

# Disciplinary Policy and SOP

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# **POLICY**

## **1 Purpose and Objectives**

The Children's Trust will, through its job descriptions, induction and training processes, organisational policies and procedures, ensure that employees are made aware of the expected standards of conduct, work performance and behaviours. All employees should embrace the values of The Children's Trust which shape behaviour and conduct day to day. These values are:

- Child & family focused
- Caring and supportive
- Professional
- Collaborative
- Can do
- Fun

This policy sets out a framework to manage concerns about an employee's conduct. There are separate policies to manage poor performance (Performance Improvement Policy) or for managing issues during a probationary period (Managing Probation Policy). There is also a policy for managing attendance and wellbeing issues at work (Attendance and Wellbeing Policy).

The Children's Trust is committed to helping employees learn and improve. Managers will, where appropriate, resolve minor disciplinary issues in an informal manner. Where an informal approach fails or where the misconduct is considered to be serious or significant the additional steps outlined in this policy will be followed.

This policy does not form part of your Contract of Employment unless otherwise stated and is subject to change at the discretion of The Children's Trust. The Children's Trust reserves the right to modify, withdraw or initiate any rules or procedures it deems necessary, and will undertake to review the policy in the light of changing working practices or legislation. Any changes will be made available via The Loop. The Children's Trust may also reasonably vary this policy, including any time limits, as appropriate to each individual case.

The objectives of the policy are to:

- to ensure a fair and consistent approach to maintaining standards of conduct, behaviours and working relationships.
- outline the rights and responsibilities of employees, Managers, the People Team and employee representatives.

Relevant laws and regulations include but are not limited to:

- Equality Act 2010
- Trade Union and Labour Relations (Consolidation) Act 1992 (which provides for the ACAS Code of Practice on Disciplinary and Grievance Procedures)

## **2 Scope**

This policy applies to:

- all employees who have passed their probationary period (during probation employees will be managed under the Managing Probation Policy).

### 3 Definitions

Unless otherwise stated, the words or expressions contained in this document shall have the following meaning:

Chair	The Manager who will chair the hearing
HRBP	The People Team HR Business Partner
Investigator	The individual, usually a Manager at The Children's Trust, who will investigate allegations of misconduct
Line Manager	A Manager with direct day-to-day managerial responsibility for a specific employee
Manager	A Children's Trust employee with responsibility for managing other employees within the organisation e.g. Manager, Senior Manager, Director or CEO
Pastoral Care Manager	A Manager who is separate from the investigation and is responsible for providing support and pastoral care to the employee
PPR	Person(s) with parental responsibility.
PPR Pastoral Support	A senior Manager who is responsible for providing information and pastoral care to the person(s) with parental responsibility for a child (e.g. parents, family members or local authority) where disciplinary proceedings relate to the care of that child or may affect future care of that child (e.g. suspension or reassignment of someone responsible for the child's care)
SOP	Standard Operating Procedure

### 4 Policy Statement

This section sets out the main organisational rules as set out in the SOP, which help ensure the policy objectives are met.

- 4.1 Managers are responsible for ensuring their team is aware of the required standards of conduct and for bringing any concerns to the attention of employees at the earliest opportunity.
- 4.2 Line Managers should try to resolve minor matters of conduct informally. If informal approaches do not bring about improvement or if misconduct is sufficiently serious, the formal stages of this policy and SOP should be followed.
- 4.3 Line Managers will ensure that all allegations of misconduct are dealt with under this policy and SOP and all action is reasonable and proportionate.
- 4.4 If a matter is not appropriate to be dealt with informally, in most cases an investigation will be undertaken by an independent investigator. The level of investigation will be dependent on the facts and complexity of each case. Employees will be told by the investigator why disciplinary action is being considered and they will be given the opportunity to respond to allegations before decisions about formal sanctions are taken.
- 4.5 If the investigator, on the balance of probabilities, feels there is a case to answer, a disciplinary hearing will be held, chaired by an independent manager. The Chair will decide on the balance of probabilities whether misconduct has occurred and if so, what sanctions will be applied. Employees will have a right of appeal against formal sanctions.

- 4.6 Employees can be accompanied at an investigative or disciplinary hearing by a work colleague or a trade union representative.
- 4.7 The role of the People Team is to oversee the disciplinary process, and it may also provide support and advice to all parties and seek external / legal guidance where required. They will support the investigation process and in addition will assist the Manager who chairs the disciplinary hearing/appeal. They will work to ensure that this policy is followed and that misconduct issues are dealt with fairly and consistently.
- 4.8 Where periods of suspension are considered, the period should be as brief as possible, kept under review and not considered a disciplinary action. There is further guidance on the process that must be undertaken prior to any suspension set out below in clause 2.4 of the SOP section of this policy.
- 4.9 Disciplinary cases will be treated sensitively and confidentially. Information will only be shared with those who have a legitimate right to be informed in accordance with the Data Protection Act 2018 and the Common Law duty of confidentiality. Breaches of confidentiality by any party may result in disciplinary action.
- 4.10 The Children’s Trust recognises that the disciplinary process, whilst necessary, can be difficult and upsetting for those involved. Independent pastoral care will be made available to any individual under disciplinary investigation and the person(s) with parental responsibility of any child affected by the disciplinary process. It may also be requested by anyone involved in a disciplinary process.

## **5 Stakeholder Consultation**

Appendix 1 details the stakeholders who were consulted in the development of this policy

## **6 Related Policies and Procedures**

The following policies and procedures stated below support the effective application of this policy:

- Whistleblowing Policy
- Bullying, Intimidation & Harassment at Work Policy
- Managing Probation Policy
- Performance Improvement Policy
- Attendance & Wellbeing Policy
- Record Retention Policy and Procedure
- The Children’s Trust Safeguarding Young People Policy & Protecting Vulnerable Adults
- Equality, Diversity and Inclusion Policy
- Health and Safety Policy
- Giving and Receiving References in the Staff Handbook

## **7 External References and Guidance**

The following external resources and guidance were consulted in drafting this policy:

- XpertHR
- CIPD Guidance
- Public Law
- Prosperity Law
- ACAS Code of Practice on disciplinary and grievance procedures
- Keeping Children Safe in Education 2020

## Standard Operating Procedures (SOP)

### 1 Roles and responsibilities

- Line Manager

The Line Manager is responsible for:

- Informing the employee that a matter is being investigated at the outset
- Consulting with the HRBP Team and appointing an investigator
- Consulting with the HRBP Team and appointing a Pastoral Care Manager
- Together with the HRBP, reviewing the Investigation Report and making the decision on whether a disciplinary hearing is appropriate
- Consulting with the HRBP and appointing a Chair for the disciplinary hearing and Appeal Manager (if required)

- Investigator

The investigator is responsible for:

- Completing the investigation within a reasonable period of time
- Making arrangements for a 'companion' to be present during meetings with the employee where requested
- Collating evidence by conducting interviews with the employee and other witnesses
- Compiling the 'Investigation Report'

- HRBP

The HRBP is responsible for:

- Assisting the Line Manager in appointing an investigator, pastoral care manager, PPR pastoral support (if required), the Chair for a disciplinary hearing and the Appeal Manager (if required)
- Keeping the employee regularly updated should there be any delays
- Providing templates and procedural guidance to the investigators to assist with the investigation
- Assisting the Line Manager with reviewing the Investigation Report and making the decision on whether disciplinary hearing is appropriate
- Providing procedural guidance to the Chair of the disciplinary hearing and the Appeal Manager (if required)

- The People Team

The People Team is responsible for:

- Overseeing the disciplinary process
- Advising the organisation, SLT and the trustees on disciplinary matters and seeking external / legal guidance where required

- Ensuring that this policy is followed and that misconduct issues are dealt with fairly, transparently and consistently
- The Pastoral Care Manager is responsible for:
  - providing pastoral care to an employee who is affected by a disciplinary process.

