



The Circle Trust Document: **Staff Discipline Policy**

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| Author: | Executive Headteacher |
| Approver: | Trustees |
| Owner: | Human Resources |
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Changes History:

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| 1.1 | 28.4.21 | Exec Head | Policy refreshed in consultation and agreement with Unions | Review |
| 1.2 | | | | |
| 1.3 | | | | |

Purpose of the Policy

The Circle Trust recognises the importance of dealing with disciplinary matters effectively to ensure that fair and effective arrangements exist for dealing with disciplinary matters and that as far as possible common standards are observed for all employees. As a result this procedure has been drawn up in accordance with the ACAS Code of Practice.

1. Introduction

1.1. Employees covered by this procedure

This procedure is applicable to all employees of the Trust.
In line with Keeping Children Safe in Education statutory guidance the LADO and investigation procedures in this policy will also cover supply teachers not employed/engaged directly by schools when safeguarding issues arise. Whilst any decisions about their employment will remain with their employer.

2. Principles

- 2.1. Employers and employees have a general duty to behave at all time in a way which preserves a necessary degree of mutual trust and confidence,
- 2.2. Employees will be told what is expected of them in terms of standards of conduct and know this disciplinary procedure will be used if disciplinary action is taken.
- 2.3. No formal disciplinary action will be taken against an employee until any allegation has been fully investigated.
- 2.4. At all stages of the formal procedure the employee will have the right to be accompanied by a trade union representative or work colleague from the Trust.
- 2.5. No formal disciplinary action will be taken against a trade union representative until the circumstances have been discussed with a full time official of the union concerned.
- 2.6. The procedure can be implemented at any stage dependent on the nature of the complaint. Action taken will depend on the seriousness of the alleged offence, past officially recorded behaviour of the employee, consequences of the alleged offence and any mitigating circumstances presented by the employee.
- 2.7. Employees will be given the right of appeal against formal disciplinary action.
- 2.8. In the event of a subsequent employment tribunal hearing the Trust will be required to show that all stages of the disciplinary procedure have been carried out in a fair and reasonable manner. It is expected that all parties concerned will adopt a constructive and co-operative approach throughout and that each stage of the procedure will be conducted with minimum delay.
- 2.9. If Local Advisors or Trustees are part of a panel or an appeal panel, they should not be involved in any aspect of the investigation of an allegation.

- 2.10. The school will process any personal data collected during the disciplinary procedure in accordance with its data protection policy. Further details can be found in the Privacy Notice on the school's website. Any data collected is held securely and accessed by, and disclosed to, individuals only for the purposes of managing the disciplinary procedure.

3. The Aims and Objectives of the Staff Disciplinary Policy

- 3.1. Handling disciplinary matters fairly is important for the efficient management for staff morale and for our Trust and a school's reputation.

4. The management of the Staff Disciplinary Policy

- 4.1. The Trustees have a fundamental role to:

- 4.1.1. Review this policy to approve changes
- 4.1.2. Form a Staff Disciplinary Appeals Panel if required (made up of 3 Trustees who have no previous knowledge of a case)
- 4.1.3. In the case only of the Executive Headteacher, form a Staff Disciplinary and/or a Staff Disciplinary Appeals Panel, if required (made up of 2 Trustees and a suitable Independent Person who have no previous knowledge of the case). The Independent Person will be identified by Trustees and may not be in the employment or involved in the governance of The Circle Trust. The Independent Person may be, for example, an Executive Headteacher (serving or retired) or a person experienced in governance such as a serving Trustee or governor

- 4.2. The Executive Headteacher will:

- 4.2.1. Implement this policy
- 4.2.2. Promote and ensure that all Headteachers/school leaders understand and follow the disciplinary procedures as set out in this policy
- 4.2.3. Be responsible for initiating disciplinary action and deciding on the appropriate level of action where the alleged misconduct involves a Headteacher
- 4.2.4. Seek and follow advice from The Circle Trust HR providers at all stages of any disciplinary process

- 4.3. The Local Advisors have a fundamental role to:

- 4.3.1. Be satisfied that any disciplinary procedure is followed as set out in this policy and understood by the Headteacher/school leaders and employees
- 4.3.2. To form a Staff Disciplinary Panel if required (made up of 3 Local Advisors who have no previous knowledge of a case)

