



South East Cornwall Multi Academy Regional Trust

Disciplinary Policy

Date	Changes
3/9/17	Original draft circulated to LGCs and Trust Board
26/3/18	All SMART-Trust policies which unions requested further consultation on were removed from sites and previous policies reinstated to enable establishment of a JCNC and a fresh round of consultation
14/12/18	Updated draft circulated
13/03/19	Copy sent to senior staff, unions, LGC, legal and Trust Board inviting comments
01/05/19	Consultation with unions in JCNC meeting at Liskeard
17/06/19	Recommended by People Committee for approval by Trust Board
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Introduction

This policy aims to provide a fair and consistent framework for:

dealing with allegations against staff (disciplinary matters)

It will cover the majority of such cases, although in some cases particular procedures will be more appropriate, such as SMART'S policy for **Whistleblowing**. Performance issues should be dealt with in accordance with the policies on **Appraisals and Capability**. It applies to all employees, including the CEO and Headteachers.

Statutory guidance is contained in the ACAS Code of Practice on Disciplinary and Grievance Procedures ("the ACAS Code"). This policy aims to adhere to that and other ACAS guidance, where applicable.

The Trust Board has delegated to the CEO and Headteachers of the schools the authority to conduct disciplinary proceedings in all cases save for those in which dismissal is contemplated and those in which the proceedings relate to the conduct of the CEO. Investigations are a systematic way of ensuring fair treatment. Every effort is made to ensure sensitivity and confidentiality is respected to avoid the need for any formal action where possible.

For simplicity, this policy uses "you" throughout for the person accused or the person who has raised the complaint, and "we" for the Trust.

This policy is non-contractual and so does not form part of your contract of employment.

Equality Statement

We are committed to equality of treatment for all employees as set out in our policy framework. This commitment extends to ensuring that all those involved in any form of disciplinary or grievance proceedings will be sufficiently trained to carry out their role in terms of:

- Eliminating unlawful discrimination, harassment, victimisation and any other conduct prohibited by the Equality Act 2010
- Advancing equality of opportunity between people who share a protected characteristic and people who do not share it
- Fostering good relations between people who share a protected characteristic and people who do not share it.

Disciplinary Procedure

1. Any disciplinary matter must be dealt with fairly and steps taken to establish the facts and to give you the opportunity to respond before taking any formal action. You may bring a work colleague or a trade union representative to all meetings under this policy.
2. If, following a full confidential investigation, the Investigating Officer makes a recommendation to the Commissioning Officer that there is potentially a case to

answer then the following is a list of the kinds of discipline sanctions that can occur after a hearing

1. Verbal warning
2. Written warning
3. Written warning with a six month review
4. Written warning with a twelve month review
5. Final written warning – can only be issued by a governor panel
6. Dismissal via governor panel with oversight of a Trust Board appointed panel

3. For a first act of misconduct, dismissal would not normally be the case, unless it amounts to gross misconduct or you have not completed a probationary period.

Suspensions

4. If a suspension of the CEO is required, this is dealt with by a panel of three Trustees. The CEO has delegated authority from the Trust Board to suspend any Headteacher or member of the Central Business Unit (CBU). Headteachers at each school have delegated authority from the Trust Board to suspend any member of staff at their school when a serious allegation or incident requires investigation. This will not occur without serious consideration, and in particular will not follow automatically when an allegation of abuse or gross misconduct is made. Depending on the nature of the case, it may be possible that alternative arrangements are made such as work location or reorganisation of duties, and these will be considered before a decision to suspend is made.
5. Suspension is not a disciplinary penalty and does not imply that any decision has been made about the allegations. If you are suspended, you will receive confirmation in writing normally within 10 school days and will be informed of the reasons. The suspension will be for no longer than necessary and will be kept under review. You will continue to receive full pay and benefits during any period of suspension.

