



LEARNING

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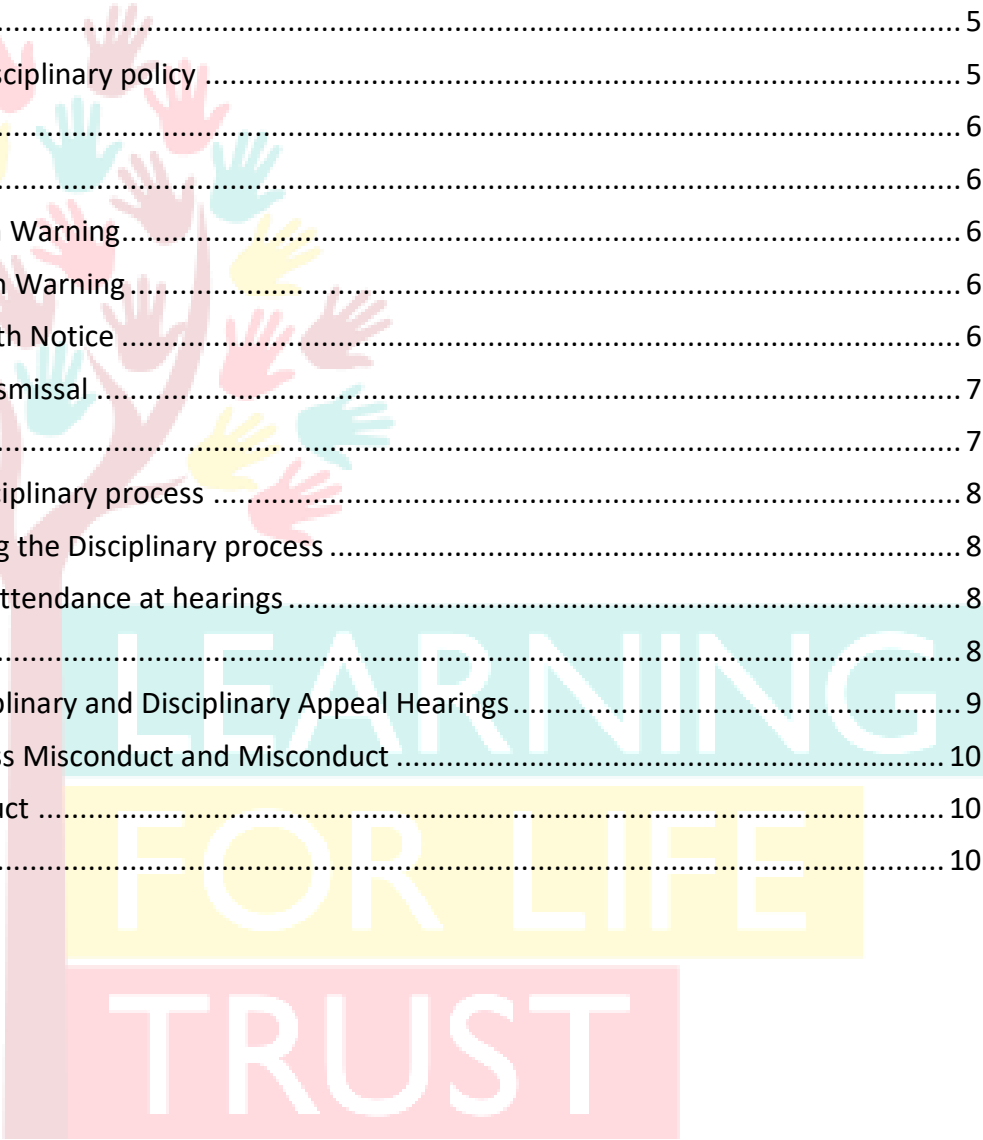
TRUST

# Disciplinary Policy

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## 1.0 Introduction

The Learning for Life Trust expects that all employees will achieve and maintain high standards of conduct and behaviour at all times and this policy seeks to ensure that the Learning for Life Trust has lawful, fair and effective arrangements in place for dealing with employee conduct and disciplinary issues. This policy has been designed to outline the standards of conduct which are expected as well as the procedure which will be followed should the standards not be met.

