

## *Staff Disciplinary*

### **1 Introduction**

- 1.1** This policy provides guidance on disciplinary issues for the Heart of Mercia Multi Academy Trust (HoM).

The Trust is committed to the avoidance of formal disciplinary procedures wherever possible by addressing problems as soon as they arise. As well as a guide to imposing sanctions, the disciplinary procedure should also be viewed as a means of encouraging and promoting professional conduct.

- 1.2** Guidance from the ACAS Code of Practice (Disciplinary & Grievance) has been taken into consideration in drafting this procedure [Disciplinary and grievance procedures | Acas](#). This policy does not form part of terms and conditions of employment.
- 1.3** New colleges and/or schools joining the Heart of Mercia Multi Academy Trust may continue to use their existing Staff Disciplinary Policy for a maximum of 12 months after their official joining date. The HoM HR Director and HoM Policy Coordinator will review the relevant policy during this period to ensure compliance with the ACAS code.

### **2 Aims & Objectives**

- 2.1** The disciplinary procedure provides a framework for dealing with instances in which Trust employees are alleged to have breached the required standard of conduct. The aim is to ensure prompt, consistent and fair treatment for all employees without discrimination. The policy covers all HoM staff except designated 'senior post holders' of the Trust, to whom the [HoM Senior Post Holders Disciplinary](#) policy applies.

Separate procedures will apply to staff serving a probationary period.

- 2.2** An employee's conduct outside of work may have a bearing on the employee's continued employment, it is therefore important that all employees immediately inform their manager of any criminal investigation, charge, or conviction.
- 2.3** Matters relating to incompetence, incapability, or poor performance at work by the employee due to a lack of skill or aptitude should be dealt with under academies individual capability procedures.

### **3 Establishing the immediate facts of the case**

- 3.1** Where there is a suspected breach of discipline or an allegation is made relating to misconduct, initial enquiries will be made by an appropriate manager. The manager will

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be required to undertake an initial fact-finding exercise. This will be carried out promptly and without delay. The purpose of fact finding is to establish the circumstances of the alleged misconduct and to determine whether a formal investigation is required.

The fact finding will involve:

- Establishing the immediate facts of the case and nature of allegations.
- Speaking to the member of staff concerned to explain that they are subject to an allegation.
- Describe the nature of the breach of discipline or allegation.
- Obtain an initial response from the employee.
- Briefly summarise the facts of the allegation/alleged breach of conduct.
- The manager will present the facts to an appropriate senior leader who has not previously been involved in the matter, to decide if a formal investigation is required.

**3.2** The manager may decide based on the facts that there is no case to answer and no further action will be taken. If no further action is to be taken, no records will be kept.

**3.3** Where there is no dispute to the facts of the case and the member of staff agrees that allegations of misconduct were correctly reported, it may be necessary to go straight to a disciplinary hearing.

**3.4** If it is determined by the appropriate senior leader that there is a case to answer, the appropriate senior leader will appoint an investigating officer, who could be an appropriate manager, or an appropriate external person.

**3.5** Disciplinary action should be dealt with in a confidential manner to respect the privacy of all parties and to ensure the matter is dealt with sensitively, fairly, and effectively. Confidentiality will be maintained throughout the process wherever possible but there may be circumstances where this is not possible in order to progress the disciplinary. Any breach of confidentiality may result in disciplinary action under the HoM Staff Disciplinary Policy against those concerned.

## 4 Suspension

At any stage, the Academy Principal/Head or designated alternate should consider whether the employee should be suspended on full pay pending further investigation.

If the employee is suspended, the Principal/Head or designated alternate should give written notification of the suspension, setting out the grounds on which the decision to suspend has been taken.

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If suspension continues for more than three weeks and a disciplinary interview has not taken place, then the investigating officer/member of the HR team will contact the employee or their representative to explain the progress.

Suspension is a neutral act and not a disciplinary penalty.

### 5 Informal Action

In some cases, it will be considered appropriate to deal with the matter by issuing the employee with advice and instructions as to expectations of their future conduct.

Where such a management instruction is given, a note of this will be kept on file.

Advice given in this way is not part of the formal disciplinary procedure and is not subject to appeal, as advised by ACAS, a note should be kept on personnel file for future reference.

