

XP Trust Discipline at Work Policy

Purpose

This procedure has been developed to provide a fair and consistent process for dealing with unacceptable conduct by employees.

The procedure should be used for dealing with matters where normal day-to-day supervision is insufficient (e.g. gross misconduct or some instances of repeated misconduct).

Scope

The procedure applies to all employees of XP School Trust. A disciplinary issue will arise when an employee has demonstrated behaviour which is inconsistent with the

 XP Trust Staff Code of Conduct .

The procedure will be applied in such a way as to comply with the limits of authority which is within the body of the policy.

The procedure should not be used for issues relating to capability, or attendance problems, or failure to meet induction period standards for newly qualified teachers. (These are covered by separate provisions.) It may be applicable in the case of bullying and harassment.

Key Principles

Managers' Responsibilities

Managers and leaders are responsible for carrying out, or making arrangements for, an investigation when any breach of discipline is alleged. Ensuring that the person subject to investigation is kept up-to-date with progress.

Deciding, in the most serious cases (alleged gross misconduct), or where an employee's continued presence at work may hinder an investigation, whether it may be necessary to suspend the employee concerned.

Minor instances of unsatisfactory conduct will be dealt with informally and at an early stage, if necessary, Managers will address these by meeting with the employee and clearly setting out the standards of conduct expected of them. This may also include advice, training, or mentoring. This informal management guidance will be followed up

in writing in the form of a Management Guidance Letter to advise that any further instances may be dealt with under the formal process.

NOTE: No disciplinary action will be taken against a representative of a recognised trade union, in reference to them carrying out their trade union duties, subject to the approval of the representative in question, the circumstances of the case have been discussed with a full time official (i.e. a regional representative) of the union concerned. However, if immediate precautionary suspension is necessary, whilst every effort should be made for these discussions to take place, this should not prevent the suspension where suspension cannot reasonably be delayed. This should be discussed with the Trust HR prior to action being taken.

The Disciplinary Investigation

Investigation

Key Responsibilities of the investigator

- Identify the potential seriousness of the matter with support from HR
- Determine any need to suspend the employee. (See [Appendix 4 "Suspension from Duty"](#))
- Investigate and gather all relevant information, which will usually include one or more investigation interviews. (See [Appendix 3 "Disciplinary Investigation Process"](#))
- Keep the employee informed of progress throughout the investigation.
- Review the need for further investigation.
- Determine [how to proceed](#) having completed a thorough investigation.
- Ensure that the investigation information is appropriately documented.

Investigation Interview

This is to enable the investigator to decide whether or not there is a disciplinary case to answer and, if so, to establish the precise allegation. It is not a disciplinary hearing.

The employee must be given reasonable written notice (normally no less than 3 working days) of the time and date of interview(s), together with details of the issues of concern. All correspondence should be forwarded to the employee via recorded delivery, hand delivered or email with read and delivery receipt.

The employee must also be informed of their right to be accompanied at the meeting (see [Appendix 5 "Employee Representation"](#)). If the employee's work colleague or representative is not available on the scheduled date(s), they may propose an alternative date and time which falls no later than 5 working days following the scheduled date. If the work colleague or representative remains unavailable beyond this timescale, it is reasonable to expect the employee to make alternative arrangements to be accompanied.

The purpose of the investigation is to establish the facts and gather evidence to determine how to proceed, investigators should seek advice and support from HR.

See [Appendix 3 “Disciplinary Investigation Process”](#)

Precautionary Suspension

Where appropriate an employee will be suspended whilst investigations are conducted (e.g. where the matter is thought to be gross misconduct, or where suspension is necessary to ensure the welfare of others or to facilitate an investigation). Although not a disciplinary sanction, suspension should always be a carefully considered decision rather than an automatic response.

The CEO will be notified of the suspension immediately.

The lifting of a suspension will be undertaken in consultation with the CEO and advice from the trust HR. Employees are entitled to be accompanied to the suspension meeting by a trade union representative or a work colleague, however if a representative is unavailable the suspension should not be delayed. Suspension is a neutral act to allow an investigation to take place and is with full pay.

See [Appendix 4 “Suspension from Duty”](#)

How to proceed after the investigation

Conclusion of the investigation

When the evidence has been gathered the investigator needs to consider how to proceed. This might be:

- that a disciplinary hearing is not warranted and there is no case to answer. In this situation the manager should write to the employee to confirm the outcome (advice can be sought from the trust HR as to the content of the letter).
- that a disciplinary hearing is not warranted but there are some issues to address (in which case the employee should be notified without delay, and any constructive guidance, advice and instruction about the employee's behaviour, to avoid similar situations arising in future, should be provided by the investigating officer in the form of management guidance.
- that a disciplinary hearing is warranted.