The employee is entitled to be accompanied by a trade union representative or work colleague at every stage.

## 2.0 Scope

The policy applies to all employees of the organisation, including Teachers, Headteachers and Support Staff. All employees will be made aware of the existence of this policy and will have access to a copy upon request.

Where a member of staff is subject to a probationary period, their conduct may instead be managed in accordance with their contractual probationary period.

## 3.0 Principles

This procedure is a formal way for the employer to deal with an employee's unacceptable or improper behaviour (conduct). A non-exhaustive list of such conduct is at Appendix 2. This procedure is not intended to deal with matters relating to an employee's performance or capability – this should be dealt with under the appropriate Performance Management/Capability policy.

The facts surrounding any alleged breach of conduct will be established as quickly as possible and any breaches will be dealt with in a fair, consistent and confidential manner.

Minor breaches may initially be dealt with informally at the discretion of the line manager, however where repeat issues arise or if the allegation is of a more serious nature, then the formal disciplinary procedure will be used.

No disciplinary action will be taken against any employee until a thorough investigation has been undertaken, unless the allegations are admitted by the employee – see section for **Investigations**.

If an employee is accused of gross misconduct, they may be suspended on full pay – once all alternatives have been explored and exhausted - while an investigation is carried out. Suspension must be reasonable in the circumstances and there is no right of appeal against a suspension decision. See section for **Suspension**.

If formal disciplinary action is required, the employee will be invited to a disciplinary hearing (following an investigation – see below). This invitation will include the following, and be provided to the employee at least ten working days ahead hearing date:

- i. Full details of the allegations against them
- ii. Copies of any evidence to be used / referred to at the hearing
- iii. Arrangements for the hearing including date, time, venue and details of the other attendees, including witnesses, and their role at the hearing
- iv. A statement to advise the employee that they have the right to be accompanied / represented at the hearing by a single companion who should be their trade union representative or a workplace colleague not otherwise involved in the issue. It is the employee's responsibility to arrange for a suitable companion to be present if required.
- v. A statement to advise the employee that they may submit evidence and call witnesses and the arrangements for doing so. If evidence is not submitted or witness details not provided

within the timeframe specified in the letter of invitation, then they will not be permitted other than in exceptional circumstances.

- vi. Details of the possible outcomes of the hearing

## 4.0 Informal Resolution

Before a decision is taken to progress an issue to the formal stages of this procedure, the manager/Headteacher should consider whether the matter is capable of being resolved in an informal manner. This may include:

- Discussing the issue privately with the employee
- Listening to their point of view
- Agreeing any improvements to be made to the employee's future conduct
- Agreeing any support and/or training measures
- Setting out clearly the academy's expectations with regard to future behaviour and conduct
- The manager/Headteacher may document the discussion

Where informal advice and guidance has not resulted in sufficient improvement in an employee's behaviour, if a further incidence occurs in future, or if the offence is more serious, a formal disciplinary hearing will be convened.

## 5.0 Suspension

The Headteacher, or the Trust Leader in the case of the Academy Headteacher/The Trust Board in the case on an executive staff member, may suspend an employee at any time during the course of the disciplinary process. Advice should be sought from the HR Provider before any decision to suspend is taken. Suspension does not constitute disciplinary action and does not itself imply any presumption of guilt on the part of the employee.

Suspension on regular earnings is undertaken where the alleged misconduct is so serious that the employee could face the possibility of dismissal with or without contractual notice. In other circumstances the employee may be suspended from employment only if this is justified by the circumstances of the case.

In cases involving child protection, the academy may wish to contact the HR Provider and the Safeguarding Children Advisory Service (Local Authority Child Protection Co-ordinator on behalf of the LADO), who will advise on the next procedural steps. It may be necessary for the Police to be informed before the disciplinary procedure is used.

