



# Thinking Schools Academy Trust “Transforming Life Chances”

## Disciplinary Policy

This policy was adopted:	September 2021
This policy was consulted and updated:	March 2024
The policy is to be reviewed:	March 2028

## Contents

1.	Introduction	3
2.	Equalities Statement	3
3.	Scope	3
4.	Policy Principles	3
5.	Delegated Responsibility	4
5.1	Matters relating to the Headteacher/Executive Team	4
6	Timescales	5
7.	Right to representation	5
8.	Informal Action	5
9.	Formal Action	6
10.	Suspension	7
13	Notifying an Employee of an allegation(s)	8
14.	Investigating the Allegation	9
15.	Investigation Outcome	9
16.	Disciplinary Hearing	9
17.	Appeals	10
18.	Non-Attendance at Meetings	11
19.	Minuting Hearing and Appeal Meetings	12
20.	Absence	12
21.	Disclosure of formal sanctions in employment references	12
22.	Referrals to Other Agencies	13
	Appendix 1: Level of Disciplinary Sanctions	14
	Appendix 2: Misconduct and Gross Misconduct Examples	16
	Appendix 3: Dismissal for some other Substantial Reason	21
	Appendix 4: Conducting an Investigation	22
	Appendix 5: Procedure of a Disciplinary Hearing – Timescales	23
	Appendix 6: Disciplinary Flow Chart	25
	Appendix 7: Hearing Procedure	26
	Appendix 8: Appeal Hearing Procedure	27
	Decision	27
	Appendix 9: Confidential Counselling Service for TSAT Employees	28

## 1. Introduction

The Trust expects satisfactory standards of behaviour, conduct and attendance from all its employees. This policy determines the procedures to be followed when standards of conduct give rise to problems which cannot be resolved by advice and encouragement, training or increased support.

Disciplinary procedures are necessary so that employees who breach the rules of conduct expected by the Trust are treated reasonably, consistently and fairly in every case.

This policy and procedure has been updated in line with the 2015 ACAS Code of Practice on Disciplinary & Grievance procedures to ensure that all staff are treated fairly and with respect and dignity and that the Trust meets all its legal requirements.

## 2. Equalities Statement

The Trust is committed to providing equal opportunities and access to all.

This policy statement embraces the spirit of managing a diverse workforce and those managing and dealing with the process of the Disciplinary Procedure must ensure that no employee is discriminated against either directly or indirectly or victimised on the grounds of any protected characteristic in accordance with the Equality Act 2010.

An equality impact assessment has been carried out to ensure that no groups or individuals with protected characteristics are unintentionally disadvantaged by this policy or practice.

## 3. Scope

This procedure is relevant to all permanent, temporary, supply and casual staff working for the Thinking Academies Academy Trust. Where an employee has transferred into the Trust and has enhanced terms these are subject to TUPE then the enhanced terms will apply.

## 4. Policy Principles

**Fairness:** This procedure should be applied consistently, promptly, impartially, reasonably and without discrimination. Annual monitoring will be undertaken to ensure action initiated and any sanctions issued do not impact unfairly on any one group or in any one area.

**Confidentiality:** Information relating to an allegation of misconduct should only be divulged to any parties directly involved in the disciplinary process and must remain strictly confidential to those people. Records will keep kept in line in compliance with GDPR and the Data Protection Act 2018.

**Natural justice:** At every formal stage of the disciplinary procedure, the employee will be advised of the nature of the complaint in writing and will be given the opportunity to state their case before a

decision is made. Where a warning is given, the employee will be provided with appropriate support to improve their conduct.

**Informal Action:** Informal action should be used wherever possible and appropriate to resolve conduct or behaviour before formal disciplinary action is considered.

**Investigation:** No formal disciplinary action should be taken (i.e. disciplinary hearing arranged) against an employee until the case has been fully investigated unless there are exceptional circumstances.

**Dismissal:** No employee should be dismissed for a first breach of discipline except in the case of gross misconduct or for some other substantial reason (SOSR).

**Records and Information Sharing:** All records and information, including those relating to any sanction imposed, are a matter of confidence between the Trust and the Employee. In certain limited circumstances, this information may be shared by the Trust - for example in accordance with Child Protection Safeguarding Procedures. Records will be kept in line in compliance with GDPR and the Data Protection Act 2018.

**Representation:** An employee has the right to be accompanied by a work colleague or trade union representative at every stage of the formal procedure. The employee must notify the panel of their chosen companion prior to a meeting. If the employee would like to be supported during informal meetings the Trust will look to accommodate this to support the employee.

**Right of Appeal:** An employee has a right of appeal against any formal disciplinary sanction in accordance with the Appeals Procedure. Sanctions, including dismissal or warnings issued as a result of procedures, will remain in place pending the outcome of any appeal, unless they have waived their right and have accepted a warning.

**Working Days:** When referring to working days, this is in relation to Monday-Friday, therefore 5 working days refers to a week (7 calendar days' notice) and does not include school closure periods\*(if term time only employees).

## 5. Delegated responsibility

In the Trust responsibility for dismissal decisions has been delegated to the Headteacher/Principal, therefore formal hearings to consider dismissal may be heard solely by the Headteacher.

A panel of two or more governors, Headteacher/Principal from another Trust school or members of the Trust SMT or Executive team may be convened to hear the matter in situations where it is not appropriate for the Headteacher to perform this function.

Appeals will be heard by a panel of two or more governors/Executive/SMT/Headteacher who have had no prior involvement in the matter under consideration.

Authority act is outlined in Appendix 5.

## 5.1 Matters relating to the Headteacher/Executive team

Informal action is delegated to a member of the TSAT executive team or the Chairs of the board of directors.

Formal hearings will be heard by a panel of two or more governors or the Trust Executive team or Directors who have had no prior involvement in the matter under consideration.

