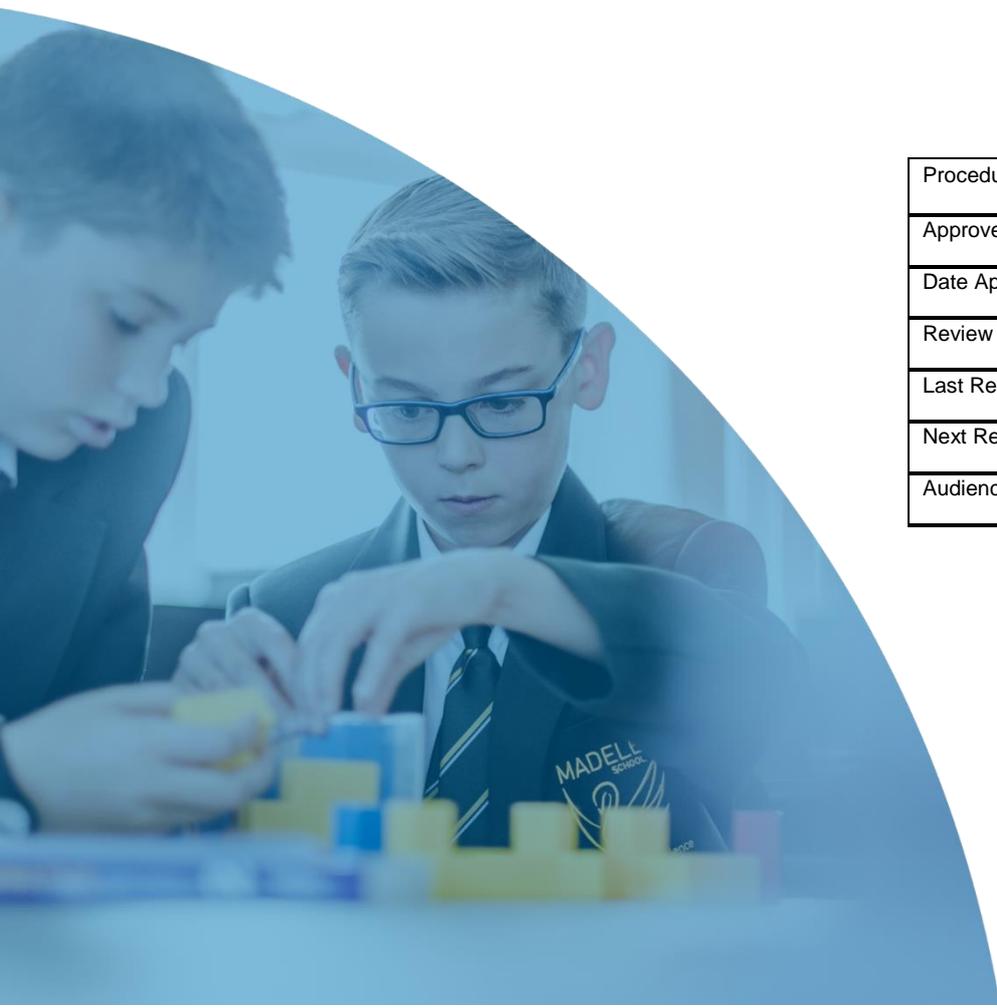




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Disciplinary Policy



Procedure Originator:	S. SMITH
Approved By:	BOARD
Date Approved:	NOVEMBER 2018
Review Interval:	3 YEARS
Last Review Date	NOVEMBER 2018
Next Review Date	SEPTEMBER 2021
Audience:	Employees

The purpose of this policy and procedure is to set out the standards of conduct expected of our employees and to ensure that all disciplinary matters are dealt with fairly and consistently. This procedure does not deal with performance or sickness absence issues. These are dealt with in our Capability and Managing Attendance at Work policies.

Any reference to 'the employer' refers to Shaw Education Trust. This policy applies to employees of the Trust, referred to in this policy as employees.

The policy and procedure applies to all employees, regardless of length of service, but does not form part of the contract of employment and can be varied from time to time and in consultation with the recognised trade unions.

The procedure does not apply to ex-employees

1. General Principles

- 1.1 All managers have a duty to ensure that they and all the employees they are responsible for are aware of, and comply with, the Shaw Education Trust's policies and procedures. Managers are also responsible for making sure that employees know when they are not achieving or maintaining the expected standards of conduct or behaviour.
- 1.2 All employees have a responsibility to be aware of and conduct themselves in line with the Shaw Education Trust's policies, the law and maintain acceptable standards of conduct and behaviour. Where relevant, employees must adhere to codes of practice or standards associated with their profession or trade. Employees must also cooperate with disciplinary investigations as required.
- 1.3 The aim of the procedure is to set out and maintain the required standards of conduct and encourage improvement.
- 1.4 All stages in the policy will operate in accordance with the duties to promote equality, to eliminate discrimination and to promote good relations between staff with protected characteristics as required under the Equality Act 2010.
- 1.5 References to Trade Unions throughout this policy mean anybody appearing on the Certification Officer's list of trade unions.

2. Acceptable Behaviour and Conduct

- 2.1 The relevant code of conduct provides employees of the Shaw Education Trust with an effective ethical framework within which to work and it provides the public with confidence that employees are working on their behalf in an appropriate manner.

2.2 Shaw Education Trust expects all employees to meet high standards of behaviour and conduct, including the relevant code of conduct.

3. Minor Conduct Issues and an Informal Approach

3.1 For minor conduct issues, the manager will adopt an informal approach to help, guide or advise in improving conduct. The manager will only consider dealing with minor disciplinary breaches through the formal stages of the procedure if misconduct continues or the misconduct is too serious to be dealt with informally.

3.2 Cases of minor misconduct are usually best dealt with informally and confidentially. A conversation about the concerns and resolutions is often all that is required to improve conduct. In some cases, the manager may decide that additional training, coaching and advice is needed.

3.3 Where a manager has a concern about conduct they will organise an informal meeting to discuss the concern. The purpose of any informal meeting is to improve conduct, to identify and examine any areas of concern and to provide a reasonable opportunity for response.

