



# **Disciplinary Policy & Procedure**

**Last Update: September 2022 (version 4.0)**

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## Document Control

### Changes History

| Version | Date       | Amended by      | Recipients              | Purpose                                    |
|---------|------------|-----------------|-------------------------|--|
| 1.0     |            |                 | All Plymouth CAST staff | New Policy                                 |
| 1.1     | March 2019 | Human Resources | JCC Union review        | Changes to Scheme of Delegation/SHBM roles |
| 2.0     | March 2019 |                 | CAST Board              | Changes to Scheme of Delegation/SHBM roles |
| 3.0     | March 2020 |                 |                         | Changes to Scheme of Delegation/SHBM roles |
| 4.0     | July 2022  | Human Resources | All Plymouth CAST Staff | Policy Review                              |

### Approvals

This policy requires the following approvals:

| Board | Chair | CEO | Date Approved               | Version | Date for Review |
|-------|-------|-----|-----------------------------|---------|-----------------|
| ✓     |       |     | 29 <sup>th</sup> March 2019 | 2.0     | March 2020      |
| ✓     |       |     | March 2020                  | 3.0     | March 2022      |
| ✓     | ✓     | ✓   | 22nd July 2022              | 4.0     | March 2024      |

### National/Local Policy

This policy must be localised by Academies

This policy must not be changed, it is a CAST/National Policy (only change logo, contact details and any yellow highlights)

### Position with the Unions

Does the policy require consultation with the National Unions under our recognition agreement?  Yes  No

If yes, the policy status is:  Consulted and Approved  Consulted and Not Approved  Awaiting Consultation

### Distribution

This document has been distributed to:

| Position                    | Date           | Version |
|-----------------------------|----------------|---------|
| All Plymouth CAST Employees | September 2022 | 4.0     |
|                             |                |         |
|                             |                |         |

## 1. Vision and Values

- 1.1. Plymouth CAST is a multi-academy trust of Catholic schools which is part of the mission of the Catholic Church dedicated to human flourishing and the building of a kingdom of peace, truth and justice. The Trust is to be conducted in all aspects in accordance with canon law and the teachings of the Roman Catholic Church and at all times to serve as a witness to the Catholic faith in Our Lord Jesus Christ.
- 1.2. Our vision and values are derived from our identity as a Catholic Trust. Central to our vision is the dignity of the human person, especially the most vulnerable. Our academies are dedicated to providing an education and formation where all our pupils and young people flourish in a safe, nurturing, enriching environment. All governors in our academies are expected to be familiar with the vision, mission, values and principles of the Trust and not in any way to undermine them. They should support and promote the vision and conduct themselves at all times in school and on school business according to the vision and principles of the Trust
- 1.3. Plymouth CAST expects all its employees to recognise their obligations to each school within the Multi-Academy Trust, the public, pupils and other employees and to provide consistently high standards of education and performance at all times and in accordance with Plymouth CAST's vision, mission and principles.

## 2. Purpose

- 2.1. The purpose of a formal procedure is to ensure that when disciplinary action needs to be taken
  - it is both fair and reasonable and
  - it is applied equitably and consistently in every case.
- 2.2. The aim is to resolve matters quickly when standards of conduct cause concerns which cannot be resolved by advice and encouragement, training or increased support. Plymouth CAST is committed to the avoidance of formal disciplinary procedures wherever possible by resolving problems as soon as they arise.
- 2.3. Schedule 14 of the Education Act 1996 requires that Governing Bodies establish disciplinary rules and procedures. In the case of an Academy this is the Board of Directors/Trustees. These procedures must reflect any legal provisions relating particularly to dismissal, the ACAS Code of Practice and Agreement and the basic requirements of natural justice.

### **Natural justice requires that:**

- (a) When disciplinary procedures are put in motion the employee should know the reason for them;
- (b) The employee should be given an opportunity to offer an explanation and to put his/her version and his/her facts forward before any decision is made;

- (c) A disciplinary hearing should be fair and conducted free of bias.

### **3. Scope**

- 3.1.** This policy applies to all Plymouth CAST employees

### **4. Equal Opportunities**

- 4.1.** The disciplinary procedure must always be applied fairly and in accordance with employment law and Plymouth CAST Equal Opportunities Policy.

### **5. Responsibilities**

- 5.1.** The day-to-day operation of each Plymouth CAST school is the responsibility of the Headteacher/Executive Headteacher, with support and challenge being provided by the Education and Standards Manager and this is discharged through each school's Senior Management Team. It is important that pupils, staff, parents and local stakeholders recognise and support this. However, ultimate accountability for Plymouth CAST as a whole Multi-Academy Trust rests with the Plymouth CAST Board. Therefore any decisions that have an impact on resources, such as staffing, structures, or compliance must be referred to the Plymouth CAST Board if they exceed delegated authority. This is essential to ensure that the legal obligations of Plymouth CAST are met and that the Trust maintains robust systems and processes that deliver effective governance.
- 5.2.** It is the school Education and Standards Manager's (ESM's) responsibility to work closely with the Headteacher and management team to ensure everyone concerned has a full and accurate picture of each school's strengths and any areas for improvement. ESMs will work with schools to identify strategies for improvement, with support, where appropriate, from within the Plymouth CAST network.
- 5.3.** It is the role of Plymouth CAST HR (and where appropriate, the school Business Manager) to provide clear HR policies, procedures and guidance, to support schools in the delivery of consistent and high standards of performance within a dignified working environment, in which all employees can take pride and enjoyment in their work.
- 5.4.** Appendix 1 provides examples of Delegated Responsibilities and Panel Formations.
- 5.5.** Management and employee representatives who may be involved in disciplinary matters should be trained and competent for the task. They should be familiar with the provisions of the Disciplinary Policy, and know how to conduct or represent at disciplinary hearings.

