

THE EDUCATION VILLAGE ACADEMY TRUST



**DISCIPLINARY POLICY AND
PROCEDURE**

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Monitoring and review

This policy is reviewed annually by the policy owner: Rachel Inchiliffe

The scheduled review date for this policy is March 2024.

Values and Ethos

Our values and ethos are inclusive and child centred. Our Trust is founded on the principles of inclusivity, diversity and fairness, and they are fundamental to our delivery of exceptional learning experiences.

EVAT stands for:

- **E**xcellence and high standards
 - a can-do culture and no-excuses ethos
- **V**alues driven with a deep sense of purpose
 - putting children and young people first
 - behaving ethically
- **A**mbition and aspiration for all
 - irrespective of background or barriers – being truly inclusive
- **T**eamwork
 - we do more, better and faster, together

We are a village. We collaborate, with our learners, their families and our communities, to provide exceptional education so that all the children and young people we serve achieve the best possible outcomes.

Our Ethos is to:

- Create a nurturing and friendly atmosphere and provide an environment where everyone feels valued for who they are
- Bring out the best in every child and young person and meet the full range of their individual needs
- Provide different and unique experiences, challenges and activities
- Show tolerance and respect for each other
- Prepare our children and young people for lifelong learning
- Improve the life chances of every child and young person we serve.

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N.B. Where reference is made to an ‘Academy’ or a ‘School’ the intention is that the policy is universal and applies to both.

PART A. DISCIPLINARY POLICY

1 Introduction

- 1.1 This policy has been designed to assist the Trust in maintaining standards of conduct and job performance and is intended to help and encourage all employees in achieving and maintaining the required standards. The procedure is necessary in promoting fair and consistent treatment of employees and in achieving good employee relations.
- 1.2 Whilst it is not possible to list all occurrences which may lead to disciplinary action, nor to specify the nature of the disciplinary action to be taken, each case will be carefully considered and disciplinary action taken according to the particular circumstances. It is the policy of the Trust to ensure that the fullest consideration is given to the nature of the offence in relation to the employee concerned, their length of service, past performance, health and any domestic or social factors which may be relevant if disciplinary action appears necessary.
- 1.3 Use of the disciplinary procedure should be primarily to help and encourage employees to improve, rather than merely being a method for imposing punishment. The issue should be dealt with as thoroughly and promptly as possible.
- 1.4 The policy incorporates relevant legislation such as the ACAS statutory guide on Discipline and Grievance and the Equality Act 2010.

2. Scope of the Policy

- 2.1 The provisions of this policy will apply to all staff, both teaching and support staff, directly employed by the Trust.
- 2.2 The policy does not apply to termination of employment on the grounds of redundancy or permanent ill-health (to which separate procedures apply), to the termination of a temporary contract of employment by completion or the expiry of a fixed-term contract or where probationary employees do not reach required standards of performance within their probationary period. Capability issues which do not amount to misconduct i.e. where an employee does not have the necessary knowledge, skill or ability, will be dealt with under the Trust's Capability policy and procedure.
- 2.3 This procedure does not form part of any employee's contract of employment.

3. Support

- 3.1 It is recommended that employees who are involved in a disciplinary process are advised to contact their Trade Union representative at the earliest opportunity so that the union can offer them appropriate advice, guidance and support.

4. Confidentiality

- 4.1 It is essential that all parties concerned have a duty of confidentiality regarding matters dealt with under this policy and procedure. Whilst it is accepted that the very nature of disciplinary investigations and procedures make total confidentiality difficult to achieve, all parties have an obligation to ensure confidentiality as far as possible and to handle information sensitively and only for its proper purpose. Any breach of confidentiality could impact upon the outcome of individual cases.
- 4.2 Under the Data Protection Act 2018 individuals have the right to see their own personal data held subject to the rights of confidentiality of any third parties involved in that information.

5. Dealing with abuses of the policy

- 5.1 Employees who attempt to abuse this policy may themselves face disciplinary action. The Trust takes false or misleading accusations very seriously and they may result in further action taken through this policy and procedure. This will not include ill-founded allegations that were made in good faith. For any disclosures to be protected, the employee must follow the correct procedures and make the disclosure to the right person. As well as making any claim in good faith (with honest intent and without malice), they must reasonably believe the information is substantially true.

6. Public Sector Equality Duty (Equality Act 2010)

- 6.1 In preparing or amending this policy, the author has given due regard to the Public Sector Equality Duty; that is, they have considered any potential impact on people who share certain protected characteristics. These protected characteristics are defined as: race, disability, sex, age, religion or belief, marriage and civil partnership, sexual orientation, pregnancy and maternity and gender reassignment.

7. Reviewing the Policy

- 7.1 The operation of this policy will be kept under review and such changes will be made to the policy as deemed appropriate following necessary consultation with the trade unions.

8. External Investigators

- 8.1 The Trust reserves the right to appoint external personnel to investigate situations where it is deemed appropriate.

