



South York
MULTI-ACADEMY TRUST

Disciplinary Policy and Procedure

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Links to other procedures: This policy has been adopted by the Board of Directors of the South York Multi-Academy Trust (SYMAT) and applies to all Trusts that make up the Trust. This policy applies to each Trust operating within the South York Multi-Academy Trust unless specific conditions and applications are identified within this policy. It also applies for staff employed by SYMAT centrally.	
This policy will be monitored regularly by the Multi Academy Trust Board in line with the agreed timetable for policy review or sooner as events or legislation changes require.	



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No.	Contents	Page
1.	Policy Statement	2
2.	Introduction	2
3.	Scope	3
4.	General Principles	3
5.	Definitions	4
	<i>Misconduct or poor performance</i>	4
	<i>Gross misconduct</i>	5
6.	Authorised Officers	6
7.	Roles	6
	<i>The Investigating Officer</i>	6
	<i>The Hearing Officer/Panel</i>	6
	<i>The Appeal Panel</i>	7
8.	The Disciplinary Process	7
	<i>Pre-investigation</i>	7
	<i>Informal process</i>	7
	<i>Formal process</i>	8
	<i>Suspension</i>	8
	<i>Investigation</i>	9
	<i>Disciplinary hearing</i>	9
	<i>Hearing process</i>	10
9.	Disciplinary Hearing – Possible Outcomes	11
	<i>No case to answer</i>	11
	<i>First Written Warning</i>	11
	<i>Final Written Warning</i>	12
	<i>Dismissal</i>	12
10.	Appeals	13
11.	Special Cases	14
	<i>Action against a Trade Union Representative</i>	14
	<i>Resignation during an on-going process</i>	14
	<i>Criminal Offences</i>	14
	<i>Safeguarding</i>	15
12.	Record Keeping	15
	Appendix 1 – Disciplinary Hearing Process	16
	Appendix 2 – Appeal Hearing Process	17
	Appendix 3 – Disciplinary Process Flowchart	18

Disciplinary Policy

1. Policy Statement

- 1.1 South York Multi-Academy Trust (“The Trust”) values all its employees and appreciates the essential role they play in delivering high quality education services to children and young people. The Trust recognises that employees at all levels need to know what is expected of them, how they are expected to behave and what they can expect of the Trust as their employer.
- 1.2 Good conduct and performance by employees are a crucial part of the employment relationship and the Trust aims to promote these through proactive employment practices and the adoption of relevant policies, including the Trust’s Code of Conduct. Additionally, Part 2 of the Teachers’ Standards details the personal and professional conduct required of all teaching staff.
- 1.3 Unfortunately, there may be cases where employees do not meet the standards of behaviour or performance that the Trust expects at work. In such cases, the Trust will aim to address issues informally wherever possible and appropriate. However, if the informal process has been tried unsuccessfully, or the circumstances of the case make the informal route inappropriate, the Trust will use a formal process. Both the informal and formal procedures are set out in this policy.

2. Introduction

- 2.1 Disciplinary procedures should not be viewed solely as a means of imposing sanctions but initially as a corrective measure that contributes to the improvement of individual conduct or performance.
- 2.2 This policy aims to:
 - Help and encourage all employees to achieve and maintain acceptable standards of conduct, behaviour and performance at work
 - Promote fairness and transparency by providing written rules and procedures that are specific, clear and applied consistently
 - Help the Trust to deal with disciplinary situations in the workplace as quickly and effectively as possible.
- 2.3 This policy reflects the ACAS Code of Practice on Disciplinary and Grievance Procedures. Should any variance exist between the Code of Practice and this policy then the former will take precedent.

3. Scope

- 3.1 This policy applies to all employees of the Trust. In cases where the employee is within their probationary period the Trust may decide to deal with disciplinary issues through that process.
- 3.2 In the event that the Trust becomes aware of any unacceptable behaviour or misconduct of any individuals working in the Trust but not employed e.g. supply staff, consultants, Health and Local Authority staff, etc. then the issue of concern will be reported to that person's employer and the individual may be asked to leave any individual Trust site whilst the issue is dealt with.
- 3.3 It should be noted that day-to-day managerial supervision of, and guidance to, employees is outside the scope of this policy. Employees with staff management responsibilities have primary responsibility for effectively managing conduct and job performance in their teams.
- 3.4 Employees should acknowledge that good conduct and performance are crucial parts of any employment relationship and are expected as the norm.
- 3.5 If a concern or grievance is raised regarding any aspect of this policy it should be dealt with as promptly as possible within this process. Matters should only be referred to be dealt with through the Trust's grievance policy where they are not related to the application of this policy for that individual case.