- 5.6. ESMs and HR should be informed about matters which might lead to a formal procedure. For any panel hearing the school must ensure an HR Adviser is aware of the process and in attendance, or have delegated attendance to a suitably qualified staff member.
- 5.7. At any stage in this procedure, an employee has the right to request representation from their trade union or a work colleague in any discussions or meetings relating to a disciplinary matter. Employees are encouraged to contact their trade union representative at the earliest opportunity for guidance. Where an employee wishes to have representation, the employee should let the Chair of the disciplinary panel know as soon as possible. Every effort should be made to accommodate the employee's companion, including the rescheduling of a disciplinary hearing if the original date is not suitable.

## 6. Timing

- 6.1. To ensure that disciplinary matters are dealt with effectively this procedure specifies the timescales that should normally apply. However, **in exceptional circumstances** and where there is a valid reason to do so, timescales can be varied **by mutual agreement**. It is management's responsibility to ensure that the timescale for each stage of the procedure is agreed before commencement. For school based staff and those working term-time, school closure periods do not necessarily need to halt the procedure and it may be advisable to continue where this is clearly having a negative impact on the employee's wellbeing. However, for the procedure to continue during periods of school closure, all parties need to be in mutual agreement and employees must not be pressured into proceeding. Employees must be paid at their appropriate rate of pay when attending meetings outside of their contracted hours. Employees are encouraged to take advice from their trade union representative in such circumstances.
- 6.2. Every effort should be made by employees to attend meetings that constitute part of this procedure. When there are valid reasons to reschedule meetings then these should be rearranged without undue delay.
- 6.3. Employees are encouraged to consult with their trade union/professional association early where they may be subject to disciplinary proceedings.

## 7. Informal Action

- 7.1. Many potential disciplinary issues can be resolved informally. A quiet word is often all that is required to improve an employee's conduct or a professional conversation which is recorded.
- 7.2. Such informal action should not be considered to form part of the formal disciplinary procedure and should not be referred to in any future disciplinary proceedings if the agreed improvement has been achieved.

- 7.3. All professional conversations should be recorded on the record in appendix 6 and stored securely within the employees personnel file for 12 months.
- 7.4. Care is required to ensure that any informal action does not turn into formal disciplinary action. If, during the discussion, it becomes obvious that the matter may be more serious, the meeting should be adjourned. The employee should be told that the matter may be continued under the formal disciplinary procedure. If in doubt, a Trust HR representative must be consulted prior to taking any action.

## **8. Suspension**

- 8.1. Plymouth CAST will fulfil its professional and ethical obligations in all matters concerning allegations of misconduct.
- 8.2. The decision to suspend an employee must not be taken lightly and will only be taken where, after full consideration of the necessity for it pending a full investigation of the conduct in question.
- 8.3. The following are instances where suspension may be justified:
  - To prevent the repetition of the conduct complained of;
  - To prevent interference with evidence;
  - To protect persons (including children) at risk from such conduct; or
  - To protect the business reputation of the school or Plymouth CAST.
- 8.4. Advice must be sought from Plymouth CAST HR before taking any action to suspend an employee.
- 8.5. Alternatives to suspension will be considered taking full account of the circumstances as understood at the time. Wherever possible, consideration should be given to temporary redeployment as an alternative to suspension. The benefits of temporary redeployment are that it keeps the employee actively engaged in work during a period of uncertainty. Alternative arrangements for school based employees may include working at Plymouth CAST's central offices where this is deemed practicable.
- 8.6. Where suspension occurs, this should be confirmed in writing giving broad details of the allegation and must be approved by the CEO or designated deputy. In all cases the Director of Education, Chair of Governors (in relation to schools based employees), and the school's HR Adviser must be informed.
- 8.7. A suspended employee must not enter any Plymouth CAST building or contact any school or central support based employee without the express permission of their allocated point of contact. Nor must a suspended employee contact pupils or their parents or anyone else with whom they would come into contact during the course of their duties to discuss their case in order to prevent a fair investigation. Failure to observe this requirement may render them liable to disciplinary action.

- 8.8.** A suspended employee will be allocated a point of contact who will be responsible for providing updates on the issue, keeping the employee informed of day to day employment matters and liaising on any necessary arrangements during the period of suspension.
- 8.9.** Where an employee is suspended and needs to contact witnesses to provide evidence at a hearing, then this may be arranged through their allocated point of contact. Consideration will need to be given to the employee's union representative being given access to witnesses and they should make that request in writing to the employee via the school.
- 8.10.** Suspension will always be on **full pay** and the period of suspension should be as brief as possible and kept under regular review.
- 8.11.** A proactive review of any suspension will take place with the employee and case management records will be kept. When a suspension is lifted, return to work arrangements will be agreed with the employee.

## **9. Disciplinary Investigations**

- 9.1.** See Appendix 1 for Responsibilities and Panel Formation

- 9.1.1.** The Investigating Officer

- 9.1.2.** An Investigating Officer, of sufficient seniority and who is trained and competent to undertake the role must be appointed (see Appendix 4 for flow chart of the disciplinary procedure process). If this is impractical or inappropriate, another Investigating Officer of equal or more senior status should be chosen either from another school or Plymouth CAST central services.

- 9.1.3.** The case must be thoroughly investigated, clearly written and supported by evidence. Where there is a need, timescales can be changed with the mutual agreement of both parties.

- 9.2. The Investigation**

- 9.2.1.** In certain cases it will be necessary to gather information regarding complaints, incidents and allegations before the start of a disciplinary investigation.

- 9.2.2.** This type of information gathering is only appropriate for prima-facie serious allegations which are particularly sensitive or complex to determine whether:

- There is any substance to the complaint and a full disciplinary investigation is appropriate
    - The allegations warrant suspension of the employee



- 9.2.3. This is **not** a formal stage of the procedure and would not be considered within the stipulated timescales of the procedure, but must be carried out as speedily as possible.
- 9.2.4. Any information uncovered at this stage would be provided to the Investigating Officer as appropriate.