Appeals will be heard by a further panel of two or more governors the Trust Executive team or Directors who have had no prior involvement in the matter under consideration.

## 6. Timescales

Concerns will be addressed promptly and without undue delay in achieving an outcome.

Timescales stated are for guidance and may vary depending on the circumstances of the case.

Notification/Process	Timescale
Suspension letter	2 working days
Invite to a meeting	5 working days
Informed of an outcome of an investigation	5 working days
Invite to a Disciplinary or Appeal hearing	10 working days
Disciplinary hearing pack	10 working days
Outcome of disciplinary letter	5 working days
Appeal needs to be submitted	Within 10 working days
Additional Appeal Information – Employee submission to the panel for witnesses	5 working days ahead of the appeal hearing

## 7. Right to representation

An employee has the right to be accompanied to a formal hearing or appeal meeting by either a workplace colleague or trade union representative.

A workplace colleague or trade union representative may also attend a disciplinary investigation meeting.

Due and careful consideration will also be given to any request from an employee to be accompanied by a workplace colleague or trade union representative at informal meetings. However, it should be noted that the presence of a representative does not make the meeting formal.

## 8. Informal Action

8.1 It is part of the normal supervisory process that Headteachers/ Principals/ Line Managers bring to the attention of employees the standards required and any incidences of failure to meet those standards. Cases of minor misconduct should be dealt with by the employee's line manager informally and without delay.

8.2 A one-to-one confidential discussion should be held to ensure that the employee understands the nature of any concerns. This discussion should enable the manager to provide constructive feedback and the employee to express views on the issue. If an employee would like to have a workplace colleague or trade union representative to attend an informal meeting they can request this.

8.3 Managers should ascertain whether any alleged failure to meet required standards or breach of policy or procedure is due to misconduct, capability or some other reason when determining the appropriate approach to take. Advice should be sought from Thinking Personnel (HR) as to alternative options that could be considered.

8.4 Where the need for improvement is identified, the manager should explain to the employee what needs to be done, how the conduct will be reviewed in a given period and the nature of any support available.

8.5 Brief confidential notes of this meeting, including details of any required actions or improvements, should be kept by the manager and a copy sent to the employee within 5 working days.

8.6 It is important that both parties understand that informal action is not part of the formal disciplinary procedure and that whilst employees can bring representation to a meeting, this does not constitute formal action.

8.7 An outcome of informal action may include:

- No further action
- Training & Support
- Informal warning
- Adjourn meeting – move to formal action

8.8 If the employee is issued an informal warning – this will remain on the employee's file indefinitely and there is no right of appeal. Informal warnings will not be referred to in references.

## 9. Formal Action

9.1 Where informal action does not lead to improved behaviour, or where the alleged misconduct is more serious so that informal action is considered inappropriate, formal action should be initiated.

9.2 Definition of what could constitute misconduct and examples of potential offences of gross misconduct, either of which may lead to formal action, can be found in Appendix 1.

9.3 In cases of alleged misconduct the employee will be informed in writing of the nature of the allegations and that an investigation will be conducted.

9.4 An Investigation will be commissioned by the commissioning manager. The aim of the investigation is to establish the facts of the case as promptly and thoroughly as practicable. An appropriate and suitable investigating officer will be appointed. Investigations will be carried out in a timely manner and without unreasonable delay.

9.5 The employee will be kept up to date of progress and will be made aware of any potential delays.

9.6 Where, following receipt of an investigation report, the commissioning manager decides that there is a formal case to answer they should establish a disciplinary hearing. The process for establishing and conducting a disciplinary hearing can be found at Appendix 3 and is also shown in the flow-chart at Appendix 4.

9.7 If a hearing decides that disciplinary action against an employee is justified a sanction should be issued from the list that can be found at Appendix 5.

## 10. Suspension

There may be occasions when it is necessary to suspend an individual on full pay whilst an investigation is being carried out. Careful consideration will be given before a decision to suspend is taken. Reasonable grounds for suspension include, but are not limited to:

- Children/adults are at risk.
- The employee needs protection themselves.
- Where the presence of the employee at work may impede the investigation.

The fact and conditions of the suspension should be confirmed in a letter to the employee at the earliest opportunity.

Suspension is not a disciplinary sanction and is not an assumption of guilt. Normally an employee will be suspended by the Headteacher/Principal after consulting with the Head of Human Resources and the Deputy CEO. Exceptionally, it may be necessary for a Headteacher/Principal/ Line Manager to send an employee home before being able to consult regarding suspension, an alternative to suspension may be a risk assessment being put into place.

The suspension should last only as long as is necessary and should be reviewed at regular intervals. The outcome of such a review should confirm whether the suspension should continue, be converted to other temporary working arrangements or be lifted. The outcome of the review should be confirmed in writing to the employee.

If an employee has been suspended, or where other limitations have been placed on accessing documents or witnesses, the employee should discuss reasonable access to facilities to enable a fair response to any allegations.

An employee should be contactable by telephone or other agreed means during their normal working hours while suspended.

An employee who is suspended must not discuss the details of the allegation(s) with other members of staff (except their workplace colleague or trade union representative), governors, pupils, or parents in such a way which could compromise their position or integrity of the investigation without the prior permission of the Headteacher. This does not prevent an Employee discussing matters with their representative. Where an employee may have a spouse/partner who also works at the Trust the employee should seek advice on how to manage this situation. Clarification should be sought from the Headteacher or HR if an employee is in doubt.

A suspended employee will be provided with a named contact in the Academy to keep them informed of matters arising during their absence. This individual will not be able to discuss any aspects of the disciplinary investigation.

In addition, a suspended Employee may be allocated a named contact from the Academy's personnel provider who will be able to provide advice about procedural aspects of the process.

