

Policy and Procedure: Complaints and Grievance Policy

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Red Balloon Educational Trust's Vision and Core Values

Red Balloon Educational Trust (RBET) provides a robust programme of academic education, wellbeing and therapy, and social re-engagement for young people aged 11 –21 who are out of school due to bullying, trauma and/or mental ill-health. The overall aims of the Red Balloon Learner Centres are that students will regain their self-esteem, get back on an academic track, and return to mainstream education, and that the staff are given opportunities for personal and professional development.

Our Vision

To provide the Red Balloon Recovery Programme to more of the young people who self-exclude from school; to employ well-trained employees to support that programme.

Our Values

- Inclusivity
- Negotiating the Curriculum
- Student Voice
- Unconditional Positive Regard

RBET fully supports the independence and distinguishing characteristics of its Learner Centres, each of which is committed to the aims and values of Red Balloon whilst adhering to those of its own.

RBET is committed to supporting its Learner Centres for the benefit of the communities that they serve. RBET expects the Centres to work together and provides a strong, responsible foundation enabling them to develop and grow, offering the best possible learning experiences for their students.

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1. Introduction

The Managing Investigations Toolkit aims to provide a framework which assists RBET managers carry out a fair and consistent investigation into staff conduct or complaints. This document offers best practice guidance to Trust management, Heads of Centres and the Chief Executive on dealing with the practicalities of carrying out investigations.

The guidance in this document should be used in accordance with the relevant Trust policy or procedure, as determined by the nature of the issue under investigation. It is non-contractual guidance and the Trust may depart from its terms at any time. In particular (and without limitation) the Trust may depart from the terms of this guidance in dealing with issues for employees with under two years' service.

This guidance is ordinarily used in conjunction with the following policies;

- Disciplinary Procedure for RBET Staff
- RBET Complaints & Grievance Procedures

This document is a practical guide on undertaking investigations. Managers are strongly advised to contact FusionHR prior to undertaking an investigation; FusionHR are available to advise the Investigating Officer (Head of Centre, Chief Executive or Senior Manager) 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, such as complaints regarding perceived unfair treatment

If an employee's conduct has the potential to lead to a disciplinary hearing, ordinarily a full and fair investigation that is consistent with the guidance that is provided within this document will be undertaken.

Examples of Misconduct

The following list of examples of misconduct is not exhaustive:

- Unauthorised absence
- Negligence
- Inadequate standards of work caused by carelessness
- Careless damage to or wastage of Trust 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 or vaping in prohibited areas
- Harassment and/or bullying
- Breach of the Trust's guidelines on e-mail/internet use
- Breach of the Trust's approach to equality
- Conduct which contravenes Trust 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 Trust, staff or public property
- Fraud and/or deliberate falsification of records
- Deliberate damage to or neglect of Trust property and/or equipment
- Gross insubordination
- Serious harassment, bullying, discrimination and/or intimidation
- Physical violence
- Actions which risks bringing the Trust 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

When to consider informal or formal action

Consideration should always be given 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 FusionHR before any action is taken to decide the most appropriate method of dealing with the matter.

FusionHR will discuss options with the manager, potential outcomes and mechanisms for dealing with the matter. FusionHR will also suggest any other sources of advice and support. The decision on how to proceed will ultimately rest with Trust or Centre management.

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

NB. If the matter relates to Child Protection the Local Authority Designated Officer (LADO) must be contacted for advice before any action is taken.

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 FusionHR as well as one of the colleagues below, before commencing a full investigation

2. Suspension

Who can suspend or lift suspension?

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

Heads of Centres

- Heads of Centres can suspend any member of staff employed or engaged at the Centre.
- If suspension occurs, the Chief Executive must be immediately informed
- Heads of Centres do not have the power to lift suspensions; this must be done by the Chief Executive.

Chief Executive

- The Chief Executive can suspend or lift the suspension of any member of staff (including the Head of Centre) employed or engaged at a Centre.
- If the Chief Executive does suspend or lift the suspension of a member of staff, either they or a delegated person must inform the Head of Centre. Suspension should not be discussed with others, to protect the impartiality of those 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 or children 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 or are likely to be in a criminal investigation.

If the police are involved, management would ordinarily consult with the Police Officer in charge prior to suspension being considered. In these circumstances, please contact FusionHR.

Alternatives to Suspension

In some cases, suspension can 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 to be considered may include:

- Paid leave of absence or Mutual agreement to refrain from work. This should only be considered as a short-term arrangement while further information is being gathered.
- Alternative duties or locations
- Removal from contact with children who 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 any case where immediate referral to the Behaviour Support Service Manager is accompanied by consideration of disciplinary procedures, suspension may or may not be appropriate. The Head of Centre or Chair of Governors should consult with the Behaviour Support Service Manager 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 student 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 their 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.
- The Head of Centre or Governors conducting the meeting will, in most cases, be accompanied by a member of FusionHR

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 hearing 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 consider alternatives to suspension
- A brief adjournment may be offered to the member of staff prior to management's response
- If suspension is considered necessary, the individual should be advised that they are 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 and other relevant equipment will be immediately removed for the duration of the suspension
- Written confirmation of the suspension should be given at the end of the meeting or otherwise provided as soon as possible (see Appendix 1)

If suspension occurs, contact with the employee should be maintained and the suspension will ordinarily be 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 Centre. The suspended member of staff will also be given the name of an

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.

appropriate person 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 Centre 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 Assistance 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 will ordinarily be agreed between the concerned employee, their representation and the Head of Centre.

Senior teachers in the Centre who need to know the reason for the suspension should be informed as far as is necessary. The Head of Centre or Chief Executive should take a decision on informing other staff colleagues in the Centre of the suspension. However, the number of people informed of the suspension should be kept to a minimum.