### 6. Formal Investigation

**6.1** Before a disciplinary hearing is convened there will be an investigation into the circumstances of the alleged misconduct. The investigation will be completed in a confidential manner. The purpose of the investigation is to prepare an investigation report establishing the full details of the case including making a recommendation if, on the balance of probabilities, there is a case to answer, or if there is no case to answer.

**6.2** The following steps are usually included in any formal investigation:

- The Investigating Officer will be required to gather evidence to enable a decision to be taken on whether there is a disciplinary case to answer.
- The employee will be informed in writing of any allegation and that an investigation to establish the facts will be undertaken by an appointed investigating officer.
- The investigative interview (s) will take place as soon as possible after the member of staff has been informed of the investigation.
- The role of the Investigating Officer will be to ensure that all relevant facts and witness statements are obtained in relation to the allegation(s).
- The employee may submit a written statement in response to the allegation for consideration prior to the investigative interview taking place.
- The employee may be accompanied at the investigative interview by a workplace colleague of their choosing or their trade union representative. In exceptional circumstances, the Trust may allow a companion who is neither a workplace colleague nor trade union representative to accompany an employee (see Appendix 3). Any such exception must be approved in advance of the meeting by the Investigating officer.

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- The Investigative Officer may be required to interview witnesses as part of the investigation, this can be in the form of a signed statement or a witness interview.
- The employee under investigation will have the opportunity to review the notes of the investigative interview.
- Confidentiality, as established in Point 3.5, will be observed by all parties involved in the investigation.

### 7 Gross Misconduct

**7.1** Gross misconduct is misconduct at work or outside work serious enough to destroy the employment contract and make any further working relationship and trust impossible.

**7.2** Some examples of the type of offences likely to be treated as gross misconduct are:

- 1) disorderly conduct caused by intoxication from drink or drugs (including prescription medication) sufficient to influence the employee's ability to carry out their duties.
- 2) fighting, violence towards others or destruction or damage of equipment or premises.
- 3) offensive behaviour (discrimination, harassment, bullying).
- 4) fraud or deliberate falsification of records for personal gain.
- 5) theft of employer's or colleagues' property.
- 6) gross negligence or dereliction of duties.
- 7) serious breaches of health and safety procedures or regulations.
- 8) gross insubordination.
- 9) serious breaches of confidence, subject to the Public Interest (Disclosure) Act 1998 and/or Data Protection Act 2018.
- 10) accepting or offering bribes.
- 11) serious or repeated breaches of Trust or academy policies, procedures, regulations, or rules in force from time to time.
- 12) misusing confidential information.
- 13) serious breach of safeguarding.
- 14) serious case of absence without leave.
- 15) serious case of dishonesty.

The above list is intended to be illustrative rather than exhaustive.

### 8 Disciplinary Action

**8.1** The following disciplinary sanctions will be deemed appropriate at a disciplinary hearing.

**8.2** The chair of the disciplinary hearing will determine the appropriate level of sanction. In determining the appropriate level of action, the chair will consider if there are any live warnings already and overall assess the gravity of the case.

Formal disciplinary	Maximum time limits for disciplinary warning
Oral warning	Confidential note kept on personnel record.
Written warning confirmed in writing.	12 months
Final written warning confirmed in writing	24 months
Dismissal	N/A

**8.3** In the case of gross misconduct being alleged and established on the balance of probabilities, the employee will be liable to summary dismissal by the Principal/Head or designated alternative. Any disciplinary action related to safeguarding, live, or spent will be disclosed for safeguarding purposes.

- Further breaches of misconduct committed during the period of a live warning will result in further disciplinary action against the employee.
- Nothing in this procedure is intended to remove the right of an appropriate person to give an employee informal advice and instruction as to expectations of their future conduct as outlined in Point 5.

## 9 Disciplinary Hearing

**9.1** If the investigation report concludes that there is a case to answer, a disciplinary hearing will take place to consider the recommendations of the investigation report and any disciplinary sanction. A member of the senior leadership team of the academy, who has not previously been involved in the matter will conduct the hearing. The role of chair of the disciplinary hearing will be assigned by the Principal/Head of the Academy, in consultation with the HoM HR Director.

