

## DISCIPLINARY POLICY & PROCEDURE

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### Revision record

Minor revisions should be recorded here when the policy is amended in light of changes to legislation or to correct errors. Significant changes or at the point of review should be recorded below and approved at the level indicated above.

Revision No.	Date	Revised by	Approved date	Comments
1	Nov 2021	Joanne Cambra	1 December 2021	<ol style="list-style-type: none"> <li>1. Additional provision to account for the 2021 Allegations Against Adults Policy.</li> <li>2. Include provision for management action instead of disciplinary hearing rather than: only as a possible outcome of a hearing.</li> </ol>

### 1. Introduction

- 1.1. This procedure is prescribed by The Good Shepherd Trust and all references to 'the Trust', includes all Trust schools, the central team and subsidiary organisations.
- 1.2. The Trust reserves the right to implement the procedure at any stage as set out below considering the alleged misconduct of an employee. Employees will not ordinarily be dismissed for a first disciplinary offence.
- 1.3. Where time limits are referred to in the course of this procedure they may be varied by agreement between the employee and the Trust.
- 1.4. Employees have the right to be accompanied at a formal disciplinary hearing by a fellow employee or trade union official of their choice.
- 1.5. A disciplinary action flowchart can be found on page 10 of this document.
- 1.6. This policy & procedure applies to all employees of the Trust only. It does not form part of the terms and conditions of any employee's employment with the Trust and is not intended to have contractual effect. However, it reflects the Trust's current practice and employees are strongly encouraged to familiarise themselves with its content.
- 1.7. The Trust reserves the right to vary or amend its disciplinary policy and procedure depending on the particular circumstances of the case. The Trust also reserves the right not

to follow the Disciplinary policy and procedure in respect of employees with less than two years' continuous service.

- 1.8. The Trust Board has delegated responsibility for making disciplinary decisions to the Principal School Leader or a member of the Trust Executive Leadership Team. Where a Principal School Leader or senior leader within the central team is alleged to have committed an act of misconduct, an Executive Leadership Team member will act as the Disciplinary Manager and decision maker. Where the Chief Executive Officer is alleged to have committed an act of misconduct, The Trust reserves the right to engage the services of a third party to undertake the investigation process reporting to a nominated member of the Trust Board who will act as the Disciplinary Manager and decision maker.

## **2. Determine probable level of misconduct**

- 2.1. Once the likely level of misconduct has been determined, the manager will be able to determine what action to take next.
- 2.2. The nature of the misconduct will be obvious in some occasions, but as the disciplinary policy will only include the type of conduct that could fall into each category, it will be necessary for an employer to make a reasonable judgement in many cases of suspected misconduct.
- 2.3. These will be determined according to the nature of the job role, as some matters may be more important in some job roles, and a failure to follow these requirements could be more of a disciplinary offence in these circumstances.
- 2.4. Depending upon the facts of the matter, the Trust reserves the right to issue an informal warning/management guidance to an employee for any act or acts of minor misconduct without undertaking an investigation first.
- 2.5. Typical examples of misconduct could include (these are illustrative only and do not constitute an exhaustive list):
- 2.5.1. Minor (breaches of the rules or required standards, but not of a nature serious enough to warrant dismissal or more formal action for a first offence)
    - Poor timekeeping
    - A failure (non-serious) to comply with work procedures or rules
    - Personal use of telephones, etc.
    - First unauthorised absence
    - Failure to act on a reasonable instruction
    - Poor performance
    - Misuse of the Trust's property
  - 2.5.2. Serious (breaches of the rules or required standards of a nature serious enough to warrant dismissal in some instances- these are illustrative only and do not constitute an exhaustive list)
    - Insubordination
    - Disruption of others by unruly or disorderly behaviour
    - Dishonesty
    - Impaired performance due to drugs or alcohol
    - Serious failure to comply with work procedures or rules
    - Repeated incidents of minor misconduct
  - 2.5.3. Gross (breaches of the rules or required standards of a nature serious enough to warrant dismissal in all instances- these are illustrative only and do not constitute an exhaustive list)
    - Serious misuse of position, the Trust's property or name
    - Bribery offences under the Bribery Act 2010
    - Violence or bullying
    - Serious breach of confidence

- Serious neglect of health and safety procedures
- Safeguarding concerns
- Conviction of a criminal offence relevant to the employee's employment
- Conduct that brings the Trust's name into disrepute and
- Conduct that risks the viability of the Trust
- Gross negligence

2.6. Repeated offences of minor misconduct may also be treated as serious misconduct.

However, it is important to remember, this is misconduct for which there have been charges brought against the employee – informal action (when formal disciplinary charges are not applied) does not count, and it is only repeated minor misconduct for which charges have been brought when repeated minor misconduct should be treated as serious misconduct.

