



**Shaw  
Education  
Trust**

# Disciplinary Policy

Procedure Originator:	Jo Collingwood/Bilal Ahmed
Approved By:	Stephen Watson
Queries to:	Regional People Team
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Audience:	Trust Wide

## **Disciplinary Policy Introduction**

The purpose of this policy is to help and encourage all employees to achieve and maintain standards of conduct with consistency and fairness in the way that disciplinary matters are handled.

Any reference to 'the employer' refers to Shaw Education Trust. This policy applies to employees of the Trust, regardless of length of service, but does not form part of the contract of employment and can be varied from time to time and in consultation with the recognised trade unions.

The procedure does not apply to ex-employees.

## **Things to consider**

This policy may be implemented at any stage, as set out below, taking into account the alleged misconduct of an employee. Employees will not normally be dismissed for a first act of misconduct, unless it is decided that it amounts to gross misconduct or are within their probationary period.

The employee is entitled to be accompanied by a companion or trade union representative to any meetings held under the formal procedure.

All managers have a duty to ensure that they and all the employees they are responsible for are aware of, and comply with, the Shaw Education Trust's policies and procedures. Managers are also responsible for making sure that employees know when they are not achieving or maintaining the expected standards of conduct or behaviour.

All employees have a responsibility to be aware of and conduct themselves in line with the Shaw Education Trust's policies, the law and maintain acceptable standards of conduct and behaviour. Where relevant, employees must adhere to codes of practice or standards associated with their profession or trade. Employees must also cooperate with disciplinary investigations as required.

References to Trade Unions throughout this policy mean anybody appearing on the Certification Officer's list of trade unions.

All stages in the policy will operate in accordance with the duties to promote equality, to eliminate discrimination and to promote good relations between colleagues with protected characteristics as required under the Equality Act 2010.

## How this links to other policies?

### Grievance Policy

Where a complaint is submitted during disciplinary proceedings, this will not normally stop the proceedings from progressing. Where a grievance is raised during disciplinary proceedings:

- The disciplinary proceedings may be temporarily suspended in order to deal with the grievance

or

- The grievance and disciplinary may be run concurrently where they are related.

### Attendance Management Policy

Where an employee is absent due to sickness whilst a disciplinary matter is pending, the attendance policy will apply as normal. Due regard will be had for what is said by Occupational Health and any information provided from the employees GP. Managers should arrange for an Occupational Health referral as soon as possible for them to assess health generally and whether the employee is fit to participate in these procedures. Being absent from work due to sickness will not automatically stop the disciplinary procedure progressing.

## Taking action against a Trade Union Representatives

Disciplinary action against a TU representative can lead to a serious dispute if it is seen as an attack on their functions. While normal disciplinary standards apply to a TU representative's conduct as an employee, the relevant full-time official or Senior Lay Officer should be notified of any action (including suspension) that Shaw Education Trust proposes to take. All reasonable efforts must be taken to ensure that disciplinary action is not taken against a TU representative until the relevant full-time official or Senior Lay Officer has had an opportunity to be present at any stage of the formal procedure.

## **Finding out the facts**

In some circumstances where an allegation is brought to the attention of the Principal/Line Manager, they or their nominated person may carry out a fact-finding exercise (not a formal investigation) as soon as possible to establish the basic facts of the situation prior to proceeding to a formal investigation. Principals/Line Managers should seek advice from their Regional People Advisor prior to commencing a formal investigation.

It is important at this stage to sense-check which is the most appropriate Trust policy in the circumstances (e.g. Whistleblowing, Anti-Fraud & Bribery, Respect and Dignity at Work, Professional Conduct).

The aim of a preliminary assessment is to establish whether, on the face of the evidence available, there is a case to investigate further. This may involve viewing CCTV footage, checking records, taking action to secure computer records and speaking informally to the colleague and any potential witnesses to obtain their version of events.

The preliminary assessment should be carried out as soon as possible after the matter is brought to the Principal/Line Managers attention. A decision should be made without undue delay as to whether the matter should be fully investigated under the formal process as set out below. The Regional People Advisor must be informed of all cases proceeding to formal investigation.