## 11. Criminal Offences

The Academy will treat seriously any employee who is charged with a criminal offence, although being charged with, or convicted of a criminal offence does not automatically lead to dismissal. It would depend on the offence, its seriousness and the effect on the employee's ability to continue to do the job, or how it might affect the Academy's credibility with the public. An employee found not guilty of a criminal offence will not necessarily be immune from disciplinary action.

## 12. Safeguarding allegations against a member of staff

Where the allegations are of a safeguarding nature and the alleged behaviour might be criminal, involve harm to a child or put a child at risk of harm, the case must be referred to the Local Authority Designated Officer (LADO). If criteria for LADO involvement are met and there is a need for further investigation, the LADO will advise on the need for a LADO strategy meeting or discussion.

No disciplinary investigation should be started by the school until the strategy meeting has met and made its recommendations with regard to next steps. At this stage, the Management of Allegations Against Staff policy will need to be followed and can be found on the Trust website.

Where it is decided to proceed with a formal disciplinary investigation, the Academy does not have to await the outcome of any criminal proceedings. However, the Investigating Officer may need to exercise

caution so that it does not impede the police inquiries. In these cases, further advice should be sought from the HR team. Should there be a formal police investigation the academy may need to wait for this and criminal proceedings to take place, however this will be considered on a case by case basis.

### 13. Notifying an Employee of an allegation(s)

An employee will be notified of all allegation(s) or complaint(s) made against them at the earliest practical opportunity and advised of the procedure that will be followed.

Prior to investigating an allegation, it may not be possible or appropriate to be specific about the precise nature of the allegation at the outset – however the employee will be informed as soon as is reasonably practical. The allegation will be clarified in writing before the formal investigation meeting.

Should the matter be addressed through a formal investigation then the employee will be advised of the nature of the allegation in writing. They will also be advised that, should the allegation be upheld, formal disciplinary action may be taken. They will be advised they may be accompanied by a Trade Union Representative or work colleague and be given 5 working days notice.

Should further allegations come to light during the investigation which are also to be investigated the Employee will be advised of these in writing.

### 14. Investigating the Allegation

Before any formal disciplinary action is taken, allegations of misconduct will be thoroughly and objectively investigated. Investigations will be undertaken without undue delay. The nature and extent of the investigation will be determined by what is reasonable given the circumstances.

The purpose of the investigation is to establish the facts, events and / or actions to determine whether there is a case to answer and not to make any decision about the outcome.

The employee will be invited to attend a meeting once the allegations have been clarified in writing. They will be advised they may be accompanied by a Trade Union Representative or work colleague and be given 5 working days notice.

The Commissioning Manager will appoint an investigating officer. The investigating officer will not have had any prior involvement in the case. On occasion it may be appropriate to identify more than one investigating officer. If, during an investigation, it becomes apparent that the Commissioning Manager is a witness to the allegation a new Commissioning Manager will be identified and the employee will be informed of this in writing.

## 15. Investigation Outcome

A written report will be produced of the investigation findings and shared with the Commissioning Manager.

Based on the findings of the investigation, the Commissioning Manager will determine which course of action is most appropriate:

- That there is no case to answer and no further action is taken
- That a minor concern is identified which is to be addressed through informal action
- That there is a case to answer on a matter of misconduct which warrants consideration of formal disciplinary action.

The investigation outcome will be communicated to the employee in writing without undue delay and usually within 5 working days of the decision being made regarding the appropriate course of action.

The investigation report will only be shared with the employee should formal action be instigated or if requested by the employee.

## 16. Disciplinary Hearing

Where the matter is to be considered by a formal disciplinary hearing, arrangements for this will be communicated in writing.

This notification should specify:

- The allegation(s) to be considered at the hearing
- The time, date and venue of the hearing
- The possible outcomes should the case be upheld and, if appropriate, that dismissal may be an outcome
- The procedure to be followed
- That the employee may be accompanied by their workplace colleague or trade union representative.

The employee will be given reasonable notification of the date of the hearing to allow them sufficient time to prepare their case. This will be no less than 10 working days, however this may be varied by mutual agreement.

The Trust will provide the employee with this information no later than 10 working days before the hearing. The employee is required to provide no later than 5 working days before the hearing:

- The name of their trade union representative or workplace colleague
- The name(s) of any witnesses they are calling

- Any relevant documentation they wish to be considered.

If a late submission is received the panel has discretion as to whether to accept this and make provision for an adjournment during the hearing to consider this. However, the panel reserves the right to disregard this information.

Where misconduct is found the following actions may be taken;

- First written warning
- Final written warning
- Dismissal with notice
- Summary dismissal (dismissal without notice) • Other sanctions

In some cases, an employee may be dismissed for some other substantial reason.

The full process of the hearing can be found in Appendix 7.

## 17. Appeals

Appeals must be submitted in writing to the relevant person outlined in the outcome letter, no later than ten working days after receipt of the decision in writing. The formal action as a result of a decision taken under the procedure will remain in force unless or until it is modified as a result of the appeal.

Appeal Hearings may be a review of the disciplinary decision or sanction or a rehearing depending on the grounds of the appeal. Employees must be specific about the grounds of an appeal as these will form the agenda for the Appeal Hearing and may determine who should be present. If an appeal is submitted on the basis of seeking a re-hearing this must be clearly stated.

Appeals may be raised on if an employee considered the decision was unjust or wrong, in line with ACAS code practice.

Appeals will be heard by a panel who will not previously have been involved in the case and the Appeal Panel will be advised by an HR representative and a note-taker will be present.

Arrangements will be made for appeals to be heard as soon after an appeal has been lodged as is reasonably practicable.

The employee should be given a minimum of ten working days' advance notice of the date fixed for their Appeal.

The employee has the right to be accompanied to the Hearing by a companion. The employee may wish to call and present witnesses at the Hearing. If the employee wishes to do this, they should inform the HR representative in writing of an intention to do so. This written notice should be received by HR at least five working days ahead of the scheduled hearing date and include the names of any proposed

witnesses to be called along with a brief explanation as to their relevance with regards to the matters to be considered by the Appeal Hearing.

