



# LIGHTHOUSE

## SCHOOLS PARTNERSHIP

# DISCIPLINARY POLICY

Policy Approved by the Board of Trustees

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Date 18 November 2021

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### Document History

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This Policy applies to all schools and employees within the Lighthouse Trust Partnership.

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## DISCIPLINARY POLICY

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## 1. Aims

### 1.1 This policy aims to:

- Help and encourage all employees to achieve and maintain satisfactory standards of conduct.
- Set out the procedures for when an employee's conduct falls below the expected standard.
- Ensure that all employees are treated fairly and consistently when a disciplinary issue is being dealt with.

## 2. Legislation and Guidance

- 2.1 The Trust is required to set out its disciplinary procedures under general employment law.
- 2.2 These disciplinary procedures are based on the Disciplinary and grievance code of practice from ACAS.
- 2.3 These procedures also comply with the Trust's funding agreement and articles of association.

## 3. Definitions

- 3.1 A disciplinary issue will arise when a staff member has not behaved to the standard expected of them.
- 3.2 Appendix 1 (the Disciplinary Rules) includes a non-exhaustive list of examples of what the Trust defines as misconduct and gross misconduct. For the purpose of this policy, misconduct does not cover staff capability or poor performance issues. These are addressed in the staff capability policy.

## 4. Disciplinary Procedures

- 4.1 Minor disciplinary issues will be dealt with informally at first, and will be escalated only where:
- There has been no resolution
  - The issue is more serious
  - There are repeated or multiple instances of misconduct
  - There is suspected gross misconduct
- 4.2 When dealing with an issue informally, the employee's line manager will organise a brief meeting with the employee and set out the concerns. If resources are needed, the line manager can refer to any relevant policy (Code of conduct, Safeguarding policy, etc). The line manager will remind the employee of the expected standard of behaviour and consider what support is needed to help them improve. Notes will be taken and retained and followed up in writing with the Employee.
- 4.3 If the issue cannot be dealt with informally, the employee must be immediately notified that formal procedures will begin. The employee will be notified of this by their line manager either in a face-to-face meeting or, if this is not possible, over

video conferencing (e.g. Microsoft Teams). The alleged misconduct and its possible consequences will be explained and confirmed in writing.

## 5. Allegations

- 5.1 Allegations may be brought to the Trust's attention in a number of ways and through a variety of sources. Appendix 1 sets out the disciplinary rules. As with disclosures made by children and young people, adults need to be aware that in making an allegation it is not always possible to keep the matter confidential. The Headteacher in conjunction with the Trust's Head of HR will need to decide upon the most appropriate course of action and may choose to proceed with an investigation (see Appendix 2) even if the person making the allegation does not want them to.
- 5.2 Allegations which involve issues of child protection and/or abuse of children by staff should be referred immediately to the Designated Officer of the Local Authority. See Appendix 3 for further guidance on the management of this type of allegation. No further action under this procedure will usually be taken until the Designated Officer of the Local Authority has been consulted.

## 6. Suspension

- 6.1 In some circumstances it may be appropriate to suspend a member of staff temporarily. Examples of these are: where there is suspected gross misconduct, or where a person remaining at work could hinder an investigation process, or where a person potentially presents a safeguarding risk to pupils. This will be a neutral act in that, in itself it does not amount to guilt or constitute disciplinary action.
- 6.2 Where this is necessary:
- The Headteacher in conjunction with the Trust's Head of HR must authorise the suspension. If it is the Headteacher who is the subject of the disciplinary procedure, the CEO or Chair of the School's Local Governing Body must authorise the suspension in conjunction with the Trust's Head of HR.
  - If it is the CEO who is the subject of the disciplinary procedure, the Chair of Trustees or Vice Chair must authorise suspension in conjunction with the Trust's Head of HR.
  - If it is the Trust's Head of HR who is the subject of the disciplinary procedure, the CEO must authorise the suspension in conjunction with a Trustee.
  - The staff member will be informed of the suspension in a face-to-face meeting, held in person or over video conferencing if the former is not possible, followed by a notification in writing within 5 working days.
  - The employee will be permitted to be accompanied to the meeting by either a colleague or trade union representative.
  - The staff member will be suspended on full pay.

