

# C19 Staff Disciplinary Policy

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<b>1. Introduction</b>	
1.1	The Trust is committed to delivering excellence for its pupils and their families, staff and the local communities it serves. This requires all staff to maintain high standards of behaviour and conduct in accordance with the needs of the Trust and the Staff Code of Conduct.
1.2	The Trust encourages open communication between employees and their managers, enabling minor conduct issues to be addressed through information, advice and guidance. Where possible and appropriate, matters of minor misconduct should be dealt with through supervisory support.
1.3	This policy aims to provide a framework for the fair, transparent and consistent management of disciplinary matters that it is not possible or appropriate to resolve through supervisory support.
1.4	A disciplinary matter refers to a situation where an employee does not work to the required standard of conduct despite having the capability to do so. This policy does not apply to situations where an employee is unable to carry out their work due to skill, aptitude, ability and/or any other physical or mental capacity. These situations should be managed under the Trust's capability policy and procedure.
1.5	This policy applies to all staff except for those within their probation period. Alleged misconduct of employees within their probation period should be managed in accordance with the Probation and Appointment Support Policy, giving due consideration to the principles contained herewith.
1.6	The provisions within this policy reflect statutory requirements and the ACAS Code of Practice on Discipline and Grievance 2015.
<b>2. Roles and Responsibilities</b>	
2.1	All employees and managers have a personal responsibility to act with professionalism and courtesy at all times in accordance with the following:

- Staff Code of Conduct
- Professional Standards appropriate to their role
- Trust policies and procedures
- Statutory requirements, including Safeguarding and Health & Safety

2.2 Managers are responsible for ensuring staff understand the expectations of them, and for managing alleged misconduct in accordance with the provisions of this policy. This may include:

- Intervening promptly where minor concerns are identified
- Implementing the informal disciplinary procedure
- Conducting preliminary investigations
- Referring matters to the HR department where formal action is possible

2.3 HR is responsible for developing and updating this policy in accordance with statutory and Trust requirements, as well as providing fair and consistent advice to managers and employees regarding the application of this policy and associated procedures.

2.4 At all stages in this policy different people will:

- Lead the investigation
- Chair the disciplinary hearing
- Chair the appeal hearing

### 3. Principles

3.1 Misconduct refers to a situation where an employee has breached rules, policies or standards of conduct, including but not exclusively:

- Unsatisfactory timekeeping
- Unauthorised absence from work
- Falsely claiming to be unable to work due to illness
- Insensitive behaviour towards colleagues, students or visitors which gives justifiable offence
- Conduct which adversely affects either the reputation of the Trust or affects confidence in the member of staff
- Acting in a manner that could reasonably be regarded as rude, impolite or contemptuous
- Willful failure to comply with policies or procedures
- Unauthorised use of Trust property including unauthorised use of telephones or photocopiers for private purposes

Matters of misconduct may be considered gross misconduct determined by individual circumstances of the situation. In these instances, it is necessary to exercise professional judgement.

3.2 Gross misconduct relates to a serious breach of the rules or requirements of the Trust, including but not exclusively:

- Any form of physical violence towards students.
- Bullying or harassment
- Physical violence, actual or threatened towards other staff or visitors to the Trust
- Any sexual approach or response to a student or the development of an intimate relationship with a pupil, whatever the provocation
- Sexual offences, sexual insults, sexual harassment or sexual discrimination against students, other staff or visitors to the Trust
- Racial offences, racial insults, racial harassment or racial discrimination against students, other staff or visitors to the college
- Theft of Trust monies or property and of monies or property of colleagues, students or visitors to the Trust. Removal from Trust premises of property which is not normally taken

away without the express authority of the Principal or of the owner of the property may be regarded as gross misconduct

- Deliberate falsification of documents such as time sheets, bonus sheets, subsistence and expense claims for the purpose of gain.
- Acceptance of bribes or other corrupt financial practices
- Willful damage of Trust property or of property belonging to other staff, students or visitors to the Trust
- Willful disregard of safety rules or policies affecting the safety of students, other staff or visitors to the Trust
- Any willful act that could result in an action for negligence against the Trust
- Refusal to comply with reasonable instructions given by staff with a supervisory responsibility
- Gross neglect of duties and responsibilities
- Being untruthful and / or engaging in deception in matters of importance within the Trust community
- Deliberate breaches of confidentiality particularly on sensitive matters
- Being incapable by reason of alcohol or drugs (not prescribed for a health problem) from fulfilling duties and responsibilities of employment
- Conduct which substantially brings the name of the Trust into disrepute or which seriously undermines confidence in the employee
- Any admitted offence or police caution of a sexual child abuse nature
- Any admitted offence or police caution relating to physical abuse of a child.