Disciplinary Investigation

6. When possible misconduct comes to light the Headteacher (or CEO for Headteachers or CBU staff or Chair of the Trust Board for the CEO) will act as the Commissioning Officer. The Commissioning Officer will appoint an Investigating Officer to carry out the investigation or will make a request to the Trust Board to be appointed as the Investigating Officer themselves. The Investigating Officer appointed by the Commissioning Officer will not have been directly involved in the incident in question. The investigation is to establish a fair and balanced view of the facts. The extent of investigation needed will depend on the nature of the allegations and will vary from case to case. It may involve interviewing you and any witnesses, and reviewing relevant documents or other information. The Investigating Officer will inform you that they are going to initiate an investigation and will provide a copy of the nature of the allegations. All such investigations will be subject to strict confidentiality arrangements that will be made clear to all witnesses by the Investigating Officer.
7. Where any allegation is made, the Headteacher (or CEO for Headteachers or CBU staff or Chair of the Trust Board for the CEO) should be informed and a meeting will be arranged with you. The Chair of the Local Governing Committee or Trust Board will be

informed. If the CEO is the person accused, the Chair of the Trust Board will arrange the meeting, and will assume all the duties of the Headteacher set out below. You will be invited to the meeting in writing and you may be accompanied by a work colleague or union representative.

8. The Investigating Officer will produce a report containing details of the allegation, the steps undertaken as part of the investigation (e.g. interviewing witnesses and reviewing documents) and a conclusion which will include a recommendation. The Investigating Officer will include a recommendation as to whether a disciplinary hearing should take place. If the Headteacher is the Investigating Officer they should inform the Chair of Governors.
9. The Commissioning Officer will consider this recommendation and make the decision as to the appropriate course of action. They will inform the CEO and Chair of the Trust Board of their decision.
10. Where alleged misconduct is not considered to be serious enough to warrant a disciplinary hearing a meeting will be arranged informally to discuss the circumstances surrounding your alleged misconduct. Written records of this discussion will be kept until 6 months after you have left the organisation, as will documentation of any information from witnesses but will not be noted as a formal process for the sake of references. You can bring a work colleague or union representative to this meeting if you wish. The Headteacher may also decide that further training, support, mediation or a referral to occupational health is appropriate.

Notification of Disciplinary Hearing

11. When the Commissioning Officer considers that the incident is serious enough to potentially result in a dismissal or final written warning then disciplinary hearings will be convened before a Governor Staffing Panel, made up of at least three governors, none of whom have had any previous involvement with the case. The Chair of the Trust Board or Vice Chair will confirm the governors selected for the panel and the selection of Chair of this panel. The Trust Board Clerk will minute all meetings. The Trust's Human Resources Officer will brief the Panel prior to the meeting in an advisory capacity. For less serious incidents the disciplinary hearing can be convened before a panel comprising the Commissioning Officer, another governor and a note taker.
12. If dismissal is contemplated or where the CEO is subject to the disciplinary proceedings, then the Chair of the Trust Board will agree the panel members and appoint the chair for the hearing.
13. When a disciplinary hearing is required, you will be notified by letter within ten working days' notice of:
 - the date, time and location of the hearing;
 - the identification of the person chairing the hearing and the governors who will be present;
 - the allegations against you;
 - the investigation report, including all relevant documentation, setting out the basis of those allegations;

- whether the allegation constitutes misconduct or gross misconduct and the likely range of sanctions if the allegations are upheld;
 - Your invitation to submit any evidence you feel is relevant.
14. The letter will remind you of your right to be accompanied. If you wish to bring a work colleague or union representative, you must make the necessary arrangements with them. If your union representative or work colleague cannot attend this date, the hearing can be rearranged to an alternative date within 5 working days of the original date, or to a mutually agreed date. The process cannot be further delayed if your chosen representative is not able to agree a date within this timeframe.
 15. You may send the panel evidence presenting your defence in advance of the hearing, via the Trust Board Clerk who will ensure all panel members receive this material.
 16. If you fail to attend without good reason, the hearing may be held in your absence and a decision made on the basis of the information available. This may also occur if you are persistently unable to attend for health or similar reasons.
 17. The Investigating Officer will normally have interviewed relevant witnesses and taken statements from them as part of the investigation report. The witnesses will not normally attend the hearing but both parties can invite witnesses if they feel there is additional relevant information beyond the written statements. If there are any relevant witnesses who have not been interviewed, you should bring this to the attention of the Chair of the Governor panel in good time before the hearing. You should not contact them directly to obtain a statement or to attend the hearing. Equally, if you believe that there is a particular reason why a witness should attend the hearing you should raise this in advance. Witnesses cannot however be required to attend.

