

DISCIPLINARY POLICY & PROCEDURE

Approving Body	Trust
Date of Last Review	November 2023
Statutory (Y/N)	Y
Responsible Officer	BMAT CEO for and on behalf of the Trust

INTRODUCTION – PURPOSE AND SCOPE

1. This Policy has been drafted in line with the relevant legislation and with guidance from ACAS.¹

2. This Policy aims to:

- a. Help and encourage all BMAT employees to achieve and maintain at least satisfactory standards of conduct; and
- b. Ensure consistent and fair treatment for all BMAT employees.

3. This Policy applies to all BMAT employees but does **not cover:**

- a. Staff grievances – see [‘Grievance Policy and Procedure’](#).
- b. Redundancy, ill health dismissals and the non-renewal of fixed-term contracts.
- c. Capability matters – see [‘Capability Policy and Procedure’](#).

I. GUIDING PRINCIPLES

4. **Non-contractual.** This Policy does not form part of employee’s contracts of employment and may be amended through normal BMAT procedure.

5. Responsibility:

- a. All employees are responsible for their conduct.
- b. It is the responsibility of managers to communicate required standards and address issues at an early stage and on an informal basis, where appropriate.
- c. The BMAT Trust Executive is responsible for the overseeing the fair and consistent implementation of this Policy, and is accountable to the Board of Trustees.

6. **Timescales.** Reasonable efforts will be made to deal with disciplinary matters promptly and in line with the timescales set out in this Policy. Those timescales may be varied in exceptional cases (e.g., due to an unforeseen lack of resource or a particularly complex case). All parties will be informed of any variance to timescales and their consent will be sought.

7. **Stage of implementation:** Informal resolution is preferred, where appropriate, but this Policy may be implemented at any stage if the circumstances warrant (e.g., if the issues are so serious that informal action would be inappropriate).

8. **Formal action** will be confirmed in writing and will not be decided until a full and impartial investigation has been completed.

1. Including: The ACAS Code of Practice on Disciplinary and Grievance Procedures 2015; The Dispute Resolution Regulations 2004; The Employment Act 2002; The School Staffing (England) Regulations 2003; and The Equality Act 2010.

9. Equal treatment: In line with the Equality Act 2010, the disciplinary process will not be used to discriminate unlawfully against any individual or group. Employees will be allowed to put their case at all stages of the disciplinary process.

10. Statutory Right of accompaniment:

- a. Employees have a statutory right to be accompanied at formal disciplinary hearings (i.e., those that may result in formal disciplinary action recorded on an employee's personnel record, or dismissal) by a colleague, trade union representative or an official employed by a trade union ['companion']. They should be advised of this in writing.
- b. External lawyers, other than those who are employees of a recognised trade union, may not act as companions.
- c. The right of accompaniment does not extend to informal or investigatory meetings, as they cannot result in disciplinary action. Employees may make a reasonable request to be accompanied during the informal stages of this Policy, but granting such requests is at BMAT's discretion.
- d. To exercise their right of accompaniment, employees must make a reasonable request (e.g., by giving BMAT sufficient time to prepare for a companion's attendance).
- e. If a companion cannot attend a meeting which is subject to the statutory right of accompaniment, then the employee should request to postpone to a convenient time, no more than **five working days** after the original date. BMAT will agree to such a request.
- f. A trade union representative who is not an employed official must have been certified by their union as being a competent companion.
- g. Companions may address the hearing, put the employee's case, and confer with him/her in private,
- h. Companions may not answer questions on the employee's behalf, address the hearing against the employee's wishes or prevent either side from putting its case.

11. Right of Appeal: Employees have a right of appeal against a formal outcome of this Policy (Section VII).

12. Records:

- a. BMAT keeps a written record of all disciplinary cases.
- b. Copies of meeting records should be given to employees as standard or on request. BMAT may withhold information to protect witnesses.
- c. Informal action under this Policy will not be stored on personnel files but a record should be kept by managers and those involved.
- d. First warnings shall be spent and disregarded for disciplinary purposes after one year of satisfactory conduct.

