

# Beckfoot Trust

## Staff Discipline, Conduct and Grievance Policy

**Beckfoot Trust has adopted the PACT HR recommended model procedure as agreed by  
Trade Unions**

<b>Approved by the Trust Board of Directors</b>	
<b>To be Reviewed on</b>	
<b>Signed on Behalf of the Trust Board of Directors</b>	

NB This version of Policy will be retained for a period of 7 years from replacement.

Implemented May 2016  
GAD

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# Part 1 – Staff Discipline

## Disciplinary Policy Statement

This policy applies to both members of teaching and support staff in the Trust.

The main purpose is to encourage an employee whose standard of work or conduct is unsatisfactory to improve. The procedure serves to ensure that this is done in a fair and consistent manner. Clear guidelines are set out for Teachers in the Teachers Standards (England) and the School's Code of Conduct on what constitutes acceptable standards of performance and behaviour.

### 1. Preamble

- 1.1 In conjunction with this policy, the Trust will follow the guidance contained within the Managing Investigations document. This document includes detailed information on how to conduct investigations. Further advice is also available from the Trust's HR Manager.
- 1.2 The disciplinary procedure is strictly confidential and all aspects including all documentation and records shall be treated as such.
- 1.3 In minor cases of alleged misconduct the manager should initially seek to resolve the matter informally by discussion with the employee. (please see the 'Informal Discussion' section below))
- 1.4 The disciplinary procedure is to be used where an employee's work or conduct is alleged to be unsatisfactory.
- 1.5 Please check with your Trust's HR Manager whether a concern should be dealt with under the Trust's disciplinary or capability procedures
- 1.6 Each step and action under the procedure must be taken without unreasonable delay.
- 1.7 The timing and location of meetings must be reasonable.

### Informal Discussion

- 1.8 The need for formal disciplinary action will be reduced if Managers demonstrate high standards of conduct themselves and make it clear that the same high standards are expected from their staff. Managers are responsible for ensuring that their staff are aware of the requirements of their roles and of the expectations of the Trust around relationships with colleagues.
- 1.9 Early intervention, offering guidance and instruction, can often prove very effective in improving minor conduct issues and avoiding the need for more formal procedures being invoked. The member of staff should fully

understand a manager's concerns, what improvements are required of them and the possible consequences if these improvements are not achieved.

- 1.10 No disciplinary action will be taken against an employee until the case has been fully investigated.

## **2. General Principles**

### **Trade Union Representatives and Officers**

- 2.1 Although normal disciplinary standards will apply to their conduct and performance as employees, no disciplinary action or suspension will be taken until the circumstances of the case have been discussed with an appropriate Trade Union Representative. In the case of suspension this may not be practical and should not prevent Management taking action.

### **Offences committed outside working hours**

- 2.2 Criminal acts resulting in cautions or convictions for offences committed outside working hours may result in disciplinary proceedings being taken against the employee, up to and including summary dismissal. The Trust will consider whether or not the employee's conduct, caution or convictions merit action because of employment implications. For example where the management of the Trust consider the act or conviction in question affects the suitability of the employee for the position in which they are employed, the reputation of the Trust or undermines the trust and confidence that the Trust has in the employee

## **3. Suspension**

- 3.1 In exceptional circumstances consideration may be given to removing a member of staff from their place of work (i.e. suspension) at the outset of the investigation or at any stage during the course of the investigation. Suspension should only happen in extreme cases. Please contact the Trust's HR Manager if you are considering suspension.

### **Considering whether Suspension is Appropriate**

- 3.2 The provisions for suspension of school-based staff are set out in Schedules 16 and 17 of the School Standards and Framework Act 1998. Decisions on suspensions are taken by the Headteacher or the Board of Directors (action by the Chair in relation to the Headteacher must be notified to the full Board of Directors).

- 3.3 Staff against whom an allegation is made should not automatically be suspended.  
Where the allegation is that a criminal offence may have been committed or a child is at risk of significant harm, immediate suspension is more likely to be appropriate. In the case where immediate referral to the Bradford Council Lead Officer (The Principal Education Social Worker) is accompanied by consideration of disciplinary procedures, suspension may or may not be appropriate. The Headteacher or Chair of the Board of Directors should consult the Bradford Council Lead Officer and consider any recommendation which may be made by the child protection agency/police or strategy meeting before a decision to suspend is taken.
- 3.4 Suspension may be considered at any stage of an investigation. Suspension is a neutral act, not a disciplinary sanction and the employee will receive normal pay. Where possible an alternative should be found to suspension. This could include alternative duties/locations or removal from contact with students
- 3.5 Suspension should not be undertaken without good reason, as an over-hasty or ill-judged decision immediately to suspend a member of staff when an allegation of abuse is made can have a substantial, detrimental effect upon the person's career. There may be other options to suspension (see paragraph 3.4). Suspension is not only a traumatic experience for the individual involved, but also for their family, for other children at the Trust, their parents and for other staff. All concerned will wish to be reassured that the responsible agencies will act in a careful, measured way when allegations are brought to their attention. Circumstances in which suspension properly occurs include:
- (i) Where a child or children is/are at risk;
  - (ii) where the allegations are so serious that dismissal for gross misconduct is possible;
  - (iii) where a suspension is necessary to allow the conduct of the investigation to proceed unimpeded.
- 3.6 In all cases where suspension is being considered, the Headteacher or Chair of the Board of Directors should advise the individual to seek assistance from his or her trade union.

### **An Interview to Consider Suspension of a Member of Staff.**

- 3.7 Where suspension is being considered, an interview should be arranged. Normally, the interview should be undertaken outside student contact time. The Headteacher (or, in cases where the allegation is against the Headteacher, the Board of Directors) should

consult with and seek advice from the Trust's HR Manager.

- 3.8 Where the Police are involved in a criminal investigation, any interview arranged where suspension is considered, should not be conducted without prior consultation with the Police Officer in charge of the case. Where there is no Police involvement, an interview should be arranged in accordance with the following procedures.
- 3.9 When called to an interview where suspension is a possible outcome the member of staff should be advised to seek the advice of their trade union. A person who is not a member of a trade union may be accompanied to the interview by a work colleague, that will not or has not been involved in any part of the disciplinary process). Where the member of staff is accompanied, they should be offered the opportunity of a brief meeting with the representative or work colleague before the interview.
- 3.10 The member of staff should be informed at the outset of the interview that an allegation or series of allegations have been made and the nature of them. At the conclusion of the interview, suspension might occur. It should be made clear, however, that the interview is not a formal disciplinary hearing but is for the purpose of raising a serious matter which may lead to suspension and further investigation.
- 3.11 The member of staff should be given as much information, including reasons for any proposed suspension, as is consistent with not interfering with an investigation into the allegation. This meeting is not concerned with examination of the evidence but is an opportunity for the member of staff to make representations concerning any possible suspension. The member of staff should be given an opportunity to make such representations after the information has been given. A brief adjournment should be offered to the member of staff prior to response being provided.
- 3.12 If, as a result of the interview, it is considered by the Headteacher/ Chair of the Trust that suspension is necessary along with a full investigation of the allegation, the member of staff should be advised that they are suspended from duty. Written confirmation of the suspension should be dispatched within one working day, giving reasons for this.
- 3.13 In accordance with the relevant ACAS Code of Practice, where the person is a trade union or safety representative, the interview should not be arranged without prior discussion with the relevant branch secretary or trade union representative. From the outset it should be established that the action being taken is not an attack on the functions of a trade union.
- 3.14 The decision to suspend should be reviewed monthly, and the suspension may be lifted prior to the completion of the investigation if

appropriate.