- 3.3 All disciplinary matters will be dealt with promptly whilst ensuring thoroughness isn't compromised. There will not be unreasonable delays to meetings, decisions and confirmation of decisions.
- 3.4 Disciplinary matters will be handled with fairness and transparency. Employees will be informed about the basis of any concerns without undue delay, along with details of any action that will be taken in the application of this policy.
- 3.5 The Trust reserves the right to consider suspension with pay or workplace adjustments whilst an investigation is carried out, or at any point during the investigation that it is considered necessary. A decision to suspend may only be made by the Executive team giving due consideration to the circumstances of the situation, including potential risk arising from the employee remaining at work or in their current role. Suspension does not predetermine guilt. Any period of suspension will be for as minimal time as possible, during which the employee will be entitled to full pay.
- 3.6 If the case involves suspected criminal activity at work, the Trust may refer the matter to the police for a criminal investigation.
- 3.7 An allegation of a criminal offence outside of work may result in disciplinary action if the offence is one which renders the employee unsuitable for working within the Trust.
- 3.8 If the allegations are considered a safeguarding matter, the Trust must refer the case to the Local Authority Designated Officer (LADO) in the relevant county.
- 3.9 Where it becomes necessary to refer any disciplinary matter to external parties, internal investigations may continue if there is sufficient information available. This may depend on advice provided by the police or LADO if relevant. Proceedings may be held in abeyance until the conclusions of any court/criminal proceedings should it be relevant.
- 3.10 Employees have the right to be accompanied at all formal stages of the disciplinary procedure by a trade union representative or workplace colleague.
- 3.11 If the disciplinary matter relates to a trade union representative, the Trust will seek the employee's permission to discuss the matter with a full-time trade union official before initiating formal disciplinary proceedings.

- 3.12 If an employee raises a grievance during the disciplinary process, a decision will be made, informed by the Trust's HR team, as to whether this runs concurrently or subsequently to the disciplinary process. This is determined by the nature and potential relationship between the two processes and will be reviewed on a case-by-case basis.
- 3.13 In the event that an employee is absent from work, disciplinary proceedings will normally continue. In exceptional circumstances, it may be necessary for the Trust to obtain medical advice before deciding how to proceed.
- 3.14 The employee or any person acting on their behalf will not normally be permitted to electronically record any meeting held under the disciplinary procedure. Any breach of this provision may be considered gross misconduct and lead to disciplinary action.
- 3.15 All documentation relating to a disciplinary case must be treated on a confidential basis in line with data protection. Copies of all documentation collated during an investigation will be retained by Human Resources.
- 3.16 No formal sanctions will be issued without an investigation.
- 3.17 Copies of warnings issued will be kept on the employee's personal file held in Human Resources until it has been spent.
- 3.18 All parties involved in the procedures must ensure they maintain confidentiality. Disclosure of information may occur if there is a legal requirement or duty of care to do so; in all other cases a disclosure may be considered gross misconduct and lead to disciplinary action.
- 3.19 Time limits and procedures referred to in this policy should be followed wherever possible, however there may be circumstances where they can be varied subject to agreement by all parties.
- 3.20 Disciplinary action will not be taken against any employee for pursuing reasonable action for anything covered within the Trust's Whistleblowing Policy, however action may be taken against employees who make malicious claims.
- 3.21 Implementation of this policy should give due consideration to the Equality Act 2010, and reasonable adjustments made where appropriate.
- 3.22 Personal data obtained during the implementation of this policy will be used, stored and disposed in accordance with GDPR.
- 4. Informal Procedure**
- 4.1 Cases of minor misconduct are often effectively addressed through an informal discussion between an employee and their line manager.
- 4.2 An informal discussion will include the following points:
- The expectations of the employee
  - How the employee is falling short of expectations
  - Required improvement
  - Timescale for improvement including a review date
  - Required support
  - If appropriate, informing the employee that they are being issued with an informal warning and of the potential consequence of not achieving the required conduct within the agreed timescale
- 4.3 There is no right to representation at this stage, however representation is permitted subject to this not unreasonably impeding timescales. In all cases, employees are encouraged to seek advice from their trade union representative prior to the informal meeting and during the improvement timeframe as necessary.

