

Calderdale Music Trust
Disciplinary Policy



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1. Introduction

- 1.1 This policy is based on the premise that the governing body have delegated the initial dismissal decision to the director of the Calderdale Music Trust. If the director of the music trust feels that it is inappropriate for the matter to be dealt with within the terms of this delegation, he or she may request that the matter is dealt with by governors.
- 1.2 These procedures apply to all employees. Nothing in these procedures is intended to contravene the statutory rights, duties and obligations of management and governing bodies.
- 1.3 In the event of the director of the music trust himself or herself being subjected to disciplinary procedures, the role normally performed by the director will be undertaken, throughout this policy, by the chair of governors. In such circumstances the chair should at all times be supported with appropriate HR advice.

2. Purpose and scope

- 2.1 The purpose is to ensure that a fair and consistent procedure is applied to all employees, having regard to the nature of their employment, when allegations of misconduct are investigated and also to ensure that fair and consistent action is taken as promptly as possible in response to any breaches of discipline.
- 2.2 Where appropriate, well planned support and/or counselling should precede formal disciplinary procedures and the employee helped to improve or resolve the situation.
- 2.3 Where a complaint concerns an employee's professional competence the matter should be dealt with under the music trust's Capability Policy.
- 2.4 The disciplinary procedures should not be thought of simply as a means of imposing sanctions or as necessarily leading to dismissal. The intention of the policy and procedures is that they should encourage all employees to achieve and maintain high standards of conduct.

3. Guidance notes

- 3.1 To observe the rules of natural justice the same person should not conduct both the detailed investigation (where this is deemed to be indicated) and any subsequent hearing under this procedure.
- 3.2 No formal action will be taken with regard to an employee who is a recognised trade union representative until (following agreement with the individual concerned) the circumstances of the case have been discussed with an official of his or her trade union. If the individual does not wish their trade union official to be involved, disciplinary process should continue.
- 3.3 It is recommended that the panel in any disciplinary hearing or appeal should, in all instances, be provided with HR advice in relation to determining an appropriate level of sanction.

4. Representation at disciplinary hearings

- 4.1 Employees have a statutory right to be accompanied at disciplinary hearings by a recognised trade union representative or work colleague. The music trust extends this right to investigatory meetings.

- 4.2 The representative or companion cannot be prevented from presenting and summing up the employee's case. They do not, however, have the right either to answer questions on the employee's behalf or prevent the employer from presenting their case.

5. Suspension from duty

- 5.1 An employee may be suspended from duty where it is considered unsuitable for him or her to remain at work. This may include circumstances where his or her absence is necessary to enable appropriate investigation to be made, or where the presence of that individual might otherwise undermine the investigation or put the music trust (or any student or staff member) at risk.
- 5.2 Allegations of gross misconduct will most often lead to suspension.
- 5.3 Suspension is a neutral act and should be kept as short as possible. Suspension should only be imposed after due consideration of the facts and after a preliminary internal investigation has taken place. It should be reviewed at regular intervals to ensure it is not unnecessarily protracted
- 5.4 The employee is entitled to receive contractual pay throughout the period of suspension. The employee must be notified of their suspension in writing, explaining the reasons and the conditions attached, and should be given the name and contact details of an appropriate senior manager to act as a contact at the music trust.

6. Child protection cases

- 6.1 In the event of the music trust being made aware of any allegations of child abuse against a member of staff (whether initially reported internally or externally) advice should be sought directly (in line with 'Keeping Children Safe in Education 2019') from the Designated Safeguarding Lead who may in turn contact the Designated Officer (formerly Local Authority Designated Officer or LADO) and/or the police.
- 6.2 The Designated Officer (formerly Local Authority Designated Officer or LADO) and/or the police may deem it necessary to arrange for a multi-agency strategy meeting to be held (or at the very least a discussion with, if applicable, the child's case manager) before an investigation is undertaken or disciplinary process (if indicated in relation to a member of staff) is initiated. Such a meeting (or discussion) will determine the precise nature, content and context of the allegation and the appropriate course of management. Sharing information in this way is vital to ensure that the correct action is taken. Additional reference should be made to the music trust's Safeguarding Policy.

7. Alleged criminal offences

- 7.1 The decision to initiate disciplinary action in criminal cases is a matter for the music trust. While this may involve waiting for the outcome of external proceedings before going ahead, there is no obligation on the music trust to do so.
- 7.2 Before proceeding to dismissal (after due process) the music trust must have a reasonable belief in an employee's guilt and must have carried out its own investigation – in other words relying solely on evidence from a police investigation is not usually sufficient.