### **After a Decision to Suspend Pending Investigation**

- 3.15 Where a member of staff has been suspended, the Chair of the Trust and Strategic Director of Education (or their representative) should be informed of the suspension formally, in writing. In all cases a report should be made to the Board of Directors that a member of the Trust staff has been suspended pending investigation. It is advisable to provide no more than the minimum information necessary to the Board of Directors, as more than this would prejudice director's impartiality in any subsequent disciplinary hearing or appeal in disciplinary proceedings. Where the Headteacher has been suspended, the implications for the management of the Trust will need to be considered including the arrangements for an Acting Headteacher.
- 3.16 Senior teachers in the Trust who need to know of the reason for the suspension should be informed as far as is necessary. The Headteacher/Acting Headteacher should also make a decision on whether other staff need to be informed of the suspension.
- 3.17 In appropriate cases the Headteacher/Acting Headteacher should discuss with the Chair of the Board of Directors the extent to which it is necessary to make a statement to parents of children in the Trust, having considered the need to avoid unwelcome publicity. If this situation occurs, then advice and guidance should be sought from the Trust's HR Manager.
- 3.18 In rare circumstances, e.g. child protection investigations, it may be necessary for the Headteacher (Acting Headteacher in consultation with the Chair of the Board of Directors) to provide immediate reassurance to parents and children in the Trust and there may be a need for information to continue to be provided during the course of an investigation to parents, children and other colleagues. If this situation occurs, then advice and guidance should be sought from the Trust's HR Manager.
- 3.19 In respect of paragraphs 3.16, 3.17 and 3.18 guidance should be sought from the Bradford Council Lead Officer, the Trust's HR Manager or, where relevant and appropriate, from Social Services or the Police.
- 3.20 The Headteacher/Acting Headteacher in consultation with the Chair of the Board of Directors should consider, and keep under review, decisions as to who is informed of the suspension and investigation and to what extent confidentiality can or should be maintained, according to the circumstances of a particular case. In a situation where a matter becomes common knowledge or the subject of general gossip, it may be desirable to provide an accurate statement for public information. Advice should be taken from the Bradford Council Lead Officer and the Trust's HR Manager.

- 3.21 Every effort should be made to avoid lengthy periods of suspension. The decision to suspend and the conditions of suspension will be reviewed initially after a period of 1 month and subsequently on a monthly basis either as part of a face to face meeting or by written correspondence. The suspended employee will be informed of the outcome of each review. Any representations received from the employee or the employee's trade union representative will be considered at each review.

### **Support for Staff during the Period of Suspension**

- 3.22 The suspended member of staff will be given the name of a contact within the PACT HR Team, as an information contact. The main role of the contact person is to provide information as to the progress of the investigation. Social contact with colleagues and friends at the Trust should not be precluded except where it is likely to be prejudicial to child protection enquiries, criminal investigations or disciplinary processes.
- 3.23 Although it is the aim that all investigations should be conducted as speedily as possible consistent with establishing the full facts, arrangements should be made (by negotiation) for the individual, or his or her representative, to be contacted regularly with information on progress and developments in the case. These arrangements should not preclude them, or their representative, contacting those conducting the investigation at any time.
- 3.24 According to the needs and wishes of the member of staff to be kept informed, a colleague contact should also be in a position to provide information about developments within the Trust in general.
- 3.25 In some cases, it may be appropriate to ask whether welfare counselling or the support through the Local Authorities Employee Health and Wellbeing Service, would be helpful, or to respond to a request for such further support.

### **Support for others concerned**

- 3.26 If a child or children have made allegation/s they and their parents will need support. Consideration should be given to the form such support should take. Consideration should also be given to what support may be needed for others in the Trust, both staff and students, according to the circumstances of the allegations. In some cases, therapeutic counselling from expert sources may be necessary. Advice on this can be obtained via the ACPC/Social Services.

### **Where no action is taken to suspend**

- 3.27 The Headteacher/Chair of the Board of Directors (in cases where the allegation is against the Headteacher) should explain to the member of staff the circumstances which led to consideration of suspension and further explain any follow up action which it is proposed to take. The member of staff may be accompanied by a trade union representative or work colleague. According to the circumstances of the case, appropriate assistance or advice may be offered. The Headteacher/Chair of the Board of Directors should seek to establish what support, if any, is required and where appropriate and acceptable to the member of staff should seek advice from the Bradford Council Lead Officer and the Trust's HR Manager. According to circumstances, appropriate counselling services should be considered.
- 3.28 If a member of staff has not been suspended but there are child protection or serious concerns about aspects of their conduct, a full investigation should be undertaken before making a decision about further action under disciplinary procedures. Please contact your HR Manager for further advice on undertaking an investigation.

### Pay during suspension

- 3.29 The member of staff is entitled to normal pay during any period of suspension. Normal pay means the pay which the member of staff would have received during their normal working week. The appropriate regular payments listed below shall also be included, providing that they would have been paid to the member of staff during the normal week leading up to their period of suspension

The payments to be included, **if regular**, are for:-

- Shift work
  - Night work
  - Split duty
  - Weekends
  - Unsocial hours
  - Scheduled standby duty
  - Contractual overtime.
- 3.30 In addition, where appropriate, employees shall continue to receive the following allowances providing they would have received them but for the suspension:-
- Essential car user lump sum allowance
- 3.31 If the employee takes annual leave or is sick at any time during the suspension, then pay for such leave or sickness will be calculated in accordance with the normal provision of the Trust's annual leave or sickness scheme. Any other payments, e.g. the allowances detailed above, will be paid in accordance with that scheme's rules for any leave or sickness absence.

3.32 When any period of sickness as described above comes to an end, then the employee, if still suspended, again becomes entitled to normal pay during suspension as defined in point 3.30.

#### **4. The Investigation Process**

4.1 Prior to conducting any disciplinary investigation, advice and guidance should be sought from the Managing Investigations Document and from your HR Manager.

4.2 Before any disciplinary decision is made regarding an employee, they will be advised of the allegations against them and will be given the opportunity to state their case.

#### **Right to be accompanied and role of the companion**

4.3 Members of staff have the right to be accompanied at any meetings or interviews (not normal management meetings that would occur in the conducting of an employee's normal role in school) by a companion. The companion may be either a trade union representative or a work colleague. The companion should be allowed to address the meeting to put and sum up the member of staff's case, respond on their behalf to any views expressed at the meeting and confer with the member of staff.

The companion does not, however, have the right to answer questions on the member of staff's behalf, address the meeting if the member of staff does not wish it or prevent the Trust from explaining the management case.

It is the responsibility of the member of staff concerned to arrange their own accompaniment and to inform the relevant person conducting the meeting, who this will be.

#### **Sickness absence during the investigatory/disciplinary process**

4.4 It is not necessary to suspend the disciplinary or investigatory process simply because the member of staff is absent due to illness. The Trust may seek advice from the Bradford Council Employee Health and Wellbeing Service, in order to ascertain whether or not the member of staff is fit to engage in the process. If the member of staff is declared 'fit' to attend meetings but not well enough to attend work, the Trust may, at its discretion, consider a number of measures, such as;

- Offering an alternative venue for the meetings/hearing;
- Allowing the member of staff to make written representation ;
- Allowing extra time during the procedure for the member of staff to participate effectively.

4.5 Where the member of staff is not 'fit' to engage in the investigation process, the investigation can still continue. At such time as the member of staff is required to attend an investigation interview, further advice will be sought from the Bradford Council Employee Health and Wellbeing Service.

### **Postponement of meetings/interviews**

4.6 In these circumstances, it is the responsibility of the employee to propose an alternative date for a meeting; this should wherever possible be within 5 working days of the original date proposed.

## **5. Disciplinary Hearings**

5.1 If the need for a disciplinary hearing has been determined following an investigation, the member of staff will be notified, in writing of this decision no later than 10 working days prior to such a hearing taking place, along with all management information to be used as part of the hearing.

