



Thinking Schools Academy Trust

“Transforming Life Chances”

Disciplinary Policy

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1. Introduction

1.1. This Policy applies to all Academies of The Thinking Schools Academy Trust and all Nurseries and Pre Schools of Little Thinkers Nursery & Pre School, a subsidiary of The Thinking Schools Academy Trust. When ‘Academy’ is used within this policy it applies to Nursery and Pre School settings. When ‘Headteacher/Principal’ is used with this policy it applies to Nursery Managers. When ‘The Thinking Schools Academy Trust’ is used within this policy it applies to Little Thinkers Nursery and Pre School.

1.2. The Academy recognises the shared responsibility between managers and employees for maintaining acceptable standards of behaviour, conduct and performance at work. Whilst most day to day issues will be picked up through regular communication and supervision between managers and their staff, there are occasions when an individual’s conduct may need more serious attention.

1.3. This policy is designed to help and encourage employees to achieve and maintain standards of conduct and aims to ensure fairness, equity and consistency in the management of employees.

1.4. This policy should be used in cases where conduct is allegedly unsatisfactory. It does not apply where there are matters of:

- Minor misconduct that can be dealt with informally by means of guidance, training or informal reprimand in order to improve conduct
- Grievance which is dealt with under the Trust’s Grievance procedure
- Competency or capability which is dealt with under a separate procedure, unless it is clear that the employee is capable of reaching the required standard and has not done so
- Ill health for which there is a separate procedure unless there is evidence of abuse of the sickness absence procedure
- Bullying, harassment, discrimination and / or victimisation which are dealt with in the first instance under the Trust’s Bulling & Harassment Dignity at Work Procedure

2. Equalities Statement

The Trust is committed to providing equal opportunities and access to all.

This policy statement embraces the spirit of managing a diverse workforce and those managing and dealing with the process of the Disciplinary Procedure must ensure that no employee is discriminated against either directly or indirectly or victimised on the grounds of their race, disability, sex, sexual orientation, religion or belief, age, marital or civil partnership status, any stage of gender reassignment or any other protected characteristic.

3. Scope

This procedure is relevant to all permanent, temporary and casual staff working for the Thinking Academies Academy Trust.

4. Delegated Responsibilities

All parties are required to respect the confidentiality of all information relating to the disciplinary process.

All records and information, including those relating to any sanction imposed, are a matter of confidence between the Academy and the Employee. In certain limited circumstances, this information may be shared by the Academy - for example in accordance with Child Protection Safeguarding Procedures.

4.1 Initial Dismissal Decision

The management of conduct and discipline issues may be delegated to staff other than the Head teacher/Principal. References to the role of the Headteacher/Principal in the policy and procedure include his / her nominee

- o Informal Action - Informal action may be delegated to line managers, where appropriate.

- o Formal Action - Formal hearings to consider matters short of dismissal may be delegated to another manager or the Headteacher/Principal.

Where matters are heard by a manager - appeals against any sanction imposed will be heard by the Headteacher. Where the Headteacher has considered the matter – appeals will be heard by a panel of one or more governors or members of the TSAT executive team

4.2 Dismissal Decisions

Where authority to dismiss has been delegated

In the Trust responsibility for dismissal decisions has been delegated to the Headteacher, therefore formal hearings to consider dismissal may be heard solely by the Headteacher.

A panel of one or more governors, Headteacher/Principal from another Trust school or members of the TSAT executive team may be convened to hear the matter in situations where it is not appropriate for the Headteacher to perform this function.

The member/s of this panel will have had no prior involvement in the matter under consideration.

Staff governors should not be a member of a panel.

The following table sets out the provisions which would normally apply.

Informal Action taken by	Formal hearing heard by	Appeal heard by
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Line Manager	Another more Senior Manager or Headteacher - for matters short of dismissal Headteacher – where dismissal is a possible outcome	Headteacher or 1 or more governors/Trust Headteacher/ members of the TSAT executive team
Headteacher	1 or more governors/Trust Headteacher/ members of the TSAT executive team	1 or more governors/ Trust Headteacher/ members of the TSAT executive team

4.3 Matters relating to the Headteacher or a member or the Trust Executive team

Informal action may be delegated to a member of the TSAT executive team or the chairs of the board of directors

Formal hearings will be heard by a panel of one or more governors, members or the TSAT executive team or Directors who have had no prior involvement in the matter under consideration.

Appeals will be heard by a further panel of one or more governors, directors or members of the TSAT executive team who have had no prior involvement in the matter under consideration.

Staff governors should not be a member of a panel and where they are must ensure that they can deal with the matter impartially and objectively.

Informal Action taken by	Formal hearing heard by	Appeal heard by
Line Manager, Member of executive team or Chair of board of directors	1 or more of governors, directors or executive team	1 or more governors, directors or executive team

In instances where there are insufficient governors available to sit on a hearing or appeal panel, the Academy may co-opt other individuals suitable to hear the case.

5. Roles & Responsibilities

5.1 Employee responsibilities:

- Making themselves fully aware of the conduct expected of them and ensuring they observe this at all times
- Familiarise themselves with appropriate conduct related policies
- Asking questions of his/her line manager or Headteacher/Principal if he/she is unsure about any aspect of the disciplinary procedure
- Responding positively to informal attempts to resolve disciplinary issues by the line manager/Headteacher/Principal

- Co-operating fully during all stages of the procedure
- Willingly engage in training or development to correct or improve behaviour or conduct
- Arrange their own representation at meetings/hearings

5.2 Line Manager/Headteacher/Principal's responsibilities

- Monitoring the conduct of their staff, making clear the standard of conduct that the Academy expects of them and for giving them help and encouragement to reach required standards
- Taking timely but considered action in all cases, supported by HR advice, where an employee's conduct gives cause for concern
- Ensuring standards of fairness, objectivity and consistency in treatment of staff, in all cases.
- Collating all relevant documentation from all relevant parties involved in disciplinary cases, distributing and filing it appropriately
- Monitoring the outcome and impact of the disciplinary procedure on protected groups of staff as per the Academy's equal opportunities obligations
- On notification of the allegation if a safeguarding concern has been raised then notify the LADO (Local Authority Designated Officer) immediately and action any advice provided by the LADO prior to commissioning the investigation. If no safeguarding issue has been raised then follow the usual investigation procedure.

5.3 HR responsibilities:

- Providing advice to Headteacher/Principals (or nominated managers) and investigating officers on disciplinary matters, on request
- Carry out an impartial review of the investigation report and provide feedback
- Ensure that policy and procedure has been followed fairly and appropriately
- Advising the Governors at the disciplinary panel at hearings and appeals
- Advising Headteacher/Principals (or nominated managers) on the content of letters

5.4 Trade Union Representative / Work place colleague role:

- Attend formal disciplinary meetings, in the role of representative (if requested by member)
- Address meetings to put forward a case or sum up a case on behalf of member
- Respond to any views expressed at meetings
- Confer with the member of staff during meetings.