### **3. Suspension/Stay at Home requirement**

3.1. The Trust has the right to suspend an employee/ask them to stay at home with pay where there are reasonable grounds for concern that evidence may be tampered with, destroyed or witnesses pressurised before the conclusion of the process, or if there is a potential risk to the business or other employees or third parties in allowing the employee to remain at work. The decision to suspend an employee should only be taken following completion of a Suspension Risk Assessment.

3.2. There may be instances where suspension with pay is necessary while investigations are carried out. Suspension is a neutral act and never should be an automatic response to allegations of potential misconduct. Suspension does not in itself constitute disciplinary action or imply any decision or judgment as to guilt; however, it will be considered in any case where:

- there is cause to suspect a child is at risk of harm; or
- the allegation is so serious that it might be grounds for dismissal; or
- to remain working could be prejudicial to the gathering and presentation of evidence

The case manager should consider the potential permanent professional reputational damage to employees that can result from suspension where an allegation is later found to be unsubstantiated or maliciously intended. (Please see the Allegations of Abuse Against Adults policy for further information).

3.3 Any decision that is taken to suspend an employee will be confirmed in writing, giving as much detail as appropriate for the reasons for the suspension. The case manager should consider the potential permanent professional reputational damage to employees that can result from suspension where an allegation is later found to be unsubstantiated or maliciously intended.

### **4. Investigation**

4.1. An Investigating Officer will be appointed by the Trust and a supervisor or other Trust Leader will promptly and thoroughly investigate any matter that is reasonably suspected or believed to contravene any of the Trust's policies or rules or may otherwise be a disciplinary matter. The Trust reserves the right to engage the services of a third party to undertake the investigation process.

4.2. The employee will be informed as soon as possible as to the fact of an investigation and when it has been concluded.

- 4.3. Depending on the circumstances of the case, the employee may be invited to attend an investigatory interview. If such an interview is held prior to a disciplinary hearing, the employee will be informed at the outset that the interview is an investigatory interview. There is no right for employees to be accompanied at a formal investigatory interview.
- 4.4. It is essential that any allegation of abuse made against an adult in the Trust is investigated as quickly as possible in a fair and consistent way that provides effective protection for the child and, at the same time provides appropriate support to the person who is the subject of the allegation. Investigations must be undertaken in accordance with the provisions outlined in the Allegations of Abuse Against Adults policy, any investigation into safeguarding matters should be done discreetly and, on a need-to-know only basis.
- 4.5. The following definitions should be used when determining the outcome of investigations regarding allegations of abuse made against an adult in the Trust:
- Substantiated: there is sufficient evidence to prove the allegation;
  - Malicious: there is sufficient evidence to disprove the allegation and there has been a deliberate act to deceive or cause harm to the person subject of the allegation;
  - False: there is sufficient evidence to disprove the allegation;
  - Unsubstantiated: there is insufficient evidence to either prove or disprove the allegation. The term, therefore, does not imply guilt or innocence; or,
  - Unfounded: to reflect cases where there is no evidence or proper basis which supports the allegation being made.

A summary of outcomes form must be completed and sent to the LADO and the staff member informed of the outcome of the investigation, via a letter. Further guidance can be found within the Trusts Allegations of Abuse Against Adults policy.

4.6 On completion of the investigation, the Investigating Officer will recommend whether a disciplinary hearing should be convened or some other steps taken in relation to the situation. The Investigating Report will be submitted to the Disciplinary Manager to consider what action should be taken by the Trust as a result of the findings. The Trust reserves the right to issue an informal warning/management guidance to an employee should the investigation report support concerns of a minor nature without holding a formal disciplinary hearing first.