3.3.1 In addition:

- The employee should fully understand the outcome and what changes in behaviour or conduct is required. The employee will be aware of the timeline of the review.
- A note of any informal action should be provided to the employee and kept for reference.

3.3.2 The note may be used to demonstrate that clear guidelines had already been given about expectations and standards. It cannot be used to increase any subsequent disciplinary action or sanction.

3.3.4 Where the behaviour causing concern may be related to an underlying relationship issue, it may be appropriate to consider an independent third party, such as a mediator, to help resolve the situation rather than disciplinary action

3.4 In the event that the matter cannot be resolved informally or the matter is too serious for the informal approach to be applied, then the formal disciplinary process will follow. Although the stages of the disciplinary process will normally be followed sequentially Shaw Education Trust may enter the process at any stage depending on the seriousness of the matter.

3.5 No formal disciplinary action will be taken unless or until the allegations have been fully investigated.

4. Link with Other Policies and Procedures

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

- The disciplinary proceedings may be temporarily suspended in order to deal with the grievance or
- The grievance and disciplinary may be run concurrently where they are related.

4.2 **Attendance Policy** - Where an employee is absent due to sickness whilst a disciplinary matter is pending, the attendance policy will apply as normal. However, those responsible for keeping in touch would not normally be the same people involved in the handling a disciplinary case. Under these arrangements due regard will be had for what is said by Occupational Health and any information provided from the employees GP. Managers should arrange for an Occupational Health referral as soon as possible for them to assess health generally and whether or not the employee is fit to participate in these procedures. Being absent from work due to sickness will not automatically stop the disciplinary procedure progressing.

5. Action against Trade Union Representatives

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

6. Suspension

6.1 The decision to suspend an employee from duty should not be taken lightly or without careful consideration of all the circumstances and the nature of the complaint or allegation made against them. Consideration should also be given to alternatives to suspension such as temporary redeployment or alternative duties – regardless of how serious the conduct is; suspension must never be an automatic reaction.

When suspended an employee will receive their normal pay.

6.2 The following list is not exhaustive but provides an indication of the types of situation when suspension ***may*** be appropriate.

- Where gross misconduct is suspected or alleged.
 - Where it would not be possible to carry out a thorough or impartial investigation with the employee still at work.
 - Where there is a concern that further instances of misconduct may occur.
 - Where an employees continued presence at work may put the individual or others at personal risk.
- 6.3 Whenever possible, an appropriate manager, in line with Shaw Education Trust's scheme of delegation (Appendix 1), will hold a meeting with the employee to advise them of the decision to suspend them from duty. If the employee is not available and cannot be contacted by all reasonable enquiries, they will be informed in writing not to attend work and to contact a named manager. An employee can be suspended in the absence of a TU representative or work employee. Any suspension will be followed up in writing within 5 working days.
- 6.4 Where suspension is considered necessary the Manager must do the following;
- Take HR advice from the Trust's HR Advisers:
 - Get appropriate authority to suspend if they are not authorised to make the decision (details in scheme of delegation).
 - In the absence of appropriate authorisation to suspend, where the manager considers an employee to be unfit and/or, it is inappropriate for them to carry out their duties, they can send them home until an appropriate person is available to provide the relevant authorisation.
- 6.5 When an employee is suspended they must be told;
- why they are being suspended from duty, and that this will be confirmed in writing;
 - that their suspension from duty is not a form of disciplinary action;
 - to contact their TU representative (if they have one) or a work colleague, if they have not already done so;
 - that they remain an employee and therefore bound by their contract of employment
 - to remain contactable and available during normal working hours so that they can attend meetings as required and answer any work related queries;
 - to inform the Manager of any change in contact details immediately while they are suspended;
 - to book any annual leave or report sickness absence in line with normal procedure
 - under no circumstances to approach, or try to influence, anyone associated with the complaint / allegation against them about the complaint / allegation, or enter any of Shaw Education Trust office / work premises without authorisation from the Investigating Manager. Failure to comply may result in further disciplinary action being taken against them;

- that their suspension will be reviewed every **15 working days** by the Investigating Manager, in consultation with the appropriate HR representative if necessary; and any decision as to whether a suspension should remain in place will be taken by the Deciding Manager.

6.6 If, at any stage in the procedure, it appears that there is a significant medical factor involved, the employee should be referred to Occupational Health.

6.7 The suspension will end in one of the following circumstances:

- the Deciding Manager decides that there is no case to answer and that the employee does not need to attend a disciplinary hearing;
- if the investigation can continue without the employee needing to be suspended;
- if the investigation has been concluded and the allegations against the employee are less serious than originally thought; or
- if the disciplinary procedure has been completed.

7. Formal Disciplinary Process

7.1 Prior to any formal disciplinary decision being made, the following steps will be taken:

- An investigation will be carried out in accordance with the Investigation Procedure (Appendix 2). Where allegations are made the employee should be made aware of the nature of the allegations that are to be investigated prior to the investigation meeting. The amount of investigation involved will vary depending on the allegations in question and the circumstances of the case. Investigations will be dealt with as confidentially as is reasonably practicable and sensitively, in line with the Investigations Procedure.
- The completed investigation will be submitted to the Deciding Manager who will determine whether the allegation warrants a hearing
- If following investigation, it is reasonably believed that there are grounds for disciplinary action, the employee will be required to attend a disciplinary hearing.

8.0 Arranging the Formal Hearing

8.1 If the Deciding Manager is satisfied that the complaint warrants a hearing, he/she will inform the employee and a Disciplinary hearing will be arranged. The employee will be informed in writing of the following:

- The date, time and place with at least 5 working days' notice from receipt of the letter;
- The names of the committee members (but this may be subject to change);
- The specific nature of the allegations;

- The right to produce written statements and to bring witnesses;
- That they are required to provide copies of any relevant evidence they intend to refer to, at least 3 working days before the hearing.
- The right to representation;
- Names of any management witnesses if applicable;
- Any supporting documents to be used as evidence by management;
- The level of the hearing with reference to the likely outcome if allegations are proven i.e. warnings, dismissal; and
- A copy of the Disciplinary Procedure

8.2 It is a perfectly acceptable part of disciplinary proceedings for an agreement to be reached, between both parties, prior to the hearing, and when an employee has received advice from their representative. Where the facts are not in dispute, and both parties agree on the sanction, it will not be necessary to hold a hearing.