The Pastoral Care Manager is not expected to provide advice on any procedural questions, such as how the process works or timescales, and any such questions should be directed to the HRBP.
- The PPR Pastoral Support is responsible for:
  - providing pastoral support to the person(s) with parental responsibility of any child or young person affected by a disciplinary process.

## **2. Disciplinary Process**

### **2.1 Concerns about Conduct**

2.1.1 When a Line Manager becomes aware of an issue that could lead to a Disciplinary Investigation this issue should be raised via IRAR (Incident & Risk Assessment Reporting) if it has not already been done so. The Line Manager must also notify the People Team as soon as possible and ideally within one Working Day. A discussion between the People Team / Line Manager, and if appropriate the Head of Safeguarding and/or the Designated Safeguarding Lead, will then take place to agree whether the issue:

- may be managed informally,
- immediately falls within the Disciplinary Investigation process,
- would initially proceed via a Root Cause Analysis Investigation or
- if further guidance should be sought from the Local Authority Designated Officer (LADO).

The People Team / Line Manager will refer to section 2.2 (in respect of informal management) and Appendix 4 for guidelines regarding an initial decision on whether a Disciplinary Investigation / Root Cause Analysis Investigation will apply. The decision of which route to follow is solely within the discretion of The Children's Trust and the choice of route is not in itself indicative of any culpability, or otherwise, on the part of an employee.

Where allegations concern the safeguarding of children or vulnerable adults, the Head of Safeguarding and the appropriate Designated Safeguarding Lead must be notified as soon as possible. Should the appropriate Designated Safeguarding Lead be the subject of the allegation or involved in the allegation, the Head of Safeguarding should be contacted. Should the Head of Safeguarding be the subject of the allegation or involved in the allegation then the Director of Nursing & Quality and the Safeguarding Trustee should be notified.

- 2.1.2 In many cases an informal process may be appropriate. This helps to enable a culture of openness and learning. Further guidance is set out in section 2.2 (Informal Management).
- 2.1.3 A Root Cause Analysis Investigation is used to identify and resolve the root causes of any underlying system and process issues within the organisation that may have caused or contributed to the incident (e.g. a failure in policy or inadequate training) whereas a Disciplinary Investigation is suitable for allegations of misconduct by individuals e.g. a safeguarding allegation or employee malpractice.
- 2.1.4 If during a Root Cause Analysis it becomes clear that there may likely be disciplinary action (e.g. obvious policy breach), the Root Cause Analysis will stop, and a Disciplinary Investigation will

commence. A new investigator may be appointed by the People Team to undertake the investigation. The formalities and guidelines related to a Disciplinary Investigation differ from those of a Root Cause Analysis Investigation therefore it is important that both the employee and The Children's Trust follow the correct process in regard to any disciplinary decisions. The Line Manager will inform the employee of any changes regarding the investigation approach.

- 2.1.5 The employee will be notified of the nature of the allegations (i.e. if the matter is a safeguarding matter or a conduct issue etc.) as soon as reasonably practical and usually within 24 hours. If the allegations involve a safeguarding issue there may be a delay whilst guidance is sought from the LADO. The employee will be informed if an issue has been referred to the LADO when they are informed of the nature of the allegations. The full details of the allegations being investigated will be provided when the employee is formally interviewed by the investigator.
- 2.1.6 Where it is deemed that suspension from work (with or without pay) is potentially the appropriate action to take in regard to an employee's status, the Line Manager, under the guidance of a member of the People Team, should reference the suspension process which is set out in section 2.4.
- 2.1.7 A Line Manager may carry out brief initial fact finding if there is insufficient information provided on IRAR to enable them to be able to assess whether an informal process, formal disciplinary process or Root Cause Analysis Investigation should be carried out. This may include discussing the matter with the employee and other relevant individuals, so they have an understanding of what happened. This is not an investigation and is purely to establish in accordance with section 2.2 below and Annex 4 which process should be followed. **Please Note:** if the matter is to be referred to the LADO, there should be **no** fact finding or conversation beyond what is directly required to complete the LADO referral form.

A disciplinary matter will be referred to the LADO by the Head of Safeguarding or the appropriate Designated Safeguarding Lead where there is an allegation that the alleged incident is sufficiently serious as to suggest that an employee has:

- behaved in a way that has harmed a child, or may have harmed a child;
- possibly committed a criminal offence against or related to a child;
- behaved towards a child or children in a way that indicates they may pose a risk of harm to children.

Further guidance on what is appropriate in a particular situation may be sought from the HRBP, or for LADO referrals the Head of Safeguarding or the appropriate Designated Safeguarding Lead.

## 2.2 Informal Management

2.2.1 The Children's Trust recognises that cases of minor misconduct can in some cases be more effectively dealt with informally and quickly. Where there are concerns about conduct, the Line Manager will talk to the person in private as soon as possible, normally within a few days. This will be a two-way discussion aimed at talking through shortcomings and encouraging improvement. A note of this conversation and any agreed outcomes will then be put on the employee's file.

2.2.2 When following an informal approach the Line Manager will:

- establish whether an investigation is required or whether the Line Manager has sufficient information to proceed without a formal investigation,
- ensure feedback is constructive with an emphasis on finding ways to improve,
- make sure the employee understands the standards expected of them,

- explain how their conduct will be monitored,
- set a clear timescale for improvement,
- consider whether further training for the employee, support, guidance or informal management is required or appropriate.

Line Managers should summarise concerns and expectations in writing, a copy of which will be placed on the employee's file. This will be retained on an employee's file for a set period (normally 6 to 12 months) but will be disregarded for disciplinary purposes. If informal action does not bring about the necessary improvement within the timeframe set out by the Line Manager, formal steps will be taken under this policy and SOP.

#### 2.2.3 An informal process will not be appropriate where:

- any alleged misconduct raises safeguarding concerns,
- the alleged misconduct would amount to gross misconduct (as explained in section 2.9)
- the Line Manager, in agreement with the HRBP, feels the alleged misconduct is too serious to be dealt with under an informal process,
- the alleged behaviour has previously been dealt with under an informal process and improvements have not been made, or
- the behaviour is part of a wider pattern of unsatisfactory conduct, especially if evidenced by previous informal management processes in the last 18 months.

2.2.4 If a Manager is unsure whether a matter is suitable to be dealt with under the informal process they should discuss the matter with the HRBP. Normally the decision whether to follow an informal or formal process will be made by the Line Manager with the HRBP, however the Director of Resources may require that the matter be dealt with under either an informal process or a formal process if they feel the seriousness of the allegations or the pattern of behaviour warrants it.

### 2.3 Confidentiality

2.3.1 The Children's Trust aims to deal with disciplinary matters sensitively and with due respect for the privacy of any individuals involved. **All** employees must treat as confidential any communication communicated to them in connection with an investigation or disciplinary matter and are reminded of the confidentiality clause in their employment contract. Failure to maintain confidentiality may result in a disciplinary process.

2.3.2 In particular, the employee and witnesses must not discuss the details of the allegation with anyone at The Children's Trust other than those people outlined in this policy who have a legitimate reason to be aware. The employment contract clause regarding confidentiality is ongoing. Employees should note that it still applies whilst an employee is suspended or working whilst under investigation, after the disciplinary process is complete and after the employee has left The Children's Trust.

