



Policy for Academy & centrally employed Staff

Managing Investigations

Blessed Christopher Wharton CAT has adopted the PACT HR recommended model procedure as agreed by Trade Unions.

Approved by the Trust Board on: 3.2.18

To be reviewed on: 30.9.18

Signed on behalf of the Trust Board:

A handwritten signature in black ink, appearing to be 'R. B. S.' or similar.

NB. This guidance will be retained for a period of 7 years from replacement.

Dated: January 2018

A Blessed Christopher Wharton Academy Trust School

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MISSION

OUR VISION

To provide and promote excellent Catholic education, enabling everyone to reach their full potential in union with God.

"Be ambitious for the higher gifts"

1 Corinthians 12:31

OUR MISSION

With Jesus Christ at the centre of our life, we will provide Catholic schools open to all who want to share our educational goals inspired by Christian principles. We will offer the highest possible standards of education in which faith, culture and life are united in harmony. For the common good, we will work in partnership and trust with each other, with families, our communities and with all involved in the mission of education. We will encourage and empower children and young people to recognise and realise their God-given potential, providing them with opportunities to develop harmoniously their physical, moral, intellectual and spiritual gifts. We will help them to aspire to a sense of personal dignity and responsibility, to learn the correct use of freedom, and to participate actively in their communities. Guided by the Holy Spirit, we will teach Gospel values, as together we celebrate and live our call to follow Christ the teacher in self-giving love and service.

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Introduction

This guidance document provides a framework which may assist Trustees, Academy Councillors and Managers to carry out a fair and consistent investigation into staff conduct or complaints. This document offers best practice guidance to Academy management and Trustees on dealing with the practicalities of carrying out investigations.

Any investigation into a member of Academy staff must be reported to the Trust Chair at the commencement of the investigation. The report will usually be made to the Trust Accounting Officer who will report to the Trust Chair; Academy Councillors may report directly to the Trust Chair. Investigations into allegations of gross misconduct or any investigation involving the Headteacher or a member of the Academy leadership team, including the Head of RE must be reported to the Trust Chair who will inform the Diocesan Education Service. Trustees may not be involved in any investigation except under the direction of the Trust Chair who will seek advice from the Diocesan Education Service.

The guidance contained within this document should be used in accordance with the relevant Trust policy or procedure, as determined by the nature of the issue under investigation.

This guidance should be used in conjunction with the following policies;

- CES Disciplinary Policy & Procedure
- CES Grievance Resolution Policy & Procedure

This document is a practical guide to Trustees and Academies on undertaking investigations. Managers, Trustees and Academy councillors are strongly advised to contact Human Resources prior to undertaking an investigation; Human Resources are available to advise the investigating officer (Executive Headteacher, Headteacher, Deputy Headteacher, Assistant Headteacher, Academy Council and Trustees) at all stages of the process.

When should an investigation be conducted?

An investigation may be required in the following circumstances;

- Allegations of misconduct (including child protection allegations)
- Allegations of bullying / harassment / discrimination
- Dealing with employee complaints e.g. complaints regarding perceived unfair treatment

If there is an occasion when an employee's conduct has the potential to lead to a disciplinary meeting it is most important that a full and fair investigation is undertaken that is consistent with the guidance that is provided within this document.

Examples of Misconduct

The following are examples of misconduct. The list is not exhaustive:

- Negligence
- Inadequate standards of work caused by carelessness
- Careless damage to or wastage of school property and/or equipment
- Failure to carry out reasonable instructions
- Insubordination
- Improper behaviour or conduct
- Disregard of safety instructions
- Aggressive behaviour
- Timekeeping offences
- Improper disclosure of confidential information
- Smoking in prohibited areas
- Harassment and/or bullying
- Breach of the School's guidelines on e-mail/internet use
- Breach of the School's approach to equality
- Conduct which contravenes Trust or Academy policy or procedure

Examples of Gross Misconduct

Gross Misconduct is generally seen as misconduct serious enough to destroy the employment relationship between the employer and the employee and make any further trust and confidence and future working relationships impossible.