4. General Principles

- 4.1 The Trust recognises the importance of dealing with disciplinary issues fairly. As such:
- where appropriate, informal action will be taken to resolve problems before moving to the formal procedure
 - if formal action is needed, the action that is reasonable or justified will depend on the circumstances of each case
 - no disciplinary action will be taken against an employee until the case has been fully investigated to establish the facts and there is a reasonably held belief that the employee committed the misconduct in question
 - employees will be provided with written copies of evidence and relevant witness statements as appropriate in advance of a disciplinary hearing
 - employees who are subject to the disciplinary policy will be offered support during the process and allocated a Contact Officer if they are suspended from work
 - the disciplinary procedure will be applied consistently to all employees and in a non-discriminatory manner by ensuring it does not disproportionately impact on those with a protected characteristic under the Equality Act 2010
 - all disciplinary matters will be dealt with confidentially with all parties involved being required to adhere to this requirement for confidentiality
 - disciplinary issues are dealt with promptly and without unreasonable delays and the employee is kept updated throughout the procedure of timescales and potential next steps
 - where formal action is necessary, the employee will be advised of the nature of the complaint against them and given the opportunity to put their case in response to the allegations during the investigation, hearing and appeal stages (if applicable)
 - the employee has the right to be accompanied by a work colleague or Trade Union representative or official employed by a trade union to all meetings under the formal stages of the disciplinary procedure

- allegations of potential risk and/or harm to children will be notified to the LADO and dealt with in line with NYSCB guidance for dealing with allegations
- all allegations of criminal behaviour and/or financial irregularity will be notified to relevant external agencies and internal audit
- except for gross misconduct, employees will not normally be dismissed for a first breach of discipline
- managers dealing with disciplinary matters will have a proficient understanding of the disciplinary policy and have support from an HR adviser if required
- employees have the right to appeal against any formal sanction applied under the policy

5. Definitions

Misconduct

- 5.1 Disciplinary situations are those where there has been potential misconduct or poor performance arising as a result of the employee's wilful negligence or carelessness. Misconduct is any type of behaviour or conduct at work that falls below the standard required by the Trust or is in breach of a policy or rule.
- 5.2 Examples of matters that the Trust considers to be disciplinary offences include (but are not limited to):
- Unjustified refusal of a lawful and reasonable instruction
 - Persistent lateness, unauthorised absence, failure to follow sickness absence notification procedures
 - Verbal assault or threat of violence in the workplace to fellow employees or other people
 - Negligence in carrying out duties in accordance with relevant policies and procedures
 - Poor performance due to an employee's own wilful carelessness, negligence or lack of effort (the Trust has a separate capability policy to deal with poor performance that is not covered by this definition)
 - Unauthorised use of the Trust's resources, or confidential information gained whilst in the employment of the Trust (except where employees are protected by the provisions of the Whistle-blowing Policy/Public Interest (Disclosure) Act 1998)
 - Acceptance of gifts and hospitality in contravention of the Trust's policy
 - Personal misconduct occurring outside of the workplace, which is deemed sufficiently serious to affect an employee's position at work (also see paragraph 11.6)
 - Inappropriate use of electronic communications, including email or internet access facilities
 - Failure to abide by professional codes of conduct/standards
 - Discrimination, bullying or harassment.
- 5.3 If the Trust is satisfied that misconduct or poor performance, as a result of wilful negligence or carelessness, has occurred on completion of the disciplinary process, the result will normally be the award of a first written warning. If the employee's first misconduct is sufficiently serious or they have a live disciplinary sanction of any nature, then the outcome of the disciplinary process may be a final written warning or dismissal with notice.

