Disciplinary Policy & Procedure

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1.0 COMMITMENT

1.1 The aims of this Policy are a) to provide a framework within which WHMAT can deal with disciplinary matters in the workplace fairly and consistently; and b) to help and encourage all employees to achieve and maintain good standards of behaviour.

1.2 WHMAT will ensure that any disciplinary matter is dealt with in line with the ACAS Code of Practice.

2.0 SCOPE

2.1 This Policy applies to all employees regardless of length of service. It does not apply to agency workers or self-employed contractors.

2.2 This Policy is used to deal with misconduct. It does not apply to cases involving genuine sickness absence, proposed redundancies or poor performance. In those cases reference should be made to the appropriate WHMAT Policy available at www.washwoodmat.com.

2.3 Whilst this Policy relates primarily to misconduct in the workplace, employee conduct outside of work may impact on their employment with WHMAT and be subject to a reasonable investigation under this Policy.

2.4 This Policy does not form part of an employee's contract of employment and it may be amended at any time following consultation.

2.5 Timescales set out in this Policy may be varied with the agreement of relevant parties.

3.0 INFORMAL ACTION

3.1 WHMAT recognises that informal action may be appropriate to resolve minor conduct issues between employees and their line managers. A quiet word is often all that is required to improve an employee's conduct. These discussions should be held in private and without undue delay whenever there is cause for concern.

3.2 The manager should discuss the matter(s) with employees and where appropriate, explain which policies/rules etc. appear to have been breached. Where improvement is required, the manager should make sure that the employee understands what needs to be done, how their conduct will be reviewed, and over what period. It is useful for the manager to confirm in writing what has been discussed with any agreed action points. Employees should be informed that if the employee commits a further disciplinary breach and/or there is no improvement in their behaviour, it may be necessary to progress to formal disciplinary action (see 5 below).

3.3 Notes of informal discussions between an employee and their line manager may be placed on the employee's HR file and retained for six months from the date of the meeting at 3.2, unless the concerns are of a safeguarding nature, in which case they may need to be retained indefinitely.

3.4 The employee will be asked to sign and date a copy of the note from the informal meeting within a reasonable period of the meeting and will also have the opportunity to add comments if they perceive the notes to be incorrect or incomplete (see record in toolkit).

3.5 Formal steps will be taken under this Policy if the parties have been unable to resolve the matter informally, or if informal discussion is not appropriate (for example, because of the seriousness of the allegation(s)). Any matter dealt with informally may be referred to as part of any formal disciplinary proceedings in the future if it is relevant to the current matter.

4.0 PRINCIPLES

4.1 Employees will not normally be dismissed for a first act of misconduct, unless WHMAT decides, following a reasonable investigation, that the conduct amounts to gross misconduct (see further at 5.0 below).

5.0 MISCONDUCT & GROSS MISCONDUCT

5.1 The following are examples of matters that may be regarded as misconduct if it is not possible to resolve them informally (the list is a guide only and is not exhaustive):

- 5.1.1 Minor breaches of WHMAT's Policies
- 5.1.2 Minor breaches of an employee's contract of employment
- 5.1.3 Minor damage to or unauthorised use of WHMAT property
- 5.1.4 Poor time-keeping and/or time wasting
- 5.1.5 Unauthorised absence from work
- 5.1.6 Refusal to follow reasonable instructions, when consequences are minor
- 5.1.7 Excessive use of WHMAT's telephones for personal calls
- 5.1.8 Excessive personal e-mail or internet usage
- 5.1.9 One-off inappropriate language or other offensive behaviour

5.2 Misconduct is behaviour which is not considered as serious as gross misconduct, and which would not generally result in termination of employment unless as a result of cumulative misconduct e.g. when an employee already has a live disciplinary warning in place and commits another act of misconduct.

5.3 If an employee's first misconduct is sufficiently serious, it may, subject to the outcome of a reasonable investigation, be appropriate to move directly to a final written warning.

5.4 Gross misconduct is defined as behaviour, on the part of an employee, which is so serious in itself, or has such serious consequences, that it destroys the relationship between employer and employee, and potentially justifies instant dismissal without notice or pay in lieu of notice (known as "summary dismissal"). However, this may not always be the outcome of gross misconduct, and will depend on mitigating circumstances.

5.5 Examples of gross misconduct are below. However, this list is not exhaustive and should be used as a guide only as much will depend on the facts of each case and any mitigating factors:

- 5.5.1 Deliberate damage to WHMAT's buildings, fittings, property or equipment or the property of a colleague, contractor, student or member of the public

- 5.5.2 Inappropriate conduct with children or young people, including failing to maintain appropriate professional boundaries

5.5.3 Failure to follow the academy's/WHMAT's child protection procedures

5.5.4 If the academy at which the employee works provides education for children up to the age of 8, making a false declaration or failing to disclose information in relation to the disqualification from childcare requirements, or becoming disqualified from providing childcare

5.5.5 Intoxication in the workplace (from drink or drugs)

5.5.6 Fighting or any other physical abuse

5.5.7 Indecent or offensive behaviour towards pupils, other employees or third parties (including discrimination, bullying and/or harassment)