2.3.3 When documents, such as the investigation report, are shared under this policy, either by The Children's Trust sending to the employee or the employee sharing with a companion including a Trade Union official, documents should be sent by a secure method such as Egress or registered post/ hand delivery due to the confidential nature. Under the ACAS Code of Practice (Time off for trade union duties and activities), union representatives must respect and maintain the confidentiality of information they are given access to.

2.3.4 Requests for audio and/or visual recordings of the proceedings are not acceptable at any stage of the disciplinary procedure and are not admissible within this process, unless agreed as a reasonable adjustment for an employee with a disability or condition covered under the Equality Act.

- 2.3.5 An employee will normally be told the name(s) of any witnesses whose evidence is relevant to disciplinary proceedings against them, however The Children's Trust may in exceptional circumstances and in their absolute discretion decide that a witness's identity should remain confidential. Any such decision shall be made by the Director of Resources.
- 2.3.6 The HRBP team will ensure that they create appropriate secure folders on The Children's Trust server for saving all documents relating to the disciplinary process with access limited to those who require it. There will be separate secure folders for documents required by:
- the investigator,
  - the Line Manager,
  - the Chair of the Disciplinary Hearing (if separate) and,
  - the Appeal Manager (if relevant).

Access and relevant passwords will be arranged by the HRBP. In addition, relevant documents will be saved on the employee's file by the HRBP team. Where hard copies are prepared they must be handed directly to the relevant individual (not through internal post) and must be kept secure.

## 2.4 Suspension

- 2.4.1 In certain circumstances, suspension may be appropriate whilst a case is investigated. Please note there is a clear difference between formal suspension and a Manager taking the decision to send a member of staff home in the immediate aftermath of an incident.
- 2.4.2 The Children's Trust recognises that suspension can be a distressing event for employees. The decision to suspend is never taken lightly and will only be taken after following the process set out in this policy. Suspension will usually be due to one of the following reasons:
- there is a potential safeguarding risk to children or young adults in our care or who volunteer with The Children's Trust in the view of The Children's Trust and/or the LADO,
  - there is a meaningful risk of harm to other people or property,
  - working relationships have severely broken down.
  - the employee could tamper with evidence, influence witnesses and/or sway the investigation into the allegation,
  - the employee is the subject of criminal proceedings which may affect whether they can do their job.

Suspension of this kind is not a disciplinary penalty and does not imply that any decision has been made regarding the allegations.

- 2.4.3 The Manager should complete a Suspension Risk Assessment (Appendix 3) to assess whether the employee should be suspended from their duties and review the outcome with the Head of People & Culture and the HRBP and in the cases of clinical staff, the Head of Nursing & Care. In addition to the guidance for suspension contained in this Policy and SOP, the Safeguarding Policy contains guidance for suspension where there are concerns in respect of safeguarding. Further guidance may also be sought from the Director of Resources.
- 2.4.4 If an employee is suspended, the reasons for the suspension will be explained by the person carrying out the suspension (or by the employee's Line Manager) in the presence of the HRBP. The Manager will ensure all points on the suspension checklist provided by the People Team are carried out.
- 2.4.5 Where an employee is suspended or where suspension is lifted, it will be confirmed in writing

within one working day or soon as reasonably possible by the suspending Manager in liaison with the People Team.

- 2.4.6 Following the Suspension Risk Assessment, as an alternative to suspension, The Children's Trust reserves the right to insist that the employee is accompanied whilst performing their duties, or to temporarily redeploy the employee to alternative duties within The Children's Trust.
- 2.4.7 An employee will not be suspended without careful consideration and suspension will not be unnecessarily protracted. The Children's Trust will consider any advice or recommendations given by appropriate external bodies, including the LADO and the Police, when reaching any suspension decision. It will be reviewed regularly and if the period of suspension is likely to be longer than stipulated then this will be explained to the employee. Any decision to suspend is taken on the information available at the time. Should further information come to light which may affect the decision to suspend, this must be made available to the Line Manager and the Head of People & Culture who will decide whether the decision to suspend should be reviewed.
- 2.4.8 An employee will be suspended on their normal rate of pay pending an investigation, unless they have reported absence due to ill health, in which case the conditions in the Attendance and Wellbeing Policy will prevail until the suspension is lifted.
- 2.4.9 Sickness during suspension will count towards the sickness absence record and the provisions of the Attendance & Wellbeing policy will apply in respect of the process followed and support provided. However, the rules of suspension still apply, and employees will be asked to attend investigation meetings and hearings if they are fit enough to follow proceedings (in consultation with Occupational Health). External medical advice will be taken into consideration but the decision of The Children's Trust as to ability to attend is final.
- 2.4.10 Whilst suspended from work, employees must make themselves available to answer questions about work-related matters or to attend investigatory meetings and any hearing that might take place. Apart from these meetings, employees are asked not to undertake any work or attend work premises or contact other employees, services users or stakeholders in relation to work, without prior permission from the Manager who carried out their suspension, the Director of Resources or the HRBP. Employees are able to continue to have social contact with colleagues but must not do anything to impact the investigation, put pressure on witnesses or discuss any aspect of the case.
- 2.4.11 The employee must not discuss the details of their case with anyone at The Children's Trust, either during or after their employment, other than those people outlined in this policy. For further details on the importance of confidentiality see section 2.3. These requirements will not, however, prevent them from contacting their companion in order to prepare their case for a hearing. The Manager will follow the steps laid out in the suspension checklist maintained by the People Team and in conjunction with the Director of Resources or the HRBP, will agree with the employee the statement to be issued regarding the employee's absence from work.
- 2.4.12 Support during any suspension period will normally be supplied internally by a Pastoral Care Manager as set out in section 2.5. The nominated HRBP representative may also provide procedural advice about the disciplinary process and the investigation. External advice can also be obtained from The Children's Trust's Employee Assistance Scheme, Workplace Options, who are specialists in providing employment and emotional support. Workplace Options advice is provided completely confidentially. It is free for employees to use.
- 2.4.13 In cases where the LADO has been involved, the decision to suspend will be reviewed with the LADO on conclusion of the case and a written record made of the outcome of this review.

## 2.5 Pastoral Care

### Employee

- 2.5.1 Where an investigation is to be undertaken, the Line Manager, with assistance from the HRBP, will appoint a Manager who is independent of the investigation to provide pastoral care and support for the employee under investigation in accordance with People Team guidelines. The Pastoral Care Manager will be available to the employee until the conclusion of the disciplinary process, including any Appeal.
- 2.5.2 Any discussions between the employee and the Pastoral Care Manager are confidential and will not form part of the investigation or the disciplinary process. However, if the Pastoral Care Manager believes information they have been given shows a potential risk to children or young people, the individual employee, other people or The Children's Trust they must immediately inform the Head of Safeguarding and if appropriate the Designated Safeguarding Lead and the HRBP. Additionally, in certain circumstances the Pastoral Care Manager's requirement to maintain confidentiality may be overridden by a legal or regulatory requirement, e.g. if there are criminal proceedings or an investigation by the relevant professional regulatory body such as the NMC. The Pastoral Care Manager is not expected to provide advice on any procedural questions, such as how the process works or timescales, and any such questions should be directed to the HRBP.

### Person(s) with Parental Responsibility (PPR)

- 2.5.3 Where a disciplinary process either relates to the care of a child or where the care of a child may be affected by the disciplinary process (e.g. through suspension or reassignment of an employee) then the Line Manager must appoint a PPR Pastoral Support to provide information, support and pastoral care to the person(s) with parental responsibility for that child throughout the disciplinary process. This requirement is supplementary to any requirement under the Incident Reporting and Duty of Candour Policy and any disclosures should follow the same principles set out in that policy.
- 2.5.4 PPR Pastoral Support will be either the Head of House, the Director of Education or the Headteacher depending on the department the employee works for. In certain cases the Line Manager may also be the PPR Pastoral Support.
- 2.5.5 PPR Pastoral Support will ensure that the person(s) responsible for the child are kept informed throughout the process in line with the PPR Pastoral Support procedures which are available from HRBP.