### 9.3. Timescales for Investigations

- 9.3.1. All allegations and complaints against employees must be investigated without delay (particularly in cases of potential gross misconduct). The Investigating Officer should be given reasonable time off from normal duties to complete the investigation promptly.
- 9.3.2. As a guide, from the time the Investigating Officer begins their investigation, the investigation report should be completed within fifteen working days for allegations of misconduct and other cases where the fact finding is relatively straightforward. For allegations of gross misconduct and more complex cases, the investigation should take no longer than twenty working days (unless agreed by mutual consent). In very complex cases or exceptional circumstances, a reasonable timescale will be agreed with the employee and their trade union representative in consultation with the school's HR Adviser.
- 9.3.3. In all cases, these should be viewed as maximum periods and investigations should be completed as soon as is reasonably practicable. In exceptional circumstances e.g. very complex cases or where the Investigating Officer or an important witness falls sick, the person responsible for initiating the investigation can agree to extend the investigation following consultation with the employee. However, a reasonable date for completion should be set.
- 9.3.4. On completing the investigation and investigation report, the Investigating Officer will recommend whether a formal disciplinary hearing is necessary and, if so, on what basis.

### 9.4. Allegations against the Head teacher

- 9.4.1. Where allegations of misconduct involve the Head teacher, the Director of Education and Standards, in consultation with the school's ESM, will be responsible for initiating any action that may be taken. In such cases a decision may be taken to appoint another independent person from the Plymouth CAST network.
- 9.4.2. The power to suspend the Head teacher will normally rest with the Chief Executive Officer of the Trust who must consult with the school's HR Adviser before taking any action. Any investigation of a Head teacher will be carried out by a suitably senior representative nominated by the Director of Education and Standards.

## **10. Disciplinary Hearings**

- 10.1.** Where the investigation recommends that there are reasonable grounds to suggest misconduct or gross misconduct, a disciplinary hearing should be arranged as soon as possible but within four working weeks of completion of the investigation. Reasons for any delay in convening a hearing must be communicated by the Chair of the disciplinary panel, or another appointed person, to all interested parties.
- 10.2.** The Investigating Officer's report and all relevant documentation, including witness statements, should be sent to the employee and their representative with a letter specifying the date, time and place for the hearing giving no less than five working days' notice, unless changed by mutual agreement. Notice periods cover working days either side of holidays. The letter must contain sufficient information on the alleged misconduct and its possible consequences. The letter should inform the employee of their right to be accompanied by a trade union representative or work colleague. However, if the allegation is such that, if substantiated, the individual could be prevented from continuing in his or her career he or she can have legal representation. If an employee's companion cannot attend on a proposed date, the employee can suggest another date so long as it is reasonable.
- 10.3.** Working days refers to actual school days for term-time only staff. For teachers, working days refer to the 195 days on which a teacher must be available for work. In the case of part-time teachers, this would refer to days they are contracted to teach. Reference should be made to Section 6.1 Timing where all parties have to mutually agree to continue with the procedure during periods of school closure.

## **11. Composition of the Panel**

- 11.1.** A disciplinary panel will be appointed to hear allegations of misconduct or gross misconduct.
- 11.2.** The panel will be formed of 3 members who have had no previous involvement in the matter. The panel will appoint one of their number as Chair to lead the disciplinary hearing. Appendix 1, 3.2 gives examples of the composition of a panel.
- 11.3.** For all meetings a note taker will attend. In cases of gross misconduct, the Clerk to the Governors may attend. It is their role to minute the significant points of the hearing and the decision of the panel but not to produce a verbatim record.
- 11.4.** Neither an employee nor their representative should audio or video record the meeting without consent, as this suggests an explicit lack of trust in Plymouth CAST's procedure or the managers who are conducting it. If the employee has misgivings about either the procedure or the managers leading it, he/she should raise their concerns with the Head teacher, or Plymouth CAST CEO so the concerns raised can be resolved.
- 11.5.** Where hearings are conducted virtually, all parties will have the opportunity to provide consent to the recording of the session for note taking purposes. All

recordings will be stored securely and confidentially disposed of once the minutes are finalised.

- 11.6.** Plymouth CAST provides professional support and advice on the effective implementation of any procedure through the HR who should be informed of all cases requiring a formal procedure. An HR representative or other suitably qualified staff member, will be in attendance for all panel hearings.

## **12. Conducting the Hearing**

- 12.1.** Venues for hearings must be fit for purpose. Consideration should be given to a neutral venue outside the school community and suitable refreshment and toilet facilities must be available. Separate, private rooms should be available for the employee and her/his representative, the Investigating Officer, witnesses and the panel. Witnesses should be accommodated in such a way as to ensure that there is no opportunity for them to discuss the case with each other and to prevent a witness, who has given evidence, from coming into contact with witnesses who have yet to give their evidence. Hearings can also be held virtually and employees should be given the same option of 'private time' with their representative. This could be in the form of a separate meeting link or by phone.
- 12.2.** Section 17 must be referred to where a pupil is to be interviewed as witness.
- 12.3.** At the hearing, all parties present will be given an opportunity to ask questions or challenge the reports/evidence submitted by all witnesses (see Appendix 4 for the Disciplinary Hearing Structure).
- 12.4.** Having considered the matter and ensured that the decision reached is a reasonable response to the circumstances, the Chair of the disciplinary panel will announce the decision to the employee and their representative. Where the panel needs further time to consider the outcome, they can adjourn the decision but must notify the employee verbally within two working days.
- 12.5.** The decision must be confirmed in writing within five working days. The letter must also confirm the individual's right of appeal and of the right to be represented by a trade union representative or work colleague at any appeal hearing. The letter must state the name of an appropriate person to whom the appeal should be addressed.