## **Informing the Employee of the alleged misconduct**

In cases of alleged misconduct, the employee will be notified in writing of the allegations and that an investigation under the disciplinary procedure will occur. The notification should also inform the employee of who is being appointed as the investigating officer.

The investigating officer may be supported in the overall investigation process by a member of the HR team but only the investigating officer will conduct the interview with the colleague against whom misconduct is alleged (with a note taker who may be a member of the HR Team).

## How to carry out a formal Investigation

No disciplinary action will be taken against a colleague until a formal investigation to establish the facts of the case has taken place. The purpose of the investigation is to establish the facts whilst they are still clear in the minds of those involved, and to decide what further action to take. The colleague may be accompanied by a Trade Union Representative or a companion.

The Investigation should be carried out in accordance with the investigation procedure pack promptly and without unnecessary delay.

Where reasonable, the investigation should be carried out within 5 working days by someone suitable training. However, if the investigation is not completed within this period, the employee will be informed of this by the Investigating Officer providing the reasons for delay and given regular updates as to how the investigation is progressing.

It is the role of the Investigating Officer to determine whether there is a case to answer and or if there is a potential case for Gross Misconduct. It is **not** their role to suggest what the outcome of the hearing should be.

If at the end of an investigation it is found that no case is to be answered, the employee will be informed in writing that there is no further action and no reference to the investigation will be placed on their personnel file. With exception of a "no further action letter" or a "management recommendation" if appropriate.

## Suspension

If the allegation is considered so serious that it may amount to gross misconduct or the individual is considered a risk to others, they may be informed that they are suspended on full contractual pay pending further investigation. HR advice will need to be sought and authorisation by the Regional Director after completing a suspension checklist form.

Suspension may also be necessary in other circumstances e.g. where the employee would be able to access evidence or influence witnesses.

Whilst a decision on suspension is being taken, an employee may be asked to go home and not attend work or be temporarily redeployed, usually for a maximum of 48 hours.

The suspension will be reviewed periodically (typically every 5 working days) to consider whether circumstances surrounding the suspension have changed.

Suspended employees must make themselves available for interviews under the procedure and must not take alternative employment while the contract of employment still applies. They must make themselves available for all meetings that may be required in the course of their employment and notify the school of the intention to take holidays as the same way they would if attending work.

If appropriate employees may be asked to return property belonging to the Trust/Academy and/or have access to online systems suspended, and/or refrain from visiting the Trust/Academy premises.

Where an employee falls sick during a period of suspension, the normal certification requirements, reporting and continual sick pay entitlements will apply.

When returning to work following a period of suspension, appropriate support should give to the employee to help them reintegrate back into their role.

## **Arranging a Disciplinary Hearing**

Following the investigation if it considered that a formal hearing is required, the employee will have written notification to inform them, at least 5 working days in advance of a disciplinary hearing.

*Please refer to the Disciplinary Toolkit to find copies of the relevant documentation and template letters.*

The employee must advise the Disciplinary Officer of the following at least 3 working days in advance of the hearing:

- The name and designation of their Union representative or workplace colleague
- Provide any written documentation to be considered
- The names of any witnesses that they wish to call
- Any special requirements (e.g. disability, language requirements)

At the disciplinary hearing, before the Disciplinary panel, the employee or representative will be given a reasonable opportunity to state their case, to question the Investigating Officer and any witness statements.

The hearing will normally be adjourned whilst the Chair/panel hearing the case reaches their decision. The basis of the decision should be whether, on the balance of probability, the employee committed the alleged misconduct based on the evidence presented from both sides and if so, what if any disciplinary sanction should be given.

The employee will be informed in writing (including verbally where possible) of the outcome within 5 working days of the hearing, to include:

- The sanction (if any) and the period it will remain current
- The reasons for the decision
- The change in behaviour required (if relevant) and the likely consequence of further misconduct
- Right of appeal

A postponement may be granted if the employee or their representative is unable to attend on the proposed date. A postponement should not be for more than 5 working days after the original proposed date. Where a hearing is rearranged and the employee is unable to attend a second time, the hearing will convene as arranged and decision may be taken in the employee's absence based on the evidence available.