The outcomes possible from an appeal are:

- The Appeal is not upheld and the formal action or sanction of the original Hearing stands unchanged;
- The Appeal is not upheld but the Appeal Panel imposes a lesser sanction;
- The Appeal is upheld and the sanction imposed by the original Hearing is no longer applied.

If an appeal against dismissal is upheld, the employee shall be paid in full for the period from the date of dismissal and continuity of service will be maintained.

The decision of the Appeal Panel is final.

The full process of the appeal hearing can be found in Appendix 8.

## 18. Non-Attendance at Meetings

Where an employee or their representative is unavailable to attend a meeting held under this procedure, they should inform the Trust at the earliest opportunity.

A hearing / appeal may be deferred by up to 5 working days from the date of the original meeting where an employee's representative is unavailable. Other than in exceptional circumstances only one postponement will be granted.

The Trust reserves the right to hold a hearing / appeal in the employee's absence where all reasonable efforts to secure attendance have been unsuccessful. In this event the employee will be given the opportunity to make written representations to the hearing or for their representative or workplace colleague to make representations either to the meeting or in writing on their behalf.

If no submissions are received the panel may make a decision based on the available information.

Due consideration to any request to postpone any other meeting held as part of this procedure taking into account the individual circumstances and the reason for non-attendance will be given.

Where an Employee refuses or fails to attend an investigation meeting without good reason or make written submissions to the investigation – the investigating officer may at their discretion deem it appropriate to conclude the investigation based on the information available

## 19. Minuting Hearing and Appeal Meetings

Minutes should be taken of all submissions to the hearing – including employer, employee and witness statements, any questioning of the parties and the panel's decision statement. The panel's deliberations should not be minuted.

Minutes should be shared with the employee as soon as practicable. The employee will have the opportunity to check the accuracy of the minutes / notes taken of their evidence and submissions. Where there are discrepancies between the Trust and the employee that cannot be resolved both versions of the minutes will be held on record.

An audio record may also be made with the prior consent of the employee. Where this is the case, the prior agreement of the employee will be sought. In these instances, an audio copy will be shared with the employee if requested.

Covert recordings of meetings or hearings are expressly prohibited. Any recording of a meeting or hearing must be with the prior consent of all parties.

## 20. Absence

The ill health of an Employee will not automatically constitute grounds for ceasing any ongoing investigation or disciplinary process however, it is important that an employee is not unduly denied or prevented from participating in the process and from defending themselves against allegations.

If the absence is likely to be short the Trust will consider pausing the process to allow the employee to recover within a reasonable time frame.

Where it is expected that the absence will be longer term the Trust will make a referral to occupational Health for further advice and to consider any reasonable adjustments.

## 21. Disclosure of formal sanctions in employment references

Should an Employee have an unexpired formal disciplinary sanction on file – this will be disclosed, upon request, in any reference provided by the Employer to a prospective Employer.

Expired sanctions will not be disclosed – unless these relate to matters which the Employer is required to share in accordance with Child Protection / Safeguarding Procedures.

## 22. Referrals to Other Agencies

- a. Where a teacher is dismissed for serious misconduct (or may have been dismissed for serious misconduct had they not resigned) the Trust will consider whether to make a referral to the Teaching Regulations Agency (TRA) in accordance with Education Act 2011 and The Teachers' Disciplinary (England) Regulations 2012.
- b. Under the Safeguarding Vulnerable Groups Act (2007) a referral may also be made to the Disclosure and Barring Service where an Employee is dismissed (or would have been dismissed had they not resigned) because they have been cautioned or convicted of a relevant offence or behaved in a manner that has put at risk of harm / harmed a child.

### 23. Right to work in the UK

Where an employee is unable to provide valid proof of their right to work in the UK or where the evidence provided requires further verification in line with the Immigration Act 2016 the employee will be suspended without pay.

Where an employee's continued right to work cannot be verified, the Trust will suspend pay without delay, as failure to do so would be in breach of the Immigration Act 2016. The conditions of the suspension without pay should be confirmed in writing at the earliest possible opportunity.

In the event that, under Immigration rules, an employee ceases to be entitled to work in the UK, they will be dismissed without notice. There will be no Pay in Lieu of Notice under such circumstances. An employee whose employment has been terminated as a result of a statutory restriction, may be reinstated with full continuity of service, if right to work evidence is provided within one month of a dismissal. Temporary Working Arrangements.

## Appendix 1: Level of Disciplinary Sanctions

LEVEL OF WARNING	AUTHORITY TO TAKE ACTION	APPEAL SUBMITTED TO	TIME LIMIT FOR APPEAL	APPEAL HEARD WITHIN	EXPIRY OF WARNING FROM PERSONAL FILE
INFORMAL STAGE Informal Advice/Coaching Informal Reprimand	Line Manager, Headteacher/ Principal or person acting on their behalf	Not Applicable (N/A)	N/A	N/A	Actions agreed on personnel file
FORMAL STAGE First written warning	Headteacher/ Principal, person acting on their behalf or member of executive team, Trust Headteacher	Chairperson of Staffing Committee of Governors, Directors, Headteacher/Principal, Trust executive team or Trust Head teacher	10 working days of receipt of letter	20 working days of receipt of appeal letter	12 months
Final written warning	Headteacher/ Principal, member of executive team, Trust Headteacher	Chairperson of Appeal Committee of Governors, Directors, Headteacher/Principal, Trust executive team or Trust Head teacher	10 working days of receipt of letter	20 working days of receipt of appeal letter	18 months

Dismissal with notice	Headteacher/ Principal, member of executive team, Trust Headteacher or panel of Governors or Directors	Chairperson of Appeal Committee of Governors, Directors, Headteacher/Principal, Trust executive team or Trust Head teacher	10 working days of receipt of letter	20 working days of receipt of appeal letter	N/A
-----------------------	--------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------	--------------------------------------	---------------------------------------------	-----