- e. Any final warning shall be spent and disregarded for disciplinary purposes after two years of satisfactory conduct and performance.
 - f. Decisions to dismiss will be securely destroyed after six years.
 - g. Disciplinary action will not be based on spent misdemeanours, but the fact that they exist may explain why BMAT does not substitute a lesser sanction.
 - h. All records are processed in line with the Data Protection Act 2018 and the [BMAT Data Protection Policy](#)
 - i. Electronic recordings of formal or informal meetings under this Policy are not permitted.
13. **HR and legal involvement:** HR and legal advice will be obtained as appropriate. Legal and/or HR advisors may attend meetings at the formal stage of this Policy, as appropriate and on notice to all parties. A member of HR or a suitable delegate should attend meetings at the formal stage of this Policy to take a note and provide advice.
14. **Confidentiality:** Disciplinary matters are confidential and will not be disclosed unless required by law or this Policy.
15. **Overlapping Grievance and Disciplinary Matters:** If an employee feels that the disciplinary process has been administered improperly and/or unfairly, then s/he should raise an appeal rather than a separate grievance. However, if the employee is concerned that disciplinary action amounts to discrimination, bullying or harassment then BMAT may suspend the disciplinary procedure to investigate the concern as a grievance first. Where grievance and disciplinary matters are related, it may be appropriate to deal with both issues concurrently, following HR and/or legal advice.
16. **Disciplinary action against Trade Union Officials:** If disciplinary action is being considered against a trade union representative or official, then it should be discussed with the Regional Union Office and a full-time trade union official.
17. **Criminal offences:** If an employee is charged with, or convicted of, a criminal offence, consideration will be given to the relevance and effect the charge or conviction has on the employee's suitability to perform their job and their relationship with colleagues, students and parents.
18. **Referrals:**
- a. **Prohibition from teaching:** BMAT may refer an allegation of serious misconduct against a teacher to the Teaching Regulation Agency (TRA) if it is so serious that it warrants a decision on whether the teacher should be prohibited from teaching.
 - b. **Safeguarding:** When an allegation against a teacher is in any way connected to the risk of harm or actual harm to a child, a referral will be made to the Disclosure and Barring Service ['DBS'], the Local Authority Designated Officer ['LADO'], and the police and/or

social services if appropriate. Allegations may also be referred to social care and/or the police. See [‘Safeguarding and Child Protection Policy’](#). If a safeguarding issue also involves misconduct by a teacher, a referral should be made to the DBS and TRA.

19. **Monitoring:** HR will monitor the implementation of this Policy across BMAT.

II. STAGE ONE - INFORMAL PROCEDURE

20. Cases of minor misconduct or unsatisfactory performance are usually best dealt with informally, as part of day-to-day management.
21. In such cases, the employee’s manager (or the next most senior manager, or a member of SLT, where appropriate) should meet with them to:
 - a. Remind them of the expected standards;
 - b. Discuss possible shortcomings in conduct;
 - c. Allow them to explain their conduct;
 - d. Encourage improvement; and
 - e. Consider providing informal coaching.
22. The manager or member of SLT should complete an informal [Interview/Coaching Statement \(Appendix A\)](#), sign it, and ensure that the employee countersigns it. Both parties should retain a copy.
23. The employee should be advised when the matter(s) will be reviewed.
24. Brief notes should be kept and stored in line with the [‘Data Protection Policy’](#).
25. If further problems arise before the review date, then appropriate action will be taken.

III. STAGE TWO - INVESTIGATION

26. If informal action does not resolve the issue(s), or the problem is too serious to be dealt with informally, then BMAT will conduct a full and impartial investigation.
27. A member of the Trust Executive or SLT² will be appointed to act as an investigating officer. This role may be delegated to line managers who are not a member of the Trust Executive or SLT, as appropriate.

