



Staff Disciplinary Policy and Procedure

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Review: Annual

NB. 'Trustees' means the Directors referred to in the Trust's Articles of Association

History of most recent policy changes

Version	Date	Page	Change	Origin of Change e.g. TU request, Change in legislation
V1.0	January 2021		New policy and procedure introduced for the Tarka Learning Partnership Central Trust Team and Schools within the Trust	Requirement for central policy to explain the approach to managing disciplinary matters in the Trust and Schools within the Trust.

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POLICY

1. Purpose

This policy sets out the disciplinary procedure relating to employees.

A high standard of discipline and conduct is essential for the effective and efficient management of schools and the safety and wellbeing of all staff and pupils in the Trust.

The Disciplinary procedure is designed to help and encourage all employees to achieve and maintain appropriate standards of behaviour and conduct. The procedure provides a method of dealing with apparent shortcomings in conduct and the main purpose of the procedure is to encourage an employee whose behaviour and conduct is unsatisfactory to improve.

2. Applications and Exclusions

This policy is based on good practice to ensure a fair and consistent approach. The application of this policy will be fair, equitable, objective and will not discriminate either directly or indirectly on the grounds of an employee's gender, age, disability, gender re-assignment, marital or civil partnership status, pregnancy, maternity status, race (including colour, nationality and ethnic or national origins), religion or belief and sexual orientation.

This policy:

- applies to all employees engaged within the Tarka Learning Partnership.
- does not apply to casual workers or volunteers.

Advice on the application of this procedure should be sought from the Tarka Learning Partnership's HR Leader.

3. Delegated Responsibilities

In line with School Staffing (England) Regulations 2009, the Head Teacher has the delegated responsibility to take disciplinary action up to initial dismissal decisions. Following this, the employee will have a right of appeal to a committee of the Local Governing Body.

There may be certain circumstances where the delegation of responsibility outlined above will not apply. For example if the Head Teacher has been directly involved in disciplinary procedures leading to dismissal, has instigated a proposal to dismiss or is a witness of particular conduct giving grounds for the dismissal in question.

Where it is not appropriate for the Head Teacher to perform this function, a Committee of the Local Governing Body will be convened. The Tarka Learning Partnership reserves the right to utilise governors from other schools within the Trust to convene disciplinary and

appeal panels where necessary. Trustees of the Tarka Learning Partnership may also participate in staff discipline and appeal hearing panels where necessary.

Where a Governor Committee is required, three of its members who are not staff members should be nominated to form the committee.

Where a matter of discipline relates to a Head Teacher's conduct, the matter will be undertaken by the Trust Central Team, with an Investigating Officer appointed by the Chief Executive Officer (CEO) and any panel convened including one Trustee of the Tarka Learning Partnership.

4. Responsibility for taking action

Action to suspend an employee as part of this policy can only be taken by a delegated person. In schools this is a Head Teacher, Chair of the Governing Body or Chief Executive Officer of the Tarka Learning Partnership (see section 20 – Suspension). Action to remove an employee from the workplace pending the decision to suspend can be undertaken by a Deputy Head Teacher.

In schools, disciplinary hearings will be conducted and chaired by the Head Teacher or Governor Committee. Support regarding the procedure and proceedings will be given by the Tarka Learning Partnership HR Leader.

The Chair of the disciplinary hearing will be responsible for arranging the hearing, writing to the employee and arranging for a suitable person to attend the hearing to take notes. The School Business Manager, Administrator or Clerk to Governors will normally undertake these duties.

5. Standards expected of employees

The standards expected of employees include but are not limited to:

- Maintain and role model standards of behaviour in keeping with the interests and standing of the school and Tarka Learning Partnership. This includes behaviour outside of working hours and in any form that is visible to the public, including social networking, social media or any other electronic medium.
- Follow all appropriate safeguarding procedures.
- Devote full attention while at work to the duties of their position and in doing so act with responsibility, good judgement and in good faith.
- Carry out any reasonable instructions given by those with authority to do so.
- Afford dignity, trust and respect for everyone and themselves.
- Have awareness of the effects of their behaviour on others and only make reasonable and manageable demands.
- Communicate honestly and openly.
- Provide and are receptive to honest feedback based on evidence.

- Carry out their role consistently with any standards set by their appropriate professional body.
- Challenge discriminatory language and behaviour in an appropriate way.
- Take steps to address any unacceptable behaviour.
- Observe the rules, regulations and instructions adopted by the Tarka Learning Partnership.

In addition to the above, the expectations of those employed in management/senior leadership roles are to:

- Ensure the standards expected from employees are role-modelled, monitored and managed effectively
- Effectively manage all applicable statutory and non-statutory obligations
- Appropriately manage all alleged incidents and/or allegations.