The following list provides some examples of actions which may constitute gross misconduct:

- Theft of school, staff or public property
- Fraud and/or deliberate falsification of records
- Deliberate damage to or neglect of school property and/or equipment
- Gross insubordination
- Serious harassment, bullying, discrimination and/or intimidation
- Physical violence
- Actions which risk bringing the school into disrepute
- Incapability whilst on duty brought on by alcohol or drugs
- Conduct at work likely to offend decency, including improper relationship with students
- Gross negligence which causes or might cause unacceptable loss, damage or injury
- Serious infringement of health and safety procedures
- Serious breach of confidence e.g. disclosure of confidential information and breach of data protection requirements.
- Criminal activities outside work where such conduct is incompatible with the individual's employment
- Matters/conduct relating to child protection
- Sexual Misconduct

- Refusal to follow a reasonable instruction
- Unauthorised absence

When to consider informal or formal action

Consideration should always be given as to whether it is appropriate to deal with a matter formally or informally (and the process to be followed).

If you are concerned that the allegation may be serious or you are uncertain as to whether initially to tackle the matter informally or formally, you are strongly advised to contact Human Resources before any action is taken to decide the most appropriate method of dealing with the matter.

Human Resources will discuss options with the manager, potential outcomes and mechanisms for dealing with the matter. Human Resources will also suggest any other sources of advice and support. The decision on how to proceed will ultimately rest with school management or Trustees for Leadership team positions

For guidance on dealing with complaints and allegations informally, please refer to the appropriate Academy Procedure.

Child Protection Allegations

In the event of an allegation of a child protection nature a basic fact finding exercise may be required to establish the initial details, however, it is most important that you contact Human Resources as well as the Local Authority Designated Officer (LADO) before commencing a full investigation.

LADO – 01274 434339

Suspension

Who can suspend / lift suspension?

In cases where suspension is considered, please contact Human Resources for advice.

Executive Headteachers and Headteachers

- Executive Headteachers and Head teachers can suspend any member of staff employed or engaged at the school
- If suspension occurs, the Academy Council and the Trust Board must be immediately informed
- Head teachers do not have the power to lift suspensions, this must be done by the Academy Council or the Trust Board

Academy Councils

- The Academy Council can suspend / or lift the suspension of any member of staff employed or engaged at the school. In the case of the Headteacher or a member of the Senior Leadership team this would be the Trust board.
- If suspension occurs, the Academy Council must inform the Headteacher (in these circumstances this function would either be carried out by the Chair of the Academy Council or a delegated council member). Suspension should not be discussed at full Academy council or Trustee level, in order to avoid the impartiality of governors that may be required to consider matters at a later stage

When suspension may be appropriate

Suspension is a neutral act, not a disciplinary sanction and the employee will receive normal pay. However, suspension may be considered at any stage of the process.

Suspension may be appropriate in the following circumstances;

- When a child(ren) is/are at risk
- Where the allegation is so serious that dismissal for gross misconduct is possible
- Where suspension is necessary to allow the conduct of the investigation to proceed unimpeded
- Where the Police are involved in a criminal investigation or are likely to be

Where the police are involved, management must consult with the Police Officer in charge prior to suspension being considered. In these circumstances please contact Human Resources and inform the Trust Board.

Alternatives to Suspension

Suspension can in some cases be a traumatic experience for all parties involved.

The member of staff, whom the allegation is against, should not automatically be suspended and alternatives to suspension can be considered, these may include;

- Paid leave of absence or Mutual agreement to refrain from work (known as Garden Leave). This should only be considered as a short term arrangement while further information is being gathered.
- Alternative duties.
- Alternative location, such as another Academy in the Trust
- Removal from contact with child(ren) that may be involved in the investigation

In the case where issues relate to a child protection matter, please consult with the appropriate Child Protection Officer, prior to making a decision regarding suspension.

In the case where immediate referral to the LADO is accompanied by consideration of disciplinary procedures, suspension may or may not be appropriate. The Headteacher or Chair of the Academy Council or Trust Chair for members of the Senior Leadership team should consult with the LADO and consider any recommendation which may be made by the child protection agency/Police or strategy meeting before a decision to suspend is taken.