² If a member of SLT who is not also a member of the Trust Executive is the subject of the disciplinary process, then the appropriate BMAT School Principal should be the investigating officer. If a member of the Trust Executive is the subject of the disciplinary process, then the BMAT CEO should be the investigating officer. If the CEO is the subject of the disciplinary process, then a trustee should be the investigating officer.

28. Awareness of the circumstances will not preclude an investigating officer from investigating the case, unless there is a clear risk of impartiality, bias or another relevant form of procedural unfairness.
29. Investigations are confined to establishing the facts of a case, collecting evidence and deciding if further action is needed (i.e., if there is a disciplinary case to answer).

30. An investigatory meeting may be held with the employee:

- a. Employees will be informed of the date, time and location of the meeting.
 - b. Meetings will be led by the investigating officer.
 - c. The issue(s) will be explained, and the employee will have an opportunity to state his/her response.
 - d. Although the statutory right of accompaniment does not extend to investigatory meetings because they cannot result in formal disciplinary action on an employee's personnel record, where appropriate and on reasonable request, BMAT will allow employees to be accompanied (see paragraph 10 of this Policy).
31. The investigating officer will keep a written record of the investigation and produce a written report of the investigation and their findings.

32. Suspension with pay may be necessary while the investigation is conducted:

- a. Suspension with pay is not a disciplinary sanction or an assumption of wrongdoing – it is an investigatory tool.
- b. The period of suspension with pay should be reviewed to ensure it is as brief as reasonably practicable (ideally two weeks or less).
- c. Suspension with pay may be necessary to investigate alleged gross misconduct, cases where relationships have broken down, cases where there are risks to members of BMAT or BMAT property, or where there is evidence of tampering with evidence, witnesses or potential witnesses.
- d. Employees should be informed in person of any decision to suspend and must be informed in writing.

IV. STAGE THREE - FORMAL DISCIPLINARY HEARING.

33. If it is decided that there is a disciplinary case to answer, then the employee who is the subject of the case will be notified in writing. The notification should include:
- a. Sufficient information about the alleged misconduct and its possible consequences, to enable the employee to prepare his/her case;
 - b. Copies of any evidence;
 - c. Details of the time and venue of the disciplinary hearing; and
 - d. Details of the procedure to be followed, including the statutory right of accompaniment.
34. Employees will be given no less than **five working days'** notice of a disciplinary hearing. The purpose of the hearing is to decide whether or not disciplinary action should be taken.
35. Both sides should give notice of their intention to call witnesses and a summary of the evidence that they intend to present at the hearing (in the case of BMAT, this should form part of the notification of the hearing; in the case of the employee, this should be at least two working days before the hearing).
36. If the employee intends to be accompanied at the hearing, s/he should make a reasonable request at least two days before the hearing. If a companion is unavailable, then the employee should request to postpone the meeting to a convenient time, no more than **five working days** after the original date.
37. The hearing will be chaired by a member of the Trust Executive or delegated to a member of SLT who is not also a member of the Trust Executive, as appropriate. It will be chaired by the CEO if the subject of the hearing is a member of the Trust Executive. It will be chaired by the Chair of the Trust (or the Vice-Chair if the Chair of the Trust conducted the investigation) if the CEO is the subject of the hearing.
38. A member of HR or a suitable delegate should attend to advise and take minutes. Legal advisors may also attend, as appropriate.
39. The investigating officer will attend to explain his/her findings.
40. If the employee misses the hearing without communication and/or a valid excuse, then it may lawfully proceed in their absence.

41. The hearing:

- a. The chair and/or investigating officer will explain the complaint and/or allegation against the employee and go through any evidence;
- b. The employee should be informed if dismissal is a possible outcome;
- c. The employee should be allowed to put their case, ask questions and present evidence.
- d. The employee's companion may ask questions and confer privately with the employee;
- e. Someone who is not involved in the case will take minutes (usually a member of HR);

- f. The main points of the hearing will be summed up and the employee will be asked if they have anything further to say.
 - g. The hearing should be adjourned before a final decision is taken about whether disciplinary action is required.
 - h. The hearing will be reconvened within a reasonable time and usually on the same day.
 - i. Where it is not possible to reconvene on the same day, all parties will be contacted to arrange a suitable time. If a mutually agreeable time cannot be arranged, disciplinary action may be communicated in writing. Disciplinary hearings are reconvened to communicate the decision, not to introduce new submissions or evidence.
42. Where an employee is persistently unable or unwilling to attend a disciplinary hearing without good cause, BMAT will make a decision based on the evidence available.