- 4.4. A Headteacher/School Leader with the oversight of Local Advisors will:

- 4.4.1. Follow this policy when dealing with disciplinary matters

- 4.4.2. The responsibility for invoking the disciplinary procedure and deciding the appropriate level of action rests with the Headteacher in the first instance. Advice and guidance is available from the School's HR Adviser, and should be sought at all stages of the disciplinary procedure. The mishandling of dismissals can result in severe financial penalties. The Executive Head (or equivalent), has a right to attend and advise at meetings which are considering the dismissal of employees.
- 4.4.3. Promote and ensure [The Circle Trust Staff Code of Conduct here](#) is understood and followed by employees in their school

5. The Disciplinary Procedure

5.1. Purpose

5.2. Except in cases of gross misconduct for which dismissal is justified, following due process, the main purpose of the whole process should be to encourage an employee whose conduct or work is unsatisfactory to improve. However if dismissal does prove necessary then action taken should withstand legal scrutiny.

5.3. Application

5.4. Where minor misconduct first occurs it should be the normal practice for the Headteacher to deal with the matter by counselling, informal reprimand or informal warning to the employee for the improvement of conduct. The warning could be oral or written. It is not intended that the formal procedure should replace this normal interchange. If the minor misconduct continues or is repeated then the case could be dealt with formally under the procedure. A time-scale for any disciplinary action is attached at Appendix 3.

5.5. Initial consideration

5.6. Any allegation should be drawn to the notice of the Headteacher, who will then decide whether there are sufficient grounds to warrant a thorough investigation. Should this be the case, the Headteacher will inform the employee, giving full details of the nature of the allegation. The investigation, in turn, determines whether or not there is a case to answer.

5.7. The Headteacher should consult with the Executive Headteacher and School's HR Adviser for advice as part of the initial consideration.

5.8. Allegations relating to children and young people must be immediately referred to the Local Authority Designated Officer (LADO) in line with the statutory guidance "Keeping Children Safe in Education".

5.9. Where further action is required under the disciplinary procedure a letter will be sent to the employee detailing the allegations.

5.10. Suspension

5.11. The Headteacher may suspend an employee on full contractual pay for the minimum period possible while an investigation is undertaken into the alleged offence. Immediate notification shall be given to the Executive Headteacher. Suspension should normally only be applied in cases of alleged gross misconduct. It may also be appropriate in other cases e.g. where there is a risk of harm to another individual or the employee concerned; or to allow the investigation to proceed unimpeded. See Appendix 1 for a definition of gross misconduct.

6. Investigation of allegations

- 6.1. If the Headteacher decides that an investigation is warranted, a senior member of staff will usually conduct it.
- 6.2. It is important that the Headteacher does not undertake the investigation. To do so would seriously hinder the ability to hear or present the case to the Local Advisory Board disciplinary committee should this prove necessary.
- 6.3. No investigation should commence if the case is being investigated by the Police or Social Care.
- 6.4. The Headteacher will ensure guidance is sought from HR in these matters.
- 6.5. Where the Police or Social Care are not conducting an investigation under child protection procedures and a child is the alleged victim of an offence, or a witness to an alleged offence, permission must be obtained from the parents or carer for the child to be interviewed. The parents or carers may also attend the interview.
- 6.6. The investigation will address only the formal allegation being pursued. However, if in the course of the investigation further allegations emerge, these too will be carefully investigated and the employee given an opportunity to answer them. The employee needs to be notified in writing where further allegations are being investigated. All allegations will be investigated at the time they are made. Allegations, which were not investigated at the time they were made, will not be admissible at any stage in disciplinary proceedings. Any allegation found to be unsubstantiated will be withdrawn immediately.
- 6.7. The investigation will be conducted fairly and without delay with the object of:
 - 6.7.1. Establishing the exact nature of the allegation and the nature of the evidence to substantiate it;
 - 6.7.2. Giving the employee, who may be represented, the opportunity, in an interview, to explain; however, the employee should be advised that he is not obliged to say anything. The employee should be given 48 hours' notice of such an interview.