## **13. Disciplinary Sanctions**

- 13.1.** The following formal stages of disciplinary action can be taken for breaches of conduct (see Appendix 2 which gives examples of gross misconduct, the list is not exhaustive).
- 13.2.** Warnings are progressive except for:
  - 13.2.1.** Cases of gross misconduct (which if substantiated through the disciplinary procedure) may result in summary dismissal with no entitlement to statutory notice. The panel may decide that whilst the allegations are proven as gross

misconduct, mitigation justifies a lesser sanction short of dismissal. In such circumstances, the panel Chair must seek guidance from HR before the panel findings are delivered. Where allegation/s of gross misconduct have been proven the employer could treat this as a fundamental breach of the implied duty of mutual trust and confidence, such that this will warrant bringing the contract to an end without meeting any minimum statutory or contractual notice requirements (summary dismissal).

Cases which are less serious than gross misconduct but warrant a Final Warning being issued if substantiated regardless of prior formal warnings.

| Disciplinary Action |  | Authority to Issue          | Duration of Warning on Personal File |
|---------------------|--|-----------------------------|--------------------------------------|
| Verbal Warning      | In the case of a minor infringement, a verbal warning can be issued. The warning will set out the nature of the infringement and the improvement in behaviour required. A copy of the verbal warning will be kept of the employee's personnel file.  | Chair of Disciplinary Panel | 6 months                             |
| Written warning     | <p>This may be issued if the first offence is serious enough to warrant formal action and will set out the nature of the misconduct and the improvement in behaviour required. A copy of the written warning will be kept of the employee's personnel file.</p> <p>The written warning will clearly state the performance problem, where improvements are required and the level of continued professional support, advice and guidance to be provided.</p> <p>Depending upon the severity of the situation, this stage may be omitted in cases of misconduct and it may be justifiable to move directly to a final written warning.</p> | Chair of Disciplinary Panel | 12 months                            |

|                       |   |                             |           |
|-----------------------|---|-----------------------------|-----------|
| Final written warning | <p>Where there is a failure to improve or change in behaviour and previous live warnings have not resulted in sufficient improvement, the employee may be issued with a final written warning. In circumstances where an offence is sufficiently serious to warrant a written warning, but not serious enough to justify dismissal, a final written warning may be issued. A copy of the written warning will be kept of the employee's personnel file.</p> <p>The final written warning will clearly state the performance problem, where improvements are required and the level of continued professional support, advice and guidance to be provided.</p> | Chair of Disciplinary Panel | 12 months |
| Dismissal with notice | <p>If the employee's conduct or performance still fails to improve following previous warnings, an employee may be dismissed with notice.</p> <p>The employee should be provided with written details of the reasons for dismissal, the date on which employment will terminate, the appropriate period of notice and their right of appeal.</p> <p>An employee should not be dismissed for a first breach of discipline, except in cases of gross misconduct.</p>  | Chair of Disciplinary Panel | N/A       |
| Summary Dismissal     | <p>In very serious cases, where an employee is found guilty of gross misconduct, the employee may be dismissed without notice. In this circumstance, termination of the contract is immediate.</p>  | Chair of Disciplinary Panel | N/A       |

- 13.3.** Where there is an active warning on an employee's record and they are involved in further substantiated misconduct (resulting in a formal hearing and a further disciplinary sanction) the duration of the new warning may supersede that of the original warning at the discretion of the Chair of the disciplinary panel.
- 13.4.** An employee who is alleged to have committed a further act of misconduct after a final written warning or an act of gross misconduct must be made aware of the potential consequences of any disciplinary action where after a disciplinary hearing the allegations are found to be substantiated (i.e. if the allegations are very serious, that dismissal could be an outcome).
- 13.5.** The warning will, in most cases, be considered spent and disregarded for disciplinary purposes upon its expiry, subject to the employee's satisfactory conduct and performance, and except in cases relating to the safety and welfare of children or young people.

## **14. Appeals Procedure**

- 14.1.** Employees have the right of appeal against all formal disciplinary action, on the basis of matters outlined in 14.6. In submitting an appeal, employees are asking the appeal panel to consider the fairness and reasonableness of any disciplinary measures taken.
- 14.2.** The appeals panel cannot impose a higher sanction than that issued at the disciplinary hearing.
- 14.3.** Appeals must be registered in writing to the Plymouth CAST HR department, within ten working days of the receipt of the letter (which should be sent by recorded delivery) Appeals received after this period will not normally be heard unless granted because of extenuating circumstances.
- 14.4.** Appeals against decisions made by the disciplinary panel must be considered by an appeals panel, who have had no prior involvement in the case. Where the case involves the Head teacher, an Education and Standards Manager or other senior leader will normally chair the appeal panel. However, consideration will be given to appointing a member(s) from Plymouth CAST's Board of Directors – see Appendix 1: - 3 panel formation.
- 14.5.** Employees must present any new evidence, which was unavailable at the time of submission of the appeal documentation, at least five working days prior to the appeal hearing.
- 14.6.** Appeals against disciplinary action will be considered by the panel in relation to one or more of the following grounds:
  - 14.6.1.** The PROCEDURE, – the grounds of appeal should detail how procedural irregularities prejudiced the disciplinary decision.
  - 14.6.2.** The FACTS, – the grounds of appeal should detail how the facts do not support the decision or were misinterpreted or disregarded. They should also detail any new evidence to be considered.
  - 14.6.3.** The DECISION, – the grounds of the appeal should state how the act(s) of misconduct did not justify the level of disciplinary action taken or the act was one of misconduct rather than gross misconduct.
- 14.7.** Appeal hearings will be convened as soon as is reasonably practicable and the employee will be given five working days' notice, unless changed by mutual agreement, of the time and place of the appeal hearing with the right to be accompanied by a trade union representative or work colleague.
- 14.8.** The appeal will concentrate on the area(s) of dispute only and will not be a rerun of the disciplinary hearing. Accordingly, it is important that the employee is explicit about the grounds for appeal and must provide clear and specific reasons in writing.
- 14.9.** In reaching their decision, it is open to the appeals panel to decide: -

- To adjourn, pending reconsideration by the first disciplinary panel where a significant amount of fresh evidence is brought;
  - To uphold the appeal;
  - To determine that some other lesser penalty should apply;
  - To reject the appeal.
  - To find that there is no case to answer
- 14.10.** The result of the appeal and the reasons for the decision will be conveyed to the employee immediately after the hearing and will be confirmed in writing to the employee and his/her representative within 5 working days by the Chair of the appeal panel.