6. Behaviour outside work

Inappropriate and unacceptable behaviour and/or criminal offences that have occurred outside of work may be dealt with under this policy, or the Managing Allegations of Abuse Made Against Staff policy and procedure, if the employee's behaviour or activities:

- may make them unsuitable for the role they are employed to perform, e.g. failure to protect their own children
- has the potential to cause damage to the reputation of the Tarka Learning Partnership or school. This includes written and verbal communications and covers all types of media including newspapers, internet, and social networking sites such as Facebook, Snapchat, Instagram, LinkedIn, TikTok and Twitter
- identifies them as a perpetrator of domestic violence
- identifies them as behaving in a way that leads to a breakdown in working relationships
- are inconsistent with the professional standards of public behaviour expected of the role e.g. lewd behaviour, sexual misconduct, being intoxicated in public, association with illegal drugs (subject to the employer's duty of care to employees who may have substance or dependency issues)
- identifies them as having engaged in inappropriate contact with a child, student or vulnerable adult.

A disciplinary investigation will also be carried out where behaviour outside of the work could be considered a transferable risk to the school and could lead to potential harm of a child.

7. Definitions of misconduct and gross misconduct

Misconduct

Misconduct is where an employee breaks specific rules about behaviour or conduct. It is where conduct falls below expected standards and is usually wilful. There may be occasions when negligent conduct amounts to misconduct. Breaches of reasonable conduct at work can take many forms. A list of behaviours which may be considered misconduct can be found at Appendix 2.

Gross Misconduct

Gross misconduct is a term used to describe misconduct which is so serious that it may destroy the employment contract between the employer and the employee and make further working relationship and trust impossible. Examples of the sorts of conduct that could be regarded as gross misconduct rendering the employee liable to summary dismissal, can be found at Appendix 2.

8. Allegations involving children

All employees working with children must understand that the nature of their work and the responsibilities related to it, place them in a position of trust. Any abuse of this trust will be managed under this policy.

The Children Act 2004 places a duty on schools to safeguard and promote the wellbeing of children in their care. This includes the need to ensure that all adults who work with or on behalf of children are competent, confident and safe to do so.

Additionally the Sexual Offences Act 2003 covers child sex offences and has specific provisions relating to care workers for persons with a mental disorder.

If any allegation involves safeguarding concerns, especially in relation to an alleged abuse of trust, the Local Authority Designated Officer (LADO) will be contacted before any further action can be taken and/or before the matter is discussed with the employee.

If there is reason to believe that evidence of inappropriate material and/or communications may be found on the employee's work computer and/or mobile phone, the Tarka Learning Partnership and the relevant school will be notified at the earliest opportunity. An employee's computer or phone will not be accessed until the Tarka Learning Partnership and the school has been informed. See Appendix 5 – Flowchart for Managing Allegations Relating to Children.

Head Teacher / Chair of Governors should be aware that a criminal act may have been committed, e.g. inappropriate communication with a student or vulnerable adult and therefore the evidence must be preserved.

Consideration should be given to restricting the employee's access to ICT accounts, e.g. webmail, and/or it may be appropriate for access to be blocked until appropriate action has been taken to secure data.

Allegations involving children should initially be managed under the Tarka Learning Partnership's Managing Allegations of Abuse Made Against Staff Policy and Procedure. The Disciplinary procedure may also be invoked.

9. Allegations in the public interest (whistleblowing)

There may be occasions when the allegations are made by an employee about something that is in the public interest and could be constituted as a 'protected disclosure' under the Tarka Learning Partnership's Whistleblowing Policy. Such allegations may include matters where there may have been:

- an unlawful or a criminal offence;
- a breach of a legal obligation (but not a personal contractual breach unless such breach involves a matter of public interest);
- a miscarriage of justice;
- mistreatment or abuse of a client or a member of the public for whom the school has a responsibility;
- in disregard of legislation governing health and safety at work;
- seeking undue favour over a contractual matter or a job application; or against the Trust's Financial Regulations;
- actions which amount to improper conduct or unauthorised use of public funds;
- actions which have led to or could lead to damage to the environment; or
- deliberately covers up information tending to show any of the above.

In these circumstances it may be appropriate to invoke the Trust's Whistle Blowing policy prior to or at the same time as the Disciplinary Policy. Where it appears that allegations may constitute a protected disclosure, those allegations will be referred for consideration under the Whistleblowing Policy.

10. Criminal offences/police involvement

A decision must be made whether to apply this policy as a result of any charge or conviction resulting from a criminal offence. This includes police cautions and/or warnings. This may apply in circumstances where the alleged offence may have an effect on employment or where this could bring the Tarka Learning Partnership or employing school into disrepute. In most cases, it is important that the internal investigation under this policy is not delayed. However, where the investigation may hamper a police investigation or has the potential to prejudice any future court proceedings, it is essential to liaise with the police to determine the most appropriate course of action.

11. Allegations of financial irregularity

If financial irregularity is suspected, the matter will be dealt with in accordance with

the Tarka Learning Partnership's strategy for dealing with Financial irregularities and the relevant school must be notified. It is particularly important not to access the employee's computer or mobile phone until Tarka Learning Partnership's auditors has been informed, and this should be done before any action is taken under this policy.

12. Allegations involving information security incidents

In the event that an allegation involves a breach or potential breach of data security, even if this is only suspected or is uncertain, the Tarka Learning Partnership's Data Protection Officer must be informed. This will ensure that actions required in line with Tarka Learning Partnership's Confidentiality Policy and the Data Protection Breach and Non Compliance Procedure are undertaken at the appropriate stage, together with the actions required under this policy.