7. Following the investigation of allegations

- 7.1. The investigating officer will report their findings to the Headteacher who will decide whether formal disciplinary action needs to be considered, this could either be a formal disciplinary interview or a Local Advisory Board disciplinary committee hearing (under either Stage 1 or Stage 2 of this procedure).
- 7.2. Where formal disciplinary action is warranted, the employee will be informed in writing of:
 - 7.2.1. The full allegations and details of all related incidents;
 - 7.2.2. The intention to proceed to disciplinary interview (Stage 1) or Headteacher / Local Advisory board disciplinary hearing (Stage 2);
 - 7.2.3. The date, time and venue of the disciplinary interview or Headteacher / Local Advisory board disciplinary hearing;
 - 7.2.4. The fact that the employee need not make any statement prior to the interview or hearing;

7.2.5. The fact that the employee may be accompanied by a trade union representative or work colleague

7.2.6. All documents relevant to the disciplinary hearing, and a list of witnesses, to be presented by the school at least 5 working days before the interview/hearing

7.2.7. All documents relevant to the disciplinary hearing, and a list of witnesses, to be presented by the employee at least 2 working days before the interview/hearing.

7.3. See Appendix 3 for a full time-scale for interview/hearing.

8. Disciplinary Interviews (Stage 1)

8.1. Where the Headteacher considers a formal disciplinary interview to be appropriate, the Headteacher will arrange, in very serious cases, to be accompanied by the Schools HR Adviser.

8.2. The Headteacher/manager presenting the employer case can also invite his/her own named witnesses. The permission of the parents or guardian will need to be obtained where a child is involved; the parents or guardian may also attend the interview. In addition, the Headteacher will arrange for a record of the interview to be kept.

8.3. Depending on the severity of the misconduct, varying courses of action may be taken by the Headteacher as a result of the disciplinary interview:

8.3.1. Recorded oral warning (i.e. confirmed in writing)

8.3.2. Written warning

8.4. If more serious evidence or allegations emerge during the disciplinary interview the Headteacher may decide that a Headteacher / Local Advisory Board disciplinary hearing should be convened or, in cases of alleged child abuse, that the matter should be referred to the LADO.

9. Recorded oral warning

9.1. Where the Headteacher considers that the employee is at fault, an oral warning may be given. If so, this will be given in the presence of a witness.

9.2. The Headteacher will give a written record of the oral warning to the employee within 5 working days of the interview. If at the time the oral warning was given the employee objects to the issuing of such a warning this objection should be recorded in the written acknowledgement. The letter will also inform the employee of his right of appeal against the oral warning to the Trustees appeal committee. Any appeal must be lodged in writing within five working days following receipt of the written record of the oral warning.

10. Written warning

10.1. At the conclusion of the disciplinary interview, the Headteacher may consider the employee to be sufficiently at fault for a written warning to be issued.

10.2. The written warning will:

10.2.1. Set out the particulars of the shortcomings of the employee;

10.2.2. Set out the nature of the warning and its duration;

- 10.2.3. Outline the nature of any further action which might be taken if the warning is not heeded;
- 10.2.4. Inform the employee of the right of appeal against the written warning or its duration. Any appeal must be lodged within five working days following receipt of the written warning.

11. Procedure leading to the convening of a Headteacher / Local Advisory Board disciplinary hearing (stage 2)

- 11.1. The Local Advisory Board disciplinary hearing must be convened in all cases of alleged gross misconduct.
- 11.2. In addition, a Headteacher / Local Advisory Board disciplinary committee may be convened in the following circumstances:
 - 11.2.1. Where the allegations are considered by the Headteacher to be of a serious nature and, therefore, not appropriate to be dealt with by means of a Stage 1 disciplinary interview;
 - 11.2.2. If more serious evidence and allegations emerge during a Stage 1 disciplinary interview;
 - 11.2.3. Where, following a written warning, any further shortcomings or misconduct arise which warrant formal disciplinary action.
- 11.3. The employee must be informed in writing of the date, time and venue of the meeting of the disciplinary committee at least five working days before the meeting;
- 11.4. The Headteacher presenting the employer case may invite his/her own named witnesses. The permission of the parents or carers will need to be obtained on the rare occasions where a child is involved; the parents or carers may also attend the hearing. In addition, the Headteacher will arrange for a record of the interview to be kept.
- 11.5. The employee may invite their own named witnesses. At least two working days' notice should be given of which witnesses the employee intends to call.
- 11.6. The Headteacher will send copies of any documents which are to be submitted, to the disciplinary committee if appropriate, the employee (and his representative), at least five working days before the meeting.
- 11.7. The employee should send copies of any documents, which are to be submitted to the Headteacher/Local Advisory Board committee, at least two working days before the meeting.
- 11.8. With the agreement of all parties, any new documentation relevant to the case may be accepted at the commencement of the hearing itself; in such an event sufficient copies should be provided for all parties and an adjournment may be necessary.