In such circumstances a formal meeting should be held to discuss the key findings of the investigation and issue the pre-agreed sanction. Accepting an Agreed Outcome means that an employee will forego their right of appeal. This approach will NOT apply to safeguarding related allegations.

8.3 The hearing will comprise of appropriate attendees in accordance with the Shaw Education Trust scheme of delegation. (Appendix 1)

The Investigating Manager may present the case at the hearing. Witnesses will **not** be called to attend the hearing as standard unless there has been a formal request for them to do so. The investigating manager will also be available to answer clarification questions at the hearing if presenting the case or if called. The investigation report and written statements will be relied upon as evidence. The employee has the right to request that a witness(es) attend the hearing. Employees will be expected to present any character witness evidence in writing rather than require the witness to attend the meeting. However, witnesses whose evidence is not challenged will not be called. Where a witness is required to attend the Deciding Manager hearing the case will invite them in writing.

8.4 Employees must make all reasonable efforts to attend a disciplinary hearing. If they or their companion are unable to attend a hearing they may propose a new date of no more than 5 working days from the date of the original date.

8.5 Managers will respond sensitively when a delay is required, for example, it may arise for a reason related to a disability or emergency involving dependants. Another hearing date may be arranged if employees fail to attend through circumstances outside of their control.

- 8.6 If an employee does not attend the hearing without good reason, it may be rearranged but if they do not attend the rearranged hearing, a decision may be made in their absence. They may submit a written statement to be taken into consideration.
- 8.7 Where they are persistently unable or unwilling to attend the hearing without good cause the manager should make a decision on the evidence available.

9.0 Right to be Accompanied

- 9.1 Employees have the right to be accompanied by a companion at any meeting as part of the investigatory or formal disciplinary procedure. The companion may be a fellow employee, a trade union representative or an official employed by a trade union.
- 9.2 The companion is allowed to address the hearing, to put and sum up the employees' case, respond on their behalf to any views expressed at the hearing and confer with them during the hearing. They may also request an adjournment and ask questions of anyone present. The companion does not, however, have the right to answer questions on the employee's behalf, address the hearing if the employee does not wish it or prevent the employer from explaining their case.
- 9.3 Under this procedure, an employee does not have the right to be accompanied by anyone else (such as a spouse, partner, other family member or legal representative).
- 9.4 It would not normally be reasonable for an employee to insist on being accompanied by a companion whose presence would prejudice the hearing nor would it be reasonable for them to ask to be accompanied by a companion from a remote geographical location if someone suitable and willing was available on site.
- 9.5 Where appropriate, eligible employees, for example those with disabilities or language difficulties, may have the attendance of a supporter or interpreter.

10.0 Conducting the Formal Hearing

- 10.1 The disciplinary hearing will be conducted by the Deciding Manager¹ and panel as detailed at Appendix 1 who will be an appropriate level of management or authority. A representative from HR may also be present and will always be present at hearings that may result in dismissal or an alternative to dismissal.

The Deciding Manager should introduce those present and clarify roles, explain the purpose of the hearing, how it will be conducted and check that the

¹ The 'Deciding Manager' will be determined by the Shaw Education Trust Scheme of Delegation. See Appendix 1.

employee received the documentation in advance of the hearing. They should also check that the employee is aware of what the potential outcome of the hearing may be.

The Deciding Manager should establish what the allegations are and clarify that the written documentation has been fully reviewed - they will ask questions to clarify any points.

- 10.2 The employee (or their companion) then has the opportunity to state their case and present evidence, including calling of the witness(s) where appropriate. They will be given the opportunity to ask questions to clarify points.
- 10.3 Before adjourning the hearing the Chair should summarise the main points of the discussion after questioning is completed and ask the employee if there is anything further that they want to add.

The hearing will then be adjourned. This is an opportunity for the Chair hearing the case to consider the facts or instigate further investigation into the matter before coming to their decision.

- 10.4 Copies of meeting records should be given to the employee including copies of any formal minutes that may have been taken. In certain circumstances (for example to protect a witness) some information might be withheld.

11. Criminal Offences

- 11.1 Certain criminal offences may affect an employee's suitability to continue in their role with Shaw Education Trust or damage their reputation. If an employee is charged with a relevant criminal offence they must inform their manager as soon as possible. We will not treat notification about criminal proceedings, or a conviction (including bind-over's and cautions), as an automatic reason for dismissal or for any other form of disciplinary action being taken. We will decide what action to take, if any, after we have reviewed the matter. The main consideration should be whether the conviction is one that makes an employee unsuitable for their job or affects Shaw Education Trust's reputation.
- 11.2 If an employee is subject to a criminal investigation, Shaw Education Trust will determine to what extent it needs to conduct its own investigation before deciding whether to proceed to formal disciplinary action. Shaw Education Trust will not usually wait for the outcome of any prosecution before deciding what action to take (unless specifically advised otherwise by the police). No decision to impose a disciplinary sanction or dismiss will be taken prior to giving an employee the opportunity to make representations.
- 11.3 If we have reasonable grounds to suspect that the potential misconduct involves fraud, systems abuse, theft, or any financial irregularity, we will notify the internal auditors and/or the police as soon as possible.

12. Disciplinary Penalties

12.1 Stage 1 – First written warning

A first written warning may be issued by the Deciding Manager and will usually be appropriate for a first act of misconduct where there are no previous warnings and where any agreed adjustments and other support has been made or provided. The warning will remain active for 6 months and it should be disregarded for disciplinary purposes after this period.

12.2 Stage 2 – Final written warning

A final written warning may be issued by the Deciding Manager in the following circumstances:

- where there has been a further act of misconduct while an existing warning is in effect; or
- the seriousness of the misconduct is sufficient to warrant such a warning, even though no previous warning may have been issued.

The warning will remain active for 18 months and it should be disregarded for disciplinary purposes after this period.