PART B DISCIPLINARY PROCEDURE

1. Core Principles

- 1.1 In handling disciplinary cases employers must act fairly, reasonably and consistently. The Trust will treat employees in accordance with the following core principles of reasonable behaviour:

- Use of the procedure should primarily be to help and encourage employees to improve rather than just as a way of imposing a punishment;
- Any issues raised should be dealt with promptly and not unreasonably delayed;
- No disciplinary action will be taken against an employee until the case has been fully investigated and the facts of the case have been established;
- Any action that is taken must be reasonable in the circumstances;
- Having investigated, should there be a case to answer, the employee should be informed of the case against them in writing and invited to attend a formal Disciplinary Hearing;
- Employees have the legal right to be accompanied by a Trade Union representative or a work colleague who does not have a conflict of interest during the Disciplinary Hearing and any appeal;
- It is good practice for the employee to be able to be represented at an investigatory meeting;
- The procedure may be implemented at any stage if the employee's alleged misconduct warrants such action;
- No employee will be dismissed for a first breach of discipline except in the case of gross misconduct, when the penalty may be dismissal without notice or payment in lieu of notice;
- Employees will be provided with a written explanation for any disciplinary action taken and what improvement and/or standard of performance is expected;
- An employee will have the right to appeal against any disciplinary action imposed;
- Where any allegations involve child or adult protection and/or safeguarding issues, there may be a requirement for legal/social care interventions – see section on protection of children and vulnerable adults for further information.

2. Responsibilities

2.1 Employees

All employees have a responsibility to conduct themselves to the highest standards at all times and to conform to the Trust's policies and procedures and the Code of Conduct.

Any employee involved in a case should not unreasonably delay meetings or other parts of the procedure.

2.2 The Principal/Chief Executive/Chief Operating Officer

The Principal / Chief Executive/Chief Operating Officer is responsible for:

- Ensuring that employees are aware of the Trust's rules, practices and procedures and for applying the policy fairly and consistently;
- Developing a culture where employees are supported and assisted in achieving the required standards of conduct;
- Applying the policy fairly and consistently and ensuring that they deal with any issues equitably without direct or indirect discrimination of the protected characteristics as specified in the Equality Act.

People Team

The People Team is responsible for advising managers on effective case management. Relevant People Team staff may accompany managers at disciplinary investigatory meetings, Hearings and Appeal Hearings in an advisory capacity and advise Trustees.

Delegation to the Chief Executive

In accordance with the Trust's scheme of delegation, the Board of Trustees has delegated responsibility for the dismissal of any Trust employee (except the Chief Executive) to the Chief Executive.

All investigations will be delegated to a member of the executive leadership team, or another relevant senior leader.

In matters of discipline, the delegation of the function can be:

- Letter of Management Advice
- Written warning (first or final);
- Dismissal.

3. Suspension from Work

- 3.1 Suspension from work while an investigation is underway can be authorised by the Chief Executive or the Chair of the Board of Trustees. The Chief

Executive and the Chair of the Board of Trustees can lift suspensions. Further information on suspension is provided later in this policy.

4. Level of Authorisation and Time Limits for Warnings

Stage	Level of Sanction	Authorised Officer	Appeal to
1	Written Warning	Chief Executive and/or COO and/or Executive Principal and/or Principal	Chief Executive and/or COO and/or Executive Principal and/or Panel of Trustees
2	Final Written Warning	Chief Executive and/or COO and/or Executive Principal	Chief Executive and/or COO and/or Panel of Trustees
3	Dismissal	Chief Executive	Panel of Trustees

5. Chief Executive Officer Procedure

- 5.1 Where there are concerns about the conduct or behaviour of the Chief Executive, the matter should be referred to the Chair of the Board of Trustees, who will appoint an investigating officer. This investigator may be an independent external investigator.

6. People Team Support

- 6.1 The Chief Executive, Chief Operating Officer, Principal or Chair of the Board of Trustees should seek advice and guidance from the People Team provider when deciding whether to apply this policy.

7. Misconduct

- 7.1 Except in cases of gross misconduct, no employee will be dismissed for a first breach of discipline. However, dismissal may occur if the employee has previous 'live' warnings on record. The following are examples of misconduct:

- Unauthorised absence (including leaving the workplace without permission or due cause);
- Persistent poor time keeping;
- Smoking in areas designated as non-smoking;
- Insubordination or using abusive language;
- Damage or misuse of Trust facilities/property including computer facilities (e.g. e-mail and Internet);

- Refusal or failure to carry out a reasonable lawful management instruction;
- Unacceptable behaviour or attitude;
- Non-compliance with Schools policies and procedures including Equalities Policies and the Code of Conduct.

This list is neither exclusive nor exhaustive and each case will be determined on the individual facts.

8. Gross Misconduct

8.1 Gross misconduct is generally seen as misconduct serious enough to overturn the contract of employment between the Trust and the employee, thus justifying summary dismissal (dismissal without notice).