## 7. Investigation

- 7.1 Upon receiving any allegations against employees it is likely that further information will be required to establish what the next course of action should be.

The Headteacher or the line manager should seek to establish the basic facts of the situation. This may involve looking at records, speaking to witnesses, reviewing CCTV etc. For further information regarding the investigation process, please see Appendix 2.

The Employee must be informed that an investigation is being instigated and must be advised of the allegation, the duration of the investigation, possible consequences and receive reassurance that the matter will be dealt with confidentially.

- 7.2 An appropriate Investigating Officer will be appointed. Please see Appendix 2 for detail on the Investigating Officer role. The Investigating Officer will conduct an investigation and provide a written report describing their findings and recommendations to the Headteacher/Trust's Head of HR/Trustees.
- 7.3 Before a disciplinary hearing takes place, the Investigating Officer will gather the facts of the case and evidence. The Investigating Officer will, if necessary, hold investigatory meetings (in person if possible or over video conferencing).
- 7.4 The employee will be informed of the outcome of the investigation in writing, confirming whether there is a case to answer or not.
- 7.5 If the Investigating Officer, in consultation with the Headteacher/Trust's Head of HR/Trustees determine that the matter should move forward to a formal disciplinary hearing a Disciplinary Officer will be appointed. This will be a person independent from the Investigating Officer. The Disciplinary Officer will take on the role of Chair for the disciplinary hearing.
- 7.6 If the disciplinary action is taking place against someone who has current ill health/stress HR will make a referral to Occupational Health, or a relevant health practitioner prior to disciplinary hearing.

## **8. Notification**

- 8.1 If after an investigation it is decided that there is a disciplinary case to answer, the employee will be required to attend a disciplinary panel hearing. The employee will receive a written notification 5 working days before the hearing. The meeting could be sooner if it is agreed by both parties. The notification will include:
  - Details of the alleged misconduct and its possible consequences.
  - Copies of any written evidence, including witness statements
  - The time, date and location of the disciplinary meeting (including details if the meeting is to be held over video conferencing, if it is not possible to conduct the meeting face-to-face)
  - A statement that the employee has the right to be accompanied by a colleague or a trade union representative
  - Notification that the employer intends to call witnesses (if relevant)
  - If the employee intends to call a witness, they must notify the employer at least two working days prior to the hearing.
- 8.2 If the employee is unable to attend the Hearing, the disciplinary Hearing may be postponed.

## 9. Disciplinary Hearing

- 9.1 Before the hearing the Disciplinary Officer will ensure that the employee and panel members have received a copy of all evidence that will be relied upon during the hearing.
- 9.2 At the hearing, the Investigating Officer will state the case against the employee and go through the evidence that has been gathered to present the management's case to the panel.
- 9.3 The employee will be allowed to set out their case and answer any allegations that have been made. The employee will also be given a reasonable opportunity to ask questions, present evidence and call relevant witnesses. They will also be given an opportunity to raise points about any information provided by witnesses.
- 9.4 An employee may be accompanied at the hearing by either a Trade Union Representative or a work colleague (referred to as a 'companion'). The companion cannot be a legal representative.
- 9.5 If an employee's chosen companion will not be available to meet at the proposed time, the hearing may be postponed as long as the alternative time is reasonable and not more than 5 working days after the original date.
- 9.6 The companion may address the hearing to put and sum up the employee's case, respond on behalf of the employee to any views expressed at the hearing and confer with the employee during the hearing. The companion does not have the right to answer questions on the employee's behalf, address the hearing if the employee does not wish it or prevent the employer from explaining its case.