## **15. Reporting Obligations**

**15.1.** The HR department can provide further advice to the following guidance on reporting obligations.

### **15.2. Professional Bodies**

**15.2.1.** Where there are cases which could potentially call into question an employee's professional registration, managers should ensure that they follow the appropriate procedure for reporting concerns to the relevant Registered Body. This will ensure that the body can investigate the individual's ability to carry out their professional duties or take other appropriate action. Further information on making a referral can generally be found on the professional body's website.

**15.2.2.** Cases of unacceptable professional conduct by a teacher should be reported to the Teaching Regulation Agency or successor body. 'Unacceptable professional conduct' is defined as 'conduct which falls short of the standard expected of a registered teacher...and is behaviour which involves a breach of the standards of propriety expected of the profession.'

**15.2.3.** Appendix 3 contains an extract from the gov.uk document 'Teachers Misconduct: The Prohibition of Teachers Advice' which gives examples of when a teacher's behaviour will be considered to be incompatible with being a teacher.

### **15.3. Disclosure and Barring Service (DBS) (Previously the ISA)**

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

**15.3.2.** The Safeguarding Vulnerable Groups Act (SVGA) 2006 places a duty on employers of people working with children or vulnerable adults to make a referral to the DBS where an employer has dismissed or removed a person

from working with children or vulnerable adults (or would or may have if the person had not left or resigned etc.) because the person has:

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

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

## **16. Child Protection**

**16.1.** If allegations are made against staff which involve child protection issues, the Child Protection Procedure must be followed irrespective of how the allegation arises. Employees may be suspended on full pay pending the outcome of the Child Protection procedure. If the relevant child protection agencies decide not to pursue action against the employee, the matter will be referred back to the school for consideration under the appropriate procedure.

**16.2.** If the Child Protection Procedure is involved, other disciplinary procedures will begin only if and when the matter has been referred back to the school. The fact that external agencies have not taken action should not be taken as an indication of the employee's innocence or guilt.

**16.3.** Pupils as Witnesses

**16.3.1.** If it is necessary to interview pupils formally, their parents/guardians must be advised and consent must be obtained.

**16.3.2.** A parent/guardian may accompany a child during the interview but may not contribute to the interview.

**16.3.3.** The employee's representative will have the opportunity to be present at an interview with a pupil to avoid the necessity of interviewing the pupil more than once, as long as this is not prejudicial to the disclosures likely to be made by the pupil. If it is thought the presence of another adult may be intimidatory, the employee's representative will be provided with a tape and a transcript of the interview.

**16.3.4.** Wherever possible, a factual record of the discussion will be agreed to avoid the child being called as a witness at any subsequent disciplinary hearing.



**16.3.5.** Witnesses must be told the following:

- Nature and purpose of the investigation;
- That a factual statement will be taken and may be used at any subsequent disciplinary hearing;
- That the witness may be called to give evidence at any subsequent disciplinary hearing;

**16.3.6.** That the employee accused of the allegation/incident, may be given a copy of the statement at some point in the future and will be present at any hearing.

## **17. Employee Representation**

**17.1.** Where allegations are made against an employee, he/she should be informed of their rights to be represented at all meetings and related hearings by a recognised trade union representative or work colleague.

## **18. Record keeping**

**18.1.** Full notes must be kept of the proceedings given that there may be a need to produce the documentation used in arriving at the decision, both at any subsequent internal appeal and in the event of a claim to an Employment Tribunal.

**18.2.** A written record must be made of all interviews and meetings held during the application of this policy. Those involved in each meeting will be provided with a copy of any records made.

**18.3.** The Chair of the panel will ensure there is a full and comprehensive file of the procedure which should include all statements, records and evidence. At the end of the procedure the file should be passed to the Head teacher / school Business Manager who should ensure that it is stored confidentially (files for Head teachers and central support staff files must be returned to HR for filing).

**18.4.** All records will be kept confidentially and retained in accordance with the General Data Protection Regulation (2018).

**18.5.** Employees may also wish to keep records of events to support their case.

## **19. Special Situations**

**19.1.** Grievances raised during the course of the disciplinary procedure

**19.1.1.** Sometimes an employee may raise a grievance during the course of a disciplinary case. Where this happens and depending on the circumstances, it may be appropriate to suspend the disciplinary procedure for a short period until the grievance procedure has been exhausted. The employee,

will however, have to raise the grievance in accordance with Plymouth CAST's Grievance Policy.

- 19.1.2.** Depending on the nature of the grievance, the school may need to consider bringing in another manager to continue to hear the disciplinary case.

**19.2.** Discipline of Union Representatives

- 19.2.1.** Any disciplinary action being contemplated in respect of staff representatives of recognised trade unions within this procedure should not be instigated without notification in advance to the appropriate regional union officer. Plymouth CAST HR must be advised in such cases.

**20. Review**

- 20.1.** The content of this procedure may be subject to revision from time to time following consultation with the recognised trade unions.

