

# STAFF DISCIPLINE, CONDUCT AND GRIEVANCE POLICY

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# Part 1 – Staff Discipline

## Disciplinary Policy Statement

This policy applies to all employees of Beckfoot Trust.

The purpose of this policy is to encourage an employee conduct or performance is unsatisfactory to improve. The procedure serves to ensure that this is done in a fair and consistent manner. Clear guidelines are set out for Teachers in the Teachers Standards (England) and the Trust's Code of Conduct on what constitutes acceptable standards of performance and behaviour. This procedure does not form part of any employee's contract of employment and it may be amended at any time.

### 1. Preamble

- 1.1 This should be read in conjunction with the Managing Investigations document at Part 3 of this document. This document includes detailed information on how to conduct investigations. Further advice is also available from the Trust's HR Advisory team.
- 1.2 The disciplinary procedure is strictly confidential and all aspects including all documentation and records shall be treated as such.
- 1.3 In minor cases of alleged misconduct the manager should initially seek to resolve the matter informally by discussion with the employee. (please see the 'Informal Discussion' section below)
- 1.4 The disciplinary procedure is to be used where an employee's work or conduct is alleged to be unsatisfactory.
- 1.5 Please check with the Trust's HR Advisory team whether a concern should be dealt with under the Trust's disciplinary or capability procedures
- 1.6 Each step and action under the procedure must be taken without unreasonable delay. The timing and location of meetings must be reasonable.

### Informal Discussion

- 1.7 The need for formal disciplinary action will be reduced if managers demonstrate high standards of conduct themselves and make it clear that the same high standards are expected from their staff. School leaders are responsible for ensuring that their staff are aware of the requirements of their roles and of the expectations of the Trust around relationships with colleagues.
- 1.8 Early intervention, offering guidance and instruction, can often prove very effective in improving minor conduct issues and avoiding the need for more

formal procedures being invoked. The employee should fully understand a manager's concerns, what improvements are required of them and the possible consequences if these improvements are not achieved.

- 1.9 No disciplinary action will be taken against an employee until the case has been fully investigated.

## 2. General Principles

### Trade Union Representatives and Officers

- 2.1 Although normal disciplinary standards will apply to their conduct and performance as employees, no disciplinary action or suspension will be taken until the circumstances of the case have been discussed with an appropriate Trade Union Representative (where the employee is a member). In the case of suspension this may not be practical and should not prevent the school from taking action.

### Conduct and Offences committed outside working hours

- 2.2 Staff are expected to inform their school should they have been investigated in any other aspect of their lives or arrested.

Criminal acts resulting in cautions or convictions for offences committed outside working hours may result in disciplinary proceedings being taken against the employee, up to and including summary dismissal. The Trust will consider whether or not the employee's conduct, caution or convictions merit action because of employment implications. For example, where the Trust consider the act or conviction in question affects the suitability of the employee for the position in which they are employed, the reputation of the Trust or undermines the trust and confidence that the Trust has in the employee or they have behaved in a way that indicates they may not be suitable to work with children (Please refer to the Trust's Child Protection and Safeguarding policy and KCSIE Part 4).

## 3. Suspension

- 3.1 In exceptional circumstances consideration may be given to removing a member of staff from their place of work (i.e. suspension) at the outset of the investigation or at any stage during the course of the investigation. Please contact the Trust's HR Advisory team if you are considering suspension. Further information can be found in the Managing Investigations guidance in this policy.

## 4. The Investigation Process

- 4.1 Prior to conducting any disciplinary investigation, advice and guidance should be sought from the Managing Investigations Document and from the Trust's HR Advisory team.
- 4.2 Employees will be advised of the allegations against them.

### Right to be accompanied and role of the companion

- 4.3 Employees have the right to be accompanied at any meetings or interviews (not normal management meetings that would occur in the conducting of an employee's normal role in school) by a companion. When school notifies an employee of an impending disciplinary meeting the employee should be advised of their right to be accompanied by a companion. The companion may be either a trade union representative or a work colleague. In line with the ACAS Code of Practice the companion should be allowed to address the meeting to put and sum up the member of staff's case, respond on their behalf to any views expressed at the meeting and confer with the member of staff.

The companion does not, however, have the right to answer questions on the employee's behalf, address the meeting if the employee does not wish it or prevent the Trust from explaining the management case.

It is the responsibility of the employee concerned to arrange their own accompaniment and to inform the relevant person conducting the meeting, who this will be. The employer reserves the right to request the choice of companion to be reasonable

### Sickness absence during the investigatory/disciplinary process

- 4.4 It is not necessary to suspend the disciplinary or investigatory process simply because the employee is absent due to illness. The Trust may seek advice from the Employee Health and Wellbeing Service, in order to ascertain whether or not the employee is fit to engage in the process. If the employee is declared 'fit' to attend meetings but not well enough to attend work, the Trust may, at its discretion, consider a number of measures, such as;

- Offering an alternative venue for the meetings/hearing;
- Allowing the employee to make written representation ;
- Allowing extra time during the procedure for the employee to participate effectively.

- 4.5 Where the employee is not 'fit' to engage in the investigation process, the investigation can still continue. At such time as the employee is required to

attend an investigation interview, further advice will be sought from the Employee Health and Wellbeing Service.

### **Postponement of meetings/interviews**

- 4.6 In these circumstances, it is the responsibility of the employee to propose an alternative date for a meeting; this should wherever possible be within 5 working days of the original date proposed.

## **5. Disciplinary Hearings**

- 5.1 If the need for a disciplinary hearing has been determined following an investigation, the employee will be notified, in writing of this decision no later than 10 working days prior to such a hearing taking place, along with all management information to be used as part of the hearing.

### **Right to be accompanied /represented**

- 5.2 Employees have the right to be accompanied at a disciplinary hearing by either (up to) two trade union representatives or one work colleague. It is the responsibility of the employee to arrange their own accompaniment and to inform the relevant person conducting the meeting that they are to be accompanied and by whom.
- 5.3 At any disciplinary hearing or appeal hearing the employee will have the right to:
- Produce written statements and bring witnesses (All written statements shall be circulated to all parties at least 3 days in advance of the hearing);
  - Ask questions of any witnesses present.
  - Present his/her case (or be represented by up to two trade union representatives or one work colleague) prior to the decision being made whether or not to issue the warning or to dismiss.
- 5.4 The employee will be given sufficient information about the allegations to enable them to answer the case at the hearing together with all documentary evidence to be presented by the management side during the hearing. The hearing will be conducted either by the Headteacher or a panel of directors selected from the Trust Directors/Trustees or LSC members or other people identified by the Board for their particular skills and experience, as necessary and taking those decisions delegated to it by the Board.

## Postponement of hearings

5.5 In accordance with Section 10(4) of the Employment Relations Act 1999 an employee may seek a postponement of a hearing and propose an alternative time if their chosen trade union representative or work colleague is not available to attend. The alternative time must wherever possible and taking account the availability of the Directors /Trustees or LSC members required to form the panel, be within 5 working days of the original date. In some circumstances it may not be possible to re-arrange the hearing within the requisite 5 working days. If the employees' chosen person is not available on the re-scheduled date, then they should select another person to accompany them who will be available at the given time. Arrangements for re-arranged hearing dates, will wherever possible be arranged in conjunction with the employee's trade union representative, however this may not always be possible.