Notes must be taken to document a confidential record of the Hearing.

Please see Appendix 4 for the Procedure at Disciplinary Hearings

### 9.7 Taking appropriate action

- 9.7.1 The hearing will be adjourned and the panel will decide whether disciplinary action is necessary and the appropriate action to be taken. The panel may refer to the Headteacher prior to the hearing outcome being confirmed. See Appendix 4 for details of the disciplinary procedure and panel member structure.
- 9.7.2 Actions taken may be:
- **No further action** is required. A further discussion with the employee should be held, prior to returning to work to provide reassurance and support to the employee which will be recorded on file.
  - **Informal warning or letter of management guidance.** Where it is decided that the action was not serious enough to warrant a formal written warning. This may be accompanied by a notification that arrangements will be put in place to improve the staff member's behaviour, such as a training course or occupational health support. Any informal warning or letter of management guidance will remain on the employee's personnel file for 6 months.
  - **A first written warning** for a first instance of misconduct. The issue will be documented, detailing possible consequences should further misconduct occur. The written warning will explain that a further instance, or no change in behaviour within a given timeframe, will result in a final written warning. A first written warning will remain on the employee's personnel file for 12 months.

- **A final written warning.** Where the employee has already received a first warning, or where the employee's misconduct was sufficiently serious. A final written warning will remain on the employee's personnel file for 18 months. The final written warning will explain that a further instance, or no change in behaviour within a given timeframe, may result in a demotion or dismissal.
  - **Dismissal** where there has been gross misconduct or a final written warning has already been given.
- 9.8 The Trust's Head of HR will refer a case of teacher gross misconduct to the National College for Teaching and Leadership (National College) when we believe the case is so severe that the National College should consider whether the teacher should be prevented from teaching. Cases will also be referred to other relevant authorities where appropriate. A referral to the DBS will be made if the employee is removed from regulated activity and the misconduct meets the relevant criteria (all staff).
- 9.9 The employee will be informed of the decision in writing within 5 working days, or as soon as possible. Verbal communication on the decision may also be given to the employee.

## 10. Dismissal

- 10.1 To take a decision to dismiss an employee from the Trust, the panel must have representation from a Trustee/CEO/CFOO and the Trust's Head of HR. The employee will be notified on the reasons for dismissal, the date the contract of employment will terminate, the notice period and details of the right to appeal.

### 10.2 Alternatives to dismissal.

- 10.2.1 In some cases, the panel may, at their discretion consider alternatives to dismissal. Such a decision will need to be authorised by a Trustee/CEO/CFOO in conjunction with the Trust's Head of HR. Examples include:
- Demotion;
  - Transfer to another department or job;
  - Loss of seniority; or
  - Reduction in pay.

Details of the hearing will be kept on the employees personnel file in accordance with the Trust's retention policy.

## 11. Appeal against Disciplinary Action

- 11.1 The employee has the right to appeal against the disciplinary action taken against them. This must be in writing, stating the full grounds of appeal and sent to the CEO/Chair of Governor within 5 working days from the date on which the employee was informed of the decision. If the appeal is made by a member of the Central Team or CEO the appeal must be made to a Trustee.
- 11.2 For further details on an Appeal hearing and the process please see Appendices 5 and 6.

## 12. Referrals to external bodies



- 12.1 In cases where employees are dismissed or resign during a disciplinary process a referral to the Disclosure and Barring Service and Secretary of State will be made where the thresholds for referral are met, and the Designated Officer of the Local Authority will be informed.

### **13. References**

When providing references for staff that are dismissed/ seeking a new role it is possible that a disclosure of the employee's disciplinary history may need to be disclosed. Guidance should be gained from the Trust's Head of HR.

### **14. Resignation during process**

Should a member of staff resign during the disciplinary process, whether that be during the investigation stage or later in the process, they would be expected to cooperate, as requested by the Investigation Manager, Chair of Hearing or Chair of Appeals. If the member of staff is the person being investigated, and they resign during the process, no matter at which stage, the investigation and hearing may continue as if they were employed and an outcome reached. This information may be disclosed in references and to external bodies, as appropriate.