8.2 As such, acts considered as gross misconduct are so serious in themselves or have such serious consequences that they may call for summary dismissal for a first offence. However, the Trust will always follow a fair disciplinary process before dismissing for gross misconduct.

8.3 The following are examples of offences which may constitute gross misconduct:

- Theft, fraud, bribery or corruption whether internal or external to the Trust;
- Deliberate falsification of records, reports, accounts, expense claims or self-certification forms, whether or not for personal gain;
- Physical violence or bullying;
- Deliberate and serious damage to the Trust and other property;
- Unlawful discrimination, harassment or victimisation;
- Serious misuse of the Trust's, or an associated organisation's property or name e.g. inappropriate use of the Trust's name on social media e.g.: Facebook, Twitter, etc;
- Deliberately accessing internet sites containing pornographic, offensive or obscene material;
- Serious insubordination;
- Serious incapability at work through drugs, substances or alcohol;
- Possession, custody or control of illegal drugs on Trust premises;
- Bringing the Trust, or an associated organisation, into serious disrepute e.g. through inappropriate behaviour while representing the Trust;
- Gross negligence which causes, or might cause, unacceptable loss, damage or injury;
- A serious breach of health and safety rules;
- Criminal or other serious misconduct outside the workplace which reflects adversely upon the Trust or on the employee's suitability for the post;
- Knowingly providing false information on any matter relating to the employee's employment;

- A serious breach of confidence;
- Allegations against another person that are frivolous, malicious or made for personal gain;
- Conviction of a criminal offence (or failure to declare a conviction) that is relevant to the employee's employment;
- Failure to declare unsuitability to work with children that is relevant to the employee's work;
- Criminal or serious misconduct involving children or vulnerable adults.

This list is neither exclusive nor exhaustive and each case will be determined on the individual facts.

- 8.4 If an employee is accused of an act of gross misconduct, they will normally be suspended from work on full pay, whilst the alleged offence is investigated. Further advice on when suspension is appropriate is provided in the section entitled Suspension.
- 8.5 If following appropriate investigation and Hearing the Trust is satisfied that gross misconduct has occurred, the result would normally be summary dismissal without notice. In some cases, it may be decided that a final written warning and some other sanction short of dismissal is appropriate, as specified later in the policy.

9. Dismissals for 'Some Other Substantial Reason' (SOSR)

- 9.1 There may be exceptional circumstances where the grounds for dismissal do not solely relate to misconduct but may either be wholly due to or involve 'SOSR' (e.g. the breakdown of the working relationship). Further advice is available from the People Team.

10. Protection of Children and Vulnerable Adults

- 10.1 If the alleged misconduct is a matter related to the protection and safeguarding of children or vulnerable adults, the appropriate officer within the relevant Authority must be informed immediately, and advice sought before progressing with the disciplinary process. The appropriate officer will be responsible for informing the appropriate professional bodies, e.g. the Designated Officer (DO – formerly the Local Authority Designated Officer - LADO). Please refer to the Managing Allegations Against Staff and Safeguarding and Child Protection Policies.
- 10.2 In addition, it may be necessary to refer to guidance based on the Department for Education – 'Handling Allegations of Abuse made against Adults who Work with Children & Young People'.

11. The Right to be Accompanied

- 11.1 Employees have a statutory right to be accompanied by a Trade Union representative or work colleague who does not have a conflict of interest at all the formal stages of a disciplinary process, formal Disciplinary Hearing and any Appeal. A trade union representative who is not an employed official must have been reasonably certified by their union as being competent to accompany the employee. The individual accompanying the employee must not be someone whose presence would prejudice the Hearing or who might have a conflict of interest. The employee should advise who is accompanying them before any Hearing.
- 11.2 At formal Disciplinary Hearings and any Appeal, the representative may play a full part, including addressing the meeting to put and sum up the employee's case, responding on behalf of the employee to any view expressed, asking questions of witnesses, summing up the employee's case and conferring with the employee during the Hearing. However, they should not answer questions that are put to the employee. For further guidance on postponing a Hearing if the employee's representative is unavailable, see the section on the Disciplinary Hearing.
- 11.3 Although there is no statutory right to be accompanied during the informal stages in relation to cases of conduct or capability, including the investigation, every effort should be made to accommodate a request from an employee. It is up to the employee to arrange for someone to attend the interview in this capacity. If their chosen representative is not available to attend, the employee should arrange for a replacement representative to accompany them, or attend on their own. Interviews will not normally be postponed in these circumstances.