Gross Misconduct

- 5.4 Gross misconduct is generally seen as misconduct serious enough to overturn the contract of employment and relationship of trust and goodwill between the Trust and the employee, thus justifying summary dismissal (dismissal without notice).
- 5.5 As such, acts considered as gross misconduct are so serious in themselves or have such serious consequences that they may call for summary dismissal for a first offence. However, the Trust will always follow a fair disciplinary process before dismissing for gross misconduct.
- 5.6 Examples of acts that the Trust will normally regard as gross misconduct (although not exhaustive) are:
- abuse or causing harm to a pupil, child or young person
 - falsification of a qualification or status that is a stated or statutory requirement of employment or results in financial gain to the employee
 - Theft or attempted theft, fraud or fraudulent falsification of accounts, or other official records
 - Deliberate damage to the property of the Trust or that of any other employee
 - Physical or indecent assaults deemed sufficiently serious to affect an employee's position at work
 - Serious breaches of the Trust's policy on the acceptance of gifts and hospitality
 - Serious breaches of confidentiality (unless subject to the protection afforded by the Whistle-blowing Policy/Public Interest (Disclosure) Act 1998)
 - Discrimination, bullying or personal harassment of a serious, wilful and/or sustained nature
 - Being incapable of work, or of working safely due to the influence of alcohol or drugs which have not been prescribed for the employee
 - Serious negligence or wilful failure to comply with legal requirements of the Trust's various policies and procedures such as Health and Safety, Equalities, Data Protection, or any other legal or statutory requirement
 - Serious negligence, which causes or might have caused unacceptable loss, damage or injury
 - Behaviour, which has brought the Trust or its services into serious disrepute
 - Serious breach of computer security and/or information governance and/or abuse of electronic systems including the misuse of email and/or internet facilities and deliberately attempting to access pornographic, offensive or obscene material
 - Personal misconduct occurring outside of the workplace, including actions which result in the employee being unable to conduct, or unsuitable for, their type of work (also see paragraph 11.6)
 - Serious and sustained insubordination
 - Serious breach of professional codes of conduct/standards
 - Serious misuse of Trust property or name
 - conviction of a criminal offence (or failure to declare a conviction) that is relevant to the employee's employment
 - failure to declare unsuitability to work with children that is relevant to the employee's work
- 5.7 If there is a reasonable belief that the employee may have committed an act of gross misconduct, they may be suspended from work on full pay, whilst the alleged offence is investigated.

6. Authorised Officers

6.1 The authority to take action under this policy is summarised in the table below:

	Headteacher / SYMAT CEO & Headteacher	All other staff
Suspension	Chair of Governors (or Vice Chair in their absence) / Chair of SYMAT	Headteacher / SYMAT CEO / appropriate SYMAT Manager / Governing Body (Chair of Governors or appropriate committee)
Lift suspension	Governing Body (Chair of Governors or appropriate committee) / Chair of SYMAT	Headteacher / SYMAT CEO / appropriate SYMAT Manager / Governing Body (Chair of Governors or appropriate committee)
Investigation	Member of the Governing Body or external independent officer / Member of Trust Board or external independent officer	Headteacher / SYMAT CEO / other member of the leadership team / member of the Governing Body / appropriate SYMAT Manager / external independent officer
Hearing	Committee of the Governing Body / Committee of Trust Board	Headteacher / SYMAT CEO / other member of the leadership team / appropriate SYMAT Manager / Committee of the Governing Body
Appeal	Appeal Committee of the Governing Body / Appeal Committee of Trust Board or external appointed board	Appeal Committee of the Governing Body or SYMAT Board

6.2 Any individual appointed to a decision making role within the process must not have been involved at an earlier stage. Staff governors may not sit on hearing or appeals panels.

6.3 Only the Headteacher / or appropriate SYMAT Manager or a Committee of the Governing Body have the authority to dismiss an employee. Therefore, a Hearing Officer with the appropriate authority should be appointed taking into account the potential severity of the allegation.

6.4 It may sometimes be necessary for an employee to be suspended by another member of the Trust's Senior Leadership Team or appropriate SYMAT Manager if the Headteacher is not available. In such cases the decision will be subsequently considered by the Headteacher and confirmed if appropriate.

7. Roles

The Investigating Officer

7.1 The Investigating Officer is appointed by the Headteacher or appropriate SYMAT Manager to conduct an investigation into any allegations of misconduct. Depending on the circumstances of the case it may, in exceptional circumstances, be appropriate to appoint an external independent officer to undertake the investigation.

7.2 In cases where an allegation has been made against the Headteacher, the Chair of Governors will appoint an investigating officer who will either be a member of the Governing Body or an external independent officer.

The Hearing Officer/Panel

- 7.3 The Hearing Officer/Panel is appointed to conduct a Disciplinary Hearing, decide whether disciplinary action is warranted and determine the appropriate level of sanction up to and including dismissal (see also paragraph 6.3 above).

