



**The  
Three  
Rivers**  
Learning Trust

<b>Name of Policy</b>	<b>Staff Disciplinary Policy &amp; Procedure</b>
<b>Policy Number</b>	<b>S11</b>
<b>The Three Rivers Learning Trust</b>	
<b>Named Person(s)</b>	<b>AVEC</b>
<b>Review Committee</b>	<b>Full Board</b>
<b>Last review date</b>	Spring 2021
<b>Next review date</b>	Spring 2023

## **Policy Outline**

### **What is the policy about?**

This policy has been designed to assist the Learning 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 industrial relations.

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 Learning 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.

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.

The policy incorporates relevant recent legislation such as the Acas statutory guide on Discipline and Grievance and the Equality Act 2010 and should be read in conjunction with the accompanying procedure. A "tool kit" has also been developed which includes additional guidance on a range of issues covered in the policy and procedure as well as example letters which can be used.

### **Who does this policy apply to?**

This procedure applies to all employees of the Learning Trust

### **Scope of the policy**

The procedure 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, 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 Learning Trust's Capability policy and procedure.

No disciplinary action should be taken against trade union representatives until the circumstances of the case have been discussed with a senior trade union representative or full-time representative, after obtaining the employee's permission. This does not apply to cases where informal guidance/support is given.

## **Support**

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.

## **Confidentiality**

It is essential that all parties concerned have a duty of confidentiality regarding matters dealt with under this 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. Further advice on confidentiality is provided under the section on Suspension.

Under the GDPR (General Data Protection Regulations 2018) and the Data Protection Act 1998 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.

## **Dealing with abuses of the policy**

Employees who attempt to abuse this policy may themselves face disciplinary action. The Learning Trust takes false or misleading accusations very seriously which 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.

## **Equality**

The Learning Trust recognises its responsibility for ensuring equality and avoiding unlawful discrimination, both direct and indirect, against the 9 "protected characteristics" identified in the Equality Act 2010 of ;

- Age
- Disability
- Gender Reassignment
- Pregnancy and maternity
- Race (including ethnic or national origins, colour and nationality)
- Religion and belief
- Sex
- Sexual Orientation
- Marriage and civil partnership

The Learning Trust will operate this policy consistently and in a non-discriminatory way by taking account of any relevant individual circumstances that may impact on the situation.

### **Publicising/distribution of the policy**

A copy of this policy is available from key personnel within the Learning Trust and will be made available to employees on request. A copy will also be placed on FROG.

New staff will be informed of the existence of this policy as part of their formal induction.

Parties involved in the processes within this policy will be allocated a copy as part of the formal notification process.

### **Reviewing the policy**

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.

### **External investigators**

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

### **Disciplinary Procedure**

#### **Core principles**

In handling disciplinary cases employers must act fairly and reasonably. The Learning 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;
- The policy will be applied consistently;
- 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;
- Employees will be informed of the basis of the problem and given the opportunity to state their case before decisions are reached;
- Having conducted an investigation, 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;

- 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 safeguarding issues, there may be a requirement for legal/social care interventions – see section on protection of children and vulnerable adults for further information.

## **Responsibilities**

### **Employees**

All employees have a responsibility to conduct themselves to the highest standards at all times and to conform to the Learning 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.

### **The CEO**

The CEO is responsible for

- Ensuring that employees are aware of the Learning 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.

### **The Learning Trust's HR provider**

The Learning Trust's HR Provider is responsible for advising managers on effective case management. Relevant HR staff may accompany managers at disciplinary investigatory meetings, Hearings and Appeal Hearings in an advisory capacity and advise trustees.

### **Delegation to the CEO**

In accordance with the Education Act 2002, the Board of trustees has the overall responsibility for all staff dismissals in its schools. However in accordance with sections 35(8) and 36(8) of the Education Act (2002), other than in exceptional circumstances, the Board of trustees should delegate these responsibilities to the CEO. However, where

it is decided to delegate this role to the CEO, it would no longer be appropriate for the CEO to carry out the investigation. This activity should then be delegated to a member of the senior leadership team.