The Trade union representative / work place colleague does not have the right to:

- Answer questions on behalf of the member of staff (i.e. if a question is directed at the member of staff)
- Address meetings if the member of staff does not wish it
- Prevent any party from explaining their case.

6. Principles

- 6.1** Managers/Headteacher/Principals will try to resolve issues of minor misconduct informally. However, where this approach has been tried and has not worked, or where the misconduct is more serious, formal disciplinary action will be considered.

- 6.2** Allegations of misconduct will normally be investigated before any disciplinary action is taken. Exceptionally, the circumstances may be such that an investigation is not required, for example where the employee admits to the misconduct, or where the facts of the case are already explicitly clear (e.g. conviction of a serious criminal offence). In these circumstances the case will proceed directly to a disciplinary hearing.
- 6.3** The employee will be advised in writing of the nature of the complaint against him/her; given the opportunity to state his/her case and present relevant evidence to a disciplinary hearing before any decision is made. The employee will have the right of appeal against any formal disciplinary action under this procedure.
- 6.4** At all stages of the formal process the employee will have the right to be accompanied by a trade union representative or work place colleague. Legal representation is not permitted at any stage in this procedure.
- 6.5** Employees will not generally be dismissed for a first incident of misconduct except in the case of gross misconduct.
- 6.6** Information relating to formal proceedings will be kept confidential.
- 6.7** The timescales within this procedure may be varied by agreement. However, any disciplinary issues will be handled promptly and in a fair and consistent manner.
- 6.8** The procedure can be started at any stage. The first stage will depend on the nature of the alleged misconduct.
- 6.9** An employee or trade union representative / workplace colleague who cannot attend a hearing because of illness or other unforeseen circumstances should notify the Academy representative at the earliest opportunity and give full reasons. The hearing will be rearranged. However, if no reason is received or the employee or trade union representative / workplace colleague fails to attend without notice a second time then the hearing will proceed in their absence. The reason for non-attendance will be recorded.
- 6.10** In all instances of alleged misconduct, however serious, the employee will normally be given the opportunity and reasonable notice i.e. (no less than ten working days unless by agreement) to attend a disciplinary hearing to explain their action.
- 6.11** Throughout the procedure, managers will demonstrate their commitment to equal opportunities and carry out fair investigations and hearings taking account of the Academy's 'Equality policy.
- 6.12** As an employee faced with possible disciplinary action is likely to find the situation stressful, the employee should be made aware of the confidential counselling service, details of which can be found in Appendix 8.
- 6.13** Disciplinary and dismissal proceedings shall not be affected or interrupted by the employee who is subject to the procedure invoking the grievance procedure. Any grievance raised during the course of these proceedings, that relates to disciplinary action or dismissal, will be dealt with as part of the disciplinary hearing, or appeal hearing as appropriate. Where an employee is on sickness absence

leave at the time of a disciplinary process, Occupational Health advice will be sought, if deemed appropriate.

6.14 All steps of the formal procedure should be completed as speedily as possible in the interests of both management and staff, and particularly in respect of cases of alleged gross misconduct. However, this shall not be to the detriment of a fair investigation or the principles of natural justice.

6.15 The HR representative should be consulted and involved at all formal stages of the procedure. In instances of potential dismissal, the HR representative must be consulted.

7. Action against a trade union representative

No formal action will be taken against a trade union representative until the regional officer of the professional association has been informed. Consent from the individual does not need to be obtained but details of the case must not be divulged. In cases of alleged gross misconduct against a trade union representative and where a regional officer cannot quickly be contacted, the trade union representative may be suspended on full pay until the regional officer has been contacted and further action discussed.

8. Action against a headteacher/principal

In the event of an alleged disciplinary offence by the Headteacher/Principal, the member of the TSAT executive team shall be responsible for ensuring that the matter is investigated and for deciding whether disciplinary action is to be taken. In such a case, the Academies HR Adviser should also be consulted.

9. Informal stage

9.1 Where possible, matters relating to conduct and discipline should be resolved informally. This may be achieved by the Headteacher/Principal giving the employee informal advice, coaching and counselling and, if appropriate an informal warning. This informal process does not constitute formal disciplinary action under this procedure.

9.2 The line manager/Headteacher/Principal will talk to the employee. This will be a two-way discussion aimed at pointing out their shortcomings in conduct and encouraging improvement.

Employee may wish to be accompanied by a professional association representative or work placed colleague. This should not unreasonably delay the meeting. The presence of a professional association representative does not make this meeting a formal meeting within the policy.

9.3 The line manager/Headteacher/Principal will listen to whatever the employee has to say about the issues.

9.4 Where improvement is required the line manager/Headteacher/Principal will ensure that the employee understands what needs to be done, how their conduct will be reviewed and over what period. The employee will be told that if there is no improvement then the next stage will be to invoke the formal disciplinary procedure.

- 9.5 Written notes will be kept of the meeting and it is recommended that these are shared with both parties. Any disagreement by the employee as to the accuracy of the notes should be formally recorded and added to the note.
- 9.6 The action agreed will be in writing.
- 9.7 If during discussions it becomes obvious that the matter may warrant formal investigation the meeting should be stopped and the employee told that the matter will be continued under the formal procedure.
- 9.8 Informal Warning – if following informal discussion, the line manager/Headteacher/Principal considers it appropriate to issue an informal warning, this must be given at the meeting and be made clear to the employee.
- 9.9 If a member of staff is issued with an informal warning this will be confirmed in writing and a copy of the letter will remain on the individual's personal file. There is no right to appeal an informal warning
- 9.10 The Informal Warning will include detail of the complaint in addition to any corrective action required, management guidance and support to be provided to the employee. The employee will be made aware that any complaints of a similar nature may be dealt with under the formal procedure.

10. Formal stage

If the allegation is concerning safeguarding and the safety of or potential abuse of children is suspected you must refer to the Trust's Safeguarding policy and Management of Allegations against staff Policy.

- 10.1 **Informing the employee of the allegations:** In cases of alleged misconduct the employee will be informed in writing of the nature of the allegations and that an investigation will be conducted.

Where the employee admits to the misconduct or the facts are explicitly clear, the circumstances may be such that an investigation is not required and the case proceeds directly to a disciplinary hearing.

- 10.2 **Investigation:** The aim of the investigation is to establish the facts of the case as promptly and thoroughly as practicable.

10.2.1 The employee should be invited in writing to attend an investigation meeting with the Investigating Officer. The employee should be given reasonable notice of the meeting in order to prepare. The letter should state the allegation and state that it is an investigation meeting. The letter should state what the meeting could lead to and inform them that they may be accompanied by a representative from their trade union or a work colleague. It should state who will be present at the meeting. A copy of the Disciplinary Policy should be enclosed.