### **Right to be accompanied /represented**

5.2 Members of staff have the right to be accompanied at a disciplinary hearing by either two trade union representatives or one work colleague. It is the responsibility of the member of staff to arrange their own accompaniment and to inform the relevant the HR Manager/Director panel conducting the meeting that they are to be accompanied and by whom.

5.3 At any disciplinary hearing or appeal hearing the member of staff will have the right to:

- Produce written statements and bring witnesses (All written statements shall be circulated to all parties at least 3 days in advance of the hearing);
- Ask questions of any witnesses present.
- Present his/her case (or be represented by up to two trade union representatives or one work colleague) prior to the decision being made whether or not to issue the warning or to dismiss.

5.4 The member of staff will be given sufficient information about the allegations to enable them to answer the case at the hearing together with all documentary evidence to be presented by the management side during the hearing. The hearing will be conducted either by the Headteacher or a panel of Directors selected from the Trust Board of Directors.

## Postponement of hearings

5.5 In accordance with Section 10(4) of the Employment Relations Act 1999 a member of staff may seek a postponement of a hearing and propose an alternative time if their chosen trade union representative or work colleague is not available to attend. The alternative time must wherever possible and taking account the availability of the Board of Directors required to form the panel, be within 5 working days of the original date. In some circumstances it may not be possible to re-arrange the hearing within the requisite 5 working days. If the employees' chosen person is not available on the re-scheduled date, then they should select another person to accompany them who will be available at the given time. Arrangements for re-arranged hearing dates, will wherever possible be arranged in conjunction with the member of staff's trade union representative, however this may not always be possible.

## Sickness

5.6 It may, on occasion be necessary to proceed with a disciplinary hearing without the presence of the member of staff, due to their sickness, or refusal to attend, despite reasonable adjustments being made to both the procedure and venue. In such circumstances, the member of staff and /or their representative will remain free to attend the hearing. The outcome will be communicated in writing to the member of staff including their right of appeal.

## Procedure at the Hearing/Appeal

- 5.7 At the beginning of the hearing/appeal, the Chair/Human Resources Representative will introduce all parties present and shall explain the procedure to the parties, as follows;
1. The management representative will put the management case and may call witnesses.
  2. The member of staff or their trade union representative will have the opportunity to ask questions of the management representative and any witnesses they have called.
  3. The member of staff or their trade representative will put their case and may call witnesses.
  4. The management representative will have the opportunity to ask questions of the employee and any witnesses they have called
  5. The Chair (and through them the other Directors) may ask questions of any party. If new evidence is brought out, both

parties will be given an opportunity to comment and, if necessary to adjourn.

6. The management representative will have the opportunity to sum up their case.
7. The employee or their trade union representative will have the opportunity to sum up their case.
8. The Chair shall ask both parties to leave while the decision is made; only recalling the two parties to clear points of uncertainty on evidence already given. If this is necessary, both parties will return even if only one of the parties is concerned with the point giving rise to the doubt.
9. The Chair shall recall the two sides to;
  - Give the decision and explain the reasons for the decision and confirm this decision will be put in writing to them as soon as possible, or
  - Inform the member of staff that the decision will be made known to them later both verbally and in writing as soon as possible after the hearing, or
  - Inform the employee that the decision will be given in writing as soon as possible.

### Levels of Disciplinary Sanction

- 5.8 The four levels of formal disciplinary sanctions are designed to reflect the varying levels of seriousness of the case. The levels give a proper sequence for persistent cases. A disciplinary sanction will be issued at whatever level appears appropriate to the circumstances, it is therefore not always necessary to commence any disciplinary sanction at the first warning stage.
- 5.9 No employee will be dismissed for a first breach of discipline except in the case of gross misconduct, when the penalty may be dismissal without notice and without pay in lieu of notice. Except for gross misconduct, a teacher dismissed by reason of disciplinary action shall be given notice (or pay in lieu) to the end of the term in which dismissal takes place, or in accordance with the Employment Rights Act 1996, whichever is the greater. There shall in any event be a minimum of four weeks.
- 5.10 For guidance, examples of gross misconduct are (please note this list is not exhaustive);
  1. Stealing from the Trust, colleagues or visitors to the Trust.
  2. Falsification of educational qualifications where such qualifications are a stated requirement of the post.

3. Fraudulently claiming sick pay or other payment from the Trust.
4. Fighting with or physically assaulting a work colleague.
5. Damage to or misuse of Trust property.
6. Inappropriate behaviour towards or relationships with students in the Trust.
7. The taking of unauthorised absence.
8. Inappropriate use of social media such as Facebook or Twitter or behaviour that is in contravention of the Trust's Social Media Policy.

5.11 The following decisions may be issued by a Board of Directors panel or Headteacher at a disciplinary hearing;

- The decision to issue no formal sanction.
- Level 1 – **A first warning**, may be given where the case is of sufficient importance or seriousness to bring to the attention of the employee formally. The time limit for this sanction shall be **6 months** (excluding the summer break from the date of the decision).
- Level 2 – **A written warning**, may be given where the case has already involved a first warning and insufficient improvement has been made, where further misconduct has occurred, or where the case is of sufficient importance or seriousness to bring to the attention of the member of staff formally. The time limit shall be **9 months** (excluding the Summer Break) from the date of the decision.
- Level 3 – **A final warning**, may be given where the case has already involved a first warning and insufficient improvement has been made, where further misconduct has occurred, or where the case is of sufficient importance or seriousness to bring to the attention of the member of staff formally. This level of sanction may also be issued where a determination of gross misconduct may not warrant dismissal for example due to mitigating circumstances. The time limit for this sanction shall be **12 months** (excluding the Summer Break) from the date of the decision.

For the purposes of future disciplinary action, breaches of discipline will be disregarded after the specified time period of satisfactory conduct. However, the fact that the employee has been subject of disciplinary action will form part of that persons employment record.

**The following disciplinary sanction can only be issued by the Board of Directors disciplinary panel, unless the Trust Board of Directors have delegated this authority (through the appropriate governing body ratification) to the school's Headteacher.**

- Level 4 – **Dismissal**. An employee is likely to be dismissed where the case has already involved a final warning and insufficient improvement

has been made or where further misconduct has occurred or where the case is so serious as to constitute gross misconduct or where there is some other substantial reason.

### The Decision Letter

- 5.12 A letter detailing the decision will be given to the member of staff within 10 working days of the date of the disciplinary hearing taking place or sooner where possible and a copy placed on the member of staff's personnel file, if a warning is issued.
- 5.13 Following the outcome of the hearing the decision letter will state:-
- The decision i.e. that there is no case to answer or the appropriate level of disciplinary sanction
  - The reason for the decision.
  - The course of action to be followed by the member of staff.
  - Time scale in which improvement is required, if applicable.
  - Where assistance is required, the assistance which will be made available to the member of staff e.g. training and guidance.
  - The date on which the warning will elapse (see section 5.11).
  - That further disciplinary action will be considered if there is further misconduct or insufficient improvement within the timescale of the warning.
  - The right of appeal against the decision and how to exercise that right. (See Section 5).
  - If the warning is a final warning it will also state that if the employee's conduct continues to be unsatisfactory or if there is further misconduct it may lead to dismissal.

### Right of appeal

- 5.14 All members' of staff have the right of Appeal
- 5.15 Appeals should be lodged in writing to the Clerk of the Board of Directors within 15 working days (excluding the Summer Break) of the date of the outcome letter.
- 5.16 The appeal will be heard by a panel of directors, selected from the full Board of Directors, who have had no previous involvement in the case.