8. Referral to DBS

- 8.1 With regard to disciplinary action in relation to safeguarding issues involving the risk of harm or actual harm to a child, employees (whether teachers or support staff) should be referred to the Disclosure and Barring Service (DBS) and additionally, in the case of teachers, to the NCTL.

9. Grievances and disciplinary process

- 9.1 During the disciplinary process, the employee concerned may raise a grievance. If this happens the disciplinary process may be suspended in order to deal with the grievance. This may mean a short delay in order for issues to be investigated.
- 9.2 Where the grievance and disciplinary cases are related/overlapping, these should be dealt with together within the disciplinary hearing.

10. Sickness absence and disciplinary process

- 10.1 If an employee is unable to attend a disciplinary hearing due to sickness absence, it is prudent to ascertain when they are likely to return and to consider postponing (and rearranging) the hearing if this is within the foreseeable future.
- 10.2 If sickness absence appears likely to be long term, the employer should make a referral to Occupational Health or seek a medical opinion from the employee's GP. If the employee is not well enough to take part in the proceedings, their absence should continue to be managed in accordance with the music trust's Attendance Management policy.
- 10.3 If medical opinion is that the employee is well enough to attend the disciplinary hearing, the disciplinary process should be continued subject to any conditions set out by the medical professional. If the employee is unable to attend, they can be asked to submit a response in writing for consideration by the chair and/or their nominated representative may present their case on their behalf.

11. References following termination of employment on health grounds

- 11.1 If allegations raised against an employee were of a grave nature and remained unproven at the point of dismissal on grounds of capability in relation to health grounds (as could happen if disciplinary proceedings were to be frustrated indefinitely due to an employee's protracted sickness absence) then the existence of such allegations should be included in any reference given by the music trust if there is good reason to believe that a referral to the Designated Officer (formerly Local Authority Designated Officer or LADO) would have taken place in relation to a misconduct charge had the employee remained at work.
- 11.2 It should be noted that following a disciplinary hearing the reference should (as in every circumstance) be fair, accurate and not misleading.

12. Investigating disciplinary matters

- 12.1 When faced with a potential disciplinary matter, an investigation must be carried out as soon as possible before taking any formal action. This may be undertaken by the director of the music trust (or the employee's line manager) although it may be appropriate for the director of the music trust (or line manager) to appoint another individual as 'investigating officer' to conduct an impartial and thorough investigation.
- 12.2 Where an investigating officer is appointed he or she will produce a factual report for consideration by the director of the music trust (or line manager).
- 12.3 It will usually be appropriate, as part of the investigation, to invite the employee to attend an investigatory meeting (in which the employee has a right to be accompanied by a trade union representative or work colleague). The purpose of the investigatory meeting is to ascertain the facts and to allow the employee to respond to the allegation(s) of misconduct.
- 12.4 A letter should be sent inviting the employee to the investigatory meeting, and this letter should outline the concerns to be investigated. All such meetings should be fully documented. In some cases, further meetings may be required in order to establish the full facts of the matter.
- 12.5 Following investigation, the evidence will be reviewed by the director of the music trust (or line manager) to determine whether there is a case to answer.
- 12.6 Any consideration of the evidence should include:
- the nature of the alleged breach of discipline, and the circumstances and consequences of the breach
 - the employee's role, experience, length of service and disciplinary record
 - the evidence of witnesses – written and signed statements
 - any previous related incidents
 - whether the employee has received appropriate counselling or training
 - any mitigating circumstances, eg health or domestic problems, or provocation.
- 12.7 It may be found, following investigation, that there is no substance to the allegations and therefore no case to be heard. The employee should be informed in writing that the case will proceed no further.
- 12.8 Alternatively it may be found, following investigation, that there is substance to the allegations, and if so a decision must be made as to whether it can be dealt with by means of informal disciplinary action such as an oral warning (see section 13) or whether it is sufficiently serious as to warrant formal disciplinary action (section 14 onwards).

13. Disciplinary procedure – informal stage

- 13.1 If an investigation has revealed a minor breach of discipline it is possible for the employee to be issued with an oral warning without recourse to a formal disciplinary hearing.
- 13.2 The oral warning is in writing and kept on file for three months. It records the reasons for the oral warning being issued, the standards expected of the employee and any relevant assistance or training to be provided.
- 13.3 The oral warning will also state that if there are any further acts of misconduct formal disciplinary action will be instigated.