12. Conduct of hearing

- 12.1. The Headteacher / Local Advisory Board disciplinary hearing will meet to hear the case against the employee. If it is a committee of Local Advisors, the Local Advisors making up the committee must not have been involved in any earlier action in respect of the same case. Their role is to conduct the hearing in a fair and balanced manner and to ensure that their conclusion is fair and free from prejudice.
- 12.2. The Advisory Board Disciplinary committee will appoint a presiding chairman.
- 12.3. A Schools HR Adviser should be present to advise the Headteacher / panel on all cases where dismissal is a possible outcome.
- 12.4. The employee must be given the opportunity to be accompanied at the meeting by a trade union representative or work colleague.
- 12.5. At the hearing the presenting manager (presenting the employer case) will be either the Headteacher (or representative) if the case is being heard by Local Advisors or the Investigating Officer if the case is being heard by the Headteacher.
- 12.6. The hearing should be conducted as follows.
 - 12.6.1. The case against the employee will be presented by the presenting manager
 - 12.6.2. The presenting manager may call witnesses
 - 12.6.3. The employee may question the presenting manager and the witnesses.
 - 12.6.4. The Headteacher / Local Advisory Board panel may ask questions of both parties and any witnesses. The witnesses should then withdraw;
 - 12.6.5. The employee's case will then be presented by the employee (or representative)
 - 12.6.6. The employee may call any witnesses individually
 - 12.6.7. The presenting manager may question the employee and the witnesses.
 - 12.6.8. The Headteacher / panel may ask questions of both parties and any witnesses. The witnesses should then withdraw;
 - 12.6.9. Both parties may sum up their cases if they wish
 - 12.6.10. The employee and representative and presenting manager will then withdraw
- 12.7. The Headteacher / panel will consider the matter in private. If it is a committee of Local Advisors, a minimum of three Local Advisors must participate in these deliberations, all of whom must have been present throughout the entire hearing.
- 12.8. A decision could be confirmed at the time (following deliberations) or can be followed up in writing

13. Power of the Headteacher / Local Advisory board panel

- 13.1. The Headteacher / Local Advisory Board panel may determine either:
 - 13.1.1. That the allegation or complaint be dismissed; Or

- 13.1.2. That one of the following sanctions be applied, based on the seriousness of the allegation or complaint
 - 13.1.3. a recorded oral warning (i.e. confirmed in writing) be given – normally current for six calendar months;
 - 13.1.4. A written warning or further written warning or final written warning be given – normally current for one year in the case of a written/further written warning and normally two years in the case of a final written warning;
 - 13.1.5. Withholding incremental progression could be considered where appropriate
 - 13.1.6. The employee should be demoted with or without protection of salary
 - 13.1.7. The employee should be dismissed from the school with due notice;
 - 13.1.8. The employee should be summarily dismissed from the school, with no notice.
- 13.2. Following the hearing the outcome should be confirmed in writing within 5 working days of the hearing. There is a right of appeal against this determination. An official record will be kept on the employee's HR file. Warnings will be kept on file for the designated period and will normally be disregarded at the end of the specified time if satisfactory conduct has been achieved.

14. Appeal

- 14.1. An employee can appeal to the Local Advisory board appeal committee against any warning or other sanction imposed by the Headteacher or Local Advisory board panel. An appeal should be lodged in writing to the Company Secretary within 5 working days following receipt of the written confirmation of the determination.