In the event that the case progresses to a disciplinary hearing, the investigating officer will prepare a report with all the associated documentation. Copies of the report and all documentation will be provided to the employee, their representative and all members of the disciplinary panel.

Arranging a Disciplinary Hearing

The employee is entitled to receive written notification of the arrangements for the hearing no later than 10 working days before the hearing, together with copies of documents to be referred to at the hearing.

All correspondence should be forwarded to the employee via recorded delivery, hand delivered or via email with receipt and delivery notifications. Within 3 working days of the hearing, the employee should submit to the investigating officer any other documents to which they intend to refer.

Where witnesses are attending the hearing statements must be provided in advance of the hearing as part of the documentation

See [Appendix 7 “Structure & Conduct of Hearings”](#)

Limits of authority to take disciplinary action

Action	Minimum Level of Authority
Written Warning	Head (or as delegated)
Final Written Warning	Head (or as delegated)
Dismissal (either cumulative or gross misconduct)	As determined by Director delegation, but at least the Head with a Director
Appeal Panel	As determined by Director delegation, CEO or Directors who have not been previously involved in the case

The Decision

The employee will be informed verbally of the decision at the hearing and this will then be confirmed in writing no later than 5 working days after the decision is made. This letter should be sent by recorded delivery, hand delivered or via emails with a delivery and read receipt.

Outcomes available are as follows:

- **No Further Action:** Appropriate in cases where it is concluded that misconduct has not occurred or is not of sufficient concern to warrant management guidance being issued
- **Management Guidance:** This is a developmental outcome, rather than a disciplinary sanction, appropriate where misconduct has occurred but is not considered to be serious enough to warrant a written warning. If it arises from a hearing, the hearing officer will refer the matter back to the employee's line manager, with appropriate recommendations to help to correct the employee's behaviour through the supervisory process. The hearing officer will caution the employee that without an improvement in their behaviour, it might be necessary for consideration to be given to disciplinary action in the event of future

misconduct. This will be recorded in the same way as supervision/ performance management records and the employee will sign to record their confirmation that the caution has been administered. If it arises from day to day supervision, the line manager will caution the employee and record this.

- **Written Warning:** Appropriate in cases where misconduct has occurred but which falls short of gross misconduct. The warning will have effect for 12 months from being issued. Once it has expired it will be disregarded for disciplinary purposes.
- **Final Written Warning:** Appropriate where either the misconduct is so serious that it justifies a warning that dismissal would result from further misconduct (even though no previous warnings had been issued), or further misconduct which would normally warrant a written warning has occurred within the life of a previous written warning. The warning will have effect for 18 months from the date of the hearing, but once it has expired it will be disregarded for disciplinary purposes.
- **Dismissal:** Appropriate for gross misconduct, or misconduct which occurs during the lifespan of a previous final written warning and which would itself warrant at least a written warning ("cumulative misconduct").

Dismissal for gross misconduct will be from the date of the decision and will be without notice. Dismissal for cumulative misconduct will be with due notice.

The employee will be provided with written reasons for dismissal, the date on which employment will or did terminate and details of how to exercise their right of appeal. This letter should also state if there is to be a referral to a regulatory professional body.

NOTE: Where appropriate, the circumstances will be reported to regulatory professional bodies.

See [Appendix 8 Referrals to Regulations](#)

Appeals

There is a right of appeal against a written or final written warning and dismissal. The appeal must be lodged in writing **no later than 5 working days** after notification of the decision. Appeals will be considered in line with the [limits of authority](#) above.

If an employee remains dissatisfied following the issuing of an advisory caution a review meeting with the issuing manager will be convened for their dissatisfaction to be addressed.

The appeal is NOT a rehearing of the original case. It is a review of the decision-making process, to consider whether the decision taken by the Disciplinary Panel was fair. The chair of the original disciplinary panel will attend to present the reasons for their decision.

The employee shall be given seven working days' notice, in writing, in advance of the time and place of the hearing. The employee has the right to be represented by his/her trade union representative or work colleague.

The Appeals Panel will announce the decision to the parties personally (unless it has been agreed by all parties to convey the decision solely in writing). The decision may be to uphold, reduce or to increase the severity of the outcome of the original disciplinary hearing or to not uphold. The decision reached at the Appeal stage shall be final and there shall be no further appeal. The outcome of the appeal will be provided in writing **within 7 working days** of the decision from the appeal panel.