Process for suspension

Meet the member of staff

- A meeting with the member of staff should normally be undertaken outside pupil contact time¹ and as soon as possible in a discreet location.
- Where suspension is being considered, the employee should be advised that they may seek advice from his or her trade union representative
- The employee may be accompanied by a work colleague not involved in the matter or a trade union representative. Where a trade union representative is not available to attend the meeting, the member of staff may be suspended and then given the opportunity to make representations while accompanied by their trade union representative at a later date.

¹ In accordance with the relevant ACAS Code of Practice, where the person is a trade union or safety representative, the interview should not be arranged without prior discussion with the relevant branch secretary or a full-time official of the trade union concerned. From the outset it should be established that the action being taken is not an attack on the functions of a trade union.

- The Headteacher / Academy Council member or Trustee conducting the meeting, will in most cases, be accompanied by a member of Human Resources

At the meeting

- The member of staff should be informed that at the conclusion of the meeting, they may be suspended
- Explain that the meeting is not a formal disciplinary or grievance meeting but is for the purpose of raising a serious matter which may lead to suspension and further investigation
- The member of staff should be given information regarding the allegation(s) and the reasons for any proposed suspension
- The employee may make representations regarding the consideration of suspension
- Management may also want to give consideration to alternatives to suspension
- A brief adjournment should be offered to the member of staff prior to management's response
- If suspension is considered necessary, the individual should be advised that he or she is suspended from duty with immediate effect and should also be informed of the reasons for and the terms of their suspension
- Advise the employee that access to ICT systems & other relevant equipment will be immediately removed for the duration of the suspension
- Written confirmation of the suspension may be given at the end of the meeting or otherwise provided as soon as possible (normally within one working day, see Appendix 1)

In cases where suspension occurs, contact with the employee should be maintained and the suspension reviewed monthly.

Support for Staff during the Period of Suspension

According to the needs and wishes of the member of staff to be kept informed, an appropriate senior member of staff may provide information about developments in the life of the school. The suspended member of staff will also be given the name of a Human Resources Representative as a contact. The role of the contact person is to provide information with regards to the progress of the investigation.

Social contact with colleagues and friends at the school should not be precluded except where it is likely to be prejudicial to child protection enquiries, criminal investigations or disciplinary processes.

In some cases, it may be appropriate to ask whether welfare counselling or the support of the Employee Health & Wellbeing Unit (or the Trusts Occupational Health provider), would be helpful, or to respond to a request for such further support.

Confidentiality

Where a parent has made the allegation they may be confidentially informed of the suspension and any developments where it is necessary to provide reassurance. The reasons given should be agreed between the concerned employee, their representation and the Headteacher.

Senior teachers in the Academy who need to know of the reason for the suspension should be informed as far as is necessary. The Headteacher/Chair of the Academy Council should take a decision on informing other staff colleagues in the school of the suspension, however, the number of people informed of the suspension should be kept to a minimum.

In certain circumstances, e.g. child protection investigations, it may be necessary for the Head teacher (in consultation with the Chair of the Academy Council) to provide immediate reassurance to parents and children in the school and there may be a need for information to continue to be provided during the course of an investigation to parents, children and other colleagues.

Guidance should be sought from the Lead Officer for Child Protection or, where relevant and appropriate, from Social Services or the Police.

The Investigation

Who Should Investigate?

- When it is decided that a formal investigation is appropriate Academy management or Academy Councils should determine who will be the investigating officer. If it is likely that the investigation may result in a disciplinary or grievance meeting, where the Headteacher may hear the case, it is advisable that an alternative member of the senior leadership team or an external investigator is commissioned in order to conduct the investigation
- For investigations of members of the Academy Senior Leadership Team, including the Head of RE, the Trust Board will determine who will lead the investigation.
- If it is likely that the investigation may result in a disciplinary or grievance meeting, where the Academy council or Trust Board may hear the case, it is advisable that the Head teacher, an alternative member of the senior leadership team or an external investigator is commissioned in order to conduct the investigation.
- If a disciplinary or grievance meeting is required and there is no alternative the Headteacher can investigate and present the case to themselves at a disciplinary or grievance meeting. Whilst it is not recommended that the Head teacher undertake this dual role, this would be a pragmatic approach in the circumstances. Please contact Human Resources before making a decision.
- If the Headteacher or senior member of staff is a key witness, or has knowledge which could be seen to prejudice the investigation, it is not recommended that they conduct the investigation, present the case at a disciplinary or grievance meeting or hear the case. (Please contact Human Resources for further advice).

