THE DIOCESE OF GLOUCESTER ACADEMIES TRUST
unlocking potential

Conduct Policy

Our vision is to enable all to flourish.

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1.0 Introduction

1.1 The Diocese of Gloucester Academies Trust has a Christian Foundation, and its vision and values underpins all its work. The Trust Board recognises the importance of good working relationships with employees and seeks to ensure that concerns with conduct are dealt with promptly and consistently.

1.2 This policy provides a framework to manage an employee's conduct to an acceptable level, promoting fairness and transparency in the treatment of employees and ensuring that acceptable standards are sustainable and maintained.

1.3 It is based on the principles of the ACAS Code of Practice on disciplinary and grievance and current employment and educational legislative requirements.

1.4 This policy applies to all Trust employees where there are serious concerns and/or the appraisal process has been unable to address concerns informally.

1.5 Line managers/headteachers are expected to:

- Regularly review the performance of employees and respond to any situations where an employee's conduct is unacceptable.
- Give employees regular feedback on their performance at work.
- Have early discussions with the employee on problems, possible causes and solutions.
- Provide support, training or development where appropriate.
- Inform the Trust's Head of Governance and People when conduct issues beyond stage one arise, who will provide oversight and guidance regarding responsibilities and timelines.

1.6 Employees are expected to:

- Maintain good conduct
- Be responsible for their own development
- Raise with their line manager any problems that are affecting their work
- Accept responsibility for their work performance
- Respond constructively to advice, guidance and development provided by their line manager
- Be flexible and cooperate with changing work requirements

1.7 This policy does not form part of any employee's contract of employment and is entirely non-contractual. It may be amended, withdrawn, suspended or departed from at the discretion of the Trust at anytime.

2.0 Conduct

2.1 Conduct relates to the behaviours and the ways in which employees act on a day-to-day basis. Acceptable conduct is largely based on the behaviours that others (i.e. children, parents, trustees/executive leaders/headteachers/line managers, colleagues and visitors) can reasonably expect of employees. Conduct differs from capability, with capability focusing on an employee's inability to attain expected standards of performance, for instance due to lack of knowledge or skill.

2.2 The scheme of delegation human resources section (HR 10 – 16) is helpful to refer to when utilising this policy at stage 3.

3.0 Misconduct

3.1 Misconduct is when expected conduct/behaviour is not achieved or maintained. This could include when an employee:

- Does not follow rules or procedures
- Fails to exercise reasonable care or skill due to negligence or lack of effort
- Fails to carry out management instructions, direction or guidance
- Is inappropriately negative or behaviour is undermining of the Trust, the school, line managers or colleagues
- Has poor attendance
- Breaches codes of conduct applicable to or adopted by the Trust or school
- Breaches professional standards
- Is dishonest

3.2 The above are examples of situations that could constitute misconduct. Each case will depend on the particular facts and circumstances.

4.0 Gross misconduct

4.1 Gross misconduct is regarded as serious misconduct that fundamentally breaches the relationship of trust and confidence between the employee and employer. In the absence of exceptional mitigating circumstances, offences of gross misconduct will result in summary dismissal.

4.2 The following list (which is not exhaustive) gives examples of situations that could constitute gross misconduct. Each case will depend on the particular facts and circumstances.

- Theft, fraud or falsification of records
- Physical violence, verbal abuse, bullying, harassment or intimidation.
- Damage to property, health and safety equipment or a serious breach of health and safety rules
- Serious negligence which causes loss, damage, injury or endangers people or property
- Misuse of alcohol or drugs
- Any illegal discrimination
- Inappropriate physical, emotional or sexual contact with a child, or an abuse of trust as defined in the Sexual Offences Act (2003)
- Serious insubordination or serious undermining of Trust or school management, or a serious breach of confidentiality, including covert recording of meetings
- Accessing internet sites containing pornographic, offensive or obscene material
- Inappropriate activities on Trust or school site(s) or whilst on Trust or school activities e.g. sexual activities with another adult
- Major breaches of the code of conduct bringing the reputation of the Trust or school into disrepute
- Serious breach of the school's Social Media Policy or central team staff handbook

5.0 Whistle-blowing

5.1 The whistle-blowing procedure should be used for employees wishing to report, in strict confidence, their serious concerns about malpractice or conduct of other employees within the Trust. It gives protection to employees who make an allegation and forms part of the conditions of employment. A copy of the Trust Whistleblowing Policy can be found on the Trust website or school website.

