

DISCIPLINARY PROCEDURE

Date of issue: 01/09/2020

1. Purpose

1.1 This procedure has been developed in accordance with the ACAS Code of Practice, its purpose is:

- to help and encourage all employees to achieve and maintain acceptable standards of conduct;
- to ensure that fair, consistent and reasonable action is taken where acceptable standards of conduct are not maintained;
- to ensure that all concerned are aware of their rights and obligations.

2. Scope

2.1 This procedure applies to all those employed by The Two Counties Trust (the Trust).

3. General principles

- 3.1 In accordance with Discipline and grievances at work: The ACAS guide, cases of minor misconduct are normally best dealt with informally via managers and without recourse this procedure. In such cases the employee should be made aware of concerns, reminded of the standards expected, support needs should be identified and the employee reminded that the formal procedure could be initiated if there is no sustained improvement. A note of any informal discussion should be made and retained by the line manager in case the matter needs to be revisited. Where the informal process does not resolve the matter, or the matter is more serious, then it should be dealt with under this procedure.
- 3.2 This procedure covers matters of conduct. For matters relating to attendance or poor work performance the Trust's Attendance Management or Capability procedures should be used.
- 3.3 Responsibility for managing the disciplinary procedure in a School / Academy normally rests with the Headteacher, except where the concern relates to the Headteacher whereby responsibility normally rests with the Chair of Governors. For The Trust central team, responsibility lies with the Chief Executive, except where the concern relates to the Chief Executive whereby responsibility normally rests with the Chair of Trustees. In these circumstances Headteacher is replaced by Chief Executive and Chair of Governors is replaced by Chair of Trustees throughout this procedure.
- 3.4 The over-riding consideration of all investigations should be to investigate matters thoroughly and address the issues as speedily as possible. No disciplinary action will be taken against an employee until the matter has been investigated and the employee has been given an opportunity to state their case.
- 3.5 In the interests of ensuring that disciplinary matters are resolved as speedily as possible, time limits are given for appropriate stages in this procedure. These are for guidance and if it is not practicable to adhere to these time limits, they may be amended.
- 3.6 Employees have the right to be present and accompanied by a trade union representative or work colleague at all stages of the formal disciplinary procedure including investigation meetings. The representative may present the employee's case, present evidence, confer with the employee and ask questions relating to the case on their behalf but may not answer questions on behalf of the employee.
- 3.7 Where disciplinary action is being considered against an employee who is a trade union representative, the normal disciplinary procedure will be followed. However matters will be discussed at the earliest stage with the relevant full time official, after obtaining the employee's consent to do so.
- 3.8 No employee will be dismissed for a first breach of discipline, except in cases of gross misconduct.
- 3.9 If an employee is charged with, or convicted of a criminal offence, this is not automatically in itself a reason to take disciplinary action, however employees are required to inform their Headteacher of the circumstances immediately. In such cases consideration will be given to what effect the charge or conviction has on the employee's suitability to perform their role and the reputation of the Trust and / or School / Academy.
- 3.10 Occasionally, when it is mutually agreeable to both parties this procedure may continue during non-working days, for example outside of term time for term time only employees.

4. Suspension from duty

- 4.1 Suspension is a neutral act and is not a sanction or disciplinary action.
- 4.2 Only the Headteacher, the Governing Body, or the Chief Executive Officer of the Trust has the authority to suspend an employee or lift a suspension.