### **What are the possible sanctions for misconduct?**

Where an employee has been found to committed misconduct the disciplinary chair/panel may decide to issue one of the following sanctions:

- Letter of Concern – misconduct is not sufficiently serious to warrant a higher level of disciplinary sanction, or the mitigating evidence provided has been considered and a lower level of disciplinary sanction is justified
- First Written Warning - Where misconduct has occurred
- Final Written Warning – Where serious misconduct has occurred or where there is repetition of an offence despite a previous warning
- Dismissal – Where an employee has still not reached the level required or where there are continued breaches of conduct despite previous warnings. Or when gross misconduct has occurred

Action short of dismissal may be considered as an alternative to dismissal, with the agreement of the employee concerned. For example, a final written warning and disciplinary demotion to a lower pay grade with no pay protection and/or transfer to an alternative role within the academy or wider trust. This is subject to a suitable role being available and the individual circumstances of the case. It should be noted that there is no entitlement to this outcome and that if the outcome is put forward but not agreed by the colleague then the dismissal would take effect.

A letter of concern, first or final written warning should set out the nature of misconduct and the improvement that is required. The employee should be told how long the warning will remain live and failure to improve or further misconduct in that timescale could lead to further disciplinary action being taken.

Warnings will be disregarded for disciplinary purposes after 6 months for a letter of concern, after 12 months for a first written warning and after 18 months for a final written warning unless otherwise stated. If during this period similar offences or further misconduct occurs, any live warnings will be considered. Once spent the disciplinary warning will remain on file as part of the employees record of employment but will not be considered.

A decision to dismiss should only be taken by persons who have the authority to do so (*see DAF*). The employee will be informed of the reasons for dismissal, the appropriate period of notice, the date on which the employment contract will end and the right to appeal. Unless a colleague is being dismissed for reasons of gross misconduct, they should receive the appropriate period of notice or pay in lieu of notice.



## How can you appeal the decision?

The employee has a right of appeal against a decision to issue a warning or to dismiss. Appeals against formal warnings or dismissal should be made in writing within 5 working days of the receipt of the written decision and be addressed to the Chair of the disciplinary panel. The appeal will be heard by the Appeals Panel and can either; confirm the sanction, reduce the sanction, or overturn it.

All appeal hearings will be held as soon as practicably possible and not normally later than 3 weeks after receipt of the appeal.

The employee will be given 5 working days' notice in writing of the date of the appeal hearing. The notification will detail the name of the person chairing the hearing and the names of the panel members. A member of the People Regional Team will attend the meeting to provide procedural advice.

Both parties must indicate at least 3 working days in advance of the appeal hearing, which if any witnesses they wish to call and provide copies of any documentation that will be relied upon. In exceptional circumstances an alternative time scale may be agreed.

The outcome of the appeal will be confirmed in writing as soon as possible and usually within 5 working days of the hearing being concluded. There is no right of further appeal against such a decision of the Appeal Panel.

The chair of the disciplinary hearing will attend the appeal. Members of the Appeals Panel would not have had any involvement in the case beforehand.

Where the Appeals Panel overturns a decision to dismiss or to issue a written warning, they may substitute a lesser sanction. There is no right of appeal against such a decision of the Appeals Panel.

In the event that the Appeal Panel decides not to uphold the decision to dismiss, the notice of dismissal shall be immediately withdrawn or reinstated without loss of pay.

## **If a Criminal Offence has been committed**

Certain criminal offences may affect an employee's suitability to continue in their role with Shaw Education Trust or damage their reputation. If an employee is charged with a relevant criminal offence they must inform their manager as soon as possible. We will not treat notification about criminal proceedings, or a conviction (including bind-over's and cautions), as an automatic reason for dismissal or for any other form of disciplinary action being taken. We will decide what action to take, if any, after we have reviewed the matter. The main consideration should be whether the conviction is one that potentially makes an employee unsuitable for their job or affects Shaw Education Trust's reputation.