5.17 When lodging an appeal, the employee should state;

1. The grounds on which they are appealing and;

(1a) whether they are appealing against the findings that they have committed the alleged act/s of misconduct here, the appeal hearing would be a full re-hearing of all the evidence in relation to the allegations against the individual concerned. The panel at this appeal re-hearing will have the full range of disciplinary sanctions open to them

2. (1b) when they are only appealing against the level of disciplinary sanction imposed on them as a consequence of the original disciplinary hearing. In this case, an appeal panel would be asked to review the original decision made. This would not constitute a full re-hearing and any outcome from this review would either see the original sanction reduced or remain the same.

5.18 There is no further internal appeal against the decision of the appeals committee.

## Part 2 – Complaints and Grievances

### 1. Trust Policy Statement

The Trust is committed to ensuring that the employment arrangements in this school meet the highest standards of fairness and statutory entitlements in employment. We seek to build a workplace environment where colleagues are treated fairly and can work with dignity and respect.

The aim of the Staff Complaints and Grievance Procedure is to address any complaints fairly, consistently and promptly. We believe that the fair and effective resolution of staff concerns is beneficial to harmonious working, job satisfaction, productivity and ultimately to the effective education of our pupils.

This procedure is compliant with the ACAS Code of Practice on Discipline and Grievance.

### 2. General Principles and Definitions

This procedure applies to all staff employed in the school in respect of whom the responsibility for seeking redress of any complaint (except those matters which are subject to separate procedures e.g. flexible working and pay relating to their employment) is under the control of the Trust under the School Standards and Framework Act 1998, as amended from time to time.

Complaints made under this procedure should be made within 30 working days of the last action complained of. Where the actions complained of are allegations of bullying, harassment or discrimination on a continuing basis the 30 day limitation will not apply. Where there are medical reasons for a delay in making the complaint the 30 day period may be extended where it is reasonable to do so.

### 3. Terms used in the procedure

Throughout the document the person making the complaint may be termed the “complainant”. The term “Trust” also refers to any Interim Executive Board, which may be in place at a school.

### 4. Definitions of bullying, harassment and discrimination

ACAS states that most people use the terms bullying and harassment interchangeably, however, ACAS provides the following definitions:

Bullying is:

*“Offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means intended to undermine, humiliate, denigrate or injure the recipient”.*

Harassment is:

*“Unwanted conduct affecting the dignity of men and women in the workplace. It may be related to age, sex, race, disability, religion, sexual orientation, nationality or any personal characteristic of the individual, and may be persistent or an isolated incident. The key is that the actions or comments are viewed as demeaning and unacceptable to the recipient”.*

*“Bullying or harassment may be by an individual against an individual (perhaps by someone in a position of authority such as a manager or supervisor) or involve groups of people. It may be obvious or it may be insidious. Whatever form it takes, it is unwarranted and unwelcome to the individual”.*

Discrimination may be characterised as:

Any less favourable treatment or victimisation of an employee which is unlawful under legislation including the following:

- Gender
- Race
- Disability
- Sexual orientation
- Trans-gender Status
- Religion or belief
- Age
- Membership or non-membership of a trade union or involvement in trade union activities
- Status as an ex-offender
- Status as a part-time worker
- Or fixed-term

## **5. Responsibilities under this procedure**

### **Management**

Managers should be aware that in law an employer may be held responsible for the actions of its employees regardless of whether or not they are aware of those actions. It is therefore essential that the school takes appropriate measures to ensure that bullying, harassment, or discrimination do not occur. All meetings and proceedings should be confidential.

It is the responsibility of the school's management to:

- Make all members of staff aware of the policy and ensure their compliance.
- Deal with all issues in a timely, serious and sensitive manner.
- Maintain confidentiality when dealing with cases and ensure that a written record is kept of all informal and formal meetings and discussions.

- Make every effort to resolve complaints informally by discussion between the individual member of staff and the appropriate level of management; the resolution of employee complaints should form part of everyday informal managerial action.
- In considering evidence relating to a complaint the management representative will apply the “balance of probabilities” standard proof.

### Individual members of staff

Each individual is responsible for his or her own actions whilst at work. It is the responsibility of all employees to:

- Be mindful of their own behaviour and treat others with dignity and respect
- Try to resolve problems informally by discussion with colleagues and/or management
- Report incidents of harassment or bullying either personally experienced or witnessed, immediately to the appropriate line manager
- Make written notes (with dates and names of any witnesses) of incidents, harassment or bullying experienced or witnessed
- Ensure confidentiality is maintained at all times

## **6. Right to be accompanied**

Throughout the process, both the complainant and the person whom the complaint is made against may be accompanied, for example by a recognised trade union representative or by a work colleague not involved in the complaint. At a hearing or appeal a complainant may be represented by up to two trade union representatives or work colleagues.

In exceptional cases, dealing with sensitive matters or where the witness may feel intimidated he or she may be accompanied by a trade union representative or work colleague. However this should not be a person who has a conflict of interest. Trade union representatives can not play the dual role of representing the person whom the complaint is made against, witnesses and/or the complainant in the same case.

It is good practice for a mutually agreed time to be arranged for meetings and hearings where a member of staff requires the presence of his or her trade union representative.

## **7. Postponement of hearings and appeals**

In accordance with Section 10 (4) of the Employment Relations Act 1999 the complainant may seek a postponement of a complaint hearing and propose an alternative time, if their chosen trade union or professional association official or work colleague is not available at the time proposed for the hearing by the employer. The Act states that the alternative time proposed by the

employee must be reasonable and fall within five working days beginning the first working day after the day proposed by the employer.

In exceptional circumstances where the efficient running of the school or the interests of the health and wellbeing of the parties involved is being compromised by the process; the hearing may be held in the absence of the complainant after considering any representation by either party.

*The non-availability of the second of the two trade union/professional association representative permitted under this procedure will not be regarded as sufficient reason for a postponement.*

## **8. Record keeping and confidentiality**

It is important that accurate and contemporaneous records are kept throughout the complaints handling processes, including any initial informal processes. Copies of meeting records should be given to the employee, including copies of any formal minutes that may have been taken.

Records should be held in a secure and confidential manner. Often the issues raised are particularly sensitive and it is essential that the circulation of information be minimised to that which is necessary to ensure a fair investigation and hearing. All meetings, documentation and proceedings should be confidential.

In the event of a complaint being made, the management of the school may inform the Chair of the Trust (or another appropriate Director). But on no account should the case be openly discussed with any other Directors.

## **9. Resolving Complaints informally**

Every effort should be made to resolve complaints informally by discussion between the individual member of staff and the appropriate level of management. This can often lead to a speedy resolution of the problem and is likely to be less damaging to working relationships.

### **The Individual**

In cases where an employee feels aggrieved by the words or actions of another; it is important for the employee to deal with this at an early stage. The employee should address the issue by one or more of the following options:

- An employee with a complaint must start by discussing it with his or her manager at the earliest opportunity; it may be possible to resolve the complaint informally through discussion
- If the employee has a complaint regarding his or her line manager she or he may seek assistance from a more senior manager

- The employee may also seek support from his or her trade union representative, via Occupational Health or the mediation service (see paragraph 9)

If the complaint is against the Headteacher see paragraph 23.

## Management

When a complaint has been raised verbally or in writing in the first instance the line manager must offer a meeting to discuss the details of the complaint, and seek to gain the employee's agreement to address the complaint informally. The line manager may decide to address the complaint by one or more of the following options:

- Offer the complainant a meeting with their manager and the person whom they have a complaint against to openly discuss any issues and agree a way forward
- Speak to the person whom the complaint is made against on the employee's behalf
- Refer the complainant and the person whom the complaint is made against to Occupational Health for support (if necessary)
- Arrange external mediation subject to agreement by both parties

In all circumstances, managers should try to resolve the underlying problem informally as part of good management practice. However, the decision to attempt to achieve an informal resolution ultimately rests with the complainant.