Suspension is not a disciplinary sanction and shall be used only in circumstances where:

- Alleged behaviour is so serious and is of such a nature that an individual may face the possibility of dismissal with or without notice and/or
- It would be dangerous/impractical to continue to allow the individual to remain at work, and/or
- There is a real risk that the individual's continuing presence at work would jeopardise investigations into the alleged misconduct(s)

The Headteacher/Local Governing Body/CEO and/or Trust Board should consider their powers and obligations set out in the School Staffing Regulations (under the Education Act 2002), including notifications to the appropriate Local Authority.

The employee may have representation at the suspension meeting. However, the unavailability of a representative must not delay convening the suspension interview or the suspension itself.

The decision to suspend and the reasons will be confirmed to the employee in writing. If circumstances do not allow for a suspension meeting to be arranged, or if the employee is unwilling or unable to attend, he/she will be informed of the suspension by letter.

A period of suspension should be as brief as possible. The academy will keep the suspension under review and will hold a review meeting every 4 weeks, keeping records of the review, give consideration to the suspension being lifted and of any alternatives. Wherever possible, these discussions should include the employee's participation. Where extension is required, the Headteacher/CEO/Chair will inform the employee and their representative. The reasons for and period of extension will be confirmed in writing to the employee (and representative). An employee should be notified when their suspension is being brought to an end and how/when they can return to work.

Throughout all stages of the suspension process the employee will be given as much information as possible about the allegations or issues of concern, subject only to protecting the interests of any other party. Confidentiality must be preserved at all times. Recognising the stress and impact suspension can have on an employee, the academy will offer such support to the employee as they require and provide a neutral person of contact within the academy.

## 6.0 Investigations

Before any disciplinary action is taken a fair and reasonable investigation into any allegation of misconduct should be carried out by an appropriate manager or impartial person. The extent of the investigation can vary depending on the circumstances and may involve questioning the employee concerned, and any other members of staff or external parties (where appropriate), gathering documentary, CCTV or other evidence.

When conducting an investigation, unless there are extremely pressing reasons to the contrary, including the issue of the employee's access to evidence, the investigating manager should reiterate to the employee concerned of the allegation(s) and the nature of the investigation. The manager commissioning the investigation should initially inform the employee of the allegation(s) that are to be investigated.

Disciplinary action may be taken where the allegation(s) arises from matters outside of work, where the matter has potential impact upon the individual's employment.

Once an investigation has been conducted the manager investigating can make a recommendation as to whether there is a case to answer and a disciplinary hearing needs to be convened. If no further action is required, or the allegations are found to have no substance, the employee concerned must be informed in writing.

In all cases where there is a case to answer, the investigating manager will prepare an investigation report which will be presented at the hearing.

## 7.0 Formal Stages of the Disciplinary policy

In addition to the Principles set out at Section 3 of this policy, the following will also apply at all formal stages:

- In cases where the Academy Headteacher has not acted as investigating manager, the hearing will be held before the Headteacher. Where the Headteacher has acted as investigating manager or in cases where the potential outcome is Dismissal, the hearing will take place before a Panel of Governors with the case being presented by the Headteacher/investigating manager.
- The Presenting Manager and the Hearing Manager/Panel may each be accompanied by a HR representative who will act in an advisory capacity.
- A note-taker may be present at all hearings held under the formal stages of this procedure. Notes may be produced following each hearing with a copy being provided to the employee for their agreement and/or comment.
- The outcome of any hearings may be delivered verbally by the Hearing Manager/Chair of the Panel but will always be confirmed to the employee in writing, ideally within five working days of the hearing taking place.
- If a formal disciplinary sanction is applied the employee will have the right to appeal against the decision to an impartial Appeal Manager / Panel.

- The purpose of the hearing will be for the Hearing Manager/Panel to consider the evidence presented in respect of the employee's conduct, and for the employee to have an opportunity of putting his or her side of the case - see agenda for conducting the hearing at Appendix 1.
- In addition to a decision to take no action, or to direct informal action/advice, the formal outcomes of a disciplinary hearing are:
  - First Written Warning
  - Final Written Warning
  - Dismissal with Notice
  - Summary Dismissal

## 8.0 Outcomes

### 8.1 No Action

Following the process, it is decided by the Hearing Manager/Chair of the panel that no further action will be taken. This will be confirmed in writing.