- 20.2.** History of policy changes

| Date       | Page    | Details of the change  | Agreed by                   |
|------------|---------|--|-----------------------------|
| 19.07.2017 | All     | Board Approval for adoption  | CAST Board                  |
| 11.03.2019 | Various | Re-definition of responsibilities in line with the new Scheme of Delegation. School Improvement Officers changed to Education and Standards Managers. Introduction of school Business Manager. Change to timescale in providing notice of meetings. Optional sanction in cases of gross misconduct. Removal of right to legal representation. Appendix 2 amended | JCC                         |
| 29.03.2019 | All     | Board Approval   | CAST Board                  |
| 22/07/2022 | Various | Reference to HR Advisor replaced with HR Representative  | SELT/JCC/Board of Directors |
| 22/07/2022 | 7       | 7.3- Added 'All professional conversations should be recorded on the record in appendix 6 and stored securely within the employees personnel file for 12 months'   | SELT/JCC/Board of Directors |
| 22/07/2022 | 10      | 11.2 Grammar correction  | SELT/JCC/Board of Directors |
| 22/07/2022 | 10      | 11.5- Added 'Where hearings are conducted virtually, all parties will have the opportunity to provide consent to the recording of the session for note taking purposes. All recordings will be stored securely and confidentially disposed of once the   | SELT/JCC/Board of Directors |

|            |    |  |                             |
|------------|----|--|-----------------------------|
|            |    | minutes are finalised' to cover the increased use of technology and virtual meetings.  |                             |
| 22/07/2022 | 11 | 12.1- Added- Hearings can also be held virtually, and employees should be given the same option of 'private time' with their representative. This could be in the form of a separate meeting link or by phone' to cover the increased use of technology and virtual meetings.  | SELT/JCC/Board of Directors |
| 22/07/2022 | 11 | 13.1- Removal of the word misconduct as appendix 2 only states gross misconduct cases  | SELT/JCC/Board of Directors |
| 22/07/2022 | 11 | 12.1- Changed to 'Where allegation/s of gross misconduct have been proven the employer could treat this as a fundamental breach of the implied duty of mutual trust and confidence, such that this will warrant bringing the contract to an end without meeting any minimum statutory or contractual notice requirements (summary dismissal).' | SELT/JCC/Board of Directors |
| 22/07/2022 | 12 | 13.2.2- Replacement of sanction table with a detailed version to ensure consistency with all cases. This provides the Chair of the Panel with clearer direction of when a sanction should be used.   | SELT/JCC/Board of Directors |
| 22/07/2022 | 14 | 14.2 Grammar correction  | SELT/JCC/Board of Directors |
| 22/07/2022 | 14 | 14.3- Change to- 'appeals to be addressed to the HR department'.   | SELT/JCC/Board of Directors |
| 22/07/2022 | 19 | Appendix 1 3.2- Clearer instructions on panel formation and addition of cases involving Senior employees   | SELT/JCC/Board of Directors |
| 22/07/2022 | 22 | Appendix 2- To avoid confusion, the list has been changed to gross misconduct acts only. Anything less than these will be treated as misconduct.   | SELT/JCC/Board of Directors |
| 22/07/2022 | 25 | Appendix 4- Flow charts updated in terms of format, but no change in content.  | SELT/JCC/Board of Directors |
| 22/07/2022 | 26 | Appendix 5 - New flow chart 'Disciplinary Procedure Process'   | SELT/JCC/Board of Directors |
| 22/07/2022 | 27 | Appendix 6- Addition of new Professional Conversation Record template.   | SELT/JCC/Board of Directors |

Policy to be reviewed by the Plymouth CAST Board in consultation with the JCC in March 2024 or when legislation changes or operational reasons arise.

## Appendix 1. Responsibilities and Panel Formation

### 1. Responsibilities

- 1.1. It is the responsibility of the school's management team and ESM to manage their school within the framework of Plymouth CAST's policies and procedures.
- 1.2. In schools the Head teacher, or most senior member of the school, has overall responsibility for the management of employees in their school. They should ensure that staff with line management responsibilities are equipped with the relevant knowledge and training to manage staff effectively and appropriately.
- 1.3. The CEO has overall responsibility for the management of Plymouth CAST's central support staff through the management structure in place.

### 2. Support

- 2.1. Plymouth CAST provides professional support and advice on the effective implementation of any procedure through HR who should be informed of all cases requiring a formal procedure. An HR Adviser will be in attendance for all panel hearings.

### 3. Panel Formation

- 3.1. An appropriate panel will be formed for any formal hearing, at which the employee will have the right to be accompanied by a trade union representative or work colleague.
- 3.2. The panel will consist of 3 panel members. One of the panel members will be appointed as the Chair of the Panel, this individual must be an employee of the Trust. For cases involving Senior Leaders of the Trust, the Chair of the Panel could be the Chair of the Board of Directors. The panel **could** comprise of a combination of the following:
  - School Senior Leaders (Headteacher, Deputy Headteacher, Key Stage leaders etc). This can include Senior Leaders from other Plymouth CAST schools.
  - A member of the Plymouth CAST central team
  - A member of the Plymouth CAST HR team
  - Member of a Local Governing Board (this can be from another Plymouth CAST School).
  - Member of the Board of Directors
- 4.
5. Consideration should also be given to appointing investigating officers and panel members from across Plymouth CAST's network.

## Appendix 2 - Examples of Gross Misconduct

Gross misconduct comprises acts of such a serious and fundamental nature that they result in a breach of an employee's contractual terms and makes continuation of the working relationship impossible. Such behaviour may justify dismissal without notice.

Where there is alleged gross misconduct it may be necessary to suspend the employee (on full pay) pending investigation.

