



Protocol for responding to a concern about a Member, Director or Governor

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“Learning together, to be the best we can be”

1. Context

- 1.1. Nexus Multi Academy Trust and its constituent schools are committed to a coherent approach to the safety, protection and wellbeing of members of the schools community, and to fairness and consistency in the way that disciplinary matters and grievances are handled at all levels within the Trust.
- 1.2. This protocol will contribute to achieving this. It will be used alongside the policy on child protection and safeguarding, allegations of abuse, whistleblowing, the Nexus Governance Handbook and code of conduct for Members, Directors and Governors.
- 1.3. The Trust expects anyone in a governance role to be professional and hardworking. It does not expect to have to take action as a result of misconduct, but sanctions have to be in place should the need arise, if informal action has not been effective or is inappropriate.

2. Member, Director and Governor conduct in our schools

- 2.1. **Anyone** involved in a governance role should comply with the [Department for Education's Governance Handbook](#) and ensure that their conduct is in line with Trust and school policy and sets a good example to pupils and students. This includes:
 - observing the terms and conditions of the code of conduct;
 - performing governance duties to the high standard expected;
 - treating with respect everyone they come into contact with during the course of their work;
 - complying with requirements relating to training and Continuing Professional Development, health and safety, and information sharing;
 - alerting the Executive Leadership Team to any circumstances that may adversely affect their work;
 - Complying with the requirements of Academy Trust Handbook, Trust Articles of Association and Memorandum of Understanding.
- 2.2. Failure to maintain satisfactory standards of conduct may result in action being taken under this procedure.

2.3. Nexus Multi Academy Trust – as per its Governance Handbook – has an expectation that all Members, Directors and Governors adhere to the 7 principles of public life. The principles are:

- **Selflessness** - Holders of public office should act solely in terms of the public interest.
- **Integrity** - Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.
- **Objectivity** - Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.
- **Accountability** - Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.
- **Openness** - Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.
- **Honesty** - Holders of public office should be truthful.
- **Leadership** - Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

2.4. This protocol is published by the Trust Board.

2.5. **The Chief Executive Officer (CEO) is the named accounting officer for the Trust, and is directly and personally accountable to HM Government for the probity and effectiveness of the Trust. The CEO has a responsibility to:**

- treat all incidents of governance misconduct or gross misconduct fairly and in line with Trust protocol;
- review this protocol regularly or after any incident of serious misconduct to ensure that it is effective, practicable and fair.

3. Types of concerns which may merit response

3.1. Listed below are some actions normally considered to be misconduct or gross misconduct that would be dealt with under this protocol. The lists are a guide and are not exhaustive. The Trust has the right to remove a Member, Director or Governor for misconduct or gross misconduct even if the action they have taken is not listed below. Governors considered to have committed misconduct may be suspended before consideration for removal:

- Breaches of the governance Code of Conduct;
- Breaches of the Trust or one of its school's policies;
- Unauthorised use of Trust facilities – Trust email account only used for Trust business;
- Inappropriate or offensive behaviour – for example, using foul or abusive language;
- Intentionally disobeying the reasonable instructions of a senior member of staff;
- A breach of confidentiality or Trust regulations;
- Negligence in the performance of duties;
- Bringing – through their direct actions or the actions of someone clearly associated with them – the Trust into disrepute or undermining the reputation of the Trust or one of its schools.

3.2. **Gross misconduct** is a serious breach of the code of conduct and includes misconduct, which in the opinion of Nexus Multi Academy Trust is likely to prejudice our reputation or irreparably damage the working relationship and trust between the Trust and the Member, Director or Governor. Gross misconduct will be dealt with under this protocol and will normally lead to removal without notice. Gross misconduct may include:

- Harassment of or discrimination against a child or employee;
- Inappropriate conduct with children or young people, including failing to maintain appropriate professional boundaries;
- Failure to follow the school's child protection procedures;
- Breaches of health and safety requirements;
- Physical assaults or threats to a colleague, pupil or member of the public;
- Actual or threatened violence, or behaviour which provokes violence;