See [Appendix 6 "Appeals"](#).

Documentation

All papers, including handwritten notes and documentary evidence together with a record of any appeal or other developments must be retained. These records will be kept confidentially for **a period of 6 years** after termination of employment; except where the case involves children when the records will remain on file permanently. Managers should return all paperwork to HR immediately after their involvement with the case has ended.

For advice and guidance on any aspect of this procedure, or accompanying fact sheets, please contact the trust HR.

Appendix 1 - Managing Behaviour

It is the Trust's policy to help and encourage all employees to adhere to standards of conduct. To achieve this a procedure has been developed to be followed when dealing with misconduct that cannot be addressed through normal supervision. The procedure aims to ensure that all employees receive consistent, fair and equal treatment, when the following examples of misconduct are being dealt with.

Managers are advised to discuss with HR, how any of the following rules apply in any given situation.

The examples are divided into two types: "gross misconduct", a single breach of which might lead to an employee's dismissal; and "other misconduct", a single breach of which might result in disciplinary action, but not normally dismissal. (If misconduct is repeated, however, this may ultimately lead to dismissal.)

Standards of Conduct

Employees should ensure they are aware of the conduct expected of them.

Managers should ensure employees are aware of policies, procedures, rules, protocols and values.

Communication

Standards will be clearly and effectively communicated to all employees. This will be achieved by:

- providing a clear explanation, at the recruitment stage and through subsequent supervision, of the standards expected in relation to job performance and general conduct
- ensuring an effective use of induction and probationary periods by providing new employees with a copy of the disciplinary rules, code of conduct, terms and conditions of their employment and details of their duties and responsibilities
- holding regular supervisory meetings (see below) where standards of conduct can be reviewed and monitored. This can provide the ideal opportunity for any issues to be discussed and resolved before they become major difficulties

Effective Supervision

Minor breaches of discipline are best dealt with through routine supervision between an immediate line manager and the employee. In these circumstances it is advisable for the line manager to:

- arrange a meeting to discuss the issue(s) with the employee to prepare for the meeting by having the facts and any documents available
- encourage the employee to talk about the situation by asking open-ended questions
- listen to what the employee has to say and ensure that they stick to the facts relating to the situation
- consider if the person requires support or more training in their role
- explore whether the employee has any personal difficulties which may be affecting their work
- ensure that the job description is clear and reasonable, i.e. not out of date and/or inappropriate for the role
- establish whether or not the person is capable of carrying out the duties (refer to capability procedure if this is appropriate)
- consider if this is a deliberate case of misconduct or wilfully negligent performance of duties, without good cause, and if this is clearly not the case –
- managers may issue informal management guidance to correct minor conduct

NOTE: Such meetings are integral to the line manager/employee supervisory relationship and unless there is good reason to the contrary need only be on a one-to-one basis.

Appendix 2 - Examples of Misconduct

Managers are advised to discuss with the trust HR Advisors, how any of the following rules apply in any given situation.

The examples are divided into two types: “**gross misconduct**”, a single breach of which might lead to an employee’s dismissal; and “**other misconduct**”, a single breach of which might result in disciplinary action, but not normally dismissal. (If misconduct is repeated, however, this may ultimately lead to dismissal.)

Gross Misconduct

Unacceptable Working Practices

- Refusal to carry out a reasonable management instruction despite being advised that to continue to do so might lead to disciplinary action.
- Failure to provide acceptable standards of care and security of pupils through gross negligence.
- Misuse of confidential information, unauthorised disclosure, destruction, alteration, addition to or erasure of official documents/records. Misuse of the Internet, as defined in the Internet Usage Policy.
- Failure to follow and uphold the safeguarding policies and practices in the Trust
- Presenting for duty under the influence of alcohol or drugs
- Bringing the Academy into disrepute
- Falsification of data or test results
- Committing a criminal offence whether during or outside of working hours which renders the employee unsuitable to be employed with the Trust
- Failure to adhere to statutory guidance
- Breaches of the code of conduct

Corrupt or Improper Practice

- Unauthorised acceptance of or requests for gifts, entertainment, hospitality or benefits of any kind, in contravention of the trust’s Trust declaration of gifts and hospitality.
- Misuse of official position with the Trust for personal gain, or the gain of some other party.
- Unauthorised involvement in clients’ financial affairs.
- Failure to declare a personal interest in contravention of the Trust Declaration Procedure.
- Engaging in activities, in or outside of work, which is seriously prejudicial or in conflict with the employee’s own function

Dishonesty

- Providing false information or conspiring to conceal information which leads to dishonest or fraudulent behaviour (e.g. deliberate falsification of expense claims, timesheets, information on application forms, aids, adaptations or other services provided or paid for by the Trust).
- Reporting sick (verbally or in writing) or remaining on sick leave when fit to undertake duties and responsibilities at work.