5.5.8 Theft/fraud

5.5.9 Neglect of responsibilities

5.5.10 Dishonesty

5.5.11 Breaches of health and safety

5.5.12 Malicious/deliberate damage to WHMAT property

5.5.13 Gross insubordination

5.5.14 Unauthorised absence

5.5.15 Accepting or offering bribes

5.5.16 Bringing WHMAT into disrepute or causing reputational damage

5.5.17 Misusing confidential information

5.5.18 Downloading pornography or other inappropriate materials

5.5.19 Abuse of a position of trust for personal gain

5.5.20 Failure to follow a reasonable management instruction

5.5.21 Misuse of an employee's position for personal gain

5.5.22 Causing loss, damage or injury through negligence

5.5.23 Breaches of trust and confidence

5.5.24 Giving false information as to qualifications or entitlement to work (including immigration status)

5.5.25 Making a disclosure of false or misleading information under our Whistleblowing Policy maliciously, for personal gain, or otherwise in bad faith

5.5.26 Making untrue allegations in bad faith against a colleague

5.5.27 Victimising a colleague who has raised concerns, made a complaint or given evidence under the Whistleblowing policy, Grievance Procedure, Disciplinary Procedure or other WHMAT Policy

5.5.28 Misuse of our information technology systems (including misuse of developed or licensed software, use of unauthorised software and misuse of email and the internet) contrary to our ICT user policy

5.5.29 Undertaking unauthorised paid or unpaid employment during working hours

5.5.30 Off duty misconduct which in the context of employment, fundamentally undermines WHMAT or confidence WHMAT has in the employee and/or could bring WHMAT into disrepute

5.5.31 Harassment of, or discrimination against employees, pupils, parents or members of the public related to any of the protected characteristics under the Equality Act 2010

5.5.32 Possession, use, supply or attempted supply of illegal drugs.

5.6 In some instances, offences which would normally constitute gross misconduct may be considered as misconduct because of mitigating circumstances. Similarly, issues which would normally be treated as misconduct may, in certain circumstances, be considered so serious that they constitute gross misconduct.

5.7 Where an employee is persistently unable or unwilling to attend a disciplinary investigation or hearing without good cause, WHMAT may make a decision based on the available evidence.

5.8 As recognisable figures in the local community, the behaviour and conduct of staff in WHMAT outside of work can impact on their employment. Therefore, conduct outside of work may be treated as a disciplinary matter if it is considered that it is relevant to the employee's employment.

5.9 Written records of any investigation or disciplinary meetings will be maintained on an employee's HR file. They will be kept no longer than is necessary in accordance with the Data Protection Act 1998.

5.10 WHMAT acknowledges that being the subject of disciplinary allegations can be worrying and unsettling for affected employees. Employees are encouraged to access the 24-hour, confidential counselling that is available to all WHMAT employees via the Perkbox Employee Assistance Programme on 0800 075 1660.

6.0 CONFIDENTIALITY

6.1 WHMAT will do all that it reasonably can to deal with disciplinary matters sensitively and with due respect for the privacy of any individuals involved. All employees must treat as confidential any information communicated to them in connection with an investigation

or disciplinary matter, save for disclosure to their chosen workplace colleague or trade union representative.

6.2 Employees, and anyone accompanying them (including witnesses), must not make electronic recordings of any meetings or hearings conducted under this Policy without the agreement of affected relevant parties.

6.3 Employees will normally be told the names of any witnesses whose evidence is relevant to disciplinary proceedings against them, unless there is good reason that a witness's identity should remain confidential e.g. because they are a pupil or have requested to remain anonymous. In such a situation, this will be explained to the employee.

7.0 DISCIPLINARY ALLEGATIONS

7.1 Allegations may be brought to the attention of WHMAT in a number of ways and through a variety of sources. As with disclosures made by children and young people, adults need to be aware that in making an allegation, it is not always possible to keep the matter confidential. The Head of Academy (CEO in the case of head office staff), may seek relevant advice from HR before deciding upon the most appropriate course of action and may choose to proceed with an investigation even if the person making the allegation does not want them to.

7.2 Allegations which involve issues of child protection and/or abuse of children by staff should be reported to the Head of Academy and referred to the Local Authority Designated Officer (LADO).

8.0 PRELIMINARY INVESTIGATION

8.1 Upon receiving any allegations against employees, it is likely that further information will be required before the most appropriate next steps can be decided. This is known as a "preliminary investigation or fact-finding" and all employees are expected to fully participate in this stage of the process.

8.2 This fact-finding exercise will usually be carried out by the Commissioning Officer who will usually be the Head of Academy or other trained member of a WHMAT senior leadership team (SLT). However, the CEO will undertake this for allegations made against head office staff, if concerns are raised with her direct, because the Head of Academy is already involved in the allegations raised against a member of staff, or because of the sensitive nature of a case.

8.3 This individual should try to establish the basic facts of the situation; this may involve looking at records, speaking to witnesses, reviewing CCTV and any other relevant evidence. Allegations made against head office staff or heads of academy will usually be investigated by the CEO initially but they may decide to commission an external/independent investigator. Allegations against the CEO will be considered and followed up by the chair of trustees, who may commission an external investigator in consultation with the Director of HR.

