



INSPIRATION THROUGH COLLABORATION

# Disciplinary

Approved by: Trust Board

Last reviewed: July 2021

Next review due: July 2022

# DISCIPLINARY POLICY

## Scope

This policy is written and approved at board level, but applies to all employees of schools, settings, and services, hereafter the 'organisations', within The Claxton Trust, except for non-teaching employees within their probationary period who are regulated by the probationary policy of the trust. This policy does not form part of any employee's contract of employment and it may be amended at any time.

This policy has been produced in consultation with the professional associations/trade unions based on a model produced by Herts for Learning.

## 1. Introduction

The aims of this Disciplinary Policy are to:

- set out the standards of conduct expected of all staff
- ensure consistent and fair treatment for all
- ensure that any disciplinary matter is dealt with fairly and in a timely manner.

The policy and procedure applies to all employees except for non-teaching employees within their probationary period who are regulated by the Trust's probationary policy. It does not apply to agency workers, consultants, self-employed contractors or volunteers unless the allegation relates to safeguarding.

This policy and procedure does not form part of any employee's contract of employment and it may be amended at any time

Where appropriate, actions taken by employees outside working hours may also fall within the scope of this policy.

## 2. Disciplinary rules

It is accepted that to differentiate between misconduct and gross is difficult, therefore each case must be treated on its own merits. Since the examples are guidelines, discretion will have to be exercised by the Trust in categorising breaches of discipline, having regard to all the circumstances under which the breach of discipline occurred.

### 2.1. Examples of misconduct

The following non-exhaustive list provides examples of matters that will usually be regarded as misconduct:

- minor breaches of policies
- poor timekeeping
- work not of the required standard (where capability is not in question)
- disruptive behaviour
- time wasting
- refusal to follow instructions
- inappropriate or offensive behaviour for example foul or abusive language
- minor damage to, or unauthorised use of, Trust property/facilities
- negligence in the performance of duties.

### 2.2. Examples of gross misconduct

Gross misconduct is a more serious act of behaviour that irreparably undermines the implied duty of mutual trust and confidence with the Trust or prejudices its reputation or business. The following non-exhaustive list provides examples of matters that will usually be regarded as gross misconduct:

- theft or fraud
- falsification of any Trust records
- violent or threatening behaviour
- serious damage or misuse of Trust property/premises
- wilful or persistent refusal to carry out a management instruction or any act of serious insubordination
- criminal offences or conduct, including those committed outside the workplace, which impact on the employee's ability or suitability to do their job
- serious failure to follow child protection procedures
- behaviour that has harmed or may have harmed a child
- behaviour that indicates an employee may not be suitable to work with children including such behaviour outside of the workplace which may or may not involve children
- gross negligence
- dishonesty involving anything that relates to life in a school
- covertly recording hearings, meetings or colleagues
- harassment, bullying or discrimination against any other person
- unauthorised absence from the workplace
- serious breach of trust and confidence
- serious breach of health and safety procedures or regulations
- smoking on Trust premises
- being under the influence of alcohol or drugs on Trust premises or at a school event
- failure to maintain appropriate professional boundaries with any pupil
- behaviour prejudicial to the good name or interests of the Trust or school or which may bring the Trust into disrepute
- breach of confidentiality or failure to ensure that confidential information is kept secure
- inappropriate use of the Trust's Information Technology including email or internet abuse or and accessing sites containing pornographic, offensive or obscene material.
- inappropriate use of social media

### **3. Safeguarding and child protection allegations**

If the allegation is that the employee has:

- behaved in a way that has, or may have, harmed a child
- possibly committed a criminal offence against or related to a child
- behaved towards a child in a way that indicates that he/she is unsuitable to work with children
- behaved, or may have behaved, in a way that indicates they may not be suitable to work with children.

This includes where an employee, agency worker or volunteer is involved in an incident outside of school which did not involve children but could have an impact on their suitability to work with children.

In some circumstances, the Trust will have to consider an allegation against an individual not directly employed by them, where its disciplinary procedures do not fully apply, for example, supply teachers provided by an employment agency.

Whilst the Trust is not the employer of agency workers, we must ensure allegations are dealt with properly. In no circumstances should a setting within the trust decide to cease to use an agency worker due to safeguarding concerns, without finding out the facts and liaising with the Local Authority Designated Officer (LADO) to determine a suitable outcome. The Trust will discuss with the agency whether it is appropriate to suspend the worker, or redeploy them to another part of the Trust, whilst an investigation is carried out.

The Trust will give reasonable consideration, before taking any action, to making a referral to the Local Authority Designated Officer and whether there is an obligation, statutory or otherwise, to make an appropriate disclosure to any relevant bodies.