13. Time limits

The time limits included in this policy may be varied by mutual agreement. The policy makes reference to a number of 'days' within which certain actions/events are to occur. A 'day' is defined as any Monday to Friday excluding public holidays as defined by ACAS.

If a concern is raised during a period of non-term time, the timeframes indicated in the policy will commence as soon as is practicable depending on the availability of relevant and appropriate staff. Where a concern is raised immediately prior to a period of non-term time, the availability of any person(s) who may need to be interviewed as part of any investigation will be taken into consideration by both parties when mutually agreeing any required extension to the timeframes.

14. Representation

The Employment Relations Act 1999 determines that an employee has a statutory right to request to be accompanied at any disciplinary or grievance hearing. The representative must be:

- a paid official from a recognised trade union/professional association
- an official of a trade union/professional association whom the union has reasonably certified in writing as having experience of, or as having received training in acting as an employee's companion at disciplinary or grievance hearings
- an appropriate work colleague.

Friends/family members are not permitted to accompany the employee.

If an employee's chosen representative is not available on the day proposed for the hearing, the employee can propose an alternative date within the following five days of the original date proposed.

15. Formal disciplinary action against trade union/professional association representatives

The usual standards of conduct expected apply to trade union/professional association representatives. In the case where disciplinary action is being considered against an employee who is a trade union/professional association representative, the normal disciplinary procedure will be followed. The Head Teacher or Trust HR Leader will discuss the case with the regional trade union office before any action is taken.

PROCEDURE

16. Informal action

For minor breaches and incidents, for example occasional time keeping issues, consideration should always be given to using informal action such as professional guidance and/or additional training as this may be sufficient to address the concerns. Any such action should be confirmed in writing as “cautionary advice” and monitored to ensure the required improvements are made and sustained. This does not form part of the formal disciplinary procedure but cautionary advice can be referred to should there be a continuation of these behaviours or a more serious incident occur. Cautionary advice is held on an employee file

Alternatively, although unlikely, it may be appropriate for the matter to be dealt with by mediation, depending on the nature of the matter. This involves the appointment of third-party mediators, who will facilitate discussion of the issues raised. Mediation will be used only where all parties involved agree to engage in the process and the Trust or school considers it to be beneficial in order to resolve the situation.

17. Incident occurs/allegation made

When an incident occurs or an allegation is made, the details should be provided to the Head Teacher. If the allegation(s) are of a safeguarding nature, the Head Teacher should follow section 8 of this policy. If the allegation(s) are not of a safeguarding nature, the Head Teacher should ensure that:

- where it is appropriate and will not have an impact on any further investigations, that the employee is notified of the allegation(s) verbally and in writing as soon as possible.
- The Trust Suspension Decision Checklist and Form will be completed by the Head Teacher to decide whether; the employee can remain at work, should be temporarily transferred to suitable alternative duties, is asked to remain away from work or be suspended (see sections 19 and 20).
- an investigator(s) is appointed, if required, and an investigation commissioned.

18. Appointment of investigator

The Head Teacher/Governing Body may ask an appropriate person, to carry out an investigation. The investigator(s) should not have had any previous involvement in the

circumstances of the incident/allegation, nor close relationship with any party involved nor any vested interest and will be more senior than the employee being investigated.

Incidents which are being investigated as a potential Gross Misconduct offence may be investigated by an appropriate person from the central Tarka Learning Partnership team.

19. Remain away from work/sending home

An employee may be instructed by the Head Teacher or a Deputy Head Teacher to remain away from the workplace or leave the workplace immediately and stay away on normal pay until further notice. This will only be done in circumstances when there appears to be an issue which may place the employee or others at risk or where there may be a detrimental impact if the employee remains in the workplace.

The school will need to consider if it is necessary to ask for work equipment (keys, phones, ID badge etc.) to be returned or access to ICT systems etc. restricted. When sending home, the manager will ensure that the employee can get home safely.

The decision and reasons for sending home should be confirmed to the employee in writing as soon as possible.

Following a review of the information available, a decision about whether to formally suspend the employee should then be made by those with appropriate authority as soon as possible and confirmed to the employee in writing.

20. Suspension

Suspension of an employee is not a disciplinary sanction nor does it indicate that disciplinary action will necessarily follow. Action to suspend an employee can only be taken by those who have delegated authority to dismiss. In schools this is a Head Teacher or the Governing Body.

A decision to suspend should not be made unless there are reasonable grounds to do so. It is important that any decision to suspend an employee can be justified and that evidence of considerations of alternatives to suspension, and why they were thought not appropriate, can all be demonstrated. This must be documented on the Tarka Learning Partnership Suspension Decision Checklist and Form.

If there are no suitable alternative duties that the employee can undertake, an employee may be suspended on normal pay when:

- a. this may facilitate a more objective investigation
- b. the allegation(s), if found, is sufficiently serious that it could constitute gross misconduct and therefore could lead to a dismissal
- c. the employee is the subject of investigation by the police and the alleged offence is considered relevant to the duties of the employee
- d. it could be prejudicial to the school's interests if the employee remains at work

- e. there may be a significantly detrimental impact on colleagues
- f. there is a need to prevent access to any records or systems
- g. there will be media interest / publicity that may negatively affect the school in some way
- h. where there is a reasonable belief that the employee's continued presence at work may put themselves or others at risk
- i. where relationships have broken down.