8.4 Preliminary investigations should be conducted without unreasonable delay and ideally be completed within 10 working days of the allegation(s) coming to light unless there are exceptional circumstances, so that a decision can be taken on appropriate next steps. Where completion of the initial fact-finding is not possible within this timescale, the CO should keep the employee updated on the reasons for the delay and a revised timescale for conclusion.

8.5 A preliminary investigation meeting may be held with the employee to establish the basic facts surrounding the allegation(s) and to enable the CO to determine whether further investigation is required. Such a meeting can sometimes give a reasonable explanation in response to allegations which then enables the matter to be concluded. A preliminary investigation meeting will not be required in all cases and it is for the Head of Academy to decide if this is appropriate (CEO in case of head office staff).

8.6 A record of the preliminary investigation meeting will be made by the manager and passed to the investigating officer as appropriate.

OUTCOME OF PRELIMINARY INVESTIGATION

8.7 If the outcome of the preliminary investigation is that there is no case to answer for formal disciplinary action, the CO will notify the employee in writing within a reasonable period (see toolkit).

8.8 If the outcome of the preliminary investigation is that the concerns are serious enough to warrant a full investigation (either as misconduct or gross misconduct), the CO will appoint and brief an appropriately trained, competent and impartial Investigating Officer (IO) to carry out the investigation. Advice should be sought from HR on the most appropriate person given the nature of the allegations, the complexity of the matter and the role of affected employees. They will also keep the employee updated so that there are no surprises.

9.0 FURTHER INVESTIGATION

9.1 In the case of allegations made against a Head of Academy, the CEO will, in consultation with the Director of HR, be responsible for project managing the investigation and determining an appropriate investigating officer, either internally or externally.

9.2 In the case of allegations made against the CEO, the Chair of Trustees will, in consultation with the Director of HR, be responsible for project managing the investigation process, including commissioning an appropriate investigating officer, either internally or externally.

9.3 The purpose of an investigation is to establish a fair and balanced view of the facts relating to any disciplinary allegations made against an employee, before deciding whether to proceed with a disciplinary hearing. The amount of investigation required will depend on the nature of the allegations and will vary from case to case. It will usually involve interviewing and taking statements from the employee and any witnesses, and/or reviewing relevant documents and other information.

9.4 Once the Commissioning Officer (CO) has appointed an Investigating Officer (IO), the CO will prepare a "Terms of Reference" document (Investigator's Brief) and any supporting evidence with the support of HR as necessary (see toolkit). The CO should discuss this with the IO before they start the formal investigation.

9.5 All investigations will vary in length and complexity. However, the IO will aim to complete the process in 4 working weeks, unless there are exceptional circumstances. Where necessary, the IO may need to extend this timeframe and should update the CO and employee accordingly to help manage expectations and minimise stress.

INTERVIEWING THE EMPLOYEE

9.6 Investigation meetings are solely for the purpose of fact-finding and no decision on disciplinary action will be taken until after a disciplinary hearing has taken place. The investigation meeting will enable the employee to provide their account of what has happened and to respond to any information that has been obtained during the course of the investigation so far.

9.7 The employee will receive no less than 5 working days' notice of the investigation meeting. This may be in the form of an email or letter (see toolkit). However, the purpose of the meeting and allegations (where known) will be stated.

9.8 Employees must co-operate fully and promptly with any disciplinary investigation under this Policy. This may include providing the names of any relevant witnesses, disclosing any relevant documents/evidence and attending investigation meeting(s).

9.9 Whilst there is no statutory right for an employee to be accompanied at an investigation meeting, WHMAT recognises that, in many cases, it will be beneficial for an employee to be accompanied by a workplace colleague or trade union representative. Whilst it is not obligatory for an employee being investigated to be accompanied, they may request to do so. This request will only be turned down if the chosen representative unreasonably delays the investigation process, by not being available to attend the meeting, despite reasonable notice being given to them.

9.10 A record of the meeting will be made and the employee will have the opportunity to review the record, make amendments for clarification purposes and sign and date the record. This record will form an appendix to the investigation report (see toolkit).

INTERVIEWING WITNESSES

9.11 As part of the further investigation, it may be necessary to interview witnesses who have information that is relevant to the allegations. These interviews will be arranged as quickly as possible and without delay, before memories and recollections fade. The IO will explain to the witness why they are being spoken to and what the information that they provide will be used for (see toolkit).

9.12 Witnesses may be given notice of their investigation interview orally, confirmed also via email or letter (see toolkit). The witness may be given less than 5 working days' notice of the meeting.

9.13 Witnesses may request to be accompanied by a trade union representative or workplace colleague but this is not obligatory. This request will only be turned down if the chosen representative unreasonably delays the investigation process, by not being available to attend the meeting, despite reasonable notice being given to them.

9.14 A record of the meeting will be made and the witness will have the opportunity to review the record, make amendments for clarification purposes and sign and date the record. WHMAT recognises that some employees may find this difficult or worrying. However, all employees are expected to fully participate in any such investigation.