12.3 Stage 3 – Dismissal

Only an appropriate level of authority in line with Shaw Education Trust's scheme of delegation can take a decision to dismiss and where any agreed adjustments and other support has been made or provided. An employee may be dismissed in the following circumstances:

- where there has been a further act of misconduct while an existing warning is in effect, this would be with notice or payment in lieu of notice; or
- where it is reasonably believed that an employee has committed an act of gross misconduct. Gross misconduct will usually result in summary dismissal without notice and without pay in lieu of notice. Examples of gross misconduct are detailed in the policy.

12.3.1 The Deciding Manager may at their discretion consider alternatives to dismissal. Examples of such alternatives which could be offered include demotion, loss of seniority, reduction in pay, compulsory training. If such an alternative is applied, it may also be accompanied by a final written warning.

13. Warnings

13.1 Where a warning is issued, this will be confirmed in writing within 10 working days of the hearing. The warning will state the misconduct that led to the warning, the action or improvement required, the duration of the warning and the likely consequences of the action of improvement not being taken and/or any further misconduct. It will also advise of the right of appeal and the person to whom an appeal should be made.

13.2 Where an employee is absent from work for 20 days or more, regardless of the reason for absence, whilst a Stage 1 or Stage 2 disciplinary warning is in force, that warning will be suspended for the period of absence. Once the employee returns, the warning will recommence and continue for the remaining active period.

14 Appeals

14.1 Where disciplinary action has been taken, if an employee is dissatisfied with that decision, they can appeal. Their appeal must be in writing and set out the grounds of their appeal in line with the list below and include all the information they wish to rely on at the appeal hearing. They must send their appeal to the Appeal Deciding Manager within 5 working days of the date they received the letter notifying them of the disciplinary decision. The action taken at the disciplinary hearing will remain in force pending the outcome of the appeal. They must be appealing against either:

- the finding that they were guilty of committing the alleged act (or acts) of misconduct where the evidence did not support this finding
- the severity of the disciplinary sanction imposed taking into account the nature of the misconduct and the mitigating circumstances
- the fact that they don't feel the correct procedure was followed
- the fact the new evidence that was not considered in the disciplinary hearing has come to light that would change the outcome
- the sanction is inconsistent with how others have been treated
- there was unlawful discrimination in the handling of the disciplinary.

14.2 They will be invited to the hearing in writing in accordance with the Section 8 above. They will be given at least 5 working days' notice of the appeal hearing. They have the right to be accompanied at the appeal hearing by their companion.

14.3 Employees must provide copies of any relevant evidence they intend to refer to, at least 3 working days before the hearing.

14.4 The Appeal Hearing will be conducted in accordance with Section 10 above. For appeal hearings the Deciding Manager should pay particular attention to any new evidence that has been introduced, and ensure the employee has the opportunity to comment on it.

14.5 The outcome of the appeal may be to overturn or confirm the original decision or apply a different, but not more serious, sanction. They will be advised of the appeal outcome, which will be confirmed in writing within 10 working days of the appeal hearing. There is no further right of appeal.

14.6 They are not entitled to raise a further complaint under Shaw Education Trust's Grievance Policy (or any of the Shaw Education Trust's complaints procedures) in relation to the same grounds of appeal.

15.0 Allegations Against Staff - Child Protection Issues – Local Authority Designated Officer

15.1 If a complaint against an employee relates to a child protection issue then it is essential that the investigator contact the Local Authority's Designated Officer (LADO) at the outset to discuss the complaint/allegation. The outcome may be that an allegations strategy meeting is required and the LADO will convene a strategy meeting.

15.2 If the allegation is substantiated and the person is dismissed or the Academy ceases to use the person's services, or the person resigns or otherwise ceases to provide his/her services, the LADO should discuss with the Academy whether a referral should be made for consideration as to the individual being barred from, or have conditions imposed in respect of, working with children.

16. Examples of Misconduct

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

- Minor breaches of Trust and Academy policies;
- Minor breaches of an employee's contract;
- Damage to, or unauthorised use of, Trust property;
- Poor timekeeping;
- Unauthorised absence from work;
- Refusal to follow instructions;
- Excessive use of Trust telephones for personal calls;
- Excessive personal e-mail or internet usage;
- Obscene language or other offensive behaviour;
- Negligence in the performance of duties;

17. Examples of Gross Misconduct

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

- Theft or unauthorised removal of property, fraud, falsification of the Shaw Education Trust's records or any other dishonesty
- Actual or threatened violence or bullying behaviour
- Deliberate or serious damage to the Shaw Education Trust's property or that of an employee, customer, contractor or authorised visitor
- Serious negligence which does or could result in loss, damage or injury

- Being under the influence of alcohol, drugs or other similar substances at work which may give reasonable grounds to suspect ability to undertake duties or being in possession of illegal or intoxicating drugs on site
- Refusal to obey reasonable instructions or any other act of serious insubordination
- Any action or behaviour which brings Shaw Education Trust into serious disrepute
- Serious breach of health and safety rules
- Unauthorised disclosure of confidential information
- Harassment or any act of discrimination
- Convictions relating to activities outside work but which have a significant and direct bearing on employment and duties with Shaw Education Trust and its reputation.
- Misrepresenting at any time, including at appointment with the Shaw Education Trust, any previous positions held, qualifications, date of birth, declaration of health, or a failure to disclose a criminal offence or pending criminal action subject to the provisions of the Rehabilitation of Offenders Act 1974.

18. Records

18.1 The maintenance of accurate and contemporaneous records is essential, particularly in the event of referral to an Employment Tribunal. Notes are not necessarily verbatim, and there is no requirement for agreed minutes; however it is good practice to attempt to agree minutes, particularly in the case of interview records.

It should be noted that consideration by an employment tribunal might be an extended time after the matter was considered internally.

18.2 Records should be held in a secure and confidential manner, often the issues raised by an employee are particularly sensitive and it is essential that information is kept in accordance with the General Data Protection Regulations

18.3 Documentation that should normally be retained includes:

- all papers presented at the Disciplinary and Appeal hearings;
- notes of meetings (contemporaneous or otherwise);
- information collated by the committee or used to assist in making a decision;
- confirmation of the decision, or other supplementary correspondence;
- clarity on how decisions were reached and disciplinary action determined.