10.2.2 The investigating officer (who will be nominated by the Commissioning Manager who might be the Headteacher/Principal/Line Manager) will promptly establish what has happened, obtain written statements from witnesses and record all the

facts. The HR Representative will provide procedural guidance to the investigating officer.

10.2.3 The Investigating officer will always need to ensure that a meeting is carried out with the complainant should this be appropriate in the case of a complaint.

10.2.4 Any witnesses to alleged offences should be asked to voluntarily make written statements and to sign and date their statements. Any witnesses must be informed that they may be asked to attend a disciplinary hearing to act as a witness.

10.2.5 Sometimes it may be appropriate for an external investigating officer to be appointed. The Headteacher/Principal will nominate the external investigating officer. A member of Human Resources will provide procedural guidance to the investigating officer.

10.2.6 It may be necessary to suspend an employee prior to an investigation being undertaken. Alternatives to suspension may also be appropriate. (Please see section 11 below).

10.2.7 As part of the investigation the investigating officer will interview the employee and any other relevant witnesses. The investigating officer will obtain written statements, and collect all relevant documentation relating to the investigation. The employee should be clear that the interview is part of the investigation, not part of a disciplinary hearing. On conclusion of the investigation, the investigating officer will make a recommendation, in consultation with the HR Representative, whether to proceed to a formal disciplinary hearing. If it is clear that there is an adequate explanation and there is no case to answer, no further action will be taken and all details referring to the investigation shall be removed from the employees file, except in cases of child protection, safeguarding or adult abuse.

10.2.8 The employee under investigation will be kept informed at all stages by the investigating officer. Every effort will be made to conclude the investigation as quickly as possible.

11. Suspension

11.1 Suspension should only be applied where the circumstances of the case make it unacceptable for the employee to remain in work while the facts are ascertained. Such circumstances are where there is an allegation, or potential allegation of gross misconduct, i.e. behaviour which may result in dismissal. Suspension may also be appropriate where:

- Children / adults are at risk
- The employee needs protection themselves
- Where the presence of the employee at work may impede the investigation.

11.2 The power to suspend in a Academy lies with:-

- (i) the Headteacher/Principal; or
- (ii) the Governing Body (usually delegated to the Chair)
- (iii) a member of the TSAT executive team

All the above have the power to suspend on full pay anyone who works at the Academy.

Each must inform the Deputy CEO and Chair of the regional governing body if they take such action.

Suspension may only be ended formally by a head teacher/Principal, member of the Trust executive team Or a director. However, the Headteacher/ Principal may provisionally lift the suspension, pending approval of the governing body, so as not to delay a return to work.

- 11.3 Prior to suspending a member of staff, the HR team must be consulted. The HR representative may wish to inform other agencies at this stage (e.g. the nominated Child Protection Representative in the case of possible child abuse).
- 11.4 The HR team will advise on the action to be taken prior to any suspension. This may need to take into account the advice from those other agencies (e.g., the Police – who may wish to conduct a criminal investigation under their own requirements).
- 11.5 In most cases, a meeting will take place with the employee, who may be accompanied by a trade union representative or workplace colleague. A postponement of 5 working days may be requested to allow an employee’s representative to attend an investigation meeting. A notetaker should be present at this meeting.
- 11.6 At the meeting the employee will be told of the allegations, the reason for suspension and the conditions that will apply. The employee should also be told:
- That they will continue to receive their normal pay
 - The period anticipated for the suspension. The suspension will normally last until the investigation has been concluded or any resulting disciplinary hearing has been held
 - Other rules (e.g. that they must not return to the workplace, contact particular members of staff)
 - That they should be available to attend any investigatory meeting or hearing during the period of suspension during their normal working hours
 - That they should notify management of any authorised annual leave
 - That they can request annual leave during the period of suspension (all year-round contracts only)
 - That they should return upon request any particular items such as keys, laptop computer etc.

The following support should be offered to the employee during the period of suspension:

- The name of a responsible person to act as a point of contact, to provide information as to the progress of the investigation
 - If appropriate, counselling may be offered, details in Appendix 7
 - Reasonable access to information which will help them prepare their case for a formal disciplinary hearing
- 11.7 The above should be confirmed in writing to the employee within two working days.

- 11.8 An employee can be suspended at any stage during the disciplinary process where it is considered appropriate e.g., when further information comes to light
- 11.9 In some circumstances, as an alternative to suspension, it may be necessary to place an employee on a period of additional leave to allow for an initial investigation of the facts to be undertaken. Such leave is determined by the Headteacher/Principal and is a neutral position. During this period the employee will continue to receive full pay as if they were at work.
- 11.10 In exceptional circumstances where it is not possible or appropriate for the employee to attend a meeting in the Academy – Suspension may be made in writing.
- 11.11 The Headteacher/Principal should also inform the Chair of the Regional Governing Body and Deputy CEO of the suspension, and any senior staff in Academy (as appropriate). The Chair should not be made aware of the details of the investigation, in the event that he/she has to form part of the disciplinary hearing or appeals panel.

12. Criminal offences

- 12.1 The Academy will treat seriously any employee who is charged with a criminal offence, although being charged with, or convicted of a criminal offence does not automatically lead to dismissal. It would depend on the offence, its seriousness and the effect on the employee's ability to continue to do the job, or how it might affect the Academy's credibility with the public. Employment law is based on different principles to criminal law which means that the Academy can take disciplinary action before the outcome of a criminal case. An employee found not guilty of a criminal offence will not necessarily be immune from disciplinary action.
- 12.2 The Academy will request a copy of the crime report, witness statements, suspect PACE interview or a summary report from the police or fraud investigation team to inform the internal disciplinary investigation.
- 12.3 Where this evidence supports the allegation of gross misconduct and the employee has admitted the offence under Police or formal caution and the charge or conviction is such as to affect (or likely to affect) the suitability of the employee for the position they are employed, then the case may proceed directly to a disciplinary hearing (section 16.0), where the employee will be allowed to account for their conduct and put forward any mitigating factors. Where a charge is not admitted the School would normally be expected to suspend the procedure until the legal process has run its course.

13. Safeguarding Allegations Against a member of staff

- 13.1 Where the allegations are of a safeguarding nature and the alleged behaviour might be criminal, involve harm to a child or put a child at risk of harm, the case must be referred to the Local Authority Designated Officer (LADO). If criteria for LADO involvement are met and there is a need for further investigation, the LADO will advise on the need for a LADO strategy meeting or discussion.
- 13.2 No disciplinary investigation should be started by the school until the strategy meeting has met and made its recommendations with regard to next steps. At this stage, the Management of Allegations Against Staff policy will need to be followed and can be found on the Trust website
- 13.3 Where it is decided to proceed with a formal disciplinary investigation, the Academy does not have

to await the outcome of any criminal proceedings. However, the Investigating Officer may need to exercise caution so that it does not impede the police inquiries. In these cases, further advice should be sought from the HR team.

