

Disciplinary and Dismissal Procedure	
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Compliance lead	Director of People, Employee Engagement and PSTE
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1 Purpose

- 1.1 The aims of the Disciplinary and Dismissal Procedure are to set out standards of conduct expected of all staff and to provide a framework within which managers can work with employees to maintain satisfactory standards of conduct and to encourage improvement where necessary. Its aim is to ensure that when disciplinary action needs to be taken, it is applied consistently and fairly.

2 General Principles

- 2.1 The Trust will follow a fair procedure in the event that disciplinary action is necessary. There may be occasions when the Trust considers it appropriate to change or omit parts of this procedure.
- 2.2 If the Trust amends the procedure from time to time, you will be given advance notice of the amendments.
- 2.3 This Disciplinary and Dismissal may be amended, withdrawn, suspended or departed from at the discretion of the Trust. While it does not form part of any employee's contract of employment and is entirely non-contractual, all employees are required to adhere to the policy and any failure to comply with any aspect of the policy may be treated as a disciplinary matter. The Trust may also vary any parts of this procedure, including any time limits, as appropriate in any case.
- 2.4 The procedure applies to all employees once they have completed their probationary period (including those working in or managed by a third party organisation, including staff on secondment). It does not apply to agency workers or self-employed contractors. It does not apply to cases involving genuine sickness absence, proposed redundancies, incompetence, incapability or other poor performance unless this is attributable to misconduct. In those cases reference should be made to the appropriate policy and procedure in the Staff Handbook or by speaking to a member of the Department of Human Resources.

- 2.5 Minor conduct issues can often be resolved informally between you and your manager. These discussions should be held in private and without undue delay whenever there is cause for concern. Where appropriate, a note or informal caution letter covering the informal discussions may be placed on your personnel file. Formal steps will be taken under this procedure if the matter is not resolved, or if informal discussion is not appropriate (for example, because of the seriousness of the allegation).
- 2.6 If you have difficulty at any stage of the procedure because of a disability or understanding English you should raise this with your line manager or a member of the Department of Human Resources as soon as possible.
- 2.7 It is our aim to deal with disciplinary matters sensitively and with due respect for the privacy of the individuals involved. All employees must treat as confidential any information communicated to them in connection with an investigation or disciplinary matter.
- 2.8 You and anyone accompanying you (including witnesses) must not make electronic recordings of any meetings or hearings conducted under this procedure.
- 2.9 You will normally be told the names of any witnesses whose evidence is relevant to disciplinary proceedings against you, unless we believe that a witness's identity should remain confidential.

3 The Investigation Stage

3.1 Investigation

- 3.1.1 The purpose of an investigation is for us to establish a fair and balanced view of the facts relating to any disciplinary allegations against you, before deciding whether to proceed with a disciplinary hearing. The amount of investigation required will depend on the nature of the allegations and will vary from case to case. It may involve interviewing and taking statements from you and any witnesses, and/or reviewing relevant documents. A member of the Senior Management or Leadership Team, where appropriate in consultation with the Department of Human Resources will usually appoint an Investigating Officer to carry out the investigation, and this will be a senior member of staff.
- 3.1.2 Investigative interviews are solely for the purpose of fact-finding and no decision on disciplinary action will be taken until after a disciplinary hearing has been held. As a first step any disciplinary issue will be investigated and you must co-operate fully and promptly in any investigation. This includes informing us of the names of relevant witnesses, disclosing any relevant documents to us and attending investigative interviews if required. If, after investigating the matter, it appears that there are no reasonable grounds for concern, you will be informed of this in writing and, if relevant, allowed to return to work as normal. However, if there are grounds it will go to the disciplinary stage of this procedure.

3.1.3 You do not normally have the right to bring a companion to an investigative interview. However, we may allow you to bring a companion if it helps you to overcome any disability, or any difficulty in understanding English.

3.1.4 The following principles apply:

- If there are witnesses to an incident, or a person makes an allegation against someone else, written statements from such persons will be obtained and/or where appropriate these persons will be interviewed and a note or statement from each interview will be prepared.
- If appropriate, as part of the investigation, the employee may be interviewed. This will not be a disciplinary hearing, but will be for the purpose of investigating the matter before a decision is taken as to whether or not a disciplinary hearing is warranted.
- Only in exceptional circumstances will statements be permitted to be anonymised, for example if there is a genuine concern for personal safety. This should be agreed with the Casework Manager.