- 4.3 Where the Headteacher suspends an employee they should inform the Chair of Governors and the Trust on a confidential basis as soon as possible.
- 4.4 The Headteacher may only be suspended by a representative of the Governing Body, normally the Chair of Governors, in conjunction with the Chief Executive Officer of the Trust or their deputy.
- 4.5 Alternatives to suspension such as redeployment will be considered by the Headteacher prior to suspending an employee. Suspension should normally only be considered where it is alleged that gross misconduct may have occurred or because of some other good and urgent cause meaning that the continuing attendance of the employee at work cannot be permitted. Such examples include:
- a child or children could be at risk.
 - the employee's continued presence at work may impede or prejudice an investigation.
 - the nature of the allegation could present potential risks to other employees.
 - there could be significant risk to property, data or operating systems.
 - other relevant circumstances, such as formal competence procedures where evidence is available that no teaching or learning is taking place which will lead to a recommendation that the employee is dismissed.
- 4.6 Suspension and the reasons for it will normally be confirmed to the employee in writing within 3 working days. This will include the fact that the employee should not attend work, perform any of their duties unless requested to do so or contact any students, parents, suppliers, contractors or staff. IT access will normally be suspended pending the outcome of an investigation, however if employees require access to IT in order to gather evidence to support their case this will be provided at an agreed time and place which may be supervised, dependent on the nature and seriousness of the concern.
- 4.7 Employees will be suspended on their normal pay.
- 4.8 Where an employee suffers a period of sickness absence during a period of suspension they should submit medical certificates in the normal way and will receive the appropriate sick pay.

5. Investigation procedures

- 5.1 The Headteacher will nominate a member of the Senior Leadership Team who is not party to the allegation, a witness, or subject to any other conflict of interest, to fulfil the role of Investigating Officer or an appropriate member of Trust HR. Where this is not practicable, the Headteacher may approach a senior manager from the Trust to undertake the role.
- 5.2 Where the Headteacher is the subject of an allegation the Chair of Governors or other nominated governor who is not a party to the allegation, a witness or subject to any other conflict of interest, will fulfil the role of Investigating Officer. Where this is not practicable the Chair of Governors will approach a senior manager of the Trust to undertake this role or to identify a suitably qualified person from elsewhere in the Trust or externally where appropriate.
- 5.3 For the remainder of this procedure the term 'Headteacher' should be interchanged with 'Chair of Governors' if the allegation concerns the Headteacher.
- 5.4 The Headteacher will notify the employee in writing that an investigation is being carried out, state the allegations and the fact that an Investigating Officer has been appointed together with the name and position of the person undertaking that role. The letter will provide 5 working days' notice of the date, time and venue of the investigation meeting and will also inform the employee of the right to be accompanied by a trade union representative or work colleague at this meeting. To maintain the integrity of the process, the Investigating Officer will not be the employee's companion.
- 5.5 The Investigating Officer will write to other employees who are required to give a statement, for example witnesses, in order to inform them that they are required to attend an investigation meeting, the nature of the concern, the date, time and venue of the meeting. This correspondence will also advise them of the right to be accompanied by a trade union representative or work colleague at the meeting and state that the matter is confidential and should not be discussed with colleagues other than the person accompanying them.

6. Investigation meetings

- 6.1 An investigatory meeting is not a disciplinary hearing and its sole purpose is fact-finding. If there is potentially a case to answer a hearing will be arranged in accordance with this procedure.



- 6.2 The Investigating Officer will promptly and thoroughly investigate the matter, normally within 20 working days for more complex cases and 10 working days where the matter is relatively straight forward. The employee will be notified of any extension to these outline timeframes and the reason for it.
- 6.3 The Investigating Officer will discuss the outcome of the investigation with The Trust's Head of Human Resources or a senior manager from The Trust, and an informed decision will be taken on the action required based on the findings. This is necessary to enable the Headteacher to hear cases up to potential dismissal and to ensure consistency of treatment.
- 6.4 In most cases there will be one of three outcomes:
- There is no case to answer and complete exoneration in which case no further action will be taken. This will be confirmed in writing to the employee.
 - Informal management action. The issue is of a nature which does not require the formal procedure and is more appropriately dealt on an informal basis by the manager or Headteacher. This could include training, counselling, explaining the shortcomings in an employee's conduct and the changes required, including potential repercussions
 - should standards continue not be met.
 - There are sufficient grounds for a potential case of misconduct or gross misconduct and a disciplinary hearing is necessary. If the conclusion is that there is potential for gross misconduct the Investigating Officer will report to the Headteacher to determine if this matter should proceed as potential gross misconduct and therefore to a Governors' Panel.