10.0 SUSPENSION

10.1 In cases of alleged gross misconduct, the Head of Academy (CEO in case of head office employees), should consider, in consultation with the Director of HR, whether suspension is appropriate whilst the facts of the allegations are being investigated (see checklist in toolkit).

10.2 Alternatives to suspension, for example re-organisation of duties, working from home, alternative work location, temporary redeployment to another role (this list is not exhaustive), may be explored in consultation with the employee, before a decision to suspend is made.

10.3 Suspension should never be a knee-jerk reaction. Before deciding whether suspension is the appropriate course of action, the manager should discuss with HR: a) the nature and severity of the allegations; b) the employee's role within WHMAT; c) the impact that their ongoing presence at work could have on witnesses and/or other relevant evidence (i.e. whether remaining in work could impede or prejudice the investigation).

10.4 If in light of 10.2 and 10.3 above, suspension appears to be the most appropriate course of action, the Head of Academy, Director of HR or CEO (in case of head office staff) should carry out any preliminary investigation beforehand (see 8 above). This will involve calling the employee to a confidential meeting, usually without notice and ensuring that the employee has the opportunity to bring a member of staff along to the suspension meeting. The manager should prepare a script beforehand (see toolkit) and have a member of staff present in the meeting with them.

10.5 During the meeting to discuss suspension or alternatives to suspension, the manager will explain the circumstances that have come to light and ask the employee for their initial response to the allegations. In Safeguarding/Child Protection cases, no specific detail will be given about the allegations. Where necessary, the manager may wish to adjourn briefly to gain advice from HR, or to reflect on the employee's response before deciding on the appropriate course of action.

10.6 If it is decided that suspension is the best course of action, the Head of Academy (CEO in case of Head Office staff) will explain to the employee in a meeting:

10.6.1 Why suspension is believed to be the best course of action;

10.6.2 Why alternatives to suspension are not suitable on this occasion;

10.6.3 That the employee will remain on full pay during the suspension and can select a welfare contact, who will be their primary point of contact during the suspension (this could be the commissioning officer or another appropriate WHMAT contact);

10.6.4 That suspension of this kind is not a disciplinary penalty and does not imply that any decision has already been made about the disciplinary allegations under investigation;

10.6.5 That the suspension will be as brief as reasonably possible, in order to investigate the allegations and will be kept under review every 4 working weeks by the Commissioning Officer. As information is gathered it may become appropriate to lift the suspension during the course of the investigation or prior to any disciplinary hearing;

10.6.6 That during the suspension, the employee should not visit any WHMAT premises, including their base academies, unless authorised to do so by the Head of Academy;

10.6.7 That any annual leave requests during the suspension should be emailed to the head of academy in the normal way. Pre-planned holiday may need to be reviewed if it is going to unnecessarily delay the investigation process. However, investigation and disciplinary meetings will not take place in WHMAT school holidays;

10.6.8 That they must not take up any alternative paid employment whilst under suspension, unless this is something previously notified and agreed between employee and HOA (CEO for head office).

10.6.9 That if they become sick during the suspension, they must notify the HOA (CEO for head office staff) so that HR records can be updated.

Further guidance appears in the toolkit.

10.7 Following the suspension meeting, all of the information at 10.6 above will be confirmed in a written suspension letter to the employee within 3 working days of the suspension meeting (see toolkit)

11.0 CONCLUSION OF DISCIPLINARY INVESTIGATION

11.1 Once the IO has completed their investigation, they will submit their investigation report and appendices to the CO. The IO's recommendations may be a) no further action as there is no case to answer for formal disciplinary action; b) that there is a case to answer for disciplinary action and a formal hearing is required or c) informal action (although this list is not exhaustive).

11.2 If the CO agrees with the IO's recommendations that there is no case to answer, the CO will advise the employee of this orally and in writing within a reasonable period (see toolkit). If the CO agrees with the IO's recommendations that there is a case to answer for formal disciplinary action, the CO will also confirm this orally and in writing to the employee within a reasonable period (see toolkit). The steps below at 12.0 shall then apply.

12.0 DISCIPLINARY HEARING

12.1 If the conclusion of the disciplinary investigation is that there is a case to answer, the employee will be invited to attend a disciplinary hearing (see invite letter in toolkit).

INVITE LETTER

12.2 The invite to hearing letter should include the exact allegations, the basis for those allegations, and what the likely range of consequences will be if it is decided at the hearing that the allegations are true. The letter should contain enough information about the alleged misconduct to enable the employee to prepare to respond to the case in a hearing. It will, where appropriate, include a copy of any relevant documents which will be used at the disciplinary hearing; and a copy of any relevant witness statements, except where a witness's identity is to be kept confidential, in which case as much information as possible will be provided while maintaining confidentiality.

12.3 Ten working days' written notice of the date, time and venue for the disciplinary hearing will be given to provide the employee with a reasonable amount of time to prepare their case based on the information that they have been provided with. The hearing will be arranged as soon as is practicably possible. If the employee has clarified the name of their trade union representative, WHMAT will make a reasonable effort to notify them in advance.

12.4 The Head of Academy (CEO in case of head office staff) will be responsible, with support from HR and/or the Clerk to Trustees, for ensuring that all of the arrangements for the hearing are made and that the employee receives the appropriate paperwork and notice of the hearing.