14. Financial misconduct

Where the alleged misconduct has arisen as a result of an Academy Audit investigation, the Academies HR Team must be informed of the matter as soon as possible. A disciplinary investigation will be conducted as soon as possible, and wherever possible, Audit will provide information to inform the investigation. In some cases, the Audit investigation may cover all that is required for a disciplinary investigation.

15. The Disciplinary Hearing

15.1 Notification

- 15.1.1 Following the investigation, a disciplinary hearing may be convened. The disciplinary hearing will decide what, if any, action should be taken in respect of the alleged misconduct.
- 15.1.2 The employee will be given no less than 10 working days' notice in writing of the disciplinary hearing, unless all parties agree to hold the hearing at an earlier date. The Academy will write to the employee to confirm the allegations against him/her and inform him/her of the date, time and venue for the disciplinary hearing. This notification will remind the employee of his/her right to be accompanied by a trade union representative or workplace colleague and include copies of documents that will be used to support management's case along with the names of witnesses to be called.
- 15.1.3 The employee will be informed if the outcome of the hearing could be dismissal (normally where the allegations are for gross misconduct or where the employee is subject to a final written warning that had not expired at the time of the alleged misconduct or where the potential dismissal is for some other substantial reason – see Appendix 1). This should happen at the earliest appropriate point and at the conclusion of the investigation at the latest.
- 15.1.4 The employee will be required to provide a nominated representative of the Academy with all documents he/she intends to rely upon at the hearing along with the names of any witnesses they intend to call, at least 5 working days before the hearing. The panel can decide not to accept late documentation or witnesses which have not been notified in advance. Any alternative timescale will be by agreement between the parties.

15.2 Procedure at hearing

- 15.2.1 At the hearing each side will be entitled to present their case and call witnesses. Each party will be able to ask questions and comment on the case presented by the other side. A procedure to be followed at disciplinary hearings can be found at Appendix 5.
- 15.2.2 Notes of the hearing will be taken by an experienced note-taker provided by the Academy where the employee subject to disciplinary action works. A copy of the notes will be supplied to the employee and or representative.
- 15.2.3 The Academies Human Resources representative will advise the disciplinary panel.

16. Disciplinary Action

- 16.1 Following the hearing a finding will be made on the balance of probability as to whether the allegation(s) are proven or not, setting out the evidence supporting the decision on each allegation, then a decision will be taken on the appropriate disciplinary action.
- 16.2 Wherever possible the decision will be notified to the employee verbally on the same day. If this is not possible it shall be confirmed in writing within 5 working days.
- 16.3 Where an employee is found to have committed misconduct, the following actions may be taken:

16.3.1 **First written warning.** The warning will:

- Set out the nature of the misconduct and the evidence supporting the decision
- State that failure to improve, or any repetition within the specified timescale could lead to more serious formal action being taken, including dismissal, and
- Refer to the right to raise an appeal within 5 working days of written notification of the outcome of the hearing and the name of the person and address where the appeal must be sent.

A record of the first written warning will be kept on the personal file. The warning will be disregarded for disciplinary purposes after 12 months unless the Academy is required not to do so by statute or regulation, or has good reason following advice from HR Services (Academies). In cases where the warning will not be disregarded after 12 months this will be included in the written notification of the warning.

16.3.2 **Final written warning**

Where there is a failure to improve or change behaviour in the timescale set at the first formal stage, or where the offence is very serious (but does not warrant dismissal) the employee should normally be issued with a final written warning.

A final written warning may be issued even though no previous disciplinary action has been taken where it is warranted by circumstances and there is a degree of serious misconduct by the employee. The final written warning will:

- Set out the nature of the misconduct and the evidence supporting the decision and refer to any previous warning where appropriate;
- State that failure to improve or any repetition within the specified timescale may lead to dismissal
- Refer to the right to raise an appeal within 5 working days of written notification of the outcome of the hearing and the name of the person and address where the appeal must be sent.

A record of this final written warning will be kept on the personal file. The warning will be disregarded for disciplinary purposes after the warning expires which will be either 18 months or 2 years unless the Academy is required not to do so by statute or regulation or has good reason, following advice from the HR Team. In cases where the warning will not be disregarded after 18 months to 2 years this will be included in the written notification of the warning.

16.3.3 Dismissal with Notice

Where an employee has previously received a final written warning and is guilty of further misconduct serious enough to warrant disciplinary action (i.e. investigation and hearing), then the employee will normally be dismissed in accordance with the terms of their contract of employment (i.e. with notice).

The person chairing the hearing will write to the employee within 5 working days of the decision giving reasons for dismissal, the date on which employment is terminated and to advise the employee of their right to appeal.

16.3.4 Other Sanctions

In some circumstances in addition or as an alternative to dismissal, it may be appropriate to consider demotion. The details of the sanction must be given in writing to the employee and a copy put on their file.

17. Gross Misconduct

17.1 If the employee is guilty of gross misconduct they will be summarily dismissed i.e. without notice or pay in lieu of notice. Exceptionally dismissal with notice may be appropriate.

17.2 The person chairing the hearing will write to the employee within 5 working days of the decision giving reasons for the dismissal, the date on which employment is terminated and to advise the employee of their right to appeal.

17.3 The Thinking Schools Academy Trust as legal employers must issue the letter of termination within 5 working days of the initial dismissal decision.

17.4 Where a contract of employment has been terminated without notice on grounds of conduct, the termination must be rescinded if an appeal is upheld.

17.5 If the employee is successful at appeal they will be reinstated and notice withdrawn. Whenever possible, appeals will be concluded within the notice period.

18. Referrals to Other Agencies

18.1 Where a teacher is dismissed for serious misconduct (or may have been dismissed for serious misconduct had they not resigned) the Trust will consider whether to make a referral to the National College for Teaching and Leadership (formerly the Teaching Agency) in accordance with Education Act 2011 and The Teachers' Disciplinary (England) Regulations 2012.

18.2 Under the Safeguarding Vulnerable Groups Act (2007) a referral may also be made to the Disclosure and Barring Service where an Employee is dismissed (or would have been dismissed had they not resigned) because they have been cautioned or convicted of a relevant offence or behaved in a manner that has put at risk of harm / harmed a child.

19. Disregarded Warnings and Indefinite Warnings

19.1 A warning will normally be removed after 12 months in the case of a first written warning, and either 18 months or 2 years in the case of a final written warning. However where statutory regulations apply (for example where the allegation concerns safeguarding or child protection matters) expired warnings will remain on file as file notes only as required by the safeguarding regulations.