### Other individuals

- 2.5.6 The Children's Trust recognises that the disciplinary process can be difficult for all those involved in the process. In disciplinary cases, the Line Manager should give consideration to whether any other individuals may be affected and require pastoral support and then either they or an appropriate Manager should signpost them to available support. In particular:
- Employees affected by a disciplinary matter should seek pastoral support:
    - from their Line Manager, or
    - by their Line Manager or them contacting the HRBP team and requesting an independent Pastoral Care Manager, and/or
    - by contacting The Children's Trust's Employee Assistance Scheme, Workplace Options, who are external specialists in providing employment and emotional support. Workplace Options advice is provided completely confidentially. It is free for employees to use.

- Volunteers should seek pastoral support from the Volunteer Development Officer.
- If third parties are affected, the Line Manager, with support from the HRBP, should seek guidance from the Director of Resources and the Director of Finance as to the appropriate response.

Should an employee, volunteer or third party feel they require or would wish to have pastoral support in respect of a disciplinary process but have not been approached, The Children's Trust would encourage them to actively seek support in the ways set out above.

## 2.6 Investigation Stage

- 2.6.1 The purpose of an investigation is to establish a fair and balanced view of the facts relating to any disciplinary allegations, before deciding whether to proceed with a disciplinary hearing. The investigation must balance the two requirements of a thorough investigation and completion within a reasonable timeframe. The amount of investigation will depend on the nature of the allegations and will vary from case to case.
- 2.6.2 All documentation produced during the Disciplinary Investigation will be created using the guidelines and templates provided by the People Team. (These templates have been developed by the People Team under the guidance of an external employment law firm.)

### Fact Finding Summary

- 2.6.3 If during initial fact finding by the Line Manager, it appears that the main facts of the incident are not disputed, consideration should be given to whether an expedited process may be followed where a Fact-Finding Summary is produced instead of an Investigation Report. A Fact-Finding summary may be produced if:
- the main facts of the incident are not in dispute,
  - the facts do not relate to safeguarding, gross misconduct nor would result in the dismissal of the employee,
  - the employee, the Line Manager and the HRBP **all** agree to produce a Fact Finding Summary instead of an Investigation Report. The employee should be under no pressure to agree and is always able to request a full investigation, should they wish.
  - the Line Manager has explained to the employee that, if upheld at the hearing, there are potential formal disciplinary sanctions which may be applied, up to and including a final written warning, and
  - prolonging the process is not in the interests of either the employee or the organisation.
- 2.6.4 If it is agreed to produce a Fact-Finding Summary, the Line Manager should ask relevant parties to submit a written statement setting out what happened in the incident (this may be provided by email). The Line Manager should produce a written summary of the facts in the format provided by HRBP. The Line Manager should, when producing the report, consider whether any necessary, limited redactions be made (e.g. use of staff initials) as set out in clause 2.7.2. Both the Line Manager and the employee should sign this summary evidencing their agreement of the facts. If there is disagreement over nonmaterial facts that would not affect the outcome of the disciplinary process then these should be noted in the summary with an explanation of why these would not affect the decision made. Following agreement of the Fact-Finding Summary, a Disciplinary Hearing will be held following the process set out below.

### Investigations

- 2.6.5 The investigative process and interviews are solely for the purpose of fact-finding and no decision on disciplinary actions will be taken until after a disciplinary hearing has been held.

- 2.6.6 An investigator will be appointed in accordance with the People Team process for appointing investigators. The appointed investigator will come from the list of suitably qualified investigators maintained by the People Team. The investigator will be independent of the issue but will have appropriate experience and professional knowledge to enable them to investigate fully and fairly. Best efforts will be made to also ensure that the investigator has relevant professional experience in the area relating to the allegation.
- 2.6.7 Where an investigation is into the conduct of a member of the Senior Leadership Team the matter will be referred to the Chief Executive. The Chief Executive may appoint another member of the Senior Leadership Team to investigate but shall retain overall responsibility for the investigation. The Chief Executive may, if they feel the allegation warrants it and in their absolute discretion, appoint an external HR consultancy firm to advise them. If the investigation is into the conduct of the Director of Resources, the role holder shall recuse themselves completely from the matter and any HR advice shall be given by the HR Business Partner or if the Chief Executive chooses an external HR consultancy firm.
- 2.6.8 Where an investigation is into the conduct of the Chief Executive, the Chair of Trustees shall delegate responsibility for the investigation and disciplinary hearing to a Trustee, so the Chair is available for any appeal. The Chair of Trustees shall notify the Board of Trustees of the allegation at the earliest opportunity. The Chair of Trustees, or their delegate, if they feel the allegation warrants it and in their absolute discretion, may appoint an external HR consultancy firm or legal representative to advise them. They may seek guidance from the Director of Resources if they feel it is appropriate.
- 2.6.9 All disciplinary issues will be investigated and dealt with as soon as reasonably possible. The investigator will aim to complete the investigation within a reasonable time period and without undue delay, recognising that investigators have other duties within the organisation which also need to be accommodated. The employee will be regularly updated by an HRBP should the investigation become delayed or protracted.
- 2.6.10 The investigator will review and collate the evidence. If the matter is very straightforward and not materially disputed by the individual parties, the employee and witnesses may give written statements by email. If the facts of the case require, the investigator will interview the employee and relevant witnesses taking statements (employees must not discuss the details of the case with anyone at The Children's Trust other than those people outlined in this policy as detailed in section 2.3). Where statements are taken during the interview, they will be sent to each interviewee to check, sign and return. Where there is disagreement regarding the content of the interview notes both copies will be included in the final pack for consideration.
- 2.6.11 The investigator will then compile a report (the 'Investigation Report') and make recommendations to the Line Manager regarding whether or not there is a disciplinary case to answer, or whether the matter can be dealt with informally/in another appropriate way. The investigator should, when producing the investigation report, consider whether any necessary, limited redactions be made (e.g. use of staff initials) as set out in clause 2.7.2. Should an investigation relate to a safeguarding allegation made against an employee of The Children's Trust School, and the investigator finds there is no case to answer, the investigator's finding shall take the form set out in Keeping Children Safe in Education and will state, based on the balance of probabilities, whether the allegation is:
- Malicious: there is sufficient evidence to disprove the allegation and there has been a deliberate act to deceive;
  - False: there is sufficient evidence to disprove the allegation;
  - Unsubstantiated: there is insufficient evidence to either prove or disprove the allegation. The term, therefore, does not imply guilt or innocence;

- **Unfounded:** to reflect cases where there is no evidence or proper basis which supports the allegation being made.