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

- Written warning
- Final written warning
- Dismissal

Decision makers, panel members and those hearing an appeal cannot have a family relationship with the member of staff involved and must be replaced by a suitable, unconflicted, person.

**Authorised Officers**

- **Suspensions** from duty can be authorised by the CEO or Chair of the Board of trustees. The CEO and the Chair of the Board of trustees/Board of trustees Committee can lift suspensions.
- **The Investigating Officer** is appointed to investigate allegations of misconduct and will usually be the manager of the employee against whom allegations have been made. However, where this is not appropriate due to the circumstances of the case, this may be another manager appointed by the CEO or an appropriate external person. Where an allegation has been made against the CEO the investigating officer will be the Chair of the Board of trustees or an external independent officer appointed to undertake the investigation.
- **The Hearing Officer/ Panel (either the CEO or Committee A of the Board of trustees)** is appointed to conduct a Disciplinary Hearing, decide whether disciplinary action is warranted and determine the appropriate level of sanction. When the possible sanction at a hearing is dismissal, the CEO can only hear the case when this responsibility has formally been delegated to them by the Board of trustees (see above.)
- **The Appeal Hearing Panel (Committee B of the Board of trustees)** is appointed to conduct a Disciplinary Appeal Hearing.

Authorised officers are detailed in the table below:

<b>Stage</b>	<b>Level of Sanction</b>	<b>Authorised Officer</b>	<b>Appeal to</b>
1	Written Warning	CEO and/or Board of trustees Committee 'A'	Board of trustees Committee 'B'
2	Final Written Warning	CEO and/or Board of trustees Committee 'A'	Board of trustees Committee 'B'
3	Dismissal	CEO and Board of trustees Committee 'A'	Board of trustees Committee 'B'

## **Role of the Investigation Officer**

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. For further details on this role and advice as to who should carry out the investigation see the section regarding investigations.

### **CEO procedure**

Where there are concerns about the conduct or behaviour of the CEO, the matter should be referred to the Chair of the Board of trustees who will appoint an investigating officer. Any proceedings, that ultimately result in a formal hearing must be considered by trustees.

## **Human Resources Support**

The CEO and Chair of the Board of trustees should seek advice and guidance from their Human Resources provider when deciding whether to apply this policy.

## **Misconduct**

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

- Unauthorised absence (including leaving the workplace without permission or due cause);
- Poor performance due to an employee's own carelessness, negligence or lack of effort (the Learning Trust's 'Capability Policy' will be used for performance issues not related to misconduct);
- Persistent poor time keeping;
- Smoking in areas designated as non-smoking;
- Insubordination or using abusive language;
- Damage or misuse of Learning 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;
- Poor attendance (outside the areas covered by the Learning Trust's "Sickness Management Policy").

## **Gross Misconduct**

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

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 Learning Trust will always follow a fair disciplinary process before dismissing for gross misconduct.

The following are examples of offences which may constitute gross misconduct. This list is neither exclusive nor exhaustive and each case will be determined on the individual facts.

Examples are:

- Theft, fraud, bribery or corruption whether internal or external to the Learning 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 Learning Trust and other property;
- Unlawful discrimination, harassment or victimisation;
- Serious misuse of the Learning Trust's, or an associated organisation's, property or name;
- 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 Learning Trust premises;
- Bringing the Learning Trust, or an associated organisation, into serious disrepute;
- 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 Learning 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.

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.



If, following appropriate investigation and hearing, the Learning Trust are satisfied that gross misconduct has occurred, the result will normally be summary dismissal without notice.

### **Dismissals For 'Some Other Substantial Reason' (SOSR)**

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' (i.e. the breakdown of the working relationship). Further advice is available from the Learning Trust's HR provider.