External Investigators

The Academy/Trust Board may also contact Human Resources with a view to commissioning an external investigator. If an external investigator is commissioned, he/she will report to the nominated Academy Council/Trust Board/s that will retain responsibility for the case. This is outside the agreed SLA's and will be at an additional cost to the school.

The Investigator should liaise with the Human Resources for advice on procedural matters and to keep the Human Resources apprised of developments in the case.

The final report shall be the joint property of Bradford MDC and the Governing Body of the school. (Please see appendix 3 for the protocol for external investigators)

How to conduct the Investigation

Principles of conducting an investigation

- The investigation should be free from bias and meet the requirements of natural justice. All concerns should be put to the employee and they should be allowed to respond
- At all stages of the process, confidentiality must be maintained by all parties
- A timescale should be provided at the beginning of the investigation to all parties concerned and every effort should be made to achieve this. However, if this is not possible, all parties should be informed and given reasons why
- All parties have the right to be accompanied by a trade union representative or work colleague not involved in the case throughout the investigation process

Meet the Member of Staff

The investigating officer will meet the member of staff whom the allegation/complaint is against (with their Trade Union Representative or a work colleague should they wish) and explain that this is a formal investigation. The member of staff will be given information about the allegation/complaint (verbally and in writing) and the procedure to be followed will be explained. The information to be given in sufficient detail for the member of staff to understand the overall matter of concern.

Before commencing the investigation

- Identify details of the precise issue to be investigated, e.g. details of allegations/complaint made etc.
- Suggested methodology for conducting investigations, e.g. identification of initial witnesses, copies of policy being breached etc.
- Under which Trust/Academy policy or procedure the investigation is being conducted.
- Clarify what purpose and by whom any Investigation Report will be used.

Investigation Interviews

Preparation for the investigation interviews

The Investigating Officer should:

- Ensure that enough time has been set aside to hold the interview confidentially, in a private room that is available without any interruptions.
- Ensure that all necessary information is available during the course of the meeting. e.g. copies of policies / procedures etc.
- Prepare a list or structure of challenging questions in relation to the alleged incident / allegation

- Ensure that an appropriate person is available to take detailed notes of the meeting, for use within the investigation process / report where appropriate.

All staff interviewed as part of the investigation are entitled to be accompanied by a trade union representative or a work colleague (who is not involved in the matter). The employee should be written to stating the date/time and venue, the purpose of the meeting and the right to be accompanied.

Conducting the Investigation Interviews

Where possible the interviews should be conducted in the following suggested order;

- The person raising the allegation/complaint should be interviewed first
- Witnesses should be interviewed one at a time. There may be a need to re-interview witnesses during the investigation process. Additional witnesses may be identified during the investigation and must also be interviewed.
- The person whom the allegation/complaint is against should be interviewed last
- Care should be taken to avoid any opportunity for collusion

When interviewing children that may be involved as witnesses please refer to Human Resources for advice.

The structure of the investigation interview

- Explain the context of the interview and the member of staff's right to representation.
- For what purpose the meeting notes and subsequent record of interviews will be used
- How and when the interviewee will be able to check the notes /record of interviews
- Reiterate the importance of confidentiality.

The interview itself is to ascertain facts and there may be times when a series of specific questions requiring specific answers may need to be put to interviewees. Fair, open and challenging questions may be used to probe answers to establish the facts. The interviewer should avoid any speculation or opinion.