3.1.5 When the investigation is concluded, a decision will be taken on:

- whether no action is necessary; or
- whether the matter should be dealt with outside the formal Disciplinary Procedure; or
- whether it is necessary to consider the matter at a formal disciplinary hearing

3.2 Criminal Charges

3.2.1 Where your conduct is the subject of a criminal investigation, charge or conviction, we will investigate the facts before deciding whether to take formal disciplinary action. We will not usually wait for the outcome of any prosecution before deciding what action, if any, to take. Where you are unable or have been advised not to attend a disciplinary hearing or say anything about a pending criminal matter, we may have to take a decision based on the available evidence. A criminal investigation, charge or conviction relating to conduct outside work may be treated as a disciplinary matter if we consider it to be relevant to your employment.

3.3 Suspension

3.3.1 If it is considered that the alleged misconduct may constitute serious or gross misconduct or if the matter to be investigated is thought at any stage of the investigation to involve gross misconduct or it is in the interests of the Trust, a student, an employee or you or your continued presence in the workplace would hinder an investigation we may need to suspend you from work, on full pay and benefits whilst the investigation proceeds. The suspension will be for no longer than is necessary and you will receive confirmation of the arrangements in writing. Suspension of this

kind is not a disciplinary penalty and does not imply that any decision has already been made about the allegations.

- 3.3.2 While suspended you should not visit any of our premises or make contact with any of our students, parents, guardians, customers, suppliers, contractors or employees, unless you have been authorised to do so by your Principal, Head of School, Head of Service or Director.
- 3.3.3 Consideration will be given to alternatives to suspension, e.g. changing work location if appropriate, with suspension being the last resort in most cases.
- 3.3.4 Suspension can only be taken (and lifted) by a manager authorised to take disciplinary action, following consultation with the Director of People, Employee Engagement & PSTE (or their designate).
- 3.3.5 circumstances where it is necessary to immediately protect the Trust's interests (for example, where there are serious safety concerns) and where an authorised manager is not available to suspend an employee, a manager may instruct the employee to leave the place of work, and stay away until further notice. This must be reported to an authorised manager and the Director of People, Employee Engagement & PSTE or their designate as soon as possible so that they can determine whether the employee is to be formally suspended in accordance with paragraph 3.3.1.

3.3.6 Where an employee has two roles at the Trust then it may be appropriate to suspend the individual from both roles. However, each case will be considered on an individual basis.

3.4 Interview

- 3.4.1 As part of the investigation the Investigating Officer may (if considered appropriate) undertake an interview with you. you do not need to be given notice of an investigatory meeting. First of all at the start of the meeting you will be advised of the nature of the complaint. Then you will be given the opportunity to explain and/or respond to the complaint and submit any relevant documents. You will be given access to any relevant information and papers held by the Trust. There may be further interviews if necessary to complete the investigation.

4 The Disciplinary Stage

4.1 Notification of a Hearing

- 4.1.1 Following any investigation, if the Investigating Officer considers it is necessary to take formal action, you will be required to attend a disciplinary hearing. We will inform you in writing of the allegations against you, the basis for those allegations, and what the likely range of outcome will be if we decide after the hearing that the allegations are true. If your dismissal is a possible outcome of the hearing, you will be informed of this possibility in advance. We will also include the following where appropriate:

- a summary of relevant information gathered during the investigation;
- a copy of any relevant documents which will be used at the disciplinary hearing; and;
- a copy of any relevant witness statements, unless exceptional, a witness's identity is to be kept confidential, in which case we will give you as much information as possible while maintaining confidentiality.

4.1.1 You will be invited to submit any relevant documents.

4.1.3 We will give you written notice of the date, time and place of the disciplinary hearing. The hearing will be held as soon as reasonably practicable, but you will be given a reasonable amount of time to prepare your case based on the information we have given you.

5 Right to be Accompanied

5.1 You may be accompanied to the disciplinary hearing by a fellow employee or trade union official who will act as your 'companion'. You should give advance notice of this to the Chair of the Disciplinary Panel, stating the name of your chosen companion and whether they are a fellow worker or trade union representative. Acting as a companion is voluntary and your colleagues are under no obligation to do so. A colleague will be allowed reasonable time off from duties without loss of pay to act as a companion but they must provide their line manager with adequate notice of their intentions. If your choice of companion is unreasonable as their attendance may prejudice the hearing or they are unable to attend at the time and date allocated, and are not available within the next five working days or they are from a remote geographical location and someone else suitable is available on site, we may use our discretion and ask you to choose someone else.