12.5 Employees should make every effort to attend the hearing and not unreasonably delay the process. They may request a reasonable alternative date within 5 working days of the original date if their chosen trade union representative or workplace colleague cannot make the original time and date suggested.

12.6 Where an employer or employee intends on calling relevant witnesses to the hearing, they should give advance notice that they intend to do this. If the employee wishes to rely on any documentation or witness accounts at the hearing, they must forward copies of this documentation to HR at their base academy at least 3 working days' before the hearing. Paperwork submitted late or on the day of the hearing itself will only be considered at the discretion of the Chair of the Disciplinary Committee.

NON-ATTENDANCE

12.7 If the employee and/or their trade union representative or work-place-colleague cannot attend the hearing, they should inform the person conducting the hearing immediately and consideration will be given to arranging an alternative time provided that it does not unreasonably delay the process. Employees must make every effort to attend the hearing and failure to attend without good reason may be treated as misconduct in itself. Failure to attend without good reason, or persistent inability to do so (for example for health reasons), may lead to a decision being taken based on the available evidence.

12.8 If the employee chooses not to attend the hearing or is unable to do so, they may choose to send a written statement for consideration at the hearing.

FORMAT

12.9 The hearing will usually be chaired by the Chair of the Disciplinary Committee. Alternatively, if the CEO or a WHMAT Head of Academy has not previously been involved in the matter, they may choose to hear the case and call the Commissioning Officer (CO) to present the case for management. The CO will be known as the Presenting Officer and will call the IO as a witness to talk through their investigation report and answer questions about it. The CO may call other witnesses who are relevant to the case in question. HR must be present where termination of employment is a possibility.

12.10 The employee, their representative and/or the Disciplinary Committee will also have an opportunity to ask any questions. The individual or panel who hear the matter at disciplinary hearing stage will be different to the people who hear the matter at appeal stage.

12.11 The employee will be able to respond and present any evidence of their own and will be given a reasonable opportunity to ask questions about the management case.

12.12 The work-place-colleague or trade union representative may make representations to the Chair and ask questions, but should not answer questions on the employee's behalf. The employee may confer privately with the companion at any time during the hearing.

12.13 Relevant witnesses may be asked by the Presenting Officer or the employee to appear at the hearing. The employee must give sufficient advance notice if they wish to call witnesses to ensure that there is time to arrange their attendance. The employee will be given the opportunity to respond to any information given by a witness and to ask questions of the Presenting Officer and witnesses.

12.14 The Chair may adjourn the disciplinary hearing if there is a need to carry out any further investigation, in the light of any new points being raised. The employee will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened (see hearing order checklist in toolkit).

DELIBERATIONS

12.15 Once all of the evidence has been heard, the Chair and/or disciplinary panel will adjourn to deliberate and to review all of the evidence in light of the disciplinary allegations. A representative from WHMAT HR will be present to support with due process. The Chair may decide to announce the decision orally to the employee on the day of the hearing, or will agree to confirm this in writing without unreasonable delay (see toolkit).

OUTCOME LETTER

12.16 The employee will be informed in writing of the decision and the reasons for it, within 5 working days of the disciplinary hearing, unless there are exceptional circumstances. The outcome letter will clarify a) the nature of the misconduct (if found); b) the required change in behaviour; c) the outcome of the hearing and the rationale for this sanction (see toolkit); d) the consequences of any further misconduct (where appropriate); and e) the employee's right of appeal against the decision.

13.0 POSSIBLE OUTCOMES OF DISCIPLINARY HEARING

13.1 The usual penalties for misconduct are set out below. No penalty should be imposed without a hearing. WHMAT aims to treat all employees fairly and consistently, and a penalty imposed on another employee for similar misconduct may be taken into account, but should not be treated as a precedent. Each case will be assessed on its own merits and facts.

13.2 After the active period for warnings specified below, the warning will expire, but will be retained on the employee's HR file. If the employee commits a further act of misconduct for the same act of misconduct or for misconduct of a similar nature within 12 months from the hearing, the previous warning may be referred to in deciding how long any new disciplinary sanction will remain live.

NO CASE TO ANSWER

13.2 The Chair/Panel may find that based on the evidence, there is no case to answer for some or all of the disciplinary allegations that formed the subject of the disciplinary investigation. If the employee was suspended during the investigation, the Chair must ensure that the written outcome letter confirms that there is no case to answer against the employee and that the suspension is formally lifted with immediate effect (see toolkit).

RECORDED WARNING

13.3 A recorded warning will last 6 months from the date of the hearing. An employee may receive a recorded warning for a first offence of misconduct, where there is no other active written warning on their file; and/or for a minor act of misconduct; and/or where the mitigation presented is substantial. If no new disciplinary offence occurs during that period, the warning will expire and be disregarded for disciplinary purposes.

WRITTEN WARNING

13.4 A written warning will last 12 months from the date of the hearing. It may be appropriate for a first act of misconduct where there are no other active written warnings on the employee's disciplinary record but will usually be more serious than the misconduct that has warranted a recorded warning at 13.3. If no new disciplinary offence occurs during that period, the warning will expire and be disregarded for disciplinary purposes.