7. Hearing panel and authority levels

- 7.1 As long as the Headteacher has not been involved in the investigation they will normally hear all cases of misconduct up to potential dismissal. However, if the Headteacher has been involved in the investigation, or has received the report and informed the next steps, a Governors' Panel should be convened. The Headteacher may not be a member of the panel in these circumstances, but may present the case, with or instead of, the Investigating Officer.
- 7.3 For matters of potential dismissal either as a result of a continuing misconduct or in the case of an allegation of gross misconduct, the matter will be referred to a Panel consisting of three members from the Board of Trustees and the Board of Governors, the majority of which must be Trustees. All members of the Panel must be unconnected to the employee or the case. Staff Governors may not be panel members.

8. Convening a disciplinary hearing

- 8.1 Where a disciplinary hearing is necessary, employees will receive written notification of the hearing date 10 working days in advance; unless an earlier hearing date is mutually agreed
- 8.2 Written confirmation will set out:
- the fact that a disciplinary hearing has been called.
 - the allegations and potential outcomes.
 - the date, time and venue of the hearing.
 - the names of those hearing the case and that a note taker will be present.
 - that the employee has a right to be accompanied at the hearing by a trade union representative or a work colleague.
 - that the employee may call witnesses in support of their case. The agreement of such witnesses to give evidence is a matter for the employee to secure.
 - that the employee should provide written material which they wish to rely on at the hearing and that this information must be provided at least 5 working days in advance of the hearing for it to be considered.
- 8.3 The employee will receive copies of documentation to be relied upon at the hearing at the same time as the written notification including:
- the Investigating Officer's report.



- signed copies of meeting notes.
- signed copies of statements taken.
- the Disciplinary Procedure.

8.4 Where the employee or their representative is unable to attend a hearing for good reason, steps will be taken to re-arrange the hearing to a mutually convenient date, usually within 5 working days of the original date. If an employee or their representative fails to attend again without good reason, the hearing will still take place and a decision will be made.

9. Outcomes from a disciplinary hearing

9.1 The hearing will be adjourned once all evidence has been presented.

9.2 The Headteacher / Panel has the power to deal with the case in one of the following ways:

- there is no case to answer and no further action will be taken. In these cases the employee will be informed in writing.
- Informal management action. The issue is of a nature which does not require the formal procedure and is more appropriately dealt on an informal basis by the manager or Headteacher. This could include training, counselling, explaining the shortcomings in an employee's conduct and the changes required, including potential repercussions
- should standards continue not be met.
- issue of a formal warning.
- dismissal.

9.3 To ensure the disciplinary penalty is reasonable account should be taken of:

- the employee's previous conduct.
- the employee's previous disciplinary record.
- the penalty imposed in similar cases in the past.
- any mitigating circumstances which might make it appropriate to lessen the severity of the penalty.
- any particular relevance that the type of offence committed may have to the duties and responsibilities of the post which the employee holds.

9.4 Normally all parties will reconvene following an adjournment for the employee to receive the decision. If this is not practicable, the employee will receive notification of the outcome in writing. In all cases the outcome will be provided to the employee in writing within 5 working days. The employee will also receive a copy of the notes taken at the hearing.

10. Formal warnings, dismissals and alternatives to dismissal

- 10.1 First Written Warnings are used in cases of more serious offences or where there is an accumulation of minor offences. A First Written Warning will detail the reasons for the warning being issued, the improvements required (with timescales), what action may be taken if the matter is repeated, how long the warning will remain current and the fact that the warning will be recorded on the employee's file. The employee will be informed of their right of appeal. First Written Warnings will be expunged from the Disciplinary Register after 12 months.
- 10.2 Final Written Warnings are used in cases of more serious misconduct or where previous warnings have been issued. A Final Written Warning will detail the reasons for the warning being issued, the improvements required (with timescales) and what action may be taken if the matter is repeated, how long the warning will remain current and the fact that the warning will be recorded on the employee's file. A Final Written Warning will also contain a statement that any further incidents within the time limits specified may lead to dismissal. The employee will be informed of their right of appeal. Final Written Warnings will be expunged from the Disciplinary Register after 12 months.
- 10.3 Dismissal. Dismissal may occur where there has been further misconduct where there is an active final written warning on file or gross misconduct regardless of whether there are active warnings on file.