In certain circumstances, such as child protection investigations, it may be necessary for the Head of Centre (in consultation with the Chief Executive) to provide immediate reassurance to parents and children in the Centre 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.

3. The Investigation

Often, before a formal investigation commences, employees may be asked to provide a contemporaneous version of events shortly after an incident has occurred. Employees will be expected to co-operate with such requests or instructions to provide information that may be used as part of a management fact-find or informal investigation.

Often this fact-find will determine whether a formal investigation is necessary or appropriate. Evidence obtained within this fact-find may subsequently be utilised as part of the formal investigation.

Who Should Investigate?

- When it is decided to undertake a formal investigation Centre management or Head of Centre should determine who the Investigating Officer will be. If the investigation may result in a disciplinary or grievance hearing, where the Head of Centre may hear the case, It is advisable that an alternative member of the senior leadership team or an external investigator be commissioned to conduct the investigation
- If it is likely that the investigation could result in a disciplinary or grievance hearing, where the Chief Executive may hear the case, it is advisable that the Head of Centre,

an alternative member of the senior leadership team or an external investigator be commissioned in order to conduct the investigation.

- If a hearing is required and there is no alternative, the Head of Centre can investigate and present the case to themselves at a hearing. Whilst it is not recommended that the Head of Centre undertake this dual role, this would be a pragmatic approach in the circumstances. Please contact FusionHR before making a decision.
- If the Head of Centre or senior member of staff is a key witness, or has key or intimate knowledge which could be seen to prejudice the investigation, it may not be appropriate that they conduct the investigation, present the case at a hearing or hear the case. (Please contact FusionHR for further advice).

External Investigators

The Centre or Trust may also contact FusionHR with a view to commissioning an external investigator. If an external investigator is commissioned, they will report to the Head of Centre/Chief Executive or Senior Manager who will retain responsibility for the case. This is outside the agreed SLAs and will be at an additional cost to the Centre/Trust.

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

The final report shall be the property of Red Balloon Educational Trust. (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 will ordinarily be provided to all parties concerned at the beginning of the investigation and every effort made to keep to it.
- The Investigating Officer may choose to record the meetings or to have notes taken (at their discretion)

Meet the Member of Staff

The Investigating Officer will meet the member of staff whom the allegation or complaint is against and explain that this is a formal investigation. The member of staff will be given information about the allegation or complaint (sufficient to understand the overall matter of concern) and the procedure to be followed will be explained. There is no need for all evidence to be provided to the member of staff before the investigation interview. However, the member of staff should be given the opportunity to comment on all evidence during the investigation process.

Before commencing the investigation, clarify:

- Details of the precise issue to be investigated, including details of allegations or the complaint made, etc.
- Suggested methodology for conducting the investigation, e.g. identification of initial witnesses, copies of policy being breached etc.
- Under which Centre/Trust policy or procedure the investigation is being conducted
- For 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 e.g. copies of policies / procedures etc. is available during the course of the meeting.
- 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 and for the report where appropriate.

Conducting the Investigation Interviews

Where possible the interviews should be conducted in the following order:

- The person raising the allegation or 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 identified during the investigation must also be interviewed.
- The person against whom the allegation or complaint is made 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 FusionHR for advice.

The structure of the investigation interview

- Explain the context of the interview.
- Explain the purpose for which the meeting notes and subsequent record of interviews will be used
- State how and when the interviewee will be able to check the notes and 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 and Greetings

To the person making the allegation, witnesses (or others with information) explain to the interviewee:

- the procedure and try to put them at their ease.
- that this is part of a formal process, their evidence may be used if the matter proceeds to a hearing and they may have to be called as a witness
- that they will be given a copy of their final record of interview
- that they will have the right to know who is making the allegation or complaint (or is providing information about the matter). They will also receive a copy of the record of interview should the matter proceed to a hearing
- that this matter is strictly confidential and must not be discussed at any stage. Reassure the interviewee that management will also strictly maintain confidentiality.
- that the above should be stated in the record of interview

Making a record of the interview with the member of staff

Explain that:

- This is part of a formal process
- The allegations or complaint against them may proceed to a disciplinary hearing, and explain 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 be avoided when interviewing witnesses
- Discuss and enquire into any additional information for clarification
- Ensure that specific examples (including times, dates, witnesses, specific actions) are provided when unsubstantiated descriptions such as 'bullying' or inappropriate behaviour' etc are given
- Where physical force is alleged to have been used the degree of force used should be clarified clearly
- 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 and 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 interview record should record the facts, written (within reason) in the language used by the interviewee following the train of events.
- If there is any ambiguity or gap in the account this should be clarified with the interviewee
- The interviewee should be given the opportunity to review the statement and be asked to sign to confirm it as a true and accurate version of events
- Once the interview record is typed the employee should be allowed sufficient time to read it through, make any amendments or 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 be typed and signed as soon as the interview has been completed. Should the interviewee refuse to sign the statement (or make amendments that are not agreed) then both versions (original and amended) may be used by the Investigating Officer
- Where records of interviews cannot be taken the Investigating Officer may ask the interviewee to provide a written statement. In such cases the statement should be checked by the Investigating Officer. Follow up questions may be asked by the Investigating Officer and should be answered (in writing, if necessary) by the interviewee. Both the statement and the response to any further questions should be included in the Investigation Report. In these circumstances, please contact FusionHR.

Evaluating the Evidence

All of the relevant evidence gathered during the investigation should be reviewed and collated for use within the Investigation Report. This should include;

- Any record of interviews
- Notes from investigation interviews
- Relevant policies and 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 or 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 problematic
- 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 or 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'.