12. Informal Process – Management Guidance

- 12.1 The Trust will always seek to resolve cases of minor misconduct informally where possible and appropriate. If such issues can be settled at an early stage, they are normally less time-consuming and less likely to damage working relationships. However, managers should seek agreement from the Chief Executive and/or Chief Operating Officer and/or Principal and advice from the People Team before instigating the informal process.
- 12.2 In many cases the right word at the right time and in the right way will often be a more satisfactory way of dealing with issues. This involves managers talking to the employee in a two-way conversation, aimed at discussing possible shortcomings in conduct and encouraging improvement. Although the employee does not have a legal right to representation at this stage of the process, both this and People Team involvement may be agreed in certain cases.
- 12.3 The aim of the discussion is to ensure that the member of staff understands the concerns and that the reasons for them are explored. The employee should be made fully aware of the standards expected of them. The manager will ensure that the employee understands what needs to be done,

how their conduct will be reviewed and the timescale for review and confirm this in writing to the employee as a letter of management advice.

13. Letter of Management Advice

13.1 Depending upon the nature of the misconduct, as part of the informal process a letter of management advice may be issued and will be kept on the employee's personal file. Letters of management advice inform employees of where their conduct has fallen short of the Trust's standards/expectations, the change or improvement that is expected of them and that a failure to achieve and maintain the standards set out may result in the formal disciplinary policy being invoked. As the letter is outside of the formal disciplinary procedure it is NOT a formal disciplinary warning and there is, therefore, no right of appeal. The letter should:

- Include a clear statement of what was discussed with regard to the employee's conduct and the required improvement;
- Define clearly any support and remedial action provided by management;
- Confirm any timescales and review dates if applicable;
- Make it clear that any further incidents of the same or a similar nature during the review period may result in formal disciplinary action being considered, which could ultimately lead to dismissal.

Where the letter of management advice is issued in relation to safeguarding issues, it is necessary and appropriate for this document to remain 'live' and not be subject to any particular time limit.

13.2 The letter should normally include a review period, if the required improvement is not achieved and/or sustained or there are further incidents of a similar nature during this time, the formal disciplinary procedure may be invoked and the letter of management advice referred to. Where there are no further areas of concern during the time limit, the letter of management advice should be disregarded for disciplinary purposes. (An example letter of management advice is included in the toolkit.)

13.3 However, if the informal process has been tried unsuccessfully, or the circumstances of the case make the informal route inappropriate, the Trust will seek to address the matter under the formal process.

14. Suspension

14.1 Suspension is NOT a disciplinary sanction and must be without prejudice, meaning there is no pre-judgement of any outcome and there is no assumption of guilt. Suspension will also be on full pay. It is essential that THE PERIOD OF SUSPENSION SHOULD BE KEPT AS BRIEF AS POSSIBLE. Circumstances in which suspension usually occurs (but is not limited to):

- Where there are sound reasons to believe that pupils and/or staff and/or property are at risk;
 - Where it is believed that the continued presence of the employee might prejudice enquiries or influence witnesses;
 - Where the allegations are so serious that dismissal for gross misconduct is possible;
 - Where there is a criminal investigation proceeding.
- 14.2 In some cases, it may be appropriate to grant paid leave of absence (garden leave) to a member of staff in order that preliminary investigations can take place to establish whether formal suspension is appropriate. In addition, consideration should be given to alternatives to suspension, such as moving the employee to another place of work if possible, however the above issues should still be considered in assessing if this would be appropriate. A suspension may be made prior to the start of the investigation or later during the course of the investigation (if this becomes necessary).
- 14.3 If any decision is taken to go ahead with suspension, the employee should be advised orally by the Principal, Chief Executive or the Chief Operating Officer about the suspension and the allegation(s) relating to the decision and may be accompanied by a Trade Union representative or colleague. Where any suspension decision relates to the Principal, the matter should be referred to the Chief Executive. Where any suspension decision relates to the Chief Executive, the matter should be referred to the Chair of the Board of Trustees.
- 14.4 The employee should also be told that they may be accompanied at subsequent interviews and be informed of the procedure to be followed. The suspension must be confirmed in writing and should be sent out to the employee as soon as possible of the decision to suspend, together with a copy of the disciplinary procedures. The letter should make clear the specific allegations made against the employee. An example letter is included in the toolkit.
- 14.5 During the suspension an employee should remain away from their place of work. It is recognised that the employee needs to cooperate with those conducting the investigation and may also need to discuss their circumstances with parties who are assisting them within the process, for example, the person who is accompanying them to meetings. However, the employee should not discuss any aspect of the case with other Trust employees/colleagues or other parties connected with the investigation or with any other inappropriate parties. Social contact with the member of staff's colleagues and friends should not be precluded except where it is likely to be prejudicial to the investigation and presentation of evidence and the need for confidentiality is maintained. An employee must remain

available for work during their normal working hours and attend meetings as appropriate.

- 14.6 The suspended member of staff should be given the name of an individual at the Trust as an information contact. The main role of the contact person is to provide information as to the progress of the investigation. Suspended employees may experience significant levels of stress and sensitivity must be shown throughout the suspension. In all cases the member of staff will be provided with the contact details of the Trust's designated counselling service.