## **5. Procedure**

- 5.1. Where, upon completion of an investigation, there are reasonable grounds to believe that an employee has committed an act of misconduct which warrants consideration under a formal disciplinary hearing, the employee will be invited to attend a disciplinary hearing which will be heard by an officer appointed by the Trust. Alternatively, The Trust reserves the right to issue an informal warning/management guidance to an employee for any act or acts of minor misconduct following completion of an investigation.
- 5.2. In the event of a disciplinary hearing taking place the Trust will:
- i. give the employee a minimum of five working days' advance notice of the hearing;
  - ii. tell the employee the purpose of the hearing and that it will be held under the Trust's disciplinary procedure;
  - iii. explain the employee's right to be accompanied at the hearing by a fellow employee or trade union official;
  - iv. give the employee written details of the nature of their alleged misconduct; and
  - v. provide to the employee all relevant information (which should include statements taken from any fellow employees or other persons that the Trust intends to rely upon against the employee) not less than five working days in advance of the hearing.
- 5.3. Where the employee is unable to attend a disciplinary hearing and provides a good reason for failing to attend, the hearing will be adjourned to another day. The Trust will comply

with a) above in respect of giving notice of the rearranged hearing. Unless there are special circumstances mitigating against it, if the employee is unable to attend the rearranged hearing, the rearranged hearing will take place in the employee's absence. The employee's fellow employee or trade union official may attend in such circumstances and will be allowed the opportunity to present the employee's case. The employee will also be allowed to make written submissions in such a situation.

- 5.4. Where the chosen companion is unavailable on the day scheduled for the hearing, it will be rescheduled, provided that the employee proposes an alternative time within five working days of the scheduled date.

## **6. Role of companion**

The employee's chosen companion has the right to address the hearing to put the employee's case, sum up the case and respond on the employee's behalf to any view expressed at the hearing. The companion may also confer with the employee during the hearing. However, there is no requirement for the Trust to permit the companion to answer questions on behalf of the employee, or to address the hearing where the employee indicates that they do not wish this.

## **7. Recording of meetings**

During formal meetings it can be useful to record the meetings, provided all parties consent to the recording. In these instances, the Trust will take responsibility for making the recording.

## **8. The disciplinary hearing**

- 8.1. The Trust will appoint a hearing officer to Chair the disciplinary hearing and an HR advisor may be present to advise. Any member of management responsible for the investigation of the disciplinary offence(s) shall not be eligible to Chair the hearing, although such managers may present any supporting facts and material to the disciplinary hearing. In this instance another Trust senior manager will conduct the hearing. Disciplinary hearings where dismissal is not contemplated as a potential disciplinary sanction should the allegation(s) be proved will usually be conducted and determined by a member of the School Senior Leadership Team or the Principal School Leader, or in the case of disciplinary proceedings involving the Principal School Leader, a member of the Trust Executive Leadership Team or another appointed person. Disciplinary hearings where dismissal may be contemplated as a potential disciplinary sanction should the allegation(s) be proved will usually be conducted and determined by the Principal School Leader or the Trust Executive Leadership Team or another appointed person.
- 8.2. The employee will be entitled to be given a full explanation of the case against them and be informed of the content of any statements provided by witnesses. The employee will be able to call their own witnesses. They will be permitted to set out their case and answer any allegations. The employee will be given a reasonable opportunity to ask questions, present evidence and call relevant witnesses. They will also be given the opportunity to raise points about any information provided by witnesses. Where the Trust intends to call relevant witnesses, it will give the employee advance notice of this. The employee must also give at least 3 days advance notice if they intend to call relevant witnesses.
- 8.3. The Trust may adjourn the disciplinary proceedings if it appears necessary or desirable to do so (including for the purpose of gathering further information). The employee will be informed of the period of any adjournment. If further information is gathered, the employee will be allowed a reasonable period of time, together with their fellow employee

or trade union official, to consider the new information prior to the reconvening of the disciplinary proceedings.

- 8.4. As soon as possible after the conclusion of the disciplinary proceedings, the senior manager conducting the hearing will convey their decision to the employee and will also inform the employee what disciplinary action, if any, is to be taken. The decision will be confirmed in writing. The employee will be notified of their right of appeal under this procedure.