6.0 Informal action

6.1 Informal action would normally be taken when the employee has:

- A previous good record of conduct and the incident is of a minor nature
- A previous good record and there are mitigating circumstances
- Informal action to address the situation should be taken as soon as a concern arises about an employee's conduct and should not be delayed.

6.2 For teachers, this will normally be managed through meetings held as part of the appraisal process.

6.3 Informal action may include a discussion between the line manager and employee, a verbal warning and the reinforcement of expectations surrounding an employee's conduct.

7.0 Formal action

7.1 Formal action should be taken when the employee has:

- Repeated incidents of misconduct, or an incident of a serious nature
- An incident that may be gross misconduct
- Previous formal warnings on file for any reason that are still current and there is a continued or new performance concern

7.2 No formal action should commence against a trade union representative until the circumstances of the case have been discussed with the appropriate branch or full-time officer, with the prior permission of the employee. If the employee does not wish there to be any prior discussion with the branch or full-time officer then formal action will proceed in the normal way under this procedure.

7.3 Although there is an expectation that formal action is generally progressive, formal action may start at any stage, dependent on the severity of the situation and the circumstances.

7.4 Advice must be sought from the Trust's HR provider who will also provide appropriate proformas and checklists. The advice and guidance from the HR provider must be followed.

7.5 At each stage, a formal meeting will be arranged with the employee.

7.6 If the concern is established, the outcome would normally result in a warning and sanction or ultimately dismissal. The maximum warning for each stage is detailed in the table below, however there is the flexibility to apply lesser sanctions if appropriate (i.e. issuing a first written warning at a stage two meeting, if the concern was not enough to warrant a final warning as detailed).

7.7 Sanctions (including associated financial outcomes) will not disproportionately impact employees covered under the Equality Act 2010, and will be considered on a case by case basis.

7.8 The stages of formal action and potential sanctions are given below:

Formal stage	**Maximum level of sanction at each stage**
One	Could lead to a first written warning. Withholding an increment for support staff and preventing progression to the next pay point/grade for teachers.
Two	Could lead to a final written warning. Withholding an increment for support staff and preventing progression to the next pay point/grade for teachers.
Three	Could lead to dismissal.

7.9 Stage one:

7.10 The warning cautions the employee that if their conduct does not improve, it may be necessary to consider further formal warnings, up to and including dismissal

7.11 A decision can be made to issue a first warning at stage one depending on the severity of the issue

7.12 If improvement is not achieved at this stage, or sustained thereafter, then progression to stage two is likely

7.13 A decision can be made to withhold any incremental or salary progression at the next salary review date

7.14 Stage two:

7.15 A decision can be made to go straight to stage two (without a first warning being in place) depending on the seriousness of the issue

7.16 The maximum sanction at this stage is a final written warning

7.17 If improvement is not achieved or sustained at this stage, then it is likely to progress to stage three and may result in dismissal

7.18 A decision can be made to withhold any incremental or salary progression at the next salary review date

7.19 Stage three:

7.20 The maximum sanction at this stage is dismissal

7.21 Lesser sanctions can be applied if during the meeting it is concluded that the conduct does not justify dismissal (i.e. final written warning)

7.22 Any notice will be in line with normal contractual arrangements or statutory notice depending on which is greater

7.23 All formal meetings for gross misconduct will be held at this stage, with the maximum potential outcome of summary dismissal

7.24 The start date of the formal warning will commence when the related action plan and support programme is finalised. Therefore, any outcome will be confirmed in writing to the employee within three working days of the decision, including as appropriate:

- The nature of the concern
- The required improvement
- The monitoring arrangements and, if appropriate, a review date
- The warning - what will happen if there is insufficient, improvement and the further formal action that could be taken
- Any support/training arrangements
- How long the warning will remain in force
- Any effect on pay
- The right of appeal
- An action plan

7.25 A written warning will remain live for the duration as set out in the outcome letter, usually 12 months.

7.26 If an employee appeals against an outcome, the sanction will remain in place until the outcome from the appeal is known.

