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MULTI ACADEMY TRUST

Disciplinary Policy and Procedure

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Disciplinary Policy and Procedure

Manor Multi Academy Trust

Date adopted by the MAT	Enter Date
This policy is scheduled for review on	Annually

This policy does not form part of the contract of employment and may be amended from time to time. The Trust reserves the right to depart from it as appropriate to individual circumstances, whilst always taking account of the ACAS Code of Conduct. This policy has been fully consulted on with the following trade unions ASCL, NASUWT, Unison, NEU and GMB and was implemented by Manor Multi Academy Trust on the above Date. Any changes to the policy following the policy review date will be consulted on with the recognised trade unions.

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Introduction

The procedures outlined in this policy are designed to assist the Trust employees, and their representatives to deal consistently with all disciplinary situations in the workplace in a prompt, fair and equitable manner and are consistent with the Trust's policy on equal opportunities and legislation on the avoidance of discrimination. **It is strongly recommended that the Headteacher/CEO seek advice and support from the Trust's HR Provider to determine the appropriate procedure before commencing any case and ensure attendance at relevant meetings/hearings/appeals. Failure to follow the adopted policy could undermine the process.**

The employee has the right to be accompanied by an official of a trade union/professional association, or work colleague. (Please refer to Appendix G – What is the right to be accompanied?)

This disciplinary procedure has been written to conform to the following:

- The School Staffing (England) Regulation 2009
- The School Staffing (England) (Amendment) Regulations 2015
- Equality Act 2010
- Employment Rights Act 1996
- ACAS Code of Practice
- The ACAS Guide – Discipline and Grievance at Work (July 2020)
- The ICO Employment Practices Guide
- The requirements of DfE statutory guidance: Keeping Children Safe in Education (September 2021) and Working together to Safeguard Children (July 2018)
- Sexual Offences Act 2003 (amended by the Sexual Offences Act (Remedial) Order 2012)
- Conditions of Service for School Teachers in England and Wales (Burgundy Book)
- NJC Conditions of Service for Non-Teaching Staff (Green Book)
- Employment Protection (Consolidation) Act 1978
- Any other relevant employment legislation

1. Scope

- 1.1 This procedure shall not be used in cases of employees experiencing issues of capability or grievance. **(Please refer to MMAT's Capability and Grievance Procedures).**
- 1.2 Measures such as medical suspension and dismissal on health grounds are not regarded as disciplinary proceedings and are dealt with separately. **(Please refer to MMAT Management of Attendance Policy)**
- 1.3 Unless otherwise stated, these procedures will apply to all disciplinary proceedings brought against all employees of MMAT. A copy of this procedure shall be made available at the start of the process. The procedure is also available for all employees to access on EVERY.

2. Principles

- 2.1 The employee will be advised of the nature of the allegation by the Headteacher. Where the Headteacher is the subject of the allegation they will be advised by the CEO. Throughout this procedure the Headteacher shall be interpreted as CEO when the Headteacher is the subject of advice or warning.
- 2.2 It is strongly recommended that advice is sought from the Trust's HR provider before instigating an investigation and formal disciplinary action and for those affected to speak to their trade union representative.
- 2.3 At the outset of any formal disciplinary proceedings, it will be important to establish who will undertake the necessary roles and responsibilities as outlined in Appendix A.
- 2.4 Parties concerned should always **try to resolve disciplinary issues informally, which may involve the Headteacher providing the individual with written informal guidance/management advice on their conduct and/or behaviour. (Although this guidance/advice is documented it is not a formal written warning)** Often an informal conversation between employee and manager is all that is required to improve conduct or performance. In some cases, additional support, coaching and advice may be required. **See section 5 for further guidance on Informal Management Advice.**
- 2.8 An independent third party or mediator can sometimes help resolve disciplinary issues. Mediation is a voluntary process whereby the mediator helps two or more people. Any agreement comes from those in dispute, not from the mediator. The mediator is in charge of the process of seeking to resolve the problem but not the outcome.

3. Equal Opportunities Policy

- 3.1 The Trust recognise that the Equality Act 2010 covers the protected characteristics of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex, and sexual orientation.
- 3.2 Under the Equality Act 2010 it is unlawful to discriminate against a disabled person for reasons related to their disability. Disability covers both physical and mental impairments that have a substantial and long-term effect (i.e., has lasted or is expected to last for at least 12 months) on the person's ability to carry out normal day to day activities.
- 3.3 Progressive conditions, such as HIV, cancer, and multiple sclerosis, are considered a disability immediately from the point of diagnosis and do not need to last for a year. However, addictions to non-prescribed substances are specifically excluded. The Trust's Drug and Alcohol policy is available on EVERY for all staff to access.

3.4 Where an employee meets the definition of a disabled person under the Equality Act employers are required to make reasonable adjustments to any elements of the job or to the application of procedures which place a disabled person at a substantial disadvantage compared to non-disabled people. Employers are only required to make adjustments that are reasonable. Factors such as the cost and practicability of making an adjustment and the resources available to the Trust may be relevant in deciding what is reasonable.

3.5 Taking the above into account the Trust may make reasonable adjustments to the disciplinary procedure as outlined below, to ensure equal and fair treatment in the application of this policy.

4. **Gross Misconduct V Misconduct**

When instigating an investigation, a decision needs to be made whether the allegation if substantiated would constitute misconduct or gross misconduct. An allegation must be fully investigated before a decision can be made on whether the allegation is substantiated or not. Allegations during the course of the investigation may also change from Misconduct to Gross Misconduct and vice versa should there be evidence to substantiate this.

4.1 Misconduct

Misconduct is where an employee's behaviour or conduct falls below the standard required by the employer or is in breach of any Trust policy or rule. Although not exclusive or exhaustive, a range of examples of misconduct for which disciplinary action may be taken are:

- Failing to comply with Trust policies, procedures, guidelines or regulations.
- Failure to comply with Health & Safety rules.
- Refusal to comply with reasonable management requests.
- Demonstrating an uncooperative and /or disrespectful attitude towards pupils, parents and colleagues.
- Abuse or misuse of Company property.
- Unauthorised absence.
- Engaging in unnecessary activity which prevents you from fulfilling your role.
- Intoxication or under the influence of drugs.
- Poor time keeping including around breaks.

4.2 Gross Misconduct

Gross Misconduct is generally seen as misconduct serious enough to overturn the contract between the Trust and the employee thus justifying summary dismissal. gross misconduct includes incidents such as theft, physical violence, gross negligence or serious insubordination. Although not exclusive or exhaustive, a range of examples of behaviour which could construe gross misconduct are:

- Stealing
- Sexual misconduct
- Working under the influence of drinks or drugs, other than those that have been medically prescribed.
- Deliberate falsification of documentation
- Criminal conduct
- Breaches of the Trust's equal opportunities including racial and sexual discrimination/harassment policies
- Failure to uphold public trust and maintain high standards of ethics and behaviour within and outside school.
- Serious misuse of the trust's email, internet and other electronic facilities
- Breach of confidentiality
- Fighting or assault on another member of staff, pupil or parent
- Actions which endanger other employees' safety
- Failure to follow safeguarding regulations to protect pupils from harm.

Acts which constitute gross misconduct must be profoundly serious and could lead to dismissal. It is strongly recommended that advice is sought from the Trust's HR provider in the first instance.

5. **Management Advice/Instruction (Informal Resolution)**

The informal approach should be used where formal disciplinary action may be disproportionate to the alleged misconduct. In these instances, the Line Manager/Headteacher (or CEO/Deputy CEO in the case of allegations against the Headteacher) should arrange to meet with the employee to discuss the conduct.

The employee does not have the right to representation at the meeting, however any reasonable request from the employee will be considered. Guidance on conducting this meeting should be sought with the Trust's HR Provider. In this instance the outcome would be an 'advice and guidance' note.

The Line Manager/Headteacher should record a brief note of the conversation and any action points, and ensure a follow up discussion is held after an appropriate period to provide an opportunity for review (where this is required) and where the desired outcomes have been achieved and to encourage a sustained improvement. Additionally, the note should set out expectations and consequences. The employee will receive written confirmation in writing 5 working days after the meeting. The employee will be provided 5 days to review and add any additional comments.

Where this process has not led to the desired outcome, such as in cases of repeated occurrences of minor misconduct, or where the matter is more serious (and this recommended practice is not appropriate) then progression to the formal part of the Policy may be required.

Advice should be sought from the Trust's HR Provider before moving into the investigatory stage of formal procedure.

6. Allegations relating to Safeguarding

6.1 In respect of Safeguarding allegations, in the first instance actions should be taken in accordance with the Trust's Safeguarding Policy which may include referring the case to the Local Authority Designated Officer (LADO). All advice received from the LADO should be followed and all recommended actions should be taken including an appropriate investigation if required. Any investigating officer appointed must seek advice from the LADO. If a Police investigation is to be undertaken or is ongoing, a decision should be made at the position of trust meeting as to whether or not an internal investigation should be initiated, or whether to await the outcome of the police investigation.