Page 14 of 28

Summary dismissal * (without notice)	Headteacher/ Principal, member of executive team, Trust Headteacher or panel of Governors or Directors	Chairperson of Appeal Committee of Governors, Directors, Headteacher/Principal, Trust executive team or Trust Head teacher	10 working days of receipt of letter	20 working days of receipt of appeal letter	N/A
Some Other Substantial reason (with notice)*	Headteacher/ Principal, member of executive team, Trust Headteacher or panel of Governors or Directors	Chairperson of Appeal Committee of Governors, Directors, Headteacher/Principal, Trust executive team or Trust Head teacher	10 working days of receipt of letter	20 working days of receipt of appeal letter	N/A

\*Summary Dismissal without notice (Gross Misconduct- Should gross misconduct be found, and dismissal is determined, this is usually without notice (Summary Dismissal). In cases of dismissal arising from misconduct, notice would normally be given. Where notice is given this is the greater of the Employee's statutory or contractual notice entitlement.

\*SOSR – please refer to Appendix 3.

#### Alternative Sanctions

- These can include demotion if dismissal is a possible action
- Additional Training

- Structured Management Support

#### Expired Warnings

Disciplinary action taken will normally be disregarded for disciplinary purposes after a warning has expired and a decision to dismiss cannot be based on an expired warning. There may however be occasions where the existence of such a warning could impact a decision to dismiss e.g. where an employee's conduct is satisfactory throughout the period a warning is valid but ceases to be satisfactory very soon thereafter.

## Appendix 2: Misconduct and Gross Misconduct Examples

### Misconduct

Misconduct is an act of a degree less serious than that which would warrant immediate dismissal for a first offence but which could nevertheless lead to dismissal if persistent.

Acts listed under the heading of gross misconduct where the impact and implications are less serious may also be considered as misconduct.

Occasionally an act of misconduct might be so serious as to justify dismissal. Normally, however, only when it can be shown that the misconduct has been previously addressed or that there is a pattern of misconduct for a variety of reasons will misconduct lead to dismissal.

Dismissal for misconduct will be with notice.

Examples of actions that are likely to be treated as misconduct include – but are not limited to:

- Unauthorised absence from work
- Failure to follow absence notification and / or certification requirements
- Poor time keeping
- Refusal / failure to follow reasonable and contractual management instruction
- Breach of one or more Academy policies or procedures either by deliberate act or omission
- Failure to adopt safe working practices either by a deliberate act, negligence or omission
- Serious neglect of duty
- Negligent use of Academy property
- Acts of dishonesty such as making unauthorised private phone calls / sending personal mail at the Academy's expense or unauthorised use of the internet
- Insubordination.
- Abusive / offensive language or behaviour towards a member of the School community
- Inappropriate conduct towards pupils

## Gross Misconduct

Gross misconduct is an act which may render it inappropriate for the employee to be allowed to remain in their job. If on the balance of probabilities, gross misconduct is found, this may lead to a summary dismissal without notice for a first offence.

Examples of actions that are likely to be treated as gross misconduct include – but are not limited to:

## Dishonesty

- Theft of Trust / pupil / employee's property
- Falsification of documents, records, claims – whether for personal gain or not, to include, but not restricted to deliberately destroying or mutilating records, altering/erasing or adding to entries without legitimate reason
- Fraud or Corrupt Practices
- Failure to disclose, if asked, criminal convictions not exempt under the terms of the Rehabilitation of Offenders Act 1975 and Amendment 2013
- Withholding significant and relevant information that the Trust could have reasonably required the employee to have disclosed including information which may bring into question the employee's suitability to work with children and/or young people and/or in a school setting and/or which may bring the Trust into disrepute.
- Breaking statutory provisions that would render the Governing Body or Academy Trust liable to prosecution.

## Conduct giving rise to a child protection issue

- Inappropriate or sexual relationship with a pupil
- Contact with a pupil via phone / text / online of an inappropriate nature and /or content
- Act of sexual misconduct by an employee where that misconduct could have a detrimental impact on students or on the employee's position within the Academy

- Misuse of the ICT to view or distribute obscene, pornographic, defamatory or otherwise unacceptable material
- Inappropriate physical contact or restraint of a pupil
- Persistent and significant failure to exercise proper control or supervision of pupils
- Inappropriate conduct towards children including serious and persistent acts of harassment, bullying and victimisation of pupils

Where a prohibition order has been issued by the Disclosure and Barring Service or National College of Teaching and Leadership or the employee has been disqualified in accordance with The Childcare (Disqualification) Regulations 2009

- Any referral, made to, or any, investigation or proceedings undertaken by the DBS, TRA or other agencies regarding child protection / safeguarding concerns relating to the Employee

#### Conduct placing others at risk

- Acts of violence
- Malicious or willful damage to property
- Willfully or negligently ignoring responsibilities/instructions thus placing other members of staff/pupils at risk
- Serious breach of health and safety rules
- Attending work or undertaking duties whilst under the influence of alcohol, drugs or other substances which may inhibit the ability to keep self or others safe.