### **Protection of children and vulnerable adults**

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 CEO will be responsible for informing the appropriate professional bodies e.g LADO (Local Authority Designated Officer).

In addition, it may be necessary to also refer to guidance based on the Department for Education – 'Handling Allegations of Abuse made against Adults who Work with Children & Young people'.

### **The Regulation of Investigatory Powers Act 2000 (RIPA)**

Under no circumstances should an employee be investigated by the use of covert surveillance techniques without prior approval and completion of appropriate authorisation. This is to prevent any breaches of the Human Rights Act 1998 and to comply with The Regulation of Investigatory Powers Act 2000 (RIPA).

### **The right to be accompanied**

Employees have a statutory right to be accompanied by a work colleague, a trade union representative or an official employed by the trade union at formal disciplinary hearings 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.

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.

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.

## **THE DISCIPLINARY PROCEDURE**

### ***Informal Process – Management Guidance***

The Learning 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 CEO and advice from the Learning Trust's HR provider before instigating the informal process.

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 HR involvement may be agreed in certain cases.

The aim of the discussion is to ensure that the member of staff understands the concerns and that the reasons for this 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.

### **Letter of Management Advice**

Depending upon the nature of the misconduct, a letter of management advice may be issued as part of the informal process, which will be kept on the employee's personal file. Letters of management advice inform employees of where their conduct has fallen short of the Learning 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 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 in the future 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 subject to any particular time limit.

If the required improvement is not achieved and/or sustained or there are further incidents of a similar nature, the formal disciplinary procedure may be invoked and the letter of management advice referred to. See the toolkit for an example letter of management advice.

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

## **Suspension**

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 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 students 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
- the continued presence of the employee within the workplace could place the employee or others at risk
- where there is concern that the investigation could be impeded i.e. it is possible that the employee may influence witnesses or interfere with relevant evidence
- where there is a criminal investigation or proceeding.

In some cases it may be appropriate to grant paid leave of absence to a member of staff in order that preliminary investigations can take place to establish whether formal suspension is appropriate. **Leave of absence should not normally exceed three working days.** 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. Suspensions may be made prior to the start of the investigation or later during the course of the investigation (if this becomes necessary).

If any decision is taken to go ahead with suspension, the employee should be orally advised by the CEO, about the suspension and the allegation(s) relating to the decision. Where any suspension decision relates to the CEO, the matter should be referred to the Chair of the Board of trustees, see the section on 'CEO procedures' for more information. The employee should also be told about the right to be accompanied at subsequent interviews and the procedure to be followed. The suspension must be confirmed in writing and should be sent out to the employee within 5 working days 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.

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 Learning 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.

The suspended member of staff should be given the name of a contact at the Learning 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.

### **Reviewing suspension**

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. Human Resources advice should be sought with regard to any on-going suspensions.

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 Learning Trust's usual sickness absence procedure will also be followed.

### **Illness/Absence during the Disciplinary Procedure**

If an employee becomes ill during the disciplinary process, the Learning Trust's Sickness Management Policy and Procedures will continue to be implemented as normal. The Learning Trust will also seek advice from Occupational Health on the employee's fitness to attend meetings, Hearings, Appeals etc.

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.

### **The investigation**

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 of evidence relating to the case;
- Taking a balanced view on whether there are sufficient grounds for an allegation of misconduct.

The investigating officer should write to the employee informing them that a detailed investigation will be conducted and inviting them to an interview as part of the investigation. The letter should include the allegations under investigation and the terms of reference for the investigation. For an example letter see the toolkit.

### **The role of the Investigating Officer**

The Investigating Officer's role is to ascertain the facts regarding all relevant issues as fairly and promptly as possible. 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.

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 timescale for conducting the investigation should be completed as quickly as possible and the employee should be kept fully informed throughout the investigation process.

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 will be invaluable when compiling the final report.

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.

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 Learning 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.

## **Investigation interviews**

The Investigating Officer will need to consider who they need to interview e.g. respondent, witnesses to the alleged incident(s), work colleagues, students 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.