#### **4. Financial irregularity**

The Academies Financial Handbook confirms Trusts must notify the Education and Skills Funding Agency (ESFA) of any instances of fraud, theft and/or irregularity exceeding £5,000 individually, or £5,000 cumulatively in an academy's financial year.

#### **5. Informal process and Management Advice**

It may be appropriate for minor conduct issues to be dealt with informally through management discussion rather than a formal process.

Where improvement is required, management advice clarifying the expectations of the Trust may be issued.

Expectations of the employee will be set out in writing and a copy will be given to the employee and placed on their personnel file. This informal management advice does not constitute a formal warning but may be referred to as part of any further disciplinary proceedings within reasonable timescales

Formal steps will be taken under this policy if the matter is not resolved informally or an informal approach is not appropriate.

#### **6. Formal process**

##### **6.1. Suspension**

There may be instances where suspension with pay is necessary whilst investigations are carried out.

Where possible, a meeting will be held with the employee at which the allegations and reasons for considering suspension will be discussed. The Trust will consider reasonable requests from an employee to be accompanied by a trade union official or work colleague where this does not unreasonably delay the process.

The Trust will consider reasonable alternatives to suspension where they exist. If suspension is deemed necessary then this does not imply that a decision about the veracity of the allegations has been made and the period of suspension will not be considered as disciplinary action.

Suspension will be reviewed periodically to consider whether circumstances surrounding the suspension have changed.

During suspension a named contact will be assigned to keep in touch with the employee

Where the employee is remanded in custody, the Trust will consider whether it is appropriate for the period of suspension to be unpaid.

##### **6.2. Investigation**

No disciplinary action or sanction will be applied until the allegations have been investigated.

Unless otherwise impracticable, different individuals will carry out the investigation and disciplinary hearing.

An investigation may consist of the gathering of evidence or investigation interview with the employee or witnesses as the case requires.

Investigation interviews are solely for the purpose of fact-finding and the employee will be informed at the outset that the meeting is an investigation interview.

There is no statutory right for an employee to be accompanied at a formal investigatory meeting. The Trust will consider reasonable requests from an employee to be accompanied where they would be otherwise unable to reasonably participate otherwise. The companion is limited to those persons outlined in paragraph 6.5.

The employee will be informed as soon as possible as to the conclusion of the investigation and its outcome.

If the allegation is without foundation, no further formal action will be taken and the employee will be informed of this in writing

### **6.3. Pre-agreement**

It is perfectly acceptable for an agreement to be arrived at prior to the hearing between both parties in circumstances where the facts are not in dispute and both parties agree on the sanction.

A formal meeting should be held to discuss the key findings of the investigation and issue the pre-agreed sanction.

An employee will be given the right of appeal against any pre-agreed sanction.

This approach will not apply where the allegation concerns the safeguarding and protection of children, where the harm threshold has or may have been met or where allegations relate to criminal activity or fraud.

It is not appropriate to dismiss an employee by means of pre-agreement.

There will be a right to revert to the procedure outlined within this disciplinary at any point prior to the formal pre-agreement meeting taking place.

### **6.4. Invite to formal hearing**

If it is decided that there is a disciplinary case to answer the Trust will invite the employee to a formal disciplinary hearing.

The employee will receive at least five working days' notice of the hearing in writing.

Notification will include details of the allegations, possible consequences and sufficient information to enable the employee to answer the case at the formal hearing. This will include any evidence the employer proposes to use in the formal hearing.

### **6.5. Right to be accompanied**

The employee has the right to be accompanied and supported at a formal hearing by a trade union representative or work colleague.

The employee should provide the name of their representative within 2 working days of the hearing. Where the chosen companion is unavailable on the day scheduled for the hearing, the employee may request that the hearing be rescheduled to an alternative time that is reasonable and within 5 working days of the scheduled date.

If the employee is unable to attend a hearing within 5 working days the hearing may take place in a timeframe at the Trust's discretion. If the representative remains unavailable, the employee may be asked to choose another representative.

During the hearing the companion may address the hearing to put the employee's case forward and confer with the employee however they may not answer questions on the employee's behalf or address the hearing if the employee indicates they do not wish this.

### **6.6. Disciplinary panel**

The individual responsible for the disciplinary investigation will not be a member of the panel.

Where dismissal is not a possibility a panel may reasonably consist of one appropriate individual.

Where dismissal is a possible outcome, a panel of three appropriate individuals will normally hear the case. Where this is impracticable, or would cause unreasonable delays, a panel of two individuals may hear the allegations.