7.0 Criminal Offences

7.1 If an employee is suspected of committing a criminal offence at or in connection with their work or otherwise and is charged by Police, suspension of the employee may be appropriate for the protection of the employee or others, or to allow investigations to be conducted more thoroughly. Possible alternatives to suspension should be considered and documented appropriately – see section 9 for further information regarding suspension. If sufficient evidence is not available on which to form a reasonable view on whether or not to hold a disciplinary hearing, action should be deferred until further enquiries have been made or the matter settled by a court.

7.2 However, suspension shall only be appropriate after alternatives have been considered and where it is believed that bringing a criminal charge compromises the employee's ability to continue working in their post during the period of investigation/consideration under the disciplinary procedures. It must be emphasised that the Trust's interest in such a matter is in so far as it relates to the conduct within the Trust. It is for the Court alone to consider the criminality or otherwise of the employee's action.

7.3 All employees should clearly understand the need to maintain appropriate boundaries in their dealings with young people. Intimate or sexual relationships between an employee and a pupil will be regarded as a grave breach of trust. Any sexual activity between an employee and a pupil under 19 years of age and in the case of young people with a statement of special educational needs 24 years of age may be a criminal offence under the Sexual Offences Act 2003 (amended by the Sexual Offences Act (Remedial) Order 2012). The Trust will act in accordance with the advice given by the appropriate authority in regard to criminal convictions and cautions.

7.4 It should be assumed that normally it will be appropriate to await the outcome of the court hearing before any disciplinary investigation commences and disciplinary procedures are followed. However, where a criminal offence is alleged, and following relevant guidance from the LADO and police as appropriate, the disciplinary investigation may commence, and disciplinary procedures may be instigated before the court hearing.

8. Protection of Trade Union Representatives

8.1 Normal disciplinary standards apply to accredited representatives of recognised trade unions/professional associations but no formal disciplinary action other than suspension shall be taken against such an employee until the circumstances of the case have been discussed confidentially and with the employee's knowledge and consent with a senior trade union/professional association representative or a full-time officer of the union/association at regional level.

9. Suspension

9.1 Suspension is a precautionary measure and does not prejudice any disciplinary action that may follow.

9.2 Careful consideration should be given prior to suspension to avoid damaging the trust and confidence between the employee and the Trust. There may be a need to make further enquires and obtain advice prior to suspension, i.e., at a safeguarding meeting. In those exceptional circumstances, it is acceptable to ask the employee to refrain from attending work for a very short and determined period of time during which all parties can seek advice.

9.3 Options constituting alternative to suspension should be carefully considered and documented. This may include the possibility of transferring the employee to any alternative post within the Trust, by mutual agreement as an alternative to suspension.

9.4 All decisions regarding whether or not to suspend should be documented. A sample template to be used for all suspension considerations can be found at appendix K.

9.5 Suspension should only occur if the continued presence of the employee at work may be prejudicial to a fair disciplinary investigation and/or there is evidence that the allegations are serious enough to warrant consideration of dismissal and/or may constitute gross misconduct. Where possible this evidence about the allegation shall be made available to the employee and their representative. Account should be taken of the emotional impact of the suspension process and in certain circumstances arrangements should be made for the employee to be supported, for example to ensure they can return home safely.

- 9.6 The suspended employee will receive full pay and benefits. The CEO or their representative or Headteacher will confirm any suspension in writing to the employee together with the reasons for suspension, including the alternatives to suspension that were considered and why they were not deemed appropriate in the particular circumstances. During a period of suspension, the Initiator should ensure, where possible, that a member of the Senior Leadership Team is allocated to the employee as a point of contact. The employee can contact this designated person at any time during the course of their suspension should they so wish. The employee will also be provided with designated HR support. During a period of suspension, an employee must continue to receive relevant school updates.
- 9.7 Suspension will be reviewed by the Initiator after five weeks. The Initiator will continue to review the suspension at five weekly intervals or as and when it is required, for example as a police investigation progresses, until a resolution is achieved. The outcome of the suspension review(s) will be confirmed in writing to the suspended employee.
- 9.8 A suspended employee can, if they so wish, request access to the school/Trust premises for the purpose of preparing their case. Access will be allowed under supervision. Requests should be submitted in writing to the Headteacher, or the CEO in the case of a Headteacher. Any request should state what type of access they require, for example access to specific rooms and ICT equipment.
- 9.9 Employees who fall sick whilst on suspension should follow the normal absence reporting procedure and normal contractual entitlements to sick pay will apply. The employee will be referred to occupational health as part of the process. Consent from the employee should be gained to make the referral and for the report to be shared. A decision will be made following receipt of the report regarding how best to proceed with the investigation.
- 9.10 When a decision has been made for a suspension to be lifted a meeting should be arranged with the employee to discuss their return to work including an agreement on the communication approach in relation to their absence from work.

10. Investigation

- 10.1 Any allegation of misconduct should be dealt with as a matter of urgency; a full investigation should be conducted **promptly incorporating the principles of natural justice** (in accordance with the guidelines at **Appendix C**). The process should inform the employee of the allegations, the potential outcomes of a disciplinary hearing, provide the employee with the opportunity to respond and **to determine if there is a case to answer**.
- 10.2 The Investigating Officer, who will be suitably trained, should be provided with clear terms of reference outlining the initial allegations that are the focus of the investigation. Where required,

information from the LADO, police, or other sources as relevant may be obtained as part of this process.

10.3 If an employee has a live warning on file at the time of this investigation it will be taken into account. A reference to this should be included in the investigation report.

10.4 No disciplinary action will be taken against an employee until the case has been fully investigated and the decision regarding whether or not to proceed to a formal disciplinary hearing has been made by the Initiator, following consideration of an investigation report.

11. Notetaking

11.1 In order to keep a factual record of any interviews/meetings during the formal disciplinary process, formal notes must be taken at all stages of the investigation and at the disciplinary hearing. The notetaker can be an employee of the Trust or can be provided by the Trust's HR Provider. Notes of meetings are not verbatim but should accurately reflect the content of the meeting and will be provided to both parties. Written notes should be provided within five working days of the meeting.

11.2 Under no circumstances should a meeting be recorded covertly without the explicit consent of all parties involved, and employees may be required to confirm that they understand this and are not making a covert recording. Where it is deemed appropriate by all parties that a recording of the meeting is needed, it should be clearly documented that the consent of all parties was gained for the recording.

12. Procedures to be followed at disciplinary hearings

12.1 Regardless of any potential outcome, all disciplinary hearings arranged under this policy must be heard by a Disciplinary Hearing Panel. This panel will be made up of 3 trustees/directors who have had no prior involvement in any part of the disciplinary procedure pertaining to that employee. The Panel will be accompanied by a HR Representative from the Trust's HR Provider.

12.2 If, upon receipt of the Investigator's report, the Initiator concludes that an employee's conduct is such as to warrant the holding of a formal disciplinary hearing, the Initiator shall convene such a hearing. **The formal notice must be issued to the employee in writing at least five working days before the date of the hearing**, where an employee or their representative is not available on the suggested date or they need more time to prepare, reasonable requests for a change in the date of the hearing will be accommodated. The formal notice must advise the employee of the following:

- (i) that they have the right to be accompanied/represented throughout the procedure by a trade union/professional association official or work colleague;
- (ii) that they will be given the opportunity to challenge any evidence presented and to state their case;
- (iii) that a copy of the Investigation Report, accompanied by witness statements is to be provided, (including a statement of truth at the end of each witness statement, which states that the party believes the facts stated to be true and accurate). In the case of children, these statements will be made anonymous. For the purposes of the operation of these procedures, confidentiality must be very strictly respected, and information limited to those who have a need to know;
- (iv) the details of any witness the Presenting Officer intends to call;
- (v) that they have the right to call witnesses, subject to the Initiator being advised of their intention to do so **no later than two working days' notice prior to the hearing;**
- (vi) that they have the right to submit documentary evidence subject to the initiator being provided with such documentation **no later than two working days prior to the hearing** Dependent on the size and type of the documentary evidence it may not be possible for late submissions of evidence to be accepted. If the employee requires more time to prepare for the appeal hearing, then they can make a request to reschedule the meeting within a reasonable time frame.
- (vii) that they are informed, in the formal notice, of the potential outcomes of the hearing by referencing all of the potential outcomes as seen in paragraph 12.4 below

All parties should note, that if documentation is extensive then every effort should be made to give enough time for all parties to be able to read and take on board the information.

12.3 The disciplinary hearing shall be conducted in accordance with the procedure detailed at **Appendix D.**

12.4 At the conclusion of the hearing, the following courses of action are open to the Disciplinary Hearing Panel to take:

- (i) No Action or the following sanctions:
 - (ii) Formal Management Advice
 - (iii) 6 month Written Warning
 - (iv) 12 month Written Warning
 - (v) Final Written Warning (2 years)
 - (vi) Dismissal
- } Further details are given below

In awarding formal sanctions under this procedure, it must be noted that the process is cumulative. If the employee has a live warning currently on file, any further sanction issued will be escalated. Expired warnings should not be referred to if they are not related to the current issue.

12.4.1 No Action

Where the Disciplinary Hearing Panel considers that the allegation is unfounded, it will take no action and will be removed from the employee's personnel file.