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.

## **Witnesses and statements**

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.

## **Concluding the investigation**

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.** See the toolkit for a suggested framework for the investigation report.

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. 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 discussed previously at the final investigation interview with the employee.

### **Formal disciplinary hearing**

If it is considered necessary to convene a disciplinary hearing the employee will be informed of this in writing. The employee should be given at least 5 working day's/7 calendar days' notice of the hearing to allow sufficient time to prepare and arrange representation. The letter will include:

- Informing the employee that there is to be a disciplinary hearing
- The date, time and location of the hearing
- Sufficient information about the alleged misconduct or poor performance and its possible consequences to allow the employee to answer the case including supporting documents and witness statements. (The employee has a responsibility to provide his/her representative with a copy of this information)
- The right to be accompanied by a trade union representative or work colleague
- A copy of the disciplinary policy and procedure
- A copy of the procedure to be followed at the meeting (see the toolkit)
- Names of any witnesses that the Investigating Officer is requesting to attend
- Requesting 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. (This information should be provided at least 5 working days/7 calendar days prior to the hearing)
- Enquiring as to whether the employee has any reasonable adjustments for the hearing venue, for example, accommodating the needs of a person with disabilities.

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.

### **Postponing the hearing**

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 working days/7 calendar days after the original date.

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

## **The outcome of the hearing**

When deciding whether disciplinary action is appropriate and what form it should take, the Hearing Body should give consideration to:

- Whether the rules of the Learning 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.

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 taken into account, 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/Officer 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.

## **First Written Warning**

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.

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

## **Final Written Warning**

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.

### **Final Written Warning and Sanction Short of Dismissal**

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.

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

- details of the misconduct;
- a new contract (where appropriate);
- any potential impact on incremental progression 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.

### **Dismissal with notice**

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

### **Summary Dismissal – Dismissal without notice**

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. More details about what can constitute gross misconduct can be found earlier in

the procedure. Further information on issues to be taken into account when considering dismissal are provided in the toolkit.

### **Time limits for warnings**

Disciplinary action taken should be disregarded for disciplinary purposes after the specified period of satisfactory conduct. Warnings should then cease to be "live". However, the fact that a warning has expired does not mean that the misconduct in respect of which the warning was given can never be taken into account in any subsequent disciplinary process. There may be occasions where an employee's conduct is satisfactory throughout the period the warning is in force, only to lapse very soon thereafter. However, care again must be taken in these circumstances and consultations must take place with Human Resources.

### **Written confirmation of the outcome of the hearing**

The employee will be informed of the decision orally at the end of the hearing where possible. It is essential that this decision is confirmed in writing to the employee within 5 working days/7 calendar 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 taken into account when arriving at the decision
- Any mitigating circumstances that were taken into account 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.

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.

### **Right of appeal**

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 CEO within **5 working days/7 calendar days of receipt of the letter confirming the disciplinary action** and must clearly state the grounds for the appeal.

## **The Appeal**

The appeal will be heard by the Appeal Panel/ Committee and a representative from Human Resources will be in attendance to provide advice and guidance to the Appeals Body. An appeal is a re-hearing of the original disciplinary hearing. 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 and appropriate time would need to be allowed for both sides to consider it.

The employee will be given preferably at least 5 working day/7 calendar days notice of the date of the Hearing in writing. Employees have a legal right to be accompanied at Appeal Hearings by their trade union representative, workplace colleague or friend of their choice who does not have a conflict of interest. For the procedure to be followed at the appeal hearing see the toolkit.

### **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 working days /7 calendar days of the meeting. The decision made at this stage is final and concludes the schools disciplinary procedure.

Where any decision has been overturned, the Appeal Committee may give consideration to any other implications such as training requirements.

## **Dealing with special situations**

### **Criminal charges or convictions**

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.

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.**

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 Learning Trust given the nature of the alleged offence?
- Does the incident involve or affect other employees?
- Is there a breach of contract?