### 8.2 Stage 1 - First Written Warning

If a breach of conduct is confirmed, on the balance of probabilities, following a formal disciplinary hearing then a first written warning may be issued by the Hearing Manager / Chair of the Panel. This warning will be confirmed in writing, including the following points, and will remain live on the employee's file for **6/12** months from the date it is issued:

1. The reason for the warning being issued and the improvement which is required
2. The length of time the warning will remain live for and the possible consequences should any further misconduct occur during this period.
3. The right of appeal against any sanction applied.

### 8.3 Stage 2 - Final Written Warning

If a further breach of conduct is confirmed, on the balance of probabilities, following a formal disciplinary hearing and if the employee already has a live first written warning on file then a final written warning may be issued by the Hearing Manager / Chair of the Panel. If, however, the employee's misconduct is of a more serious nature then a final written warning may be issued without the need for a first written warning to be on file. A final written warning will be confirmed in writing, including the following points, and will remain live on the employee's file for **12/18/24** months from the date it is issued:

1. The reason for the warning being issued and the improvement which is required
2. The length of time the warning will remain live for and the possible consequences should any further misconduct occur during this period.
3. The right of appeal against any sanction applied.

It should also be noted that if the matter is considered sufficiently serious, a final written warning may not automatically be discarded upon its expiry, and may be reviewed on an annual basis (e.g. in cases of safeguarding or fraud).

### 8.4 Stage 3 - Dismissal with Notice

If a further breach of conduct is confirmed, on the balance of probabilities, following a formal disciplinary hearing, and when the employee already has a live first or final written warning on file, then the employee may be dismissed with notice by the Hearing Manager / Chair of the Panel. If the employee's contract of employment allows for payment to be made in lieu of notice then this may be considered by the Hearing Manager / Panel however it should

be noted that there is no obligation on the employer to offer pay in lieu of notice. The organisation may, at their discretion, also advise the employee that they are not required to attend work during their notice period, known as “garden leave”. It should be noted that there is no obligation on the employer to offer garden leave. Dismissal with notice will be confirmed in writing, including the following points:

1. The reason for the dismissal
2. The effective date of dismissal
3. The right of appeal against the dismissal

### 8.5 Stage 4 - Summary Dismissal

If the employee is found to have committed an act of gross misconduct, on the balance of probabilities, following a formal disciplinary hearing the employee may be summarily dismissed (i.e. dismissed without notice) by the Hearing Manager / Chair of the Panel.

Summary dismissal will be confirmed in writing, including the following points.

1. The reason for the dismissal
2. The effective date of dismissal
3. The right of appeal against the summary dismissal

## 9.0 Appeals

If any sanction is applied under this procedure, then the employee will have the right of appeal against the decision to an impartial Appeal Manager / Panel. Appeals must be received within five working days of the date of receipt of the outcome letter, they should be in writing, addressed to the person named in the outcome letter and must include a clear reason for the appeal.

Appeals will be arranged, within 10 working days of the date of receipt of the appeal and will be heard as soon as possible thereafter. Appeals will consider the employee’s grounds for appeal and the Academy presenter’s response. Appeal hearings will not generally constitute a full re-hearing; they will focus on the areas of appeal and may follow the suggested agenda contained at Appendix 1 of this policy.

Arrangements for the appeal will be confirmed in writing at least five working days ahead of the date for the Appeal Hearing to the employee who may be accompanied by a single workplace colleague not involved in the issue or by their trade union representative. It is the employee’s responsibility to arrange for a companion to be present if required. The Academy presenter and the Appeal Hearer / Panel may each be accompanied by a HR Adviser if required and a note-taker may also be present.