15. Reviewing Suspension

- 15.1 A period of suspension should not be any longer than necessary and every effort should be made to ensure that it is as brief as possible. During the suspension the employee should be kept informed of progress, including any subsequent review of the suspension and the likely timescale of the investigation. A note of this contact should be kept. Advice from the People Team should be sought with regard to any ongoing suspensions.
- 15.2 If an employee becomes ill during the suspension the normal contractual sick pay entitlements will come into force for the period of the illness. Employees should comply with the sickness absence reporting procedures in full. However, the suspension will continue and the rules of the suspension will remain unchanged. The Trust's usual sickness absence procedure will also be followed.

16. Illness/Absence during the Disciplinary Procedure

- 16.1 If an employee becomes ill during the disciplinary process, The Trust's Absence Management Policy and procedures will continue to be implemented as normal. The Trust will also seek advice from Occupational Health on the employee's fitness to attend meetings, Hearings, Appeals etc.
- 16.2 Employees must be available for work during their normal working hours and to attend meetings as appropriate; therefore, approval for annual leave must be sought in accordance with normal procedures

17. The Investigation

- 17.1 To ensure the fair handling of disciplinary matters it is essential to carry out a **prompt and thorough** investigation, which will include:
- Enquiring into the circumstances and establishing the facts of the case;
 - Giving the employee a chance to offer an explanation;
 - Gathering evidence relating to the case;

- Taking a balanced view on whether there are sufficient grounds for an allegation of misconduct.
- 17.2 The Investigating Officer should write to the employee informing them that a detailed investigation will be conducted and inviting them to an interview giving 5 clear working days' notice of the date and reminding them they can be accompanied by a Trade Union representative or colleague who does not have a conflict of interest. The letter should include the allegations under investigation and the terms of reference for the investigation. An example letter is included in the manager's toolkit.

18. The Role of the Investigating Officer

- 18.1 The Investigating Officer is appointed to investigate allegations of misconduct and will usually be a senior manager of the employee against whom allegations have been made, or the relevant Principal. However, where this is not appropriate due to the circumstances of the case, this may be another manager appointed by the Principal or Chief Executive within the Trust. Where an allegation has been made against a Principal or the Chief Operating Officer, the Investigating Officer will be the Chief Executive or an external independent officer appointed to undertake the investigation. Where an allegation has been made against the Chief Executive, the Investigating Officer will be an external independent officer appointed by the Board of Trustees to undertake the investigation.
- 18.2 The role of the Investigating Officer is to ascertain the facts regarding all relevant issues as fairly and promptly as possible. The Investigating Officer will normally be expected to present the case at the formal Disciplinary Hearing where applicable. They will be expected to answer to their prepared report in any Hearing.
- 18.3 There should be as much investigation into the matter as is reasonable. What will amount to a reasonable investigation will depend very much on the circumstances of the particular complaint of misconduct. If it is something which the employee readily admits to having done, the extent of the investigation may well be confined to that, or obtaining a measure of confirmation of it.
- 18.4 Investigating Officers should look at the whole case from all angles. It is important to bear in mind that there is a duty to pursue all reasonable lines of enquiry, whether these support or conflict with the case which is being investigated. All relevant people should be interviewed and any related documentation examined e.g. copies of applicable rules and procedures, personnel files and records, training records and notes of relevant meetings etc. The investigation should be completed as quickly as possible and the employee should be kept fully informed throughout the investigation process.

- 18.5 The Investigating Officer should keep notes of the sequence of events throughout the investigation, including a chronology of dates of interviews and details of any delays e.g. interviews cancelled and absence of any parties etc. This record will be invaluable when compiling the final report.
- 18.6 The Investigating Officer must produce a report showing the findings and containing a recommendation as to whether it is appropriate for a Disciplinary Hearing to be convened. **It is not the role of the investigating officer to make recommendations regarding the scope of disciplinary action to be taken.** The Investigating Officer will normally be expected to present the case at the Disciplinary Hearing and any subsequent appeal. They will be expected to answer to their prepared report in any Hearing. It is essential that the investigation is fair and impartial to avoid leading to a subsequent conclusion that there was a procedural flaw. The investigating officer should present the case and not participate in the decision making at the Disciplinary Hearing/Appeal.
- 18.7 Where the Investigating Officer recommends, in safeguarding cases, that a Disciplinary Hearing is convened, the report should include reference to any risks potentially linked to the Trust's safeguarding duties. If there is a suspicion of safeguarding involving children or vulnerable adults during a disciplinary investigation, then the relevant safeguarding team must be informed.

19. Investigation Interviews

- 19.1 The Investigating Officer will need to consider who they need to interview e.g. respondent, witnesses to the alleged incident(s), work colleagues, pupils etc. A decision to interview children or young people must be carefully considered and advice sought where necessary. There needs to be consideration of the potential impact on the child and whether there are any other elements of supporting evidence or information. In addition, issues such as consent, the age and understanding of the child and whether the interview process would cause any possible distress for the child need to be reviewed.
- 19.2 If, for example, the complaint has been received from colleagues about an employee's conduct, it will be necessary not only to interview the complainants and obtain statements from them, but also to interview some, at least, of those who have not complained but who can be expected to know, or have an opinion about, whether the complaints are justified. If a complaint is received from a member of the public or other person who is not an employee, that person should be seen and invited to make a written statement setting out the details of the complaint. See the toolkit for additional guidance on investigation interviews.

