



CST DISCIPLINARY POLICY

1. SCOPE OF PROCEDURE

- 1.1 This Disciplinary Policy applies to all CST employees. The purpose of the policy is to provide a structure to address any issues or concerns that CST may have relating to an employee's conduct.
- 1.2 Normally, matters of Discipline will be investigated and managed by CST's Chief Executive Officer. In the event of the Chief Executive Officer being subject to the Disciplinary Policy, then the procedure will be carried out by the Chair of the Board or another Trustee. Disciplinary matters shall be heard by a Panel of three Trustees depending on the nature and seriousness of the allegations. Only Trustees of the Board, who are the employers of staff, shall have the power to dismiss staff.
- 1.3 There may be some occasions where an employee's lack of capability could also be described as lack of competence. This Disciplinary Policy and CST's Capability Policy may be used concurrently whilst CST endeavours to ascertain if the lack of capability is misconduct or lack of competence.
- 1.4 There may be occasions where an employee's conduct could relate to their health. This Disciplinary Policy may be used concurrently with CST's Sickness Absence Policy. In particular, if an employee is absent from work on sick leave following this Disciplinary Policy being invoked, CST may use its Sickness Absence Policy.
- 1.5 There may be occasions when an employee attempts to use CST's Grievance Resolution Policy in connection with actions taken under this Disciplinary Policy. This shall not lead to any automatic delay or pause in the conduct of any matters under this Disciplinary Policy.
- 1.6 The management of unsatisfactory conduct and performance and related investigations will be treated in confidence as far as possible by all parties involved at all stages of this Disciplinary Policy.
- 1.7 CST will maintain records of all interviews and reviews which take place under this Disciplinary Policy. All data and evidence collected is to be shared between all the relevant parties, where appropriate.

2. INFORMAL ACTION

- 2.1 The Executive Officer/Chief Executive may give the employee informal warnings at any time about any conduct or performance falling short of the standard expected.



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2.2 Informal warnings may be recorded in writing and referred to at a later stage to evidence that an informal approach was attempted and the success or failure of such an approach. Informal warnings will not normally be kept on record for longer than 12 months.

3. SUSPENSION

3.1 In cases where the Chief Executive Officer considers that it is appropriate, S/He will recommend to the Chair of the Board that the employee is suspended whilst the matter is investigated.

3.2 Prior to recommending suspension, the Chief Executive Officer will:

- Engage fully with the employee in order to determine their version of events regarding the allegations prior to a suspension;
- Consider whether there are any available alternatives to suspension, and whether suspension is warranted; and
- Keep full documentation of the reasons given for any suspension.

3.3 During the suspension, the Chief Executive Officer will ensure the employee is kept informed regarding the investigation on a regular basis.

3.4 Only the Chair or another Trustee acting on behalf of the Board may end the suspension.

3.5 Notification of suspension should ideally be undertaken in person but may, where circumstances dictate, be notified to the employee in writing. If notification of suspension is undertaken in person it will be confirmed in writing.

3.6 ACAS suggests that suspension may be appropriate whilst investigations are carried out, where:

- (a) Relationships have broken down
- (b) Gross misconduct is alleged
- (c) There are reasonable concerns that evidence or witnesses could be interfered with
- (d) There are responsibilities to other parties
- (e) It is necessary for the protection of staff or property (or pupils given the School environment)
- (f) The presence at work of the employee under investigation may be an obstacle to a proper investigation.

September 2018

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- 3.7 Suspension is not a disciplinary sanction. Employees will receive full pay and benefits during a period of suspension (unless they are otherwise absent from work due to sickness or other leave and have exhausted the pay entitlements connected to such absence).
- 3.8 During a period of suspension, the Chief Executive Officer may require that the employee does not:
- 3.8.1 attend work premises at any time (except with the prior agreement of the Chief Executive Officer or Chair);
- 3.8.2 discuss or communicate in any way with staff, Trustees or CST members except:
- (a) With the prior written agreement of the Chief Executive Officer or Chair; or
- (b) Where following the investigation the employee is called to a formal disciplinary meeting, when they may then approach the above as potential witnesses but this must be done via the Chief Executive Officer to avoid any breach of the Data Protection Act or duties of confidentiality.
- 3.9 During a period of suspension CST will suspend access to the email account and to any office systems.
- 3.10 During a period of suspension CST may take such steps as necessary to cover work commitments.
- 3.11 During any period of suspension contractual duties to CST (whether express or implied) remain in force and enforceable.