After hearing the evidence presented, the Appeal Manager / Panel will take one of the following decisions, which may be delivered verbally by the Appeal Manager / Chair of the Panel but which will always be confirmed to the employee in writing, ideally within five working days of the appeal hearing taking place:

- To reject the appeal and confirm that the original level of sanction stands.
- To uphold the appeal and overturn / partially overturn the original decision. In this case the Appeal Manager / Panel may remove or reduce the original level of sanction.

There is no scope for the Appeal Manager / Panel to increase the level of sanction originally applied. When an appeal against dismissal is not upheld the original date of termination will stand. An appeal decision is final and there is no further right of appeal.

The appeal should be dealt with impartially and, wherever possible, by a manager/panel who has not previously been involved in the case.

### 10.0 Absence during the Disciplinary process

If the employee becomes unwell at any stage of the disciplinary process, then the absence will be managed in accordance with the adopted absence policy. Action taken will depend on the specific circumstances of each case and may include a medical referral to establish fitness to attend or participate in a hearing, continuing with the disciplinary process in absentia or with written submissions from the employee, or temporarily suspending the process for a short time until the employee recovers as appropriate.

### 11.0 Grievances raised during the Disciplinary process

If an employee raises a grievance during the disciplinary process about the disciplinary process itself, this will not be dealt with as a grievance as the employee has the right to raise any issues of unfairness during the disciplinary investigation and any subsequent hearing. In all other scenarios, consideration will be given as to whether or not the grievance issues should be dealt with separately under the grievance procedure or form part of the disciplinary process.

It should be noted that the lodging of a grievance will only in exceptional circumstances lead to suspension of the disciplinary proceedings until such time as the grievance has been resolved. In most circumstances it is more likely to be appropriate that the disciplinary process continues although a different manager may manage the process until the grievance is resolved.

### 12.0 Postponement or non-attendance at hearings

If the employee / their companion are unable to attend a scheduled hearing, the hearing will be postponed to a mutually convenient time / time proposed by the employee, provided that the alternative time is both reasonable and not more than five working days after the date originally proposed. The employee will be advised in writing that the rescheduled hearing may proceed in their absence should they fail to attend the rescheduled hearing.

### 13.0 Equality

In line with our equality objectives, Managers/Headteachers should be aware of their personal responsibility in ensuring that discrimination in any form does not impact on their handling of a case of misconduct.