## Mediation

Mediation is a voluntary process where the mediator helps two or more people in dispute to attempt to reach an agreement without recourse to the formal procedures. Mediation should be undertaken by a neutral third person who is trained in mediation techniques. Mediation, where it is successful, can produce quicker and more satisfactory results for the parties involved and may reduce the damage caused to working relationships and the health and wellbeing of both parties. Employees may be offered mediation at any stage of the complaints process. Equally, either party or their trade union representatives may make this suggestion.

Even if mediation is not initially agreed by the parties, the offer of a mediated process can be re-offered as the case progresses.

Mediation may be used for:

- Resolving conflict between colleagues of a similar job or grade, or between a member of staff and their line-manager
- Rebuilding relationships after a formal dispute has been resolved
- Addressing personality clashes, communication problems and bullying and harassment

Please note, where disciplinary action is required; this process should be completed prior to mediation.

The details of discussions within mediation processes are confidential to the parties involved.

The mediation process is normally carried out without the involvement of trade union or management representatives.

For advice on arranging mediation or for further details on the mediation process, please contact Human Resources.

## **10. The Formal Procedure**

If it is not possible to resolve a complaint informally employees should raise the matter formally and without unreasonable delay (see paragraph 1.2) to the Headteacher, or the Chair of the Trust if the complaint is against the Headteacher. This should be done in writing and set out the details of the complaint and state that the complaint is being made on a formal basis.

### **Step 1 – The Complaint Letter**

Details of the complaint should be forwarded in writing to the Headteacher/Chair of Directors (see above) by the complainant or their representative. The complainant should normally receive an acknowledgement of the complaint within five working days. A formal complaint should normally be submitted without unreasonable delay following the action or decision under dispute (see paragraph 1.2).

A copy of the letter of complaint will be provided to the person complained against. He or she may respond in writing to the Headteacher or Chair of Directors. If the letter of complaint refers to other persons then these elements of the complaint will be removed to preserve confidentiality.

The letter of complaint should carefully describe the complaint, giving a detailed account of what is alleged to have occurred, who was involved, detail any witnesses and state when the event/s happened. The complainant should also state what outcome they are seeking from their complaint.

Should an investigation be necessary then the timescales for arranging a complaints hearing may vary. To minimise employee stress and to facilitate the efficient running of the school all attempts will be made to complete the process in a timely manner.

### **Step 2 – The Case Manager**

A case manager should be appointed to handle the complaint. The case manager may be a member of the Trust Board of Directors or a senior manager. Care should be taken that the person who is to be the case

manager has no direct interest in the outcome of the case and is not a witness to any of the events complained of.

**The case manager's role is to:**

- Acknowledge the complaint in writing, normally within five working days
- Manage the case in accordance with procedural requirements
- Offer mediation and arrange this, if required
- Undertake an investigation, or commission another appropriate person to undertake this role (for further advice please contact Human Resources)
- Present the findings of the investigation to the complainant and subsequently to the person complained against possibly in conjunction with the Headteacher or Chair of Directors if appropriate
- Arrange for any necessary hearings
- Present the management case at any hearing, or commission another appropriate person to undertake this role (for further advice please contact Human Resources)

Where the complaint is against the Headteacher the Chair of the Trust will arrange for the Clerk to the Trust Board of Directors to convene a Trust meeting to nominate a Board of Director/s to investigate. Alternatively, the school may decide to employ an external investigating officer.

**Step 3 - The Investigation**

The case manager will establish the basic facts of the case. Where the matter is not complicated it may be resolved by mutual agreement or mediation. If not, the complaint can be referred to a hearing where witness evidence can be heard and all the relevant factors can be considered. If the case is less complex, the complaint and response can be presented directly to a Headteacher or Board of Directors hearing.

More complex or legally sensitive cases are likely to require a more detailed investigation. Should the case manager decide that an investigation is required then an investigating officer will be appointed. The investigating officer may be an appropriate school manager or Governor. In some circumstances the school may decide in the interests of fairness or capacity to appoint an independent external investigator.

**The investigating officer's role is to:**

- Interview the complainant, any witnesses and the person complained against
- Establish the facts of the case
- Submit a written report setting out the findings of the investigation

The investigating officer must not decide on the outcome of the complaint.

**NOTE: In some cases it may be appropriate to suspend the person whom the complaint is made against in order to conduct the investigation.**

Please refer to the Managing Investigations document and contact Human Resources for further support.

#### **Step 4 – Feedback on the findings of the investigation**

Once the investigation has been completed the case manager should arrange a meeting with the complainant to give feedback on the findings. If the case manager is not the investigating officer then the investigating officer may also be present. The complainant can be accompanied by a trade union representative or a work colleague. A meeting should then be arranged with the person whom the complaint is made against to provide feedback on the investigation. The person whom the complaint is made against may also be accompanied by a trade union representative or a work colleague. The meetings with both complainant and the complained against will be held consecutively.

If the findings of the investigation support the complaint then the case manager will inform the employee of this.

If the findings of the investigation do not support the complaints made by the employee because there is contrary evidence, or if there is insufficient evidence to support the complaints, then the employee can be given this information and advised that if s/he wants to take the matter further then s/he will need to inform the Headteacher/Chair in writing that s/he now wants to have the matter considered at a grievance hearing. Consideration may be given to disciplinary action at this stage.

Where there is reason to believe that the employee has been treated inappropriately or if there is evidence that the employee has been bullied, harassed or discriminated against then management action should be considered, using the school's Disciplinary Procedure where appropriate.

#### **Step 5 – The Hearing**

If the complainant remains dissatisfied then s/he may request that a formal hearing is arranged for the complaints to be considered.

The person against whom the complaint is made will normally be required to attend any formal hearing or appeal hearing and may be accompanied at the hearing by up to two trade union representatives or work colleagues. S/he may be present solely as a witness or, at the discretion of the management representative, may be present throughout the hearing.

For complaints made against the Headteacher see below

Where a Board Committee is used, its members will be convened by the Clerk to the Trust from members of the Trust Board of Directors who (where possible) have not previously been involved in the case.

The complainant and the person whom the complaint is made against should be given ten working days written notice of the formal hearing.

The person against whom the complaint is made will be entitled to attend any formal hearing or appeal hearing and may be accompanied at the hearing by up to two trade union representatives or work colleagues. S/he may be present solely as a witness or, at the discretion of the management representative, may be present throughout the hearing.

Both parties will receive copies of the procedure and a full set of the evidentiary documentation for the hearing, including any material submitted by the other party. Should either party wish to present additional documentation they should do so by providing it to the Clerk to the Board of Directors (for Trust hearings or to the Headteacher/Deputy Headteacher for Headteacher/Deputy Headteacher hearings) by five working days prior to the hearing. Again, any additional material will be copied to the other party.

The nominated manager or Chair hearing the case may wish to adjourn the hearing pending further investigation.

A Human Resources representative will normally be present at hearings to advise on the procedure. The hearing will take place as soon as is reasonably practicable. If possible, a verbal decision will be given after the hearing. The decision will be confirmed in writing within ten working days.

## **Step 6 – The Decision**

There are two possible outcomes:

### **Complaint - not upheld**

The Discipline, Grievance and Dismissal Committee or Headteacher (as appropriate) may conclude that the complaint is not upheld, i.e. because the behaviour complained of did not occur or because there is insufficient evidence to support the complaint. If, in such a case, the Committee or Headteacher is nonetheless satisfied that the complainant's distress is genuine and/or that there has been a serious breakdown in relationships the school will offer support to the colleagues in the restoration of their working relationship through mediation or other methods as appropriate.