FORMAL PROCESS

3.12 **Step 1 - Investigation**

- 3.12.1 The Executive Officer/Chief Executive Officer will conduct an investigation into the alleged misconduct.
- 3.12.2 The Executive Officer/Chief Executive Officer may appoint any other person from within the organisation or an external third party to assist in the investigation.
- 3.12.3 The Executive Officer/Chief Executive Officer will notify the employee in writing of the fact of the investigation and the allegations made. The investigation may include a face to face interview but this is not mandatory. In the event of a face-to-face interview the employee will be notified at least 5 working days beforehand. They may, if they wish, provide a written statement or response.

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3.12.4 The employee is required to co-operate fully with the Executive Officer/Chief Executive Officer to ensure that the investigation can be completed as swiftly and thoroughly as possible and, in any event, within a reasonable timeframe.

3.12.5 At the conclusion of the investigation, the Executive Officer/Chief Executive Officer will produce an Investigation Report setting out, in detail, the allegations made in respect of the employee's conduct, the evidence considered and a recommendation that either:

- (a) A Disciplinary Meeting be convened in accordance with Step 2 below; or
- (b) There is insufficient evidence to support the allegations of misconduct to proceed in accordance with Step 2 below and no further action will be taken under this Disciplinary Policy.

4.1.6 The employee will be sent a copy of the Investigation Report.

3.13 **Step 2 – Disciplinary Meeting**

3.13.1 If the Investigation Report contains a recommendation that the employee must attend a formal disciplinary meeting, the Chief Executive Officer will write to the employee within 5 working days of receipt of the Investigation Report, inviting the employee to the Disciplinary Meeting.

3.13.2 The Disciplinary Meeting shall take place at least 10 working days after the Investigation Report was received.

In advance of, and at the Disciplinary Meeting, the Chair of the Panel of Trustees shall consider:

- (a) Evidence presented in support of the allegations of misconduct;
- (b) Evidence presented in defence of the allegations of; and
- (c) Where misconduct is admitted, whether in whole or in part, any evidence the employee has in mitigation.

3.13.3 The Panel may adjourn the Disciplinary Meeting to allow for further investigations in the light of this evidence and will reconvene the Disciplinary Meeting to give the employee an opportunity to comment on any further evidence produced by further investigations.

3.13.4 The Panel is not required to hear oral evidence and may rely on written evidence.

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- 3.13.5 If the Panel does decide to hear oral evidence, the employee will be given an opportunity to comment on it either by (a) attending the meeting or (b) reviewing the notes of that oral evidence after the meeting (if they were not present at the meeting when such oral evidence was given). In the event of (b) the employee must provide any response to the notes of the oral evidence within 5 working days of receipt of the same.
- 3.13.6 Once all the evidence has been considered, the Chair will confirm the outcome of the Disciplinary Meeting in writing within 5 working days of the date of the Disciplinary Meeting being either:
- (a) The imposition of a formal disciplinary sanction in accordance with Paragraph 5; or
 - (b) That, on balance, there is insufficient evidence to substantiate the allegations and so the disciplinary proceedings will be terminated and no further action will be taken under this Disciplinary Policy.

Step 3 – Appeal

- 3.13.7 In the event that the employee is unsatisfied with the decision of the Panel they can appeal provided they do so in writing to the Chief Executive Officer within 10 working days of the disciplinary decision letter being sent.
- 3.13.8 The appeal letter must set out the grounds for appeal in detail. This will enable the Chief Executive Officer/Chair to determine the grounds of the Appeal, i.e. if the appeal is to consider new evidence or why the decision of the previous Panel was disproportionate given the circumstances.
- 3.13.9 The Appeal Meeting will normally be held within 20 working days of the appeal letter being received by the Chief Executive Officer.
- 3.13.10 The Appeal Hearing will be formed from another Panel of Trustees not involved in the original hearing or involved in the case itself. The Appeal Hearing may consider any new evidence which was not available to the Disciplinary Meeting.
- 3.13.11 The Appeal Hearing may only consider new evidence if it touches upon credibility in relation to evidence the employee has already given or if it rebuts any new evidence produced, or any assertions made, by the employee in the grounds of appeal.
- 3.13.12 The Appeal Hearing is not required to hear oral evidence and may rely on written evidence.