### **15. Links with other policies**

This policy links with our policies on:

- LSP Code of Conduct Policy
- LSP Capability Policy
- LSP Grievance Policy
- LSP Equality and Diversity Policy
- LSP Safeguarding and Child Protection Policy

## Appendix 1 - Disciplinary Rules

### 1. Policy statement

- 1.1 The aim of the Disciplinary Rules and Disciplinary Procedure is to set out a fair consistent approach of the standards of conduct expected of all staff and to provide a framework within which the Headteacher/Manager and line managers can work with staff to maintain those standards and encourage improvement where necessary.
- 1.2 If any employee is in any doubt as to their responsibilities or the standards of conduct expected they should speak to their line manager / Headteacher or the Trust's HR team.

### 2. Rules of conduct

- 2.1 While working for the Trust employees should at all times maintain professional and responsible standards of conduct. In particular employees should:
  - observe the terms and conditions of the employment contract, particularly with regard to:
    - hours of work;
    - confidentiality;
  - ensure that the Trust's Code of Conduct is understood and followed;
  - observe all of the Trust's policies, procedures and regulations;
  - take reasonable care in respect of the health and safety of colleagues, pupils and third parties and comply with the Trust's Health and Safety Policy;
  - comply with all reasonable instructions given by the Headteacher/CEO and managers; and
  - act at all times in good faith and in the best interests of the Trust and those of its pupils and staff.
- 2.2 Failure to maintain satisfactory standards of conduct may result in action being taken under the Disciplinary Procedure.
- 2.3 **Misconduct**

The following are examples of matters that will normally be regarded as misconduct and will be dealt with under the Disciplinary Procedure:

  - Minor breaches of the Trust's policies including the Managing Attendance Policy, E-safety Policy, and Health and Safety Policy;
  - Minor breaches of an employee's contract of employment;
  - Damage to, or unauthorised use of, the Trust's property;
  - Poor timekeeping or time wasting;
  - Unauthorised absence from work;
  - Refusal to follow reasonable instructions;
  - Unreasonable use of the Trust's telephones, email or internet usage for personal reasons;
  - Inappropriate or offensive behaviour, including using obscene language, victimisation or harassment of other members of staff or pupils;
  - Negligence in the performance of duties;
  - Smoking in no-smoking areas, which applies to anything that can be smoked and includes, but is not limited to, cigarettes, electronic

cigarettes, pipes (including water pipes such as shisha and hookah pipes), cigars and herbal cigarettes; or

- Poor attendance.

This list is intended as a guide and is not exhaustive.

#### 2.4 Gross misconduct

Gross misconduct is a serious breach of contract and includes misconduct which, in the opinion of the Trust, is likely to prejudice its business or reputation or irreparably damage the working relationship and trust between the Trust and the employee. Gross misconduct will be dealt with under the Disciplinary Procedure and may lead to dismissal without notice or pay in lieu of notice (summary dismissal).

