failure to uphold public trust and maintain high standards of ethics and behaviour within and outside school
- serious misuse of the school's email, internet and other electronic facilities
- fighting or assault on another member of staff, pupil or parent
- actions which endanger another employees' safety
- serious lack of care to their duties or other people ('gross negligence')
- serious insubordination, for example refusing to take lawful and reasonable orders from a supervisor
- abuse of contractual benefits

Additionally, in the case of Headteachers or Senior Managers in the Trust:

- deliberate failure to meet reporting responsibilities as required within the Trust
- failure to uphold the professional standards expected
- negligent conduct which leads to poor provision of education to children
- undermining the Chief Executive Officer/Local Governing Body/Board of Trustees
- failure to comply with Safeguarding of Children requirements
- failure to maintain appropriately checked records of employees e.g. DBS, Eligibility to Work in the UK etc.

Some examples of behaviour at work may also constitute a criminal matter, e.g. bribery may fall under the Bribery Act 2010.