- Undertaking paid employment elsewhere whilst certified unfit to perform substantive duties.

Alcohol, Drugs and Substance Abuse

- Being on premises licensed for the sale/consumption of alcohol during working hours, or drinking alcohol at work during working hours
- Incapability at work due to the effects of alcohol, or prohibited drugs, or due to the misuse of non-prohibited drugs or other substances.

Criminal Activities

- Committing a criminal offence, whether during or outside of working hours, which renders the employee unsuitable to be employed in the Trust Academies.

Discrimination, Harassment and Bullying

- Discrimination, harassment or bullying when it is of a serious or unlawful nature.
- Use of the Trust equipment or premises to access, use, store or distribute explicit, offensive or discriminatory material.

Sexual Misconduct

- Involvement in sexual activities on The Trust Academies premises during or outside working hours
- Use of The Trust equipment or premises to knowingly access, use, store or distribute explicit sexual material.

Property

- Loss or damage to The Trust property or equipment through gross negligence or deliberate behaviour, whether during or outside of the working day.

Health and Safety

- Any act or omission which is grossly negligent and which seriously endangers the health and safety of self or others.
- Failure to make use of protective equipment and clothing.
- Wilful disregard of safety practices, procedures and rules.

Assault and Aggressive Behaviour

- Fighting or physical assault at work.
- Serious verbal abuse, threatening or intimidating behaviour in or outside of the workplace

Theft and Misappropriation

- Stealing from the Trust or its employees or pupils, or the unauthorised removal of monies or property belonging to them.

Other Misconduct

The following list indicates the type of offence normally regarded as misconduct:

Attendance and Timekeeping

- Unauthorised absence from duty

Unjustified and repeated lateness

- Unjustified failure to comply with absence reporting procedures.
- Failure to comply with prescribed working hours (e.g. lunch breaks).
- Undertaking activities detrimental to recovery whilst on sick leave.

Behaviour

- Insubordination
- Smoking in a prohibited area.
- Knowingly being an accessory to a disciplinary offence.
- Failure to maintain appropriate standards of dress in line with the Trusts dress code

Operational working procedures

- Failure to comply with and observe operational policies and procedures, which the employee would reasonably be expected to be aware of.
- Frivolous or vexatious use of procedures.

Appendix 3 - Disciplinary Investigation Process

The investigation will be conducted by an investigating officer. In the Trust, this will be an appropriate leader or Head, or their nominee.

The investigating officer will, at appropriate stages during the investigation, convene one or more investigation interviews with the employee. This is the employee's opportunity to explain their actions and for the investigating officer to put questions to them regarding the allegations. It is important that any investigation is carried out as thoroughly and promptly as possible.

Why hold an investigation?

- To enquire into the circumstances of the alleged misconduct.
- To give the employee a chance to offer an explanation.
- To obtain a balanced view of the information that emerges.
- To enable the investigating officer to decide whether the matter should continue to be dealt with under the disciplinary procedure.
- To accurately record all relevant information arising from the investigation.

Who should conduct the investigation?

- Normally the line manager of the employee.

- Another manager (where it is not appropriate for the immediate line manager to carry out the investigation, e.g. where the line manager has been involved in the alleged misconduct or has commitments which would delay the investigation).

The role of investigating officer

- To gather the evidence that establishes the facts.
- To consider at the outset, and throughout the investigation, whether the matter under investigation is potentially gross misconduct or otherwise, and to make that clear to the employee.
- To decide whether or not the matter should go to a disciplinary hearing.
- To notify the appropriate senior manager of the need to convene a disciplinary hearing.
- To prepare a report on the findings of the investigation including any appropriate recommendations for consideration.
- To submit the report to the hearing officer and employee, together with any supporting documents, prior to a hearing.
- To present the case together with the appropriate evidence at the disciplinary hearing.
- To keep the employee informed of the progress of the investigation, **at least every 2 weeks**.