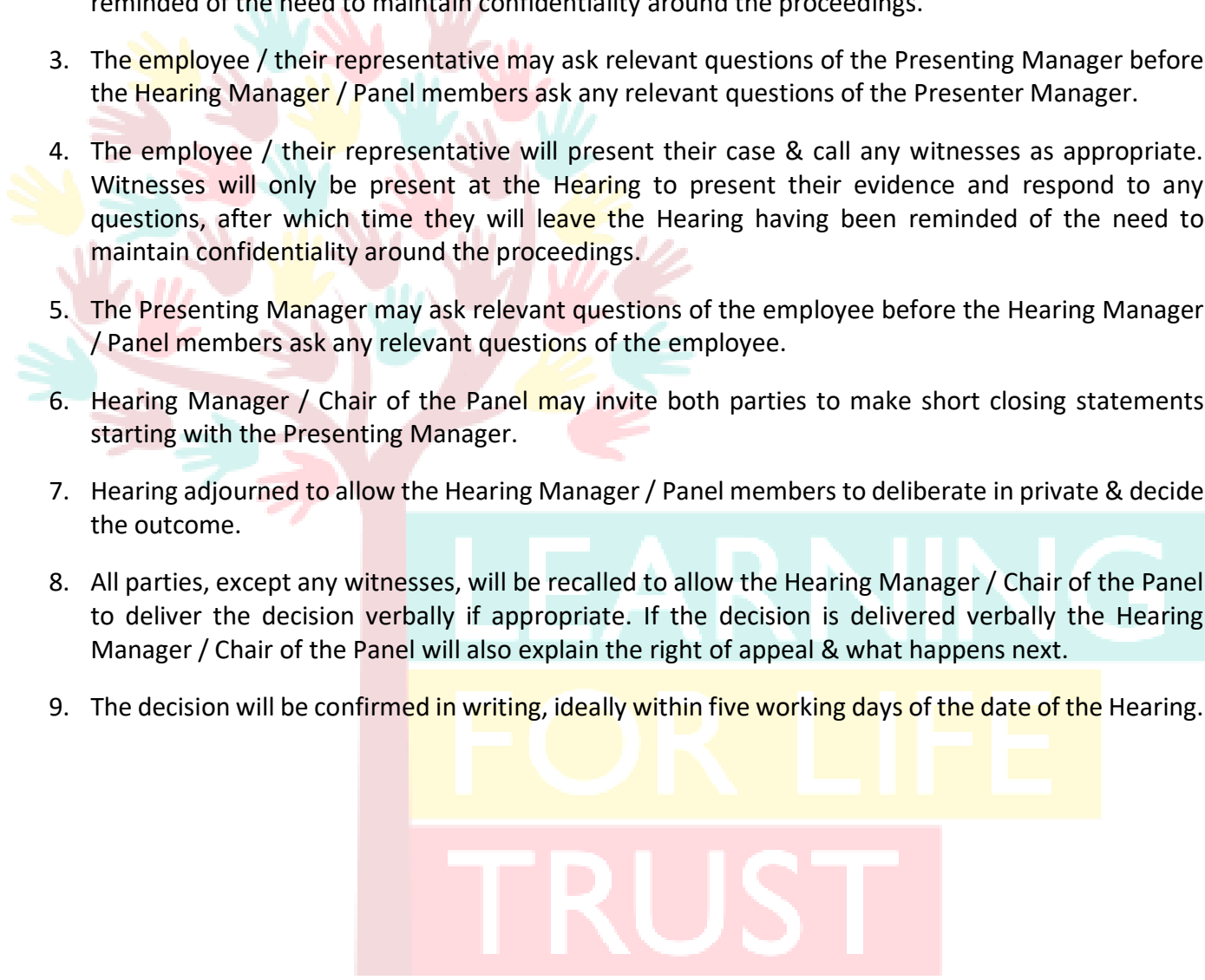
Managers/Headteachers should consider providing flexibility in arranging the date and venue of a meeting or appeal.

Reasonable adjustment may be needed for a worker with a disability (and possibly for their companion if they are disabled) e.g. the provision of a support worker or advocate with knowledge of the disability and its effects.



## Appendix 1 – Agenda for Disciplinary and Disciplinary Appeal Hearings

1. Hearing Manager / Chair of the Panel introduces those present, explains their roles and the process to be followed during the hearing. The Hearing Manager / Chair of the Panel should check that all parties have received all documentation that will be referred to at the Hearing.
2. Case presented by an appropriate manager (the Presenting Manager) who may present evidence and call witnesses as appropriate. Witnesses will only be present at the Hearing to present their evidence and respond to any questions, after which time they will leave the Hearing having been reminded of the need to maintain confidentiality around the proceedings.
3. The employee / their representative may ask relevant questions of the Presenting Manager before the Hearing Manager / Panel members ask any relevant questions of the Presenter Manager.
4. The employee / their representative will present their case & call any witnesses as appropriate. Witnesses will only be present at the Hearing to present their evidence and respond to any questions, after which time they will leave the Hearing having been reminded of the need to maintain confidentiality around the proceedings.
5. The Presenting Manager may ask relevant questions of the employee before the Hearing Manager / Panel members ask any relevant questions of the employee.
6. Hearing Manager / Chair of the Panel may invite both parties to make short closing statements starting with the Presenting Manager.
7. Hearing adjourned to allow the Hearing Manager / Panel members to deliberate in private & decide the outcome.
8. All parties, except any witnesses, will be recalled to allow the Hearing Manager / Chair of the Panel to deliver the decision verbally if appropriate. If the decision is delivered verbally the Hearing Manager / Chair of the Panel will also explain the right of appeal & what happens next.
9. The decision will be confirmed in writing, ideally within five working days of the date of the Hearing.