V. STAGE FOUR – DECIDING AND COMMUNICATING DISCIPLINARY ACTION

43. Written notice of any disciplinary action should be given to the employee as soon as the decision is made and within **ten working days** of the disciplinary hearing.
44. In most cases, employees should be given a first written warning, specifying:
- a. The nature of the misconduct;
 - b. The improvement(s) or changes required and the timescale for doing so;
 - c. The sanction and, where appropriate, how long it will last;
 - d. The timescale for lodging an appeal and how it should be made; and
 - e. The possible consequences of further misconduct.
45. If an employee has a current warning, or if the first instance is sufficiently serious, then it may be appropriate to move directly to a final written warning.
- 46. Dismissal, Demotion or Transfer:**
- a. If an employee is demoted or transferred, s/he will be warned that dismissal could result if there is no satisfactory improvement.
 - b. In cases of dismissal, employees will be informed in writing of the reasons for dismissal, the date on which their employment contract will end, the appropriate period of notice and their right of appeal. Where practicable, this will be within **14 days** of the decision to dismiss.
 - c. A decision to dismiss, demote or transfer will not be based on spent misdemeanours, but the fact that one exists may explain why BMAT does not substitute a lesser sanction.
 - d. Unless an employee is being dismissed for reasons of gross misconduct, s/he will receive the appropriate period of notice or payment in lieu of notice.

47. Cases of Gross Misconduct:

- a. Employees who are accused of gross misconduct may be suspended with full pay while the alleged offence is investigated.
- b. If, following an investigation and disciplinary hearing, BMAT is satisfied that gross misconduct has occurred, the employee will be summarily dismissed without notice or payment in lieu of notice.
- c. Employees will be informed in writing of the reasons for dismissal, the date on which their employment contract will end, the appropriate period of notice (which should be within 10 working days of the decision to dismiss) and their right of appeal.

48. See Appendix B –Examples of Gross Misconduct.

VI. STAGE FIVE – APPEAL

49. The appeal process may be suspended at any stage for voluntary and confidential mediation³, on agreement between BMAT and the appellant employee. If mediation fails, the appeal process may be restarted.
50. At any stage of the formal procedure, as an alternative to appealing against a formal warning, an employee may request to have a statement placed on their personnel file, indicating their views and comments regarding the formal action taken.
51. Where an employee feels that disciplinary action taken against them is wrong or unjust, they can appeal the decision. Grounds for appeal may include:
 - a. Disproportionality/undue severity;
 - b. Inconsistency in disciplinary action or decision making;
 - c. The decision or decision making process was biased;
 - d. A material mistake was made on the facts;
 - e. The decision is irrational (i.e., no reasonable person could have come to the decision that was made);
 - f. There was a failure to act or investigate the allegation properly;
 - g. New and material information has come to light.
52. The onus is on the appellant to clearly establish the ground(s) of appeal, materiality to the decision taken and the detriment they have suffered as a result.
53. Within **five working days** of the decision to take disciplinary action, the appellant must submit the Disciplinary Appeal Form (Appendix C) to HR, in person or at hr@beaconacademytrust.co.uk.