Disciplinary Hearing

18. As well as the Panel, the Investigating Officer will attend as a witness to present the findings of their investigation. The Commissioning Officer will be asked to attend to present the management case. A note-taker will also be present.
19. The Chair will go through the allegations and ask you to respond. You can also present your case and any evidence you sent to the Trust Board Clerk prior to the hearing.
20. The hearing is for considering evidence in addition to information-gathering. In the hearing, the case is presented. The aim is to give you the fullest possible opportunity to explain your position. It is not intended to be an interrogation, and questions will be put to you to explore your response. Evidence in the investigation report will be raised and you will be invited to comment on each aspect.
21. Your work colleague or union representative can make points or ask questions on your behalf during the hearing, but should not answer questions for you.
22. If any witness does attend in person to give evidence, you will again be given the opportunity to respond to any information they provide but will not be permitted to

cross-examine them directly. Questions you would require to be answered by such a witness can be asked through the Chair of the Governor panel and ideally should be submitted in writing prior to the hearing for their consideration. Please see the flow chart below.

23. At the end of the hearing you (or your work colleague/ union representative) will have a further opportunity to make representations.
24. The hearing may be adjourned if it is deemed necessary to carry out any further investigations and you will be given a reasonable opportunity to consider any new information before the hearing is reconvened.
25. The person chairing the hearing may be in a position to verbally communicate the decision on the day. In all cases, the decision will be communicated in writing.

The Panel have a pre-meeting to consider the paperwork and questions they will ask. Legal representatives will normally attend this meeting as advisors



The Chair invites you, your chosen representative, the Investigating Officer and the Commissioning Officer in to the room. The Chair conducts introductions, reads through the allegations that have already been shared previously



The Commissioning Officer or other person presenting the management case will present that case and will call any agreed witnesses



Questions can be asked of the person presenting and of witnesses, by the panel and through the panel by you and your representative



You now present your case together with your representative and then call any agreed witnesses to present



Questions can be asked of you and your witnesses, by the panel and through the panel by those presenting the management case



The person presenting the management case sums up their case and advises the panel



You and your representative sum up your case



The panel ask all parties to leave in order for them to deliberate and reach their conclusion

Disciplinary Outcome

You will be informed in writing of any decision and the reasons for it. If there has been a hearing, this will be within 10 working days of this hearing. The panel/Headteacher/CEO may find that the case does not warrant formal measures and refer the case back to an informal process. Alternatively, the decision may be a first warning or final warning or dismissal.

Written warnings will set out the nature of the misconduct, the period for which the warning will remain active and the likely consequences of further misconduct in that active period. Any active period required to be longer than six months must be reviewed by the Commissioning Officer after a six-month period to confirm that the measures are still required. If a further incident is reported during this active period which may be in breach of the original warning, then a separate investigation will be required. If dismissal is a possible recommendation, then a panel will be convened.

After the active period, the warning will remain on your personal file until six months after you have left the organisation, but will be disregarded in deciding the outcome of future disciplinary proceedings, reference requests and future job opportunities. The documentation will be clearly marked 'Sanction completed. No longer to be referred to in reference requests'.

Appeal

An employee can appeal against the outcome to the Trust Board Clerk who will make reference to the Scheme of Delegation to identify the appropriate person to whom it should be directed. This should not be a person who was on the original panel. This should be the Chair of Trust Board for CEO, Headteachers or in cases of dismissal. The appeal must be made within 5 working days of receipt of the outcome letter, stating clearly the reasons for appeal.