14. Invitation to formal disciplinary hearing

- 14.1 If a more serious situation emerges as a result of the investigation (or if the employee's conduct does not meet acceptable standards following the issue of an oral warning) and it is determined that there is a case to answer then formal proceedings will be instigated and the employee should be invited to a disciplinary hearing.
- 14.2 If a decision is taken to implement formal disciplinary procedures, the staff member concerned must be made aware in writing of the nature of the allegation(s), must be given reasonable notice of the time and venue of the formal disciplinary hearing and must be made aware of their right to be represented during the course of the disciplinary hearing. It is recommended that correspondence to this effect is either delivered to the employee by hand or sent by recorded delivery.
- 14.3 Copies of any statements (including any investigation report) to be used in the hearing, the management case, and the relevant disciplinary procedures should be sent to the employee. Ideally, these should accompany the notification of the disciplinary hearing but if this is not possible, the information should be sent under separate cover to the employee within a reasonable timescale prior to the disciplinary hearing.
- 14.4 If the employee intends to rely on any written material in the hearing (whether this consists of a personal statement or any other material to be regarded as evidence in his or her defence) this documentation should be submitted to management (and forwarded to the person or persons hearing the case, possibly via the clerk to governors) within a reasonable timescale prior to the disciplinary hearing.
- 14.5 If management intend to call any witnesses during the disciplinary hearing their identity should be disclosed to the employee within a reasonable timescale prior to the hearing.
- 14.6 Similarly, if the employee intends to call any witnesses during the disciplinary hearing their identity should be disclosed to management within a reasonable timescale prior to the hearing.
- 14.7 If witnesses on either side are employees then management should take steps to ensure their availability for this purpose during the hearing.
- 14.8 If the employee's appointed union representative is not available on the date proposed for the hearing, the hearing can be deferred for up to 5 working days.

15. Formal disciplinary hearing

- 15.1 The disciplinary hearing will be conducted in accordance with Appendix 1 of this policy.
- 15.2 The case may be heard by the director of the music trust alone (if he or she has had no previous involvement in the case) or alternatively may be heard by a panel comprising up to three members of the governing body. (For clarity hereinafter the words 'panel' or 'chair of the panel' should be taken to include the director of the music trust (or governor) who may be hearing the case alone.)
- 15.3 No person who has had previous involvement in the case may sit on the disciplinary panel.
- 15.4 The disciplinary hearing will proceed as follows:
 - i. the chair of the panel explains the procedure to be followed

- ii. the disciplinary case is presented by the chosen management representative
- iii. questions may be asked by the employee (or their representative) and the panel
- iv. the chosen management representative may call witnesses (if appropriate) in furtherance of the management case
- v. the management witnesses may be questioned by the employee (or their representative) and the panel
- vi. the employee (or their representative) presents their defence to the management case
- vii. questions may be asked by the chosen management representative or the panel
- viii. the employee may call witnesses (if appropriate) in furtherance of their defence
- ix. the employee's witnesses may be questioned by chosen management representative and the panel
- x. the chair of the panel will confirm that all relevant evidence has been presented, and will invite the chosen management representative to sum up their case
- xi. the chair of the panel will then invite the employee (or their representative) to sum up their case
- xii. the chair of the panel will then briefly adjourn the hearing to consider their decision
- xiii. in addition to oral evidence, the panel will also consider any written evidence submitted* before making their decision.

**additional written evidence should only be admissible at this stage of the process if it could not have reasonably have been submitted for consideration prior to the hearing in accordance with clause 14.4.*

15.5 Following a brief adjournment the chair of the panel will inform both management and employee whether they are able to make a determination on the day or whether they require further time for consideration, in which case the employee will be notified as soon as possible once a decision has been reached.

15.6 If a decision is reached on the day, the chair of the panel will communicate this to the employee in person, but will additionally confirm the decision in writing by means of an outcome letter.

16. Outcomes available to disciplinary panel

16.1 Having considered all relevant material the panel must determine whether the management case is proven. If they are **not** satisfied that this is the case, then the employee should be informed that there is no case to answer and accordingly the matter is closed.

16.2 If the case is proven the panel should then consider whether a sanction is warranted, and if so must consider the appropriate level of sanction.

16.3 When deciding upon a sanction the following circumstances should always be considered:

- a) the seriousness of the offence
- b) whether the offence was repeated (live warning on file)
- c) whether there are mitigating circumstances
- d) the employment record of the employee concerned.