19.0 Monitoring and Review

This policy will be monitored to ensure consistency of application and adherence to Equalities legislation and will be monitored and reviewed by the trust in conjunction with recognised trade unions at an agreed date/timescale.

DISCIPLINARY CASES AND DISMISSALS delegation ²model (see below)

- Disciplinary
- Capability (professional competence)
- Ill Health Capability
- Redundancy. (The Board will have determined that there is a Redundancy situation)
- Some other substantial situation

Post	Delegated authority	Appeal
Chief Executive	Board member	3 Board members
Director of Education, deputy Director of Education	Board member or Chief Executive	3 Board members
Director of Operations and Finance Director	Board member or Chief Executive	3 Board members
Principal	Board Member or Chief Executive	Board Member
Subject Directors (Inc. Director of Teaching School and SCITT)	Chief Executive or DOE/ DDOE or Chief Operating Officer	Board Member, Chief Executive or Executive Principal
Vice Principal and SLT Members	Principal, DOE, DDOE	Chief Executive
All other Academy posts	Principal	DOE, DDOE
Operations central posts	Director of Operations	Chief Executive or DOE
Finance central posts	Finance Director	Chief Executive or DOE

GRIEVANCE

Post	Delegated authority	Appeal
Chief Executive	Board Member	Chair of Board
Director of Education, Executive Principal	Chief Executive	Board member
Deputy Director of Education	Director of Education	Chief Executive
Director of Operations, Finance Director	Chief Executive	Board member
Principal	Director of Education	Chief Executive/Board member
Directors of Subject	Deputy Director of Education	Director of Education

Vice Principal/SLT member	Principal	Director of Education or DDoE
All other academy posts	Principal	Director of Education/Deputy Director of Education
All central finance posts	Finance Director	Chief Executive
All operational posts	Director of Operations	Chief Executive
OTHER		
ACTION	DELEGATED AUTHORITY	
Compromise agreements up to and including £10,000	Director of Finance to agree terms Chief Executive to sign	
Compromise agreements in excess of £10,000	Chief Executive and Director of Finance to agree terms. Chair of Board to sign	
Compromise agreements in excess of £50,000	Approval to be sought from the EFA/HM Treasury	
SIGNATURE ON LETTER OF APPOINTMENTS		
ROLE	DELEGATED AUTHORITY	
Chief Executive	Chair of Board	
Director of Education	Chief Executive	
Principal	Chief Executive, Director of Education	
Director of Education/ Deputy Director of Education	Chief Executive	
Directors of Subjects	Chief Executive	
Finance posts	Finance Director	
Operations posts	Director of Operations	
Teachers Pay- Threshold/UPS	Principal	
All other academy based posts	Principal, or DOE if unavailable	

² any dismissal decisions should only be taken by a committee of 3 members – anything up to and including Final Written Warning could be issued by a single Hearing Manager or by a committee

STAFFING RESTRUCTURES	
Chief Executive, Director of Education, DD of Education, HR, Principal and Chair of Academy Council	
PERFORMANCE MANAGEMENT	
Chief Executive	Chair and 1 Board member
Director of Education	Chief Executive
Deputy Director of Education	Chief Executive
Finance Director	Chief Executive
Director of Operations	Chief Executive
Principals	DoE with AC
Finance core team	Finance Director
Operations core team	Director of Operations
All other academy posts	Principal and academy line management structure

Appendix 1

Shaw Education Trust Scheme of Delegation

Appendix 2

Investigations Procedure

General Requirements

In order to give effect to the employer's policies and procedures there needs to be a manager in a deciding role. Such a manager is to be known as the 'Deciding Manager' to differentiate this role from that of the 'Investigating Manager'. The Deciding Manager may consider that a matter is not capable of being dealt with informally and so requires a formal investigation. The purpose of an investigation is to enable the Deciding Manager to establish, as far as possible, the facts behind any grievance, bullying and harassment complaint or disciplinary allegations in order to decide how to progress any issues through the relevant procedures. This procedure applies to employees of the organisation, referred to in this guidance as employees.

The form of investigation will depend on the nature of the allegations and will vary from case to case. It is important to keep an open mind and look for evidence which supports the employee's case as well as evidence against it.

The manager leading the investigation will be referred to as the Investigating Manager for the purposes of this procedure. Investigations must be carried out by managers who have sufficient skills and experience to complete an effective investigation considering the nature of the case.

Any formal investigation must not be undertaken by anyone who is either a witness to events and/or who will oversee any subsequent proceedings.

Depending on the seriousness of any allegations the investigation may, in straightforward cases, be a short consolidation and chronology of facts or, in more extreme circumstances, necessitate a more detailed inquiry involving the gathering of complex evidence and statements. However, in all cases the Investigating Manager will need to provide enough information so that the Deciding Manager can make a reasonable decision based on reasonable grounds.

Anyone involved in the investigation must be treated fairly, reasonably, and with courtesy and respect. Any investigation must recognise the need for confidentiality. Employees involved with the investigation are to comply with the employer's equality and diversity principles giving due consideration to any particular needs of those participating which may arise due to cultural, personal, physiological or lawfully protected characteristics or circumstances.

Formal Investigations

Where a Deciding Manager initiates a formal investigation, they will identify and arrange for an appropriate person to carry out the investigation but will retain authority

for the investigation process at all times. This person will be known as the Investigating Manager

If a manager undertaking an investigation is unable to continue for unavoidable reasons such as long term illness or jury service, a substitute must be nominated by the Deciding Manager within **3 working days**. Similarly, where the Deciding Manager becomes unavailable for unavoidable reasons a substitute will be nominated.