## **6.7. Formal hearing**

The employee (and their companion) must make every effort to attend the hearing. If the employee fails to attend the hearing without good reason, or is persistently unavailable, the Trust may make a decision in their absence based on the evidence available.

A Human Resources advisor may attend the disciplinary panel to provide professional support and advice to the panel. This advisor will not be a decision maker in this process.

A note taker may be present at the hearing. They will make a record of the hearing, but not of the confidential deliberations of the panel. The employee will receive a copy of these notes with the formal outcome letter unless otherwise impracticable.

The Trust does not allow the audio recording of disciplinary hearings unless there are pre-agreed exceptional circumstances. Covert recording is considered gross misconduct.

At the hearing the employee will be entitled to:

- a full explanation of the case against them
- set out their case and respond to any allegations
- ask questions, present evidence and call relevant witnesses
- raise points about any information provided by witnesses.

Any witness to be called at a hearing must have submitted a written statement of their knowledge of the case at least 3 working days in advance of the hearing. These statements will be shared with the all relevant parties without delay.

The Disciplinary Panel may adjourn the hearing if it is necessary to do so. The employee will be informed of the likely period of any adjournment.

The panel will convey the decision to the employee, in writing, within 7 calendar days or as soon as is reasonably practicable. The employee will be notified of their right of appeal under this policy.

## **7. Disciplinary action**

Where, following a disciplinary hearing, the panel reasonably believes that the employee has committed a disciplinary offence, the following disciplinary action may be taken:

### **7.1. First written warning**

Where misconduct has occurred and informal discussions have not led to sufficient improvement or are not considered appropriate, a formal written warning may be issued.

A written warning will remain active for a period of 12 months, unless the employee is notified to the contrary, and will be recorded on the employee's personnel file.

After the expiry of the warning period, the warning will remain permanently on the personnel file but will be disregarded in deciding the outcome of future disciplinary proceedings.

The employee will need to be at work throughout the relevant warning period. If they should be absent from work for any reason the Trust reserves the right to extend the period of warning at their discretion.

### **7.2. Final written warning**

If an employee's misconduct is sufficiently serious, or if there are existing live warnings, it may be appropriate to move directly to a final written warning.

A final written warning will normally remain active for a period of 12 months or in exceptional circumstances up to 24 months.

After the expiry of the warning period the warning will remain permanently on the personnel file but will be disregarded in deciding the outcome of future disciplinary proceedings.

The employee will need to be at work throughout the relevant warning period. If they should be absent from work for any reason the Trust reserves the right to extend the period of warning at their discretion.

### **7.3. Dismissal (including summary dismissal for gross misconduct)**

Where the employee has committed further acts of misconduct during the life of a final written warning the Trust may elect to dismiss with notice or payment in lieu of notice.

Where the employee has committed an act of gross misconduct, the employee may be summarily dismissed without notice, regardless of whether there are live previous warnings on file.

Where the allegations relate to safeguarding or child protection issues the Trust will consider whether it is appropriate to make a referral to the DBS.

If a Teacher is summarily dismissed the Trust will make a referral to the Teaching Regulation Agency.

## **8. Right to appeal**

Employees have the right of appeal against any disciplinary sanction given at any stage of the formal process.

Any employee who wishes to appeal a sanction should do so in writing within seven calendar working days of the receipt of a decision letter to the person named in the letter. The employee's letter to lodge the appeal should include the grounds for appeal i.e. breach of procedure, severity of disciplinary penalty, against the fact or all of the above reasons.

If the employee is appealing against dismissal, the date on which dismissal takes effect will not be delayed pending the outcome of the appeal. However, if the appeal is successful the employee will be reinstated with no loss of continuity of service or pay or any other detriment.

## **9. Appeal process**

The appeal hearing will take place as soon as is reasonably practicable and without unreasonable delay.

Wherever possible the appeal will be heard by an appropriate individual, or panel of individuals, who have not been involved in the decision to impose a disciplinary sanction.

At the discretion of the Trust the appeal may be a complete re-hearing of the matter or it may be a review of the fairness of the original decision.

New evidence will only be considered if relevant and there is a good reason why this had not been included as part of the original hearing.

The decision of the appeal panel will be final. It will be confirmed in writing as soon as reasonably practicable, usually within five working days.

## **10. Disciplinary action involving a trade union representative**

If the employee is an accredited trade union representative recognised by the Trust for collective bargaining purposes no action will be taken under this policy, save for of suspending the employee in a case of suspected gross misconduct, until the matter has been discussed (with the employee's consent) with a full time official of the relevant union.

If consent is withheld the Trust may continue to apply its policy.

## Appendix 1 – Disciplinary Procedure Flowchart