5.2 The companion may address the disciplinary hearing to put and sum up the employee's case but may not answer any questions on behalf of the employee or address the hearing if the employee does not wish it. The companion must not act in a manner which prevents the Trust from presenting its case (including evidence from relevant witnesses).

6 Disciplinary Hearings

6.1 If you or your companion cannot attend the hearing you should inform the Department of Human Resources immediately and we will arrange an alternative time, normally within 5 working days of the original hearing. You must make every effort to attend the hearing, and failure to attend without good reason may be treated as misconduct in itself. If you fail to attend without good reason we may have to make a decision based on the available evidence. If you are persistently unable to attend, for example due to health reasons, we may have to make a decision based on the available evidence. This will only be done after considering alternative ways of proceeding (for example, inviting written submissions or arranging an alternative venue).

- 6.2 The Trust will appoint a Disciplinary Panel to hear the matter, and will be one or more people who have not been involved in the investigation. Where possible this will be a senior member of staff within the Trust, college or school, /site. In appropriate circumstances, a member of your Senior Management or Leadership Team or a Director may hear the matter on their own. The Investigating Officer shall not be a member of the Disciplinary Panel.
- 6.3 The disciplinary hearing will be conducted by the Disciplinary Panel. The Investigating Officer will be asked to report on their investigation. Both, you, or your companion, and the Disciplinary Panel will be entitled to question the Investigating Officer and any witnesses. You will be entitled to give your explanation and may be questioned by the Investigating Officer as well as by the Disciplinary Panel. You or your companion and the Investigating Officer will be given the opportunity to address the Disciplinary Panel.
- 6.4 At the disciplinary hearing we will go through the allegations against you and the evidence that has been gathered. You will be able to respond and present any evidence of your own. Your companion may make representations to us and ask questions, but should not answer questions on your behalf. You may confer privately with your companion at any time during the hearing.
- 6.5 You may ask a relevant witness to appear at the hearing, provided it is reasonable to do so and you give us sufficient advance notice to arrange their attendance. You will be given the opportunity to respond to any information given by a witness. However, you will not normally be permitted to cross-examine witnesses unless, in exceptional circumstances, we decide that a fair hearing could not be held otherwise.

7 Adjournment

- 7.1 We may adjourn the disciplinary hearing if we need to carry out any further investigations such as re-interviewing witnesses in the light of any new points you have raised at the hearing. You will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened. At any time during the hearing you may request an adjournment if you need to consult your companion. Any adjournment will normally be for a specified period of time.

8 Decision Making

- 8.1 On completion of the hearing, the Disciplinary Panel will retire to consider the decision. Neither you, your companion nor the Investigating Officer will be allowed to take part nor be present during the Disciplinary Panel's deliberations.
- 8.2 The decision of the Disciplinary Panel will be communicated to you, (where practicable) verbally, and in any event in writing as soon as reasonably practicable. If the complaint is upheld you will be informed of the action to be taken and your right of appeal.

9 Outcome of Disciplinary Hearing

- 9.1 **Take no action**

9.2 Recommend the issue be dealt with informally by the employee's manager

9.2 Sanctions

9.1.1 Depending upon the nature of any misconduct found to have been committed, any explanation given by you and any mitigating circumstances, the Disciplinary Panel may impose any of the following sanctions:

- a first written warning;
- a final written warning;
- dismissal with or without notice.

9.1.2 No penalty should be imposed without a hearing. We aim to treat all employees fairly and consistently, and a penalty imposed on another employee for similar misconduct will usually be taken into account but should not be treated as a precedent. Each case will be assessed on its own merits.

10 Gross Misconduct

10.1 Where there has been gross misconduct the Disciplinary Panel may recommend dismissal without notice. Examples of what the Trust considers to be gross misconduct are set out in the "Code of Conduct" section of the Staff Handbook.

11 Alternatives to Dismissal

11.1 In some cases we may use at our discretion to consider alternatives to dismissal. These may be authorised by the Principal, Head of School, Head of Service or appropriate Director or the Director of People, Employee Engagement & PSTE and will usually be accompanied by a final written warning, and remain current for 24 months from the date of the hearing.