Where a Deciding Manager initiates an investigation they will brief the Investigating Manager on the following points

- Why the investigation has been instigated
- Details of any allegations which have been made
- The sequence of events leading up to the investigation
- Whether the employee has been suspended
- When and how the employee was made aware of the allegations made against them

The Investigating Manager should:

- Ensure that at all times they treat the investigation as confidential
- Clarify which policy the investigation is being carried out under
- Clarify the issues to be investigated and consider the employer's definitions under the relevant policies e.g. harassment and bullying
- Consider the sequence in which witnesses will be interviewed (including the employee under investigation if applicable)
- Consider what points actually need to be evidenced or proven
- Consider how a particular witness will contribute to the investigation
- Consider what questions need to be asked to establish appropriate facts
- Consider what other evidence they will need to review
- Arrange a note taker

It is essential to ascertain who has witnessed the events so that facts can be gathered as soon as possible and before memories fade. Any investigation should be commenced within **5 working days** of a decision to instigate the investigation.

Wherever possible, investigations into the allegations or complaint should be completed within **40 working days**. Any delays in completing the investigation must be fully documented and the relevant parties kept informed. Therefore, the nominated Investigating Manager must be able to devote sufficient time to the investigation without being distracted by his/her primary role. The Deciding Manager will monitor this and take action where necessary, throughout the investigation. Investigation meetings should be held as quickly as possible and without unreasonable delay. A nominated Human Resources (HR) adviser must be available to advise the Investigating Manager on procedural matters and HR implications.

At the investigation stage, if a complaint or allegation has been made against an employee, or where an employee is raising a grievance or a complaint, the employee

will be given a reasonable opportunity to ask the Investigating Manager to interview relevant and important witnesses and any such request will not be unreasonably denied. They must specify the name of the witness and explain the reason for the request. Where a request is refused the employee may appeal the refusal to the Deciding Manager who will make a determination on the merits of the request. The Investigating Manager will focus on finding witnesses whose evidence will have a specific and direct bearing on the investigation but other than the need to achieve corroboration should avoid multiple witnesses who will not add anything further to the investigation e.g. witnesses who are only going to confirm facts already established.

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

If allegations made are anonymous, the action we take will depend on the nature and content of the allegations.

Employees must co-operate fully and promptly in any investigation. This will include informing the Investigating Manager of the names of any relevant witnesses, disclosing any relevant documents to them and attending investigative interviews if required.

Investigating Allegations

The employee under investigation is required to co-operate reasonably with any investigation but cannot be compelled to make a statement against his or her will. An employee who is signed off sick is not necessarily unfit to be interviewed and, unless there is medical advice to the contrary, e.g. from Occupational Health, the employee should co-operate with the investigation.

The investigation process can be stressful to all concerned. Providing appropriate support and/or counselling (if appropriate) should be considered for all parties involved in the investigation process.

Refusal to give a statement must not be viewed as a sign of guilt but the employee must be advised that:

- Unreasonable refusal to co-operate with the investigation may in itself be considered a disciplinary matter
- The investigation will nevertheless proceed but a decision on what further action could be taken may have to be made without them having put forward their case
- Their refusal to give a statement will be recorded as part of the investigation.

The employee under investigation must be given every chance to state their case and, therefore, will be interviewed as part of the investigation (unless for example they have been declared unfit to be interviewed). The Investigating Manager must keep an open mind and not assume 'guilt' or 'innocence'. If there is more than one allegation each

should be dealt with separately, as far as possible, and the employee must be given the opportunity to respond. There is a right to be accompanied by a fellow worker, a trade union representative or an official employed by a trade union at investigation meetings.

Following an interview with the employee under investigation it may be necessary to re-interview previous witnesses (and consequently the employee under investigation) to clarify issues.

If the employee offers their resignation before the investigation is complete, the Deciding Manager must decide whether or not to accept it. ³If the resignation is accepted the Deciding Manager must decide whether to continue with the investigation process in the employee's absence and if appropriate, take any relevant action. Where an employee's resignation has been accepted, there may still be a legal duty for the employer to refer information to the Disclosure and Barring Service - DBS or Teacher Regulation Agency in certain circumstances where they may have been removed from their role if they had not resigned.

Surveillance and/or Monitoring

In extremely exceptional and restricted circumstances, covert surveillance or monitoring may only be considered in order to gather evidence where criminal activity or equivalent malpractice is suspected. Furthermore, it should only be deployed as part of a specific investigation and should cease once the investigation is completed. Other information collected in the course of any such investigation relating to any employee who is not the subject of the investigation will be disregarded and where feasible deleted.

Covert monitoring will not be used in the workplace generally or specifically in places like toilets and private offices except where there is a reasonable belief based on reasonable grounds that serious crime is occurring and there is an intention to involve the Police.

Prior to undertaking any such surveillance or monitoring, the Deciding Manager must obtain express advice and specific authorisation in line with the employer's procedure and relevant legislation before any covert monitoring can occur.

Matters Involving Children and Other Vulnerable People

Any concern of a child protection/safeguarding nature, pertaining to a child under the age of 18 should be considered by the Deciding Manager without delay for possible referral to the First Response Team on 0800 131 3126. They will initiate any necessary safeguarding activities, and advise upon anything additional the referrer may need to do.

³ Any safeguarding allegation will be investigated regardless of whether the individual wishes to resign. Any outcome will be shared with the LADO upon conclusion of the investigation.

Where concerns relating to a child under 18 involve the possibility of inappropriate behaviour by an adult in a 'position of trust' (e.g. teacher), or an allegation is made directly about an adult in a 'position of trust', then it is a requirement that an 'Initial Discussion' is undertaken with a Local Authority Designated Officer ("LADO") within 24 hours of the concern or allegation arising. The LADO will advise on 'next steps' including possible suspension, how the matter should be investigated and when and who should be told about the matter. There should be no presumption that the adult should be made aware of the concern/allegation prior to contacting the LADO.

Where safeguarding concerns arise in relation to a young adult (over 18) then advice should be sought from the Vulnerable Adults team – 0845 604 2719.

Physical Evidence

Originals or certified copies of documents or other items relevant to the case such as timesheets and claims, referred to in the report, and should be attached as appropriate appendices. Objects and artefacts referred to (or certified photographs where it is not possible to produce an original item, e.g. if it is fixed or too large) should be clearly labelled as exhibits e.g. A,B, C etc so they can be identified within the report.

Record Keeping

During the investigation, the Investigating Manager should keep copies of paperwork and correspondence and, after the investigation is complete, the paperwork should be attached to the personal file of the employee who is under investigation. A copy of the outcome letter will be kept on the personnel files of all parties where applicable.