The Appeal Panel

- 7.4 The Appeal Panel is appointed to conduct the Appeal Hearing and decide whether or not to accept the employee's appeal.

The Disciplinary Process

Pre-investigation

- 8.1 When an allegation has been made an informal pre-investigation will usually take place to inform how the potential disciplinary matter will be dealt with. This pre-investigation may include a manager, appointed by the Headteacher, reviewing documentation, speaking to a range of people, possibly including potential witnesses, pupils and the member of staff involved and gathering other information.
- 8.2 In cases where the allegation relates to potential risk and/or harm to children it must be reported to the Local Authority Designated Officer (LADO) before any actions are taken, including speaking to the employee concerned. In such cases, child protection procedures will take precedence and the Trust will not take any actions which could prejudice both this and any police processes.
- 8.3 In cases where the allegation relates to possible criminal behaviour, potential financial irregularity or fraud, advice should be taken from the Police and internal audit prior to the commencement of any investigation or discussion with the employee.
- 8.4 In all other cases, on the conclusion of the pre-investigation, the Headteacher will decide if further action is appropriate and whether this should follow the informal or formal route taking into account the nature and severity of the alleged misconduct and whether the informal process has already been followed.
- 8.5 Should the decision be to proceed into a formal process then it may be necessary to revisit some of the actions undertaken in the pre-investigation to ensure they are appropriately documented.
- 8.6 Consideration will be given at this stage to the impact and distress that the disciplinary process may have on the individuals involved and how this can be minimised. If an allegation has been made against an individual with an existing health condition which they have previously disclosed as a disability, the Trust will make reasonable adjustments to the process, taking into account appropriate medical advice.

Informal Process

- 8.7 The Trust will always seek to resolve disciplinary issues informally where possible and appropriate. If such issues can be settled at an early stage, they are normally less time-consuming and less likely to damage working relationships.
- 8.8 This involves the Headteacher or an appropriate manager, talking to the employee in a two-way conversation, aimed at discussing possible shortcomings in conduct or performance and encouraging improvement. Although the employee does not have a legal right to representation at this stage of the process, both this and HR involvement will be considered if requested by either side and may be agreed in certain cases.
- 8.9 The Headteacher/manager will ensure that the employee understands the standard of behaviour/performance expected and the consequences if these standards are not met. They will also discuss how conduct or performance will be reviewed, the timescale for review and any support which has been identified. A written record of the issue and discussions will be produced and copies will be provided to the employee and placed on their confidential personal file.

Formal Process

- 8.10 When the decision has been made to proceed into a formal disciplinary process, the employee will be notified of this decision in writing, including details of the allegations and the name of the investigating officer and they will be provided with a copy of the policy. Wherever possible, a meeting will be held between the Headteacher, or the Investigating Officer, and the employee so that they may be verbally notified of this information.

Suspension

- 8.11 Once the decision has been made to proceed into the formal disciplinary process consideration will be given to whether or not temporary redeployment, relocation or suspension is appropriate.
- 8.12 With the exception of gross misconduct cases, suspensions will generally be considered as a last resort if temporary alternative work is not suitable or available.
- 8.13 Suspensions may be made at the commencement of a disciplinary process or later during the course of the investigation. Generally, this will happen when evidence of potential gross misconduct comes to light or if the employee's presence in the workplace is impeding the investigation.
- 8.14 Suspension will always be with pay and as brief as possible. Suspension is not an assumption of guilt and is not considered a disciplinary sanction (i.e. a suspension is made 'without prejudice').
- 8.15 The period of suspension will be kept under review and the Investigating Officer will keep the employee informed of the reason(s) for any delay(s).
- 8.16 Any employee who has been suspended will be assigned a Contact Officer who will be their primary point of support and contact during the suspension period. Should the employee wish to contact the Trust for any reason then this must be done through the designated Contact Officer. The role of the Contact Officer is to communicate with and support the employee but they will not represent them at meetings or participate in any decision making processes.

- 8.17 An employee who has been suspended must not contact or attend their workplace or discuss the issue with work colleagues or others associated with the Trust (with the exception of their Contact Officer and/or their representative) unless they have been given explicit permission by the Investigating Officer to do so.
- 8.18 If an employee commences a period of sick leave whilst on suspension, the suspension may be temporarily lifted for the duration of the period of certificated sick leave. In such situations, medical advice will be sought regarding the employee's fitness to participate in investigatory meetings or disciplinary hearings during the period of sick leave.