#### 2.5 The following are examples of matters that are normally regarded as gross misconduct:

- Theft or unauthorised removal of Trust property or the property of a colleague, contractor, student or member of the public;
- Fraud, forgery or other dishonesty, including fabrication of expense claims and time sheets, student's work, examinations or assessments;
- Actual or threatened violence, or behaviour which provokes violence;
- Deliberate damage to the buildings, fittings, property or equipment of the Trust, or the property of a colleague, contractor, pupil or member of the public;
- Inappropriate conduct with children or young people, including failing to maintain appropriate professional boundaries;
- Serious failure to follow the Trust's child protection procedures;
- Making a false declaration or failing to disclose information in relation to the disqualification from childcare requirements, or becoming disqualified from providing childcare;
- Serious misuse of the Trust's property or name;
- Deliberately accessing internet sites at work or at home, using School equipment, which contain pornographic, offensive or obscene material;
- Using your mobile phone to access internet sites which contain pornographic, offensive, obscene material or gambling;
- Repeated or serious failure to obey instructions, or any other serious act of insubordination;
- Bringing the Trust into serious disrepute;
- Being under the influence of alcohol, illegal drugs or other substances during working hours because of the effects of alcohol or illegal drugs or other substances.
- Causing loss, damage or injury through serious negligence;
- Serious or repeated breach of health and safety rules or serious misuse of safety equipment;
- Unauthorised use or disclosure of confidential information or failure to ensure that confidential information in your possession is kept secure;
- Acceptance of bribes or other secret payments;
- Conviction or caution for a criminal offence that in the opinion of the Trust may affect our reputation or our relationships with our staff, pupils, parents or the public, or otherwise affects your suitability to continue to work for us;
- Possession, use, supply or attempted supply of illegal drugs;

- Serious neglect of duties, or a serious or deliberate breach of your contract or operating procedures;
- Unauthorised use, processing or disclosure of personal data contrary to our Data Protection Policy;
- Harassment of, or discrimination against, employees, pupils, parents or members of the public, related to any of the protected characteristics contrary to the Trust's Equality & Diversity Policy or Anti-Bullying Policy;
- Refusal to disclose any of the information required by your employment or any other information that may have a bearing on the performance of your duties;
- Giving false information as to qualifications or entitlement to work (including immigration status);
- Making a disclosure of false or misleading information under our Whistleblowing Policy maliciously, for personal gain, or otherwise in bad faith;
- Making untrue allegations in bad faith against a colleague;
- Victimising a colleague who has raised concerns, made a complaint or given evidence information under the Whistleblowing policy, Staff Anti-Bullying policy, Grievance Procedure, Disciplinary Procedure or otherwise;
- Serious misuse of our information technology systems (including misuse of developed or licensed software, use of unauthorised software and misuse of email and the internet) contrary to our E-Safety policy;
- Undertaking unauthorised paid or unpaid employment during your working hours;
- Unauthorised entry into an area of the premises to which access is prohibited.

This list is intended as a guide and is not exhaustive.

- 2.6 In some instances, offences which would normally constitute gross misconduct may be considered as misconduct because of mitigating circumstances. Similarly, issues which would normally be treated as misconduct may, in certain circumstances, be considered so serious that they constitute gross misconduct.

## **Appendix 2 - Investigation Process**

### **Preliminary Investigation meeting**

A preliminary investigation meeting may be held with the employee to establish the basic facts of the circumstance and to enable the Headteacher to determine whether further investigation is required. Such a meeting can sometimes give a reasonable explanation in response to allegations which then enables the matter to be concluded. A preliminary meeting will not be required in all cases and it is for the Headteacher in conjunction with the Trust's Head of HR to decide if this is appropriate.

### **Investigating Officer**

After a preliminary investigation where it is determined that there is a need for investigation, or if the concerns are serious enough to warrant a full investigation immediately, the Headteacher in conjunction with the Trust's Head of HR will usually appoint an Investigating Officer to carry out the investigation. This will be an appropriate person to the nature of the allegations and the role of the employee. In the case of allegations made against the Headteacher, the CEO will be responsible for the management of the procedure and determining an appropriate Investigating Officer, either internally or externally. If the investigation is regarding a member of the Central team either the CEO/CFOO will be, or may nominate the Investigating Officer. If the investigation is regarding a Senior member of the Central team a Trustee will be the Investigating Officer.

### **Further investigation**

The purpose of an investigation is to establish a fair and balanced view of the facts relating to any disciplinary allegations made against an employee, before deciding whether to proceed with a disciplinary hearing. The amount of 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 any witnesses, and/or reviewing relevant documents and other information.