Dealing with Witnesses and their Evidence

Witnesses should be interviewed in a quiet place away from their immediate workplace where confidentiality can be assured and consideration should be given to providing refreshments and comfort breaks if necessary. They should be advised that they will be required to sign any statement. They must also be advised that their evidence may be shared with the member of staff under investigation and/or their representative and that they could be asked to attend any subsequent hearing where they may be questioned. An interview template is available to support you in structuring the meeting.

Being interviewed can be stressful and the investigating manager should put witnesses at ease as far as possible and at all times treat the witness with sensitivity and respect, avoiding any temptation to interrupt. A short introduction and explanation of the allegations and what the interview is aiming to achieve prior to undertaking detailed questioning will give the witness an opportunity to settle down. The interviewer should then ask the witness to give a brief outline of their evidence which will help put things into context and identify what detailed questions should be asked. If a witness does become distressed during the interview a brief adjournment should be considered. When requesting additional information, open questions e.g. What?, when?, why?, where?, who?, how?, "tell me about..." are more likely to elicit a detailed

response than questions which can simply be answered “yes” or “no”.

Evidence is weighted, not counted, unless there is a need to corroborate a particular view there is little purpose including a number of virtually identical statements from different witnesses. Unless an employee believes that particular witness evidence is relevant and important to the explanation of their case.

As far as is possible the Investigating Manager should be clear about what evidence they are trying to establish from a particular witness. However, the exact nature of the evidence may not be known. Therefore, they should be prepared to adapt their inquiries according to the responses given and not attempt to lead the witness to give an expected answer, put words into their mouth or ‘edit’ their statement in a way that alters their intended evidence. Simply said, the investigation should be unbiased, investigating both angles, which may show the employees innocence as well as their guilt.

The Investigating Manager should endeavour to obtain ‘best’ evidence e.g. first-hand accounts from witnesses who are prepared to give a signed statement. Evidence should be corroborated, where possible, to avoid inconsistencies. Anonymous evidence and hearsay (which relies on what a witness has been told by a third party) may be used but needs to be treated with caution and cannot be relied upon in isolation. Where anonymous evidence is to be taken the following steps will be necessary. Explore whether the witness had the opportunity and ability to observe clearly what they are asserting and with accuracy. Equally, exploring why such details are memorable. Tactful enquires are needed into whether the anonymous informant has suffered at the hands of the accused or has any other reason to fabricate their evidence.

Witnesses who wish to give anonymous statements should be advised that anonymity cannot be guaranteed if the matter proceeds. This is particularly important if the reason for them wishing to remain anonymous is a fear of reprisal or detriment. If an employee declines to give evidence the reason should be considered and further advice sought from HR before proceeding. In some circumstances refusing to assist in a work related investigation could be considered misconduct under the Disciplinary Policy.

Non-employees may be invited to give evidence or make a written statement but cannot be compelled.

When the Investigating Manager is sure that all relevant questions have been asked they should ask the witness if there is anything else they wish to say in evidence. They should then briefly summarise what has been covered so the evidence can be agreed or clarified if necessary. Where possible, the evidence should immediately be transcribed into a statement. If this is not possible due to the length of the evidence the Investigating Manager should draw up the statement, a [template](#) is available, without unreasonable delay. In either case the witness must be given sufficient time to read the statement and be offered the opportunity to challenge and clarify the content of the statement. This may be necessary if the Investigating Manager has misunderstood a point the witness had intended to convey. However, if it would

represent a radical change to the evidence actually given, the Investigating Manager should leave the evidence as it is but note the witness' concerns and any changes they wish to be made. Their reason for changing their evidence also should be recorded.

On completion of the interview the witness should be told that they must not discuss their evidence/statement with anyone else, particularly other witnesses or the person being investigated. Witnesses for the person under investigation may reasonably discuss their perception of events with them and/or their representative but must not directly communicate the evidence specifically given to the investigation. All witnesses should also be asked to report immediately any approach, directly or through a third party, by the person under investigation to ascertain the nature of, or attempt to influence, their evidence. Any attempt by the person under investigation to intimidate or influence a witness may be regarded as an act of gross misconduct under the Disciplinary Policy.

Interviewing pupils following an incident

The guiding principle is that best efforts should be made to ensure that any pupil is interviewed only once about an incident. The interview should be carried out by a member of Senior Leadership and parental/guardian consent should be sought ahead of **any interview**. For serious offences two members of staff should always be in the interview. The member of staff conducting the interview should concentrate on ascertaining the facts and resolving inconsistencies. Detailed notes must be taken, either at the time or immediately after.

Investigation Report

The Investigating Manager prepares a report confirming the process and findings of their investigation. The report should be in a clear and simple format and be written in plain English. The report should be written in a way that the reader can easily ascertain what has led to the investigation, what the key issues are, what the investigator reviewed and what were the findings.

The report will document what facts the investigating Manager has discovered during the investigation and will include any documents that relate to the finding of any such facts. The Investigating Manager must not speculate or make recommendations about whether a formal hearing should be convened in the case of a disciplinary matter or what disciplinary sanction may be appropriate as these are the functions of the Deciding Manager. In some circumstances, it may be appropriate for the Investigating Manager to feedback wider observations to the Deciding Manager and issues that have arisen as part of an investigation. This may include providing suggestions about what action might be taken for example training, or communications.

If the Investigating Manager feels that there is evidence to indicate that any alleged misconduct has occurred or the complaint could be considered malicious or vexatious, the Investigating Manager will report on their findings explaining why they believe that this has occurred, describing the basis for their belief and referring to any supporting evidence accordingly.

A [template](#) is available to structure the investigation report.

Arising from the Investigation - What the Investigating Officer will include in their report.