The Investigation Interview

The investigation officer should carry out the investigation interview(s) and may have a Trust HR Advisor present to assist the process. The following provides a quick checklist with regard to the interview(s):

- Managers should write to the employee, giving **at least 3 working days notice** of the intention to hold an investigation interview, at a date and time which is reasonably and mutually convenient. All documents to be discussed at the meeting should be enclosed, together with a copy of the Discipline At Work Procedure.
- The employee is entitled to representation at the interview (see [Appendix 5 "Employee Representation"](#)).
- At the interview the investigation officer should explain that this is not a disciplinary hearing, but an investigation interview.
- If the employee has no representation the investigation officer must confirm that they are willing to continue with the interview.
- The investigating officer and the HR Advisor can ask any relevant questions, giving the employee the opportunity to respond at the end of each question.
- The investigating officer must inform the employee whether they need to make any further enquiries and how often they will keep in touch during the process of the investigation.
- It is important, and in the interests of both the employer and employee, to keep written records during the disciplinary process. It is the investigating officer's responsibility to arrange for notes to be taken at the investigation interview(s).

- Notes taken at any interview, during the investigation process, should be agreed, where possible, and signed as a true reflection of the meeting by the employee. However, it should be noted that if the employee refuses to sign the notes they might still be used as part of the evidence in a disciplinary hearing.

Appendix 4 - Suspension from Duty

Where there appears to be serious misconduct, or risk to property of other people or pupils, a period of suspension with pay should be considered while the case is being investigated. Where possible the period of suspension should be kept as short as possible.

What is suspension?

- Suspension is a neutral act, not a disciplinary penalty.
- It involves removal of an employee from the workplace.
- It is a precautionary measure and full pay will continue to be paid during the suspension period.

When is it appropriate to suspend?

- In cases of potential gross misconduct. (See [Appendix 2 "Examples of Misconduct"](#))
- When it is necessary to safeguard the personal welfare of employees, children.
- In advance of a suspension employees must be given the opportunity to respond to the allegations made against them, their response must be taken into consideration as to whether they can remain in work.
- In order to allow an investigation to take place.
- It may be necessary to report allegations to the LADO and await the outcome of a strategy meeting before a suspension takes place

Who can suspend?

- Heads, CEO, Trust Board
- The person conducting the suspension should consult with the CEO and the trust HR Advisor before any suspension is carried out.

How to carry out a suspension

- Arrange to meet with the employee to inform them of the nature of the allegations.
- The employee may have a trade union representative or work colleague with them during the meeting at which they are suspended. (If a representative is not available, suspension should not be delayed.)

During the suspension meeting the employee should be advised:

- not to comment on the allegations made against them
- that an investigation interview will be arranged as soon as possible
- they will have an opportunity to comment on the allegations during the investigation interview
- it may be necessary to contact them during the course of the investigation and they must therefore be reasonably available during normal working hours
- not to enter the workplace or discuss the matter with colleagues without permission during the period of suspension
- to hand in any Trust possessions/equipment, e.g. keys, fobs, blackberry, laptop, etc. so that their remote access to email will be suspended
- to contact their trade union
- to consider seeking support from Occupational Health (employees can self-refer for counselling)
- who to contact and how to contact them for information on the progress of the investigation.

If the employee is not in work (e.g. due to annual leave or sickness) management may carry out the suspension when the employee returns to work. However, where the return-to-work date is not known, management should contact the employee as soon as possible and attempt to undertake the suspension in person. (It would not normally be considered reasonable to do this by telephone or letter. Only in exceptional circumstances, where it is unavoidable, should this be considered.)

Next Steps

- All suspensions will immediately be confirmed in writing. The CEO will be notified.
- The matter should be investigated without delay.
- At regular intervals the need for suspension to continue will be reviewed.

Lifting the suspension

If the suspension is lifted, sensitive and supportive arrangements will be put in place to manage the return to work.

Appendix 5 - Employee Representation

Employees have a statutory right to be accompanied by a work colleague or trades union official at disciplinary or grievance hearings. Representation at other meetings relating to employment issues is encouraged where it is seen as a positive way of moving things forward and negotiating a mutually satisfactory outcome.

Role of Representative

A representative can:

- support the employee during the hearing/meeting by responding on the employee's behalf, if the employee requests this.
- attend meetings to support an employee who is to be suspended. However, it should be noted that a suspension would not be delayed if a representative were unavailable.
- liaise with a line manager, or investigating officer, with regard to the employee they are representing.
- take reasonable time off work without loss of pay to fulfil the role.

A representative cannot:

- answer any questions on behalf of an employee who is required as a witness under the proceedings in question.
- act as a trades union representative unless they are either a full-time official or accredited by their own trades union to perform such a role.