In such cases the employee will be informed of the reasons for the dismissal, the date on which employment will end, the appropriate notice and their right of appeal.

- 10.4 There may be occasions when misconduct is regarded as being insufficiently serious to justify dismissal, but sufficiently serious to warrant only one Written Warning, which in effect is both a First and Final Written Warning.
- 10.5 Where dismissal is the outcome as a result of repeated misconduct and where previous warnings have not been followed notice of dismissal will be given in accordance with the contract of employment. Where an employee, following an investigation, is found to have committed gross misconduct, the dismissal will be summary and without notice or payment in lieu of notice.

11. Register of disciplinary action.

- 11.1 The Head of Human Resources will maintain a confidential Disciplinary Register of disciplinary action for The Trust. This will include the date when a formal warning was issued, the employee in question, the level of warning and the date when the warning should be expunged.
- 11.2 Where an employee completes a period of satisfactory service as stipulated in the warning letter, the warning will be expunged from the Register and their personal file.
- 11.3 Substantiated allegations of harm to the safety and wellbeing of children must be kept in a confidential personnel file and a copy provided to the individual. The record should be retained until the individual has reached normal retirement age or for a period 10 years from the date of the allegation, if that is longer. The record will include a comprehensive summary of the allegation, details of how the allegation was followed up and resolved, including a note of any action taken and decisions reached.
- 11.4 In line with the DfE guidance on 'safer recruitment' details of disciplinary warnings, spent or live, will be included in references where the misconduct affected adversely the safety and wellbeing of children.

12. Appeals

- 12.1 Employees have the right of appeal against a written warning or dismissal. Normally the grounds for appeal will be one or more of:
- procedural concerns
 - the substance and basis of the decision
 - the severity of the sanction.
- 12.2 The employee must set out in writing the grounds of the appeal within 10 working days of receipt of the original decision and send this to the Head of Human Resources at the Trust.
- 12.3 If the employee is appealing against dismissal, the date on which dismissal takes effect will not be delayed pending the outcome of an appeal. However, if the appeal is successful the employee will be reinstated with no loss of pay.
- 12.4 The matter will be referred to a Governors' Appeal Panel where the original penalty was not dismissal and to a Trustees' Appeal Panel where the penalty was dismissal. In all cases the panel shall consist of at least two and ideally three members and must not include those who have been previously involved in the case.
- 12.5 The employee will be given 10 working days' notice of an appeal hearing, unless an earlier date is mutually agreed. This notice will include the time, date and purpose of the meeting and will include their right to be accompanied by a trade union representative or work colleague.
- 12.6 At an appeal hearing the disciplinary penalty will be reviewed, but it cannot be increased. The appeal panel may decide to retain, reduce or overturn the penalty imposed.
- 12.7 The decision of the hearing will be notified to the employee in writing within 5 working days of the hearing and the employee will be advised that this decision is final and there is no further right of appeal.

13. Overlapping grievance and disciplinary cases

- 13.1 In the course of this process there may be occasions where an employee raises a grievance that is related to the case. In such cases, it may be appropriate to deal with both issues concurrently as outlined in the ACAS Code of Practice, as such if an employee raises a grievance during any stage of the disciplinary process and this relates to the disciplinary matter in question, they will normally present their grievance as part of their case under the disciplinary procedure.



14. Confidentiality

- 14.1 All employees must treat as confidential any information communicated to them in connection with an investigation or disciplinary matter. Disclosure of confidential information may in itself be regarded as an act of misconduct and dealt with under this procedure, however; employees are free to disclose such information to their trade union representative in confidence.
- 14.2 All correspondence and documentation related to this procedure will be kept confidential and in accordance with Data Protection Regulations, it will be maintained in an appropriate system of record keeping.
- 14.3 All parties involved in this procedure must not make electronic recordings of any meetings or hearings conducted under this procedure.