12.4.2 Formal Management Advice

The Disciplinary Hearing Panel can arrange to give appropriate advice for the purpose of improving the future conduct of that employee. The advice given will be confirmed in writing to the employee. The written formal guidance/advice should be removed from the individual's file following a successful designated monitoring period. Managers should refer to advice relating to GDPR to ensure that they are compliant.

12.4.3 Six Month Written Warning

Where the Disciplinary Hearing Panel is satisfied that the allegation is founded, then they may give a Six Month Written Warning to the employee concerned. The record of this warning will be retained on the employee's personal file. All records of the Six Month Written Warning, which constitutes the first formal stage of the disciplinary procedure, shall be expunged after a period of six months' satisfactory conduct (the only exception to this is covered in paragraph 12.10. Safeguarding Allegations). Conduct will not be deemed to have been satisfactory if a further warning relating to the original misconduct is given within the six-month period.

12.4.4 Twelve Month Written Warning

Where a Six Month Written Warning appears not to have had the desired effect, and is still current on file, a Twelve Month Written Warning may be issued by the Hearing Panel. All records of the Twelve Month Written Warning shall be expunged after a period of one year's satisfactory conduct (see exception in paragraph 12.10 Safeguarding Allegations). Conduct will not be deemed to have been satisfactory if a further warning relating to the original misconduct is given within the one-year period.

12.4.5 Final Written Warning (Two Years)

A Final Written Warning (Two years) may be issued after more than one Six Month Written Warning or Twelve Month Written Warning appears not have had the desired effect, and is still live on file, or for serious incidents of misconduct where misconduct is regarded as being sufficiently serious to issue one Final Written Warning (Two years) whether or not any disciplinary action has previously been taken. All records of the Final Written Warning (Two years) shall be expunged after a period of two year's satisfactory conduct (see exception in paragraph 12.10 Safeguarding Allegations). Conduct will not be deemed to have been satisfactory if a further warning relating to the original misconduct is given within the two-year period.

12.4.6 Final Written Warning (Two years) and Demotion

In addition to the Final Written Warning (Two years), in certain circumstances Hearing Panel may consider demotion as an alternative to dismissal.

12.4.7 Dismissal

If there is a reason for further serious concern after an unexpired final written warning or where it is alleged that misconduct has occurred of such gravity that, if proven, the employee might properly be dismissed, at the conclusion of the hearing, the decision of the Disciplinary Hearing Panel shall be one of the following:

- (a) to exonerate the employee and direct that all reference to the matter in question be removed from their personal file;
- (b) to find that the alleged breach of discipline is proven in whole or in part and
- (c) to resolve that no action be taken; or

Issue one or more of the following sanctions:

- (i) issue a warning; or
- (ii) as an alternative to dismissal or other formal sanctions, and only with agreement of the employee, the employee may be demoted from their current post to another lower graded post. If no agreement can be made, then the employee would be dismissed. There would be no protection of pay and for those to whom probationary periods apply (i.e., support staff but not teaching staff), a probationary period of six months would be applied. This would require a resolution in accordance with (v) below, and a further recommendation offering the employee the alternative post immediately following the termination of their existing post; or
- (iii) that the employee should cease work at the school or establishment and be dismissed from their post with appropriate period of notice in accordance with the contract or the minimum prescribed in employment legislation;
- (iv) SUMMARY DISMISSAL will take place if there is a breach of disciplinary rules which is so serious as to be considered GROSS MISCONDUCT (i.e., between the employer and employee and make any further working relationship and trust impossible). If this is the case, the Dismissal will occur without notice.

12.5 Suspended Employees

Where an employee is under suspension and the Disciplinary Hearing Panel resolves to take no action or issue a further warning the suspension shall be lifted with effect from the day following

the making of that decision or as soon as practicable thereafter. When a decision has been made for a suspension to be lifted a meeting should be arranged with the employee to discuss their return to work including an agreement on the communication approach in relation to their absence from work.

12.6 Recording Warning Outcomes

All warning outcomes will be confirmed in writing five working days after the meeting and shall include:

- (i) a statement of the allegation against the employee;
- (ii) details of the improvement in conduct which is expected along with any advice or instruction to the employee as to how this may be achieved and the timescale within which the improvement is required;
- (iii) the likely consequence of further misconduct;
- (iv) the right of appeal.

12.7 Retention of Disciplinary Warnings

A disciplinary warning will be considered live for the timescales specified above. Once the warning has expired a record of the warning will remain on file as a record of the commission of misconduct in the mind of both the employer and employee. The record of the warning will remain on file for the duration of the employee's employment and for 6 years post-employment.

12.8 Recording Dismissal Outcomes

The dismissal decision of the Disciplinary Hearing Panel shall be given to the employee in writing within five working days of the meeting and should include:

- i) The reason for the dismissal and a summary of what the employee has been told about the decision to dismiss
- ii) Details of the contract end date and any notice period or pay in lieu of notice
- iii) The right of appeal

12.9 Retention of Dismissal Outcomes

The record of the dismissal will remain on file for 6 years post-employment.

12.10 For allegations related to safeguarding, the record of the warning will remain on file until the employee's normal retirement age or 10 years from the date of the allegation (whichever is longer) in line with Keeping Children Safe in Education September 2021.

13. Safeguarding records of allegations

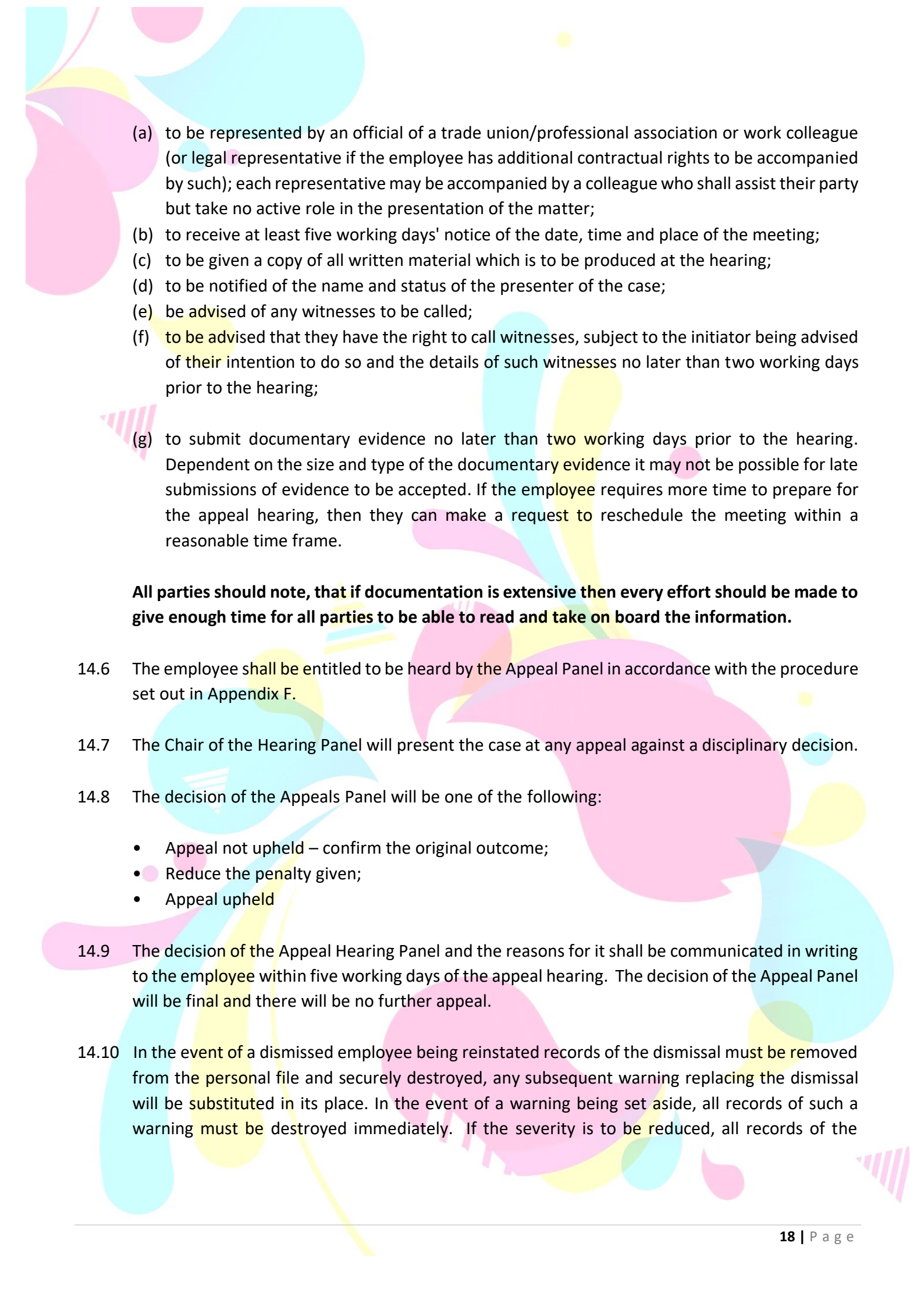
- 13.1 Details of allegations that are found to have been malicious should be removed from personnel records. However, for all other allegations, the Trust will keep a clear and comprehensive summary of any allegations made, details of how the allegation was followed up and resolved, and details of any action taken and decisions reached, on the employee's personnel file. As referred to in section 13.3.10, such information should be retained on file, including for people who leave the organisation, at least until the person reaches normal retirement age or for 10 years if that will be longer.
- 13.2 The purpose of the record is to enable accurate information to be given in response to any future request for a reference. It will provide clarification in cases where a future DBS reveals information from the police that an allegation was made but did not result in a prosecution or a conviction. It will prevent unnecessary re-investigation if, as sometimes happens, allegations re-surface after a period of time.