## Sickness

5.6 It may, on occasion be necessary to proceed with a disciplinary hearing without the presence of the employee, due to their sickness, or refusal to attend, despite reasonable adjustments being made to both the procedure and venue. In such circumstances, the employee and /or their representative will remain free to attend the hearing. The outcome will be communicated in writing to the employee including their right of appeal.

## Procedure at the Hearing/Appeal

5.7 At the beginning of the hearing/appeal, the Chair/HR representative will introduce all parties present and shall explain the procedure to the parties, as follows;

- The hearing/appeal may be digitally recorded to ensure a clear and accurate account of the meeting is obtained. All present will be asked to consent to this. The employee will have been made aware of this as part of the invite letter to the hearing and asked if they consent to this. The meeting minutes along with the digitally recorded version remain the property of the school. A hard copy of the meeting minutes can be made available upon written request from the Chair of the Board as can the digital recording.
- The management representative will put the management case and may call witnesses.
- The employee or their trade union representative will have the opportunity to ask questions of the management representative and any witnesses they have called.



- The employee or their trade representative will put their case and may call witnesses.
- The management representative will have the opportunity to ask questions of the employee and any witnesses they have called
- The Chair (and through them the other Directors/Trustees or LSC members or other people identified by the Board) may ask questions of any party. If new evidence is brought to the hearing, both parties will be given an opportunity to comment and, if necessary to adjourn.
- The management representative will have the opportunity to sum up their case.
- The employee or their trade union representative will have the opportunity to sum up their case.
- The Chair shall ask both parties to leave while the decision is made; only recalling the two parties to clear points of uncertainty on evidence already given. If this is necessary, both parties will return even if only one of the parties is concerned with the point giving rise to the doubt.
- The Chair shall recall the two sides to;
  - (i) Give the decision and explain the reasons for the decision and confirm this decision will be put in writing to them as soon as possible, or
  - (ii) Inform the employee that the decision will be made known to them later both verbally and in writing as soon as possible after the hearing, or
  - (iii) Inform the employee that the decision will be given in writing as soon as possible.

## **Levels of Disciplinary Sanction**

- 5.8 The four levels of formal disciplinary sanctions are designed to reflect the varying levels of seriousness of the case. The levels give a proper sequence for persistent cases. A disciplinary sanction will be issued at whatever level appears appropriate to the circumstances, it is therefore not always necessary to commence any disciplinary sanction at the first warning stage.
- 5.9 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 and without pay in lieu of notice. Except for gross misconduct, a member of staff dismissed by reason of disciplinary action shall be given notice based on their terms and conditions of employment.

5.10 For guidance, examples of gross misconduct can be found in the Managing Investigations guidance at paragraph 1.8

5.11 The following decisions may be issued by a panel (formed from Directors/Trustees or LSC members or other people identified by the Board) or Headteacher at a disciplinary hearing;

- The decision to issue no formal sanction.
- Level 1 – **warning** may be given where the case is of sufficient importance or seriousness to bring to the attention of the employee formally. The time limit for this sanction shall be **6 months** (excluding the summer break from the date of the decision).
- Level 2 – **warning** may be given where the case has already involved a first warning and insufficient improvement has been made, where further misconduct has occurred, or where the case is of sufficient importance or seriousness to bring to the attention of the employee formally. The time limit shall be **9 months** (excluding the Summer Break) from the date of the decision.
- Level 3 – **warning** may be given where the case has already involved a first warning and insufficient improvement has been made, where further misconduct has occurred, or where the case is of sufficient importance or seriousness to bring to the attention of the employee formally. This level of sanction may also be issued where a determination of gross misconduct may not warrant dismissal for example due to mitigating circumstances. The time limit for this sanction shall be **12 months** (excluding the Summer Break) from the date of the decision.

For the purposes of future disciplinary action, breaches of discipline will be disregarded after the specified time period of satisfactory conduct. However, the fact that the employee has been subject of disciplinary action will form part of that persons employment record.

**The following disciplinary sanction can only be issued by the Board of Directors disciplinary panel (Formed from Directors/Trustees or LSC members or other people identified by the Board for their particular skills and experience, as necessary and taking those decisions delegated to it by the Board.**

- Level 4 – **Dismissal**. An employee is likely to be dismissed where the case has already involved a final warning and insufficient improvement has been made or where further misconduct has occurred or where the case is so serious as to constitute gross misconduct or where there is some other substantial reason.

## The Decision Letter

- 5.12 A letter detailing the decision will be given to the employee within 10 working days of the date of the disciplinary hearing taking place or sooner where possible and a copy placed on the employee's personnel file, if a warning is issued.
- 5.13 Following the outcome of the hearing the decision letter will state:-
- The decision i.e. that there is no case to answer or the appropriate level of disciplinary sanction
  - The reason for the decision.
  - The course of action to be followed by the employee.
  - Time scale in which improvement is required, if applicable.
  - Where assistance is required, the assistance which will be made available to the employee e.g. training and guidance.
  - The date on which the warning will elapse.
  - That further disciplinary action will be considered if there is further misconduct or insufficient improvement within the timescale of the warning.
  - The right of appeal against the decision and how to exercise that right. (See Section 5.14).
  - If the warning is a final warning it will also state that if the employee's conduct continues to be unsatisfactory or if there is further misconduct it may lead to dismissal.

## Right of appeal

- 5.14 All employees have the right of Appeal
- 5.15 Appeals must be lodged in writing to the Clerk of the Board of Directors within 10 working days (excluding school holiday breaks) of the date of the outcome letter.
- 5.16 The appeal will be heard by a panel of directors, selected from Directors/Trustees or LSC members or other people identified by the Board for their particular skills and experience, as necessary and taking those decisions delegated to it by the Board, who have had no previous involvement in the case.

5.17 When lodging an appeal, the employee should state;

- a) If the employee is appealing against the findings that they have committed the alleged act/s of misconduct, then any appeal hearing would be a full re-hearing of all the evidence in relation to the allegations against the individual concerned as heard at the original hearing. The panel at this appeal re-hearing will have the full range of disciplinary sanctions open to them.
- b) If the employee is appealing against the level of disciplinary sanction imposed on them as a consequence of the original disciplinary hearing. In this case, an appeal panel would be asked to review the original decision made. This would not constitute a full re-hearing and any outcome from this review would either see the original sanction reduced or remain the same.

5.18 There is no further internal appeal against the decision of the appeals committee.

### **What is the Difference between a Review and a Re-hearing at an Appeal?**

5.19 A review of the original disciplinary decision involves a panel of directors not previously involved in the original disciplinary hearing and the evidence available from the original decision. As part of this they may wish the original decision maker(s) to give evidence.

A full re-hearing also involves a new panel of directors not involved in the case re-hearing the management and staff case and potentially hearing further witness evidence in order to come to a fresh decision.

5.20 Where the member of staff appeals following a disciplinary hearing against the level of sanction, the appeal hearing would review the original decision made. This would not require a full re-hearing and any outcome from this review would either see the original sanction reduced or remain the same.