FINAL WRITTEN WARNING

13.5 A final written warning will last for 24 months from the date of the hearing. If no subsequent disciplinary offence occurs during that period, the warning will expire and be disregarded for disciplinary purposes.

It will usually be appropriate for:

13.5.1 misconduct where there is already an active/live written warning on the employee's disciplinary record; and/or

13.5.2 misconduct that is considered sufficiently serious to warrant a final written warning even though there are no other active warnings on the employee's disciplinary record.

13.5.3 cases of gross misconduct during which the employee has presented significant mitigation.

Expired warnings will not be referred to in references. Any records relating to safeguarding matters will remain on the employee's HR file in line with appendix 1 paragraph 9.

DISMISSAL WITH NOTICE

13.6 This will usually only be appropriate in cases where an employee still has a live/active final written warning on file for a disciplinary offence and a further act of misconduct or gross misconduct takes place (known as cumulative misconduct).

13.7 The relevant period of notice will be given if it is not a summary dismissal e.g. statutory or contractual, whichever is the greater. Depending on the circumstances, HR may agree with the employee that it is more appropriate for them to be paid in lieu of their notice period rather than remaining in work during the notice period.

SUMMARY DISMISSAL WITHOUT NOTICE

13.8 Employees dismissed on the grounds of gross misconduct will usually be summarily dismissed i.e. without notice or payment in lieu of notice, regardless of whether or not there are active warnings on their record.

ALTERNATIVES TO DISMISSAL

13.9 In some cases, the Chair/Panel may, at its discretion, consider other reasonable and appropriate alternatives to dismissal. However, these may be authorised by the Head of Academy or CEO following consultation with the Director of HR.

13.10 Depending on the facts, alternatives may include (a) temporary or permanent transfer to a lower paid job/demotion if a suitable alternative exists (b) agreed transfer to another WHMAT academy doing a different or comparable job (if this exists and can be agreed by relevant parties). Such an alternative will usually be accompanied by a final written warning. If a suitable vacancy does not exist, then dismissal may still take place.

13.11 Regardless of the outcome above, minutes of the hearing will be provided to the employee within 5 working days of the hearing, unless there are exceptional circumstances. This will allow the employee to prepare any appeal.

14.0 ROLE OF TRADE UNION REPRESENTATIVE OR WORKPLACE COLLEAGUE

14.1 An employee may be accompanied at any formal disciplinary hearing by a work-place-colleague or trade union representative where a warning or dismissal may be a potential outcome. The employee should inform the person(s) conducting the hearing who this will be in good time before the hearing

14.2 Should the employee choose to be accompanied at the hearing, they will be responsible for making these arrangements and for providing them with any paperwork that they require for the hearing.

14.3 Acting as a work-place-colleague is voluntary and colleagues are under no obligation to do so. If they agree to do so they will be allowed reasonable time off from WHMAT duties without loss of pay.

14.4 If the choice of trade union representative or work-place-colleague is unreasonable, the employee can be asked to choose someone else, for example:

14.4.1 if they have a conflict of interest or may prejudice the meeting; or

14.4.2 if the trade union representative or work-place-colleague is not available at the time a meeting or hearing is scheduled under this Policy and will not be available for more than five working days after the originally scheduled date and time.

14.5 A trade union representative or work-place-colleague may make representations, ask questions, and sum up the employee's position, but will not be allowed to answer questions on the employee's behalf. However, the employee may confer privately with them at any time during a disciplinary hearing.

15.0 APPEALS

APPEAL LETTER

15.1 The employee has the right to appeal against the disciplinary action taken against them. This must be in writing, stating the full grounds of appeal and be sent to the Chair/Panel who made the decision within 10 working days of the date on which the employee was informed of the decision (see toolkit).

CONTENT OF APPEAL

15.2 In submitting an appeal, employees are asking the appeals committee to consider the fairness and reasonableness of any disciplinary sanction awarded at the disciplinary hearing. It will not be a re-hearing and will usually relate to:

15.2.1 The procedure e.g. that WHMAT's disciplinary process included procedural errors which prejudiced the disciplinary decision, undermining the fairness of the decision; and/or

15.2.2 The facts e.g. that facts relied on in reaching the disciplinary decision were incorrect or misinterpreted or that other key facts were disregarded. This should include any new evidence to be considered and the reasons for this; and/or

15.2.3 The reasonableness of the decision itself e.g. that the grounds of the appeal should state how the acts of misconduct did not justify the level of disciplinary action taken or that the act was one of misconduct rather than gross misconduct.

15.3 If the employee is appealing against dismissal, the date on which dismissal takes effect will not be delayed pending the outcome of the appeal. However, if the appeal is successful, they will be reinstated with no loss of pay or continuity of service.

15.4 If any new matters are raised in the grounds of appeal, which have not previously been raised, further investigation may need to be carried out. The Chair may adjourn the appeal hearing if there is a need to carry out any further investigations such as re-interviewing witnesses in the light of any new points that have been raised as part of the appeal. If any new information comes to light this will be provided to the employee with a summary including, where appropriate, copies of additional relevant documents and witness statements. The employee will have a reasonable opportunity to consider this information before the hearing is reconvened.