14. Rights of Appeal

- 14.1 An employee may appeal against any formal disciplinary action including dismissal, by giving notice in writing within ten working days of receipt of the written decision made following the Disciplinary Hearing. Details of who the employee should send the appeal to will be outlined in the decision outcome letter. An appeal hearing will be arranged with an Appeal Hearing Panel as soon as practicable (and normally within fifteen working days). All parties will be of the date, time and venue of the hearing at least five working days beforehand.
- 14.2 In lodging an appeal the employee should specify the grounds of appeal. Grounds for appeal should be one of the following:
- The disciplinary outcome is too severe, stating the reasons;
 - Any part of the disciplinary procedure was wrong or unfair, specifically stating how;
 - The dismissal is for an unfair reason, stating reasons;
 - There is new evidence to show, stating the nature of the evidence.

The appeal will not be a re-hearing but will be concerned with the grounds of appeal which should be set out in the letter from the employee. ACAS guidance appealing a disciplinary outcome can be found here. [Appealing a disciplinary or grievance outcome - Acas](#)

- 14.3 The Appeal Hearing Panel will be made up of 3 trustees/directors who have had no prior involvement in any part of the disciplinary procedure pertaining to that employee. The Panel will be accompanied by a HR Representative from the Trust's HR Provider.
- 14.5 An employee subject to the appeal procedure will have the right:

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- (a) to be represented by an official of a trade union/professional association or work colleague (or legal representative if the employee has additional contractual rights to be accompanied by such); each representative may be accompanied by a colleague who shall assist their party but take no active role in the presentation of the matter;
 - (b) to receive at least five working days' notice of the date, time and place of the meeting;
 - (c) to be given a copy of all written material which is to be produced at the hearing;
 - (d) to be notified of the name and status of the presenter of the case;
 - (e) be advised of any witnesses to be called;
 - (f) to be advised that they have the right to call witnesses, subject to the initiator being advised of their intention to do so and the details of such witnesses no later than two working days prior to the hearing;
 - (g) to submit documentary evidence no later than two working days prior to the hearing. Dependent on the size and type of the documentary evidence it may not be possible for late submissions of evidence to be accepted. If the employee requires more time to prepare for the appeal hearing, then they can make a request to reschedule the meeting within a reasonable time frame.

All parties should note, that if documentation is extensive then every effort should be made to give enough time for all parties to be able to read and take on board the information.

- 14.6 The employee shall be entitled to be heard by the Appeal Panel in accordance with the procedure set out in Appendix F.
- 14.7 The Chair of the Hearing Panel will present the case at any appeal against a disciplinary decision.
- 14.8 The decision of the Appeals Panel will be one of the following:
 - Appeal not upheld – confirm the original outcome;
 - Reduce the penalty given;
 - Appeal upheld
- 14.9 The decision of the Appeal Hearing Panel and the reasons for it shall be communicated in writing to the employee within five working days of the appeal hearing. The decision of the Appeal Panel will be final and there will be no further appeal.
- 14.10 In the event of a dismissed employee being reinstated records of the dismissal must be removed from the personal file and securely destroyed, any subsequent warning replacing the dismissal will be substituted in its place. In the event of a warning being set aside, all records of such a warning must be destroyed immediately. If the severity is to be reduced, all records of the

original warning must be destroyed, and appropriate documentation produced in accordance with the decision of the Panel.

15. Non-Attendance

- 15.1 All parties and their representatives should make every effort to attend any meeting/hearing during this process. If the employee does not attend but has a genuine reason the meeting/hearing may be adjourned and rearranged for a later date. Unless there are exceptional circumstances only one adjournment will be allowed, however all reasonable attempts to accommodate the employee's attendance should be made.
- 15.2 If there is an indication in advance of the meeting/hearing that the employee cannot attend for medical reasons, then a referral to the school's Occupational Health Provider can be undertaken to ascertain if they are fit to attend.
- 15.3 Where all reasonable attempts to engage the employee in attendance at the hearing have been made and where the employee does not attend and no explanation is provided, or the explanation given is deemed by the Chair of the Panel to be unacceptable, the meeting/hearing will be held in the absence of the employee.
- 15.4 Where the employee chooses not to attend the meeting/hearing and/or chooses not to submit any further information or provide a written statement the panel's decision will be made based on the information available.

16. Statutory Regulatory Authorities

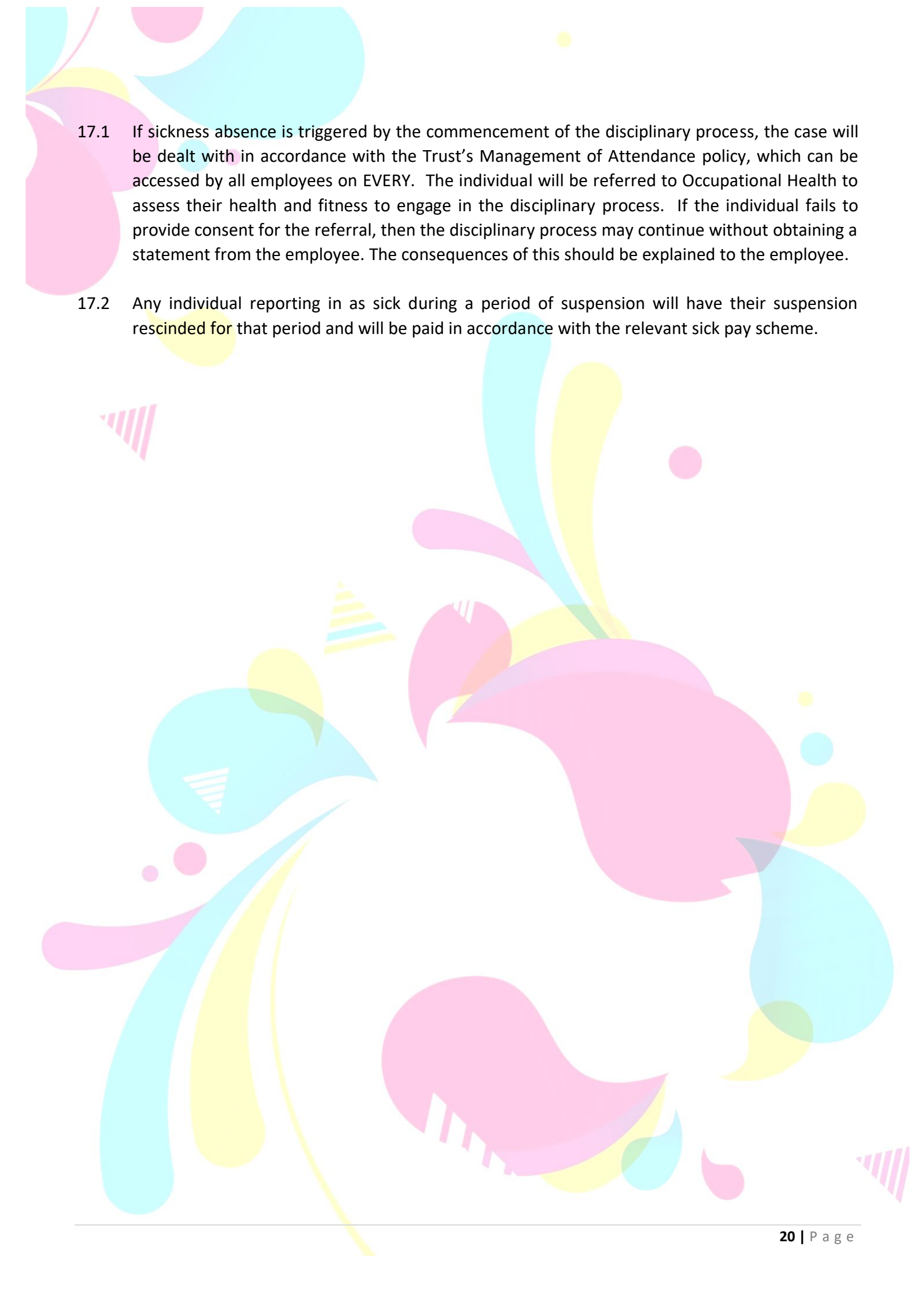
- 16.1 Where an allegation is substantiated, it may be necessary to make a referral to the appropriate Statutory Regulatory Authority.
- 16.2 It is a legal requirement to refer cases to the Disclosure and Barring Service (DBS) in cases where it is thought that an individual has engaged in conduct that harmed (or is likely to harm) a child or if a person otherwise poses a risk of harm to a child.

In such circumstances, the duty to refer an individual to the DBS arises where:

- An employer has removed the individual from relevant work with children;
- the employee has ceased to work in circumstances where they would have been removed had they not done so.