- Unauthorised removal of Trust property, or malicious damage to Trust property or equipment;
- Criminal offences that in the Trust's opinion may undermine that individual's ability to do their job or adversely affect internal relations, staff or pupils;
- Dishonesty involving anything that relates to life in schools;
- Fraud or forgery, including falsification of documents such as expense claims, pupils' work, examinations or assessments;
- Theft;
- Being under the influence of alcohol, illegal drugs or other substances during governance hours or not being capable of fulfilling duties because of their effects;
- Any action that harms the reputation of the Trust;
- Negligence or a deliberate breach of an employee's contract of employment;
- Failure to obey instructions, or any other act of insubordination;
- Accessing internet sites at work or at home, or using schools equipment, which contains pornographic, offensive or obscene material;
- Making a false declaration or failing to disclose information in relation to the disqualification from childcare requirements, or becoming disqualified from providing childcare;
- The disclosure of confidential information;
- Failure to ensure confidential information is kept securely;
- Possession, use, supply of illegal substances;
- Serious misuse of IT policies or systems.

4. Member, Director or Governor investigation procedures

4.1. It is the Trust policy to ensure that any response to a cause for concern is dealt with fairly and that steps are taken to establish the facts and to give individuals the opportunity to respond before taking any formal action.

4.2. Investigations

4.2.1. Where there is an allegation that misconduct has taken place, this must be reported to the Chief Executive Officer (CEO) immediately. If appropriate, the CEO will discuss the issue with the Chair of the Trust Board and/or the Chair of local governance. However, this will be determined by the level of governance at which the allegation is being made.

4.2.2. Where the CEO determines that an investigation is needed, **the alleged individual will be suspended from governance without prejudice**. Where this relates to a Member or Director, an extraordinary meeting of Members OR Directors may be called by the CEO to sanction such action.

4.2.3. Once a decision has been made and action taken, the CEO must then delegate authority to carry out an investigation.

4.2.4. For an investigation regarding a Member, this will be done by a suitably qualified individual who is independent of the Trust.

4.2.5. For an investigation about a Director, this will be undertaken by a Member or, if use of a Member is inappropriate, by suitably qualified individual who is independent of the Trust.

4.2.6. For an investigation about a member of local governance, this will be undertaken by a member of the executive leadership team or if necessary, a suitably qualified individual who is independent of the Trust.

4.2.7. The appointment of the investigating officer will be mindful of two things:

4.2.7.1. The experience/expertise of an individual in the area of the alleged misconduct which has prompted the investigation e.g. HR, Legal, Financial etc.;

4.2.7.2. The reputational impact of the appointment on Nexus Multi Academy Trust. The requirement to assure the public of openness and transparency.

4.2.8. Where necessary, advice and guidance will be sought from the Education Funding Agency and/or the Department for Education.

4.2.9. The purpose of an investigation is to establish a fair and balanced view of the facts. It may involve interviewing the alleging individual and any witnesses, and reviewing relevant documents or other information. The CEO will first and foremost inform the Member, Director or Governor that they are going to initiate an investigation.

4.2.10. The Chief Executive Officer will arrange a meeting to take place immediately if there is concern that a child is at risk of harm, or normally within 7 days if this is not the case.

4.3. Investigatory meeting

4.3.1. The investigating officer will listen and view any evidence presented, including the details of the misconduct and any discussions which have followed. HR may be asked to attend. 7 day's written notice should be given of the investigatory meeting.

4.3.2. An investigation report will be written following the meeting which includes an introduction, executive summary, methodology, findings and potential further actions.

4.3.3. Recommendations will be either that:

- no further action is taken or;
- a disciplinary hearing should take place.

4.4. No further action will be taken

4.4.1. If the individual who has investigated the misconduct of a Member, Director or Governor and has made the recommendation that no further action be taken, this will be reported back to the Chief Executive Officer who will in turn ensure the alleged individual is informed in writing within 7 days of the investigatory meeting, at which point the suspension period will end.

4.4.2. If the investigator believes that the misconduct was a one-off, a misunderstanding, or an act of poor judgement, the CEO may wish to arrange a follow-up meeting to discuss this with the Member, Director or Governor in question and the implications of their conduct.

4.5. An Investigation Hearing will take place

4.5.1. In cases where an act of gross misconduct or incidents of misconduct have taken place, the CEO will convene an Investigation Hearing to review the conduct and decide on a formal course of action.

4.5.2. The person who is the subject of the investigation will be informed as soon as an investigation hearing has been decided. If there has been an allegation made against them by a pupil, they will be informed only after the CEO has spoken to the Trust Chair and/or HR.