A review hearing panel would review the documentation presented at the original disciplinary hearing including the letter of appeal, the official notes of the hearing and the decision/outcome letter(s). Any additional submissions would not be accepted. Potential witnesses would be the employee; the School Management representative and a member of the original decision maker (in the case of a panel decision this is preferably the Chair but in exceptional circumstances to avoid undue delay another member of the panel would be acceptable). The appeal panel's decision is final.

- 5.21 Where the employee is disputing the facts of the case, the appeal hearing would be a full re-hearing of all the evidence in relation to the allegations against the individual concerned. The panel will have the full range of disciplinary sanctions open to them – including issuing a higher sanction than was issued at the original hearing.
- 5.22 In addition to any new evidence the documentation for a re-hearing should contain as a minimum the documentation presented at the original disciplinary hearing; the letter of appeal and the decision/outcome letter(s). However, the minutes of the previous hearing will not be used as evidence for the rehearing. In addition to the witnesses at the original hearing additional witnesses may be called.

## Part 2 – Grievances Procedure

### 1. General Principles

- 1.1 This procedure applies to all employees of Beckfoot Trust in respect of whom the responsibility for seeking redress of any complaint (except those matters which are subject to separate procedures e.g. flexible working) is under the control of the Trust under the School Standards and Framework Act 1998, as amended from time to time. This procedure does not form part of any employee's contract of employment and it may be amended at any time.
- 1.2 The raising of a grievance under this procedure will not necessarily delay the operation of any stage of any other procedure. If an employee wishes to raise a grievance relating to the application of the disciplinary, capability or other procedure, the grievance will be considered and a decision will be made by the Headteacher/Chair of the Board as to the order in which each matter proceeds under the relevant procedure or whether all issues should be dealt with concurrently.
- 1.3 The employee must make all attempts to resolve the grievance at the earliest opportunity with their line manager at the informal stage 1 of the procedure.
- 1.4 When raising a grievance, employees should state what they are seeking as a preferred outcome or remedy to the grievance. This provides a framework for discussion and clarity about remedies available under the procedure.
- 1.5 Issues that may cause grievances include:
  - Terms and conditions of employment
  - Health and safety
  - Work relations
  - Bullying/ harassment or discrimination \*
  - New working practices
  - Working environment
  - Organisational change;
- 1.6 \*Discrimination may be characterised as:  
Any less favourable treatment or victimisation of an employee which is unlawful under the Equalities Act 2010 and other legislation, including the following:
  - Gender
  - Race
  - Disability
  - Sexual orientation

- Trans-gender Status
- Religion or belief
- Age
- Membership or non-membership of a trade union or involvement in trade union activities
- Status as an ex-offender
- Status as a part-time worker
- Or fixed-term

1.7 \*Bullying and harassment can be characterised as:

ACAS states that most people use the terms bullying and harassment interchangeably, however, ACAS provides the following definitions:

Bullying is:

*“Offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means intended to undermine, humiliate, denigrate or injure the recipient”.*

Harassment is defined by the Equality Act 2010 is:

*“Unwanted conduct related to a relevant protected characteristic, which has the purpose or effect of violating an individual’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual”.*

“Bullying and harassment is not necessarily face to face, it may occur through written communications, visual images (for example pictures of a sexual nature or embarrassing photographs of colleagues), email, phone, and automatic supervision methods – such as computer recording of downtime from work, or recording of telephone conversations – if these are not universally applied to all workers”.

## 2. Roles and Responsibilities

Grievances are internal matters and may involve a number of people. It is not possible to prescribe specific roles. However, the following broad guidelines may be helpful.

### Management

- 2.1 Managers should be aware that in law an employer may be held responsible for the actions of its employees regardless of whether or not they are aware of those actions. It is therefore essential that the school takes appropriate measures to ensure that bullying, harassment, or discrimination do not occur. All meetings and proceedings should be confidential.

It is the responsibility of the school's management to:

- Make all employees aware of the policy and ensure their compliance.
- Deal with all issues in a timely, serious and sensitive manner.
- Maintain confidentiality when dealing with cases and ensure that a written record is kept of all informal and formal meetings and discussions.
- Make every effort to resolve complaints informally by discussion between the individual employee and the appropriate level of management; the resolution of employee complaints should form part of everyday informal managerial action.
- In considering evidence relating to a complaint the management representative will apply the "balance of probabilities" standard proof.

### **Individual members of staff**

2.2 Each individual is responsible for his or her own actions whilst at work. It is the responsibility of all employees to:

- Be mindful of their own behaviour and treat others with dignity and respect
- Try to resolve problems informally by discussion with colleagues and/or management
- Report incidents of harassment or bullying either personally experienced or witnessed, immediately to the appropriate line manager
- Where possible make written notes (this is advisable and should include dates and names of any witnesses etc) of incidents, harassment or bullying experienced or witnessed
- Ensure confidentiality is maintained at all times

## **3. Right to be accompanied**

- 3.1 Throughout the process, both the complainant and the person whom the complaint is made against may be accompanied, for example by a recognised trade union representative or by a work colleague not involved in the complaint. At a hearing or appeal a complainant may be represented by up to two trade union representatives or work colleagues.
- 3.2 In exceptional cases, dealing with sensitive matters or where the witness may feel intimidated they may be accompanied by a trade union representative or work colleague. However, this should not be a person who has a conflict of interest. Trade union representatives cannot play the dual role of representing the person whom the complaint is made against, witnesses and/or the complainant in the same case.
- 3.3 It is good practice for a mutually agreed time to be arranged for meetings and hearings where an employee requires the presence of his or her trade union representative.



## 4. Circumstances when Grievances will not normally be accepted

- 4.1 Where the grievance affects more than one employee (the Collective Disputes Procedure applies, please see section 14 of this policy).
- 4.2 Where the grievance is about a decision made through an agreed procedure where a right of appeal exists within that procedure (Re-Grading of role's grade, Discipline, Capability, Assimilation, Redundancy etc)
- 4.3 Where the grievance is in relation to an element that is not within the manager's control such as complaints relating to statutory adjustments to pay and allowances, for example income tax, national insurance and pensions, policies, collective agreements or conditions of service.
- 4.4 Where the grievance is about an event or decision more than **30 working days** old. However an employee may refer to earlier issues if the matter relates to a repeated pattern of behaviour and the issues support the grievance. Extension of this time limit will only be agreed where management accept that it was not reasonably practicable for the employee to have lodged the grievance in time. An aggrieved employee should submit their grievance as soon as practical. The longer the time that elapses, the more difficult it will be for the line manager or any subsequent management investigation to establish the detail of what has happened and why. Almost inevitably people will have poorer recollection of events with the passage of time. Even where records exist, people may be less likely to recall why certain decisions or actions were taken, making it difficult to conclude whether a grievance should be upheld.
- 4.5 Where the grievance is about a decision which the employee has already complained about and which has previously been investigated. **Once a resolution process is completed, or the employee withdraws the grievance (or chooses not to proceed to the next stage) then the matter is closed.**
- 4.6 Where the grievance is against those other than the decision maker for example where the employee was acting in an advisory capacity i.e. Legal/Human Resources/Finance staff.