11.1.1 Examples include:

- suspension without pay for a defined period; or
- demotion, which may include demotion to a lower grade with, resulting reduction in salary/pay;
- loss of seniority;
- reduction in pay;
- transfer to another role;
- loss of future incremental increase (if applicable);
- loss of progression through the grade pay gateway (if applicable);
- loss of overtime (if applicable);
- Retraining. Meditation or other appropriate course of training/counselling.

12 Effect of a Warning

- 12.1 Written warnings will set out the nature of the misconduct, the change in behaviour required, the period for which the warning will remain active, and the likely consequences of further misconduct in that active period.
- 12.2 Currency of warnings: A first written warning will be recorded on your personnel file for a period of 12 months from the date the warning was given. A final written warning will be recorded on your personnel file for a period of 24 months from the date the warning was given. In exceptional cases verging on gross misconduct for example dangerous breaches of health and safety, a final written warning may state that it will remain active indefinitely.
- 12.3 After the active period, the warning will remain permanently on your personnel file but will be disregarded in deciding the outcome of future disciplinary proceedings.

13 Appeals Against Disciplinary Action

13.1 Right of Appeal

13.1.1 You have the right to appeal to an Appeal Panel against any decision made by the Disciplinary Panel if you are dissatisfied with it. Such a right of appeal must be exercised in writing to the person identified in the outcome letter within 5 working days of your being notified of the decision giving full details of why you wish to appeal. If no specific person is identified in the outcome letter your appeal must be sent to the Director of People, Employee Engagement & PSTE. The grounds for appeal must fall into one or more of the following categories:

- that the investigation or disciplinary hearing was flawed or that the process has been followed incorrectly;
- that the disciplinary penalty is disproportionate to the allegations;
- that new evidence has come to light that was not available at the time of the investigation or the disciplinary hearing.

13.1.2 The Appeal Panel will arrange a review hearing or a re-hearing to take place as soon as reasonably practicable. You will be informed in advance of its timing and location.

13.2 Appeal Panel

13.2.1 The Appeal Panel shall not include any member of the Disciplinary Panel nor the Investigatory Officer and may comprise one or more persons. As far as reasonably practicable the person chairing the Appeal Panel will be someone holding a more senior position than the person chairing the Disciplinary Panel.

13.3 Appeal Procedure

13.3.1 The procedure at the appeal hearing shall be the same as that for the disciplinary hearing save that there will be no right of appeal from the

decision of the Appeal Panel. You must take all reasonable steps to attend the appeal hearing. The Appeal Panel will be entitled to reach a different conclusion and impose a different sanction (excluding dismissal) than that imposed by the Disciplinary Panel. The Appeal Panel will consider its decision after the completion of the appeal hearing.

13.4 You will be communicated the decision of the Appeal Panel, (where practicable) verbally, and in any event in writing as soon as reasonably practicable. If a different conclusion is reached and a different sanction is imposed by the Appeals Panel you will be informed of the action if any to be taken.

13.5 **Right to be Accompanied**

13.5.1 You may be accompanied to the appeals hearing by a fellow employee or trade union official acting as a 'companion'. Acting as a companion is voluntary and your colleagues are under no obligation to do so. A companion will be allowed reasonable time off from duties without loss of pay to act as a companion but they must provide their line manager with adequate notice of their intentions. If your choice of companion is unreasonable as their attendance may prejudice the hearing or they are unable to attend at the time and date allocated, and are not available within the next five working days or they are from a remote geographical location and someone else suitable is available on site, then we may use our discretion and ask you to choose someone else.

13.6 **Employment Status**

13.6.1 If an appeal is made against a dismissal decision, that dismissal decision will have immediate effect so that, if the dismissal is by notice, the period of notice will have begun at the date given in the dismissal decision. If summary dismissal without notice has been imposed, you will not be entitled to be paid for the period between that decision and the decision of your appeal unless you have been reinstated on appeal. If having been dismissed you are reinstated on appeal, your continuity of employment will be unaffected.

14. **Return to Work**

14.1 The Line Manager and the HR Manager/Advisor will develop a return to work programme to reintegrate the employee back into the workplace effectively following a period of suspension or a disciplinary hearing where there was no action taken, or action short of dismissal. This may include:

- meeting the employee on their first day back at work before they see any colleagues to check how they are feeling, and any support they feel they need.
- a conversation with any work colleagues of the employee concerned and in particular those who may have given evidence that sets out clearly expectations about working relationships going forward.
- checking what (if any) support immediate work colleagues or witnesses feel they may need.