4.5.3. The individual will then be advised what the next course of action will be.

4.5.4. However, if the police or children's social care are to be involved, for example in a case of alleged sexual misconduct, they will be contacted before the individual who will advise on what information may be disclosed to the person under investigation.

4.5.5. In the case of an individual who has been accused of abuse, the Trust will report through to children's social care and will take their lead from these services, usually the Local Authority Designated Officer

4.6. Investigation Hearings

4.6.1. The purpose of the Investigation Hearing is to test the facts and probe the evidence through reviewing the investigation. Individuals should be

allowed to state their case and from this establish any mitigating circumstances.

4.6.2. The Investigation Hearing Panel will be made up of the Chair of the Trust Board and at least 2 other Members, Directors or Governors (dependent on the tier of governance the alleged individual operates at – the Trust Article of Association outline which tier of governance has the power to remove others). The CEO will act as an advisor to the panel, unless they have also been the investigating officer. The Trust’s HR advisor may also advise the panel.

4.6.3. The individual will be notified in writing as soon as is practicable of the date, time and location of the hearing (at least 7 days’ notice). The procedure and copies of relevant documentation that will be used - or may be useful or necessary to prepare a response - will be provided. The individual will be informed of the allegations against them, the basis for those allegations and the likely range of consequences if it is decided at the hearing that the allegations are true.

4.6.4. The alleged individual may bring a companion to all meetings where removal from governance may be an outcome. Should they wish to bring a companion to the hearing, they will be responsible for making the necessary arrangements and providing them with copies of paperwork that they may require.

4.7. Process

4.7.1. The hearing will follow the following process:

- Investigating Officer outlines case
- Alleged individual given opportunity to state their case
- Witnesses available for questioning
- Opportunities for both sides to ask questions
- Investigating manager summarises case
- Adjournment
- Decision

4.7.2. The Nexus Multi Academy Trust seeks to minimise the stress of this sanction process.

4.8. Confidentiality

4.8.1. The Trust will make every effort to protect the privacy of all parties during and after an investigation into misconduct. It is in everyone's best interest to maintain this confidentiality to ensure a fair investigation with minimum impact for all parties. All alleged individuals must treat information communicated to them in connection with an investigation as confidential.

4.8.2. A breach of confidentiality will be taken seriously and may warrant its own investigation. It is a criminal offence to publish information that could lead to the identification of someone who is the subject of an allegation or a sanction hearing before they are charged or summonsed.

4.8.3. Where the Trust is legally required or entitled to make a statement in relation to the outcome of action, individuals will be informed of this wherever possible.

4.9. Resignations

4.9.1. If a Member, Director or Governor submit their resignation when a sanction hearing has been ordered or during an investigation, the investigation may still continue until an outcome has been reached, with or without the person's cooperation. They will be given full opportunity to respond to the hearing. A referral to the Disclosure and Barring Service and Secretary of State will also be made where the thresholds for referral are met.

4.10. Record keeping

4.10.1. Detailed records of all investigations and outcomes should be kept securely, and in line with the Data Protection Act, in the personal file of the person who has been under investigation, who should be given a copy of the same information. This will enable the Trust to:

- provide all the necessary information in future if the individual requires a reference. Where DBS checks highlight allegations that did not result in any criminal charges, records will need to show exactly what happened, what points of action were taken during and after the investigation, and how the result of the investigation was reached;

- prevent unnecessary re-investigation in the future if an allegation re-surfaces.

4.11. Allegations or investigations that are proven to be malicious will not be kept on records or used in references.

4.12. **Action on conclusion of the case**

4.12.1. The individual will be informed in writing of the decision and the reasons for it, usually within 7 days of the hearing.

4.12.2. The Investigation Committee may find that there is no case to answer.

4.12.3. The Chief Executive Officer will inform the Education & Skills Funding Agency and the Department for Education in writing if they choose to dismiss a Member, Director or Governor with the reasons for their removal. It may also be necessary to inform Companies House.

4.12.4. Where a Member, Director or Governor is dismissed, a referral to the Disclosure and Barring Service and Secretary of State will be made where the thresholds for referral are met.

4.12.5. If it is decided that the individual may return to governance (after a suspension) then provisions will be put in place by the Trust to ensure that the transition is as smooth as possible.