Investigation

- 8.19 The formal procedure will involve an investigation into the alleged misconduct by the Investigating Officer to establish the full facts of the case. The Investigating Officer should consider all evidence relevant to the case, whether or not it supports the allegations under investigation and must give consideration to any evidence or witnesses suggested by the employee.
- 8.20 Every attempt will be made to ensure that the investigation takes place without unreasonable delay. The employee will be informed of the specific allegation(s) at the commencement of the process, though it recognised that these may change during the investigatory process. The Investigating Officer will keep the employee informed of progress throughout the investigation and at least every 4 weeks. The Investigating Officer may be supported by an HR adviser.
- 8.21 Employees involved in disciplinary investigation meetings, including those attending as potential witnesses, may be accompanied by a trade union representative or colleague who does not have an involvement in the case.
- 8.22 All disciplinary interviews will be documented and the interviewee will be asked to sign the notes of the meeting to confirm their accuracy.
- 8.23 On completion of the investigation the Investigating Officer will make a recommendation, on the basis of their investigation, whether there is a case to answer which should proceed to a disciplinary hearing. In such cases where there is believed to be a case to answer the Investigating Officer will compile a written report, in which they will include all the evidence they have compiled through the investigation, including notes from investigatory meetings.
- 8.24 If the Investigating Officer concludes that there is no case to answer then the employee will be notified of this decision as soon as possible and within no more than 10 working days of the decision being made. The matter will cease at that point and this decision will be confirmed to the employee in writing.
- 8.25 The Investigating Officer may conclude that the misconduct or wilful poor performance does not warrant a formal disciplinary sanction, but that guidance and support under the informal stage of the procedure is appropriate. This decision will be confirmed to the employee in writing.
- 8.26 In cases where an independent investigating officer has been appointed they will report their findings back to the Headteacher/ SYMAT CEO / Chair of Governors on conclusion of the investigation. The Headteacher/ SYMAT CEO / Chair of Governors will then make the decision whether there is a case to answer which should proceed to a disciplinary

hearing. The timescales detailed in paragraph 8.24 will apply when it is determined that there is no case to answer.

Disciplinary Hearing

- 8.27 If the Investigating Officer recommends that there is a disciplinary case to answer following investigation, the employee will be notified of this in writing.
- 8.28 The Hearing Officer/Panel will arrange an appropriate venue and note taker for the hearing, and other rooms/areas for witnesses to be able to wait separately. The hearing manager may also request a member of the HR team to be present at the disciplinary hearing to advise.
- 8.29 The Hearing will be held without unreasonable delay, whilst allowing the employee reasonable time to prepare their case (see also paragraph 8.31). The Trust will ensure that the employee is in receipt of the notification letter and all relevant documentation at least 5 working days' notice prior to the hearing. However, this may be waived by the employee should they wish.
- 8.30 The letter to the employee will:
- give details of the time and venue for the Disciplinary Hearing and who will be attending
 - contain information about the alleged misconduct or poor performance and its possible consequences including where dismissal is a possibility
 - attach a copy of any written evidence, including the Management Statement of Case and witness statements if appropriate
 - notify the employee of any witnesses who the Investigating Officer will be calling and ask if the employee will be calling any witnesses
 - advise the employee of their right to be accompanied at the Disciplinary Hearing
 - inform the employee of the procedure that will be followed
- 8.31 Where possible, the employee's representative should be consulted about the date and time of the Disciplinary Hearing. If the representative cannot attend on the proposed date, the employee will be required to suggest a reasonable alternative time and date not more than five working days after the original date.
- 8.32 Where the employee wishes to have documentary evidence considered by the hearing panel every effort should be made to ensure this is submitted to the Hearing Manager/Chair of the Hearing Panel no less than 3 days prior to the Disciplinary Hearing.
- 8.33 Employees and their representatives should make every effort to attend the Hearing on the date given. Where an employee is unable or unwilling to attend a re-arranged Disciplinary Hearing without good cause, the Hearing may take place in the employee's absence and a decision made on the evidence available. The employee will be informed of this in the hearing letter.
- 8.34 The employee's representative may attend in such circumstances and will be allowed the opportunity to present the employee's case. The employee will also be allowed to make written submissions in such a situation. The employee will then be advised of the outcome in writing.