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## Appendix 2 – Examples of Gross Misconduct and Misconduct

### Examples of Gross Misconduct

*(This list is not intended to be exhaustive and is included only to give an indication of the types of offence which may be considered Gross Misconduct)*

- A serious breach of confidentiality or the essential relationship of trust and confidence which must exist between employee and employer
- A serious breach of Academy policies or relevant standards e.g. the Health and Safety policies, IT / Social Media policy, Safeguarding policy, Bullying & Harassment policy or the Teachers Standards etc.
- Acts outside work or conviction of a criminal offence which makes the employee unsuitable or unable to carry out their duties
- Acts of violence, harassment, obscene or abusive behaviour, or enticing others to behave in such a way
- Being Absent Without Leave (AWOL)
- Deliberate or reckless damage to Academy/Trust property
- Deliberate, fraudulent or unauthorised use of Academy/Trust property or equipment
- False or malicious accusations or allegations made against others
- Incapability at work due to the consumption of alcohol or illegal drugs or the possession or sale of alcohol or illegal drugs in the workplace
- Negligence which caused or had the potential to cause significant loss or damage to the organisation, its students, staff or visitors
- Theft, fraud, bribery, deliberate falsification of records or dishonesty
- Unprofessional conduct or serious acts of insubordination

### Examples of Misconduct

*(This list is not intended to be exhaustive and is included only to give an indication of the types of offence which may be considered misconduct – depending on severity, some may be considered to be gross misconduct)*

- Behaviour likely to cause offence to pupils, parents, members of the public, staff or Governors
- Failure to comply with reasonable management instructions or to follow Academy/Trust procedures
- Negligence or failure to maintain accepted professional standards
- Incidents that take place outside of the workplace if they are sufficient to bring the reputation of the organisation into disrepute, sufficiently impact upon the employee's ability to do their job, or sufficient to call into question their suitability to do their job

#### Attendance at Work:

- deliberate provision of false or misleading information on applications for employment or promotion
- failure to wear or use appropriate equipment/attire made available or necessary for the job (including safety equipment), (unless exempted on the grounds of religion or belief following risk assessment.)
- unauthorised absence
- poor timekeeping: late starting, early finishing, excessive break periods
- failure to comply with sickness absence procedures
- falsification of official accounts or documents e.g. bonus, travel sheets, expense claims
- incapacity at work, due to the effects of alcohol or non-prescribed drugs

Behaviour:

- physical violence
- indecent behaviour, action or language that is likely to cause offence, including racial or sexual abuse
- harassment, bullying or victimisation of others, including racial, religious or sexual intimidation or prejudice
- disruption of others by unruly or disorderly behaviour
- discourteous or improper treatment of members of the public, colleagues, pupils, governors or parents
- acceptance of bribes or involvement in similar corrupt practice
- inappropriate use of social media
- lack of integrity that would damage public confidence in the Academy/Trust

Behaviour out of Work:

- unauthorised employment, e.g. engaging in unauthorised employment during hours when contracted to work for the Academy Trust, or engaging during off-duty hours in employment that is detrimental to the interests of the Academy Trust
- engaging in political activity whilst occupying a politically restricted post, as defined in the Local Government and Housing Act 1989 (e.g. acting as a party election agent or sub-agent, failure to give notice of an intention to stand in a pending general or parliamentary by-election)
- neglect of health (e.g. activities or conduct which seriously affect your recovery during sickness)
- conviction of a criminal offence that is inconsistent with the position held by you

Care of Property:

- use of the school/Academy's time or property for personal reasons without permission
- misuse of property or equipment to which you have access through your work
- damage to or neglect of property in the course of an employee's work
- theft

Neglect:

- failure to report actual or suspected abuse of any pupil by another member of staff or any other person who has contact with a pupil
- disregard for the health and safety of others, including reckless driving or operation of vehicles or equipment, and smoking in prohibited areas
- conviction of a criminal offence that is inconsistent with the position held by the employee

Standards of Work:

- failure to follow operating instructions and procedures
- failure to achieve required levels and/or quality of performance, through carelessness or lack of application
- maladministration
- failure to carry out a reasonable instruction