³ BMAT will make arrangements for the mediation process, following HR and/or legal advice, as appropriate.
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54. Within **five working days** of receipt of an appeal, a written acknowledgement will be sent to the appellant outlining the next steps.
55. In exceptional cases, appeals may be dismissed on the papers (i.e. without a hearing) if BMAT has reasonable grounds to believe that the appeal is vexatious, baseless and/or inarguable (e.g. because the evidence in favour of formal action was very strong and/or because the appellant has made no arguable case in response and/or because the appellant has used the appeal form to attack BMAT and/or the person(s) responsible for enforcing the disciplinary procedure.
56. Malicious appeals may result in disciplinary action.
57. A governors' appeal panel will be held no later than **20 working days** from the submission of the appeal. The Panel will consist of three members of the Governing Body, with advice from HR and/or a legal professional, who should attend the panel hearing.
58. Appeals by employees who provide services directly to BMAT and/or members of the Trust Executive, will be dealt with by an appeal panel of Trustees. The Panel will be held no later than **20 working days** from the submission of the appeal, and consist of three trustees, with advice from HR and/or a legal professional, who should attend the panel hearing.
59. The details of the hearing and copies of any relevant documentation will be sent to the complainant and panel not less than **five working days** prior to the date of the hearing.
60. Appeals will be impartial and cannot result in an increase to any sanction.
61. Appeals will **not** take the form of a rehearing; the purpose is to review the decision and the decision making process. Following legal and/or HR advice, exceptions may be made if the appellant submits evidence to suggest that there was bias or discrimination in the decision or decision making process.

62. At the appeal hearing, the panel will:

- a. Follow the procedure for the disciplinary hearing set out in Section V of this Policy, except that the appellant employee shall put the case for appeal first.
- b. Deal with individuals fairly, impartially and in line with equality and diversity requirements;
- c. Aim to reach a consensus;
- d. Maintain confidentiality, as appropriate;
- e. Consider all relevant materials and give all parties the opportunity to make submissions in person;
- f. Consider the grounds of appeal and any responses to them;
- g. Review the record of the disciplinary process;
- h. Seek clarification from the individuals involved;

- i. Consider whether or not to admit any new evidence, where applicable.
- j. See paragraph 10 of this Policy on the statutory right of accompaniment, which applies to appeal hearings.

63. Following an appeal hearing, the appeal may be:

- a. Upheld in full or in part, with an appropriate remedy (e.g., a reduction to the severity of any disciplinary action); or
- b. Dismissed, with no change to any decision or disciplinary action.

64. Before reaching a decision, the panel may need to obtain legal or other professional advice. They will normally communicate their decision and its rationale in writing, within **ten working days**. If they are unable to do so, they will give reasons why not and the date by which a decision is expected.

65. Attendance at each meeting of the panel, issues discussed, and recommendations will be recorded in writing. The Clerk to BMAT keeps a record of appeal hearings, in line with data protection legislation and the [BMAT Data Protection Policy](#).

66. The outcome of the appeal hearing will be final in respect of internal procedures.

67. See 'Appendix E – The Appeal Panel'.

APPENDIX A – COACHING STATEMENT

Employee Name:		Date:	
Coach Name:			

Concern	Area of Concern	For teaching staff indicate the Teachers' Standard relevant to the concern and/or whether the concern relates to leadership or is linked to Performance Management targets	For support staff indicate the relevance of the concern to:
Indicate if: Performance ☐ Conduct ☐		TS1 ☐ TS2 ☐ TS3 ☐ TS4 ☐ TS5 ☐ TS6 ☐ TS7 ☐ TS8 ☐ Part Two ☐ Leadership ☐ Performance Management target ☐	Role and responsibility ☐ Performance Management target ☐ BMAT policies (please indicate specific policy below) ☐ e.g. Employee Code of Conduct
			Relevant policy:

APPENDIX A – COACHING STATEMENT - continued

Area of concern	Teachers' Standard if applicable	Actions to address this concern (including support provided)	Completion Date	Target/Success Criteria	Evaluation and impact of support Review date 00/00/00	Has the expected progress been achieved? (Yes/No)

Employee Signature:		Date:	
Coach Signature		Date:	

Disciplinary Policy

Appendix B – Examples of Disciplinary Offences and Gross Misconduct

Examples of Disciplinary Offences

The Teachers' Standards may be found on the GOV.UK website:

<https://www.gov.uk/government/publications/teachers-standards>

Matters that BMAT views as amounting to disciplinary offences could include, but are not limited to the following, which may amount to gross misconduct if sufficiently persistent and/or serious.