### **Interviewing witnesses**

It may be necessary to interview witnesses who may have information that is relevant to the allegations. A record of the meeting will be made and the witness will have the opportunity to review the record, make amendments for clarification purposes and sign and date the record. The Trust recognises that some employees may find this difficult or worrying, however all employees are expected to fully participate in any such investigation.

### **Interviewing the employee**

Investigation meetings are solely for the purpose of fact-finding and no decision on disciplinary action will be taken until after a disciplinary hearing has been held.

Employees are allowed to bring a trade union representative or work colleague to the investigation meeting if they are available. No rearrangements will be made to the time and date of the investigation meeting to enable a companion to attend. A record of the meeting will be made and the employee will have the opportunity to review the record, make amendments for clarification purposes and sign and date the record.

Employees must co-operate fully and promptly in any investigation. This will include providing the names of any relevant witnesses, disclosing any relevant documents or information and attending investigative interviews if required. As each investigation will vary in length and complexity it will be completed in as short a timeframe as possible.

## **Appendix 3 - Managing Allegations of Abuse**

In dealing with allegations of abuse against employees there is guidance that needs to be followed to ensure that children and young people are not at risk of harm as well as supporting employees through the relevant processes.

### **1. Scope**

- 1.1 This guidance will be used alongside the Disciplinary Procedure where allegations have been made that might indicate a person would pose a risk of harm if they continue to work in regular or close contact with children in their present position, or in any capacity.
- 1.2 It will be used in respect of all cases in which it is alleged that an employee has:
  - behaved in a way that has harmed a child, or may have harmed a child;
  - possibly committed a criminal offence against or related to a child; or
  - behaved towards a child or children in a way that indicates that they would pose a risk of harm if they work regularly or closely with children.
- 1.3 As with other conduct issues the behaviour of employees outside of work may impact on their role within the Trust. If concerns are brought to the Trust's attention about an employee's behaviour in regard to their own children or any other child/ children outside of the Trust, consideration will be given to any implications for children with whom the employee has contact with at work.

### **2. Initial considerations**

- 2.1 Where the Designated Safeguarding Lead/Headteacher/CEO determines that the allegations meet the criteria above they will immediately contact the Designated Officer of the Local Authority<sup>1</sup> and provide them with all relevant information.
- 2.2 The Designated Officer of the Local Authority and the Headteacher/CEO will consider the nature, content and context of the allegation and agree a course of action. The Designated Officer of the Local Authority may ask for further relevant information to be provided or obtained such as previous history, whether the child or their family have made similar allegations, and the individual's current contact with children.
- 2.3 **Outcomes of initial considerations:**
  - 2.3.1 No further action by external agencies or the Trust is to be taken in regard to the individual facing the allegation. The decision and reasons for this will be recorded. The Headteacher/CEO in conjunction with the Trust's Head of HR will agree with the Designated Officer of the Local Authority what information should be put in writing to the employee and what if any action is appropriate to take in respect of the person making the allegation. After consulting the Designated Officer of the Local Authority, the Headteacher/ CEO will inform the employee about the allegation and provide them with as much information as possible at the time.

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1 . The LADO contact details can be provided by the Safeguarding lead/Headteacher/CEO/Trust's Head of HR.

OR

2.3.2 No further action by external agencies, but Headteacher CEO determines further action is required and will refer to the Disciplinary Procedure.

OR

2.3.3 The Designated Officer of the Local Authority determines that a strategy discussion is needed, or police or Local Authority's social care services need to be involved. The Designated Officer of the Local Authority will coordinate the appropriate arrangements and will inform the Headteacher/CEO. The Headteacher/CEO should not provide any further information to the employee. The strategy discussion will determine what action will be taken and by whom. The point at which the Trust can continue with its own disciplinary procedures will be determined. No further investigation should be carried out until agreed through this process.