Hearing Process

- 8.35 The disciplinary hearing will be conducted by the Hearing Officer/Panel, whose role will be to listen to both sides of the case, decide whether disciplinary action is warranted and if so, the level of sanction that is appropriate. The Hearing Officer/Panel will usually be advised by an HR adviser. The process which will be followed at a disciplinary hearing is detailed in Appendix 1.
- 8.36 At the hearing, the Investigating Officer will explain the case against the employee and go through the evidence that has been gathered. They may also call witnesses and ask questions of the employee and the employee's witnesses.
- 8.37 In cases of a complex technical nature a professional advisor may be called to the hearing as a witness e.g. Finance, ICT, etc. This person may be an employee of the Trust, with the relevant knowledge, or an external advisor.
- 8.38 The employee will be allowed to set out their case and answer the allegations made against them. The employee will also be able to ask the Investigating Officer questions, present their own evidence, call relevant witnesses and raise any points about information provided by any witnesses called by the Investigating Officer.
- 8.39 The employee has the legal right to be accompanied by their trade union representative or workplace colleague who does not have a conflict of interest.
- 8.40 The representative will be allowed to address the hearing to put forward 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. However, the representative 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 Investigating Officer from explaining the case against the employee.
- 8.41 If new evidence comes to light during the hearing and/or further investigation is required the Hearing Officer/Panel may adjourn the hearing to enable this matter to be investigated. Depending on the nature of this additional investigation it may be possible to reconvene the hearing on the same day or a further hearing may need to be arranged.
- 8.42 At the end of the disciplinary hearing, the Hearing Officer/Panel will decide whether there is a reasonably held belief that the employee committed the act in question and on the balance of probabilities the allegations have been proven. If this is the case then disciplinary action is justified and the employee will be informed accordingly. This may be done at the end of the hearing and confirmed in writing or later in writing. This will be done, normally within 5 working days of the hearing.
- 8.43 In cases where the employee has been suspended from work and the outcome of the hearing is not dismissal, the Hearing Officer/Panel will also confirm the arrangements for the lifting of the employee's suspension and their return to work.

9. Disciplinary Hearing - Possible Outcomes

No Case to Answer

- 9.1 If the Hearing Officer/Panel feels that a disciplinary sanction is not justified, they will notify the employee that there is no case to answer.

9.2 In such situations, where the Officer/Panel believes it is necessary to enable the employee to make and sustain an improvement in their behaviour or performance, they may be issued with guidance or support in line with the informal stage of this policy.

First Written Warning

9.3 Where misconduct is confirmed it is usual to give the employee a first written warning. The letter issued following the hearing will set out:

- the nature of the misconduct/wilful poor performance
- the disciplinary penalty
- the change in behaviour/performance required (with timescale(s))
- any other action recommended

- any potential impact on incremental progression if appropriate to the facts of the case
- that the warning will remain current for 6 months from the date of the hearing
- that a further act of misconduct within a set period would normally result in a final written warning
- the right of appeal, including timescales and how an appeal should be made
- that a copy of the written warning will be retained on the personal file but disregarded for disciplinary purposes after 6 months from the date of the hearing, subject to achieving and sustaining satisfactory conduct/performance

Final Written Warning

9.4 A final written warning may be given if there is further misconduct/wilful poor performance during the currency of a first written warning.

9.5 Alternatively, if an employee's first misconduct/wilful poor performance is sufficiently serious, it may be appropriate to move directly to a final written warning. This might occur where the employee's actions or inactions have had, or are liable to have, a serious or harmful impact on the Trust, a pupil or pupils of the Trust or another employee.

9.6 The letter issued following the hearing will set out:

- the nature of the misconduct/wilful poor performance
- the disciplinary penalty
- the change in behaviour/performance required (with timescale(s))
- any other action recommended
- any potential impact on incremental progression if appropriate to the facts of the case
- that the warning will remain current for 12 months from the date of the hearing
- the consequences of further misconduct within the set period - i.e. that it may result in dismissal
- the right of appeal, including timescales and how an appeal should be made
- that a copy of the final written warning will be retained on the personal file but disregarded for disciplinary purposes after 12 months from the date of the hearing (or longer in exceptional circumstances), subject to achieving and sustaining satisfactory conduct

Dismissal

- 9.7 If the outcome of the hearing is that there has been an act of gross misconduct or if there is further misconduct/poor performance during the currency of a written or final written warning, the sanction may be dismissal.
- 9.8 In the case of a decision to dismiss the employee will receive in writing:
- the reason for dismissal
 - date on which the employment will terminate
 - the situation regarding notice (none in the case of gross misconduct)
 - right of appeal, including timescales and how an appeal should be made
 - details of any proposed referral to an appropriate body, if applicable
- 9.9 As an alternative to dismissal and with mitigating factors, the Hearing Officer/Panel may in exceptional cases wish to consider taking other action, e.g. the ability to leave a final written warning on file for an extended period.