19.2 If any further misconduct of a similar nature is found to have occurred after a warning has expired, it may be taken into account at a future disciplinary hearing when considering the overall employment of that employee. Please seek advice from the HR Team prior to the hearing.

19.3 Should an Employee have an unexpired formal disciplinary sanction on file – this will be disclosed, upon request, in any reference provided by the Employer to a prospective Employer. Expired sanctions will not be disclosed – unless these relate to matters which the Employer is required to share in accordance with Child Protection / Safeguarding Procedures.

20. Disciplinary Appeals

20.1 An employee is entitled to appeal against the formal decision taken at the disciplinary hearing.

20.2 The appeal must be made in writing, addressed to the Chair of the Appeals Committee stating the grounds for the appeal, within 5 working days of being advised in writing of the decision of the disciplinary hearing.

20.3 The letter of appeal from the employee must clearly state the reasons for appealing

20.4 The disciplinary appeal will be heard as soon as possible taking into account the availability of all those involved and unless agreed otherwise not normally later than 20 working days following the date of receipt of the appeal. This is not automatically an opportunity to re-hear the whole case.

20.5 The employee will normally be given no less than 10 working days' notice, in writing, of the date of the disciplinary appeal hearing. This notification will give the names of panel members, and the name of the representative of the Academies Human Resources Team who will advise the panel. It will remind the employee of his / her right to be accompanied at the hearing by a trade union representative or workplace colleague.

20.6 No less than 7 working days before the date of the appeal, unless otherwise agreed, both sides will exchange with each other copies of documents they intend to rely upon at the appeal and a list of witnesses. Copies will be provided to the panel members and the HR representative. The panel may decide not to accept late submission of documents and / or witnesses unless the evidence was not available at the time of exchange.

20.7 The Headteacher/Principal/Chair of the disciplinary panel who heard the original case at the disciplinary hearing will attend the appeal hearing and present the management case. They will normally be accompanied by a HR Representative who advised them at the disciplinary hearing. The employee will attend the appeal and has the right to be accompanied by a trade union representative or workplace colleague.

20.8 The employee or their representative will present their case referring to evidence and calling witnesses as necessary, the Headteacher/Principal/chair will present the management case. Both parties will have the opportunity to question the other and any witnesses called, as will the appeal panel.

20.9 The appeal panel will review the decision of the disciplinary hearing in the light of the evidence presented at the appeal hearing and taking into account the grounds of appeal will decide whether or not to confirm the disciplinary decision, overturn the disciplinary decision or impose a lesser penalty.

- 20.10 The employee will be informed of the decision of the appeal panel in writing; the panel will set out the reasons for its decision within 5 working days.
- 20.11 The procedure to be followed at appeal hearings can be found at Appendix 4.

21. Absence and Concurrent Processes

- 21.1 The ill health of an Employee will not automatically constitute grounds for ceasing any ongoing investigation or disciplinary process however, it is important that an employee is not unduly denied or prevented from participating in the process and from defending themselves against allegations.
- 21.2 Where the absence is likely to be short, the Academy should normally pause the process until the Employee recovers. Where the absence is ongoing, the Academy should seek guidance from an occupational health advisor to determine whether or not the Employee is sufficiently fit to take part in the process and /or if there are any adjustments/arrangements that may allow a hearing to proceed.
- 21.3 It is expected that Employees will consent to a referral being made to an occupational health advisor in such circumstances. Upon receipt of occupational health advice consideration may be given to any measures that can be put in place to enable the process to proceed. This may include giving the Employee the opportunity to make written representations to an investigation or hearing or for their trade union representative or workplace colleague to make representations on their behalf.
- 21.4 In the event that an Employee raises a grievance or a complaint of harassment or bullying in the course of a disciplinary process, both processes may continue concurrently. However, each case will be considered on its own merits to ensure that the Academy is acting reasonably.

22. Minuting Hearings and Appeal Meetings

- 22.1 Minutes should be taken of all submissions to the hearing – including Employer, Employee and witness statements, any questioning of the parties and the panel's decision statement. The panel's deliberations should not be minuted.
- 22.2 Minutes should be shared with the Employee as soon as practicable. The Employee will have the opportunity to check the minutes and comment on the accuracy of the minutes. Where there are discrepancies between the Employer and Employee that cannot be resolved both version of the minutes will be held on record.
- 22.3 An audio record may also be made with the prior consent of the Employee. Where this is the case, the prior agreement of the Employee will be sought. In these instances, an audio copy or summary transcript will be shared with the Employee.
- 22.4 Covert recordings of meetings or hearings are expressly prohibited. Any recording of a meetings or hearing must be with the prior consent of all parties.

23. Guidance for Line Managers, Headteachers/Principals and Governors

- 23.1 Senior Staff and Governors, at all levels, who may be involved in disciplinary action, shall be fully briefed in the operation of this procedure.

23.2 To ensure consistency of approach across the Trust, the HR Team will provide advice to senior staff, Governors and investigating officers in all disciplinary investigations and will advise the disciplinary panel at hearings and appeals.