### **3. Suspension**

- 3.1 Suspension will not be an automatic response when an allegation is reported, and alternative arrangements will be considered. The risks of the employee remaining in the Trust during any process of investigation will be carefully evaluated. In cases where there is cause to suspect children at the School are at risk of significant harm, or the allegation warrants investigation by the police, or is so serious that it might be grounds for dismissal the employee will usually be suspended.
- 3.2 Suspension will be managed as per the Disciplinary Procedure.
- 3.3 The Headteacher/CEO will consider the advice of the Local Authority children's social care services or the police with regard to suspension but will make their own informed decision with regard to the suspension of any employee.

### **4. Support Staff**

- 4.1 Where an employee is the subject of an allegation of abuse the Trust recognises that in most circumstances this will be a time of stress and anxiety. Employees are advised to seek support from their trade union representative or an appropriate colleague. If the employee feels it is beneficial a referral to the Trust's occupational health provider and/or counselling service will be arranged. The Trust has an Employee Assistance programme and actively encourages the use of this.
- 4.2 The employee will be kept informed of the likely course of action as the case progresses unless there is an objection by the Local Authority social care services or the police.

### **5. Confidentiality**

The provisions in the Disciplinary Procedure regarding confidentiality apply to cases where allegations of abuse are made. The Trust will make every effort to maintain confidentiality and guard against unwanted publicity. During the process of managing these types of allegation the Trust will only release information to the wider Trust community for the purposes of reducing speculation.

## 6. Investigations

6.1 Investigations under the Disciplinary Procedure will not usually commence until agreement from the Designated Officer of the Local Authority and any other external agencies involved in dealing with the allegations have agreed that the Trust can proceed. The provisions in the Disciplinary Procedure regarding investigations apply where allegations of abuse are made. Those undertaking investigations into allegations of abuse should be alert to any sign or pattern which suggests that the abuse is more widespread or organised than it appears at first sight, or that it involves other perpetrators or institutions. It is important not to assume that initial signs will necessarily be related directly to abuse, and to consider occasions where boundaries have been blurred, inappropriate behaviour has taken place, and matters such as fraud, deception or pornography have been involved.

### 6.2 Interviewing students

The Investigating Officer will avoid interviewing pupils unnecessarily. Information will be gathered from the Local Authority social services and the police where available and accessible

### 6.3 Photographing pupils

The Investigating Officer or any other person at the Trust will not take photographs of pupils to support allegations of abuse. In cases where the Headteacher / CEO determines it appropriate to record injuries to a pupil they will use the appropriate procedure, eg body mapping, or refer to the Designated Officer of the Local Authority, the Local Authority social services or the police for advice. Photographs and other information provided by external agencies may be used as a part of the investigation process if appropriate and authorised by the relevant agency.

## 7. Possible Outcomes

On the conclusion of the investigation one of the following four outcomes will be determined:

- Substantiated: there is sufficient evidence to prove the allegation (on the balance of probability)
- Malicious: there is sufficient evidence to disprove the allegation and there has been a deliberate act to deceive
- False: there is sufficient evidence to disprove the allegation
- Unsubstantiated: there is insufficient evidence to either prove or disprove the allegation. The term, therefore, does not imply guilt or innocence

## 8. Malicious Allegations

The Trust consider the making of malicious allegations to be unacceptable. Any allegations found to not have been made in good faith by a pupil, parent, other employee or any other person may result in action being taken. Any allegation that is found to be malicious will be removed from the file of the employee that has been accused.

## 9. Records and references

A record of the allegations, any investigation and the outcome will be kept on the employee's file in line with the Trust's retention policy. The employee will be provided with copies of any records held. These records will remain on file until



normal retirement age or for a period of 10 years from the date of the allegation if that is longer. Details of allegations that are proven to be false, unsubstantiated or malicious will not be referred to in any reference that the Trust provides for the employee concerned. However a reference must be fair and accurate.

Under KCSiE, schools may wish to use the additional definition of ‘unfounded’ to reflect cases where there is no evidence or proper basis which supports the allegation being made. It might also indicate that the person making the allegation misinterpreted the incident or was mistaken about what they saw. Alternatively, they may not have been aware of all the circumstances.