When considering the suspension of an employee, the Head Teacher should inform the Chair of Governors and the Tarka Learning Partnership HR Leader.

The reasons for suspension must be stated clearly to the employee and confirmed in writing as soon as practicable and the individual should be informed at that point who their named contact is within the school or the Tarka Learning Partnership and provided with their contact details.

The suspension must be kept under review, discussed with the employee ensuring each review is documented and kept on file. Suspension can only be lifted by the Head Teacher or Chair of the Governing Body (or Tarka Learning Partnership CEO).

21. Investigation

Any investigation carried out under this policy will be thorough, unbiased and reasonable in the circumstances.

The nature and extent of the investigation will depend on the seriousness of the matter and should be proportionate to the allegation that has been made. The Head Teacher or the appointed Investigating Officer will confirm the likely timescale and scope of any investigation required and produce an investigation remit.

For allegations against the Head Teacher the Tarka Learning Partnership Chief Executive Officer will confirm this information.

Where it is necessary to interview witnesses during an investigation, the interviews and discussions undertaken should follow a standard format and any interview or witness statements produced should be signed and agreed by the witness.

If evidence of further instances or further allegations arise during the investigation process, these will be added to the initial investigation and will be considered at the same time as the original allegations. The employee who is subject to the investigation will be informed of any additional allegations being considered.

The findings of any investigation, together with any relevant evidence, including witness statements etc., should be provided to the Head Teacher in a report together with written recommendation as to the next steps. In a school, where the Head Teacher has undertaken the investigation, the findings should be provided to the Chair of Governors. If the allegations are against the Head Teacher the findings should be provided to the Trust's Chief Executive Officer.

The investigator(s) will recommend whether:

- no action is necessary
- the matter should be dealt with outside this policy
- the matter should be referred to a disciplinary hearing.

22. Interviewing children

If children are to be interviewed as part of an investigation, their parents/carers should be advised and consent obtained in advance. Interviews should not take place with children unless they are accompanied by a suitable person or parental consent has been given to them being interviewed unaccompanied.

The employee's trade union/professional association representative may be present during any interview if this does not jeopardise the integrity of the investigation. This will preclude the child/vulnerable adult being interviewed more than once and negate the requirement for them to attend a disciplinary hearing. If the matter does proceed to a hearing, the employee will be provided with notes of the meeting as part of the investigation report.

23. Disciplinary hearing

Where it is determined that an employee is required to attend a hearing, the School Business Manager, Administrator or Clerk to Governors will notify the employee in writing giving at least 5 days' notice, stating the details of the disciplinary hearing, the possible outcomes of the hearing, the employee's right to request to be accompanied and that the hearing may take place in the employee's absence if they fail to attend without providing a satisfactory explanation. A copy of the investigation report and a copy of this policy must be included with the letter.

At the hearing, the employee will be given the opportunity to respond to the allegation(s), call any witnesses, if relevant, and present their case to the Head Teacher/Governor Committee/Trust CEO.

Following consideration of all the evidence, the Head Teacher/Governor Committee/Trust CEO will adjourn the hearing to make their decision. They will come to a view regarding the validity or otherwise of the allegation(s) and decide what action should be taken.

The Head Teacher/Governor Committee/Trust CEO should act in good faith. In disciplinary cases the standard of proof required is the balance of probability, i.e. a judgment of whether it is more probable than not that misconduct (or gross misconduct) took place. The Head Teacher/Governor Committee/Trust CEO should take into account any mitigating circumstances given by the employee.

The courses of action available are as follows:

Non-Formal Action

- take no action
- offer professional guidance as to the required standard of behaviour and inform the employee of the consequences of not achieving the required standard. Professional Guidance/cautionary advice is not a formal disciplinary sanction

Formal Action

- issue a verbal warning
- issue a formal written warning if there has been either a repeated minor breach of conduct, or a first but more serious breach of conduct
- issue a final written warning if there has been an insufficient response to previous warnings and conduct is still unsatisfactory or in the case of a first but sufficiently serious breach of conduct
- issue the employee with notice of dismissal if, following a final written warning, conduct remains unsatisfactory and the employee still fails to reach or maintain the prescribed standard; or in the case of a first but sufficiently serious breach of conduct or if the circumstances of the matter justify dismissal for some other substantial reason
- dismiss the employee because a statutory bar results in the employment being unable to continue
- dismiss the employee summarily without notice and without there having been any previous disciplinary warnings when there has been gross misconduct.

Formal Action (Some Other Substantial Reason)

There may be occasions, following a fair procedure, where a dismissal for some other substantial reason (SOSR) is considered. In these circumstances the Head Teacher/Governor Committee/Trust CEO will ensure that they act reasonably in dismissing the employee taking into account all of the circumstances.