15. Power of the Appeal Committee

- 15.1. The Trustee appeal committee will hear any appeal by an employee
- 15.2. The members of the appeal committee must not have been involved in any earlier actions in respect of the same case.
- 15.3. The Appeal Committee may:
 - 15.3.1. Uphold the appeal
 - 15.3.2. Dismiss the appeal
 - 15.3.3. Reduce or confirm the duration of a warning
 - 15.3.4. Impose a different sanction from that imposed by the head teacher or disciplinary committee. Where a different sanction is imposed, it must be one selected from paragraph above
 - 15.3.5. The decision of the appeal committee will be confirmed in writing to the employee and the Headteacher within five working days of the appeal hearing.

16. Notification to the Teaching Regulation Agency

- 16.1. The Circle Trust has the responsibility to report cases to the Teaching Regulation Agency <https://www.gov.uk/guidance/teacher-misconduct-referring-a-case> where a

Appendix 1 – Types of misconduct and levels of action

Whilst it is possible to give examples of types of misconduct (minor, serious, gross) it is important that each case is looked at in relation to the type of offence, circumstances, previous record and type of job. What would be a relatively minor breach of discipline in one job may be viewed more seriously in a different job because of the nature of the work, for example contact generally with children, young people, public, vulnerable clients or responsibility for cash.

It is not possible to give a definitive list of penalties which may be awarded for particular offences but there are general guidelines which should be followed. Your HR Adviser can provide advice as to whether a recorded oral warning, written warning, final written warning or dismissal is appropriate.

Except in cases of summary dismissal for gross misconduct, employees who are dismissed are entitled to a period of notice in accordance with their contract of employment.

Employees would not normally be dismissed for a first breach of disciplinary rules except in the case of gross misconduct or specific and/or repeated cases of serious misconduct.

LEVELS OF MISCONDUCT

Minor Misconduct

- a) Minor misconduct is that which does not impact significantly upon the work of the school / trust, other employees, pupils or the public provided that it is not a repetition of an earlier similar offence.
- b) Some examples would be:
- c) Poor timekeeping or non-attendance without reason
- d) Failure to follow instructions/carry out simple tasks
- e) Minor abuse of working hours
- f) Smoking in a no smoking area

Penalties

A recorded oral or written warning is the generally accepted penalty for minor misconduct but the Headteacher / manager will need to make it clear to the employee that repetition may lead to more serious action. The warning will generally be for up to 12 months.

Serious Misconduct

Serious Misconduct is that which impacts to a significant degree upon the work of the school / trust, other employees, pupils or the public and/or is a recurrence or continuation of conduct which is unacceptable and has been dealt with previously as minor misconduct. Some examples would be:

- a) Improper, disorderly or unacceptable conduct at, during or when arriving at work including offensive language in front of the public or pupils
- b) A breach of a rule which endangers the safety of another person
- c) A breach of confidential information which might have serious repercussions for the school / trust
- d) Neglect of responsibilities
- e) Dishonest Behaviour (depending on the degree and extent)
- f) Behaviour which is sexist or racist or offensive to those of a particular ethnic origin, religion or belief, nationality or sexual orientation or harassment/victimisation of an individual for reasons relating to disability or age
- g) Malicious or reckless damage to school/trust property (depending on the degree or extent)
- h) Repeated and significant misuse of the school's / trust's facilities (e.g. telephones, internet, e-mail)
- i) Viewing or distributing inappropriate material whether on the internet, by e-mail or in written form (depending on the circumstances, this could be considered gross misconduct)
- j) Participating without the knowledge or consent of the school / trust in any other employment, business or profession which has an adverse impact on work or the school / trust.
- k) Unauthorised entry into the school / trust computer systems including the running of computer games and other unauthorised software
- l) Working or indulging in other activities while absent from work on sickness leave

Penalties

There is a range of penalties available including:

Written warning.

Final Written warning - used for continued minor offences or failure to achieve the improvements required by a written warning. The warning will generally be for up to 24 months but may, in certain circumstances, be retained for the rest of the employee's working career.

Other examples of appropriate action are: transfer to alternative duties or demotion for a specified period of time or permanently; withholding of increments.