20. Witnesses and Statements

- 20.1 Any witness to the alleged misconduct should be asked to provide a signed written statement and there may be an expectation to attend a Hearing if

required. Where witnesses wish to remain anonymous, consideration needs to be given to balancing the interests of the parties, the need to protect witnesses and the right of the employee to a fair Hearing. In addition, it remains important to have a written statement and that corroborative evidence is available. Consideration should be given as to whether the person's motives are genuine. See the toolkit for additional guidance on witnesses and statements.

21. Concluding the Investigation

- 21.1 On completion of the investigation a report should be prepared with the findings. The evidence collected should be analysed to establish whether there are sufficient grounds to merit moving to a formal Disciplinary Hearing or not. The Investigating Officer will bear in mind the test to be applied is whether the facts are established "on a balance of probabilities" i.e. that they are more likely than not to have occurred. Ultimately that will be a test for the decision makers. This means, as opposed to 'beyond all reasonable doubt' in criminal proceedings, on balance does the evidence support the conclusion more than it conflicts with it.
- 21.2 The outcome at this stage may be no further action, informal discussion, a letter of management advice or a recommendation that a Disciplinary Hearing be convened. The employee should be informed of this decision in writing as soon as possible once the decision is made. In the event that a Disciplinary Hearing is convened the report will form the basis of the employer's case to be presented at the Hearing. The report should not contain any issues not previously discussed during the investigation with the employee.

22. Formal Disciplinary Hearing

- 22.1 If it is considered necessary to convene a Disciplinary Hearing the employee will be informed of this fact in writing. The employee should be given at least 5 clear working days' notice of the Hearing to allow sufficient time to prepare and arrange representation. The letter will:
- Inform the employee that there is to be a Disciplinary Hearing;
 - Provide the date, time and location of the Hearing;
 - Provide sufficient information about the alleged misconduct or poor performance and its possible consequences to allow the employee to answer the case, including copies of any and all documents that will be produced at the Hearing including witness statements;
 - Inform the employee that it is their responsibility to provide his/her representative with a copy of this information (assistance will be offered to facilitate the copying of all the documentation, if requested);

- Inform the employee of their right to be accompanied by a Trade union representative or work colleague, who does not have a conflict of interest;
- Provide a copy of the disciplinary policy and procedure;
- Provide a copy of the procedure to be followed at the meeting (see the toolkit);
- Provide names of any witnesses that the Investigating Officer is requesting to attend;
- Request from the employee confirmation of attendance, the name of their representative, the name of any witnesses the employee intends to call and copies of any additional documentation that the employee intends producing at the Hearing;
- Inform the employee that he/she should submit any documentation they will refer to during the Hearing at least 2 clear working days in advance of the Hearing unless otherwise agreed;
- Confirm that any documentation not submitted in the time limit may be submitted to the Hearing Officer/Panel at the start of the Hearing who will decide whether or not it can be submitted;
- Enquire as to whether the employee has any reasonable adjustments for the Hearing venue, for example, accommodating the needs of a person with disabilities.

22.2 The letter must include reference to the potential range of outcomes if the Hearing concludes that there has been a breach of disciplinary rules, up to and including dismissal. See the toolkit for an example letter inviting the employee to a Hearing, which provides an appropriate form of words for this requirement.

23. Postponing the hearing

23.1 Where possible, the employee's representative should be consulted about the date and time of the Disciplinary Hearing. If the employee and/or their representative cannot attend on the proposed date, an alternative time and date will be arranged, ideally not more than 5 clear working days after the original date.

23.2 Employees and their representatives should make every effort to attend the Hearing on the date given. Where an employee does not attend a Hearing without good cause and has not informed the Trust that they cannot attend, the Hearing may take place in the employee's absence and a decision be made on the evidence available.

24. The Outcome of the hearing

24.1 When deciding whether disciplinary action is appropriate and what form it should take, only factors to which reference has been made during the Disciplinary Hearing may be considered. The Hearing Panel should consider:

- Whether the rules of the Trust indicate what the likely action will be as a result of the particular misconduct;
- The action/penalty imposed in similar cases in the past;
- The employee's disciplinary record (including current warnings), general work record, work experience, position and length of service;
- Any special/and or mitigating circumstances which might make it appropriate to adjust the severity of the action;
- Whether the proposed action is reasonable in view of all of the circumstances;
- Whether any training, additional support or adjustments to work are necessary.

24.2 Whilst consistency is important, this does not mean that similar offences will always call for the same disciplinary action. Each case must be looked at on its own merits and any relevant circumstances considered, for example, health or domestic problems, provocation, ignorance of the rule or standard involved.