## 5. Counter Complaints

- 5.1 All employees have a contractual right to raise a grievance under the schools Grievance Procedure. This means that there can be occasions where "counter complaints" are raised i.e. where an employee who is the subject of a grievance raises a grievance about the "complainant". Such grievances must

be dealt with in the same way as the original grievance. “Counter Complaints” should not be put on hold until the original grievance has been resolved, unless the “Counter Complainant” agrees to that course of action. Given that a “counter complaint” will usually cover the same issues, albeit from a different viewpoint, to the original grievance, it may be appropriate to have one investigation into the matters. In addition it will usually be appropriate for the same manager to progress all matters in relation to the complaint.

## 6. Record keeping and confidentiality

- 6.1 It is important that accurate written records are kept throughout the complaints handling processes, including any initial informal processes.
- 6.2 Records should be held in a secure and confidential manner. Records should contain information on the nature of the grievance and the date submitted. Details of decisions made and actions taken should be retained in writing.
- 6.3 In the event of a complaint being made, the management of the school may inform the decision maker(s). But on no account should the case be openly discussed with any other Directors.

## 7. Stages in the grievance procedure

### **Informal stage**

- 7.1 Most grievances can be resolved quickly and informally through discussion. If an employee has a grievance that involves another member(s) of staff, they should seek to resolve the matter informally by approaching the person(s) involved and, if necessary, request the involvement of the appropriate manager, who may be the Headteacher or chair of the Board. If the complaint is about the line manager they should speak informally to a more senior manager or Headteacher. This allows for problems to be resolved quickly and normal working relationships to resume.

Employees should be able to demonstrate that they have made every effort to discuss the issue(s) informally, before the formal process is commenced.

### **Mediation**

- 7.2 During the informal stage, it may be appropriate to explore the use of mediation, depending on the nature of the grievance. This will involve the appointment of someone with mediation skills. Please contact the Trust HR Advisory team for advice.

### **Investigation**

- 7.3 It may be necessary to carry out an investigation into a formal grievance. The amount of any investigation required will depend on the nature of the

allegations and will vary from case to case. It may involve interviewing and taking statements from the employee and witnesses and/or reviewing relevant documents.

The employee must co-operate fully and promptly in any investigation. This may include informing the investigating officer of the names of any relevant witnesses, disclosing any relevant documents and attending interviews as part of the investigation.

The school may instigate an investigation before holding a grievance meeting where considered appropriate. In other cases a grievance meeting may be held before deciding what investigations (if any) to carry out. In either case the school will hold a further grievance meeting after the investigation is completed to enable a decision to be made.

#### **Formal grievance meeting**

- 7.4 Grievances concerning issues that are more than 30 working days old will not usually be investigated unless related to the current issue or there are exceptional circumstances. The formal grievance will not proceed unless the employee has submitted their grievance in writing, clearly stating the nature of their grievance.

When submitting a grievance the employee should give as much detail as possible, including what outcome they are looking for. Evidence that the informal stage has been undertaken should also be submitted at this stage. Where this has not happened the aggrieved party should explain clearly why they did not feel able to go through the informal stage.

The Headteacher or Chair of the panel, should be the person conducting the meeting/hearing unless they have had prior involvement at the informal stage. The person hearing the grievance should ensure that a note taker attends the hearing in order to record the main points and actions. It is important that all grievances are considered fairly and without unreasonable delay.

It is important that all parties have advance access to any written statement or evidence to be used at the grievance meeting. This should be in sufficient time to enable full consideration of the material. Both parties have the right to be accompanied.

Separate meetings with each of the parties involved may be held if this is deemed more appropriate. The manager considering the grievance will decide who should be present at any meeting.

The purpose of the grievance meeting is for the employee to explain their grievance and how it may be resolved. The decision will be reached as soon as reasonably practicable and usually within five working days of the final

grievance meeting.

### Witnesses

- 7.5 Any witness to be called at a hearing must have submitted a written statement of their knowledge of the case in advance of the hearing which has been exchanged with all parties as soon as reasonably practicable and in any event at least three working days prior to the hearing.

Testimonials regarding an employee's personality and character will not be accepted as witness statements, nor may such witnesses be called to attend a hearing for this purpose.

A witness who is not a school employee may provide a witness statement (not a testimonial) but would not usually attend a grievance hearing.

## 8. The Appeal

- 8.1 If the complainant is dissatisfied with the decision from the first hearing, they should notify the Clerk to the Board within 10 working days of receipt of the decision letter of his or her decision to appeal. The complainant must give specific reasons why they are dissatisfied with the outcome. An appeal can be made on the grounds of:

- Why the outcome does not reflect the desired outcome/remedy initially outlined
- Perceived unfairness of the decision, the employee must set out the reasons in the appeal application.
- Disputing the facts of the case including new evidence coming to light.
- Procedural non-compliance.

- 8.2 The Appeals Committee will be formed to hear the complaint. The Committee will be convened by the Clerk to the Board. The committee will comprise of Directors/Trustees or LSC members or other people identified by the Board for their particular skills and experience, as necessary and taking those decisions delegated to it by the Board.

HR will be present to advise the directors. The hearing will take place as soon as is reasonably practicable. If possible, the Chair of the Committee may be able to give a verbal decision after the hearing. The decision will be confirmed in writing normally within 5 working days. The decision will be final; there is no further right of appeal through the school's procedure.

## 9. Restoring Working Relationships

- 9.1 Whatever the outcome of a complaint, it is management's responsibility to re-establish effective working relationships amongst the employees involved; it is the employees' responsibility to co-operate to achieve this. The school may seek agreement from both the complainant and the person who the complaint has been made against for the case to be referred to mediation.

## 10. Occupational Health Support

- 10.1 The school has a duty of care to both parties involved in the case and should recognise that the process may be stressful and have an impact on the health and wellbeing of both parties. Schools are advised to seek Occupational Health support for either party where required.

## 11. Complaints against the Headteacher

- 11.1 An employee who wishes to make a complaint against the Head teacher should submit their complaint to the Chair of the Board and follow the stages set out in the procedure. Alternatively an employee may wish to contact their trade union representative who may support the employee in raising their concern. The Chair of the Board may delegate the matter to a Director with the particular skills to enable them to provide assistance. Whoever undertakes this role cannot subsequently be a member of the Board of Directors panel dealing with the matter.
- 11.2 Only an external investigating officer or one or more Directors (or Trustees or LSC members) may carry out an investigation into complaints against the Headteacher.

## 12. Complaints made by the Headteacher

- 12.1 A Headteacher may raise a complaint against an employee on the grounds of bullying, harassment or discrimination. A Headteacher may raise a complaint against the Board of Directors but not against an individual Director unless they are exercising a delegated power or function or one conferred by law, for example a director acting in an official capacity as a member of the Headteacher's performance management panel.

## 13. Allegations against the Trust Board

- 13.1 Please contact the Trust HR Advisory team for advice before taking any action.

## 14. Collective Grievances

- 14.1 Where more than one employee has lodged a complaint relating to the same or substantially the same issue, the school may deal with the complaints together in the interests of fair and consistent decision-making. The trade union may initiate a collective grievance on behalf of more than one named employee where the issues are the same.