If an employee is subject to a criminal investigation, Shaw Education Trust will determine to what extent it needs to conduct its own investigation before deciding whether to proceed to formal disciplinary action. Shaw Education Trust will not usually wait for the outcome of any prosecution before deciding what action to take (unless specifically advised otherwise by the Police). No decision to impose a disciplinary sanction or dismiss will be taken prior to giving an employee the opportunity to make representations.

If we have reasonable grounds to suspect that the potential misconduct involves fraud, systems abuse, theft, or any financial irregularity, we will notify the internal auditors and/or the police as soon as possible.

## **Keeping your data safe!**

All employees subject to disciplinary investigations or proceedings must treat as confidential any information communicated to them in connection with an investigation or disciplinary matter. Only the decision of a disciplinary hearing, following appeal may be reported. All records will be retained in line with GDPR regulations.

## Appendix A – Examples of Misconduct/Gross Misconduct

Breaches of reasonable conduct at work may take many forms. The following list is not exhaustive and there may be other examples appropriate to the nature of a particular job which would warrant disciplinary action following a thorough examination of the circumstances involved -:

### Examples of Misconduct

- Minor breaches of Trust and Academy policies;
- Minor breaches of an employee's contract;
- Damage to, or unauthorised use of, Trust property;
- Repeated poor timekeeping;
- Unauthorised absence from work;
- Refusal to follow instructions;
- Excessive use of Trust telephones for personal calls;
- Excessive personal e-mail or internet usage;
- Obscene language or other offensive behaviour;
- Wilful negligence in the performance of duties;
- Undertaking additional employment outside normal working hours without authorisation

### Examples of Gross Misconduct

The following are examples of gross misconduct but this list is not exhaustive:

- Theft or unauthorised removal of property, fraud, falsification of the Shaw Education Trust's records, misappropriation or any other dishonesty
- Actual or threatened violence or bullying behaviour
- Deliberate or serious damage to the Shaw Education Trust's property or that of an employee, customer, contractor or authorised visitor
- Serious negligence which does or could result in loss, damage or injury
- Being under the influence of alcohol, drugs or other similar substances at work which may give reasonable grounds to suspect ability to undertake duties or being in possession of illegal or intoxicating drugs on site
- Refusal to obey reasonable instructions or any other act of serious insubordination
- Serious breach of health and safety rules
- Unauthorised disclosure of confidential information

- Convictions relating to activities outside work but which have a significant and direct bearing on employment and duties with Shaw Education Trust and its reputation
- Misrepresenting at any time, including at appointment with the Shaw Education Trust, any previous positions held, qualifications, date of birth, declaration of health, or a failure to disclose a criminal offence or pending criminal action subject to the provisions of the Rehabilitation of Offenders Act 1974.
- Behaviour prejudicial to the good name or interests of the Trust or which may bring the employee or the Trust into disrepute
- Repeated unauthorised and unreasonable absence from the place of work
- Breach of trust and confidence
- Fraudulent practices
- Falsification of any records
- Violent or threatening behaviour towards people or property on the Trust's premises or at a Trust related event
- Covertly recording hearings, meetings or colleagues
- Making any sexual or other inappropriate contact with any pupil whatever the age of the pupil
- Discrimination, harassment or victimisation on the grounds of protected characteristics as defined in the Equality Act of 2010
- Bullying, harassment or victimisation, whether verbal, written, photographic, pictorial or physical
- Serious breaches of the Trust's IT user and social media and internet related policies
- Using social media (e.g. blogs, Facebook, Twitter etc.) to post derogatory or offensive comments about the Trust, work colleagues, or third parties with which the Trust has an operational relationship
- Any misappropriation of files or documents belonging to the Trust of any kind or making copies, duplicates or excerpts of these for private or any other purposes unrelated to an employee's employment and without consent



# Shaw Education Trust

Shaw Education Trust Head Office,  
Kidsgrove Secondary School,  
Gloucester Road,  
Kidsgrove,  
ST7 4DL

Twitter  
LinkedIn  
Call  
Email  
Visit

@ShawEduTrust  
@ShawEducationTrust  
01782 948259  
info@shaw-education.org.uk  
shaw-education.org.uk

**Pupil &  
people  
centred**

**Act with  
integrity**

**Be  
innovative**

**Be best  
in class**

**Be  
accountable**