16.4 Outcome options available include:

- a) admonishment
- b) first written warning - on file for up to 6 months

- c) final written warning* - may remain in force for 12 months
- d) demotion** (as an agreed alternative to dismissal)
- e) dismissal
- f) summary dismissal (only for gross misconduct***).

**a final written warning may (depending on the seriousness of the case) be issued even if no previous disciplinary action has been taken*

***demotion (normally accompanied by a final written warning) can only be effected (by means of a variation to contract) **with the agreement of the individual concerned** and accordingly there can be no appeal against demotion – only against the initial decision to dismiss*

****gross misconduct is conduct of such nature that the employer cannot reasonably continue to allow the employee to remain at the place of work – examples of behaviour which might constitute gross misconduct are provided in Appendix 2*

16.5 It is recommended in all instances that the panel is provided with HR advice in relation to determining the appropriate level of sanction.

17. Guidance on warnings

17.1 Any written warning must specify the following:

- the level of the warning (first or final)
- the nature of the unsatisfactory conduct
- the change in behaviour required (with appropriate timescales)
- how long the warning will remain current
- information on the consequences of repeated misconduct (ie when a final warning is issued this must make clear that any further misconduct may result in dismissal)
- provision of relevant support and guidance
- the employee's right of appeal (and in relation to this must make clear both the time limit for submission of an appeal and the provision that any submission must identify the specific grounds on which the appeal is based).

18. Formal communication of outcome

18.1 A formal outcome letter, stating the findings of the panel and detailing any sanction deemed appropriate, must be sent to the employee, even if the decision of the panel has been communicated to the employee at the conclusion of the hearing.

18.2 The outcome letter should be sent as soon as possible, but in all cases the employee should receive formal notification of the outcome within five working days of the disciplinary hearing.

18.3 The outcome letter may be handed to the employee but if this is not possible it should be sent by recorded delivery.

18.4 If the outcome of the disciplinary hearing is dismissal the outcome letter must be sent by recorded delivery, and the content of the letter must ensure that the employee is informed clearly as to the reason(s) for their dismissal and also of the date of termination of their employment.

18.5 The outcome letter must, in all cases, advise the employee of the right of appeal against any formal disciplinary sanction, and must also specify to whom an appeal (in writing) should be addressed (see 'appeal process' below).

19. Appeal process

19.1 An employee is entitled to appeal against a formal disciplinary sanction.

19.2 Any appeal must be lodged in writing to the appeals panel (via the clerk to governors or other designated person) within 5 working days of receiving written notification of the disciplinary outcome. The written appeal must identify the specific grounds for appeal.

19.3 The appeal hearing will not be a re-hearing of the original allegation(s) unless the appeal is in relation to procedural issues. The appeal hearing will only focus on the grounds for appeal, for instance, new evidence (but only if this evidence was not available at the time of the initial disciplinary hearing) or undue severity or inconsistency of the penalty.

19.4 A separate appeals panel must be established to consider any appeal that may be submitted. This panel will usually consist of no more than 3 members of the governing body. (An appeal body must have no fewer members than the number who constituted the panel for the original hearing.)

19.5 The appeal should be heard by a person (or persons) no less senior in authority than the person(s) who took the initial disciplinary decision and who had no involvement in the original hearing or in any matters pertaining to the disciplinary process.

19.6 The appeal process should not result in any increase in level of sanction.

20. Appeal hearing procedure

20.1 The employee must be given sufficient notice of the date, time and venue of the appeal hearing. A letter should be sent to all relevant parties informing them of these details.

20.2 The letter of invitation should also state that the outcome letter from the original disciplinary hearing and all relevant notes and records will be made available to the appeal panel.

20.3 The date of the appeal hearing may be rearranged (within 5 working days of the original date set) if requested by the employee or their union representative for a valid reason.

20.4 Following introductions and the explanation of the purpose of the hearing and how it will be conducted, the employee and their representative or companion are invited to present their grounds for appeal. Where the specific grounds for appeal are unclear, the panel may ask for clarification.

20.5 The chair of the original disciplinary hearing will then present the reasons for the decision taken at that time and may call as a witness the individual who presented the management case to the original disciplinary panel.

20.6 Once all relevant material has been thoroughly explored by the panel they will deliberate before making a determination, which will be conveyed by the chair. This will be either to overturn a previous decision or to reject the appeal.

20.7 The decision of the appeal panel will normally be communicated verbally before the hearing is closed, although in certain circumstances it may be appropriate to defer judgement pending further consideration.