Examples of gross misconduct might include:

- Offences relating to Child Protection and the safeguarding of children.
- Misuse of official position for personal gain.
- Serious misuse of school/Trust property.
- Fraud, theft, unauthorised removal or possession of property belonging to the school, Trust or others.
- Acts of violence, including physical assault, threats or intimidating behaviour towards others.
- Serious bullying or harassment.
- Serious sexual misconduct (behaviour at or away from work that affects the employee's suitability for employment e.g. child protection issues).
- Accessing and/or distributing offensive, obscene or unauthorised sexually explicit material in the school environment using electronic or other means.
- Deliberate accessing of pornographic or offensive material on the internet or social media sites using Trust equipment.
- Deliberate or malicious damage to school and/or Trust property.
- Bringing the name of the school and/or Trust into disrepute.
- Making statements that are damaging, slanderous or libellous to a pupil, employee, governor or member of the school/Trust.
- Serious insubordination.
- Irresponsible or negligent behaviour likely to endanger the health and safety of others.
- Serious negligence or incompetence that causes unacceptable loss, damage or injury.
- Falsification of qualifications or information that is a statutory or essential requirement for employment or which results in additional remuneration.
- Dishonesty, including theft and deliberate falsification of records including travel, subsistence and expense claims.
- Acceptance of bribes or corrupt practices.
- Being incapable of adequately performing work duties as a result of drunkenness or unauthorised drug taking.
- Carrying of or distribution of drugs, alcohol or other unauthorised or illegal substances within a school/work environment.
- Unauthorised disclosure of confidential records, including computer generated information and files.
- A criminal offence, alleged or otherwise, relevant to the employee's suitability to remain in employment or right to work in the UK.
- Performing services (paid or voluntary) that conflict with the employee's obligations to the school.

The above list is neither exclusive nor exhaustive and therefore, does not preclude the possibility of dismissal for other offences of similar gravity not specified. Notwithstanding the above reference to summary dismissal in relation to gross misconduct, the Trust may arrive at a decision other than summary dismissal having regard to all the circumstances.

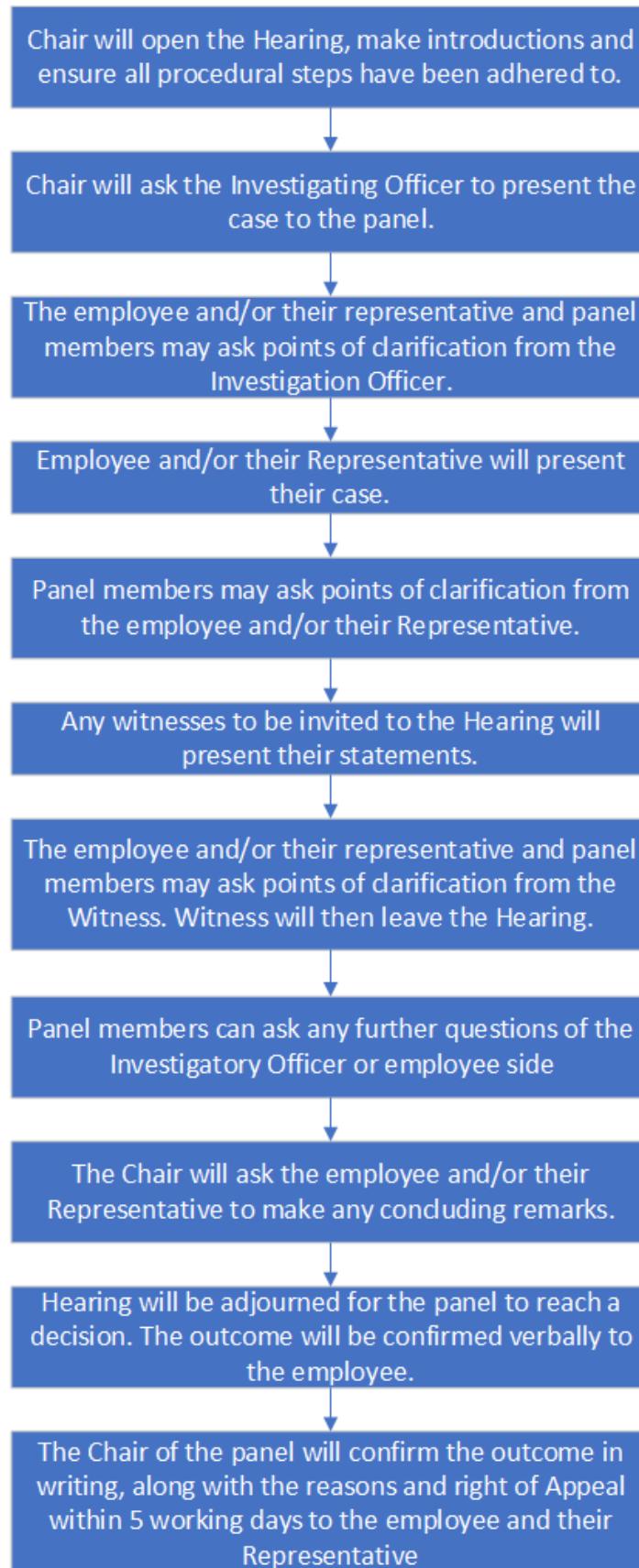
### Appendix 3: 'Teachers Misconduct: The Prohibition of Teachers Advice'

Extract from The Teaching Regulation Agency or successor body.