8.0 Investigation

8.1 An investigation is the gathering of information relating to a conduct issue. Dependent on the line manager's prior involvement in addressing conduct issues with the employee, the line manager will investigate or arrange an investigation to establish the facts. An investigation must be carried out before calling a formal meeting and will usually include a discussion with the employee about the issue.

8.2 Prior to the formal meeting, the investigator will produce a report setting out the findings and conclusions. Where appropriate, copies of witness statements and any other relevant documentation will be attached to the report.

8.3 All parties to the proceedings have an obligation to co-operate to ensure that processes and timescales are followed without delay.

9.0 Suspension

9.1 Suspension does not imply in any way that the matters have been pre-judged or the outcome pre-determined. Before suspending an employee, careful consideration should be taken of the circumstances of the allegation – it should not be an automatic response. It may be necessary to suspend an employee as a precautionary measure on normal

contractual pay either pending, or as a result of, an investigation which could lead to a formal meeting, if:

- Their presence might cause an unacceptable risk to a child or children
- The allegations are sufficiently serious that the outcome may be dismissal
- Their presence may impede or influence the investigation
- To prevent a possible repeat allegation or offence
- There are reasonable grounds to believe that the interests of the school or employee would be seriously affected, if they were to remain at work

9.2 Alternatives, on a short-term basis where appropriate, include:

- Paid leave of absence with the agreement of the employee (very short term – a few days – allowing time for an initial decision to be made)
- Alternative duties/locations including working from home
- Close supervision e.g. a colleague present during pupil contact time

9.3 There will be a designated point of contact for the suspended employee.

10.0 Allegations involving children or young people

10.1 If the allegation relates to harm or risk of harm to a child or young person, no investigation should be undertaken until a discussion has been held with the Local Authority Designated Officer (LADO).

10.2 Refer to the Gloucestershire Safeguarding Children Board website and details on Allegations Management.

10.3 Under the Education Act 2011, there are reporting restrictions related to teachers if there is an allegation that they are or may be guilty of a criminal offence against a child and it is made by or on behalf of a registered pupil at the school.

10.4 Any messages, whether, verbal or in writing, issued to the public and connected to child related allegations should be cleared through the LADO who will liaise with appropriate parties including the press office. In addition, it is good practice that the reporting restrictions are applied to support staff to ensure consistency

11.0 Summary dismissal

11.1 If an investigation finds that there is a case for gross misconduct the employee will be required to attend a stage three formal meeting.

11.2 If it is decided that gross misconduct has occurred and there are no significant mitigating factors (or those factors do not sufficiently reduce concerns), the employee will be 'summarily dismissed'.

11.3 Summary dismissal is dismissal without notice, pay in lieu of notice, or any other contractual benefit and is effective from the date of the decision.

11.4 The decision must be confirmed in writing within three working days, setting out the grounds for dismissal and how the employee can appeal.

12.0 Right to representation

12.1 The employee has a right to be represented/supported by a trade union representative or workplace colleague during formal conduct meetings.

12.2 If the employee's representative is unavailable for any of the formal meetings, an alternative date (usually within five working days) will be arranged. There will normally be only one postponement allowed for this reason. If the representative subsequently becomes unavailable for the re-arranged meeting the employee may be advised they will need to find a different representative and it is the union's responsibility to ensure an alternative representative is provided.

12.3 The employee does not have a specific right to be accompanied at an informal meeting by a trade union representative or workplace colleague. However, it is recommended they be given the opportunity to be accompanied if there is the possibility of formal action being taken at a later date.