Appendix 6 - Appeals

The appeal is NOT a rehearing of the original case. It is a review of the decision-making process, to consider whether the decision taken by the Disciplinary Panel was fair.

An appeal hearing provides the employee or former employee with the opportunity to have the decision-making process reconsidered. The appeal will be heard by a different panel in accordance with the scheme of delegation.

Appeal hearings are an integral part of a fair disciplinary process. To ensure a fair and sensitive process is followed, panel members whose role it is to hear appeals will at all stages before, during and after proceedings:

- conduct themselves impartially
- show due respect and courtesy to all parties
- recognise the uncomfortable, unfamiliar, and stressful nature of proceedings for all concerned (including witnesses)
- ensure that all parties have the full opportunity to put their case forward
- pay due attention to evidence presented
- ask questions to clarify points during the hearing
- be mindful of the consequences of their decisions
- ensure that an appropriate record of proceedings is taken
- carefully record their decision and the reasons for their decisions.

Procedure

An appeal must:

- be submitted in writing in accordance with the letter confirming the disciplinary decision - be received within 5 working days of receipt of the letter that confirms the disciplinary decision.

- provide 7 days' notice in writing, in advance of the time and place of the hearing. The appellant has the right to be represented by a trade union representative

The appeal will follow the same format as the original hearing as set out at [Appendix 7 "Structure and Conduct of Hearings"](#).

This comprises:

- introductions and explanation of process - presentation of reasons for the decision by the chair of the original panel (with reference to documents and witnesses as appropriate)
- questioning of chair of original panel (by appellant, appellant's representative, and appeals body and adviser)
- presentation of appellant's case (with reference to documents and witnesses as appropriate)
- questioning of appellant's case and witnesses (by chair of original panel, appeals body and adviser)
- final summaries from chair of original panel and appellant (in that order) - adjournment for the appeals body to make a decision.

The appeals body will determine whether to:

- uphold the original finding and outcome; or - uphold the original finding but modify the outcome (by, for example, substituting it for a lesser sanction or outcome); or
- not uphold the original finding and in doing so remove the original sanction or outcome, or substitute for a lesser sanction or outcome.

The outcome of the appeal will be given orally at the end of, or as soon as possible after, the hearing, and will be confirmed in writing (by recorded delivery) within 5 working days.

Subject only to any statutory rights the appellant may wish to exercise, the decision of the appeal hearing will be final and no further rights of appeal or hearing will be allowed under this procedure.

There are circumstances in which an employee who is dismissed considers the dismissal unfair and they may apply to take their case to an Employment Tribunal. If an Employment Tribunal claim is received please contact the CEO and the Trust HR Advisor immediately for advice.

Appendix 7 - Structure and Conduct of Hearings

Structure of the Hearing

1. Introductions and explanation of the hearing process by the Hearing Officer/Chair of the hearing.
2. Presentation of the alleged misconduct by the Investigating Officer (termed, "Presenting Officer" - at appeal hearings the Presenting Officer might be the original Hearing Officer rather than the Investigating Officer.)
3. Witnesses to be called as necessary, by the Presenting Officer, and to leave after:
 - questioning by the Presenting Officer
 - questioning by the employee/appellant and their representative
 - questioning by the Hearing Officer/members of the hearing and HR Consultant
4. Employee/appellant and their representative to ask questions of the Presenting Officer.
5. Hearing Officer/members of the hearing and HR Consultant to ask questions of the Presenting Officer
6. Employee/appellant and their representative to respond to the allegation, calling witnesses if necessary.
7. Witnesses to be called as necessary, by the employee/appellant, and to leave after
 - questioning by the employee/appellant and their representative
 - questioning by the Presenting Officer
 - questioning by the Hearing Officer/members of the hearing and HR Consultant.
8. Presenting Officer to ask questions of employee/appellant and their representative.
9. The Chair/members of the hearing and HR Advisor to ask questions of the employee/appellant and their representative.
10. Summing up (with no new information introduced). Presenting Officer first, then employee/appellant and their representative.
11. Hearing adjourned for the Chair/members of the hearing to consider the case. All parties will withdraw, with the exception of the Human Resources Advisor, to allow the Chair/members of the hearing to come to a decision. The Human Resources Advisor will remain to provide advice. However, the decision is the responsibility of the Chair/members of the hearing.
12. Hearing to be reconvened and the Chair/Chair of the hearing to verbally announce the decision.