Type of disciplinary action possible	Disciplinary hearing before:	Appeal Hearing
Disciplinary action <b>other than dismissal</b>	Appropriate member of the Academy Senior Leadership Team (assigned by Academy Principal/Head in consultation with the HoM HR Director)	Academy Vice Principal/Deputy Head or Principal/Head
Disciplinary action <b>including dismissal.</b>	Academy Vice Principal/Deputy Head (assigned by Academy Principal/Head in consultation with the HoM HR Director)	Academy Principal/Head

Disciplinary action <b>including dismissal</b>	Academy Principal/Head (assigned by Academy Principal/Head in consultation with the HoM HR Director)	Committee of Academy LGB
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The employee /respondent will be given a minimum of 7 calendar days’ advanced notice of the hearing and may be accompanied at the hearing by a workplace colleague of their choosing or their trade union representative. In exceptional circumstances, the Trust may allow a companion who is neither a workplace colleague nor trade union representative to accompany an employee (see Appendix 3). Any such exception must be approved in advance of the meeting by the appointed Chair.

The management case / bundle of evidence should be forwarded to the employee at the same time. The employee should forward to the relevant HR department all paperwork they wish to be considered at the hearing, a minimum of 3 calendar days before the date of the hearing.

**9.2** Where the case is upheld, and the misconduct was found to be minor, an oral warning may be issued. In line with ACAS Guidance, a confidential note should be kept on the individual’s personnel file for future reference.

**9.3** If the issue is more serious or a further offence occurs, there could be a written warning (or even a final written warning) setting out the nature of the offence, the improvement required, the timescale allowed for this and the likely consequences of further offences.

Details of such disciplinary action should be given in writing within 7 working days to the employee and if desired to her/his work colleague or trade union representative. At the same time, the employee should be informed of her/his right to appeal against the disciplinary action taken.

**9.4** Where there is a further suspected breach of discipline or there is still a failure to improve following a formal written warning, the procedure set out above will be repeated.

**9.5** Where the case of a further breach of discipline is upheld a further formal warning or final written warning may be issued. Other possible forms of disciplinary action that may be appropriate are alteration of duties and responsibilities, demotion, or transfer to another post.

**9.6** Where a final written warning has already been issued and the case of a further breach of discipline is upheld, disciplinary action could include dismissal. The Principal/Head or designated alternate should notify the employee in advance that dismissal is being contemplated.

If the Principal/Head or delegated alternate does decide to dismiss the employee and, if desired, her/his work colleague or trade union representative should be given written reasons for dismissal, the date on which employment will terminate and the right of appeal to the academy Principal/Head or Local Governing Body (LGB).

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- 9.7** The ACAS Code of Practice provides for an appeal against formal disciplinary action.
- If action has been taken by the academy Principal/Head, then the appeal must be to the academy LGB.
  - If, however, the Principal/Head empowers another member of staff e.g., a member of the academy senior leadership team to take disciplinary action, then the appeal should be considered by the academy Principal/Head.
  - The employee may be accompanied by a work colleague or trade union representative at the appeal hearing. In exceptional circumstances, the Trust may allow a companion who is neither a workplace colleague nor trade union representative to accompany an employee (see Appendix 3). Any such exception must be approved in advance of the meeting by the Chair of the appeal hearing.
  - The appeal should be lodged in writing to the HR department/ Academy Principal or Head/ Chair of the LGB within 14 calendar days of receipt of the letter informing the employee of the outcome of the disciplinary sanction / hearing.
  - An appeal cannot result in a more severe penalty than that originally imposed and the decision at appeal is final.

**9.8** The appeal hearing should be convened without undue delay. The procedure to follow at the appeal hearing will follow that of Appendix 1. The original decision maker (Chair of previous disciplinary hearing) will replace the investigating officer in the order of hearing. The investigating officer can be called as a witness by the original decision maker at the appeal hearing. The appeal hearing cannot be a re-run of the original disciplinary hearing or consider any new evidence but may address points which the member of staff considers were not properly considered at the original hearing.

## 10 Equality Impact

The Trust’s responsibilities towards promoting equality, diversity and inclusion have been considered when drafting this policy.

Date of review	Date agreed	LGBs	MAT Board	Review date	Comments
07/11/23	23/11/23	Spring 2024	7/12/23	November 2024	

### Appendix 1

#### DISCIPLINARY HEARING

The employee /respondent will be given a minimum of 7 calendar days' advanced notice of the hearing and may be accompanied at the hearing by a workplace colleague of their choosing or their trade union representative. In exceptional circumstances, the Trust may allow a companion who is neither a workplace colleague nor trade union representative to accompany an employee (see Appendix 3). Any such exception must be approved in advance of the meeting by the appointed Chair.