The outcome of the Hearing may be:

- No further action – where there is no case to answer. If the Hearing Panel feels that disciplinary action is not justified, they will advise that there is no case to answer and that no disciplinary information will be kept on the employee's file (unless there is a legal requirement to do so);
- Letter of management advice – although management advice may be issued outside of a Disciplinary Hearing, it can also be given as an outcome of a Hearing in cases of minor misconduct;
- Formal disciplinary action as outlined below.

25. First Written Warning

25.1 Where an employee is found guilty of misconduct a first written warning will be issued setting out the nature of the misconduct and the improvement in behaviour required. The employee should be informed that the warning is part of the formal disciplinary process and what the consequences will be as a result of further/similar misconduct. This could be a final written warning and ultimately, dismissal. The employee should also be informed that they may appeal against the decision.

25.2 Under normal circumstances a written warning will be disregarded for disciplinary purposes after 12 months subject to satisfactory conduct or performance.

26. Final Written Warning

26.1 Where there is a failure to improve or change behaviour, and previous live warning(s) have not resulted in sufficient improvement, the employee should be issued with a final written warning. In circumstances where an offence is sufficiently serious to warrant only one written warning, but not serious enough to justify dismissal, a first and final written warning will be issued. The warning will give details of the complaint, warn that failure to improve or modify behaviour may lead to dismissal or other sanction and advise of the right of appeal. Under normal circumstances a final written warning will be disregarded for disciplinary purposes after 24 months, subject to satisfactory conduct or performance.

27. Final Written Warning and Sanction Short of Dismissal

27.1 If the outcome of the Hearing is that there has been an act of gross misconduct or if there is further misconduct during the currency of a written or final written warning, the sanction may be some other action short of dismissal such as demotion, loss of seniority, loss of increment (all without salary protection). This will be in addition to a final written warning. Such cases occur where there is evidence of gross misconduct and dismissal would be appropriate but some mitigating factor has been considered.

27.2 If some sanction short of dismissal is imposed, the employee will receive in writing:

- Details of the misconduct and any warning;
- Any potential impact on pay/incremental progression and a new contract; if appropriate to the facts of the case;
- That dismissal could result if there is no satisfactory improvement;
- The right of appeal, including timescales and how an appeal should be made;
- That a copy of the written sanction will be retained on the personal file but disregarded for disciplinary purposes after 24 months from the date of the Hearing, subject to achieving and sustaining satisfactory conduct (although in demotion cases, return to the former grade would not be automatic after this period of time);
- Details of any proposed referral to an appropriate body, if applicable.

28. Dismissal with Notice

28.1 Where the decision is taken to dismiss but it is not for gross misconduct the employee should be provided with written details of the reasons for dismissal, the date on which employment will terminate, the appropriate period of notice and their right of appeal. Dismissal with notice is likely to be where there is a final written warning still in force and further misconduct has occurred.

28.2 An employee should not be dismissed for a first breach of discipline, except in cases of gross misconduct.

29. Summary Dismissal – Dismissal Without Notice

- 29.1 In very serious cases where an employee is found guilty of gross misconduct, dismissal will be without notice or payment in lieu of notice i.e. with effect from the date of the Hearing.
- 29.2 More details about what can constitute gross misconduct can be found earlier in the procedure. Further information on issues to be considered when considering dismissal are provided in the manager's toolkit.

30. Time Limits for Warnings

- 30.1 Disciplinary action taken should be disregarded for disciplinary purposes after the specified period of satisfactory conduct. Warnings should then cease to be "live".
- 30.2 As part of the Trust's fair approach to disciplinary issues, the Trust's Disciplinary Policy enables employees to regain a clean record and the disciplinary sanction will normally be disregarded for disciplinary purposes once the time period of the sanction has expired. However, there may be occasions where an employee's conduct is satisfactory throughout the period that the warning is in force, only to lapse very soon afterwards. Where a pattern emerges/and or there is evidence of abuse, the employees disciplinary record can be considered when deciding how long any warnings should last. A decision to dismiss should not be taken on an expired warning but the fact that there is an expired warning may explain why a lesser sanction is not enforced. In accordance with the policy no disciplinary action will be taken without a proper investigation and Hearing and will be subject to the right of appeal. Advice should be taken from the People Team in such circumstances.

31. Written Confirmation of the Outcome of the Hearing

- 31.1 The employee will be informed of the decision orally at the end of the Hearing where possible. This decision should be confirmed in writing to the employee within 5 clear working days of the Hearing. The written notification should include:
- A clear statement of the nature of the misconduct;
 - The disciplinary action;
 - The key factors/facts/evidence that were considered when arriving at the decision;
 - Any mitigating circumstances that were considered when considering the decision;
 - Any training/support that will be provided;
 - The length of time a warning will remain live;
- The consequences of further misconduct or failure to improve;

- The right of appeal including the timescale for lodging an appeal and how it should be made;
- The fact that formal disciplinary action may well form part of any future reference and will form part of the reference if working with vulnerable groups;

31.2 Where the outcome of the Disciplinary Hearing results in dismissal, the employee should be provided with full details for the reason for dismissal (as identified in the 'Dismissal' section). In addition, the employee will be required to return all work apparatus including identification cards. For an example letter confirming the outcome of a Hearing see the toolkit.