- 16.3 Professional gross misconduct cases should be referred to the relevant regulatory body e.g. The Teaching Regulation Agency (TRA).

17. Absence during Disciplinary Action

- 
- 17.1 If sickness absence is triggered by the commencement of the disciplinary process, the case will be dealt with in accordance with the Trust's Management of Attendance policy, which can be accessed by all employees on EVERY. The individual will be referred to Occupational Health to assess their health and fitness to engage in the disciplinary process. If the individual fails to provide consent for the referral, then the disciplinary process may continue without obtaining a statement from the employee. The consequences of this should be explained to the employee.
- 17.2 Any individual reporting in as sick during a period of suspension will have their suspension rescinded for that period and will be paid in accordance with the relevant sick pay scheme.

Roles and Responsibilities

Establishing Roles

1. At the outset of any formal disciplinary proceeding, it will be important to establish who will undertake the necessary roles and responsibilities.
2. The Trust has made the decision that although sections 35 and 36 of the Education Act 2002 and the School Staffing (England) Regulations 2015 give Governing Boards the right to delegate initial staff dismissal decisions (with the exception of Headteacher dismissals) to the Headteacher that all Disciplinary Hearings regardless of the potential outcome are heard by a Disciplinary Hearing Panel. (See Appendix X)
3. Natural Justice is an umbrella term for the legal standards of basic fairness. All Parties must ensure that all aspects of the case are considered in a fair and unbiased way.

The Role of the Initiator

1. The Initiator is the appointed person who commences and manages the case throughout the procedure. This may be a member of the senior leadership team, the Deputy CEO, CEO or a Trustee/Director. The initiator must hold a role within the Trust of either an equal or higher seniority than the employee who is the subject of the investigation.
2. The Initiator, after full consideration, will decide whether to proceed with an investigation or not.
3. The Initiator will agree the scope and Terms of Reference of the investigation with the Investigating Officer from the outset of the investigation (Appendix H).
4. The Initiator will arrange an initial meeting with the Investigating Officer in order to provide a detailed overview of the matter to be investigated. The meeting should help to form clear terms of reference, identify the policy or procedure allegedly breached, identify known witnesses and supply documentary and/or physical evidence in support of allegations where appropriate.
5. The Terms of Reference will be reviewed and may be revised during the investigation process. When a revision of the Terms of Reference is required, the Initiator will liaise with the Investigating Officer.
6. The Initiator will consider the report produced by an Investigating Officer and make a decision regarding the next stage. This will depend on whether there is a case to answer or not.
7. If there is a case to answer, the Initiator will decide whether or not to proceed to a Disciplinary Hearing. If the decision is to proceed, a Presenting Officer will be appointed. The Presenting Officer could be the Initiator, the Investigating Officer or a third party.

8. In cases where the Initiator, is identified as a witness as a result of the disciplinary investigation, the role of Initiator will be transferred to another person, such as a member of the senior leadership team, the Deputy CEO, CEO or a Trustee/Director. If there is a case to answer, this person will be responsible for deciding whether or not to proceed to a Disciplinary Hearing.

The Role of the Investigating Officer (includes external consultant)

1. The Investigating Officer is appointed by the Initiator and should hold a role withing the Trust with appropriate seniority to the employee involved, and should be someone who has not had any prior involvement in the matter. In some circumstances, the Initiator may wish to commission an external consultant to carry out an investigation. Anyone appointed as an Investigating Officer should be appropriately trained and experienced and should follow the Trust's Disciplinary Procedure.
2. The Investigating Officer will, at the outset, attend a meeting arranged by the Initiator to discuss the scope and Terms of Reference (Appendix H) of the investigation.
3. The Investigating Officer will carry out an investigation into the allegations. They will consider all of the available evidence, both written and oral, and produce a written factual report for the Initiator. The Investigating Officer will, if necessary, interview witnesses and others in order to produce a balanced report that can lead to a fair judgement. During this process there may be a need to review the Terms of Reference.
3. The Investigating Officer has an obligation to obtain reliable, corroborated evidence.
4. The Investigating Officer should make it clear to Witnesses that should the case proceed to hearing their statement will form part of the disciplinary hearing pack and will be shared with the subject of the allegations. If the witness requests anonymity the Investigating Officer should explain that whilst statements can be anonymised, there cannot be a guarantee of anonymity as the content of the statement may make the identity of the witness obvious to the subject of the allegation.
5. It may be necessary to interview parents or other members of the public, the police, children or vulnerable clients and members from the Audit team for example. In such cases advice should be sought from the Trust's HR Provider.
6. Where it is necessary to interview children, parental consent must first be obtained. When investigating allegations of child abuse the Investigating Officer should be informed of the outcome of any child protection strategy meetings in order that any recommendations made can be taken into account in the disciplinary investigation. The Investigating Officer should ensure that any enquiries are not open to subsequent charges of collusion.
7. The Investigating Officer will conclude their report (Appendix J) and confirm whether or not there is sufficient evidence, on the 'balance of probabilities', to support the allegations.

8. When concluding their report (Appendix J), the Investigating Officer can make recommendations for the Initiator to consider, based on all evidence collected.
9. The Investigating Officer must not take a view about whether a disciplinary hearing is appropriate or whether a disciplinary sanction is justified. The decision to proceed to a disciplinary hearing is made by the Initiator. Any sanction applied will be the responsibility of the Disciplinary Hearing Panel.
10. The Investigating Officer may present the findings of the investigation alongside the Presenting Officer at a disciplinary hearing.
11. Model letters and templates are available from the Trust's HR Provider.

The Role of the Presenting Officer

1. The Presenting Officer (and the Investigating Officer, where necessary) present the case and evidence gathered to a Disciplinary Committee and answers any questions on points of information.
2. The Presenting Officer may call witnesses as they deem appropriate. Where the Investigating Officer is not presenting the findings of the investigation, the Investigating Officer can be called upon as a witness.
3. The Presenting Officer will summarise the main points of the case.

The Role of the Trust Board

1. The Trust Board has overall responsibility for disciplinary matters within the school and has the power to delegate the responsibility for disciplinary action and dismissals to a panel of Trustees/Directors. In all disciplinary cases that are referred to a hearing, the hearing will be heard by a hearing panel, made up of three Trustees/Directors who have had no prior involvement in the case.
2. Where the Headteacher has had no prior involvement in the case, the hearing panel may ask the Headteacher to attend the meeting to offer advice.
3. All appeals will be heard by a Hearing Appeals Panel
4. Any Trustee who has been involved in a particular action taken or who is called as a witness, or is in any material way an interested party, should not participate as a member of the panel in a Disciplinary Hearing.

The Role of Witnesses (See also Appendix C)

1. If children (of compulsory school age) are witnesses advice should be taken from the Schools' Trust's HR Provider.
2. In the case of children, these statements will be made anonymous. Where children are witnesses, they should be afforded all the protection as in a court of law.
3. Witnesses must ensure that the information given is true and accurate and in no way malicious. Witnesses must also ensure that when providing their evidence, they give a first-hand account of any incidents that they have witnessed, and that information given is not third hand information or hearsay.
4. Witnesses must be informed that they may be called to give evidence at any subsequent hearing. If the subject of disciplinary action specifically wants to question any witnesses at any subsequent hearing or call their own relevant witnesses to a disciplinary hearing, then the employee should notify their Trade Union Representative, or the Trust in cases where they are not a member of a recognised Trade Union/Professional Association.
5. Witnesses will be invited to sign their statement confirming that they believe the facts written in the witness statement to be true and accurate. In signing the statement, the witness is also agreeing that they may be called as a witness in any subsequent hearing (see Appendix I – Statement Format).

Guidance on Conducting an Investigation

(Model letters and templates are available from the Trust's HR Provider)

1 Introduction

- 1.1 The aim of an investigation is to obtain, as far as possible, a fair and balanced picture through a written record. The aim is not to prove or disprove an allegation. The investigation is a fact finding exercise and is preliminary to considering the appropriateness or not of disciplinary action.
- 1.2 Evidence compiled in the investigation must be made available to the participants involved in the process in any subsequent disciplinary proceedings and those giving evidence as part of the investigation should be so informed. Parents making allegations should be interviewed to record their allegation in the form of signed and dated statements. They should be informed that their statements may be used in subsequent disciplinary action and that they should assume that they will be called to give evidence at any subsequent disciplinary hearing. (see also 3.4 below)

2 Preliminary Stages

- 4.1 The Investigator should seek specialist advice as necessary, for example, from the Trust's HR provider, and should familiarise themselves with any relevant procedures and guidelines.
- 2.2 The Investigator should:
 - (a) define areas to be investigated using the terms of reference (Appendix H);
 - (b) draw up a provisional list of those to be interviewed and a list of topics to be discussed, extended as required during the investigation;
 - (c) check corroborative evidence;
 - (d) assess the credibility of the person making the allegation.

3 The Investigation Process

- 3.1 The employee would normally be advised promptly of the following:
 - (a) the allegation against them;
 - (b) that they have the right to be accompanied/represented throughout the procedure by a work colleague who may be a professional association/ trade union official.
- 3.2 The investigation interview(s) should be carried out as soon as practicably possible. Delays should be kept to a minimum.
- 3.3 It may be necessary to interview an individual more than once, if so additional wellbeing support may need to be provided.