Introductions & Greetings

To the person making the allegation, witnesses (or others with information) explain;

- The procedure to the interviewee and try to put them at their ease.
- Their right to be accompanied by a trade union representative

- This is part of a formal process, their evidence may be used if the matter proceeds to a disciplinary or grievance meeting and they may have to be called as a witness
- They will be given a copy of the final record of the interview
- The member of staff will have the right to know who is making the allegation/complaint (or providing information about the matter). The member of staff will also receive a copy of the record of interview should the matter proceed to a disciplinary or grievance meeting
- This matter is strictly confidential and must not be discussed at any stage. Reassure the interviewee that management will also strictly maintain confidentiality.
- This should appear in the record of interview

Taking a record of interview from the member of staff under investigation

Explain that:

- This is part of a formal process
- They have a right to representation
- The allegations/complaint against them may proceed to a disciplinary hearing, and the potential outcomes.
- They will be given a copy of their final record of interview

Questioning

- Use open questions (who, what, why, when, how etc)
- Use closed questions in order to clarify points. Leading questions should not be used when interviewing witnesses
- Discuss and enquire into any additional information for clarification
- Ensure that specific examples are provided when unsubstantiated descriptions are given, i.e. 'bullying' or inappropriate behaviour' etc
- Where physical force is alleged to have been used then the degree of force used should be clarified
- Once questioning is complete, re-cap and clarify main points of discussion, ensuring that the notes taken are accurate and answer any appropriate questions or concerns raised

Closing Statement

- Explain the next steps, confirming how / when the record of interview is to be prepared and verified and when the investigation is expected to be completed.
- Ensure that contact details of the Investigating Officer are provided, and ensure confidentiality is fully understood.

At the end of the investigation interview the Investigating Officer should have obtained from each witness:

- The names of those present or involved
- Date / time / place of the alleged incident / allegation
- Details of what took place, and the order in which they happened

- How the individual reacts to any other documents or witness evidence which is inconsistent with their account
- The steps taken since the alleged incident / allegation, including any steps taken to resolve the matter
- Their preferred outcome (in cases of complaint)

Records of Interviews

- Any notes taken during the investigation interviews should be typed, checked and signed by the interviewee. The record of interview should record the facts, written (within reason) in the language used by the interviewee following the train of events. (For a template record of interview please see Appendix 6)
- If there is any ambiguity or gap in the account these should be clarified with the interviewee
- The interviewee must be given the opportunity to review the statement and must only sign to confirm it as a true and accurate version of events
- Once the record of interview is typed the employee should be allowed sufficient time to read it through, make any amendments/additions as necessary and sign and date the record at the bottom of each page. Any amendments should be initialled. Where possible it is advised that the record is typed and signed as soon as the interview has been completed.
- Where records of interviews cannot be taken the Investigating officer may ask the interviewee to provide a written statement which can be prepared with their Trade Union representative. In these cases the statement should be checked by the Investigating officer and included in the Investigation Report. In these circumstances please contact Human Resources

Evaluating the Evidence

All of the relevant evidence gathered during the investigation should be reviewed and collated for use within the Investigation Report (For a template investigation report, please see appendix 7). This should include;

- Any record of interviews
- Notes from investigation interviews
- Relevant policies & procedures
- Evidence of custom and practice etc.

This evidence should be evaluated, particularly where there are contradictions or conflicts which the Investigating Officer must consider. In evaluating evidence, each case should be judged on its merits; however, the following points should be considered;

- Direct witness evidence will usually be stronger than indirect information relating to the incident / allegation

- Evidence which is inconsistent with documents produced at the time is questionable
- Evidence which is vague, is unsubstantiated opinion or hearsay, omits significant details or contains inherent contradictions is questionable
- Anonymous evidence should be reviewed with caution as it is often difficult to substantiate
- Consideration should be given to any bias, motivation or influence individual witnesses may have
- Where possible the factual accuracy of points raised in records of interviews should be verified by the investigating officer if they are material to the allegations/complaints

It is important to remember that in reviewing the evidence and recommending appropriate courses of action, the Investigating Officer only has to show they have a reasonable belief of what happened based on their assessment of the evidence. Unlike a legal case there is no requirement to prove a case 'beyond reasonable doubt'.

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