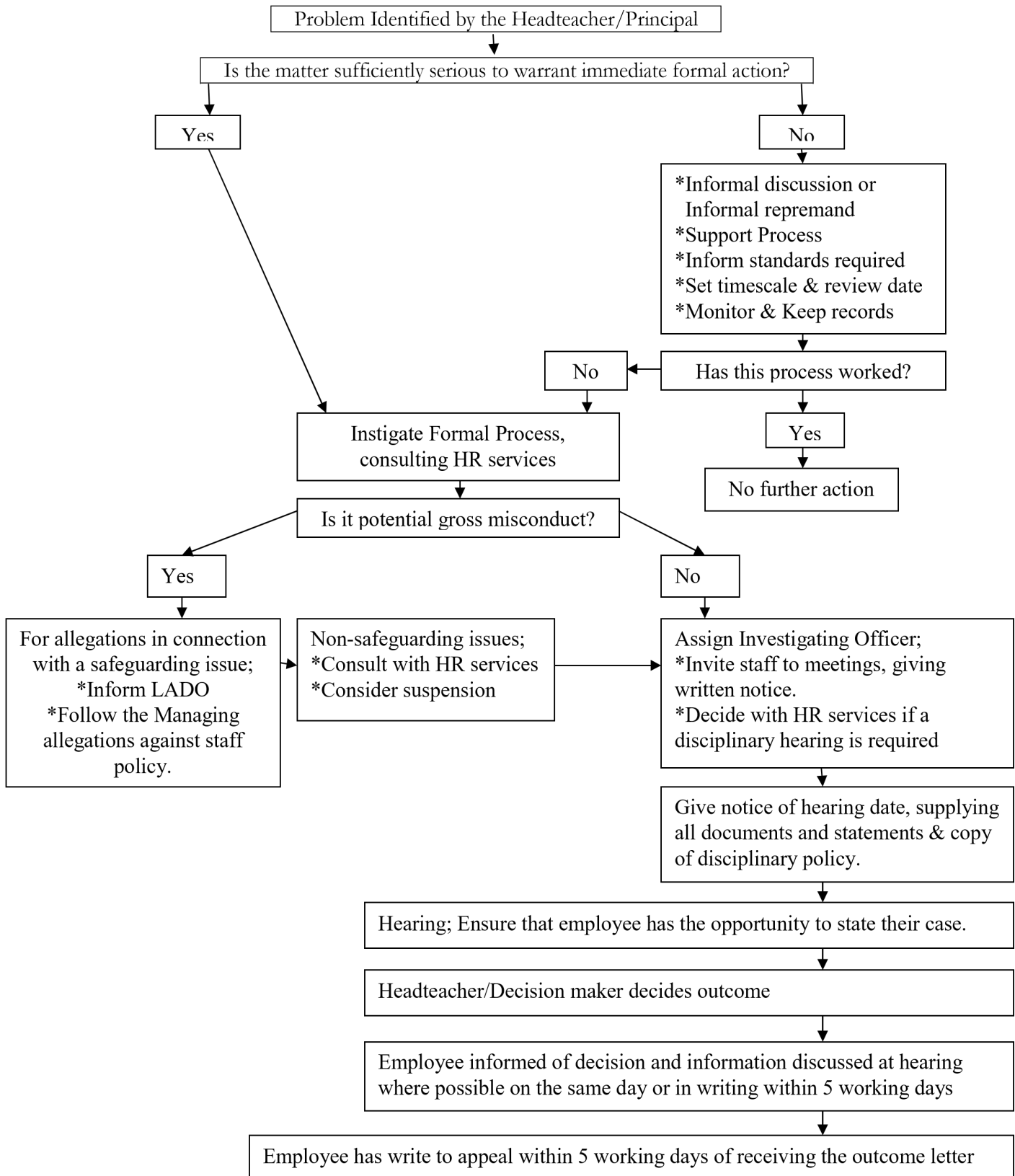
24. Relevant Guidance

24.1 This procedure follows the advice contained in both the ACAS Code of Practice ‘Disciplinary Practice and Procedures in Employment’ and the Advisory Handbook ‘Discipline at Work’.

24.2 This disciplinary procedure may be used in conjunction with other Academy procedures, such as the Safeguarding Policy, Management of Allegations Against Staff, Code of Conduct or Dignity at Work Procedure.

24.3 The inter-relationship with Codes of Practice of relevant professional bodies must be recognized. The Academy may report action taken under this disciplinary procedure to the relevant professional body and may take action under this procedure if an employee is removed from the relevant professional bodies register for professional misconduct.

APPENDIX 1: Disciplinary Process Flowchart



APPENDIX 2: The Investigation -Roles & Responsibilities

In order to ensure that investigations are carried out in a fair and timely manner the information below provides guidance on the roles and responsibilities, throughout the duration of the investigation.

It should be noted that both the Commissioning Manager and the Investigating Officer are required to have completed investigation training/managing allegations against staff, before being appointed.

Commissioning Manager

Purpose of the Role

The Commissioning Manager is responsible for commissioning an Investigating Officer to undertake the investigation process. They can also hear the case should it proceed to a disciplinary hearing

Responsibilities

- Undertake or arrange to undertake, any initial fact-finding preliminary interviews with the employee to establish whether a formal investigation is required;
- Notify the employee of the allegations to be investigated and the next steps of the process i.e. formal investigation;
- Place the employee on alternative duties or suspend if deemed necessary or arrange for this to be done by for example the line manager;
- Continue to review the appropriateness of the suspension during the period of investigation;
- Commission an Investigating Officer to undertake the formal investigation process;
- Prepare the Allegations for the Investigating Officer;
- Should the Investigating Officer identify any new information during the investigation, revisit the allegations and amend where necessary;
- On receipt of the report from the Investigating Officer ensure that it complies with the allegations;
- On receipt of the investigation report findings determine the appropriate action to be taken;
- Inform the employee concerned of the outcome of the investigation and any subsequent action;
- If the decision is to deal with the matter informally rather than formally, speak to the employee about what they need to do to improve and in what timescale, or arrange for this to be done by, for example, the line manager. A note of the informal outcome should be recorded for HR purposes.
- If the decision is not to proceed to a disciplinary hearing communicate the outcome to the employee concerned and place a copy of the written correspondence on the employees HR file
- Present the case at a disciplinary hearing

Investigating Officer

Purpose of the Role

The Investigating Officer is commissioned by the Commissioning Manager to ascertain the facts relating to a situation by undertaking an investigation in a fair and thorough matter. The Investigating Officer (IO) should take a balanced and fair view during the investigation so that the facts of the case can be established.

The Investigation Officer must be neutral to the investigation and prior to appointment, the following guidance should be considered:

- The IO should not be personally involved in the matter being investigated and their appointment should not raise a conflict of interests. The appointment should also be of a person who is not likely to be influenced

by any person involved in the hearing and they should not be involved in any decision making on the investigation.

- It would also be appropriate to consider whether the IO has availability and is able to meet the required timescales of the investigation.
- Finally, any IO appointed must be trained and preferably experienced in conducting investigations. Consideration should also be given as to whether they are likely to require any additional support or training before undertaking the role.

The appointment of the IO may be dependent on the complexity of the case. In some instances, it will be appropriate to appoint a line manager or member of the HR department.

However, if the evidence suggests a more serious matter (such as gross misconduct) then a more senior appointment would be beneficial.

Responsibilities

The IO should in the first instance meet with the complainant(s) to introduce themselves and explain their role in the investigation.

- During the course of the meeting complainant and all individual parts to it should be agreed during which time the complainant (s) should be given the opportunity to explain how they feel.
- The complainant (s) should be asked if there is anyone they consider that may have information relevant to the investigation and it should be established as to the outcome the complainant(s) are looking for.
- The IO should check whether the complainant(s) require any support or representation (if appropriate) and also consider whether the complaint can be resolved, without further investigation or whether alternative resolution such as mediation would be a more appropriate way of dealing with the complaint.
- During the conclusion of the meeting the IO should give the complainant(s) a timescale of when a response can be expected and agree how and when updates will be provided.