## 15. Overlapping grievance and disciplinary cases

- 15.1 Where an employee raises a complaint during a disciplinary process, the disciplinary process may be temporarily suspended in order to deal with the complaint, at the discretion of the Trust. Where the complaint and disciplinary cases are related it may be appropriate to deal with both issues concurrently.

## 16. Vexatious, malicious and misconceived grievances

- 16.1 There is no intention to deter a genuine grievance being raised but the procedure must not be used inappropriately. When a grievance is apparently vexatious, malicious or misconceived or when grievances repeat or duplicate complaints which have already been raised and /or resolved or where an employee has refused to co-operate with the requirements of this procedure then the Headteacher should seek further advice from the Trust HR Advisory team. Any decision to exclude a grievance or part of a grievance will be notified to the employee in writing stating the reasons. When an employee makes allegations other than in good faith or which are reasonably believed to be false, or amount to harassment of another employee, the school may decide to invoke the school's disciplinary procedure.

## 17. Resignations and Exit Interviews

- 17.1 If an employee leaves the employment of the school through resignation etc., consideration should be given as to whether it is reasonably practicable to conclude the grievance. Consideration will need to be given to the remedy outlined at the outset and whether any remedy is possible once the employee has left employment.
- 17.2 An issue raised in an exit interview or questionnaire might constitute a grievance. Where there is a concern about the content of a resignation, interview or questionnaire, advice from the HR Advisory team should be sought.

## Part 3 – Managing Investigations

### 1. Introduction

- 1.1 The Managing Investigations Toolkit aims to provide a framework, which may assist schools to carry out a fair and consistent investigation into staff, other workers including supply staff and volunteers conduct or complaints.
- 1.2 This guidance should be used in conjunction with the following policies;
- Trust Staff Discipline
  - Trust Grievance
  - Trust Child Protection and Safeguarding
  - KCSIE 2020
- 1.3 This document is a practical guide to schools on undertaking investigations. Managers are strongly advised to contact the Trust’s HR Advisory team prior to undertaking an investigation; they are available to advise the investigating officer (Headteacher, Deputy Headteacher, Assistant Headteacher, Cluster Business Manager or Board of Directors) at all stages of the process. This document does not form part of any employee’s contract of employment and it may be amended at any time.

#### **When should an investigation be conducted?**

- 1.4 An investigation may be required in the following circumstances;
- Allegations of misconduct (including child protection allegations)
  - Allegations of bullying / harassment / discrimination
  - Dealing with employee complaints e.g. complaints regarding perceived unfair treatment
  - Allegations of misconduct for other workers including supply staff and volunteer. If there are concerns or an allegation is made against someone not directly employed by the school, such as supply staff provided by an agency, the following actions will be taken in addition to our standard procedures:
    - School will not automatically decide to stop using a supply teacher due to safeguarding concerns without finding out the facts and liaising with our local authority designated officer to determine a suitable outcome
    - School will discuss with the agency whether it is appropriate for them to suspend to suspend the supply teacher, to send an alternative supply staff during an investigation or redeploy them to another part of the school if at all possible, while the school carries out the investigation.

- School will involve the agency fully, but the school will take the lead in collecting the necessary information and providing it to the local authority designated officer as required
- School will address issues such as information sharing, to ensure any previous concerns or allegations known to the agency are taken into account (this will be carried out, for example, as part of the allegations management meeting or by liaising directly with the agency where necessary)
- When using an agency, we will inform them of our process for managing allegations, and keep them updated about our policies as necessary, and will invite the agency's HR manager or equivalent to meetings as appropriate.

1.5 If there is an occasion when staff conduct has the potential to lead to a disciplinary hearing it is most important that a full and fair investigation is undertaken that is consistent with the guidance that is provided within this document.

### **Examples of Misconduct**

1.6 The following are examples of misconduct. The list is not exhaustive:

- Negligence
- Inadequate standards of work caused by carelessness
- Careless damage to or wastage of school property and/or equipment
- Failure to carry out reasonable instructions
- Insubordination
- Improper behaviour or conduct
- Disregard of safety instructions
- Aggressive behaviour
- Timekeeping offences
- Improper disclosure of confidential information
- Smoking in prohibited areas
- Harassment and/or bullying
- Breach of the School's guidelines on e-mail/internet use
- Breach of the School's approach to equality
- Conduct which contravenes school policy or procedure

### **Examples of Gross Misconduct**

1.7 Gross Misconduct is generally seen as misconduct serious enough to destroy the employment relationship between the employer and the employee and make any further trust and confidence and future working relationships impossible.



1.8 The following list provides some examples of actions which may constitute gross misconduct:

- Stealing from the school/Trust, staff/visitors or public property
- Fraud and/or deliberate falsification of records (including educational qualifications where such qualifications are a stated requirement of the post).
- Deliberate damage to or neglect of school property and/or equipment
- Gross insubordination
- Serious harassment, bullying, discrimination and/or intimidation
- Physical violence
- Actions which risks bringing the school/Trust into disrepute
- Incapability whilst on duty brought on by alcohol or drugs
- Conduct at work likely to offend decency, including improper relationship with students
- Gross negligence which causes or might cause unacceptable loss, damage or injury
- Serious infringement of health and safety procedures
- Serious breach of confidence e.g. disclosure of confidential information and breach of data protection requirements.
- Matters/conduct relating to child protection
- Sexual Misconduct
- Refusal to follow a reasonable instruction
- Unauthorised Absence
- Fraudulently claiming sick pay or other payment from the school.
- Inappropriate use of social media such as Facebook or twitter or behaviour that contravenes the trust's Online Safety policy
- Criminal activities outside work where such conduct is incompatible with the individual's employment

### **When to consider informal or formal action**

1.9 Consideration should always be given to whether it is appropriate to deal with a matter formally or informally (and the process to be followed).

1.10 If you are concerned that the allegation may be serious or you are uncertain as to whether initially to tackle the matter informally or formally, you are strongly advised to contact the Trust's HR Advisory team before any action is taken to decide the most appropriate method of dealing with the matter.

1.11 The Trust's HR Advisory team will discuss options, potential outcomes and mechanisms for dealing with the matter. They will also suggest any other sources of advice and support. The decision on how to proceed will ultimately rest with the school.

1.12 For guidance on dealing with complaints and allegations informally, please refer to the appropriate Trust Procedure.

**NB. If the matter relates to Child Protection the Designated Safeguarding Lead (DSL) must be contacted for advice before any action is taken.**

## Child Protection Allegations

- 1.13 In the event of an allegation of a child protection nature a basic fact finding exercise may be required to establish the initial details, however, it is most important that you contact school HR team/Business Manager as well as one of the colleagues below, before commencing a full investigation.

Suzanne Ellis – Lead officer Education Safeguarding Team  
01274 437043  
[Suzanne.ellis@bradford.gcsx.gov.uk](mailto:Suzanne.ellis@bradford.gcsx.gov.uk)

Duty or Safeguarding Duty Co-Ordinator  
01274 435600

## 2. Suspension

- 2.1 In exceptional circumstances consideration may be given to removing a member of staff from their place of work (i.e. suspension) at the outset of the investigation or at any stage during the course of the investigation. Please contact the Trust's HR Advisory team if you are considering suspension.