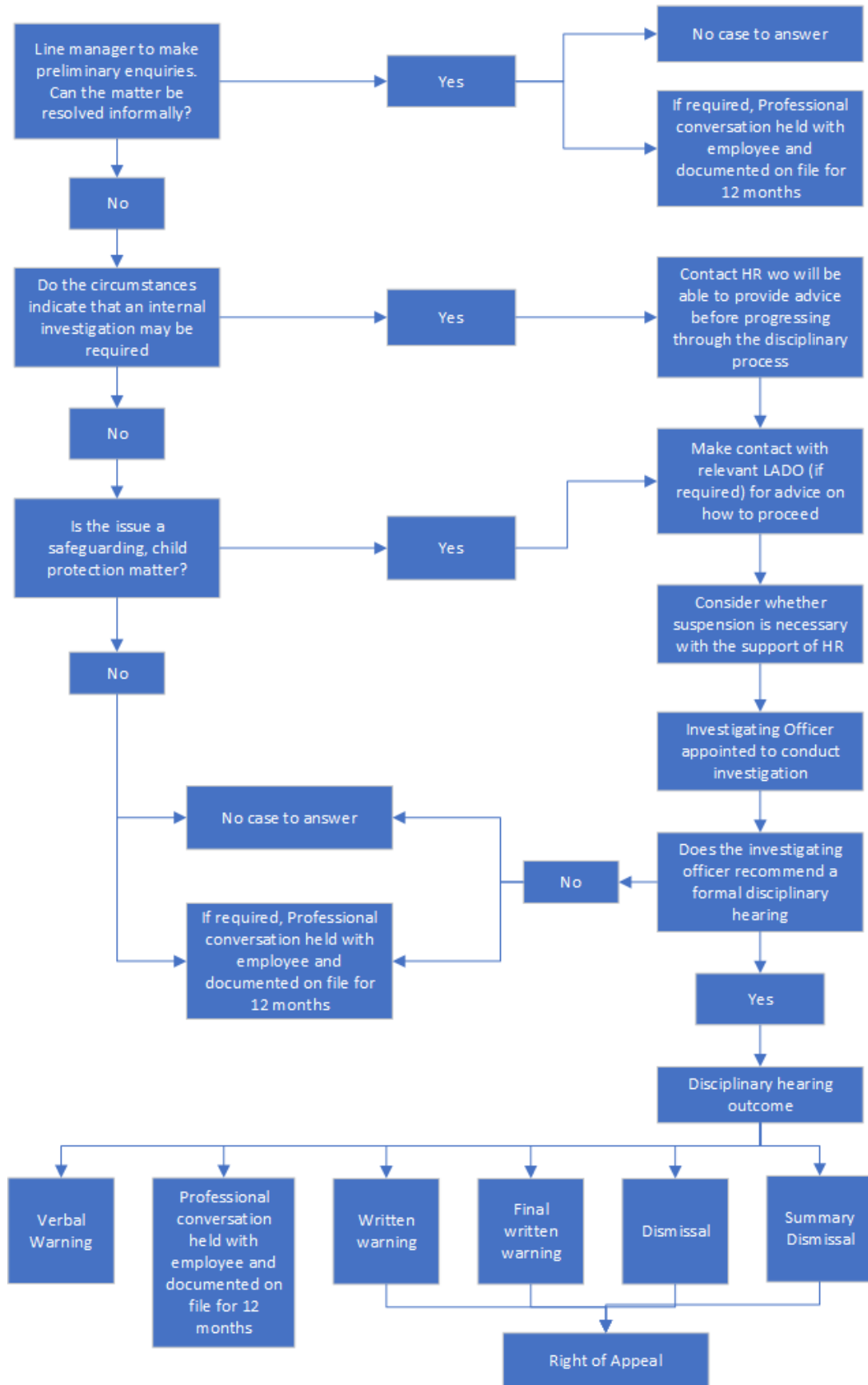
It is likely that a teacher's **behaviour** will be considered to be incompatible with being a teacher if there is evidence of one or more of the factors below. This list is not exhaustive and the decision would be made by a prohibition panel on a case by case basis, after seeking relevant advice from the panel's Legal Adviser:

- serious departure from the personal and professional conduct elements of the Teachers' Standards;
- misconduct seriously affecting the education and/or well-being of pupils, and particularly where there is a continuing risk;
- actions or behaviours that undermine fundamental British values of democracy, the rule of law, individual liberty, and mutual respect and tolerance of those with different faiths and beliefs; or that promote political or religious extremism. This would encompass deliberately allowing the exposure of pupils to such actions or behaviours, including through contact with any individual(s) who are widely known to express views that support such activity, for example by inviting any such individuals to speak in schools;
- abuse of position or trust (particularly involving vulnerable pupils) or violation of the rights of pupils;
- dishonesty especially where there have been serious consequences, and/or it has been repeated and/or covered up;
- sustained or serious bullying, or other deliberate behaviour that undermines pupils, the profession, the school or colleagues;
- possession of prohibited firearms, knives or other weapons;
- sexual misconduct e.g. involving actions that were sexually motivated or of a sexual nature and/or that use or exploit the trust, knowledge or influence derived from the individual's professional position;
- any activity involving viewing, taking, making, possessing, distributing or publishing any indecent photograph or image or pseudo photograph or image of a child, or permitting such activity, including one off incidents;
- the commission of a serious criminal offence, including those that resulted in a conviction or caution, paying particular attention to offences that are 'relevant matters' for the purposes of The Police Act 1997 and criminal record disclosures; 7
- failure to refer to the police known female genital mutilation (FGM) cases involving girls under 18 where the individual is aware, or should have been aware, of the statutory duty to report such matters but deliberately chose not to do so.

#### Appendix 4 - Disciplinary Hearing Structure



## Appendix 5- Disciplinary Procedure Process





**Appendix 6**

**Professional Conversation Record**

A professional conversation notice can be issued under the informal section of the Plymouth CAST Disciplinary Policy or as an outcome from a disciplinary investigation. The purpose is to make the individual concerned aware of any work related conduct or behaviour that raises concerns and needs improvement.

|  |                                |
|--|--------------------------------|
| <b>Employee Name:</b>                              | <b>Employee Job Title:</b>     |
| <b>Line Manager Name:</b>                          | <b>Line Manager Job Title:</b> |
| <b>Date of Professional Conversation Meeting :</b> |                                |

**Reason/s for Professional Conversation:**

**Expectations going forward and any specific actions that need to be taken:**

**Details of any on-going support and/or development agreed:**

**Employee Comments:**

|                                |              |
|--------------------------------|--------------|
| <b>Employee Signature:</b>     | <b>Date:</b> |
| <b>Line Manager Signature:</b> | <b>Date</b>  |