13.0 Formal meeting

13.1 For the formal stages up to stage two, the holding of formal meetings and the issuing of warnings will usually be undertaken by an appropriate member of the Trust or school leadership team e.g. the headteacher or line manager.

13.2 Where the headteacher is the subject of the formal meeting, the CEO will take responsibility for the formal action.

13.3 Where the CEO is the subject of the formal meeting, the chair of the Trust Board will take responsibility for the formal action.

13.4 At stage three, the headteacher or line manager cannot take dismissal decisions if they have been directly involved in making decisions on previous formal warnings at stage one and two.

13.5 At stage three, for school staff an untainted investigator should gather the evidence and a panel of two local governors and a member of the Trust executive leadership team will undertake the conduct hearing. For central staff, including the CEO, an untainted investigator should gather the evidence and a panel of three Trust Board Members will undertake the conduct hearing.

13.6 The line manager should make it clear to the employee that formal action is being taken:

13.7 At least five working days' notice will be given to the employee attending the formal conduct meeting. For a formal meeting where dismissal is being considered, at least 10 working days' notice should be given.

13.8 The letter should include details of the right to representation, of the Conduct Policy and the documents to be discussed at the meeting (e.g. investigation notes). There should be an additional copy for the representative that the employee can send, or it can be sent directly to the representative if the employee has advised their line manager who their representative is, provided the employee has agreed.

13.9 The letter must state the formal stage at which the meeting is being held and the potential formal outcome/sanction that may result.

13.10 The employee must be given a date by which to provide any documentation to support their case (five working days). Sufficient time should be given to allow papers to be distributed to the chairperson/panel to be read prior to the formal meeting. If this is not possible they should contact the relevant person to make appropriate arrangements.

13.11 For a formal meeting where dismissal is being considered, the employee must ensure the panel receives any documents at least five working days before the meeting to allow time to read and understand the content.

13.12 Any formal action taken and the reasons for the decision will be confirmed in writing to the employee, including details on how they can appeal. The employee should be informed of the consequences of failing to improve sufficiently within the set period following a final warning, including confirmation that it may result in dismissal.

13.13 An action plan for improvement (if appropriate) should either be issued with the decision letter or follow shortly after.

13.14 It is good practice to make notes of informal meetings to inform future proceedings. Where a formal meeting takes place, minutes must be taken and shared with all parties. Where dismissal is a potential outcome, minutes must be kept and a note-taker must be present.

13.15 Audio recording of a meeting is not permitted unless all parties agree prior to the meeting. Ther is no obligation for any party to comply with a request to record a meeting. Covert recordings must not be taken. If a covert recording is suspected or discovered the meeting will be ended and reconvened at a later date. A warning letter may be sent to the individual that has attempted the covert recording.

14.0 Action plan

14.1 Action plans are developed to suit individual circumstances but would normally include clear expectations regarding work standards and practices, the criteria for success, time scales for improvement and any agreed support and review arrangements. The employee may be given the opportunity to discuss the content of this plan with their trade union representative before agreeing to it.

14.2 Whilst it is for the line manager to determine the criteria it is important for the employee to understand what is required of them and to help identify potential support. Employees are expected to co-operate with the process and engage fully with any agreed support.

14.3 Should the employee not achieve a successful outcome following the action plan they would normally progress to the next stage of the conduct policy, and ultimately could be dismissed.

14.4 Arrangements for monitoring and review will be agreed as part of the action plan.

15.0 Absence during the conduct procedure

15.1 If the employee becomes absent during the conduct process the headteacher/line manager is advised to contact the Trust HR provider as soon as possible to ensure that the best course of action is followed. Advice from the HR professional must be followed.

15.2 Sickness absence should not normally delay any part of a conduct process. If during the process the employee is signed off as medically unfit for work the employee should be referred immediately for Occupational Health assessment including in the referral details of the process including the stage reached in the procedure, and the question of whether they are fit to attend formal meetings.