#### Conduct in the Workplace

- Deliberate and significant refusal to carry out a reasonable, lawful and safe instruction or the normal agreed defined duties of the post
- Significant gross negligence in failing to attend or carry out the agreed duties of the post
- Persistent and substantial failure to follow procedures, regulations and policies either by deliberate act or omission
- Serious and / or persistent acts of harassment, bullying or victimisation of other employees
- Acts which amount to willful discrimination or incitement to discriminate

- Serious and unlawful breach of confidentiality or data protection obligations
- Serious breach of the school's Code of Conduct , Part 2 of the Teachers' Standards or any other relevant professional standard or guidance
- Making a false or vexatious allegation against another member(s) of the Trust
- Serious instances of abusive / offensive language or behaviour towards a member of the Trust
- Acts which are incompatible with the ethos of the Trust
- Serious insubordination – undermining the authority of senior staff
- Serious misuse of the internet or inappropriate use of email and social media, including deliberately accessing or sharing pornographic, offensive or obscene material or malicious, defamatory or abusive communication via social media / emails
- Persistent unauthorised absence

#### Actions outside of the workplace

- Being subject to any police investigation / enquiry, arrest, ban, charge, caution, reprimand, warning, fine, or pending prosecution, or criminal conviction which may affect or is likely to affect the suitability of the Employee to undertake their job role or work with children/young people or within a School setting. This includes any actions committed overseas which would be subject to a police investigation or formal action if such actions had been committed in any part of the United Kingdom,
- Actions outside of the workplace that could be so serious as to fundamentally breach the trust and confidence placed in the Employee.
- Bringing the Academy or profession or the Employee's own reputation into disrepute, including failure to observe reasonable standards of ethics and behaviour (or appropriate professional standards) within and outside work, or failure to have proper and professional regard for the ethos, policies and practices of the Academy
- Breach of confidentiality including sharing personal / sensitive information or disclosing operational / employment / pupil matters to members of the public
- Inappropriate comments made on any social networking site such as Twitter, Facebook or YouTube or in the public domain
- Please also refer additionally to Conduct giving rise to a child protection issue

## Disclosure of Information

- Failure to disclose any information or change in circumstance which may affect or is likely to affect the suitability of the Employee to undertake their job role or work with children/young people or in a School setting
- Failure to disclose any police investigation / enquiry, arrest, ban, charge, caution, reprimand, warning, fine, or pending prosecution, or criminal conviction, this includes any actions committed overseas which may affect or is likely to affect the suitability of the Employee to undertake their job role or work with children/young people or within a School setting
- Failure to disclose matters arising from a previous or current secondary employment, or voluntary work, which may impact on the Employee's suitability to undertake their role or work with children/young people or in a School setting
- Failure to disclose an inclusion on the DBS Children's Barred list and any change in DBS status or any referral, made to or any, investigation or proceedings undertaken by the DBS

Failure to disclose any referral, made to, or any investigation or proceedings being undertaken by the TRA, General Teaching Council for Scotland, or the Education Workforce Council in Wales

- Failure to report any significant current or historical information in the public domain or which is likely to come into the public domain, which may be of relevance to the Employee's job role or suitability to work with children/young people or in a School setting or matters which may be subject to adverse media attention.

Convictions or being charged with a criminal offence outside the workplace and normal working hours may be deemed as misconduct or gross misconduct, though not automatically. Each case should be considered as to the individual circumstances including the nature of the offence, effect of the charge on the employee's suitability to do the job and their relationship with Trust, colleagues, students and those external to Trust and any sentence incurred.

•

### **Appendix 3 : Dismissal for Some Other Substantial Reason**

This appendix should be referred to when the Trust wishes to consider a case for potential dismissal for some other substantial reason (“SOSR”) which does not relate to an employee’s conduct, capability, redundancy or fall under the Trust’s Code of Conduct Policy or one of its other employment Policies.

Under the Employment Rights Act 1996 dismissals which do not fall into other specific categories are referred to as SOSR dismissals and may constitute a fair reason for terminating employment.

It may not always be possible to ascertain at the outset whether an issue should be addressed as a SOSR, or disciplinary matter. In such instances the findings of an investigation or fact-finding exercise may inform which course of action to take. Any investigation will take place in accordance with the provisions as outlined in the disciplinary policy.

A potential dismissal under SOSR will follow the principles and process outlined in this policy.

Suspension may be considered where it is not deemed appropriate for the employee to attend work pending the outcome of the process.

Consideration will be given to ensuring there is as much investigation as is reasonable and appropriate given the circumstances.

There may be instances in which, due to specific circumstances, an employee may not be able to attend investigation or hearing / appeal meetings. In this event the employee will be given reasonable opportunity to make written representations to the meeting or for their representative or workplace colleague to make representations either to the meeting or in writing on their behalf.

Should the outcome result in dismissal this would be with the appropriate notice according to the terms and conditions of employment.

#### **Breach of Statutory Restriction**

On occasion an Employee may no longer be able to continue in their job role because to do so would contravene a statutory restriction. In these circumstances termination of employment may be considered.

Matters which may be considered in this manner may include, but are not limited to:

- Where an individual is banned from driving where this is an essential part of their post.
- The loss of a relevant registration or licence where this is a statutory requirement.

## **Appendix 4: Conducting an Investigation**

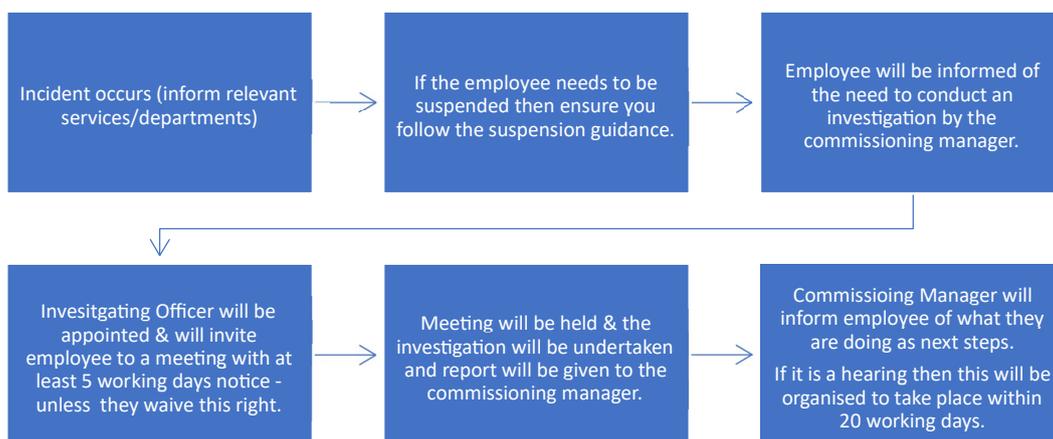
The Investigating Manager's role is to establish the facts of the alleged misconduct case so that it can be determined whether there is a disciplinary case to answer. They should investigate all aspects of the allegation.