There is no set definition of what is an SOSR reason however common examples can include (but are not limited to):

- A breakdown in trust and confidence
- Personality clashes
- Conflict(s) of interest/ Protection from competition
- Reputational risk
- Where there are concerns relating to the safeguarding of children, but where the employer does not have grounds for a misconduct dismissal.

The Head Teacher/Governor Committee/Trust CEO will reconvene the hearing and confirm their decision verbally, unless valid reasons exist not to do so, and will write to the employee within five days to confirm their decision.

Where action results in the issue of a warning of any type, there should normally be a specified period that the warning remains current, e.g. 6 months for a verbal warning, 12 - 18 months for a written/final written warning. It should be made clear to the employee

that further unsatisfactory conduct may result in further disciplinary action which could lead to dismissal.

After the specified period the warning will be considered spent for disciplinary purposes. However, if the warning relates to safeguarding children or vulnerable adults this sanction may be referred to in employment or other references that the school are required to provide - if the role involves responsibility or contact with children. This may be the case even where the warning is spent, as the school's safeguarding responsibilities would take precedence, although discretion will be applied to determine if this is appropriate.

Where a warning/final written warning or dismissal is the outcome, the employee must be informed of their right of appeal and where to send the appeal.

24. Non attendance

If an employee fails to attend a meeting or hearing under this policy through circumstances beyond their control, such as certified illness, an alternative time and date may be offered. Alternatively they may submit a written statement or nominate a representative to attend on their behalf.

Where an employee is persistently unable or unwilling to attend the meeting/hearing it will proceed in their absence and a decision based on the evidence available will be made.

A failure to not attend a pre-arranged meeting or hearing may also lead to action under this policy.

25. Appeal

An employee has the right to appeal against the decision made at the disciplinary hearing, if that decision is to issue the employee with any sanction other than a verbal warning. If an employee wishes to appeal against the decision, they must do so in writing, stating the grounds for their appeal, within five days of receiving the written outcome. This time limit will be strictly observed.

An employee may appeal on the following grounds:

1. the sanction given was too harsh given the circumstances
2. the procedure was not fairly or correctly applied
3. new information has come to light that would directly affect the decision made at the hearing.

The appeal should be sent to the Clerk to Governors or Tarka Learning Partnership Chief Executive Officer, will then arrange for an Appeal Hearing to take place.

An Appeal Committee will be convened and will hear the appeal. No fewer members than that of the Disciplinary Hearing panel, shall make up the Appeal panel. The appeal should be heard without unreasonable delay. A minimum of five days' notice will be given to

allow for preparation. No member of the Disciplinary Hearing panel shall be a member of the Appeal panel.

Evidence presented at the Appeal Hearing must relate to any of the three reasons given above and must enable the assessment of whether or not the allegations against the employee were accurate, justified and substantiated and whether the disciplinary action was appropriate in all the circumstances. The appeal is not a re-hearing of the previous panel. It is a review of the process and/or policy that underpinned the previous decision or new evidence that could not be submitted during the initial hearing as it was not available at the time. Additional witnesses may be called but only where the witness is presenting new evidence that could not be submitted during the initial hearing as it was not available at the time.

The outcome of an appeal hearing may be to:

- adjourn and refer the matter back to the Head Teacher / Governor Committee if significant new information/evidence is provided, which was not available previously, and may change the original decision
- conclude a procedural irregularity occurred and determine whether this had an impact on the decision-making process and outcome. If so, determine an appropriate sanction and make a recommendation to rectify the situation
- uphold the appeal and determine an alternative sanction/appropriate course of action
- reject the appeal and confirm that the original decision stands.

The decision will be given verbally to all parties at the end of the appeal hearing unless valid reasons exist not to do so. The decision will be confirmed in writing to the employee within five days. The process ends with the decision of the Appeal Committee.

ADDITIONAL INFORMATION

26. Additional information

Where there are cases which could potentially call into question an employee's professional conduct, the Head teacher / Governing Body should ensure that they follow the appropriate procedure for reporting concerns to the relevant registered body. This will ensure that the body can investigate the individual's ability to carry out their professional duties or take other appropriate action in the circumstances. Further information on making a referral can generally be found on the professional body's website. Where a referral is necessary, this should be made at the start of the formal process.

Cases of unacceptable professional conduct by a teacher should be reported to the National College for Teaching and Leadership. 'Unacceptable professional conduct' is defined as 'conduct which falls short of the standard expected of a registered teacher...and is behaviour which involves a breach of the standards of propriety expected of the profession.'

27. Disclosure and Barring Service (DBS)

The primary role of the Disclosure and Barring Service (DBS) is to help employers make safer recruitment decisions and prevent unsuitable people from working with vulnerable groups, including children.

The Safeguarding Vulnerable Groups Act (SVGA) 2006 places a duty on employers of people working with children or vulnerable adults to make a referral to the DBS where an employer has dismissed or removed a person from working with children or vulnerable adults (or would or may have if the person had not left or resigned etc.) because the person has:

- been cautioned or convicted for a relevant offence; or
- engaged in relevant conduct in relation to children and/or vulnerable adults, i.e. an action or inaction (neglect) that has harmed a child or vulnerable adult or put them at risk of harm; or
- satisfied the Harm Test in relation to children and/or vulnerable adults i.e. there has been no relevant conduct (i.e. no action or inaction) but a risk of harm to a child or vulnerable adult still exists.