Once the initial meeting has taken place the IO should then proceed to:

- Undertake an investigation in accordance with the Allegations provided by the Commissioning Manager (CM);
- Collate any relevant documentation, records and supporting evidence to assist with establishing the facts to the allegations;
- Identify any relevant witnesses;
- Make interview arrangements
- Liaise with CM to arrange a note taker when required to make written notes of the discussion;
- Prepare questions in readiness for any interview;
- Formally interview employee;
- Interview all witnesses concerned;
- Ensure the witness is briefed to the purpose of the interview, what will happen with the information disclosed and what to expect in the future process;
- Following the interview provide the witness with a copy of the notes taken;
- Invite employee to the formal investigation interview providing sufficient notice to enable them to arrange to be accompanied by a representative who will be from the trade union or a fellow worker;
- Following the interview provide the employee with a copy of the notes taken;

- If during the investigation additional information comes to light discuss this with the Commissioning Manager to enable any relevant amendments to be made to the allegations;
- At any stage of the investigation should additional information need to be ascertained invite witnesses / the employee concerned to a further interview;
- On completion of the investigation interviews collate all evidence and produce a report on the factual information obtained;
- Provide the Commissioning Manager with the report to enable them to make a decision on how to proceed;
- Should it be decided by the Commissioning Manager that a disciplinary hearing needs to be held then the investigation findings will need to be presented verbally from the original report by the Investigating Officer at the hearing;
- The Investigating Officer will need to be prepared to respond to questions and be constructively challenged by the Commissioning Officer and employee / their representative at the disciplinary hearing.

Human Resources

- The Investigating Officer and Commissioning Manager will receive procedural advice and support with regard to policy from the Human Resources Department.
- A Human Resources representative will support all formal investigations and will be present at all formal stages of this procedure.
- The HR Department will be available to provide support to the Investigating Officer at all stages up to and including supporting them through any resulting hearing.
- A HR representative will also support the Commissioning Manager through any disciplinary hearing to provide procedural, legal and best practice advice only.

APPENDIX 3: Examples of misconduct and gross misconduct

Examples of misconduct:

Ordinary misconduct is conduct of such a kind as to warrant disciplinary action rather than dismissal for a first offence on the part of the employee, and the warning procedure will normally be followed.

- Unauthorised or casual absence from work, including repeated late attendance or persistent absenteeism
- Failure to comply with the Academy's code of conduct for employees, protocols or procedures.
- Persistent failure to comply with sickness absence reporting procedures
- Failure to comply with the provisions of the Data Protection legislation
- Failure to comply with the Academy's Rules of Procedure including financial Procedure Rules
- Using threatening or abusive language/behaviour towards colleagues, any member of the school community or in any aspect of employment
- Failure to observe Academy's safety rules and regulations
- Failure to comply with a reasonable instruction, or provide information that is needed by a manager
- Wilful inefficiency or neglect of duties and responsibilities
- Failure to observe the Academy's Equal Opportunity policy and acts of discrimination against or harassment of employees, council members, governors or members of the public on any grounds

- Inappropriate use of Academy time, property and telephone e.g. misuse of e-mail and internet facilities for inappropriate personal use.
- Failure to discharge without sufficient cause the obligations which statute or the contract of employment places on the employee
- Wilful failure to exercise proper control or supervision of pupils

Examples of Gross Misconduct:

Gross misconduct is of such a kind that in the light of the employee's action, the Academy cannot allow the employee to continue work and sees no alternative to dismissal on the grounds of gross misconduct or suspension pending an investigation.

- Persistent and wilful refusal to carry out a reasonable management instruction
- Serious or deliberate failure to comply with the Academy's Code of Conduct for employees; Financial regulations and standing orders and corporate or directorate health and safety policies and practices
- Improper disclosure of confidential information
- Physical violence or assault of, or towards a member of the public, pupils, governors, Council members or staff
- Theft or attempted theft of cash or property belonging to the Academy or an employee of the Council •
Cash shortage by reason of negligence in relation to money within your responsibility
- Serious or persistent acts of discrimination or harassment.
- Conduct of a fraudulent nature, including falsification of time sheets, sickness absence forms, time sheets and fraudulently recording arrival on behalf of other employees, or inappropriate application of the Academy's services
- Willful and irresponsible actions or omissions which would endanger people or property
- Acts of professional negligence or grossly inadequate standards of work due to neglect or wilful failure to perform
- Conduct liable to cause serious loss of confidence in the Academy or considered contrary to the interests of the Academy. In addition to those mentioned in the Code of Conduct, this includes criminal offences outside of work, which may affect the continued performance of your contract of employment
- Interference with or misuse of Academy computer systems, hardware, software or data, in such a way as to threaten the continued operation, integrity or security of the Academy's systems
- E-mail and internet abuse which could call into question the employees' suitability and integrity to continue in employment
- Unauthorised removal and use of Academy property
- Conduct giving rise to a child protection issue;
- Inappropriate or sexual relationship with a pupil
- Contact with a pupil via phone / text / online of an inappropriate nature and /or content
- Act of sexual misconduct by an employee where that misconduct could have a detrimental impact on students or on the employee's position within the Academy
- Misuse of the ICT to view or distribute obscene, pornographic, defamatory or otherwise unacceptable material
- Inappropriate physical contact or restraint of a pupil

- Persistent and significant failure to exercise proper control or supervision of pupils.
- Improper use of an official position for private gain, including seeking and accepting bribes
- Unauthorised use and/or disclosure of information relating to the Academy’s business, its members, staff or clients (contrary to the Code of Conduct)
- Serious failure to discharge obligations in accordance with statute or contract of employment
- Sleeping on duty unless expressly permitted
- Incapability through the result of the influence of alcohol or other drug misuse
- Causes of child protection or adult abuse
- Failure to report an incident of child protection or adult abuse which has come to your attention.
- Falsification of any information given on an application form for a teaching/non-teaching post to gain advantage whether pecuniary or otherwise
- Falsification of registration of pupils or students for pecuniary gain
- Tampering with pupil examination papers, results, coursework etc.
- Serious professional misconduct which could lead to a criminal conviction
- Drug offences committed by employees whose job brings them into contact with young people
- Breaking statutory provisions that would render the Governing Body liable to prosecution
- Failure to disclose, if asked, criminal convictions or cautions not exempt under the terms of the Rehabilitation of Offenders Act.
- Actions outside of the workplace that could be so serious as to fundamentally breach the trust and confidence placed in the Employee.
- Bribery
- Gross incapability
- Serious abuse/offensive language or behaviour
- Influencing an internal investigation

The above lists are for illustrative purposes only and are not exhaustive. Each disciplinary case will be viewed on its own merits as to whether it constitutes gross or minor misconduct.

APPENDIX 4: Dismissal for some other substantial reason:

Some dismissals do not fall into the specific categories of misconduct or gross misconduct and are termed under the Employment Rights Act 1996 as for “some other substantial reason” (SOSR) dismissals.

An employer is required to show that the substantial reason is a potentially fair one. Any employment tribunal must then decide whether the employer acted reasonably in dismissing for that reason. As in all unfair dismissal claims, an employment tribunal will take into account whether the employee was consulted, given a hearing and appeal rights, and whether dismissal was a reasonable response in the circumstances.