## **Appendix 4 - Procedure at Disciplinary Hearing**

### **Procedure at Disciplinary Hearings**

If the employee and/or their companion cannot attend the hearing they should inform the Headteacher or the Trust's Head of HR immediately and consideration will be given to arranging an alternative time. Employees must make every effort to attend the hearing and failure to attend without good reason may be treated as misconduct in itself. Failure to attend without good reason, or persistent inability to do so (for example for health reasons), may lead to a decision being taken based on the available evidence.

If the employee chooses not to attend the hearing, they may choose to send a written statement for consideration at the hearing.

The hearing will be chaired by the Disciplinary Officer and the hearing panel will comprise of a minimum of 3 people from either the senior leadership team, Local Governing Body or Trustees where appropriate, none of whom will have had involvement in any investigation to date. The Investigating Officer, Headteacher and the Trust's Head of HR will also be present.

The Chair should inform all parties at the beginning of the hearing to remain professional. The Chair has the right to end meeting / remove people due to conduct after they have been warned about behaviour. Such as Intimidation / Hostile / Undermining /Threatening behaviour.

At the disciplinary hearing the Investigating Officer will outline the management's case including allegations against the employee and the evidence that has been gathered. The employee will be able to respond and present any evidence of their own. The companion may make representations to the Chair of the panel and ask questions but should not answer questions on the employee's behalf. The employee may confer privately with the companion at any time during the hearing.

Relevant witnesses may be asked by the Investigating Officer and/or the employee to appear at the hearing. The employee must give sufficient advance notice if they wish to call witnesses to ensure that there is time to arrange their attendance. The employee will be given the opportunity to respond to any information given by a witness. However, the employee will not normally be permitted to cross-examine witnesses unless, in exceptional circumstances, the Chair decides that a fair hearing could not be held otherwise. The Chair must ensure that the employee has the opportunity to state their case.

The Chair may adjourn the disciplinary hearing if there is a need to carry out any further investigations such as re-interviewing witnesses in the light of any new points that have been raised at the hearing. The employee will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.

The employee will be informed in writing of the outcome of the disciplinary hearing and the reasons for it, usually within 5 working days of the disciplinary hearing. Where possible this information will also be explained to the employee in person.

## **Appendix 5 - Appeals Procedure**

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

The employee must be given written notice of the date, time and place of the appeal hearing. This will normally be no less than seven working days after the Appeal has been lodged. The employee may bring a Trade Union representative or colleague to the appeal hearing. The Chair of the original panel will attend to present information to the appeal panel and explain how the decision was made.

Where possible, the appeal hearing will be conducted by a different panel of Trustees/CEO/CFOO/Trust's Head of HR who have not been previously involved in the case. The appeal hearing is not a complete re-hearing, it may be a review of the fairness of the original decision in the light of the procedure that was followed and any new information that may have come to light.

This will be at the Chair of the appeal panel's discretion depending on the circumstances of the case.

Following the appeal hearing the appeal panel may:

- confirm the original decision;
- revoke the original decision; or
- substitute a different penalty. Ordinarily a penalty will not be increased on appeal unless there is new information or evidence being available that requires further investigation.

The employee will be informed in writing of the decision and the reasons within 5 working days of the appeal hearing. Where possible this information will also be explained to the employee in person. **There is no further right to appeal.**

If any new matters are raised in the appeal hearing further investigation may need to be carried out. The Chair may adjourn the appeal hearing if there is a need to carry out any further investigations such as re-interviewing witnesses in the light of any new points that have been raised at the hearing.

### **Referrals to external bodies**

In cases where employees are dismissed or resign during a disciplinary process a referral to the Disclosure and Barring Service and Secretary of State will be made where the thresholds for referral are met.

**Appendix 6 - Disciplinary Procedure Flowchart**