An employee should be informed promptly, normally within five working days, in writing by the Investigating Manager that an investigation is being undertaken and given the opportunity to respond to the allegation. As part of the investigation, the employee who is the subject of the allegation will normally be invited to an investigatory interview. The employee must be notified of the meeting so they have reasonable time to prepare for it. The investigation will also include the collation of evidence for a possible hearing, taking statements from and usually meeting with relevant parties, including where appropriate, any witnesses to the alleged incident(s) of misconduct. Any witness to the alleged misconduct may be required to make a signed and dated written statement as soon as possible after the investigation meeting.

The Investigating Manager may be accompanied by a colleague from HR at such meeting(s) to provide advice and guidance. The employee concerned may be accompanied at such meeting(s) by either a workplace colleague or a Trade Union representative. Witnesses do not have the right to be accompanied at these meetings as they are not the subject of the investigation.

Once the investigation has been completed the Investigating Manager will prepare a report on the findings of their investigation for the Commissioning Manager. There may be exceptional circumstances where the identity of the person making the complaint will not be revealed as part of the investigation report i.e. where someone's welfare may be put at risk.

The Commissioning Manager will then consult with HR (who is not supported the Investigating Manager) to determine whether or not a disciplinary hearing is required based upon the findings of the investigation. If it is agreed that no disciplinary hearing is required the employee should be advised accordingly. Where the investigation concludes that there is a potential case to answer a formal disciplinary hearing should be convened. If the Commissioning Manager considers that it is not appropriate to convene a formal disciplinary hearing, but that informal advice or guidance is appropriate, any resulting discussion should take place under the informal procedure.



## Appendix 5: Procedure of a Disciplinary Hearing - Timescales

A timeframe over which the procedure should run is set out below.

Process	Timescale
If suspended – letter sent to employee	2 working days
Invite to investigation	5 working days
Investigation undertaken	10 working day*
Outcome delivered to employee	As soon as practical from receiving the report from the IO.
Hearing to be arranged	20 working days from outcome being reached.
Invite to hearing from the Chair of the Panel	10 working days in advance
Management Statement of Case and Hearing Pack	10 working days in advance of the hearing
Employee evidence for hearing	Received 5 working days in advance of the hearing
Witnesses for the hearing – employees request	5 working days notice – minimum
Outcome of the hearing	5 working days
Right to appeal	Within 10 working days of receiving the letter
Appeal hearing to be arranged	At least 10 working days' notice
Witnesses that are called to the appeal as requested the employee	At least 5 working days' notice

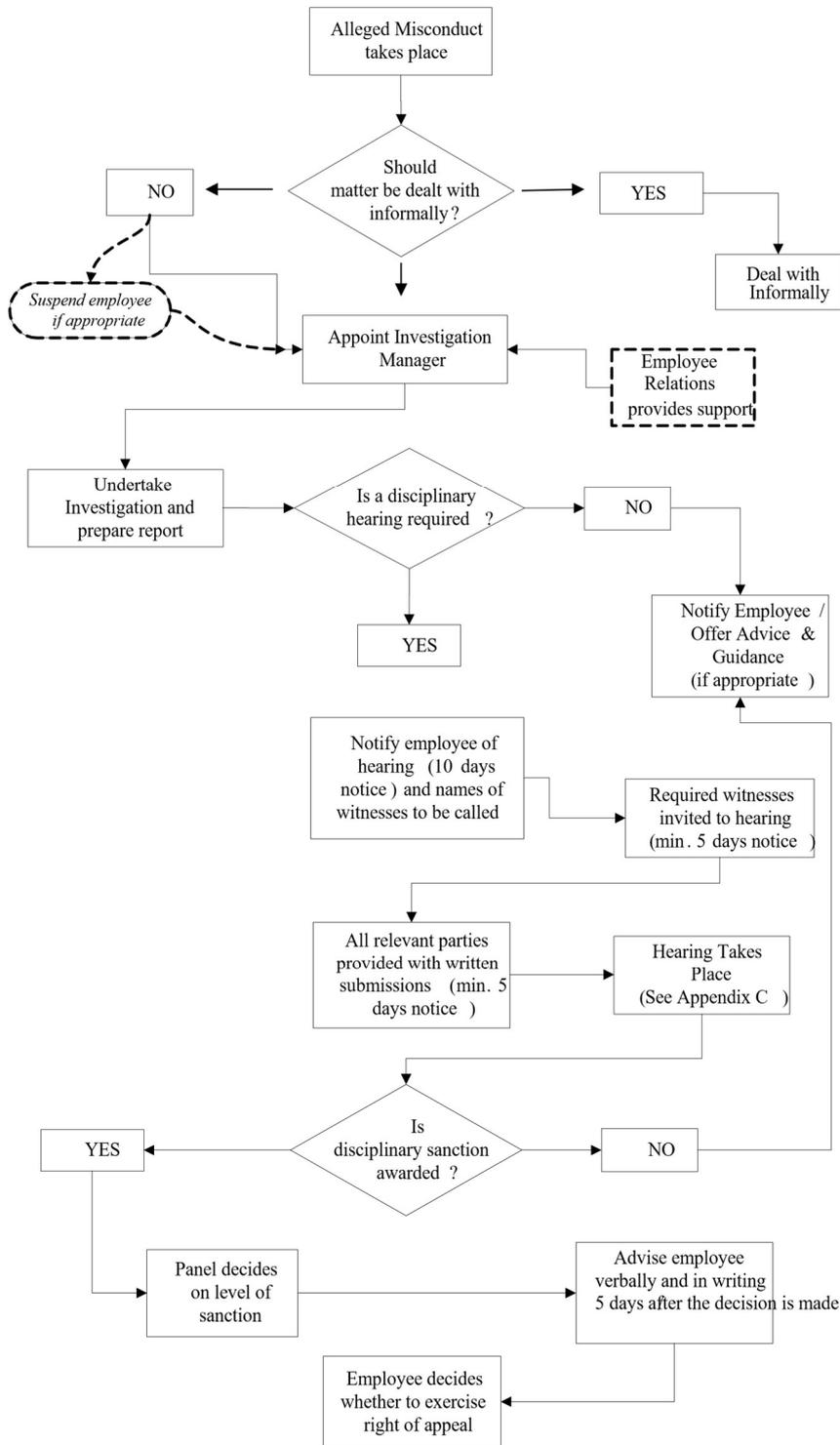
This timeframe is indicative and in certain circumstances, it may be necessary to extend the timeframe outlined.