Note: Schools are not permitted to suspend someone not directly employed by the school such as supply staff provided by an agency when an allegation or concern is made. School must liaise with the agency for them to decide to suspend. Please contact the HR Advisory service for advice.

- 2.2 The Headteacher should take appropriate advice before making any decision to suspend. The provisions for suspension of school-based staff are set out in Schedules 16 and 17 of the School Standards and Framework Act 1998. Decisions on suspensions are taken by the Headteacher or the Board of Directors (action by the Chair in relation to the Headteacher must be notified to the full Board).
- 2.3 Staff against whom an allegation is made should not automatically be suspended.

Where the allegation is that a criminal offence may have been committed or a child is at risk of significant harm, immediate suspension is more likely to be appropriate. Where the allegation is of a child protection/safeguarding nature the LADO procedure should be followed.

- 2.4 Suspension may be considered at any stage. Suspension is a neutral act, not a disciplinary sanction and the employee will receive normal pay. Where possible an alternative should be found to suspension. This could include alternative duties/locations or removal from contact with pupils.
- 2.5 Suspension should not be undertaken without good reason, as an over-hasty or ill-judged decision immediately to suspend a member of staff can have a substantial detrimental effect upon the member of staff's career. Suspension is not only a traumatic experience for the individual involved, but also for their family, for other children at the school, their parents and for other staff. All concerned will wish to be reassured that the responsible agencies will act in a careful, measured way when allegations are brought to their attention.

Circumstances in which a decision to suspend a member of staff are likely to be taken include:

- Where a child or children is/are at risk;
- where the allegations are so serious that dismissal for gross misconduct is possible;
- where a suspension is necessary to allow the conduct of the investigation to proceed unimpeded.
- Where the Police are involved in a criminal investigation or are likely to be

Where the police are involved, management must consult with the Police Officer in charge prior to suspension being considered. In these circumstances please contact Trust's HR Advisory team.

- 2.6 In all cases where suspension is being considered, the Headteacher should advise the individual to seek assistance from his or her trade union.

### **A meeting to Consider Suspension of a Member of Staff**

- 2.7 Where suspension is being considered, a meeting should be arranged. Normally, the meeting should be undertaken outside pupil contact time. The Headteacher (or, in cases where the allegation is against the Headteacher, the Chair of the Board) should consult with and seek advice from CIT HR. There are three possible outcomes outlined below:

1. Not to suspend
2. Action short of suspension (e.g. restriction of duties)
3. Suspend

Consideration needs to be given to disclosure of any criminal proceedings.

- 2.8 When called to a meeting where suspension is a possible outcome, the member of staff should be advised to seek the advice of their trade union. A person who is not a member of a trade union may be accompanied to the meeting by a work colleague, that will not or has not been involved in any part of the proposed disciplinary process. Where the member of staff is accompanied, they should be offered the opportunity of a brief meeting with the representative or work colleague before the meeting

Attempts will be made to identify if the individual concerned is a member of a trade union and contact them on their behalf if possible. However, the meeting can go ahead without trade union representation present.

- 2.9 The employee should be informed at the outset of the meeting that an allegation or series of allegations have been made and the nature of them. At the conclusion of the meeting, suspension might occur. It should be made clear, however, that the meeting is not a formal disciplinary hearing but is for the purpose of raising a serious matter which may lead to suspension and further investigation.
- 2.10 The employee should be given as much information, including reasons for any proposed suspension, as is consistent with not employee of staff to make representations concerning any possible suspension. The employee staff should be given an opportunity to make such representations after the information has been given. A brief adjournment should be offered to the member of staff prior to response being provided.
- 2.11 If, as a result of the meeting, it is considered by a Headteacher that suspension is necessary along with a full investigation of the allegation(s), the employee should be advised that they are suspended from duty. Written confirmation of the suspension should be dispatched within one working day, giving reasons for this.
- 2.12 In accordance with the relevant ACAS Code of Practice, where the person is a trade union or safety representative, the meeting should not be arranged without prior discussion with the relevant branch secretary or trade union representative. From the outset it should be established that the action being taken is not an attempt to undermine the function of a trade union.

### **Alternatives to Suspension**

- 2.13 Suspension can in some cases be a traumatic experience for all parties involved. The employee, whom the allegation is against, should not automatically be suspended and alternatives to suspension can be considered, these may include;

- Paid leave of absence or mutual agreement to refrain from work (known as Garden Leave). This should only be considered as a short term arrangement while further information is being gathered.
  - Alternative duties/locations
  - Removal from contact with child(ren) that may be involved in the investigation
- 2.14 In the case where issues relate to a child protection matter, please consult with the appropriate DSL, prior to making a decision regarding suspension.
- 2.15 In the case where immediate referral to the DSL is accompanied by consideration of disciplinary procedures, suspension may or may not be appropriate. The Headteacher or Trust Board of Directors should consult with the Behaviour Support Service Manager and consider any recommendation which may be made by the Child Protection Agency/Police or strategy meeting before a decision to suspend is taken.

### **Where no action is taken to suspend**

- 2.16 The Headteacher/Chair of the Board (in cases where the allegation is against the Headteacher) should explain to the member of staff the circumstances which led to consideration of suspension and further explain any follow up action which it is proposed to take. The member of staff may be accompanied by a trade union representative or work colleague. According to the circumstances of the case, appropriate assistance or advice may be offered. The Headteacher/Chair of the Board should seek to establish what support, if any, is required and where appropriate and acceptable to the member of staff should seek advice from Trust's HR Advisory team. According to circumstances, appropriate counselling services should be considered.
- 2.17 If a member of staff has not been suspended but there are child protection or serious concerns about aspects of their conduct, a full investigation should be undertaken before making a decision about further action under disciplinary procedures. Please contact Trust's HR Advisory team for further advice on undertaking an investigation.

### **After a Decision to Suspend Pending Investigation**

- 2.18 Where a member of staff has been suspended a report should be made to the Trust's HR Advisory team that a member of the school staff has been suspended pending investigation. Where the Headteacher has been suspended, the implications for the management of the school will need to be considered including the arrangements for an Acting Headteacher.

In certain circumstances it may be prudent for the Headteacher to request that certain work related equipment be returned to the school.

- 2.19 Senior leaders in the school who need to know of the reason for the suspension should be informed as far as is necessary. The Headteacher/Acting Headteacher should also make a decision on whether other staff need to be informed of the suspension. Any appropriate communication to explain the member of staff's absence from school will need to be discussed with School HR team/Business Manager.
- 2.20 In appropriate cases the Headteacher/Acting Headteacher should discuss with the Business Manager the extent to which it is necessary to make a statement to parents of children in the school, having considered the need to avoid unwelcome publicity. If this situation occurs, then advice and guidance should be sought from Business Manager/CIT.
- 2.21 In rare circumstances, e.g. child protection investigations, it may be necessary for the Headteacher (Acting Headteacher in consultation with the Board) to provide immediate reassurance to parents and students in the school and there may be a need for information to continue to be provided during the course of an investigation to parents, children and other colleagues. If this situation occurs, then advice and guidance should be sought from School HR team/Business Manager.
- 2.22 The Headteacher/Acting Headteacher in consultation with the Chair of the Board should consider, and keep under review, decisions as to who is informed of the suspension and investigation and to what extent confidentiality can or should be maintained, according to the circumstances of a particular case. In a situation where a matter becomes common knowledge or the subject of general gossip, it may be desirable to provide an accurate statement for public information. Advice should be taken from the trust's HR Advisory team.
- 2.23 Every effort should be made to avoid lengthy periods of suspension. The decision to suspend and the conditions of suspension will be reviewed initially after a period of 1 month and subsequently on a monthly basis either as part of a face to face meeting or by written correspondence. The suspended employee will be informed in writing of the outcome of each review. Any representations received from the employee or the employee's trade union representative will be considered at each review.