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

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 school 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.

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'.

### **What if the employee raises a grievance?**

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 from Human Resources should be sought.

Where the disciplinary and grievance cases are related it may be appropriate to deal with the issues concurrently and advice should be sought from Human Resources where appropriate.

## **Disciplinary Toolkit**

(to be used in conjunction with the Learning Trust's Discipline Policy and Procedure)

### **Preparation for the investigation interview**

Sound preparation for the interview will make establishing the facts easier to achieve. The Investigating Officer must know what he or she is trying to establish. At the interview it is good practice to:

- Arrange a suitable venue that is fully accessible and ensure that you will not be disturbed. Also, check with the interviewee as to whether they have any special requirements
- Allow the employee to be accompanied by a trade union representative, or an official employed by a trade union or work colleague. Although there is no right at this stage it is good practice to allow this and the opportunity should be extended to all employees being interviewed including witnesses
- Draft your main questions in advance
- Try and put the employee at his or her ease. Outline who you are and your role and explain the purpose of the interview
- Begin by outlining the matters to be discussed and explaining that the interview is by way of a preliminary enquiry. Start off by saying "I am looking into what happened on...when...and want to ask you some questions about it."
- Avoid an accusatory tone. Use probes like "I'm not quite sure what you meant when you said.... Would you like to explain it?"
- Use open questions (who, what, where, when, why, with whom, how) and ask follow up questions to check understanding
- Avoid leading questions and multiple questions
- Question the employee further if an explanation is given which is incomplete, inconsistent, evasive or otherwise unsatisfactory
- Avoid interruptions or the main purpose of the interview, which is to hear the employee's side of the story, can be lost
- Remind the interviewee that the proceedings are confidential and that matters raised should not be discussed outside the interview
- Remain impartial throughout the interview. It is important not to indicate agreement or judgement. Decisions can only be made at the end of the investigation when all available evidence can be analysed and balanced
- Keep an open mind and look for evidence that supports the employee's case as well as evidence against.

All interviews should be formally recorded in writing and signed by the interviewee. For an example of an interview record form see the toolkit. The Investigating Officer may need administrative support during the process, for example, to take notes or send correspondence. During the interview if the interviewee confesses to a criminal act or the interviewer believes that a criminal act may have been committed, then the interview should be suspended immediately and the matter referred to Human Resources for further advice.

## **Witnesses and statements**

The following guidance should be followed in relation to statements:

- Witnesses should be made aware that they are being interviewed as part of a disciplinary investigation and they may be called as a witness at a subsequent disciplinary hearing
- Statements should be in writing and need to be accurate with regard to date, time and place of each incident
- Include the opportunity and ability of the witness to observe clearly and with accuracy
- Include evidence such as knowledge of a system or arrangement, or the reason for their presence and why certain small details are memorable
- Consider possible reasons for fabrication
- Seek corroborative evidence
- Is any fear on the witness part genuinely sufficient to not require them to be involved in the disciplinary process further? If so, a decision will need to be made whether or not to continue with the disciplinary process
- If the process does continue and progresses to a disciplinary hearing, the Hearing Body can ask questions of the witness themselves and be satisfied about the weight to be given to the information
- The written statement, if necessary with omissions to avoid identification, should be made available to the employee or their representative
- If at any stage in the disciplinary hearing the employee raises issues to be put to a witness who cannot attend then consideration should be given to an adjournment so the relevant questions can be put to them
- In cases involving anonymous witnesses, it is particularly important that full and careful notes are taken – identifying dates, times and places of observations and incidents, the witness's opportunity to observe clearly and accurately and why the witness is aware of the incident. Where possible, corroborative evidence to support any anonymous allegations should be sought. In addition, if possible, comment may be included about possible motives linked to anonymous allegations
- Witnesses should be made aware of the need for confidentiality about the issues discussed and that they should not discuss the investigation with anybody else.