- 4.4 A written record of the meeting and agreed action will be shared with the employee and stored on their personnel file.
- 4.5 If there is satisfactory improvement within the agreed timescale, the matter will be considered resolved. Records of the informal process will remain on the employees file for a period of six months and may form part of a formal procedure if further conduct concerns arise within this period.
- 4.6 If there has been insufficient improvement arising from the informal procedure, or information comes to light that makes the matter sufficiently serious, the formal disciplinary procedure should be invoked.

## 5. Formal Procedure

- 5.1 The formal procedure should be invoked if there is insufficient improvement following an informal process, a recurrence of misconduct or a suspected serious breach of conduct.

### 5.2 Preliminary Investigation

- 5.2.1 When there is an allegation of misconduct, the line manager should carry out a preliminary investigation in the form of a short fact-finding exercise. The aim of the preliminary investigation is to ascertain whether there is substance to the allegation, and therefore whether formal disciplinary action is necessary and appropriate.
- 5.2.2 If there is substance to the allegation, the line manager will either decide that the matter should be dealt with informally or refer it to HR for a full investigation. The outcome is dependent on the circumstances, severity and/or frequency of the alleged misconduct.
- 5.2.3 If there is no substance to the allegation the matter will be closed.
- 5.2.4 The employee will be notified of the outcome of the preliminary investigation.

### 5.3 Full Investigation

- 5.3.1 When HR receives a referral for a full investigation they will allocate:

An Investigating Manager (hereafter referred to as Investigator) - this will be an Independent Manager/Trustee who does not work directly with the employee\*.

A Disciplinary Panel, consisting of a Chair and a member of HR. The Chair will be an independent person who does not work directly with the employee and was not involved in the investigation\*.

The disciplinary panel may not be necessary depending on the outcome of the investigation.

*\*see appendix 2: Delegation of Responsibility Matrix*

- 5.3.2 Where practicable, the investigator will arrange to meet the employee to explain the allegations, outline the disciplinary procedure and explain their role.
- 5.3.3 The investigator will conduct a full investigation by accessing sources of evidence, including but not limited to:
- Collecting information from witnesses/potential witnesses
  - An investigation meeting with the person whom the allegation relates to, depending on circumstances/appropriateness
  - Collecting relevant information/documents
  - Collecting appropriate physical evidence as permitted e.g. CCTV

- 5.3.4 Depending on the circumstances, it may be appropriate for the employee to be invited to an investigation interview. The employee will receive 3 working days' notice and may be accompanied by a trade union representative or workplace colleague.
- 5.3.5 If additional allegations come to light, the employee will be notified in writing and the scope of the investigation may change.
- 5.3.6 Investigation report with recommendations:
- There is a case to answer and disciplinary hearing should be arranged
  - There is no case to answer
- 5.3.7 The investigation report is sent to the Disciplinary Hearing Chair who will decide if a hearing should be arranged. The employee will be notified of this decision.

## 5.4 Disciplinary Hearing

- 5.4.1 The employee will receive 10 working days' notice of a disciplinary hearing. They will be issued with a letter which will set out:
- The allegations
  - Their right to be accompanied
  - The date, time and venue for the meeting
  - The names and roles of those attending, including those will be called as a witness
  - Potential sanctions

The letter will be accompanied by the investigation report and supporting documentation.