The referral will enable the DBS to consider whether or not the individual should be barred from working with children and/or vulnerable adults and should be made as soon as possible after an employee has been dismissed or removed from working with children or vulnerable adults (or would have been if they had not resigned).

28. Management responsibilities

Head teachers / Chair of Governors are required to ensure that each employee is aware of this policy and understands both the professional conduct that is required of them and the consequences of not meeting the required standards of behaviour. Action should be taken consistently to identify concerns and reinforce standards of behaviour before it becomes necessary to take formal action. The Tarka Learning Partnership will manage the process effectively, fairly and reasonably if it is necessary to use this policy.

29. Employee responsibilities

Employees are required to conduct themselves appropriately and to observe the rules, regulations and instructions adopted by their employer and carry out their role consistently with any standards set by their appropriate professional body. Employees have a responsibility, where necessary, to take any steps required to address their behaviour.

30. Professional standards

In this policy where there is reference to “relevant professional standards” this refers to any standards applicable to the post(s) and the career stage of the post holder (e.g. the Teachers Standards 2012 are applicable to all teachers including the Head Teacher).

31. Raising a grievance during the application of this policy

If an employee is currently being managed under this policy and has a complaint related to either the person applying it and/or its application, the employee will raise a complaint under this policy which will be investigated. It may be necessary to suspend the application of the policy while the complaint is being looked into. Any delay to the application of this policy to deal with an employee's complaint should not exceed 10 days, unless by mutual agreement.

If an employee raises an unrelated complaint, then the employee should use the Grievance Policy and Procedure. As the matter is unrelated, there will be no need to put any process currently being applied on hold as the complaint can be dealt with in parallel.

32. Confidentiality

Any parties affected by or involved in the application of this policy will be expected to maintain an appropriate level of confidentiality. Breaches of confidentiality will be taken seriously, especially if they hinder the application of the policy. Failure to maintain confidentiality may result in action being taken under this policy.

Disclosure of information may also be a breach under the General Data Protection Regulations (2018) and Tarka Learning Partnership Confidentiality Policy and may lead to action being taken under the provisions of the Data Protection Act, in addition to action being taken under this policy.

33. Recording of information

A written record must be made of all interviews and meetings held during the application of this policy. Those involved in each meeting will be provided with a copy of any records made. Recording devices are not permitted in any of the interviews, informal or formal meetings.

The investigator(s) will ensure there is a full and comprehensive file of the process which should include all statements, records and evidence. At the end of the process the file should be passed to the School Business Manager, Administrator, Clerk to Governors or Tarka Learning Partnership HR Leader who should ensure that it is stored confidentially.

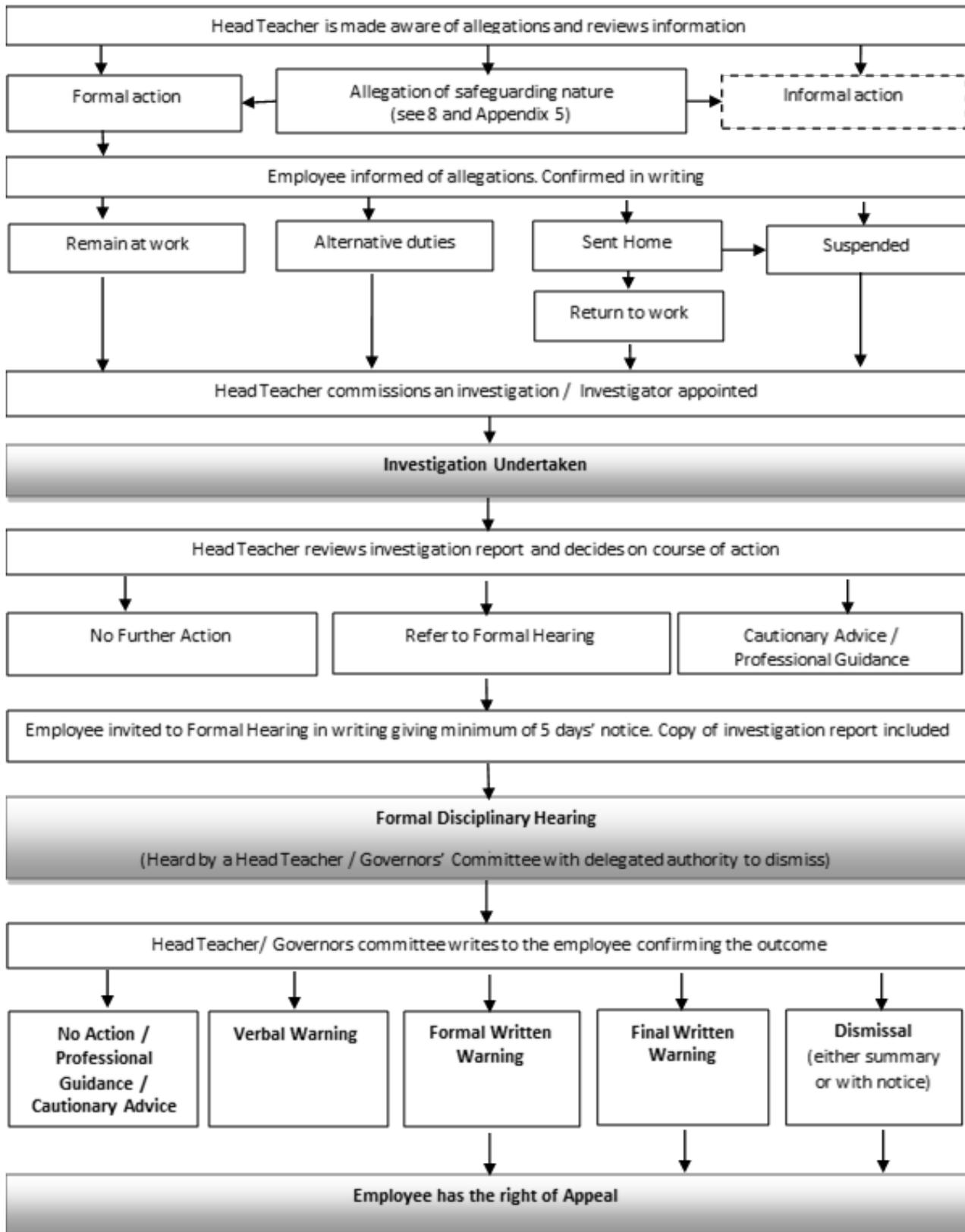
All records will be kept confidentially and retained in accordance with the General Data Protection Regulations 2018.