NOTICE

15.5 The employee must be given at least 10 working days' written notice of the date, time and place of the appeal hearing. The employee may bring a companion to the appeal hearing (see toolkit)

WHO HEARS

15.6 If the disciplinary hearing was conducted by a committee comprising Board Trustees, the appeal hearing will be conducted by an impartial panel of Board Trustees who have not been previously involved in the case. Alternatively, if the disciplinary hearing was conducted by the Head of Academy, the appeal may be heard by the CEO, provided that they have had no

previous involvement in the matter. A member of WHMAT HR shall be present to advise on due process regardless of who is hearing the appeal.

FORMAT

15.7 The hearing will be chaired by the Chair of the Appeals Committee. The employee will be asked to present their appeal, including calling any witnesses. The Presenting Officer will then be asked to respond to the appeal and will have an opportunity to call witnesses.

APPEAL OUTCOMES

15.8 Following the appeal hearing the Panel may:

15.8.1 confirm the original decision (i.e. dismiss the employee's appeal);

15.8.2 set aside the original decision (i.e. uphold the employee's appeal); or

15.8.3 substitute a different penalty (see paragraph 13). Normally, a penalty will not be increased on appeal unless there is new information or evidence being available that requires further investigation.

15.0 The employee will be informed in writing of the decision and the reasons for it, usually within 10 working days of the appeal hearing (see toolkit). Where possible this information will also be explained to the employee in person. There is no further right of appeal.

16.0 REFERRALS TO EXTERNAL BODIES

16.1 If employees are dismissed or resign during a disciplinary process, WHMAT will ensure that, in relevant cases, it meets its statutory obligations under *Keeping Children Safe In Education* ("KCSIE") by referring the matter to the Disclosure and Barring Service ("DBS") and/or the National College for Teaching & Leadership ("NCTL") for consideration (see guidance in toolkit).

17.0 CRIMINAL CHARGES & CONVICTIONS

17.1 Employees should inform their Head of Academy (CEO in case of head office staff) immediately if they are involved in a criminal investigation, or are subject to a criminal charge or conviction. Failure to disclose any such matters may result in a disciplinary investigation and to disciplinary action being taken against them.

17.2 Where an employee's conduct is the subject of a criminal investigation, charge or conviction, the Head of Academy/CEO or Director of HR will investigate the facts in line with this Policy before deciding whether to take formal disciplinary action against an employee. Disciplinary action will not be automatic and will depend upon the circumstances. Employees will not be dismissed solely because a charge against them is pending or because they are absent as a result of being remanded in custody. Advice should be taken from HR before taking any formal action.

17.3 WHMAT may need to liaise with appropriate agencies e.g. Police/social services and/or LADO before deciding on whether to start its own internal disciplinary process. This may or may not mean waiting for the outcome of any criminal prosecution. Often the allegations will differ to the criminal charges and a lower burden of proof will apply. The principles of

preliminary investigation, further investigation and/or suspension under this Policy will still apply as far as is reasonably possible.

17.4 Where employees are unable or have been advised not to attend an investigation meeting or disciplinary hearing or to say anything about a pending criminal matter, a decision may have to be made by WHMAT based on the available evidence, or the internal disciplinary process may be delayed. An employee who is convicted of a criminal charge and is in prison may have their contract of employment frustrated. Each case will be determined on its own facts. (see toolkit).

17.5 A criminal investigation, charge or conviction relating to conduct outside of work may be treated as a disciplinary matter if it is considered that it is relevant to the employee's employment and/or has caused reputational damage to WHMAT.

17.6 Where a criminal investigation relates to allegations of abuse of children and/or young people, WHMAT will co-operate and share information about the employee with other relevant agencies as appropriate.

18.0 REVIEW OF POLICY

18.1 This Policy will be reviewed and amended annually by WHMAT in line with employment legislation and HR good practice. The Director of HR will monitor the application and outcomes of this policy to ensure it is working effectively.

APPENDIX 1 - MANAGING ALLEGATIONS OF ABUSE AGAINST TEACHERS AND OTHER STAFF

In dealing with allegations of abuse against employees there is guidance that needs to be followed to ensure that children and young people are not at risk of harm as well as supporting employees through the relevant processes.

1.0 Scope

1.1 This guidance will be used alongside the Disciplinary Procedure where allegations have been made that might indicate a person would pose a risk of harm if they continue to work in regular or close contact with children in their present position, or in any capacity.

1.2 It will be used in respect of all cases in which it is alleged that an employee has:

1.2.1 behaved in a way that has harmed a child, or may have harmed a child;

1.2.2 possibly committed a criminal offence against or related to a child; or

1.2.3 behaved towards a child or children in a way that indicates that they would pose a risk of harm if they work regularly or closely with children.

1.3 As with other conduct issues the behaviour of employees outside of work may impact on their role within WHMAT. Therefore, if concerns are brought to WHMAT's attention about an employee's behaviour in regard to their own children or any other child/ children outside of WHMAT, consideration will be given to any implications for children with whom the employee has contact with at work.