- 3.4 There will be a requirement that witnesses must sign to state that:
- (a) their statement/notes of interview(s) is/are a factual account;
 - (b) their statement/notes of interview(s) may be released to authorised parties associated with the said investigation;
 - (c) they understand they may be called to give evidence at any subsequent hearing.
- 3.5 If necessary, the investigator should have access to assistance to record the interview.
- 3.6 It should be determined whether the services of an interpreter and/or any other reasonable adjustments are required.
- 3.7 A suitable venue and time should be selected to encourage co-operation and the entitlement to be accompanied/represented by a work colleague who may be a professional association/trade union representative should be offered.
- 3.8 Subject to the caveats given in the introduction a general explanation of the purpose of the investigation should be provided at the beginning of the interview.

4 Interviewing the employee who is the subject of an allegation

- 3.1 The point at which this occurs will depend upon the nature of the allegation and the investigation process.
- 3.2 If not advised previously, the employee must be advised of the allegation against them and strongly advised of their rights under the Trust's disciplinary procedure, including the right to be accompanied/represented by a work colleague who may be a trade union/professional association official at a subsequent meeting which shall be convened normally within five school working days.
- 4.3 At this subsequent meeting, the employee should be invited to respond and to make a statement. The employee has the right to:
- (a) respond; or
 - (b) decline to respond; or
 - (c) to request a further period in which to respond in order to provide more detailed information to the investigator. Such a request will not be unreasonably refused.
- 4.4 Full notes should be taken of the interview and the employee invited to read and sign them as a true record after the interview. A copy of the notes will be given to the employee. It is the view of the employee that must be recorded.
- 4.5 The employee should be invited to identify any persons who have information relevant to the investigation. These names may be added to the list of those to be interviewed.
- 4.6 If, during the course of the investigation, further allegations are uncovered which may or may not enlarge the original investigation, the employee must normally be informed immediately

- 4.7 Dependent upon the nature of any further allegation, a decision will be made by the initiator in consultation with the investigating officer as to whether these can be considered in the context of the original investigation, or whether it would be appropriate to commission a separate investigation.

5 Compiling a Report

- 5.1 Once all the relevant persons have been interviewed and all the relevant issues have been explored, the investigation is complete. The findings and conclusions of the investigation should then be compiled into an investigation report (See Appendix J). Any evidence will be attached as appendices.
- 5.2 The investigating officer submits their report to the initiator in line with Appendix A – roles and responsibilities (role of investigating officer)

6 Subsequent Action

- 6.1 The Investigator's report will be forwarded to the Initiator who will make a decision on whether further action should be taken i.e., whether or not to proceed to a Disciplinary Hearing.
- 6.2 If the decision is to proceed to a hearing, it should, where possible, be held within 15 working days.

7 Involvement of Pupils in the Investigation

- 7.1 The Investigating Officer reserves the right to determine whether it is appropriate for a pupil to be interviewed as part of the investigative procedures. Determination of this right will be based upon an assessment of the best interests of the pupil.
- 7.2 The pupil's age and any special educational needs must be taken into account with specialist advice sought if deemed appropriate.
- 7.3 Initially, following an allegation a pupil may be interviewed at the start of the procedure as laid down in appendix A – roles and responsibilities.
- 7.4 Any pupil may only be interviewed formally by the Investigating Officer with the approval of their parent or guardian who shall also be entitled to be present at the interview.
- 7.5 Where a child of any age has contributed to the investigation process (as given above), it is not expected that they will be called as a witness at any subsequent disciplinary hearing concerning the allegation.

Procedures to be followed at a disciplinary hearing

1 Preliminary Matters

- 1.1 Any Trustee/Director who has been involved in a particular action taken or who is called as a witness, or is in any material way an interested party, shall not participate as a member of the panel in the proceedings.
- 1.2 The meeting shall take place in private session and all parties shall be reminded that proceedings are confidential. In these circumstances, "confidential" does not inhibit the parties concerned seeking further information/evidence for the purpose of preparing for an appeal.
- 1.3 The subject and presenter shall have the right to call witnesses and all participants shall have the right to be accompanied/represented by a work colleague who may be a trade union/professional association official.
- 1.4 It should be established whether the services of an interpreter and/or any other reasonable adjustments are required.
- 1.5 Facilities shall be provided for each side to meet separately.
- 1.6 Parties should be aware of external demands made on witnesses and take care to advise their witnesses of developments and timescales, etc.

2 Outline of determination of procedures to be followed

- 2.1 It shall be confirmed that the preliminary matters in paragraph 1 above have been carried out.
- 2.2 At the commencement of the meeting a procedure shall be agreed which it is suggested should follow the format set out below.
- 2.3 The witnesses shall be instructed not to discuss the matter outside the hearing and advised at which point they may no longer be required. Witnesses will only be present in the hearing when giving evidence or being questioned.
- 2.4 The parties to the matter, with their representatives, if any, should be invited into the meeting (notice must be issued to the employee in writing at least five working days before the date of the hearing).

3 Opening remarks by the Chair of the Hearing Panel

- 3.1 Introducing those present at hearing.
- 3.2 Advising that an adjournment may be requested at any time during the hearing.

3.3 Outlining the procedure to be followed.

3.4 Outlining the reason(s) for calling the disciplinary hearing.

4 The Procedure

4.1 The Case against the Employee

4.1.1 The Presenting Officer (can be the Investigating Officer) will present the case against the employee, including supporting evidence to corroborate the findings.

4.1.2 The subject or their representative and Members of the Panel may question the presenter of the case on any evidence which has been given.

4.1.3 The presenter may then call and question the first witness.

4.1.4 The subject of the action and/or their representative may then question the witness. Members of the Panel may also ask questions of the witness on the evidence presented. The witness then withdraws.

4.1.5 Subsequent witnesses may then be called and treated in the same manner. In the light of evidence presented further questions may be asked of the presenter.

4.1.6 In exceptional circumstances, witnesses may be recalled.

4.2 The Case for the Employee

4.2.1 The employee and/or their representative (work colleague/trade union/professional association official) present their case including any evidence they may wish to offer.

4.2.2 The presenter/Members of the Panel may question the subject of the case or their representative on any evidence which they have given.

4.2.3 The subject may then call and question the first witness.

4.2.4 The presenter of the action may then question the witness. Members of the Panel may also ask questions of the witness on the evidence presented. The witness then withdraws.

4.2.5 Subsequent witnesses may then be called and treated in the same manner. In the light of evidence presented further questions may be asked of the subject.

4.2.6 In exceptional circumstances witnesses may be recalled.

4.3 Closing statements which shall not include new material will be made by:

- (i) the presenter;
- (ii) the subject.

4.4 The Decision

4.4.1 All parties will then withdraw. The Panel will consider the evidence presented to determine the facts of the case. The Panel may seek the advice of the HR Representative supporting the panel on questions of law and procedures only. Should the Panel decide to recall either side to clarify any points, then both parties will be invited to return for that clarification.

4.4.2 At the end of the hearing having reached a decision the Chair of the Panel will, if practicable, endeavour to inform all parties of their decision. In the case of longer deliberation being necessary the panel will endeavour to inform all parties as soon as practicable

4.4.3 This decision will be confirmed in writing to all parties by the Chair of the Panel within five working days.

4.5 Possible sanctions against Employees (other than Headteachers)

Stages	Action	By	Appeal
1	Informal Management Advice	Headteacher/Line Manager	None
2	Formal Management Advice	Hearing Panel	Appeal Panel
3	Formal Written Warning (6 or 12 months)	Hearing Panel	Appeal Panel
4	Formal Final Written Warning	Hearing Panel	Appeal Panel
5	Dismissal	Hearing Panel	Appeal Panel

4.6 Possible sanctions against Headteachers or Equivalent

Stages	Action	By	Appeal
1	Informal Management Advice	Deputy CEO/CEO	None
2	Formal Management Advice	Hearing Panel	Appeal Panel
3	Formal Written Warning (6 or 12 months)	Hearing Panel	Appeal Panel
4	Formal Final Written Warning	Hearing Panel	Appeal Panel
5	Dismissal	Hearing Panel	Appeal Panel

4.7 Possible sanctions against Deputy CEO/CEO

Stages	Action	By	Appeal
1	Informal Management Advice	Chair of the Trust	None

		Board	
2	Formal Management Advice	Hearing Panel	Appeal Panel
3	Formal Written Warning (6 or 12 months)	Hearing Panel	Appeal Panel
4	Formal Final Written Warning	Hearing Panel	Appeal Panel
5	Dismissal	Hearing Panel	Appeal Panel

Composition of a Hearing Panel or Appeal Panel

- 1 The Hearing Panel and Appeal Panel shall include three members of the Trust Board Hearing and Appeal Panels should consist of three Trustees/Directors who have had no previous involvement in the case.
- 2 Where an Appeal Panel is considering an appeal against a decision of the Hearing Panel, no member of the Hearing Panel whose decision is subject to appeal shall take part in the proceedings of the Appeal Panel.
- 3 In exceptional circumstances where capacity is an issue, the Hearing Panel or Appeal Panel may involve external Trustees/Directors. The Chair of the panel must be a member of the Trust Board and will be responsible for the ultimate decision and recommendations in consultation with the rest of the panel.