## **9. Disciplinary action**

- 9.1. Where, following a disciplinary hearing, the Trust establishes that the employee has committed a disciplinary offence, the following disciplinary action may be taken:
- 9.2. Where a minor offence or offences have been committed, management guidance may be issued in writing, any similar incidents would result in disciplinary action being taken. Where either a more serious disciplinary offence has been committed or further minor offences have been committed by an employee following a recorded oral warning that remains "live", the employee will receive a first written warning. The warning will:
- i. set out the nature of the offence committed;
  - ii. inform the employee that further misconduct is liable to result in further disciplinary action under this procedure;
  - iii. specify the period for which the warning will remain "live", after such period the Trust will review the warning; and
  - iv. state that the employee may appeal against the warning.
- 9.3. Where a serious disciplinary offence amounting to gross misconduct has been committed, thereby justifying summary dismissal, but the Trust decides, after taking into account all appropriate circumstances, that a lesser penalty is appropriate, or, where an employee commits further disciplinary offences after a first written warning has been issued and remains "live", a final (or combined first and final) written warning may be given. Such a warning will:
- i. set out the nature of the offence committed;
  - ii. inform the employee that further misconduct is likely to result in their dismissal and
  - iii. state that the employee may appeal against the warning.
- 9.4. Where the employee has committed further acts of misconduct (these being acts of misconduct other than gross misconduct) following a final written warning given under 9.3 above, the employee may be dismissed with notice or with pay in lieu of notice.
- 9.5. Where the Trust establishes that an employee has committed an act of gross misconduct, the employee may be summarily dismissed.
- 9.6. Where a final written warning is given to an employee under 9.3. above, the Trust may also impose on the employee:
- i. disciplinary suspension;
  - ii. demotion;
  - iii. in line with any provision in the contract of employment, stoppage of pay for such period as the Trust thinks fit in the circumstances; or
  - iv. in line with any provision in the contract of employment, transfer to a job of a lower status.
- 9.7. The above sanctions may be imposed in conjunction with other forms of disciplinary action, or as an alternative to dismissal.

## **10. Appeal**

- 10.1. An employee may appeal against any disciplinary sanction imposed against them, with the exception of an informal oral warning. The appeal will be heard by a senior manager who has not been involved in the decision to impose the disciplinary sanction on

the employee. The senior manager is obliged to consider any representations made by the employee, the employee's fellow employee or trade union official and those of the manager who conducted the investigation and the manager who conducted the disciplinary hearing and imposed the disciplinary sanction. The senior manager hearing the appeal must decide on the basis of both sets of representations, together with any subsequent facts that may have come to light, whether or not to uphold the disciplinary sanction. In the event that the senior manager finds for the employee, the senior manager shall allow the appeal and shall remove all records of the disciplinary sanction from the employee's record. In the event that the senior manager does not accept the representations made by or on behalf of the employee, the senior manager must uphold the disciplinary sanction.

- 10.2. When lodging an appeal, the employee should state:
  - i. the grounds of appeal; and
  - ii. whether they are appealing against the finding that they have committed the alleged act or acts of misconduct, or against the level of disciplinary sanction imposed.
- 10.3. The employee must provide written notice of the appeal within five working days of being informed of the disciplinary sanction being imposed against them.
- 10.4. Appeal hearings will normally take place within 14 days of receipt of the employee's written notice of appeal.
- 10.5. Upon completion of the appeal, the senior manager conducting the hearing will convey their decision to the employee. The decision will be confirmed in writing within one week. The Trust's decision at the appeal is final.
- 10.6. Where there is an appeal against a dismissal by the panel, the panel's decision to dismiss will have had immediate effect and, therefore, if the dismissal is by notice, the period of notice will already have commenced on the date that the decision was given by the panel. If the panel's decision was to dismiss the employee summarily without notice, the Trust will be under no obligation to reinstate or pay the employee for any period between the date of the original dismissal and the appeal decision and the original date of termination will stand. In the event that the panel's decision to dismiss is overturned, the employee will be reinstated with immediate effect, and they will be paid for any period between the date of the original dismissal and the successful appeal decision. Their continuous service will not be affected.

## **11. Gross misconduct**

Gross misconduct is misconduct of such a serious and fundamental nature that it breaches the contractual relationship between the employee and the Trust. In the event that an employee commits an act of gross misconduct, the Trust will be entitled to terminate summarily the employee's contract of employment without notice or pay in lieu of notice. The following are examples of issues which might constitute gross misconduct. These are illustrative only and do not constitute an exhaustive list.