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- 3.13.13 If the Appeal Hearing does decide to hear oral evidence, the employee will be given an opportunity to comment on it either by (a) attending the meeting or (b) reviewing the notes of that oral evidence after the meeting (if they were not present at the meeting where such oral evidence was given). In the event of (b) they must provide any response to the notes of the oral evidence within 5 working days of receipt of the same.
- 3.13.14 The Chair of the Appeal Hearing will confirm the outcome in writing within 5 working days of the date of the meeting.
- 3.13.15 The decision of the Appeal Hearing is final and there will be no further right of appeal other than the circumstances set out in (d) below. The outcomes of the Appeal Hearing are:
- (a) the Appeal Hearing may uphold the decision of the Disciplinary Meeting or
 - (b) the Appeal Hearing may uphold the appeal and overturn the decision of the Disciplinary Meeting.
 - (c) the Appeal Hearing may impose a lesser sanction, or
 - (d) the Appeal Hearing may impose a more severe sanction in which case the employee would have a further right of appeal against this decision.

4. FORMAL SANCTIONS

The Disciplinary Hearing may impose the following sanctions:

4.1 A First Written Warning

- 4.1.1 A First Written Warning will remain live for **12** months from the date that the written decision was sent.
- 4.1.2 For a first disciplinary offence (ignoring any informal action), a First Written Warning would be the normal response.
- 4.1.3 The following is a non-exhaustive list of matters which the Board considers amount to misconduct:
- (a) Persistent lateness or absenteeism
 - (b) Unsatisfactory standards of work or poor productivity
 - (c) Disruption of other employees
 - (d) Abusive language

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(e) Unauthorised use of property or negligent damage/loss of property

(f) Failure to abide by Health and Safety procedures

4.2 A Final Written Warning

4.2.1 A Final Written Warning will remain live for **24** months from the date that the written decision was sent to the employee.

4.2.2 A Final Written Warning would normally be given for a second disciplinary offence committed or discovered during the currency of a live First Written Warning (even if that First Written Warning related to a different type of misconduct, if appropriate in the circumstances).

4.2.3 A Final Written Warning could be given for serious misconduct regardless of previous disciplinary history if the conduct is sufficiently serious.

4.2.4 The following is a non-exhaustive list of matters which the Board considers may amount to serious misconduct:

4.3 Dismissal on notice

4.3.1 Dismissal on contractual notice would be given for a disciplinary offence (other than an act of gross misconduct) committed or discovered during the currency of a live Final Written Warning (even if the Final Written Warning related to a different type of misconduct, if appropriate in the circumstances).

4.3.2 For the avoidance of doubt the notice period commences immediately and does not await the outcome of any appeal.

4.3.3 In the event that employment is terminated in accordance with this paragraph:

(a) The contract of employment contains a garden leave clause and the Chief Executive may exercise that clause so that the employee is not required to attend work during the notice period but remain employed and so bound by the terms of the contract of employment until the expiry of the notice period;
or

(b) The Chief Executive may authorise payment in lieu of notice to bring the contract to an end with immediate effect.

4.4 Dismissal without notice or termination payment

4.4.1 Dismissal without notice or termination payment (also known as summary dismissal) will only occur if the employee has committed an act of gross

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misconduct or otherwise has destroyed the trust and confidence required between the employee and CST.