### **Complaint upheld or upheld in part**

If the outcome of the hearing is that the complaint is fully or in part proven on the balance of probabilities then consideration should be given to appropriate actions to prevent reoccurrence of the matters complained of. Disciplinary action may be recommended in appropriate circumstances as a separate procedure.

## **Step 7 – Issuing the decision**

The complainant should be informed of the outcome, in writing, normally within five working days. The reason(s) for the outcome should be included as part of the response. If the complaint is not upheld (at a first hearing), the employee must be informed of the right to take the complaint to an Appeal Hearing.

### **The decision letter should be copied to the:**

- Management representative who presented the case
- Headteacher
- Complainant's trade union representative

The person whom the complaint is made against should receive written confirmation of the outcome of the complaint against them.

## **Step 8 – The Appeal**

If the complainant is dissatisfied with the decision from the first hearing, s/he should notify the Clerk to Trust within ten working days of receipt of the decision letter of his or her decision to appeal. The complainant must give specific reasons why they are dissatisfied with the outcome. An appeal can be made on the grounds of:

- Perceived unfairness of the decision
- Disputing the facts of the case including new evidence coming to light
- Procedural non-compliance

The Appeals Committee will hear the complaint. The Committee will be convened by the Clerk to the Trust. The committee will comprise of Directors not previously involved at the first hearing. A Human Resources representative will be present to advise the Directors. The hearing will take place as soon as is reasonably practicable. If possible, the Chair of the Committee may be able to give a verbal decision after the hearing. The decision will be confirmed in writing normally within ten working days. The decision will be final; there is no further right of appeal.

## **Disciplinary Implications on the outcome of complaints process**

- Where a complaint of bullying, harassment or discrimination is upheld, management may take action under the disciplinary procedures
- Where the behaviour complained of is found to be inappropriate but not meriting formal disciplinary action, management may work with the person whom the complaint is made against to modify their behaviour through the use of management instruction, coaching, training, mentoring and mediation
- The making of vexatious or false complaints may result in disciplinary action being taken

## 11 Restoring Working Relationships

Whatever the outcome of a complaint, it is management's responsibility to re-establish effective working relationships amongst the employees involved; it is the employees' responsibility to co-operate to achieve this. The school may seek agreement from both the complainant and the person who the complaint has been made against for the case to be referred to mediation.

## 12 Occupational Health Support

The school has a duty of care to both parties involved in the case and should recognise that the process may be stressful and have an impact on the health and wellbeing of both parties. Schools are advised to seek Occupational Health support for either party where required.

## 13 In-School arrangements

In some cases it may be difficult for employees to work closely together and if possible schools may offer suitable alternative employment within the school if able to do so. (Further advice should be sought from Human Resources).

## 14 Complaints against the Headteacher

### Informal

- An employee who wishes to make an informal complaint against the Headteacher with a view to resolving an issue may use any of the following approaches:
- Approach a Deputy Headteacher or another member of the leadership team
- Contacting the trade union representative who may contact the Headteacher's trade union representative or the Headteacher directly.
- Approaching the Chair of Directors - The Chair of Directors may delegate the matter to a Director with the particular skills to enable him or her to provide assistance in this type of problem. Whoever undertakes this role cannot subsequently be a member of the Discipline and Complaints Committee or the Appeals Committee dealing with the matter.

Where the situation cannot be resolved through mutual discussion, consideration should be given to the use of mediation.

It must be noted that this is the INFORMAL part of the process and that any person the employee chooses to contact to assist in resolving the problem must deal with the matter on a confidential basis.

## **Formal**

The employee may contact the Chair of Directors to raise a complaint against the Headteacher. The complainant must put the details in writing outlining their specific complaint to the Chair of Directors/Clerk to Board of Directors. The same steps outlined within the Complaints Procedure will apply with the exception that the investigation and any subsequent hearing(s) will be heard by the Discipline, Grievance and Dismissal Committee.

Only an external investigating officer or one or more Directors may carry out an investigation into complaints against the Headteacher.

### **15 Complaints made by the Headteacher**

A Headteacher may raise a complaint against a member of staff on the grounds of bullying, harassment or discrimination. A Headteacher may raise a complaint against the Trust Board but not against an individual Director unless s/he is exercising a delegated power or function or one conferred by law.

### **16 Allegations against the Trust Board**

Please view the Trust's Complaints Procedure.

### **17 Collective Disputes**

Where more than one member of staff has lodged a complaint relating to the same or substantially the same issue, the school may deal with the complaints together in the interests of fair and consistent decision-making. The trade union may initiate a collective grievance on behalf of more than one named employee where the issues are the same.

### **18 Overlapping complaints and disciplinary cases**

Where an employee raises a complaint during a disciplinary process, the disciplinary process may be temporarily suspended in order to deal with the complaint, at the discretion of the Trust. Where the complaint and disciplinary cases are related it may be appropriate to deal with both issues concurrently.

# Part 3 – Managing Investigations

## 1 Introduction

The Managing Investigations Toolkit aims to provide a framework, which may assist School Managers to carry out a fair and consistent investigation into staff conduct or complaints. This document offers best practice guidance to school management and the Trust Board of Directors on dealing with the practicalities of carrying out investigations.

The guidance contained within this document should be used in accordance with the relevant Trust policy or procedure, as determined by the nature of the issue under investigation.

This guidance should be used in conjunction with the following policies;

- Disciplinary Procedure for Staff Employed in Schools
- Complaints & Grievance Procedures for Schools

This document is a practical guide to schools on undertaking investigations. Managers are strongly advised to contact Human Resources prior to undertaking an investigation; Human Resources are available to advise the investigating officer (Headteacher, Deputy Headteacher, Assistant Headteacher or Board of Directors) at all stages of the process.

### When should an investigation be conducted?

An investigation may be required in the following circumstances;

- Allegations of misconduct (including child protection allegations)
- Allegations of bullying / harassment / discrimination
- Dealing with employee complaints e.g. complaints regarding perceived unfair treatment

If there is an occasion when an employee's conduct has the potential to lead to a disciplinary hearing it is most important that a full and fair investigation is undertaken that is consistent with the guidance that is provided within this document.

### Examples of Misconduct

The following are examples of misconduct. The list is not exhaustive:

- Unauthorised absence
- Negligence
- Inadequate standards of work caused by carelessness
- Careless damage to or wastage of school property and/or equipment
- Failure to carry out reasonable instructions
- Insubordination

- Improper behaviour or conduct
- Disregard of safety instructions
- Aggressive behaviour
- Timekeeping offences
- Improper disclosure of confidential information
- Smoking in prohibited areas
- Harassment and/or bullying
- Breach of the School's guidelines on e-mail/internet use
- Breach of the School's approach to equality
- Conduct which contravenes school policy or procedure

### **Examples of Gross Misconduct**

Gross Misconduct is generally seen as misconduct serious enough to destroy the employment relationship between the employer and the employee and make any further trust and confidence and future working relationships impossible.

The following list provides some examples of actions which may constitute gross misconduct:

- Theft of school, staff or public property
- Fraud and/or deliberate falsification of records
- Deliberate damage to or neglect of school property and/or equipment
- Gross insubordination
- Serious harassment, bullying, discrimination and/or intimidation
- Physical violence
- Actions which risks bringing the school into disrepute
- Incapability whilst on duty brought on by alcohol or drugs
- Conduct at work likely to offend decency, including improper relationship with students
- Gross negligence which causes or might cause unacceptable loss, damage or injury
- Serious infringement of health and safety procedures
- Serious breach of confidence e.g. disclosure of confidential information and breach of data protection requirements.
- Criminal activities outside work where such conduct is incompatible with the individual's employment
- Matters/conduct relating to child protection
- Sexual Misconduct
- Refusal to follow a reasonable instruction

### **When to consider informal or formal action**

Consideration should always be given to whether it is appropriate to deal with a matter formally or informally (and the process to be followed).