- a fundamental and/or wilful breach of the Trust rules, regulations and policies;
- gross negligence or dangerous behaviour, which causes or might cause unacceptable loss, damage or injury;
- grossly indecent or immoral behaviour;
- threatening or violent behaviour, fighting or physical assault;
- deliberate falsification of any records or documents (e.g. Sickness Self-Certification Form, time-sheets, qualification, recruitment documents);
- undertaking private work on the premises and/or during working hours and wilful disregard of duties or of instructions;
- deliberate and serious breach of confidence relating to the Trust's or its students' affairs;

- theft, dishonesty or fraud or misappropriation of money or property whether belonging to the Trust, another employee, pupil or a third party;
- possession of or unauthorised consumption of alcohol on the premises or during working hours or attending for work under the influence of alcohol;
- possession or use of non-prescribed drugs or controlled drugs on school premises or during working hours;
- any taking or possession of illegal drugs or controlled drugs or stimulants, which have not been prescribed by a registered medical practitioner;
- destruction/sabotage of Trust property or any other property on the premises;
- bringing the Trust's into disrepute;
- serious Health and Safety breaches;
- gross insubordination and/or refusal to obey reasonable legitimate instructions given by any members of the Senior Leadership Team;
- any breach of a legal statute, which has a direct effect on the employee's ability to undertake stated duties and/or on the desired characteristics of their position;
- allowing or assisting any unauthorised person to gain entry to the premises;
- repeated absences from duty without authorisation;
- any fundamental and/or substantial breach of trust or unauthorised disclosure of information relating to the Trust's affairs to third parties.
- a substantial failure to meet expected standards of work and/or behaviour amounting to serious neglect of duty;
- deliberately driving on Trust business without an appropriate licence and/or the appropriate insurance;
- discrimination, victimisation, bullying or harassment or another breach of the Trust's Equal Opportunities and Diversity Policy;
- failure to inform the Senior Leadership Team of any criminal charges/convictions or police cautions that are relevant to the employee's employment;
- serious breaches of the Trust's Safeguarding and Child Protection Policies and Procedure;
- serious breaches of the Trust's [Electronic Information and Communications Systems Policy];
- serious breach of the Trust's policies or procedures;
- in respect of teaching staff, serious breach of the standards of professional conduct as set out in the Teacher's Standards.

## **12. Miscellaneous**

- 12.1. If an employee who is an accredited representative of a trade union recognised by the Trust for collective bargaining purposes is suspected of having committed a disciplinary offence, the Trust will take no action under this procedure (with the exception of suspending the employee in a case of suspected or known gross misconduct) until the Trust has had a chance to discuss the matter, with the prior agreement of the employee, with a full-time official of that trade union.
- 12.2. Throughout the application and management of this procedure, it is essential that the matters of concern are treated by all relevant parties as confidential and information only shared on a need-to-know basis.
- 12.3. The Trust demands employees of the highest integrity and expects you to maintain high standards outside working hours. Any outside activities, which could reasonably be regarded as detrimental to the reputation of the Trust, may lead to dismissal.
- 12.4. As a condition of employment, you are required to notify the Trust immediately of any criminal charges, cautions or convictions, a plea of guilty or not guilty in respect of a criminal offence.

- 12.5. If a decision is made to dismiss an employee for a breach of safeguarding obligations and/or where it is determined that the employee has engaged in conduct that harmed (or is likely to harm) a child or if the employee otherwise poses a risk of harm to a child, the Trust has a legal obligation to refer the matter to the DBS. The DBS will consider whether to bar the person. Referrals should be made by the Trust DSL (or Trust HR team in their absence) as soon as possible after the resignation, removal, or redeployment of the individual. Guidance on referrals can be found [here](#).
- 12.6. Where a teacher's employer, including an agency, dismisses or ceases to use the services of a teacher because of serious or gross misconduct, or might have dismissed them or ceased to use their services had they not left first, they must consider whether to refer the case to the Secretary of State via the [TRA](#). The Secretary of State may investigate the case, and if they find there is a case to answer, must then decide whether to make a prohibition order in respect of the person.
- 12.7. This procedure will be periodically reviewed. Any amendment to it will be notified to employees in writing by the Trust and such written advice will inform employees as to the date when any amendment comes into effect. This may be by means of the Trust's staff Handbook on the GVO or via use of staff newsletters or notice boards.

## Disciplinary Action Flowchart