Procedures to be followed at an Appeal Hearing

1 Preliminary Matters

- 1.1 Any member of the Appeal Panel who has been involved in the particular action taken, or who is to be called as a witness, or who is in any material way an interested party, shall not participate in the proceedings.
- 1.2 The meeting shall take place in private session and all parties shall be reminded that proceedings are confidential.
- 1.3 The subject and presenter shall have the right to call witnesses and all participants shall have the right to be accompanied by a work colleague who may be a Trade Union /Professional Association Official. (Legal representation is clarified under appendix G)
- 1.4 It should be established whether the services of an interpreter and/or any other reasonable adjustments are required.
- 1.5 Facilities shall be provided for each side to meet separately.

2 Outline of Procedure to be followed

- 2.1 The Chair of the Panel shall confirm that the Panel is correctly constituted and that the preliminary matters in paragraph 1 above have been carried out.
- 2.2 The Panel shall, at the commencement of the meeting, agree a procedure which it is suggested should follow the format set out below.
- 2.3 The witnesses shall be instructed not to discuss the matter outside the hearing and advised at which point they may no longer be required. Witnesses will only be present in the hearing when giving evidence or being questioned.
- 2.4 The parties to the matter, with their representatives, if any, should be invited into the meeting. (notice must be issued to the employee in writing at least five ~~school~~ working days before the date of the hearing)

3 Opening Remarks by Chair of the Panel

- 3.1 Introducing those present at appeal
- 3.2 Advising that an adjournment may be requested at any time during the appeal.
- 3.3 Outlining the reason(s) for calling the hearing.
- 3.4 Advising in the case of an appeal that the Committee is not considering all of the original facts

of the case concerning the original decision made by the formal disciplinary hearing/staff dismissal committee. But is considering only the grounds for appeal.

4 The Procedure

Note: *In the case of an appeal hearing the appellant makes the first presentation.*

4.1 The case for the Employee

4.1.1 The employee and/or their representative (work colleague/trade union/professional association official) present their case including any evidence they may wish to offer.

4.1.2 The presenter and members of the Panel may question the subject of the case or their representative on any evidence which they have given.

4.1.3 The subject may then call and question the first witness.

4.1.4 The presenter of the action and any member of the Panel may also ask questions of the witness on the evidence presented. The witness then withdraws.

4.1.5 Subsequent witnesses may then be called and treated in the same manner. In the light of evidence presented further questions may be asked of the subject.

4.1.6 In exceptional circumstances witnesses may be recalled.

4.2 The case Against the Employee

4.2.1 The Presenting Officer (Chair of the original hearing panel) presents the case including any evidence they may wish to offer.

4.2.2 The subject or their representative and members of the Panel may question the presenter of the case on any evidence which they have given.

4.2.3 The presenter may then call and question the first witness.

4.2.4 The subject of the action and/or any member of the Panel may also ask questions of the witnesses on the evidence presented. The witness then withdraws.

4.2.5 Subsequent witnesses may be called and treated in the same manner. In the light of evidence presented further questions may be asked of the presenter.

4.2.6 In exceptional circumstances, witnesses may be recalled.

4.2.7 Closing statements which shall not include new material will be made by

- (i) the subject or their representative.
- (ii) the presenter

4.3 The Decision

- 4.3.1 All parties will then withdraw. The Panel will consider the matter to determine the facts of the case. They may seek the advice of the HR Representative supporting the Panel on questions of law and procedures only. If the Panel decides to recall either side to clarify any points, then both parties will be invited to return for that clarification.
- 4.3.2 The Panel shall reach a decision and inform all parties.
- 4.3.3 This decision will be confirmed in writing to all parties by the Chair of the Panel within five working days.

What is the right to be accompanied?

1. What is the right to be accompanied?

1. When does the right apply?

1.1 Employees have the right to be accompanied at meetings that could result in:

- a formal warning being issued to a worker (i.e., a warning that will be placed on the worker's record);
- the taking of some other disciplinary action (such as suspension without pay, demotion or dismissal) or other action; or
- the confirmation of a warning or some other disciplinary action (such as an appeal hearing).

1.2 Informal discussions, counselling sessions or investigatory meetings do not attract the right to be accompanied, however, the Trust will offer the employee the option of accompaniment if they wish. Meetings to investigate an issue are not disciplinary meetings. If it becomes apparent that formal disciplinary action may be needed, then this should be dealt with at a formal meeting at which the employee will have the statutory right to be accompanied.

2. What is a reasonable request?

2.1 Whether a request to be accompanied is reasonable will depend on the circumstances of the individual case and, ultimately, it is a matter for the courts and tribunals to decide. The request to be accompanied does not have to be in writing.

2.2 The choice of companion cannot be refused on the grounds that the choice is not a reasonable one — for example, it would be prejudicial to the hearing. It is only the request to be accompanied that needs to be reasonable.

3. The companion

3.1 Workers have the right to be accompanied at these hearings by any companion as long as they are:

- a colleague (another employee of Manor Multi Academy Trust)
- an official employed by a trade union
- a workplace trade union representative, as long as they have been reasonably certified in writing by their union as having experience of, or having received training in, acting as a

worker's companion at disciplinary or grievance hearings. Certification may take the form of a card or letter.

- 3.2 Some workers may, however, have additional contractual rights to be accompanied by persons other than those listed above (for instance a partner, spouse or legal representative).
- 3.3 Reasonable adjustment may be needed for a worker with a disability (and possibly for their companion if they are disabled). For example, the provision of a support worker or advocate with knowledge of the disability and its effects.
- 3.4 Workers should seek support from their trade union so they can access appropriate support and advice from qualified individuals.
- 3.5 Work colleagues or trade union officials do not have to accept a request to accompany a worker, and they should not be pressurised to do so.
- 3.6 A worker who has agreed to accompany a colleague employed by the same employer is entitled to take a reasonable amount of paid time off to fulfil that responsibility. This should cover the hearing and it is also good practice to allow time for the companion to familiarise themselves with the case and confer with the worker before and after the hearing.
- 3.7 A lay trade union official is permitted to take a reasonable amount of paid time off to accompany a worker at a hearing, as long as the worker is employed by the same employer. In cases where a lay official agrees to accompany a worker employed by another organisation, time off is a matter for agreement by the parties concerned.

4. Applying the right

- 4.1 The employer should allow a companion to have a say about the date and time of a hearing. If the companion cannot attend on a proposed date, the worker can suggest an alternative time and date so long as it is reasonable, and it is not more than five working days after the original date.
- 4.2 Before the hearing takes place, the worker should tell the employer who they have chosen as a companion.
- 4.3 The companion should be allowed to address the hearing in order to:
 - put the worker's case
 - sum up the worker's case
 - respond on the worker's behalf to any view expressed at the hearing.

- 4.4 The companion can also confer with the worker during the hearing. It is good practice to allow the companion to participate as fully as possible in the hearing, including asking witnesses questions. The employer is, however, not legally required to permit the companion to answer questions on the worker's behalf, or to address the hearing if the worker does not wish it, or to prevent the employer from explaining their case.
- 4.5 Workers whose employers fail to comply with a reasonable request to be accompanied may present an allegation to an employment tribunal. Workers may also complain to a tribunal if employers fail to re-arrange a hearing to a reasonable date proposed by the worker when a companion cannot attend on the date originally proposed. The tribunal may order compensation of up to two weeks' pay.
- 4.6 It is unlawful to disadvantage workers for using their right to be accompanied or for being companions. This could lead to a claim to an employment tribunal.

Any further requests for representation must also be submitted for consideration in writing up to 3 working days prior to the hearing.

Terms of Reference Template

Investigation into allegations that on (date), (name) (details of allegations)

Purpose

The investigation is to be conducted on behalf (name), as the Initiator, in order to inform an appropriate course of action in response to the allegations made against (name).

Background

(details of how the allegations came to light)

Nature of Allegations

(details of allegations)

Objectives and Scope of the Investigation

To fully investigate the allegations under the Disciplinary Policy and:-

- Interview all persons directly involved in the allegations / incidents.
- Interview any other persons who may contribute substantive evidence in relation to the allegations
- Scrutinise all documentary evidence that is substantive to the allegations. All request for documentary evidence or reports should be directed to the Initiator.
- Obtain evidence to assess how all parties involved have conducted themselves during the course of events with specific regard to the application of the appropriate Policy and Procedures.
- Produce a written report to close the investigation detailing the Findings, Conclusions and Recommendations, including whether there is a case for action to be taken against (name).

Key Timescales

The investigation will start on (date) and is expected to be completed by (date). Any extension to the timescale set will be at the discretion of the Initiator.

During the course of the investigation all complaints regarding the Investigating Officer or process should be made directly to the Initiator in writing.