## **Investigation Report**

A suggested framework for the report should include:

- A brief introduction to the circumstances of the case
- Relevant background information on the employee e.g. post details, relevant letters of management advice, live disciplinary warnings
- A chronology of events and outline of timescales – including how the allegation(s) came to light, the events that have happened since i.e. suspension, dates of interviews; reasons for any delays in the process
- A list of interviewees
- What appropriate support mechanisms may have been offered to the employee, for example – training, mentoring, Occupational Health etc
- An outline of each allegation and the findings for each allegation
- A balance of evidence and summary of findings

- A recommendation as to whether the matter should be referred to a disciplinary hearing
- All documentary evidence (sometimes referred to as the “bundle”) should be attached as appendices. For example, witness statements and interview records and, if appropriate, copies of the relevant rule or policy/ procedure as well as evidence as to how that has been communicated to employees. In cases where there may be implications for the safeguarding of vulnerable adults, young people or children, a statement may be included from the appropriate safeguarding child protection officer.

## **Preparing for a disciplinary hearing**

When arranging the disciplinary hearing careful consideration should be given to providing a suitable venue that is fully accessible and includes refreshments. Any reasonable adjustments for the parties involved should be requested. The room should be as comfortable and as private as possible, bearing in mind the sensitivity and confidentiality of the matter, and the fact that interviewees might not be comfortable being interviewed at their own place of work, a neutral venue should be considered. Every effort should be made to provide 2 additional rooms to that used for the hearing to accommodate the employee, together with their representative and any witnesses, as well as the Investigating Officer and any witnesses.

There must be a representative from Human Resources present at the hearing to provide advice and guidance and ensure that the correct procedure is followed. Administrative support should be provided to take a written record of the hearing.

A witness called to a disciplinary hearing is likely to feel apprehensive about the process. The Investigating Officer should meet with the witness in advance of the hearing to outline the process, reassure them and answer any questions that they may have. They should also have provided the witness with a copy of the disciplinary procedure.

Preparation prior to the hearing will be invaluable when presenting the case. The hearing panel/officer and the employee and their representative should have had the “bundle” of evidence in advance of the hearing, this does not include a copy of the Investigating Officer’s report. The investigation report will form the basis of the presentation. All supporting information should be included as appendices and the information in support of allegations cross-referenced. The Investigating Officer should make notes of any issues that they feel need to be challenged or clarified during the employee’s statement of case. It will also be useful to prepare a summing up statement in advance of the presentation, bearing in mind that this may need to be amended if new points arise during questions or submission of the employee’s case. Within the hearing, the details of the complaint should be set out clearly, the evidence should be carefully examined and the employee given sufficient opportunity to ask questions, present evidence and produce their own witnesses.

## **What problems may arise?**

If the employee becomes upset or distressed during the hearing, allow time for them to regain composure before continuing. If the distress is too great to continue then adjourn and subsequently consider reconvening at an appropriate time; however, the issues should not be avoided. During the hearing there may be some 'letting off steam' and this can be helpful in finding out what actually happened. However, abusive language or behaviour during the hearing should not be tolerated. An adjournment is also useful to allow time to check matters further particularly if there is any dispute over facts. If new facts emerge, consider whether to reconvene the hearing.

[\*\*Appendix 1\*\*](#) - Example letter of management advice

[\*\*Appendix 2\*\*](#) - Example letter confirming suspension

[\*\*Appendix 3\*\*](#) - Example invitation to interview as part of the investigation

[\*\*Appendix 4\*\*](#) - Example interview record form – Disciplinary Investigation

[\*\*Appendix 5\*\*](#) - Example invitation to disciplinary hearing

[\*\*Appendix 6\*\*](#) - Procedure to be followed at the disciplinary hearing

[\*\*Appendix 7\*\*](#) - Example confirmation of the outcome of the hearing

[\*\*Appendix 8\*\*](#) - Procedure to be followed at the disciplinary appeal