- 2.6.12 The Investigation Report will then be reviewed by the Line Manager and HRBP. The investigator retains ownership of the Investigation Report at all times and the HRBP will ensure that any advice they give to the investigator is limited to questions of law, procedure and process. The Line Manager, in consultation with the People Team, will make the decision as to whether or not to hold a disciplinary hearing
- 2.6.13 The employee may request to bring a workplace colleague or certified Trade Union official, a 'companion,' to an investigative interview provided the companion is not a party to the disciplinary process. The decision to allow a companion to an investigative interview is at the discretion of The Children's Trust. The request, and details of the proposed companion, should be passed to the HRBP a minimum of 48 hours before the meeting for confirmation. Employees may not bring as their companion an individual acting in a legal capacity, e.g. a solicitor.
- 2.6.14 Any companion is expected to behave in a professional manner throughout the meeting. If the companion's behaviour is inappropriate, threatening or aggressive, the investigator may adjourn the meeting. The companion must treat as confidential any information communicated to them in connection with an investigation or disciplinary matter including adhering to requirements on the sending and receiving of documents as set out in section 2.3 (Confidentiality).
- 2.6.15 All employees must co-operate fully, honestly and promptly in any investigation. This includes informing the investigator of the names of any relevant witnesses, disclosing any relevant documents and attending investigative interviews if required. Where an employee against whom the allegations have been raised leaves the organisation prior to completion of the investigation / disciplinary process, the process will conclude in their absence. The employee will be informed in writing of the conclusion. Where an employee raises a grievance concerning the issues / allegations surrounding the disciplinary process, this may delay the Disciplinary Investigation and may be investigated by an alternative investigating officer and presented in the hearing as mitigating circumstances.
- 2.6.16 Where the employee raises a grievance during any disciplinary action and the grievance is considered to be of material significance by the Director of Resources (under the guidance of The Children's Trust's external employment law firm), the grievance will be investigated prior to any further disciplinary process (which will be placed on hold until the grievance is resolved). Further guidance can be sought from the People Team.

## **2.7 Disciplinary Hearing**

### Notice of Meeting

- 2.7.1 Following an investigation, if The Children's Trust consider there are grounds for disciplinary action a disciplinary hearing will be held. The employee will be given advance written notice by the Line Manager, stating the date, time, venue and reasons (allegations / issues and the potential consequences if upheld) for the hearing and giving sufficient time to enable them to prepare. The Line Manager will endeavour to give a minimum of seven days' notice of the hearing.
- 2.7.2 The employee will also receive a copy of the Fact-Finding Summary or the Investigation Report, together with all supporting documentation including interview notes. The Children's Trust recognise that it is a fundamental part of a fair disciplinary process for an employee to have access to these documents in order that they may fully understand the case against them. However limited redactions may be made in the following circumstances:
- where, due to exceptional circumstances, a witness's identity is to be kept confidential, although as much information as possible will be provided while maintaining confidentiality; and
  - in all cases, where the names of children and young people in the care of The Children's Trust

appear they will be redacted from the report and supporting documentation to protect the interests of the children and comply with data protection law requirements.

In the Investigation Report, given its confidential nature, staff are usually referred to by their initials but this should be sufficient for parties who need to identify said staff to do so.

- 2.7.3 The employee will be informed of the right to be accompanied at the hearing by a companion (a workplace colleague or certified Trade Union official). Employees may not bring as their companion an individual acting in a legal capacity, e.g. a solicitor. For verification purposes the employee must provide details to the Line Manager of their chosen companion a minimum of 48 hours before the hearing. The Children's Trust may ask the employee to choose another companion where the original choice may give rise to a conflict of interests or is deemed inappropriate by The Children's Trust. A companion is allowed reasonable time off duties without loss of pay but no-one is obliged to as a companion if they do not wish to do so.

#### Chair

- 2.7.4 The HRBP will agree with the Line Manager to appoint a Manager who has been independent of the investigation and decision to suspend (if relevant) to chair the disciplinary hearing. This may be the Line Manager of the employee if they are independent of the investigation and any decision to suspend (e.g. a House Manager is able to chair disciplinary hearings for their employees if independent of the investigation). Best efforts will be made, where appropriate, to ensure that the Chair has relevant professional experience in the area relating to the allegation.
- 2.7.5 If a disciplinary hearing relates to a member of the Senior Leadership Team, the Chief Executive will chair the disciplinary hearing, ensuring they remain independent of the investigation. A Board trustee would be appointed for any subsequent appeal. See clause 2.10.7. If required a Trustee would chair the disciplinary hearing if the Chief Executive were unable to do so. If a hearing relates to the Chief Executive, per 2.6.8, a Trustee shall chair the meeting or the Chair of the Trustees or their delegate, if they feel the allegation warrants it and in their absolute discretion, may alternatively appoint a suitably qualified external HR advisor or legal representative to chair the disciplinary hearing.

#### Witnesses

- 2.7.6 The Children's Trust and/or the employee may ask relevant witnesses to appear at the hearing either in person or virtually. If attending virtually the witness must ensure that they are able to maintain confidentiality and call quality whilst participating in the hearing. The employee will be given a reasonable opportunity to ask questions, present evidence and call relevant witnesses where agreed. Please note a witness cannot be forced to attend a hearing. The Chair will have the final decision as to whether it is appropriate to request a witness' attendance at the hearing.
- 2.7.7 The employee should give sufficient advance notice to the organisation to arrange the witness' attendance, together with the questions they would like asked of the witness. Should any question seem inappropriate the purpose will be sought from the employee before the Chair decides in their absolute discretion whether or not to include the questions.
- 2.7.8 Where the witness is unable to attend the employee should highlight any questions they would like asked and the witness will respond formally in writing to the People Team. The People Team will review the questions and delete where appropriate any that are viewed as irrelevant or inappropriate. The witness will respond formally in writing to the People Team. It will not normally be permitted to cross-examine witnesses unless, in exceptional circumstances, the Chair decides that a fair hearing could not be held otherwise. The colleague / certified Trade Union representative will not be permitted to directly question the witness.

### Attendance

- 2.7.9 The employee whose conduct is the subject of the investigation / disciplinary must take all reasonable steps to attend the hearing, which will be attended by the Chair, and may include another member of staff in order to take contemporaneous notes of the hearing. (Please note contemporaneous notes will be taken but these are not intended to be detailed minutes.) It is the responsibility of the Chair to ensure that an accurate record of all discussions is maintained. The contemporaneous notes will be available to the employee after completion of the disciplinary hearing process. A People Team HRBP will also be present to provide procedural guidance and support. In certain circumstances, the Chair may decide that a virtual hearing is preferable or required. All parties attending a virtual hearing must ensure that they are able to maintain confidentiality and call quality whilst participating in the hearing.
- 2.7.10 No disciplinary action will be taken without the employee being given an opportunity to state their case, answer any allegations that have been made, ask questions, present evidence, and raise points about any information provided by witnesses. If an employee prefers they may elect to deliver a written submission containing the above points to the Chair, in advance of the proposed hearing, for review by the Chair instead of attending the hearing. The Chair will come to a reasonable decision by reviewing all of the relevant evidence. This will include, but may not be limited to, the employee's disciplinary record and general work record, the level of seriousness of the issue, medical opinion regarding the employee's fitness to attend the hearing and any written submission from the employee (if applicable). The Chair will then reach a decision in their absence. An email, or if this is not feasible a letter, will be sent to the employee's home address, confirming the decision and giving the right of appeal. For further information on the appeal process see section 2.10 below.

### Failure to attend

- 2.7.11 Employees subject to disciplinary hearings should make every effort to attend disciplinary hearings. If the employee fails to attend a disciplinary hearing without (i) a reasonable explanation, (ii) providing a written submission as detailed in clause 2.6.10 or (iii) suggesting a reasonable alternative date, the hearing will be re-arranged to a later date. The employee will be informed that if they fail to attend on the second occasion, a decision will be taken in their absence. Failure to attend or provide a written submission without good reason may be treated as misconduct in itself.
- 2.7.12 If the employee is unable to attend the hearing, but gives a reasonable explanation (for example their companion cannot attend), the employee may offer an alternative date within 5 days or as soon as reasonably practical of the original date. If the employee fails to attend through circumstances outside their control e.g. illness, the organisation may arrange another hearing within 5 days or as soon as reasonably practical and advise the employee that, if they fail to attend the rearranged meeting, the organisation may make a decision on the evidence available. If the employee is absent due to ill health, they may still be asked to attend the rearranged hearing if they are deemed fit to be at the hearing (guidance will be taken in consultation with Occupational Health) and are able to follow the proceedings. External medical advice will be taken into consideration but the decision of The Children's Trust as to ability to attend is final.