The management case / bundle of evidence should be forwarded to the employee at the same time. The employee should forward to the relevant HR department all paperwork they wish to be considered at the hearing, a minimum of 3 calendar days before the date of the hearing.

#### Order of hearing to follow at the Disciplinary Hearing

- 1 The Chair of the hearing can have an appropriate advisor /note taker present at the hearing. The role of the advisor will be to provide guidance on the procedure to follow and take any notes.
- 2 The Chair will introduce all parties present and confirm the order of hearing. /Procedure to follow. They will explain the role of the companion (see Appendix 3) if a companion is in attendance.
- 3 The investigating officer will outline the management case.
- 4 The investigating officer will have the opportunity to call any witnesses.
- 5 The employee/ respondent can ask questions of the investigating officer (and their witnesses, if applicable).
- 6 The Chair can ask questions of the investigating officer (and witnesses, if applicable).
- 7 The investigating officer's witnesses to withdraw from proceedings, (if applicable).
- 8 Employee/ respondent to state their case.
- 9 The employee/ respondent will call any witnesses (if applicable).
- 10 The investigating officer to ask questions of the respondent's witness (s).
- 11 The Chair can ask questions of the employees/ respondent's witness if applicable). *(All witnesses should leave the hearing at this stage).*
- 12 The investigating officer will summarise their case.
- 13 The employee/ respondent will summarise their case.



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- 14 The Chair should call for an adjournment for deliberation at this stage.
- 15 After all parties have summarised their cases, the Chair of the hearing should have a stated period of adjournment.

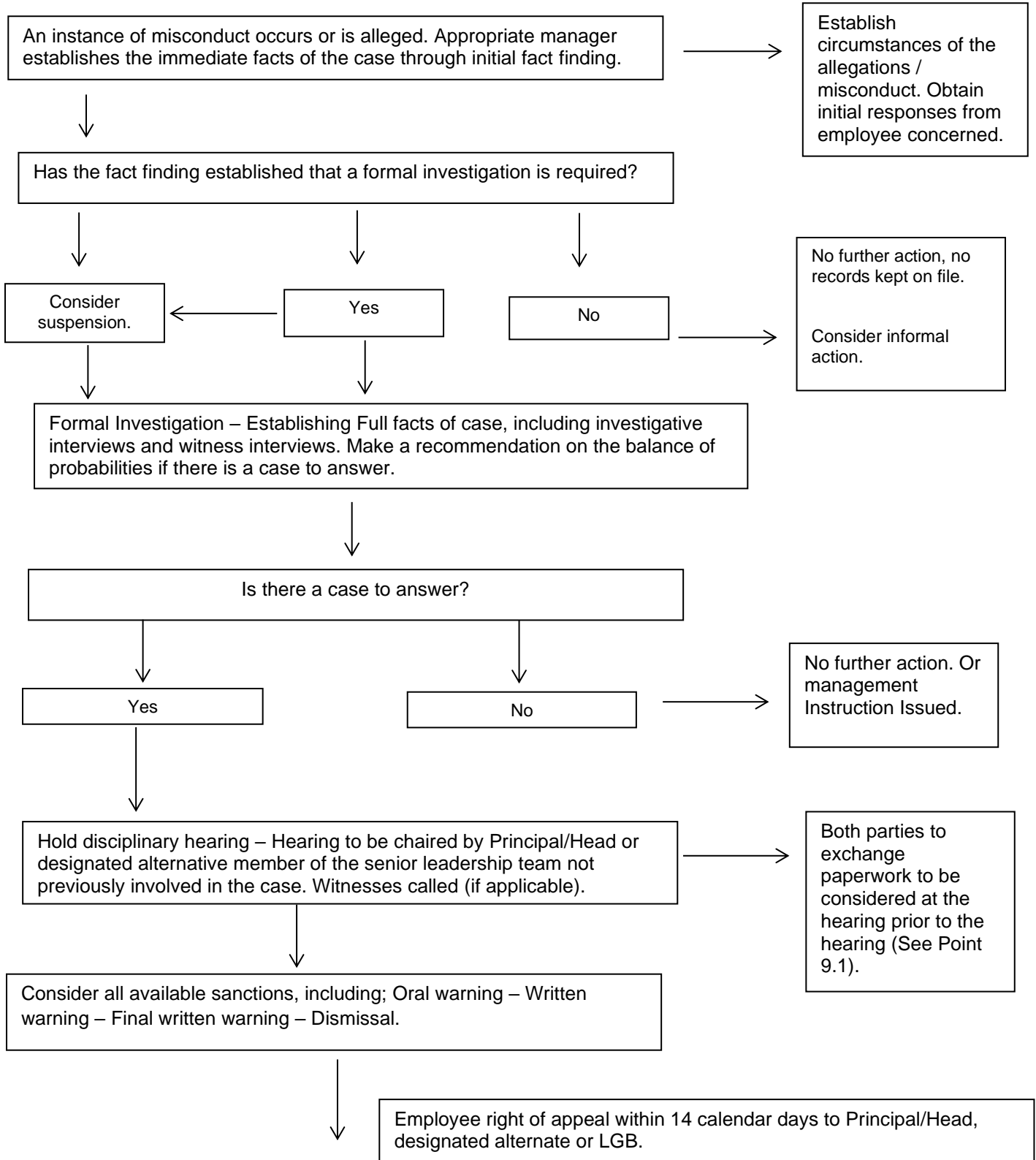
This time will be spent to deliberate the case, or to establish if a decision can be made within a reasonable amount of time in order to call all parties back to the hearing to communicate an outcome. If, after a period of adjournment, the Chair has determined that it is not possible to reach a decision within a reasonable period of time, the employee/ respondent will be informed that a decision will be communicated to them in writing within a period of 7 calendar days.