If you are concerned that the allegation may be serious or you are uncertain as to whether initially to tackle the matter informally or formally, you are strongly advised to contact Human Resources before any action is taken to decide the most appropriate method of dealing with the matter.

Human Resources will discuss options with the manager, potential outcomes and mechanisms for dealing with the matter. Human Resources will also suggest any other sources of advice and support. The decision on how to proceed will ultimately rest with school management.

For guidance on dealing with complaints and allegations informally, please refer to the appropriate Trust Procedure.

**NB. If the matter relates to Child Protection the Behaviour Support Service Manager must be contacted for advice before any action is taken.**

### Child Protection Allegations

In the event of an allegation of a child protection nature a basic fact finding exercise may be required to establish the initial details, however, it is most important that you contact Human Resources as well as one of the colleagues below, before commencing a full investigation.

Jennie Sadowskyj – Behaviour Support Service Manager  
01274 385617 – 07730544800  
[jennie.sadowskyjj@bradford.gov.uk](mailto:jennie.sadowskyjj@bradford.gov.uk)

Jenni Whitehead – Lead Officer for Child Protection  
01274 385726 – 07730544810  
[Jenni.whitehead@bradford.gov.uk](mailto:Jenni.whitehead@bradford.gov.uk)

## 2 Suspension

### Who can suspend / lift suspension?

In cases where suspension is considered, please contact Human Resources for advice.

#### Headteachers

- Headteachers can suspend any member of staff employed or engaged at the school
- If suspension occurs, the Trust Board of Directors must be immediately informed
- Headteachers do not have the power to lift suspensions, this must be done by the Trust Board of Directors

#### Board of Directors

- The Trust Board of Directors can suspend / lift the suspension of any member of staff employed or engaged by the Trust, including the Headteacher
- If suspension occurs, the Trust Board of Directors must inform the Headteacher
- Suspension should not be discussed at full Trust Board of Directors level, in order to avoid the impartiality of Directors who may be required to consider matters at a later stage

### When suspension may be appropriate

Suspension is a neutral act, not a disciplinary sanction and the employee will receive normal pay. However, suspension may be considered at any stage of the process.

Suspension may be appropriate in the following circumstances;

- When a child(ren) is/are at risk
- Where the allegation is so serious that dismissal for gross misconduct is possible
- Where suspension is necessary to allow the conduct of the investigation to proceed unimpeded
- Where the Police are involved in a criminal investigation or are likely to be

Where the police are involved, management must consult with the Police Officer in charge prior to suspension being considered. In these circumstances please contact Human Resources.

### Alternatives to Suspension

Suspension can in some cases be a traumatic experience for all parties involved.

The member of staff, whom the allegation is against, should not automatically be suspended and alternatives to suspension can be considered, these may include;

- Paid leave of absence or mutual agreement to refrain from work (known as Garden Leave). This should only be considered as a short term arrangement while further information is being gathered.
- Alternative duties/locations
- Removal from contact with child(ren) that may be involved in the investigation

In the case where issues relate to a child protection matter, please consult with the appropriate Child Protection Officer, prior to making a decision regarding suspension.

In the case where immediate referral to the Behaviour Support Service Manager is accompanied by consideration of disciplinary procedures, suspension may or may not be appropriate. The Headteacher or Trust Board of Directors should consult with the Behaviour Support Service Manager and consider any recommendation which may be made by the Child Protection Agency/Police or strategy meeting before a decision to suspend is taken.

## Process for suspension

### Meet the member of staff

- A meeting with the member of staff should normally be undertaken outside pupil contact time<sup>1</sup> and as soon as possible in a discreet location.
- Where suspension is being considered, the employee should be advised that they may seek advice from his or her trade union representative
- The employee may be accompanied by a work colleague not involved in the matter or a trade union representative. Where a trade union representative is not available to attend the meeting, the member of staff may be suspended and then given the opportunity to make representations while accompanied by their trade union representative at a later date.
- The Headteacher / Trust Board of Directors conducting the meeting, will in most cases, be accompanied by a member of Human Resources

### At the meeting

- The member of staff should be informed that at the conclusion of the meeting, they may be suspended
- Explain that the meeting is not a formal disciplinary hearing but is for the purpose of raising a serious matter which may lead to suspension and further investigation
- The member of staff should be given information regarding the allegation(s) and the reasons for any proposed suspension
- The employee may make representations regarding the consideration of suspension
- Management may also want to give consideration to alternatives to suspension
- A brief adjournment should be offered to the member of staff prior to management's response
- If suspension is considered necessary, the individual should be advised that he or she is suspended from duty with immediate effect and should also be informed of the reasons for and the terms of their suspension

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<sup>1</sup> In accordance with the relevant ACAS Code of Practice, where the person is a trade union or safety representative, the interview should not be arranged without prior discussion with the relevant branch secretary or a full-time official of the trade union concerned. From the outset it should be established that the action being taken is not an attack on the functions of a trade union.

- Advise the employee that access to ICT systems & other relevant equipment will be immediately removed for the duration of the suspension
- Written confirmation of the suspension may be given at the end of the meeting or otherwise provided as soon as possible (normally within one working day, see Appendix 1)

In cases where suspension occurs, contact with the employee should be maintained and the suspension reviewed monthly.

### Support for Staff during the Period of Suspension

According to the needs and wishes of the member of staff to be kept informed, an appropriate senior member of staff may provide information about developments in the life of the school. The suspended member of staff will also be given the name of a Human Resources representative as a contact. The role of the contact person is to provide information with regards to the progress of the investigation.

Social contact with colleagues and friends at the school should not be precluded except where it is likely to be prejudicial to child protection enquiries, criminal investigations or disciplinary processes.

In some cases, it may be appropriate to ask whether welfare counselling or the support of the Employee Health & Wellbeing Unit (or the schools Occupational Health provider), would be helpful, or to respond to a request for such further support.

### Confidentiality

Where a parent has made the allegation they may be confidentially informed of the suspension and any developments where it is necessary to provide reassurance. The reasons given should be agreed between the concerned employee, their representation and the Headteacher.

Senior teachers in the school who need to know of the reason for the suspension should be informed as far as is necessary. The Headteacher/Trust Board of Directors should take a decision on informing other staff colleagues in the school of the suspension, however, the number of people informed of the suspension should be kept to a minimum.

In certain circumstances, e.g. child protection investigations, it may be necessary for the Headteacher (in consultation with the Trust Board of Directors) to provide immediate reassurance to parents and children in the school and there may be a need for information to continue to be provided during the course of an investigation to parents, children and other colleagues.

**Guidance should be sought from the Lead Officer for Child Protection or, where relevant and appropriate, from Social Services or the Police.**

## 3 The Investigation

### Who Should Investigate?

- When it is decided that a formal investigation is appropriate, school management or the Trust Board of Directors should determine who will be the investigating officer. If it is likely that the investigation may result in a disciplinary or grievance hearing, where the Headteacher may hear the case, it is advisable that an alternative member of the senior leadership team or an external investigator is commissioned in order to conduct the investigation
- If it is likely that the investigation may result in a disciplinary or grievance hearing, where the Trust Board of Directors may hear the case, it is advisable that the Headteacher, an alternative member of the senior leadership team or an external investigator is commissioned in order to conduct the investigation.
- If a hearing is required and there is no alternative the Headteacher can investigate and present the case to themselves at a hearing. Whilst it is not recommended that the Headteacher undertake this dual role, this would be a pragmatic approach in the circumstances. Please contact Human Resources before making a decision.
- If the Headteacher or senior member of staff is a key witness, or has knowledge which could be seen to prejudice the investigation, it is not recommended that they conduct the investigation, present the case at a hearing or hear the case. (Please contact Human Resources for further advice).