10. Appeals

- 10.1 Any employee, who has received a formal disciplinary sanction including dismissal, has the right of appeal.
- 10.2 The purpose of an appeal is not to re-hear the original hearing and therefore the remit and scope of the considerations of the Appeal Panel is limited to the specific areas which the employee is dissatisfied with in relation to the outcome of the original hearing. The Panel will consider, based on the information available to the Hearing Officer/Panel at the time, whether the original decision was fair and reasonable. If the employee is appealing on the grounds that there is new evidence, the Panel will consider all of the new evidence presented and decide whether that information, if available at the time of the original hearing, would have made a material difference to the outcome.
- 10.3 The grounds on which the employee can appeal includes the following:
- new evidence, relevant to the case which was not available at the original hearing or to the Investigating Officer
 - that the finding that they committed the alleged act was not reasonable or appropriate in the circumstances
 - the disciplinary sanction or penalty was not felt reasonable and appropriate in all the circumstances of the case
 - a procedural error in the disciplinary process.
- 10.4 This will be heard by an Appeal Panel, made up of at least 3 Members' of the Governing Body or Trust Board (not including staff governors), who have had no prior involvement in the case. The Appeal Panel will usually be advised by an HR advisor. A note taker may also be present.
- 10.5 The appeal must be made in writing, giving the grounds of appeal, to the Hearing Officer/Panel, within 10 working days of receiving written confirmation of the disciplinary action.
- 10.6 On receipt of an appeal an Appeal Hearing will be arranged. The Trust will ensure that the employee is in receipt of the notification letter and all relevant documentation at least 5 working days' notice prior to the appeal hearing.

- 10.7 The employee and their representative will present their case for the appeal first and the Hearing Officer/Chair of the Hearing Panel will have the opportunity to respond to this.
- 10.8 The documentary evidence available at the original hearing will be made available to the Appeal's Panel for reference purposes and both parties may call witnesses.
- 10.9 The process which will be followed at an Appeal Hearing is detailed in appendix 2.
- 10.10 In cases of a complex technical nature a professional advisor may be called to the hearing as a witness e.g. Finance. This person may be an employee of the Trust with the relevant knowledge or an external advisor.
- 10.11 Employees have a legal right to be accompanied at appeal hearings by their trade union representative or workplace colleague who does not have a conflict of interest. Where possible, the employee's representative should be consulted about the date and time of the Appeal Hearing. If the representative cannot attend on the proposed date, the employee will be required to suggest a reasonable alternative time and date not more than five working days after the original date.
- 10.12 If an appeal is made on the grounds of new evidence becoming available and further investigation is required the Appeal Panel may adjourn the hearing to enable this matter to be investigated. Depending on the nature of this additional investigation it may be possible to reconvene the hearing on the same day or a further hearing may need to be arranged.
- 10.13 The Appeal Panel may withdraw, reduce or uphold the disciplinary sanction, however, they may not increase the sanction applied at the Disciplinary Hearing. The decision of the Appeal Panel is final. In the case of dismissal the employee should be re-instated or re-engaged with no loss of contractual pay or service. The employee will normally be informed in writing of the results of the appeal hearing within 5 working days of the hearing.

11. Special Cases

Action against a Trade Union Representative

- 11.1 Where disciplinary action is being considered against an employee who is also a trade union representative, the normal disciplinary procedure will be followed.
- 11.2 However, the Trust will discuss the matter with an official employed by the union at the commencement of the procedure, after obtaining the employee's agreement.

Resignation during an ongoing process

- 11.3 Should an employee resign during the disciplinary process, the Trust reserves the right to conclude the process after the employment has terminated. In such cases, the employee will be notified of any hearings to be held, given copies of relevant paperwork and offered the opportunity to attend or send written representations to be considered in their absence. Following the hearing they will be informed of the outcome of the process in writing.