15. Reporting to outside agencies.

- 15.1 In cases of dismissal, the matter may be referred to:
- the Teaching Regulation Agency where the matter concerns teacher misconduct, and / or
 - the Disclosure and Barring service where the Trust believes the employee has caused harm or poses a future risk of harm to vulnerable groups including children, and / or
 - the police where a criminal act has occurred.

16. General Data Protection Regulation

- 16.1 All data within this policy will be processed in line with the requirements and protections set out in the General Data Protection Regulation.



Appendix 1

Rules and Standards of Conduct

Employees should know which acts or omissions could result in disciplinary action being taken.

It is not possible to list all specific offences or omissions which are likely to result in disciplinary action under this procedure as each situation is dependent on its own circumstance. Therefore this list of examples is not intended to be exclusive or exhaustive and there may be other offences of a similar gravity which may constitute misconduct or gross misconduct. Equally the examples listed under each category below do not preclude the type of offence being viewed as more closely fitting another category of greater or lesser seriousness depending on the particular circumstances.

Misconduct

Most first breaches of disciplinary rules will not be sufficiently serious to warrant dismissal without a previous warning, the types of offences of this nature normally include

- Poor timekeeping.
- Absenteeism and leaving the workplace without permission.
- Refusal to comply with reasonable and lawful management requests.
- Minor contraventions of the Code of Conduct.

Gross Misconduct

Gross misconduct is generally seen as misconduct serious enough to destroy the contract, trust and confidence between the employer and employee making any further working relationship impossible. The types of offences of this nature normally include:

- Inappropriate behaviour towards staff or students (physical, verbal or cyber) including violent, dangerous or intimidatory conduct, unlawful discrimination, victimisation or harassment, serious insubordination, physical assault or bullying.
- Serious breach of professional codes resulting in being barred from the professional body.
- Deliberate damage to, or serious misuse of Trust or School / Academy property.
- A serious breach of the Code of Conduct.
- A serious breach of health and safety rules, practices or instructions endangering other people, including deliberate damage to, neglect of or misappropriation of safety equipment.
- Serious negligence which causes or might cause unacceptable loss, damage or injury to staff, students or property.
- Fraud including abusing financial systems and protocols and / or non-compliance with financial regulations.
- Falsification of expense claims or sickness self-certification.
- Unauthorised removal, possession or theft of property belonging to the Trust / School / Academy, a fellow employee, student or member of the public.
- Acceptance of a bribe, other corrupt practice and other offences of dishonesty.
- A criminal offence which removes (whether committed during or outside the employee's working hours), the employee's suitability for the type of work they are employed.
- Deliberate misuse of confidential information or the disclosure of confidential information to unauthorised persons (excluding that disclosed to trade union representatives acting on behalf of the employee or subject to the Public Interest Disclosure Act) and/or deliberate interference with computerised information.
- Being under the influence of alcohol, illegal drugs or other substances during normal working hours or possession, use, supply or attempted supply of illegal drugs.
- Falsification or destruction of documents with the intent of concealing or camouflaging fraudulent activity.



- Wilful gross breach of the IT user policy including deliberately accessing internet sites or sending e-mails containing illegal or obscene, pornographic, defamatory, malicious, racist or sexist information
- Holding unauthorised paid employment during paid working time.
- Serious or repeated wilful failure to carry out reasonable instructions and job requirements, or to comply with policies or rules.
- Other offences which seriously threaten the security of students, members of the public, employees or property, or which seriously damage public confidence.
- Falsification of qualifications or information which are a statutory or essential requirement of employment or which result in additional remuneration.
- Sexual misconduct.
- Serious maladministration of statutory tests and examinations.
- Failure to following Safeguarding policies.
- Knowingly making false allegations in bad faith against a colleague.
- In respect of teaching staff, serious breaches of the Teaching Standards.
- Unauthorised use, processing or disclosure of personal data contrary to the Data Protection Policy.