## Process for suspension

### Meet the employee

- A meeting with the employee should normally be undertaken outside pupil contact time<sup>1</sup> and as soon as possible in a discreet location.
- Where suspension is being considered, the employee should be advised that they may seek advice from his or her trade union representative
- The employee may be accompanied by a work colleague not involved in the matter or a trade union representative. Where a trade union representative is not available to attend the meeting, the employee may be suspended and then given the opportunity to make representations while accompanied by their trade union representative at a later date.
- The Headteacher/ Trust Board of Directors conducting the meeting, will in most cases, be accompanied by a member of HR.

### At the meeting

- The employee should be informed that at the conclusion of the meeting, they may be suspended
- Explain that the meeting is not a formal disciplinary hearing but is for the purpose of raising a serious matter which may lead to suspension and further investigation
- The employee should be given information regarding the allegation(s) and the reasons for any proposed suspension
- The employee may make representations regarding the consideration of suspension
- Management may also want to give consideration to alternatives to suspension
- A brief adjournment should be offered to the employee prior to management's response
- If suspension is considered necessary, the individual should be advised that they are suspended from duty with immediate effect and should also be informed of the reasons for and the terms of their suspension
- Advise the employee that access to ICT systems & other relevant equipment will be immediately removed for the duration of the suspension
- Written confirmation of the suspension may be given at the end of the meeting or otherwise provided as soon as possible (normally within one working day)

In cases where suspension occurs, contact with the employee should be maintained and the suspension reviewed monthly.

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<sup>1</sup> In accordance with the relevant ACAS Code of Practice, where the person is a trade union or safety representative, the interview should not be arranged without prior discussion with the relevant branch secretary or a full-time official of the trade union concerned. From the outset it should be established that the action being taken is not an attack on the functions of a trade union.

## **Support for Staff during the Period of Suspension**

- 2.24 The suspended member of staff will be given the name of a contact within the Trust not involved in the process. The main role of the contact person is to provide procedural information and no detail will be provided about the actual case/investigation. Social contact with colleagues and friends at the school should not be precluded except where it is likely to be prejudicial to child protection enquiries, criminal or disciplinary investigations or processes.
- 2.25 Although it is the aim that all investigations should be conducted as speedily as possible consistent with establishing the full facts, arrangements should be made (by negotiation) for the individual, or his or her representative, to be contacted regularly with information on progress and developments in the case. These arrangements should not preclude them, or their representative, contacting those conducting the investigation at any time.
- 2.26 According to the needs and wishes of the member of staff to be kept informed, a colleague contact should also be in a position to provide information about developments within the school in general. Usually this will be a member of the school's SLT who is not involved in any disciplinary investigation.
- 2.27 In some cases, it may be appropriate to ask whether welfare counselling or other support through the Employee Health and Wellbeing Service, would be helpful, or to respond to a request for such further support.

## **Support for others concerned**

- 2.28 If a child or children have made allegation/s they and their parents will need support. Consideration should be given to the form such support should take. Consideration should also be given to what support may be needed for others at the school, both staff and students, according to the circumstances of the allegations. In some cases, therapeutic counselling from expert sources may be necessary. Advice on this can be obtained via the ACPC/Social Services.

## **Pay during suspension**

- 2.29 The member of staff is entitled to normal pay during any period of suspension. Normal pay means the pay which the member of staff would have received during their normal working week. The appropriate regular payments listed below shall also be included, providing that they would have been paid to the member of staff during the normal week leading up to their period of suspension



The payments to be included, **if regular**, are for:-

- Shift work
- Night work
- Split duty
- Weekends
- Unsocial hours
- Scheduled standby duty
- Contractual overtime.
- Essential car user lump sum allowance

2.30 If the employee takes annual leave or is sick at any time during the suspension, then pay for such leave or sickness will be calculated in accordance with the normal provision of the School's annual leave or attendance management schemes. Any other payments, e.g. the allowances detailed above, will be paid in accordance with that scheme's rules for any leave or sickness absence.

2.31 Where the employee is on a period of sickness absence but would have been considered for suspension were they not then once this has been communicated they would be advised they are bound by the terms of suspension.

2.32 When any period of sickness as described above comes to an end, then the employee, remains suspended and again becomes entitled to normal pay.

### **Who can suspend / lift suspension?**

2.33 In cases where suspension is considered, please contact the Trust's HR Advisory team for advice.

#### Headteachers

- Headteachers can suspend any employee employed or engaged at the school
- If suspension occurs, the Trust Board of Directors must be immediately informed
- Headteachers do not have the power to lift suspensions, this must be done by the Trust Board of Directors

#### Board of Directors

- The Trust Board of Directors can suspend / lift the suspension of any employee employed or engaged by the Trust, including the Headteacher
- If suspension occurs, the Trust Board of Directors must inform the Headteacher
- Suspension should not be discussed at full Trust Board of Directors level, in order to avoid the impartiality of Directors who may be required to consider matters at a later stage

## 3. Confidentiality

- 3.0 Where a parent has made the allegation they may be confidentially informed of the suspension and any developments where it is necessary to provide reassurance. The reasons given should be agreed between the concerned employee, their representation and the Headteacher.
- 3.1 Senior leaders in the school who need to know of the reason for the suspension should be informed as far as is necessary. The Headteacher/Trust Board of Directors should take a decision on informing other staff colleagues in the school of the suspension, however, the number of people informed of the suspension should be kept to a minimum.
- 3.2 In certain circumstances, e.g. child protection investigations, it may be necessary for the Headteacher (in consultation with the Trust Board of Directors) to provide immediate reassurance to parents and children in the school and there may be a need for information to continue to be provided during the course of an investigation to parents, children and other colleagues.

**Guidance should be sought from the DSL for Child Protection or, where relevant and appropriate, from Social Services or the Police.**

## 4. The Investigation

### Who Should Investigate?

- When it is decided that a formal investigation is appropriate, the headteacher or the Trust Board of Directors should determine who will be the investigating officer. If it is likely that the investigation may result in a disciplinary or grievance hearing, where the Headteacher may hear the case, it is advisable that an alternative member of senior leadership or an external investigator is commissioned in order to conduct the investigation
- If the Headteacher or senior employee is a key witness or has knowledge which could be seen to prejudice the investigation, it is not recommended that they conduct the investigation, present the case at a hearing or hear the case. (Please contact the Trust's HR Advisory team).

### External Investigators

- 4.1 The school may also contact the Trust's HR Advisory team with a view to commissioning an external investigator, ideally from within the Trust who has

no prior involvement or knowledge of the allegations. If an external investigator is commissioned, they will report to the nominated headteacher who will retain responsibility for the case.