The appeal will be dealt with as impartially as possible and will be conducted by a different panel of Governors not previously involved in the case. In the case of Headteachers or the CEO this panel will be three Trustees not previously involved in the case. If necessary, this may be supplemented by Trustees from another MAT.

You will be given written notice of the date, time and place of the appeal hearing no less than 5 working days before the hearing. At the same time, you will also be provided with a copy of the notes taken at the disciplinary hearing. You may present further evidence that has arisen as a result of the disciplinary process and relates to the reason for the appeal within two days of the appeal hearing.

The appeal hearing will ascertain whether the process was followed correctly and the sanction was relevant given all the information available to the original panel. The appeal panel may review new evidence if this was not available for the initial hearing or has resulted from the hearing proceedings.

Following the appeal hearing, the panel may confirm or revoke the original penalty or substitute a different penalty, but the penalty will not be increased on appeal. You will be

informed in writing of the decision and the reasons for it, usually within 5 working days of the hearing.

Confidentiality

We will make every effort to protect the privacy of all parties during and after an investigation into misconduct. It is in everyone's best interest to maintain this confidentiality to ensure a fair investigation with minimum impact for all parties. You must treat information communicated to you in connection with an investigation or disciplinary matter as confidential. This will apply to all parties involved in the hearing and investigation.

A breach of confidentiality will be taken seriously and may warrant its own investigation.

Resignations

If you hand in your resignation when a disciplinary hearing has been ordered or during an investigation, the investigation may still continue until an outcome has been reached, with or without your cooperation. If so, you will still be given a full opportunity to respond to the allegation. When a disciplinary hearing relates to a potential safeguarding concern, the CEO/Chair of the Trust Board will seek legal advice regarding the Trust Board's obligations and ability to end the process.

Record Keeping

Detailed records of all investigations and outcomes will be kept securely, and in line with General Data Protection Regulations, in your personal file. You will also be given a copy of the same information. Where DBS checks highlight allegations that did not result in any criminal charges, records will need to show exactly what happened, what points of action were taken during and after the investigation, and how the result of the investigation was reached.

Allegations or investigations that are proven to be malicious will not be kept on your records or used in your references.

Types of Misconduct

Listed below are some actions normally considered to be misconduct or gross misconduct that would be dealt with under this policy. These lists are a guide and are not exhaustive.

Misconduct

- Breaches of your contract of employment;
- Breaches of our policies, including the sickness absence policy, code of conduct, IT user policy and health and safety policy;
- A breach of confidentiality or school regulations;
- Unauthorised absence from work;
- Unauthorised use of our facilities – for example using the internet for excessive personal emailing;
- Inappropriate or offensive behaviour – for example, using foul or abusive language;

Gross Misconduct

Gross misconduct is a serious breach of contract and includes misconduct, which in our opinion is likely to prejudice our reputation or irreparably damage the working relationship and trust between us and you. It will normally lead to dismissal without notice or pay in lieu of notice. The following list is non-exhaustive, but examples of gross misconduct can include:

- Inappropriate conduct with children or young people, including failing to maintain appropriate professional boundaries;
- Serious failure to follow our safeguarding and child protection procedures;
- Harassment or discrimination related to any of the protected characteristics – see other relevant policies;
- Serious or repeated breaches of health and safety requirements;
- Physical assaults on or intimidation or threats to or harassment of a colleague, student or member of the public;
- Unauthorised removal of Trust property, or malicious damage to Trust property or equipment;
- Criminal offences that in our opinion may undermine your ability to do your job or adversely affect internal relations, staff or students;
- Theft, financial impropriety or dishonesty at work;
- Fraud or forgery, including falsification of documents such as expense claims, students' work;
- Being under the influence of alcohol, illegal drugs or other substances during working hours or not being capable of fulfilling your duties;
- Any action that seriously harms the school's reputation;
- Publishing material and/or content which has the potential to damage the reputation of the school;
- Serious negligence or a serious or deliberate breach of your contract of employment;
- Serious or repeated failure to obey instructions, or any other serious act of insubordination;
- Abuse of authority, position, power or status.