A potentially fair dismissal under SOSR may be made for a variety of reasons, for example

- Where an employee has confirmed that they are not prepared to accept a change in working practises/contractual terms following a reorganisation
- Where there is a serious breakdown in relationship which causes a breach of trust and confidence between the employee and the Academy or Trust
- Where an employee has a sentence of imprisonment imposed upon them which falls outside the normal disciplinary procedure
- Where an overseas trained unqualified teacher has failed to secure qualified teacher status within the prescribed time limits
- Where a qualified teacher has been appointed, in accordance with statute, to replace an unqualified teacher
- Where a prohibition order has been issued by the Disclosure and Barring Service or National College of Teaching and Leadership.

This list of reasons is not intended in any way to be exhaustive or prescriptive. Each instance must be assessed on an individual basis within the context of the nature of the job and any other relevant circumstances.

A potential dismissal under SOSR will follow the disciplinary process and if there is a dismissal it would be with appropriate notice of termination of services. Dismissal on the grounds of SOSR will always be dismissal with notice as stated in the employee's contract of employment.

APPENDIX 5: Disciplinary Hearing Procedure

The hearing will be conducted by the Headteacher/Principal, 1 or more Governors, Directors, members of the executive team or Trust Headteacher/Principal who will be accompanied by a Trust Human Resources representative.

The Headteacher/Principal/Chair of Staffing Committee will explain the procedure to be followed, outline the allegation(s) made and ask the employee whether he/she admits or denies the allegation(s).

1. The investigating officer will detail the allegations and will present the evidence against the employee and call any witnesses in support of their case.
2. The employee and/or his/her representative may cross-question the investigating officer and any witnesses and examine any documentary evidence submitted.

3. The employee and/or his/her representative may present their evidence and call witnesses in support of their case.
4. The investigating officer may cross-question the employee, his/her representative and any witnesses.
5. The Headteacher/Principal/Staffing Committee and the Academies Human Resources representative may question the investigating officer, the employee, his/her representative and any witnesses.
6. Witnesses will remain in attendance whilst they are questioned and will withdraw thereafter.
7. The investigating officer and the employee or his/her representative will have the opportunity to sum up their cases if they so wish.
8. When the Headteacher/Principal/Staffing Committee and the Academies Human Resources representative are satisfied that all the relevant facts have been obtained, they will, in private, consider this evidence, any mitigating circumstances and any previous relevant disciplinary record prior to deciding what action is appropriate.
9. An adjournment may be approved by the Headteacher/Principal/Staffing Committee, if necessary, to obtain further information.
10. Wherever possible the decision will be notified to the employee and their representative verbally on the day of the hearing and confirmed in writing within 5 working days.
11. Where disciplinary action is taken, the employee will be informed of his/her right of appeal against the decision.

APPENDIX 6: Disciplinary Appeals Procedure

An Appeals Panel of Headteacher/Principal, Members of the executive team, Governors, directors or Trust Headteacher/Principal will conduct the appeal hearing and be advised by a Human Resources representative. The Chair of the Appeals Panel will explain the purpose of the hearing, outline the procedure to be followed and the powers vested in the Appeals Panel.

1. The appellant has the right to be represented by his/her Trade Union representative or workplace colleague and may call witnesses and refer to documents.
2. The appellant (or representative) will put the appellant's case in the presence of the Headteacher/Principal/Chair of Staffing Committee and may call such witnesses as required.
3. The Headteacher/Principal/Chair of Staffing Committee will have the opportunity to ask questions of the appellant and witnesses who have been called on the evidence.

4. The members of the Appeals Panel and the HR Adviser will have the opportunity to ask questions of the appellant and witnesses and call such witnesses as required.
5. The Headteacher/Principal/Chair of Staffing Committee will put the case in the presence of the appellant and representative and may call witnesses as required.
6. The appellant or representative will have the opportunity to ask questions of the Headteacher/Principal/Chair of Staffing Committee and any witnesses who have been called on the evidence.
7. The members of the Appeals Panel and the HR Adviser will have the opportunity to ask questions of the Headteacher/Principal/Chair of Staffing Committee and call such witnesses as required.
8. Witnesses will remain in attendance whilst they are questioned and will withdraw thereafter.
9. The appellant (or representative) and the Headteacher/Principal/Chair of Staffing Committee will have the opportunity to sum up their cases if they so wish.
10. Headteacher/Principal/Chair of Staffing Committee and the appellant (and representative) will then withdraw.
11. The Appeals Panel and the HR Adviser will deliberate in private. They will determine, on the basis of the case made and evidence presented whether to refuse the appeal allow the appeal or substitutes some lesser penalty. The Panel may not determine a harsher form of penalty.
12. Wherever possible the decision will be notified to the employee and their representative verbally on the day of the hearing and confirmed in writing within 5 working days.

APPENDIX 7: Summary of Disciplinary measure available

LEVEL OF WARNING	AUTHORITY TO TAKE ACTION	APPEAL SUBMITTED TO	TIME LIMIT FOR APPEAL	APPEAL HEARD WITHIN	EXPIRY OF WARNING FROM PERSONAL FILE
INFORMAL STAGE Informal Advice/Coaching Informal Reprimand	Line Manager, Headteacher/ Principal or person acting on thier behalf	Not Applicable	N/a	N/a	Actions agreed on personnel file
FORMAL STAGE First written warning	Headteacher/ Principal, person acting on their behalf or member of executive team, Trust Headteacher or panel of Governors or Directors	Chairperson of Staffing Committee of Governors, Directors, Headteacher/Principal, Trust executive team or Trust Head teacher	5 working days of receipt of letter	20 working days of receipt of appeal letter	12 months
Final written warning Dismissal*	Headteacher/ Principal, member of executive team, Trust Headteacher or panel of Governors or Directors Headteacher/ Principal, member of executive team, Trust Headteacher or panel of Governors or Directors	Chairperson of Appeal Committee of Governors, Directors, Headteacher/Principal, Trust executive team or Trust Head teacher Chairperson of Appeal Committee of Governors, Directors, Headteacher/Principal, Trust executive team or Trust Head teacher	5 working days of receipt of letter 5 working days of receipt of letter	20 working days of receipt of appeal letter 20 working days of receipt of appeal letter	24 months N/A

Alternative disciplinary action to dismissal, include demotion.

At the appeal, any disciplinary penalty imposed will be reviewed but it cannot be increased. Working days does not include Academy holidays.

APPENDIX 8: Confidential Counselling Service for TSAT Employees

Confidential Counselling Service for TSAT Employees

A confidential counselling service is available for all Employees across the Trust provided by Smart Clinic. The service offers information, advice and support 24 hours a day, 7 days a week. This includes a telephone support line, access to advice and information, coaching and counselling where appropriate. To access the service please use the contact details below:

- Telephone: 0845 862 2113
- Access the online services via www.client.smartclinic.com and use your personal log in details.
- Download the app for convenience – details are available online.