Conduct during a Hearing

The role of the Chair/Chair of the hearing is to:

- Chair the hearing.
- Be responsible for the proper conduct of the hearing.
- Ensure both parties are provided with adequate opportunity to fully state their case.
- Take notes and ask questions, as appropriate.
- Decide what action to take, based on the evidence presented.
- Inform the employee of their decision, which is subsequently confirmed in writing. The letter should be sent via the post by recorded delivery.

The Panel's role is to:

- Listen to the evidence presented by all parties
- Ask questions of parties as appropriate
- Decide whether or not misconduct has been committed by the employee and whether this warrants dismissal

The panel can only consider the allegation(s) submitted and no other matter will be considered. The Committee may only ask questions during the course of the hearing, they should refrain from making comments or judgements until the adjournment.

The HR Consultant's role is to:

- Clarify any procedural matters raised during the course of the hearing
- Provide professional advice to the Chair/Committee during the hearing and during the decision-making process
- Ask any relevant questions of any parties as appropriate

Standards of Behaviour

All those involved in the hearing are expected to be respectful and courteous.

Any behaviour from any party deemed to be inappropriate, offensive, intimidating, malicious, insulting or abusive and/or intended to undermine, humiliate, or injure the other party will not be tolerated.

Witnesses

Witnesses should provide relevant evidence and respond only to questions they are asked.

Documentation

It is the responsibility of each party to ensure that all evidence they wish to refer to is included in the bundle, which is circulated to all parties prior to the hearing.

New documentary evidence can only be submitted at the discretion of the Chair/Chair of the hearing.

It is felt that the relevance of any submission is questionable; the Chair/Chair of the hearing will look for clarification from the HR Advisor prior to proceeding on that point. It is important to consider the General Data Protection Act 2018 when submitting any personal information to other parties, and again clarification must be obtained from the HR Consultant if personal information is supplied without the express consent of the individual concerned. If consent is not given, the documents will need to be either anonymised, or not supplied to maintain the duty of confidentiality to other employees.

Witnesses can be provided with necessary/appropriate documentary evidence to refer to during the hearing.

Adjournments

An adjournment may be sought at any time during the hearing process where appropriate.

The decision to adjourn rests with the Chair/Chair of the hearing.

Appendix 8 - Referrals to Regulator Professional Bodies

If an employee is dismissed or resigns before a disciplinary process is completed and the Trust considers that it may have dismissed the employee at the outcome of the process, there may be a statutory duty to report the case to an appropriate regulatory professional body. (This is applicable in cases of incompetence as well as misconduct.)

Teacher Regulation Agency (TRA)

The Teacher Regulation Agency (TRA) acts on behalf of the Secretary of State for Education and is responsible for investigating allegations of serious misconduct against teachers and Heads in schools in England.

If appropriate the TRA can prohibit a teacher from teaching in schools.

Employers have a statutory duty to consider referral of cases involving serious professional misconduct to TRA. Where a teacher's employer has dismissed the teacher for misconduct or would have dismissed them had they not resigned first, they must consider whether to refer the case to TRA.

The Academy must refer to the Teacher misconduct referral form for employers and seek advice from the Trust HR.

Allegations of serious misconduct against a teacher may be referred to TRA by any of the following:

- a teacher's employer, including an employment or supply agency
- members of the public who think that a case of misconduct by a teacher is serious enough to warrant a prohibition order
- the police
- the Disclosure and Barring Service (DBS) and other regulators who are aware of relevant information

A referral is appropriate if the alleged misconduct is so serious that it warrants a decision on whether the teacher should be prevented from teaching. Cases of less serious misconduct, and all cases of incompetence, should be dealt with locally by employers.

TRA can put an interim prohibition order in place to prevent a teacher from teaching until their case has been fully investigated. The Prohibition of Teachers document explains (available on the Government Website) provides advice on the factors relating to decisions leading to the prohibition of teachers from the teaching profession, the types of misconduct and relevant offences that may lead to prohibition.

Disclosure and Barring Service (DBS)

Employers have a legal duty to make a referral to the DBS where:

- An individual has harmed, or poses a risk of harm, to a child or vulnerable adult;
- The harm test is satisfied in respect of that individual;
- The individual has received a caution or conviction for a relevant offence, or if there is reason to believe that individual has committed a listed relevant offence; and
- That individual has been removed from working (paid or unpaid) in regulated activity, or would have been removed had they not left
- The DBS will then consider whether to bar the person. You should make a referral as soon as possible and ordinarily at the conclusion of an investigation, when an individual is removed from working in regulated activity.
- The DBS sets out the circumstances where a child care organisation must refer names to the Secretary for State for consideration of inclusion in the Barred List
- The Trust will refer on to the Teacher Regulation Agency (TRA) misconduct cases relating to registered teachers,

Making Referrals

A line manager will be responsible, with the assistance of the Trust HR Advisor, for ensuring that a referral has been made.