- 4.2 The Investigator should liaise with school HR team/Business Manager for advice on procedural matters and to keep them apprised of developments in the case.

## **How to conduct the Investigation**

### **Principles of conducting an investigation**

- The investigation should be free from bias and meet the requirements of natural justice. All concerns should be put to the employee and they should be allowed to respond
- At all stages of the process, confidentiality must be maintained by all parties
- A timescale should be provided at the beginning of the investigation to all parties concerned and every effort should be made to achieve this. However, if this is not possible, all parties should be informed and given reasons why
- All parties have the right to be accompanied by a trade union representative or work colleague not involved in the case throughout the investigation process

### **Meet the Employee**

The investigating officer will meet the employee whom the allegation/complaint is against (with their Trade Union Representative or a work colleague should they wish) and explain that this is a formal investigation. The employee will be given information about the allegation/complaint (verbally and in writing) and the procedure to be followed will be explained. The information to be given in sufficient detail for the employee to understand the overall matter of concern.

### **Before commencing the investigation**

- Identify details of the precise issue to be investigated, e.g. details of allegations/complaint made etc.
- Suggested methodology for conducting investigations, e.g. identification of initial witnesses, copies of policy being breached etc.
- Under which Trust policy or procedure the investigation is being conducted
- Clarify what purpose and by whom any Investigation Report will be used.

## **Investigation Interviews**

### **Preparation for the investigation interviews**

The Investigating Officer should:

- Ensure that enough time has been set aside to hold the interview confidentially, in a private room that is available without any interruptions.

- Ensure that all necessary information is available during the course of the meeting. e.g. copies of policies / procedures etc.
- Prepare a list or structure of challenging questions in relation to the alleged incident / allegation
- Ensure that an appropriate person is available to take detailed notes of the meeting, for use within the investigation process / report where appropriate.

All staff interviewed as part of the investigation are entitled to be accompanied by a trade union representative or a work colleague (who is not involved in the matter). The employee should be written to stating the date/time and venue, the purpose of the meeting and the right to be accompanied.

### **Conducting the Investigation Interviews**

Where possible the interviews should be conducted in the following suggested order;

- The person raising the allegation/complaint should be interviewed first
- Witnesses should be interviewed one at a time. There may be a need to re-interview witnesses during the investigation process. Additional witnesses may be identified during the investigation and must also be interviewed.
- The person whom the allegation/complaint is against should be interviewed last
- Care should be taken to avoid any opportunity for collusion

**When interviewing children that may be involved as witnesses please refer to school HR/Business Management for advice.**

### **The structure of the investigation interview**

- Explain the context of the interview and the employee's right to representation.
- For what purpose the meeting notes and subsequent record of interviews will be used
- How and when the interviewee will be able to check the notes /record of interviews
- Reiterate the importance of confidentiality.

The interview itself is to ascertain facts and there may be times when a series of specific questions requiring specific answers may need to be put to interviewees. Fair, open and challenging questions may be used to probe answers to establish the facts. The interviewer should avoid any speculation or opinion.

### **Introductions & Greetings**

**To the person making the allegation, witnesses (or others with information) explain;**

- The procedure to the interviewee and try to put them at their ease.
- Their right to be accompanied by a trade union representative

- This is part of a formal process, their evidence may be used if the matter proceeds to a hearing and they may have to be called as a witness
- They will be given a copy of their final record of interview
- The employee will have the right to know who is making the allegation/complaint (or providing information about the matter).The employee will also receive a copy of the record of interview should the matter proceed to a hearing
- This matter is strictly confidential and must not be discussed at any stage. Reassure the interviewee that management will also strictly maintain confidentiality.
- This should appear in the record of interview

### **Taking a record of interview from the employee**

Explain that:

- This is part of a formal process
- They have a right to representation
- The allegations/complaint against them may proceed to a disciplinary hearing, and the potential outcomes.
- They will be given a copy of their final record of interview

### **Questioning**

- Use open questions (who, what, why, when, how etc)
- Use closed questions in order to clarify points. Leading questions should not be used when interviewing witnesses
- Discuss and enquire into any additional information for clarification
- Ensure that specific examples are provided when unsubstantiated descriptions are given, i.e. 'bullying' or inappropriate behaviour' etc
- Where physical force is alleged to have been used then the degree of force used should be clarified
- Once questioning is complete, re-cap and clarify main points of discussion, ensuring that the notes taken are accurate and answer any appropriate questions or concerns raised

### **Closing Statement**

- Explain the next steps, confirming how / when the record of interview is to be prepared and verified and when the investigation is expected to be completed.
- Ensure that contact details of the Investigating Officer are provided, and ensure confidentiality is fully understood.

At the end of the investigation interview the Investigating Officer should have obtained from each witness:

- The names of those present or involved
- Date / time / place of the alleged incident / allegation
- Details of what took place, and the order in which they happened

- How the individual reacts to any other documents or witness evidence which is inconsistent with their account
- The steps taken since the alleged incident / allegation, including any steps taken to resolve the matter
- Their preferred outcome (in cases of complaint)

### Records of Interviews

- Any notes taken during the investigation interviews should be typed, checked and signed by the interviewee. The record of interview should record the facts, written (within reason) in the language used by the interviewee following the train of events.
- If there is any ambiguity or gap in the account these should be clarified with the interviewee
- The interviewee must be given the opportunity to review the statement and must only sign to confirm it as a true and accurate version of events
- Once the record of interview is typed the employee should be allowed sufficient time to read it through, make any amendments/additions as necessary and sign and date the record at the bottom of each page. Any amendments should be initialled. Where possible it is advised that the record is typed and signed as soon as the interview has been completed.
- Where records of interviews cannot be taken the Investigating officer may ask the interviewee to provide a written statement, which can be prepared with their Trade Union representative. In these cases the statement should be checked by the Investigating Officer and included in the Investigation Report. In these circumstances please contact the trust's HR Advisory team.

### Evaluating the Evidence

All of the relevant evidence gathered during the investigation should be reviewed and collated for use within the Investigation Report. This should include;

- Any record of interviews
- Notes from investigation interviews
- Relevant policies & procedures
- Evidence of custom and practice etc.

This evidence should be evaluated, particularly where there are contradictions or conflicts which the Investigating Officer must consider. In evaluating evidence, each case should be judged on its merits; however, the following points should be considered;

- Direct witness evidence will usually be stronger than indirect information relating to the incident / allegation
- Evidence which is inconsistent with documents produced at the time is questionable

- Evidence which is vague, is unsubstantiated opinion or hearsay, omits significant details or contains inherent contradictions is questionable
- Anonymous evidence should be reviewed with caution as it is often difficult to substantiate
- Consideration should be given to any bias, motivation or influence individual witnesses may have
- Where possible the factual accuracy of points raised in records of interviews should be verified by the investigating officer if they are material to the allegations/complaints

It is important to remember that in reviewing the evidence and recommending appropriate courses of action, the Investigating Officer only has to show they have a reasonable belief of what happened based on their assessment of the evidence. Unlike a legal case there is no requirement to prove a case 'beyond reasonable doubt'.