2.0 Initial considerations

2.1 Where the Head of Academy determines that the allegations meet the criteria above they will immediately contact the Local Authority Designated Officer (LADO) and provide them with all relevant information.

2.2 The LADO and the Head of Academy will consider the nature, content and context of the allegation and agree a course of action. The LADO may ask for further relevant information to be provided or obtained such as previous history, whether the child or their family have made similar allegations, and the individual's current contact with children.

2.3 Outcomes of initial considerations;

2.3.1 No further action by external agencies or WHMAT is to be taken in regard to the individual facing the allegation. The decision and reasons for this will be recorded. The Head of Academy will agree with the LADO what information should be put in writing to the employee and what if any action is appropriate to take in respect of the person making the allegation. After consulting the LADO the Head of Academy will inform the employee about the allegation and provide them with as much information as possible at the time.

OR

2.3.2 No further action by external agencies, but the Head of Academy determines further action is required and will refer to the Disciplinary Procedure.

OR

2.3.3 The LADO determines that a strategy discussion is needed, or police or Local Authority's social care services need to be involved. The LADO will coordinate the appropriate arrangements and will inform the Head of Academy. The Head of Academy should not provide any further information to the employee. The strategy discussion will determine what action will be taken and by whom. The point at which the Trust can continue with its own disciplinary procedures will be determined. No further investigation should be carried out until agreed through this process.

3.0 Suspension

3.1 Suspension will not be an automatic response when an allegation is reported and alternative arrangements will be considered. The risks of the employee remaining in the academy/Trust during any process of investigation will be carefully evaluated. In cases where there is cause to suspect children at the academy are at risk of significant harm, or the allegation warrants investigation by the police, or is so serious that it might be grounds for dismissal the employee will usually be suspended.

3.2 Suspension will be managed as per the Disciplinary Procedure.

3.3 The Head of Academy will consider the advice of the Local Authority children's social care services or the police with regard to suspension, but will make their own informed decision with regard to the suspension of any employee in consultation with WHMAT HR.

4.0 Support for Staff

4.1 Where an employee is the subject of an allegation of abuse WHMAT recognises that in most circumstances this will be a time of stress and anxiety. Employees are advised to seek support from their trade union representative or an appropriate colleague. If the employee feels it is beneficial a referral to the academy/Trust's occupational health provider and/or counselling service will be arranged via Perkbox Employee Assistance Programme.

4.2 The employee will be kept informed of the likely course of action as the case progresses unless there is an objection by the Local Authority social care services or the police.

5.0 Confidentiality

The provisions in the Disciplinary Procedure regarding confidentiality apply to cases where allegations of abuse are made. WHMAT will make every effort to maintain confidentiality and guard against unwanted publicity. During the process of managing these types of allegation the Trust will only release information to the wider community for the purposes of reducing speculation.

6.0 Investigations

6.1 Investigations under the Disciplinary Procedure will not usually commence until agreement from the LADO and any other external agencies involved in dealing with the allegations have agreed that this can proceed. The provisions in the Disciplinary Procedure regarding investigations apply where allegations of abuse are made. Those undertaking investigations into allegations of abuse should be alert to any sign or pattern which suggests that the abuse is more widespread or organised than it appears at first sight, or that it involves other perpetrators or institutions. It is important not to assume that initial signs will necessarily be related directly to abuse, and to consider occasions where boundaries have been blurred, inappropriate behaviour has taken place, and matters such as fraud, deception or pornography have been involved.

6.2 Interviewing students - The Investigating Officer will avoid interviewing students unnecessarily. Information will be gathered from the Local Authority social services and the police where available and accessible.

6.3 Photographing students - The Investigating Officer or any other person within WHMAT will not take photographs of students to support allegations of abuse. Where appropriate, to record injuries to a student they will use the appropriate procedure e.g. body mapping, or refer to the LADO, the Local Authority social services or the police for advice. Photographs and other information provided by external agencies may be used as a part of the investigation process if appropriate and authorised by the relevant agency.

7.0 Possible outcomes

7.1 On the conclusion of the investigation one of the following four outcomes will be determined:

7.1.1 Substantiated: there is sufficient evidence to prove the allegation (on the balance of probabilities), therefore there is a case to answer for disciplinary action

7.1.2 Malicious: there is insufficient evidence to prove the allegation and there has been a deliberate act to deceive

7.1.3 False: there is insufficient evidence to prove the allegation

7.1.4 Unsubstantiated: there is insufficient evidence to either prove or disprove the allegation. The term, therefore, does not imply guilt or innocence, therefore there is no case to answer for disciplinary action

8.0 Malicious allegations

WHMAT consider the making of malicious allegations to be unacceptable. Any allegations found to not have been made in good faith by a student, parent, other employee or any other person may result in action being taken (this may include disciplinary action for a WHMAT employee). Any allegation that is found to be malicious will be removed from the file of the employee that has been accused.

9.0 Records and references

A record of the allegations, any investigation and the outcome will be kept on the employee's file. The employee will be provided with copies of any records held. These records will remain on file until normal retirement age or for a period of 10 years from the date of the allegation

if that is longer. Details of allegations that are proven to be false, unsubstantiated or malicious will not be referred to in any reference that WHMAT provides for the employee concerned.