Misconduct referrals will be made promptly within one month of the termination of employment (or, where applicable, suspension) and be accompanied by supporting evidence.

Appendix 9 - Allegations involving Child Protection

When an allegation is received within the academy (anonymous or otherwise), which indicates that an employee may be unsuitable to continue to work with children in their present position or in any capacity, disciplinary action may not be the priority.

The following course of action should be used in respect of all cases in which it is alleged that an employee of the academy 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 s/he would pose a risk of harm if they work regularly or closely with children.

Whilst not subject to any formal disciplinary action the principles outlined in this appendix should similarly be applied to volunteers working on behalf of the academy.

On receipt of an allegation it should be reported to the senior manager (child protection coordinator) identified in the academy's child protection procedure immediately, unless that person is the subject of the allegation, in which case it should be reported directly to the Local Authority designated officer (LADO) for child protection issues.

The child protection coordinator in the academy should not investigate the incident by interviewing either those directly involved or any witnesses, but should take steps:

- to establish when and where the incident is alleged to have occurred and;
- what led up to it, and who was involved, including whether anyone else was present.

If initial enquiries confirm the allegation is likely to meet any of the criteria set out in paragraph 2 above, the academy should report it to the LADO at the earliest opportunity, at the latest within one working day.

Multi-agency involvement

The LADO and in most circumstances a HR representative will discuss the matter with the academy and, where necessary, obtain further details of the allegation and the circumstances in which it was made.

Initial discussions with the LADO should take place in advance of an employee being informed of an allegation, in order for agreement to be reached on what information can be disclosed to the individual. The discussion should also consider whether there is evidence/information that establishes that the allegation is false or unfounded.

If the allegation appears to be with some foundation, discussions will take place which determine whether there is cause to suspect that a child is suffering, or is likely to suffer, significant harm, and appropriately refer the matter to children's social care and ask for a 'strategy meeting' to be convened straightaway.

If there is no cause to suspect that 'significant harm' is an issue, but a criminal offence might have been committed, the LADO will immediately inform the police and convene a similar discussion to decide whether a police investigation is needed.

Strategy meeting

The strategy meeting will include as appropriate, children's social care and/or the police. The strategy meeting will also normally involve the LADO, a senior member of the HR service team, a representative of the academy and any other agencies involved with the child.

The purpose of the strategy meeting will be to evaluate the allegation and decide how it should be dealt with. Available information about the allegation, the child and the person against whom the allegation has been made, will be shared to consider whether a children's social care/police investigation is needed and, if so, agree the timing and conduct of that.

Strategy meeting discussions will also inform the consideration of any recommendation for a disciplinary suspension, although the decision to suspend can only be made by the academy.

In circumstances where the parents/carers of the child are not aware of the allegation, the strategy discussion will decide how and by whom they should be informed.

In cases where a police investigation is necessary, discussions will also consider whether there are matters that can be taken forward in accordance with the disciplinary procedure, in parallel with the criminal process, or whether any disciplinary action needs to wait for completion of the police enquiries and/or prosecution.

Action following initial consideration

Where initial evaluation or the strategy meeting indicates an allegation does not appear to warrant police investigation or enquiries by children's social care, but professional misconduct may still have occurred the initial joint evaluation will also consider whether the allegation is more appropriately dealt with through the formal disciplinary procedure.

Where further investigation is required to inform consideration of disciplinary action, this should be conducted in accordance with the formal disciplinary procedure. The LADO in consultation with the HR representative and the academy should discuss who will conduct the disciplinary investigation and how to proceed.

If the nature of the allegation does not require formal disciplinary action, appropriate action should be implemented without delay. If a disciplinary hearing is required, the employee should be provided with the appropriate notice and be invited to attend a hearing in accordance with the disciplinary procedure.

The LADO will continue to liaise with the HR representative and the academy to provide support and guidance as necessary. Any relevant information obtained in the course of enquiries by children's social care or the police will be made available where possible, to assist disciplinary action.

Whilst volunteers will not be subject to any formal disciplinary action it is vital that every effort is made to achieve a conclusion in all cases of allegations bearing on the safety or welfare of children.