34. Support for employees

Employees are encouraged to seek support from their trade union/professional association in the first instance. Procedural guidance relating to this policy is available from the Trust HR Leader on 01271 443124.

Occupational Health support is also available if necessary, this should be made by the employee's line manager/school.

Appendix 1 – Procedure Flow Chart



Appendix 2 – Examples of what might constitute misconduct or gross misconduct

Misconduct

The following list is not exhaustive but gives examples of behaviour that may be dealt with under this policy. It should be noted that depending on the seriousness of the circumstances, any of these actions may be treated as gross misconduct:

- refusal to comply with reasonable and lawful instructions
- timekeeping, including failure to remain at work during contracted hours and being absent without permission
- negligent actions or behaviour
- failure to disclose relationships which may compromise the integrity of the school
- failure to disclose a personal relationship with a colleague/service user/pupil which impacts on professional duties
- inappropriate use of work equipment/property
- breach of confidentiality
- failure to comply with Health and Safety requirements
- actions that may bring the school/ Trust into disrepute
- undertaking unnecessary personal activities during working hours
- failure to report any concerns regarding the health, safety and welfare of children / student / vulnerable adults
- misuse of social media.

Gross Misconduct

The following list is not exhaustive but gives examples of behaviour that could be regarded as gross misconduct:

- any of the listed items from the above 'misconduct' list
- physical, sexual, emotional, financial or verbal abuse of children, vulnerable adults, colleagues, parents, customers or volunteers
- a criminal offence applicable to the work performed
- inappropriate conduct and/or contact with a child and/or pupil
- inappropriate physical intervention or restraint of a child
- inappropriate contact with a child/vulnerable adult, either physical or non-physical e.g. via a social network
- grooming - actions deliberately undertaken with the aim of befriending and establishing an emotional connection with a child, in order to lower the child's inhibitions in preparation for abuse or exploitation, by a person who is in a position of trust in relation to a person under 18 who is receiving education in an education institution. Grooming is illegal.
- abuse of position of trust
- perpetrator of domestic violence
- using school equipment to access, take, possess or distribute indecent, illegal or inappropriate images
- bring personal equipment containing indecent and/or illegal images or links to them, into the working environment where children or vulnerable adults are present
- using personal or schools' equipment to access, make, download or distribute incident images of children or pseudo images of children on or off school/site premises.
- taking or distributing indecent photographs or publications, possession of such documents where children/vulnerable adults present
- breach of security, financial procedures or confidentiality

- inappropriate use of computer, laptop and/or communications systems, including but not limited to inappropriate communications using technology i.e. texts, social networking websites
- making of vexatious and/or malicious allegations
- discrimination, including harassment and victimisation on the grounds of gender, age, disability, gender re-assignment, marital or civil partnership status, pregnancy, maternity status, race (including colour, nationality and ethnic or national origins), religion or belief, sex and sexual orientation.
- dishonesty, theft, bribery, fraud (including corruption), misuse of school property or resources, or deliberate falsification of records
- bullying and/or harassment, including cyber bullying
- providing false information in relation to applications for employment, qualifications, etc.
- fighting with, or assault or any violent behaviour towards children, vulnerable adults, colleagues, parents, customers, volunteers, contractors or members of the public
- deliberate damage to property or equipment
- sleeping or carrying out inappropriate activity e.g. using Facebook, social media sites during working hours
- a criminal conviction inconsistent with the standards expected for the role
- failure to disclose any conviction, caution, reprimand, bind over, warning, pending criminal proceedings for which an arrest or a formal charge is made
- being under the influence of alcohol, illegal substances or drugs at work
- being in possession of illegal substances or drugs
- serious negligence which causes unacceptable loss, damage or injury
- refusal to follow a reasonable formal management instruction
- engaging in unauthorised employment during hours contracted to work for the school or during periods of specially designated leave e.g. sick leave, special leave etc.
- abuse of the sick pay scheme
- failure to uphold the professional standards of the role the employee is employed to perform
- misconduct and/or displays of lack of professionalism which leads to the employee deliberately absenting him/herself from work
- breach of the General Data Protection Regulations (GDPR) or the Tarka Learning Partnership's Data Protection Policy.