32. Right of Appeal

32.1 Employees have the right of appeal against formal disciplinary action taken against them. The opportunity to appeal is essential to natural justice. Employees may appeal on various grounds, for example, that the evidence did not support the findings, that there is new evidence to be considered or that the level of sanction was too severe. Defects in the original procedure may often be remedied through a properly held appeal. Appeals should be in writing and received by the Chief Executive (or the Chair of the Board of Trustees in cases where the Chief Executive is the Hearing Officer) within 5 clear working days of receipt of the letter confirming the disciplinary action and must clearly state the grounds for the appeal.

33. The Appeal

33.1 The appeal will be heard by an appeal panel and a representative from the People Team will be in attendance to provide advice and guidance to the Appeals Panel. The Appeal Panel will comprise of a minimum of two Board Members.

33.2 There is a possibility to admit new evidence to ensure principles of natural justice, however **new allegations should not be considered**. Such evidence would need to be provided in writing 48 hours prior to the appeal to be allowed for both sides to consider it.

33.2 The purpose of an appeal is not to re-hear the original hearing. The remit and scope of the considerations of the Appeal Panel is limited to the specific areas which the employee is dissatisfied with in relation to the outcome of the original hearing. There are four grounds for appeal:

- New evidence relevant to the case which was not available at the original hearing;
- That the finding that he/she committed the alleged act was not reasonable or appropriate in the circumstances;
- The disciplinary sanction or penalty was not felt reasonable and appropriate in all the circumstances of the case;
- A procedural error in the disciplinary process.

- 33.3 The employee will be given 5 clear working days' notice of the date of the Hearing in writing. Employees have a legal right to be accompanied at the Appeal by their Trade Union representative or workplace colleague who does not have a conflict of interest.
- 33.4 **The Appeal outcome should not result in any increase in a disciplinary penalty.** Where possible, once a decision is reached at the Appeal Hearing, the employee will be given oral notification of the decision and the reasons at the conclusion of the Hearing. The employee will normally be informed in writing of the results of the Appeal Hearing within 5 clear working days of the meeting. The decision made at this stage is final and concludes the Trust's disciplinary procedure.
- 33.5 Where any decision has been overturned, the Appeal Panel may consider any other implications such as training requirements.

34. Criminal Charges or Convictions

- 34.1 If an employee is subject to a criminal investigation, this will be a separate issue to the internal disciplinary investigation. The internal disciplinary investigation does not necessarily have to wait for the completion of the criminal investigation, but care should be taken and the Investigating Officer should consult with the Police Officer concerned so as not to obstruct the course of the criminal inquiries. It may be that the criminal investigation will have to be completed first. In which case, the timescale for the internal investigation should have to be reviewed. The employee should be kept informed of the position.
- 34.2 The fact that a criminal investigation leads to no formal charges does not necessarily mean that there should be no disciplinary investigation as they are two separate matters and dealt with on different burdens of proof. **It is important to remember that the burden of proof that an employer is working to is 'on the balance of probabilities' and not 'beyond all reasonable doubt' as in criminal proceedings.**
- 34.3 If an employee is charged with, or convicted of, a criminal offence not related to work, this is not necessarily a reason for disciplinary action. Similarly, an employee should not be dismissed solely because they are absent from work as a result of being remanded in custody. Careful consideration should be given to a criminal conviction. It may relate to an offence either in work or outside of work. In the latter case, consideration must be given as to the likely effect and impact upon the employee's ability to carry out his or her duties. The following should be considered:
- Is the offence, or alleged offence, one that makes the employee unsuitable for their type of work?
 - Will there be an effect on the reputation of the Trust given the nature of the alleged offence?

- Does the incident involve or affect other employees?
- Is there a breach of contract?

34.4 Where any criminal conviction leads, for example, to the loss of a licence so that continued employment in a particular job would be illegal, the Trust should consider whether alternative work is appropriate and available.

34.5 Where an employee, charged with or convicted of a criminal offence, refuses or is unable to co-operate with the disciplinary investigation and proceedings, this should not deter the Trust from taking disciplinary action. The employee should be advised in writing that, unless further information is provided, a disciplinary decision will be taken on the basis of the information available and could result in dismissal.

34.6 Where cases may involve safeguarding issues involving vulnerable adults or children there will be specific requirements on how to proceed with a disciplinary case. Further details can be found in the earlier section 'protection of children and vulnerable adults.'

35. Grievances

35.1 Where an employee raises a grievance during the disciplinary process the disciplinary process may be suspended in order to deal with the grievance and advice should be sought from the People Team.

35.2 Where the disciplinary and grievance cases are related, it may be appropriate to deal with the issues concurrently and advice should be sought from the People Team.