### Responsibilities of companion

- 2.7.13 During the meeting the companion may sum up the employee's case, ask questions to the Chair on behalf of the employee and confer with the employee. The companion will not be permitted to directly question any witness. The companion must not answer questions on behalf of the employee, speak when the employer/ee does not wish them to do so, or prevent others from fulfilling their roles in the meeting.
- 2.7.14 The companion is expected to behave in a professional manner throughout the hearing. If the companion's behaviour is inappropriate, threatening or aggressive, the Chair may adjourn the hearing. The companion must treat as confidential any information communicated to them in

connection with an investigation or disciplinary matter including adhering to requirements on the sending and receiving of documents as set out in section 2.3 (Confidentiality).

#### Adjournment

- 2.7.15 The Chair may adjourn the disciplinary hearing if s/he needs to carry out any further investigations such as re-interviewing witnesses in the light of any new points raised at the hearing. The employee will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.

#### Decision

- 2.7.16 The Chair will close the disciplinary hearing and take time to consider their decision. The Chair will give the employee their decision as soon as reasonably possible, but the time taken by a Chair to reach their decision will vary depending on the facts of the case. In straightforward cases the Chair may reach their decision on the same day as the hearing. The Chair will then inform the employee in writing of their decision, usually within one week of the disciplinary hearing. Where possible this information will also be explained to the employee in person. In their decision, the Chair will state whether, on the balance of probabilities, the allegations have been proven and if so, what sanctions (as set out in section 2.7 (Disciplinary Sanctions) will apply. An employee has a right of appeal against formal sanctions as set out in section 2.10 (Appeals Procedure).
- 2.7.17 Should a disciplinary hearing relate to a safeguarding allegation made against an employee of The Children's Trust School, the Chair's decision shall take the form set out in Keeping Children Safe in Education and will state, based on the balance of probabilities, whether the allegation is:
- Substantiated: there is sufficient evidence to prove the allegation;
  - Malicious: there is sufficient evidence to disprove the allegation and there has been a deliberate act to deceive;
  - False: there is sufficient evidence to disprove the allegation;
  - Unsubstantiated: there is insufficient evidence to either prove or disprove the allegation. The term, therefore, does not imply guilt or innocence;
  - Unfounded: to reflect cases where there is no evidence or proper basis which supports the allegation being made.

#### General

- 2.7.18 No employee will be dismissed for a first breach of discipline, except in cases of gross misconduct (as defined in section 2.9) when the penalty will be dismissal without notice.
- 2.7.19 If the employee's first misconduct is sufficiently serious, it may be appropriate to move directly to a final written warning. This might occur when the employee's actions have had, or are liable to have, a serious or harmful impact on an individual or the organisation.
- 2.7.20 Confidential records of all disciplinary hearings will be held on the employee's file. Once 'spent' (expired), warnings will be disregarded for the purpose of escalating the disciplinary process (employees will be advised of the length of 'live' warnings when issued, as detailed in section 2.7 Disciplinary Sanctions below), but will remain on the employee's file. However if an employee's conduct deteriorates soon after a warning expires, the disciplinary record may be taken into consideration in further disciplinary hearings as evidence of general behaviour and standards when considering the duration of any new warnings.
- 2.7.21 It is expected that employees will act with the utmost honesty and integrity at all times. Each member of staff must report any acts of misconduct or dishonesty and any perceived breach of statutory requirements, whether that is their own misconduct or that of other employees. Failure to report acts of misconduct or co-operate with a reasonable investigation may in themselves constitute a matter for disciplinary action.

## 2.8 Disciplinary Sanctions

Depending on the findings of the disciplinary hearing, the Chair has a number of disciplinary sanctions available to them. These are detailed below:

### Stage 1 – first written warning

- 2.8.1 If an employee's conduct does not meet acceptable standards the employee will normally be given a first written warning. The first written warning letter will be sent by the Line Manager, with the support of the HRBP, to the employee by email advising of the reason for the warning, that it is the first stage of the disciplinary procedure and giving details of the change in behaviour required, any support available and details of his or her right of appeal. A copy of the warning will be retained as 'live' on the employee's file (this is normally for a period of 6-12 months) but it may be disregarded for disciplinary purposes after a set period (the employee will be advised in writing of the disciplinary period), subject to satisfactory conduct throughout (i.e. where an employee has gathered multiple first written warnings, it will be at the discretion of The Children's Trust to consider whether to include these when making a decision regarding the potential future sanction). The employee will also be advised that should the employee be found by a disciplinary hearing to have committed a further act of misconduct, this would normally result in a final written warning.

### Stage 2 – final written warning

- 2.8.2 If there is still a failure to improve and conduct is still unsatisfactory, or if the misconduct is sufficiently serious to warrant only one written warning but insufficiently serious to justify dismissal, a final written warning will normally be issued to the employee. The final written warning letter will be sent by the Line Manager, with the support of the HRBP, to the employee by email giving details of the issue together with the change in behaviours required, any support available and will warn that dismissal or some other contractual penalty such as loss of seniority may result if there is no satisfactory improvement or if further misconduct occurs. It will also advise of the right of appeal.
- 2.8.3 A copy of the final written warning will be retained on the employee's file. It will be disregarded for disciplinary purposes after a set period (e.g. 6 or 12 months; the employee will be advised in writing of their disciplinary period), subject to achieving and sustaining satisfactory conduct throughout (i.e. where an employee has gathered multiple first written / final written warnings, it will be at the discretion of The Children's Trust to consider whether to include these when making a decision regarding the potential future sanction).

### Stage 3 – dismissal or other contractual penalty, such as loss of seniority

- 2.8.4 If conduct is still unsatisfactory and the employee still fails to reach the prescribed required standards, or if the misconduct is sufficiently serious, dismissal will normally result. The employee will be provided by the Line Manager, with the support of the HRBP and as soon as reasonably practicable, with written reasons for the dismissal, the date on which the employment will terminate, the appropriate period of notice (or pay in lieu of notice) and the right of appeal.
- 2.8.5 If occasion warrants, an alternative to dismissal such as some other contractual penalty e.g. demotion, transfer (subject to a suitable post being available), loss of pay or increment and/or suspension without pay, may be applied.
- 2.8.6 If an alternative sanction to dismissal is applied, the employee will receive from the Line Manager, with the support of the HRBP, details of the complaint and will be warned that dismissal may result if there is no sustained improvement in conduct or if further misconduct occurs. S/he will be advised of the right of appeal. A copy of the written warning, including details of the sanction, will be placed on

the employee's file but will be disregarded for disciplinary purposes after a set period (e.g. 12-18 months, the employee will be advised in writing of their disciplinary period), subject to achieving and sustaining improved standard of conduct.

### Summary Dismissal

Summary dismissal shall only apply in cases where a disciplinary hearing makes a finding of gross misconduct. Examples of the type of offence that might lead to summary dismissal are shown in section 2.9 (Gross Misconduct). This is not an exhaustive list, but is given as a guide to the level of seriousness. Employees dismissed for gross misconduct will not receive any notice or entitlement to pay in lieu of notice. They will, however, be paid for any other entitlements due under the contract of employment, for example any expenses or outstanding holiday pay.

### **Right of Appeal**

- 2.8.7 As set out in section 2.10 Appeals Procedure, every employee will have the right to appeal against sanctions imposed at any of the stages 1, 2 and 3 of the procedure and will be informed how to do so.