- 11.4 Alternatively, the Trust may decide not to take a case to conclusion when an employee leaves before the disciplinary process is concluded. However, in such cases the Trust may state, if asked, in any requested employment references that there was an unresolved matter under investigation when the employee left.
- 11.5 If the case relates to safeguarding issues the Trust will always progress the matter as far as possible in the event that the employee leaves, and will make the appropriate referrals if the statutory criteria for doing so are met.

Criminal Offences

- 11.6 Criminal charges or convictions occurring outside of work are not automatically a reason for invoking the disciplinary process. Consideration should be given to what effect the charge or conviction has on the employee's suitability to do the job and their relationship with the employer, work colleagues and other parties. This consideration will usually include a discussion with the employee before a course of action is determined. However, each case must be treated on its own merits and in context.
- 11.7 Disciplinary action will not be unduly delayed or postponed because other proceedings are contemplated or pending. However consideration should be given to advice from external parties to ensure that action taken under the disciplinary procedure does not compromise critical stages of their investigation, i.e. advising an employee of allegations before police have been able to arrest and obtain critical evidence first.
- 11.8 Where an employee receives a custodial sentence, advice should be sought from the Trust's HR advisers.

Safeguarding

- 11.9 If the allegation involves potential risk and/or harm to children or vulnerable adults then advice should be sought from the Local Authority Designated Officer (children) /or a senior manager within the Safeguarding Team (adults) and an HR advisor prior to the start of the investigation. Further information is available in the document '*Keeping Children Safe in Education*' and the managing allegations against staff guidance issued by the City of York Safeguarding Children Partnership.
- 11.10 At the conclusion of such cases, consideration should also be given to whether the case falls under the legal criteria that requires a referral to be made to the Disclosure and Barring Service (DBS) and other relevant professional bodies. This also applies to employees who may resign during the disciplinary process who may have fallen into the criteria if they had not resigned.

12. Record Keeping

- 12.1 All disciplinary matters should be dealt with in the strictest confidence and any records retained must be kept no longer than necessary in accordance with the data protection principles set out in the Data Protection Act 2018.
- 12.2 A record will be kept on the individual's confidential personnel record and should include:
- the complaint against the employee
 - the employee's defence
 - findings made and actions taken
 - the reason for actions taken

- whether an appeal was lodged
- the outcome of the appeal
- any grievances raised during the disciplinary procedure
- subsequent developments
- notes of any formal meetings.

12.3 Sanctions will be disregarded for disciplinary purposes on their expiry, however, the records will be retained on the confidential personnel file.

12.4 Allegations of abuse or potential risk or harm to a child should be kept in line with the retention arrangements specified within '*Keeping Children Safe in Education*'.

Appendix 1

Process to be followed at a Disciplinary Hearing

1. Introduction by the Hearing Officer/Chair of Hearing Panel
2. Management statement of case presented by the Investigating Officer including the calling of any witnesses
3. Questions to the Investigating Officer and witnesses by the Employee and their Representative
4. Questions to the Investigating Officer and witnesses by the Hearing Officer/ Panel
5. Statement of case presented by the Employee and their Representative including the calling of any witnesses
6. Questions to the Employee, their Representative and witnesses by the Investigating Officer
7. Questions to the Employee, their Representative and witnesses by the Hearing Officer
8. Summing up by the Investigating Officer
9. Summing up by the Employee and their Representative
10. Adjournment for the Hearing Officer/Panel to consider their decision
11. Notification of decision to all parties either at reconvened hearing or later in writing

Appendix 2

Process to be followed at an Appeal Hearing

1. Introduction by the Chair of the Appeal Panel
2. Statement of Appeal presented by the Employee and their Representative including the calling of any witnesses
3. Questions to the Employee, their Representative and witnesses by the Hearing Officer
4. Questions to the Employee, their Representative and witnesses by the Appeal Panel
5. Management statement against appeal presented by the Hearing Officer including the calling of any witnesses
6. Questions to the Hearing Officer and witnesses by the Employee and their Representative
7. Questions to the Hearing Officer and witnesses by the Appeal Panel
8. Summing up by the Employee and their Representative
9. Summing up by the Hearing Officer
10. Adjournment for the Appeal Panel to consider their decision
11. Notification of decision to all parties either at reconvened hearing or later in writing.

Appendix 3 Disciplinary Process Flowchart