20.8 In all cases the member of staff will be informed of the outcome of the appeal hearing in writing, normally within five working days of the date of the appeal hearing.

20.9 The decision of the appeal panel is final.

21. Other policies and procedures

21.1 This policy will be supported by the following policies and procedures:

- Attendance Management Policy
- Capability Policy
- Grievance Policy
- Safeguarding Policy

Appendix 1: Flowchart – Formal Disciplinary Hearing

Chair of the disciplinary panel

- Makes introductions of everyone at the Hearing describing their various roles
- Describes reason for the Hearing
- Explains the procedure to follow at the Hearing
- Informs the employee or representative of their right to ask for an adjournment at any time during the Hearing

Management representative (either the director of the music trust or a senior staff member)

- Presents disciplinary case and the evidence to be considered
- Is cross-examined by defendant and/or representative, and the panel members
- Presents witnesses (if appropriate) for separate questioning by defendant and/or representative and also by chair, etc
- Takes questions on evidence from the chair and panel members

Defendant (employee or representative)

- Presents defence case
- Is cross examined by management representative
- Is cross-examined by the panel members
- Presents witnesses (if appropriate) for separate questioning, by management representative and chair, etc

Chair of the disciplinary panel

- Decides that all material evidence has been presented
- Informs both parties of their right to an adjournment before summing up

Management representative

- Sums up their case

Defendant (employee or representative)

- Sums up their case

Chair of the disciplinary panel

- Asks both parties and their representatives, advisers, etc to leave the room
- Decides on course of action/sanction, taking advice from HR (as appropriate)
- If decision can be conveyed without further delay, calls both parties, etc back into the room and informs them of decision reached, or undertakes to inform defendant of the outcome in writing within a reasonable timescale.
- Confirms the decision in writing as soon as possible

Appendix 2: Examples of Gross Misconduct

The following list gives examples of behaviour that may be regarded as serious disciplinary breaches or completely unacceptable misconduct. The specific circumstances of each case should be carefully considered. These examples are neither exhaustive nor exclusive.

- Serious or persistent failure to comply with the music trust's recognised policies and procedure.
- Unauthorised removal of property, or stealing from the music trust, its clients, members of staff or the public and other offences of dishonesty.
- Fraud and corruption, deliberate falsification of records.
- Sexual offences including offences against children and young people, abuse of trust, grooming, accessing or downloading or sending obscene, indecent or offensive images or statements.
- Child abuse.
- Sexual misconduct at work.
- Inappropriate use of social media (eg damage to the reputation of the organisation).
- Fighting, physical assault, violent and/or intimidating conduct.
- Falsification of subsistence and expenses claims etc.
- Falsification of qualifications which are a stated requirement of employment or which result in financial gain.
- Malicious or deliberate damage to the music trust's property.
- Serious breach of health and safety or breaches of safety regulations endangering other people, including deliberate damage to, neglect or misappropriation of safety equipment.
- The persistent and wilful refusal to carry out a reasonable instruction despite warnings of the consequences of continued refusal.
- The commission of a serious breach of duty prejudicial to the music trust's relations with members of the public or other outside contracts or any wilful attempt to damage the standing or position of the music trust.
- Serious acts of unlawful discrimination against other employees, clients or members of the public in the course of duty; or serious or persistent sexual or racial harassment, victimisation or bullying.
- Serious breach of the music trust's sickness absence reporting system: undertaking paid work during hours whilst reporting sick.
- Serious misuse of the Internet/contravention of the music trust's ICT policy (e.g. for purposes of running a business). Unauthorised entry to computer records.
- A serious breach of the normal trust and confidence, which should exist between employee and employer, bringing the music trust into serious disrepute.
- Serious negligence that causes unacceptable loss, damage or injury.
- Serious act of insubordination.
- Continued and repeated offences of misconduct.
- Serious incapability through alcohol or being under the influence of illegal drugs.

There may be other offences of a similar gravity which could constitute gross misconduct.

Acts of gross misconduct normally lead to suspension while the alleged offence is investigated. The procedures to be followed in cases of gross misconduct are the same as those described for misconduct, but may proceed directly to a Hearing with consideration of a dismissal decision by the manager or the disciplinary panel of the governing body.

If, on completion of the investigation and Hearing, the manager or the chair of the governors' disciplinary panel is satisfied that gross misconduct has occurred, the result may be summary dismissal without either notice or payment in lieu of notice. However, in such a case a right of appeal to a Governors' Appeal Committee against the initial decision still stands.