## **2.9 Gross Misconduct**

The following list provides examples of offences which are normally regarded as gross misconduct, however, this list is not exhaustive:

- Child abuse (as defined in The Children's Trust's Safeguarding Policy)
- Sexual offences and sexual misconduct
- Physical and verbal violence, including threats
- Theft, fraud, falsification of records, electronic timesheets or self-certification forms
- Breach of The Children's Trust financial regulations
- Serious breaches of The Children's Trust policies, rules or procedures
- Serious breaches of The Children's Trust School Code of Conduct
- Bullying or harassment, including sexual, religious or racial harassment or intimidation or discrimination (see the Bullying, Intimidation & Harassment at Work policy)
- Gross breaches of the organisation's IT policies or inappropriate use of mobile phones or social media in a way that harms The Children's Trust, its employees or its service users/stakeholders
- Deliberate damage to property including that belonging to The Children's Trust
- Being under the influence/using alcohol or non-prescribed drugs or smoking illegal substances whilst at work; smoking at work in non-prescribed areas of The Children's Trust sites
- Sleeping whilst on duty where there is a risk to the children or young people in our care or a safeguarding risk
- Use of personal electronic devices whilst on duty in roles where this is prohibited and there is a risk to the children or young people in our care or a safeguarding risk
- Negligence with regard to the health, safety and welfare of self or others
- Repeated failure to comply with reasonable management instructions
- Any serious act of insubordination
- Acceptance of any gifts, inducements or hospitality in return for placing of contracts for purchase of materials, equipment or supplies, or the supply of information without prior approval
- Gross inefficiency or neglect of duty
- Breach of confidentiality
- Willful defiance of the organisation's policies, rules and procedures
- Repeated failure to maintain professional registration or to update/register for a Disclosure and Barring Service check

- Failure to inform the Children’s Trust of a caution or conviction accrued during the employee’s employment with The Children’s Trust
- Serious breach of Health and Safety and other statutory rules
- Serious breach of a professional code of conduct set by a professional body
- Repeated failure to complete mandatory training
- Any conduct which in the reasonable opinion of The Children’s Trust brings the employee or the organisation into disrepute, including outside of the employee’s working hours.

## **2.10 Appeals Procedure**

- 2.10.1 An employee may appeal if they believe that a disciplinary decision is wrong or unjust. Examples of potential grounds for an appeal that an employee may rely on include:
- new evidence has come to light that should be investigated;
  - the sanction imposed was too severe or disproportionate to the misconduct;
  - the sanction was inconsistent with one imposed for similar misconduct committed by another employee;
  - the employer has not taken into account a previously exemplary disciplinary record, or
  - there were procedural failings, for example The Children’s Trust did not follow this disciplinary policy, or did not give the employee enough information about the allegations of misconduct for them to be able to prepare for the disciplinary hearing.
- 2.10.2 An employee who wishes to appeal against a disciplinary decision should do so in writing to the HRBP, giving grounds for the appeal, within five working days of receipt of the written confirmation of the disciplinary decision.
- 2.10.3 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 the employee will be reinstated with no loss of continuity or pay.
- 2.10.4 If the employee raises any new matters in their appeal notice The Children’s Trust may decide, at its absolute discretion, it is appropriate to carry out further investigation. Both parties will be provided with a summary including, where appropriate, copies of additional relevant documents and witness statements. Both parties will have a reasonable opportunity to consider this information before the disciplinary hearing.
- 2.10.5 The employee will be given written notice of the date, time and place of the appeal hearing. This will normally be within 14 days, or as soon as reasonably practical, following receipt of the written appeal notice.
- 2.10.6 The appeal hearing may be a complete re-hearing of the matter or it may be a review of the fairness of the original decision in the light of the procedure that was followed and any new information that may have come to light. It will be at The Children’s Trust’s discretion depending upon the circumstances of the case. In any event the appeal will be dealt with as impartially as possible.
- 2.10.7 An independent Manager who has not been previously involved in the case will hear the appeal (the Appeal Manager). The Appeal Manager will ideally be of a more senior position to the chair of the disciplinary hearing. If an appeal relates to a member of SLT a suitably independent trustee, and if the appeal relates to the CEO the Chairperson of Trustees, shall function as an Appeal Manager or alternatively The Children’s Trust may appoint a suitably qualified external HR advisor or legal representative.
- 2.10.8 The Appeal Manager will be accompanied by another independent person in order to take notes and witness what is said. (Please note contemporaneous notes will be taken but these are not intended to be detailed minutes.) The contemporaneous notes will be available to the employee after completion

of the appeal process. It is the responsibility of the Appeal Manager to ensure that an accurate record of all discussions is maintained. A People Team HRBP will also be present to provide procedural guidance and support.

2.10.9 All employees will have the right to be accompanied to an appeal hearing. The employee may bring a companion (who is a workplace colleague or certified Trade Union official) with them to the appeal hearing. Employees may not bring as their companion an individual acting in a legal capacity, e.g. a solicitor. For verification purposes the employee must provide details to the Appeal Manager of their chosen companion, a minimum of 48 hours before the appeal hearing. The Children's Trust will ask the employee to choose another companion where the original choice may give rise to a conflict of interests or is deemed inappropriate at the absolute discretion of The Children's Trust.

2.10.10 During the appeal the employee or companion will be given the opportunity to present or comment on any new evidence arising before a decision is taken. The same rules of engagement in terms of the role of the companion will apply during the appeal as those of the original disciplinary hearing as set out in Clause 2.7.13 and 2.7.14 above.

2.10.11 The Children's Trust may adjourn the appeal hearing at its discretion if there is a need to undertake further investigations in the light of any new points raised by the employee or their companion at the appeal hearing. The employee will be given a reasonable opportunity to consider any new information obtained before the appeal hearing is reconvened.

2.10.12 Following the appeal hearing the Appeal Manager may:

- (a) confirm the original decision
- (b) revoke and revise the original decision
- (c) confirm the original decision but apply an alternative sanction.

2.10.13 The Appeal Manager has the discretion to apply an alternative sanction, which could include an increased sanction.

2.10.14 The employee will be notified in writing of the results of the appeal by the Line Manager, with the support of HRBP, and the reasons for the decision as soon as possible. The decision of the Appeal Manager will be final. There is no further right of appeal.

## **2.11 Special Considerations**

### Criminal investigations

2.11.1 Where the employee's conduct is the subject of a criminal investigation, charge or conviction, The Children's Trust will investigate the facts before deciding whether to take formal disciplinary action.

2.11.2 Where appropriate, investigations by other agencies such as police or social services, may be carried out separately from investigations under this policy. The Children's Trust will refer relevant matters to the LADO who will make the decision as to whether this is a police matter and will contact the police if required. The Children's Trust will give the fullest co-operation allowed by law to try to ensure any such external investigations are carried out to a high standard.

2.11.3 The Children's Trust will not necessarily wait for the outcome of any prosecution before deciding what action, if any, to take (i.e. suspension with or without pay). Where the employee is unable or has been advised not to attend a disciplinary hearing, or say anything about a pending criminal matter, The Children's Trust may have to take a decision based on the available evidence. However The Children's Trust will consider advice received (if any) from the Police or investigating authorities before proceeding so as not to prejudice any investigation or future trial.

2.11.4 Criminal offences outside employment will not be treated as automatic reasons for dismissal. Consideration will be given as to whether the offence is one that makes the employee unsuitable for the work, unacceptable for other employment within The Children's Trust, or whether for reasons of

statute the employee is unable to carry on in the required role. Furthermore, if the nature of the offence committed is such that the fact the offence has been committed by the employee (albeit outside work) may cause damage to the reputation of The Children's Trust, then this may be deemed to be gross misconduct.