- Persistent bad time keeping
- Unauthorised absence
- Damage to the organisation's property
- Failure to observe the organisation's procedures
- Any act which has a negative impact on the reputation of the organisation
- Unreasonable or abusive behaviour
- Unreasonable refusal to follow an instruction issued by a manager or supervisor
- Poor attendance
- Smoking or use of an e-cigarette in non-designated areas of the organisation's premises
- Breaches of legislation.

Examples of Gross Misconduct

The following list is neither exclusive nor exhaustive and therefore does not preclude the possibility of dismissal for other offences of similar gravity. BMAT may arrive at a decision other than summary dismissal having regard to all the circumstances.

- Theft, fraud or embezzlement in relation to employment.
- Offences relating to Child Protection.
- Fighting and offences involving violence against others at work.
- Serious bullying or harassment.
- Serious insubordination.
- Serious breach of the DfE Teachers' Standards.
- Misuse of BMAT's property or name and/or bringing BMAT into serious disrepute.
- Serious incapability whilst on duty brought on by alcohol or drugs.

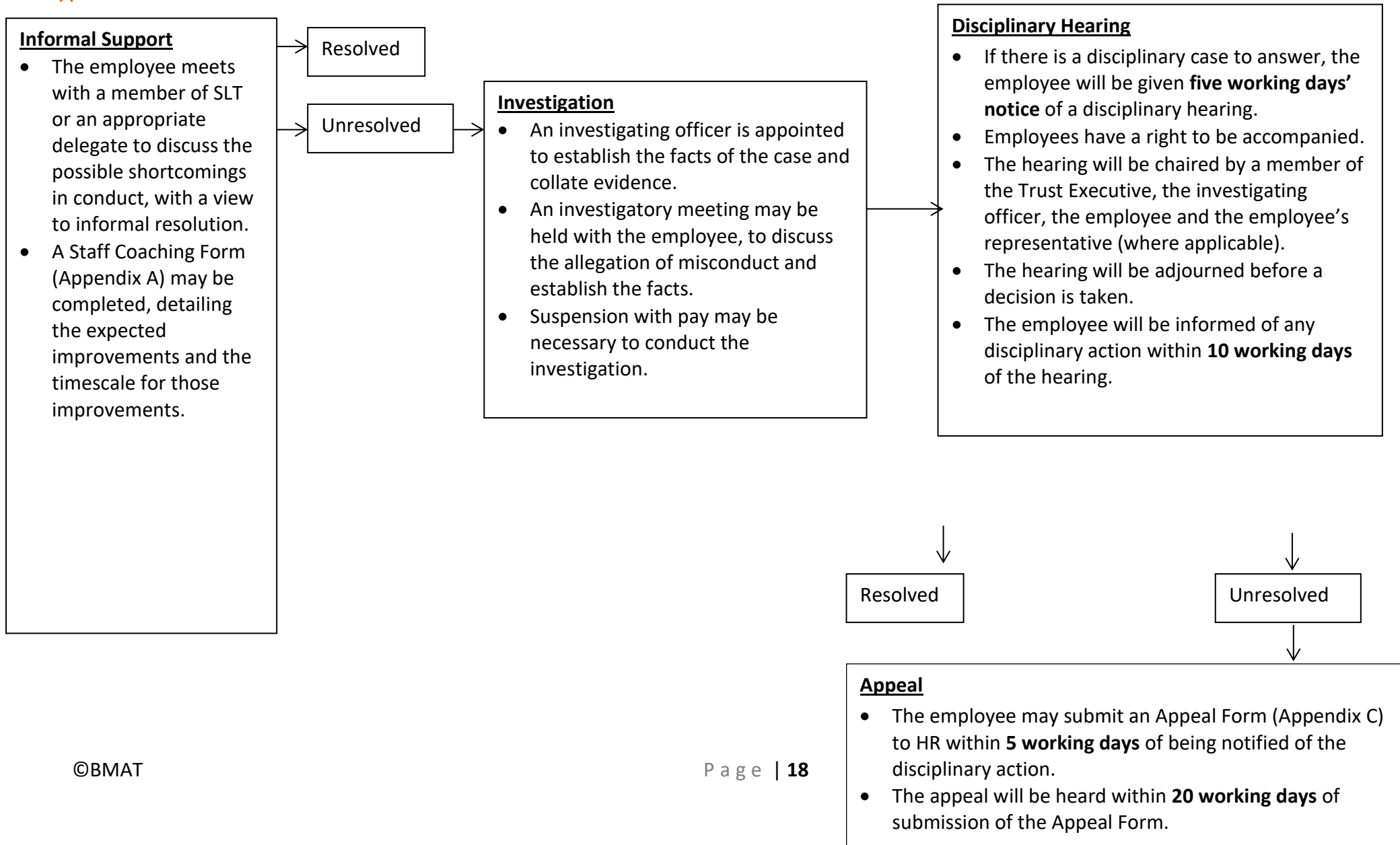
- Acting in an unprofessional manner on any BMAT premises or at any BMAT event.
- Deliberate acts of abuse, discrimination, bullying or harassment on a protected characteristic.
- Victimisation.
- Unauthorised access to, and use of, computer records and electronic data.
- Breach of the IT policies including accessing offensive or pornographic material and attempting to download material likely to damage BMAT IT systems.
- Being convicted of any criminal offence or any action likely to bring BMAT into disrepute.
- Malicious or vexatious claims of any nature.
- Unauthorised use or disclosure of confidential information, including via social media or leaving confidential information unsecured.
- Gross inefficiency or neglect of duty.
- Serious breach of health and safety issues.
- Serious negligence which causes or might cause unacceptable loss, damage or injury.
- Serious breach of confidence (subject to the Public Interest (Disclosure) Act 1998).
- Unauthorised removal of, or malicious damage to, the property of BMAT, of its employees or of persons in relation to whom BMAT and/or its employees are in a position of trust.
- Falsification of time records, travel, subsistence and expense claims in relation to his/her employment.
- Sexual offences and sexual misconduct whilst at work.
- Serious breaches of safety regulations endangering other persons, including deliberate damage to, neglect of, or inappropriate use of safety equipment.