15.3 Where the employee is unable to attend conduct related meetings for health reasons, the meetings may proceed in the employee's absence, considering all the circumstances of the case. They may submit a written statement and/or their representative may attend on their behalf. It is advised that further guidance is obtained from the Trust's HR provider if there are difficulties in arranging for an employee to attend meetings.

15.4 If an employee is absent during the period of any formal warning being in force, the warning will be extended by a period equivalent to the total absence from work. Any such extension must be confirmed in writing to the employee.

15.5 The absence will be dealt with in accordance with the school or Trust's attendance policy.

16.0 Dismissal

16.1 Where dismissal is an option, a member of the Trust executive leadership team must sit on the decision-making panel.

16.2 In all cases of dismissal, the Head of Governance and People will send the employee a dismissal notice.

16.3 Where dismissal is with notice, any notice period will be in accordance with the employee's contractual arrangements, or the statutory period, whichever is greater. The employee will receive normal pay throughout the period of notice.

17.0 Right of appeal

17.1 There is a right of appeal at every stage of the formal absence process as specified in the warning or dismissal letter.

17.2 The appeal is not a rehearing of the case but is a review of the reasonableness of the decision. Determining reasonableness may include consideration of procedural irregularities or any relevant new evidence which could not have been available at the time of the formal meeting.

17.3 Whilst the outcome of the appeal is pending, an action plan, warning or dismissal will remain in force.

17.4 The appeal letter must be received within five working days of the date of the outcome letter and should specify the grounds of the appeal including why and in what respects the decision of the original meeting was unreasonable. The appeal needs to be

sufficiently clear to enable the initial chair whose decision is being appealed to respond at the appeal meeting.

17.5 Any supporting documents or information should be provided with the appeal letter. If this is not possible, documents should be submitted to allow reasonable time for the employer to prepare their case and collate, paginate and distribute the bundle for receipt by all parties at least three working days before the appeal meeting.

17.6 Where the appeal period overlaps with a pre-determined holiday period (i.e. out of term-time for term-time only employees), the letter of appeal needs only to register the intention of appeal. A fully detailed letter should arrive within five working days after the end of the holiday period.

17.7 For an appeal related to school staff, a panel of two local governors and a member of the Trust executive leadership team will undertake the appeal hearing. These individuals should not have previously been involved in the stage three case If required, local governors from another Trust school may be used. For central staff, including the CEO, a panel of three Trust Board members not previously involved in the case will undertake the appeal hearing. If required Trustees from another Trust could be used.

17.8 Arrangements for the appeal meeting should normally be notified to the employee within 10 working days of receipt of the request for an appeal. The employee should be reminded of the right to be accompanied by a trade union representative or workplace colleague.

17.9 At an appeal, the original sanction will be reviewed and may be amended or withdrawn but cannot be increased.

17.10 The decision of the appeal panel will be final, and will be confirmed in writing to the individual within three working days. Should the outcome of the appeal change the original decision, the panel will make clear the terms and reasons of that revised decision.

17.11 If an appeal is successful, any outcome will be amended or withdrawn without detriment to the employee. In the case of dismissal, there will be no detriment to pay or continuous service. In the case of dismissal for gross misconduct, the individual will be reinstated with no break in service.

18.0 Informing the Teaching Regulation Agency (TRA)

18.1 The TRA's disciplinary functions require the employer to consider referring cases to the Agency when the employer:

- Has dismissed a teacher on the grounds of serious misconduct
- Might have done so if the teacher had not already resigned

19.0 Informing the Disclosure and Barring Service (DBS)

19.1 Where employment finishes due to a child protection allegation, whether a resignation, dismissal or non-renewal of a fixed term contract, the matter should be referred to the DBS.

19.2 The DBS should also be informed if the employee is removed from working with children.

19.3 Where the employee has resigned, or been removed from working with children or where there has been a non renewal of a fixed term contract, the employer will still need to continue the formal procedure in order to reach a formal decision in respect of the allegations.