Statement Format

Interview Name:

Job Title:

Employee Representative:

Investigating Officer:

Place of Interview:

Date of Interview:

In opening the interview, the Investigating Officer outlined the following points:

- Investigating Officer's role in the investigation
- Description of the Terms of Reference for the investigation
- Confirmation that the interview will be noted and that an account provided to (name) to verify its accuracy
- (name) offered the opportunity to ask questions for clarification

Comments from (name) are shown in normal type font. ***Questions or comments from the Investigating Officer are shown in bold italics.***

1. ***(question asked)***
2. (response of interviewee)
3. ***(question asked)***
4. (response of interviewee)

Etc

The interview was concluded by outlining the following points:-

- Plan for the investigation though to the initial planned date for submission of the report
- The potential outcomes from the investigation for the interviewee
- Requested to maintain the confidentiality of the interview
- How complaints about the investigation process or officer could be made
- If the person has been suspended re-iterate the terms of suspension.

Please tick and sign as appropriate:

- I, (name) confirm that I believe the above to be a true and accurate and understand that a copy of the statement will not be disclosed to any other person(s) other than those detailed in the disciplinary procedure (if a decision is made that there is no case to answer). In signing this statement, I am agreeing that I may be called to give evidence and to attend any subsequent hearing(s).

I, (name) made amendments on the document and agree that this is an accurate review of the interview.

I, (name) have attached additional comments.

Signed: (name)

Date:

Investigation Report Template

REPORT OF THE INVESTIGATION INTO ALLEGATIONS AGAINST (NAME) (JOB TITLE), (SCHOOL)

1. INTRODUCTION AND BACKGROUND

- 1.1 (name) has been employed at (school) as (job title) since (date)
- 1.2 (give back ground to job/educational setting where relevant)

2. ALLEGATION

- 2.1 (details of allegations)

3. TERMS OF REFERENCE

- 3.1 XXX, initiated this investigation in response to XXXXX.
- 3.2 XXX was appointed as Investigating Officer and the Terms of Reference was finalised (Appendix 1).
- 3.3 The specific objectives and scope of the investigation were to conduct an investigation within the parameters of the Disciplinary Policy by:
 - Interviewing all persons directly involved in the allegations / incidents.
 - Interviewing any other persons who may contribute substantive evidence in relation to the allegations
 - Scrutinising all documentary evidence that is substantive to the allegations. All request for documentary evidence or reports should be directed to the Initiator.
 - Obtaining evidence to assess how all parties involved have conducted themselves during the course of events with specific regard to the application of the appropriate Policy and Procedures.
 - To produce a written report to close the investigation detailing the Findings, Conclusions and Recommendations, including whether there is a case for action to be taken against (name).

4. PROCESS OF THE INVESTIGATION

- 4.1 In order to gather evidence and to establish the facts, a schedule of interviews were carried out as follows:

	Name	Job Title	Interview Date
1			
2			
3			
4			

4.2 The following additional relevant documentation was also considered:

- XXXX
- XXXX

5. FINDINGS

5.1 Interview with XX (See Appendix X for full and verified statement)

5.1.1 (details of interview)

5.2 Interview with XX (See Appendix X for full and verified statement)

5.2.1 (details of interview)

5.3 Interview with XX (See Appendix X for full and verified statement)

5.3.1 (details of interview)

6. CONCLUSIONS

6.1 Allegation 1 - XXXXXXXXX

6.1.1 It is concluded that.....

6.2 Allegation 2 - XXXXXXXXX

6.2.1 It is concluded that.....

7. RECOMMENDATIONS

7.1 Based on the findings described in Section 5 of this report, the supplementary documents provided, and the conclusions drawn in Section 6 it is recommended that:

7.1.1 XXXXXXXXXXXXXXXXXXXXX

7.1.2 XXXXXXXXXXXXXXXXXXXXX

7.1.3 XXXXXXXXXXXXXXXXXXXXX

Investigating Officer: Name & Position/role

Date: XXXXX

Record of Suspension Considerations

Date of Allegation(s) :	
Employee Name:	
Job Title:	
Allegation(s):	
1.	
2.	
3.	
Points to Consider:	Record of School's Decision: Provide justification for the Panel's decision.
Are the allegations so serious that, if proven, they may be grounds for dismissal?	Yes / No
Is there cause to suspect a child or adult at the school is at risk of harm?	Yes / No
Have the designated officer(s), police, children's / adult's social care services or any other relevant party raised any objections to the member of staff continuing to work during the investigation?	Yes / No Yes / No Yes / No / Not Applicable If an objection has been received, please explain:
Could the continued presence of the employee at work be prejudicial to a fair disciplinary investigation? Consider any potential risk to evidence or the protection of witnesses.	Yes / No Please explain:
Could the member of staff be redeployed within the school so that the individual does not have direct contact with the child, children or adult concerned (if this is relevant to the investigation)?	Yes / No / Not Applicable Please explain:
Could the member of staff be redeployed to alternative work in the school, so the individual does not have unsupervised access to children (if this is relevant to the allegation)?	Yes / No / Not Applicable Please explain:
Could another employee be present at all times when the individual has contact with children, until the investigation is complete (if this is relevant to the allegation)?	Yes / No / Not Applicable Please explain:

Could the child or children's classes be moved where they will not come into contact with the member of staff, making it clear that this is not a punishment and parents have been consulted (if relevant to the allegation)?	Yes / No / Not Applicable Please explain:
Could the member of staff be redeployed to another role in a different location, for example to an alternative school, the Local Authority or another role within the Academy Trust?	Yes / No Please explain:
Are you confident that all alternatives to suspension have been considered?	Yes / No
Decision to Suspend?	Yes / No
Date of suspension (if applicable):	
Human Resources Representative:	
Chair of Trust Board/CEO/Deputy CEO/Head Teacher/Manager:	

Disciplinary Process Flow Chart

Informal Stage

Management Advice/Instruction

The informal approach should be used where formal disciplinary action may be disproportionate to the alleged misconduct. In these instances, the Line Manager/Headteacher (or CEO/Deputy CEO in the case of allegations against the Headteacher) should arrange to meet with the employee to discuss the conduct.

The Line Manager/Headteacher should record a brief note of the conversation and any action points and ensure a follow up discussion is held after an appropriate period to provide an opportunity for review (where this is required) and where the desired outcomes have been achieved and to encourage a sustained improvement. Additionally, the note should set out expectations and consequences.

See Section 5

Formal Stage

Safeguarding Allegations or Criminal Offences

All allegations of Safeguarding or Criminal offences should be dealt with formally and in line with **sections 7 and 8** of this Policy.

Suspension

Suspension is a precautionary measure and does not prejudice any disciplinary action that may follow. Careful consideration should be given prior to suspension to avoid damaging the trust and confidence between the employee and the Trust. There may be a need to make further enquires and obtain advice prior to suspension, i.e., at a safeguarding meeting. In those exceptional circumstances, it is acceptable to ask the employee to refrain from attending work for a very short and determined period of time during which all parties can seek advice.

See Section 9 and Appendix J

Investigation

Any allegation of misconduct should be dealt with as a matter of urgency; a full investigation should be conducted promptly incorporating the principles of natural justice. The process should inform the employee of the allegations, the potential outcomes of a disciplinary hearing, provide the employee with the opportunity to respond and to determine if there is a case to answer.

All employees involved in the investigation should be mindful of their duty of care to the employer and participate fully and in a timely manner

See Section 10 and Appendix B

Investigation Report Outcome

Once all the relevant persons have been interviewed and all the relevant issues have been explored, the investigation is complete. The findings and conclusions of the investigation should then be compiled into an investigation report. Any evidence will be attached as appendices.

See Appendix K

The Investigator's report will be forwarded to the Initiator who will make a decision on whether further action should be taken i.e., whether or not to proceed to a Disciplinary Hearing. If the decision is to proceed to a hearing, it should, where possible, be held within 15 working days.

See Section 10

Disciplinary Hearing

Regardless of any potential outcome, all disciplinary hearings arranged under this policy must be heard by a Disciplinary Hearing Panel. This panel will be made up of 3 trustees/directors who have had no prior involvement in any part of the disciplinary procedure pertaining to that employee. The Panel will be accompanied by a HR Representative from the Trust's HR Provider.

Formal notice must be issued to the employee in writing at least five working days before the date of the hearing

See Section 12 and Appendix C

Possible outcomes

No Action

Formal Management Advice

6 month Written Warning

12 month Written Warning

Final Written Warning (2 years)

Dismissal (Alternatives to dismissal may also be considered)

See Section 12.4 and Appendix C

Appeal

An employee may appeal against any formal disciplinary action including dismissal, by giving notice in writing within five working days of receipt of the written decision made following the Disciplinary Hearing. An appeal hearing will be arranged with an Appeal Hearing Panel as soon as practicable (and normally within fifteen working days).

The appeal will not be a re-hearing but will be concerned with the grounds of appeal which should be set out in the letter from the employee.

See Section 14 and Appendix E

Appeal Outcome

The decision of the Appeals Panel will be one of the following:

Appeal not upheld – confirm the original outcome;

Reduce the penalty given;

Appeal upheld

The decision of the Appeal Hearing Panel and the reasons for it shall be communicated in writing to the employee within five working days of the appeal hearing. The decision of the Appeal Panel will be final and there will be no further appeal.

See Section 14