### External Investigators

The school may also contact Human Resources with a view to commissioning an external investigator. If an external investigator is commissioned, he/she will report to the nominated Trust Director who will retain responsibility for the case. This is outside the agreed SLA's and will be at an additional cost to the school.

The Investigator should liaise with Human Resources for advice on procedural matters and to keep Human Resources apprised of developments in the case.

The final report shall be the joint property of Bradford MDC and the Trust Board of Directors. (Please see appendix 3 for the protocol for external investigators)

### How to conduct the Investigation

#### Principles of conducting an investigation

- The investigation should be free from bias and meet the requirements of natural justice. All concerns should be put to the employee and they should be allowed to respond

- At all stages of the process, confidentiality must be maintained by all parties
- A timescale should be provided at the beginning of the investigation to all parties concerned and every effort should be made to achieve this. However, if this is not possible, all parties should be informed and given reasons why
- All parties have the right to be accompanied by a trade union representative or work colleague not involved in the case throughout the investigation process

### Meet the Member of Staff

The investigating officer will meet the member of staff whom the allegation/complaint is against (with their Trade Union Representative or a work colleague should they wish) and explain that this is a formal investigation. The member of staff will be given information about the allegation/complaint (verbally and in writing) and the procedure to be followed will be explained. The information to be given in sufficient detail for the member of staff to understand the overall matter of concern.

### Before commencing the investigation

- Identify details of the precise issue to be investigated, e.g. details of allegations/complaint made etc.
- Suggested methodology for conducting investigations, e.g. identification of initial witnesses, copies of policy being breached etc.
- Under which school policy or procedure the investigation is being conducted
- Clarify what purpose and by whom any Investigation Report will be used.

## **Investigation Interviews**

### Preparation for the investigation interviews

The Investigating Officer should:

- Ensure that enough time has been set aside to hold the interview confidentially, in a private room that is available without any interruptions.
- Ensure that all necessary information is available during the course of the meeting. e.g. copies of policies / procedures etc.
- Prepare a list or structure of challenging questions in relation to the alleged incident / allegation
- Ensure that an appropriate person is available to take detailed notes of the meeting, for use within the investigation process / report where appropriate.

All staff interviewed as part of the investigation are entitled to be accompanied by a trade union representative or a work colleague (who is not involved in the matter). The employee should be written to stating the date/time and venue, the purpose of the meeting and the right to be accompanied.

### Conducting the Investigation Interviews

Where possible the interviews should be conducted in the following suggested order;

- The person raising the allegation/complaint should be interviewed first
- Witnesses should be interviewed one at a time. There may be a need to re-interview witnesses during the investigation process. Additional witnesses may be identified during the investigation and must also be interviewed.
- The person whom the allegation/complaint is against should be interviewed last
- Care should be taken to avoid any opportunity for collusion

**When interviewing children that may be involved as witnesses please refer to Human Resources for advice.**

#### The structure of the investigation interview

- Explain the context of the interview and the member of staff's right to representation.
- For what purpose the meeting notes and subsequent record of interviews will be used
- How and when the interviewee will be able to check the notes /record of interviews
- Reiterate the importance of confidentiality.

The interview itself is to ascertain facts and there may be times when a series of specific questions requiring specific answers may need to be put to interviewees. Fair, open and challenging questions may be used to probe answers to establish the facts. The interviewer should avoid any speculation or opinion.

#### Introductions & Greetings

**To the person making the allegation, witnesses (or others with information) explain;**

- The procedure to the interviewee and try to put them at their ease.
- Their right to be accompanied by a trade union representative
- This is part of a formal process, their evidence may be used if the matter proceeds to a hearing and they may have to be called as a witness
- They will be given a copy of their final record of interview
- The member of staff will have the right to know who is making the allegation/complaint (or providing information about the matter). The member of staff will also receive a copy of the record of interview should the matter proceed to a hearing
- This matter is strictly confidential and must not be discussed at any stage. Reassure the interviewee that management will also strictly maintain confidentiality.
- This should appear in the record of interview

### Taking a record of interview from the member of staff

Explain that:

- This is part of a formal process
- They have a right to representation
- The allegations/complaint against them may proceed to a disciplinary hearing, and the potential outcomes.
- They will be given a copy of their final record of interview

### Questioning

- Use open questions (who, what, why, when, how etc)
- Use closed questions in order to clarify points. Leading questions should not be used when interviewing witnesses
- Discuss and enquire into any additional information for clarification
- Ensure that specific examples are provided when unsubstantiated descriptions are given, i.e. 'bullying' or inappropriate behaviour' etc
- Where physical force is alleged to have been used then the degree of force used should be clarified
- Once questioning is complete, re-cap and clarify main points of discussion, ensuring that the notes taken are accurate and answer any appropriate questions or concerns raised

### Closing Statement

- Explain the next steps, confirming how / when the record of interview is to be prepared and verified and when the investigation is expected to be completed.
- Ensure that contact details of the Investigating Officer are provided, and ensure confidentiality is fully understood.

At the end of the investigation interview the Investigating Officer should have obtained from each witness:

- The names of those present or involved
- Date / time / place of the alleged incident / allegation
- Details of what took place, and the order in which they happened
- How the individual reacts to any other documents or witness evidence which is inconsistent with their account
- The steps taken since the alleged incident / allegation, including any steps taken to resolve the matter
- Their preferred outcome (in cases of complaint)

### Records of Interviews

- Any notes taken during the investigation interviews should be typed, checked and signed by the interviewee. The record of interview should record the facts, written (within reason) in the language used by the interviewee following the train of events. (For a template record of interview please see Appendix 6)
- If there is any ambiguity or gap in the account these should be clarified with the interviewee

- The interviewee must be given the opportunity to review the statement and must only sign to confirm it as a true and accurate version of events
- Once the record of interview is typed the employee should be allowed sufficient time to read it through, make any amendments/additions as necessary and sign and date the record at the bottom of each page. Any amendments should be initialled. Where possible it is advised that the record is typed and signed as soon as the interview has been completed.
- Where records of interviews cannot be taken the Investigating officer may ask the interviewee to provide a written statement, which can be prepared with their Trade Union representative. In these cases the statement should be checked by the Investigating officer and included in the Investigation Report. In these circumstances please contact Human Resources.

### Evaluating the Evidence

All of the relevant evidence gathered during the investigation should be reviewed and collated for use within the Investigation Report (For a template investigation report, please see appendix 7). This should include;

- Any record of interviews
- Notes from investigation interviews
- Relevant policies & procedures
- Evidence of custom and practice etc.

This evidence should be evaluated, particularly where there are contradictions or conflicts which the Investigating Officer must consider. In evaluating evidence, each case should be judged on its merits; however, the following points should be considered;

- Direct witness evidence will usually be stronger than indirect information relating to the incident / allegation
- Evidence which is inconsistent with documents produced at the time is questionable
- Evidence which is vague, is unsubstantiated opinion or hearsay, omits significant details or contains inherent contradictions is questionable
- Anonymous evidence should be reviewed with caution as it is often difficult to substantiate
- Consideration should be given to any bias, motivation or influence individual witnesses may have
- Where possible the factual accuracy of points raised in records of interviews should be verified by the investigating officer if they are material to the allegations/complaints

It is important to remember that in reviewing the evidence and recommending appropriate courses of action, the Investigating Officer only has to show they have a reasonable belief of what happened based on their assessment of the

evidence. Unlike a legal case there is no requirement to prove a case 'beyond reasonable doubt'.