Additionally, in the case of Head teachers or other Managers in schools:

- deliberate failure to meet reporting responsibilities to the Governing Body
- failure to uphold the professional standards expected
- negligent conduct which leads to poor provision of education to children
- undermining the Head Teacher / Governing Body
- failure to comply with Safeguarding of Children requirements
- failure to maintain appropriately checked records of employees e.g. DBS, Eligibility to Work in the UK etc.

Some examples of behaviour at work may also constitute a criminal matter, e.g. bribery may fall under the Bribery Act 2010.

The above lists are not exhaustive and there may be several other breaches of conduct that may be deemed to be misconduct or gross misconduct.

Appendix 3 – Procedure for the disciplinary hearing

1. Preliminaries

- Introductions, identification of Committee panel members, employee, representative, HR support, note taker
- Where witnesses are called, they are only present for the period of questioning
- Notification to all present to switch off mobile phones and other electronic devices for the duration of the hearing including any adjournments. Where participants leave the room for adjournments/deliberations, they must take all personal belongings with them

2. Management case

- The investigating officer/management representative presents management case and calls witnesses for the management case (if necessary)
- Employee/representative have the opportunity to question the investigating officer/management representative and witnesses
- Head teacher/Committee have the opportunity to question the investigating officer/management representative and witnesses
- Further questions if necessary from the Employee/representative
- Further questions if necessary from Head teacher/Committee

3. Employee's case

- Employee/representative presents their case and calls witnesses for the employee's case
- The investigating officer/management representative, HR Support has the opportunity to ask questions of the employee/representative and witnesses
- Head teacher/Committee have the opportunity to ask questions of the employee/representative and witnesses
- Further questions if necessary from investigating officer/management representative, HR Support
- Further questions if necessary from Head teacher/Committee

4. Summing up

- The investigating officer/management representative has the opportunity to sum up their case (no new evidence to be submitted at this point)
- The employee/representative has the opportunity to sum up their case (no new evidence to be submitted at this point)

5. Adjournment and deliberation of whether misconduct has taken place

- The investigating officer/management representative and HR support to withdraw
- The employee/representative to withdraw
- Head teacher/Committee panel to consider the facts presented to them and to determine whether misconduct has taken place
- Investigating officer/management representative, HR support and employee/representative to be recalled and the determination of the Head Teacher/Committee panel on whether misconduct has occurred to be conveyed verbally. If valid reasons exist not to advise the employee verbally, then the decision will be conveyed to the employee within five days of the hearing and confirmed in writing.

- Where action results in the issue of a warning of any type, there should normally be a specified period that the warning remains current, e.g. 6 months for a verbal warning, 12 - 18 months for a written/final written warning. It should be made clear to the employee that further unsatisfactory conduct may result in further disciplinary action which could lead to dismissal.

Appendix 4 – Procedure for the disciplinary appeal hearing

1. Preliminaries

- Introductions, identification of Committee panel members, employee, representative, HR support, note taker
- Explanation by Chair of the Appeal Hearing process
- Where witnesses are called, they are only present for the period of questioning
- Notification to all present to switch off mobile phones and other electronic devices for the duration of the hearing including any adjournments. Where participants leave the room for adjournments/deliberations, they must take all personal belongings with them.

2. Running order

- Employee/representative to put their case and call witnesses where required
- HR support to have the opportunity to ask questions of the employee/ representative/witnesses
- Panel Chair and members to have the opportunity to ask questions of the employee /representative/witnesses
- Chair of the initial Disciplinary Hearing to have the opportunity to put their case and answer questions on their decision, and to call any witnesses as required
- Employee / representative to have the opportunity to ask questions of the employer representative
- Panel to have the opportunity to ask questions of the employer representative
- Chair of the initial Disciplinary Hearing to sum up their case if required (no new evidence should be submitted at this point)
- Employee/representative to sum up their case for appeal (no new evidence should be submitted at this point)
- Employee/representative and Chair of the initial hearing/HR support to withdraw taking all personal belongings with them.
- Appeal panel to consider the facts presented to them and reach a determination which they will relay to all parties verbally. If valid reasons exist not to advise the employee verbally, then the decision will be conveyed to the employee within five days of the Appeal hearing and confirmed in writing.
- The appeal hearing may also be adjourned at the deliberation stage in order to allow for further investigation if the panel feels that there are points that need clarification. An opportunity may be given to re-examine the evidence/witnesses.

The decision of the appeal panel is final.

Appendix 5 – Flowchart for managing allegations relating to children