- 5.4.2 The employee will be asked to confirm the following 5 working days before the meeting:
- The name and role of their companion
  - Details of witnesses they are calling
  - Documentation that they wish to be considered during the hearing
- 5.4.3 The expectation is that the meeting will take place at the time agreed. In exceptional circumstances where the time is not suitable for either the employee or their companion, there may be one postponement of up to 5 working days. If the employee is unable to attend the rescheduled date the hearing will continue in their absence, and the employee may provide a written submission for consideration.
- 5.4.4 During the disciplinary hearing the circumstances of the case will be discussed. The investigator will present the findings of the investigation report, and both the panel and the employee are able to question witnesses.
- 5.4.5 At the end of the hearing, the Chair will call an adjournment for the panel to deliberate the case and decide an appropriate outcome. Where possible, the hearing should reconvene on the same day and the outcome confirmed to the employee.
- 5.4.6 In exceptional circumstances, and/or where additional information needs to be gathered, the adjournment may be for up to a maximum of 5 working days.

## 5.5 Outcomes and Possible Sanctions

- 5.5.1 No formal action

This will be the outcome if there is insufficient evidence to uphold the allegation of misconduct, or a sanction is considered inappropriate on balance of all evidence provided.

### 5.5.2 First written warning

A first written warning may be appropriate for a first offence of conduct which is below the standard expected, and this isn't sufficiently serious to warrant a final written warning.

A first written warning is live for 6 months.

### 5.5.3 Final written warning

A final written warning may be appropriate for an occurrence of misconduct during the period that a first written warning is live; or for a first offence of misconduct that is considered sufficiently serious to warrant progressing immediately to a final written warning.

A final warning is live for 12 months.

### 5.5.4 Dismissal with notice

Dismissal with notice may be appropriate where there has been no improvement in conduct following a final written warning or where there has been another instance of misconduct during the currency of an existing final written warning.

### 5.5.5 Dismissal without notice

Dismissal without notice is only appropriate where an allegation of gross misconduct is substantiated.

In the case of sanctions, employees have the right of appeal.

## 6. Appeal Process

- 6.1 An employee may appeal a sanction imposed against them following a formal disciplinary procedure. The appeal should be sent to the HR Director in writing within 5 working days of receiving the written confirmation of the sanction.
- 6.2 The appeal should state the grounds for the appeal.
- 6.3 The HR Director will allocate an appeal panel. This will be determined by the delegation of responsibility matrix (appendix b) and include a member of HR. The panel will arrange for the appeal to be heard within 10 working days of receipt where practicable.
- 6.4 The employee is entitled to be accompanied to an appeal hearing by a trade union representative or workplace colleague. Where the time is not suitable for either the employee or their companion, there may be one postponement of up to 5 working days. If the employee is unable to attend the rescheduled date the hearing will continue in their absence, and the employee may provide a written submission for consideration.
- 6.5 Following the appeal hearing, the panel will call a short adjournment to deliberate the employee's arguments. They will invite the employee back into the meeting to confirm the outcome. The possible outcomes are:
  - Uphold the appeal – The sanction is fully revoked
  - Partially uphold the appeal – Where there are multiple points to the appeal, it is possible that some may be upheld and some rejected. This may result in an amendment to the sanction.
  - Reject the appeal – The sanction will remain in place