Gross Misconduct

Gross misconduct is that which is so serious in relation to its impact upon the work of the school / trust, other employees, pupils or the public that it cannot be tolerated under any circumstances and thus is likely to result in the termination of employment. Some examples would be:

- a) Theft, fraud or falsification of records, breach of delegation limits
- b) Serious incapability through alcohol or drugs
- c) Acts of violence or vandalism in course of employment
- d) Inappropriate behaviour of a sexual nature towards another employee, pupils or member of the public
- e) Any act which may result in an action against the school / trust for negligence or for breach of the duty of care
- f) Falsification of information when applying for a post and failure to disclose criminal convictions
- g) Falsifying pupil records, or assisting pupils to cheat or gain unfair advantage in examinations
- h) Drug trafficking and other drug-related offences
- i) Wilfully ignoring responsibilities or instructions thereby placing other members of staff and/or pupils in danger
- j) Viewing or distributing offensive material whether on the internet, by e-mail or in written form
- k) Gross negligence in failing to attend or to carry out the duties of the post
- l) Any other behaviour which involves an abuse of a teacher's or member of staff's position of trust or a breach of the standards of propriety expected of the profession.

Penalty

Dismissal without notice is given in cases of gross misconduct

Appendix 2 – Criminal Offences

Where a criminal offence has been alleged this procedure will be applied as appropriate. However, in some cases, it may be undesirable, unfair or impossible for the Headteacher to authorise an investigation under this procedure while a Police / Social Care enquiry or prosecution is pending.

The employee may, in such circumstances, be suspended on full pay (i.e. be suspended on full pay pending the outcome of the proceedings). The Headteacher should seek the advice of the Schools HR Adviser.

Any criminal offence resulting in a conviction, or behaviour which could lead to prosecution for a criminal offence, may result in disciplinary action. Factors to be considered will include:

- a) The seriousness of the offence;
- b) Whether the offence is such as to render the individual unsuitable for his type or scope of work;
- c) Whether the offence is such as to render it undesirable or inappropriate for the individual to remain in his present employment;
- d) Whether and, if so, to what extent the offence affects and concerns the school and the employment of the individual within it.

Where an employee is not able to work as they are held in custody pending a prosecution for a criminal offence then pay will be suspended until the outcome of the prosecution is known.

Where an employee receives a custodial sentence as a result of a conviction then they will be summarily dismissed on the recommendation of the Trustees.

Appendix 3 - Timescale

Investigation

Employee to be given 48 hours' notice to attend an investigation meeting.

Interview / hearing

Employee informed in writing of the need for and stage 1 or stage 2 disciplinary hearing

In the case of a hearing, written notice to be sent to the employee at least 5 working days before the meeting

All documents relevant to the hearing to be provided at least:

From employer – 5 working days before the meeting

From employee – 2 working days before the meeting

In the case of a hearing decision, this should be confirmed to the employee in writing within 5 working days of the end of the hearing

Any appeal must be lodged within 5 working days following receipt of written confirmation of the decision

Employee must be informed in writing of the date, time and venue of appeal hearing at least 5 working days before the appeal.

All documents relevant to the appeal hearing to be provided at least:

From employer – 5 working days before the meeting

From employee – 2 working days before the meeting

Decision of appeal panel to be confirmed in writing within 5 working days of the end of the appeal hearing.

Appendix 4 – Model Suspension Letter

Dear

I am writing to confirm the decision taken under the Schools' Disciplinary Procedure to suspend you from work with effect from until further notice. Your suspension is without prejudice and on full pay. The reason for your suspension is to facilitate a full investigation into the allegation that However, should any other issues emerge during the course of the investigation they will be brought within its scope.

During the period of your suspension you should not enter the school grounds or buildings. You should not have any contact with any member of staff or pupil at the school or any member of the Local Advisory Board or Trustees while the suspension is in force. I would be grateful if you could return any keys that you have to me.

Should it be necessary to arrange a disciplinary hearing you will of course be entitled to discuss your case with any witnesses you wish to call or any colleague or representative. You will be notified of this at the appropriate point.

If you wish access to any personal effects please contact X and an acceptable time will be arranged for this to occur.

You will appreciate that it is important that the investigation is finalised as soon as is reasonably possible. You will be informed at each stage of the process.

I will contact you again concerning a further interview to which you may bring a trade union representative or work colleague. You may wish to discuss your case with your trade union representative.

This is understandably a challenging time for you and if there is any additional support we can provide please contact me.

Yours sincerely

Name

Headteacher