- The nature of the alleged misconduct or complaint (if applicable)
- The circumstances, background and context of the issues
- What witness statements reveal
- Whether there are any other facts that can clarify the situation including any relevant written or electronic records, timesheets etc.
- The seriousness/effects of the behaviour / action and or its relevance to the employee's job, team and service delivery
- Whether the alleged conduct or action reflects poorly on or brings the good name of the employer into question
- Whether there are any work related factors that may have contributed to the behaviour or action such as changes to the team, job or the working environment
- Whether the employee(s) received appropriate induction, support and training
- Whether there are any personal or underlying factors that might have affected the situation such as illness, disability, domestic or health problems, or provocation
- Whether there are any other mitigating factors
- Whether there have been previous occurrences without any action being taken
- Whether the employee had been given any authority, on this or a previous occasion, which would lead them reasonably to believe the action or alleged conduct was acceptable.
- What the employer's policy, procedure or guidance provide for
- Whether there is or was an established 'custom and practice' prevailing.

Having considered all the above matters, the Deciding Manager will consider whether there is a case to answer or not. The Deciding Manager may conclude that there is insufficient evidence to proceed to a formal hearing or that an appropriate response would be the application of informal counselling or additional training or else may decide to progress the matter to a formal hearing.

Investigation Interview Template

Ensure interviews are held in a suitable venue where you can make sure you will not be interrupted.

Introduction

- Introduce yourself and outline your role in the investigation.
- Confirm interviewee details (name, job title, length of time with XXX).
- Note date and time of interview.
- Confirm name of colleague Representative (if XXX does not have a representative, confirm they are aware of their rights to be accompanied and get agreement that they are willing to continue with the interview).
- Describe the investigation Terms of Reference.
- If an account of the interview is to be taken, confirm this to the interviewee and tell them a copy will be sent to them for verification.
- Ask if they have any questions for clarification.

Conducting the Interview/Interview Techniques

- It is vital that any investigation is dealt with sympathetically with due regard to the feelings and emotions of everybody concerned (including the alleged perpetrator).
- The complainant should be interviewed first with the aim of obtaining as much detail about the complaint as possible
- Ensure all persons attending interviews have been notified and informed of their rights to be accompanied by a representative.
- Interview all relevant persons using open (descriptive), closed, hypothetical and probing questions as appropriate.
- Do not lead interviewees or put words "in their mouth".
- Investigate both angles, which may show colleagues innocence as well as their guilt.
- Listen carefully to what is being said and do not interrupt when people are speaking
- Attempt to note accurately what is said and probe for clarification.
- Summarise information in chunks to check understanding and/or manage the conversation.
- Repeat what is being said to ensure no misinterpretation.
- Ask for demonstrations and diagrams if appropriate that can aid you getting a full picture.
- Pay attention to detail.
- Where the complaint is one of verbal harassment, ask them to say or write the exact words spoken to them.
- Should any of the interviewees become distressed or aggressive during the interview it should be suspended for a short period or terminated.
- If it's a grievance explore with the complainant what they are seeking by way of an outcome being careful however not to make any commitments.
- At the end of the interview ask if there is anything in relation to the investigation that the interviewee wants to mention that they have not specifically been asked about.

Conclude

- If an account of the interview has been taken by way of a statement, confirm that a copy will be sent to them for verification and signature and when it is expected to be returned. Agree where the statement will be sent to.
- Explain the plan for the investigation through to the target date for submitting the investigation report to the Deciding Manager.
- Explain potential investigation outcomes and any possible consequences for XXX.
- Request not to discuss the content of the interview – outline potential consequences if confidentiality is found to be breached.

Statement Template

Interviewee Name	
Job Title	
Length of Service/Time in Post	
Companion	
Investigating Manager	
Location of Interview	
Date and Time of Interview	

In opening the interview XXX outlined the following points:-

- Introduction to Investigating Manager and role in the investigation.
- Summary of the reason for the interview
- Confirmation that the interview would be noted and that an account would be provided to XXX to verify its accuracy.

Record of Questions and Responses

Closing

Interview finished at **[insert time]**

The interview was concluded by outlining the following points:-

Please tick and sign as appropriate: -

- I have made amendments on the document and agree that this is an accurate account of the interview.
- I have attached additional comments.
- I agree that this is an accurate account of the interview

Print Name:

Signature:

Date:

Investigation report template

Example Investigation Report

Strictly confidential

1 April 2012

Prepared by: John Smith – Investigating Manager

1. Background to investigation

- Employee details, job title, previous warnings etc.
- Why the investigation was instigated.
- The sequence of events leading up to the investigation.
- Whether the employee was suspended.
- When and how the employee was made aware of the allegations made against them.

2. Allegations

Following an investigation and interviews with staff members, the following allegations were raised:

1. Downloading inappropriate material from the internet in core time.

3. Summary of investigation process

- List of who was interviewed and when.
- Refer to relevant appendices.

4. Findings

If the employee faces more than one allegation, list the findings for each allegation separately.

- · Summary of background and context of the allegation.
- · What evidence there is to support, dispute or mitigate the allegation.
- Witness statements
- Training records
- Medical assessment/OHU or GP records
- Copy of logs / records
- Written documents
- Notes of meetings

- Memos / letters
- Existing procedure
- Any prevailing custom or practice
- The employee's response to this allegation during your investigatory meetings.
- Whether the employee admits or denies the allegation.
- If appropriate, whether the employee has been offered any support; for example, if the allegation is alcohol-related, what support has the employer provided in relation to this problem?

5. Conclusions

List the conclusions of the investigation.

6. Summary

Consider the following questions.

- Are there any key issues that relate directly to the employer (for example, a risk to customers and staff, or loss of money through negligence or deliberate acts).
- Are there any other warnings outstanding against this employee (verbal or written)?
- Has the employee been offered the opportunity to improve their performance through informal support, training and so on? What were the outcomes?
- Are there any medical issues involved? What support have we offered them? What action has been taken, and what was the outcome?
- Are there any key issues that have come out of the investigation that need to be raised in the report, if appropriate?

Example appendices

Appendix 1	Job description
Appendix 2	Letter of suspension
Appendix 3	Witness statement – (name of witness 1)
Appendix 4	Notes of meeting with (name of person whom allegation is about)



We believe, you achieve

The Lodge
Wolstanton High School
Milehouse Lane
Newcastle-under-Lyme
Staffordshire
ST5 9JU

Twitter: @shawedutrust
Tel: 01782 742910
Email: info@shaw-education.org.uk
Online: www.shaw-education.org.uk