- 2.11.5 Failure to inform The Children's Trust of a caution or conviction accrued during the employee's employment with The Children's Trust will be considered as gross misconduct.

#### Data Breaches

- 2.11.6 Where cases include serious personal data breaches, The Children's Trust has a legal duty to report such cases to the Information Commissioner's Office within 72 hours via the Data Protection Officer. Should such a breach occur the Data Protection Officer must be consulted as a priority.

#### References

- 2.11.7 The Children's Trust is under no obligation to provide employees with a reference for new posts but will provide minimal information around start and end date and the employee's final role and, where relevant and in line with statutory guidance, suitability to work with children, young people and/or Adults at Risk. Where references are provided, The Children's Trust will ensure that these are fair and accurate.
- 2.11.8 In cases where the employee is the subject of disciplinary action or has been dismissed under the terms of this policy, The Children's Trust reserves the right to provide only a factual reference including the details of policies the employee has been managed under. If a disciplinary warning is live (as advised in the disciplinary decision letter) on the employee's file, then this will be highlighted in any reference provided by the organisation.
- 2.11.9 In line with statutory guidance, cases of a child protection or safeguarding nature which were founded or upheld will always be disclosed in a reference if the referee asks for information regarding safeguarding concerns or suitability to work with children. Such disclosures will be approved by the Director of Resources and the relevant regulatory Manager prior to being issued.
- 2.11.10 All references will be provided in accordance with the Staff Handbook and under the guidance issued by the appropriate regulatory body for example Department of Education and The Children's Trust's external employment law firm.

## **2.12 The DBS, Professional bodies, Professional codes of conduct and Referral to external bodies**

- 2.12.1 The Disclosure and Barring Services (DBS) was set up by the UK Government to safeguard vulnerable adults and children. The DBS maintain lists of individuals who are barred from working with these groups.
- 2.12.2 If an individual in regulated activity is removed from regulated activity (e.g. by dismissal, redeployment to a post not in regulated activity) as a result of a safeguarding matter where it is believed the 'harm' test has been met, The Children's Trust has a legal duty to make a referral to the DBS for consideration of discretionary barring.
- 2.12.3 If the employee resigns during the investigation, The Children's Trust will complete the process and determine whether, on balance of probability, they would have dismissed the person if they had not resigned. If so, the legal duty to make a referral to the DBS applies.
- 2.12.4 In addition, professional bodies, e.g. the Teaching Regulation Agency, The Nursing and Midwifery Council, General Medical Council and The Health and Care Professionals Council, include their own professional codes of conduct and standards for maintaining professional standards of conduct and performance in order to safeguard and protect the interests of the public/service users. You may be referred to your professional body when it is felt their standards or Code of Conduct has been breached.

2.12.5 In cases of alleged misconduct The Children's Trust retains the right to decide whether or not the employee will need to be referred to these regulatory bodies at any point during the disciplinary process. It will be the responsibility of the relevant regulatory Manager in consultation with the Head of People & Culture, to make the referral. The employee will be informed of the referral. The Children's Trust also retains the right to provide evidence and assist any independent investigations carried out by such regulatory bodies and may take any findings by such regulatory bodies into account in the disciplinary process.

2.12.6 In addition, in any case that involves an alleged safeguarding issue, The Children's Trust is required to immediately contact the LADO and/or the regulatory bodies CQC and Ofsted, and supply personal details of any employee, including supply/agency staff and volunteers, suspected of putting children/vulnerable adults at risk. The Children's Trust is also required to provide regular updates (including Disciplinary documentation where requested) to the LADO regarding progress of the investigation / progress of the Disciplinary process. The LADO will provide guidance as to appropriate next steps following any disciplinary decision. The Children's Trust is obliged to follow this guidance in a timely manner. The Line Manager will be responsible for informing the employee of any referrals within a timely manner.

If the LADO is notified of an alleged safeguarding issue in respect of an employee with their own children, it should be noted that the LADO may also consider the safeguarding of the employee's own children dependent on the facts of the alleged issue.

2.12.7 On conclusion of any disciplinary investigation involving an alleged safeguarding issue and/or where the LADO has been involved, The Children's Trust will undertake a learning lessons review to identify any policy amendments, training needs or other actions that may reduce the risk of the same or a similar issue arising in the future. The HRBP will appoint an appropriate person to conduct the lessons learnt exercise.

2.12.8 As a registered charity, The Children's Trust is also required to notify the Charity Commission of any serious incident. If a serious incident may have occurred, the Line Manager, with the agreement of the relevant SLT Director, should refer the matter to the Head of Audit, Risk & Governance.

A serious incident is an adverse event, whether actual or alleged, which results in or risks significant:

- harm to beneficiaries, staff, volunteers or others who come into contact with The Children's Trust through its work
- loss of money or assets
- damage to The Children's Trust's property
- harm to The Children's Trust's work or reputation.

## 8 Document Change Control

Version	Status	Description (of changes)	Reviewed by	Reviewed/ Issued Date
0.1	Draft	Aligning to Keeping Children Safe in Education 2020, Employment Law changes & ACAS guidelines & New Policy format	Mike Maddick	June 2021
0.2	Draft	Changes to wording on Pastoral Care and safeguarding. Put into new format for Policy and SOP.	Clare Shiels and Samantha Newton	June 2021
0.3	Draft	Additional changes from Jayne Cooper	Jayne Cooper	August 2021
2.0	Final	Published to the Loop		Sept 2021
2.1	Final	Expiry date extended to Jan 25 to allow for review of PSIRF impact and requirements	Gareth Blake	July 2024
2.2	Interim Update	Amendments to sections 2.6.8, 2.7.5. & Updated job titles	Amendments approved by FF&GPC, Incl further update by Trustee – F. Sheridan. Implemented by K Mackison & Approved by J Gillespie	December 2024
2.3	Final	Expiry date extended to 31 July 25	Gareth Blake	March 2025
2.4	Final	Further extended to 31 October 25 Policy reviewed and updated, pending approval at FIRC September.	Gareth Blake	July 2025

## Appendix 1 – Stakeholder Engagement Checklist

Review and complete the following checklist to indicate which stakeholders were consulted in the development of this policy.

#	Question	Yes/ No	Stakeholder(s) to be consulted
1	Is there a statutory requirement to have in place this particular policy/ does the policy need to comply with detailed legislation?	Yes	Audit, Risk and Governance team
2	Is implementation of the policy (or any element of it) dependent on the use of new or existing information technology?	No	Head of IT
3	Does implementation of the policy (or any element of it) place any demands on/ or affect the activities of the Estates and Facilities teams (e.g. does it impact the provision or maintenance of premises, equipment, vehicles or other TCT assets)?	No	Head of Estates
4	Does implementation of the policy or any element of it involve/ impact the processing of personal data?	Yes	Data Protection Officer
5	Does implementation of the policy require significant unbudgeted operational or capital expenditure?		Finance Director
6	Does implementation of the policy (or any element of it) directly or indirectly impact on the delivery of services / activities in other areas of the organisation? E.g. a policy written by a clinical lead in CF&S might impact on the delivery of care for CYP attending the School.	Yes	Relevant, impacted OLT members
7	Is there a need to consider Health and Safety or potential environmental impacts in developing and implementing the policy?		Health and Safety Manager
8	Have you consulted with a representative of those who will be directly impacted by the policy?		
9	Is there a need to consider Equity, Diversity and Inclusion in developing and implementing the policy?	Yes	EDI Lead
10	Is there a need to consider sustainability and potential environmental impacts in developing and implementing the policy?	Yes	Lead for Responsible Organisation
11	Please detail any other stakeholder groups consulted, if applicable.	No	SLT – J. Cooper, Mike Maddick & Samantha Newton OLT – Claire Shiels