4.4.2 For the avoidance of doubt the dismissal takes effect immediately and does not await the outcome of any appeal.

4.4.3 The following is a **non-exhaustive** list of matters which the Board considers may amount to gross misconduct:

- (a) Conduct incompatible with being an employee of CST or conduct that is likely to bring CST into disrepute
- (b) Conduct giving rise to any Child Protection issue including, but not limited to, a change in DBS status during the course of employment
- (c) Failure to disclose DBS status/submit to a DBS check where requested to do so by the Chief Executive Officer
- (d) A serious breach of any relevant code of conduct or professional standards
- (e) Theft of any property
- (f) Malicious or wilful damage to any property
- (g) Knowingly or recklessly falsifying, or knowingly or recklessly causing falsification of, any documents whether for personal gain or not
- (h) Ordering any goods or services on behalf of CST from a supplier in which an employee or a relative have a personal interest (whether financial or not) without declaring that interest and without the permission of the Chief Executive Officer
- (i) Dishonesty
- (j) Violence to any person
- (k) Abusive, threatening or offensive language or behaviour to any person
- (l) Unlawful discrimination or harassment
- (m) Bullying
- (n) Deliberate refusal to carry out a lawful and safe instruction
- (o) Absence from work without leave or reasonable explanation
- (p) Attending work or undertaking duties whilst under the influence of alcohol or unlawful drugs

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- (q) Misuse of the Company's ICT (including internet and email access and any social networking policy) to view or distribute obscene, pornographic, defamatory or otherwise unacceptable material
- (r) Breaching the confidentiality or data protection obligations of the Charity
- (s) Covert recording of any meetings without the knowledge or consent of all persons' present
- (t) Serious breach of health and safety procedures
- (u) Serious negligence (whether or not leading to any actual loss)
- (v) Criminal activity during the course of employment
- (w) Making a false malicious or vexatious allegation against CST, its staff or Trustees.

4.5 Voluntary demotion as an alternative to higher formal sanction

4.5.1 There may be a situation where the Chief Executive Officer considers that a recent promotion or job change has been a contributory factor in the misconduct.

4.5.2 Where paragraph 4.5.1 applies, the Panel may offer the option of taking a voluntary demotion as an alternative to a higher formal sanction. Any such offer shall be made in writing.

5. REPRESENTATION

- 5.1 If an employee is the subject of disciplinary allegations leading to a meeting within this policy, they may be accompanied at such interview or meeting by a Trade Union representative or colleague.
- 5.2 The employee must let the Chief Executive Officer know who their representative will be at least one working day before any interview or meeting.
- 5.3 If the employee has any particular reasonable need, for example, because a disability, they can also be accompanied by a suitable helper.
- 5.4 The employee's representative can address the relevant interview or meeting in order to:
 - (a) put the case on behalf of the employee;
 - (b) sum up the case;
 - (c) respond on the employee's behalf to any view expressed at the relevant interview or meeting; and

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- (d) ask questions on the employee's behalf.
- 5.5 The representative can also confer with the employee during the relevant interview or meeting.
- 5.6 The employee's representative has no right to:
- (a) answer questions on their behalf;
 - (b) address the relevant interview or meeting if the employee does not wish it;
or
 - (c) prevent the employee from explaining their case.

Where the employee has identified a representative and they have confirmed in writing to the Chief Executive Officer that they cannot attend the date or time set for the relevant interview or meeting, it will be postponed for no more than five working days from the date set to a date or time agreed with the employee's representative provided that it is reasonable in all the circumstances. Should the employee's representative subsequently be unable to attend the rearranged date, the meeting may be held in their absence or written representations will be accepted.

- 5.7 Such meetings will not normally be arranged for days when the employee is not in work. If the allegations are sensitive the Chief Executive Officer may hold the interview or meeting away from the workplace.

6. TRADE UNION OFFICERS

CST notes and adopts the ACAS Code of Practice's statement "Where disciplinary action is being considered against an employee who is a trade union representative the normal disciplinary procedure should be followed. Depending on the circumstances, however, it is advisable to discuss the matter at an early stage with an official employed by the union, after obtaining the employee's agreement."

7. REVIEW

This procedure may from time to time be reviewed and amended or updated in the light of working experience, employment law and case law and the circumstances of the Charity. An up-to-date copy will be retained in the workplace for employees' perusal.

Authorised signatory

Date 21 September 2018; Revised 2 November 2018

Date of review: July 2019