Employee details			
Name:		Organisation:	
Job Title:		Department:	
Date:			
Appeal Information			
Date:			
Date of Disciplinary Hearing:			
Name & Job Title of Chair:			
Name & Job Title of Investigating Officer:			
Were you informed of the disciplinary action taken against you within 10 working days of the hearing?	Yes ☐ No ☐ If no, were you informed of the reasons for delay? Yes ☐ No ☐		
<u>Summary of Appeal</u> <i>Please explain:</i> - The ground(s) of your appeal; - Their materiality to the decision to take disciplinary action and/or the disciplinary action taken; and - The detriment you have suffered as a result. Provide as much detail as possible. Attach additional sheets if required.			

<u>Outcome Requested</u> If your appeal is successful, what steps would you like to be taken and why would it be appropriate to take them?	
6. Declaration I confirm that the above statements are true to the best of my knowledge, information and belief.	
Employee's Signature:	
Date:	

Disciplinary Policy

Appendix D FLOW CHART OF PROCEDURE FOR STAFF DISCIPLINARY ACTION.



1. Governors/trustees will be selected based on their eligibility and availability.
2. There should be three governors/trustees who have no prior involvement in the case and no concern for the case other than in their capacity as governors or, if a parent of a student of BMAT, than in the capacity of such parents generally.
3. Governors/trustees must not be employees of BMAT (e.g., a staff governor or a school principal within BMAT) and any decision(s) to which they are a party must not be under appeal;
4. The committee will be reconstituted for each appeal hearing;
5. The hearing must take place in a suitable room which must be free from interruptions and suitable for any disabled attendees;
6. HR and/or legal professionals will advise the committee if needed and should attend appeal hearings, where appropriate.