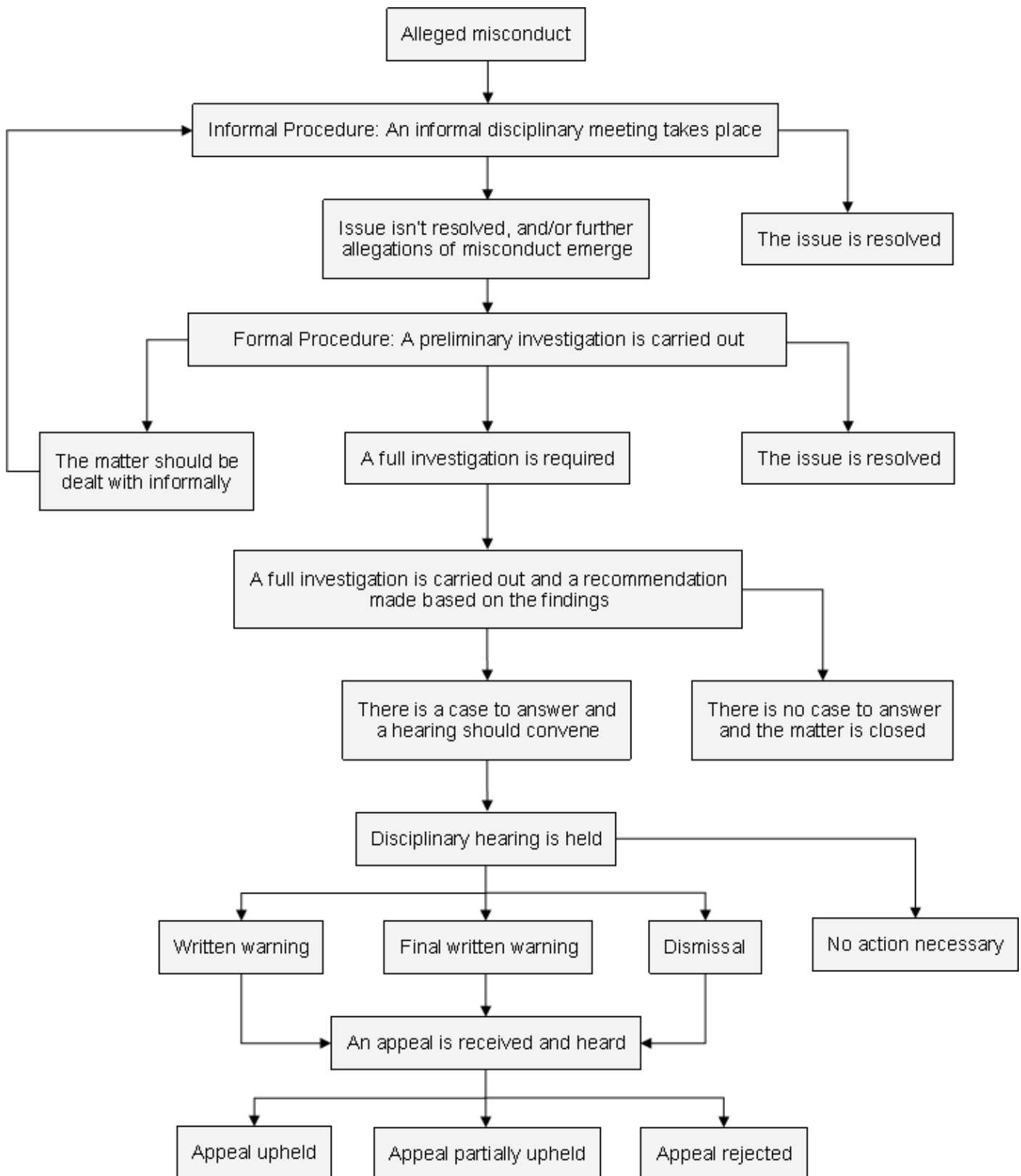
This outcome of the appeal is final.

## 7. Policy Status and Review

Written by	Interim Head of HR
Owner	HR Director
Status	Approved
Equality Impact Assessment	Initial Impact Assessment    Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Full Impact Assessment        Yes <input type="checkbox"/> N/A <input checked="" type="checkbox"/>
JCC Consultation date	30 <sup>th</sup> January – 1 <sup>st</sup> March 2019.
Approval date	28 <sup>th</sup> February 2019*  *subject to union approval.
Review date	27 <sup>th</sup> February 2022
Comments	This policy supersedes the Hastings Academies Trust disciplinary policy.



## Appendix a: Disciplinary Procedure Flowchart



## Appendix b: Disciplinary - Delegation of Responsibility Matrix

Post	Disciplinary Investigation*	Disciplinary Hearing*	Appeal*
Academy based support staff	Trust Manager** / Principal	Trust Manager** / Principal	Executive Director
Teaching staff	Trust Manager** / Principal	Trust Manager** / Principal	Executive Director
Academy Leadership (excluding Principal)	Trust Manager** / Principal	Trust Manager** / Principal	Executive Director
Principal	Executive Director	Executive Director	Trustee
Central support staff	Trust Manager** / Principal	Trust Manager** / Principal	Executive Director
Central Services Directors/Heads of Service	Executive Director	Executive Director	Trustee
Executive Director	Trustee	Trustee	Chair or Vice Chair of the Board

\*Wherever possible, each stage of the process will be led by a different person/people who does not work directly with the employee. The investigation and hearing will be led by a person more senior to the employee. The appeal will be held by a person more senior to the person who chaired the hearing.

\*\*A Trust Manager may include anyone on Local and Management Support Grade