- 16 The decision of the Chair will be one of the following:
  - a No action to be taken. On the balance of probabilities, the allegations against the employee/ respondent cannot be proven. The employee/ respondent will be exonerated.
  - b The alleged breach of discipline / allegation (s) is proven on the balance of probabilities in whole or part and one of the disciplinary sanctions open to the Chair will be imposed.

\*If the employee's chosen companion is unable to attend the date of any formal meeting, the meeting can be rescheduled once.

Appendix 2

**DISCIPLINARY PROCEDURE FLOW CHART**



### Appendix 3

#### THE RIGHT TO BE ACCOMPANIED AND THE ROLE OF THE COMPANION

##### **(1) The right to be accompanied.**

Employees of the Heart of Mercia Multi Academy Trust (HoM) have the right to be accompanied by a colleague or a trade union representative at a disciplinary hearing as established in Section 10 of the Employment Relations Act 1999.

The Trust also recognises its legal obligations under the Equality Act 2010 and will make reasonable adjustments here for disabled employees of the Trust.

In exceptional circumstances, the Trust may allow a companion who is neither a workplace colleague nor trade union representative to accompany an employee. Any such exception must be approved in advance of the meeting by:

- the Investigating officer for an investigative interview.
- the Chair of the disciplinary hearing.
- the Chair of the appeal hearing.

As the statutory right to be accompanied does not extend to legal representatives, friends, or family members, any decision to allow this remains at the discretion of the Trust.

If a HoM employee would like someone other than a trade union representative or workplace colleague to accompany them, they should make a request to the Trust in writing, explaining why this person is suitable and why it is reasonable for that person to accompany them. Please address any such request to the Heart of Mercia Trust HR Director at [anna.meade@heartofmerciamultiacademytrust.org.uk](mailto:anna.meade@heartofmerciamultiacademytrust.org.uk)

The person accompanying an employee is known as a companion.

If a HoM employee makes a request to be accompanied, he or she should do so reasonably. For example:

- it may not be reasonable to choose a companion who is in geographically remote location when a suitable person is available at the place of work.
- It would also not be reasonable to choose a companion whose presence would prejudice a hearing or who has a conflict of interest.

If the employee's chosen companion cannot attend on the hearing date proposed, the employee can propose an alternative time and date, so long as it is reasonable and is no more than five working days later than the date originally proposed by the Trust.

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### (2) The role of the companion

The role of the companion in a disciplinary hearing is limited.

Section 10, of the Employment Relations Act 1999, and the Employment Relations Act 2004 state that the companion can:

- put forward the employee's case;
- sum up the case;
- respond on the employee's behalf to any view expressed at the hearing;
- and confer with the employee during the hearing.

However, the companion cannot:

- answer questions on the employee's behalf;
- address the hearing if the employee indicates at it that he does not wish his companion to do so;
- or act in a way that prevents the Trust explaining and addressing its case.