Process	Timeframe
Panel Chair/Hearing Manager notifies employee in writing that they are required to attend a disciplinary hearing. Employee provided with details of the alleged disciplinary offence.	No later than 10 working days before the date of the hearing
Employee can request witnesses to be called at hearing. Employee are responsible for organising witnesses' statements.	No later than 5 working days before the date of the hearing. their own
All written submissions including witness statements must be submitted to HR.	No later than 5 working days before the date of the hearing or in line with deadline agreed by both parties.
Both parties and all panel members provided with copies of all written submissions received	No later than 5 working days before the date of the hearing or in line with deadline agreed by both parties

Hearing

Process	Timeframe
Panel Chair/Hearing Manager notifies employee of outcome of disciplinary hearing in writing and informs employee of right of appeal	No later than 5 working days after decision made

## Appendix 6: Disciplinary Flowchart



## Appendix 7: A Hearing Procedure

The hearing will be conducted by the Headteacher/Principal or a panel of two or more governors, Headteacher/Principal from another Trust school or members of the Trust SMT or Executive team.

The Chair will explain the procedure to be followed and outline the allegation(s).

1. The commission manager will detail the allegations and will present the evidence against the employee and call any witnesses in support of their case.
2. The employee and their representative may cross-question the presenting officer and any witnesses and examine any documentary evidence submitted.
3. The employee and their representative may present their evidence and call witnesses in support of their case.
4. The presenting officer may cross-question the employee, their representative and any witnesses.
5. The panel may question the commissioning manager, the employee, their representative and any witnesses.
6. Witnesses will remain in attendance whilst they are questioned and will withdraw thereafter.
7. The presenting officer and then the employee or their representative will have the opportunity to sum up their cases if they so wish.
8. When the panel are satisfied that all the relevant facts have been obtained, they will, in private, consider this evidence, any mitigating circumstances and any previous relevant disciplinary record prior to deciding what action is appropriate.
9. An adjournment may be approved by panel, if necessary, to obtain further information.
10. Wherever possible the decision will be notified to the employee and their representative verbally on the day of the hearing and confirmed in writing within 5 working days.
11. Where disciplinary action is taken, the employee will be informed of their right of appeal against the decision.

## Appendix 8: Appeal Hearing Procedure

At the Appeal Hearing the Chair of the Appeal Panel will explain the purpose of the meeting. They will outline the process to be followed at the Hearing, how it will be conducted and the actions open to the Appeal Panel depending upon the evidence they hear. The Manager who made the decision against which the appeal is being heard should, if requested, attend the Appeal Hearing and may outline the reasoning behind the original decision.

The employee will be asked to explain the grounds of appeal including any new matters to be introduced. The appeal hearing will take into account any relevant new evidence which either party may present and consider its significance with regards to the sanction imposed at the original Hearing. If new witnesses are called, both parties and the Appeal Panel will have an opportunity to question them. At the end of the Hearing, the employee will have an opportunity to summarise the keys issues in the case. At the end of the Hearing once all of the relevant issues have been aired sufficiently, the Chair of the Appeal Panel will (after an appropriate adjournment) briefly summarise the findings of the Appeal Panel and outline its conclusions.

The outcomes possible from an appeal are:

- The Appeal is not upheld and the formal action or sanction of the original Hearing stands unchanged;
- The Appeal is not upheld but the Appeal Panel imposes a lesser sanction;
- The Appeal is upheld and the sanction imposed by the original Hearing is no longer applied.

### Decision

The Appeal Hearing decision will be made carefully and without undue delay. It will usually be conveyed verbally to the employee within a maximum of one working day of the Hearing. A decision will be made to either:

- Uphold the original disciplinary decision and sanction awarded;
- Uphold the appeal and confirm that the disciplinary action will be removed from the employee's record;
- Confirm that misconduct has occurred but reduce the level of disciplinary sanction.

The outcome of the Appeal Hearing should be confirmed in writing to the employee by the Chair of the Appeal Panel no later than five working days after the decision has been conveyed verbally. Notes of the Appeal Hearing can be made available if a request is made to HR by the employee. Any such request should be received by Employee Relations no later than 10 working days after the written decision of the Appeal Panel has been issued.

## **Appendix 9: Confidential Counselling Service for TSAT Employees**

### Confidential Counselling Service for TSAT Employees

A confidential counselling service is available for all Employees across the Trust provided by Smart Clinic. The service offers information, advice and support 24 hours a day, 7 days a week. This includes a telephone support line, access to advice and information, coaching and counselling where appropriate. To access the service please use the contact details below:

- Telephone: 0845 862 2113
- Access the online services via [www.client.smartclinic.com](http://www.client.smartclinic.com) and use your personal log in details.
- Download the app for convenience – details are available online.

