

Featherstone High School



Disciplinary Procedure

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The
Disciplinary Procedure has been
adopted in line with the guidance
from the Local Authority and has
been ratified by the Governing Body

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Disciplinary Procedure

1. Aim

- 1.1** The aim of this procedure is to provide fair and effective arrangements for maintaining the standards of staff conduct and behaviour required by Featherstone High School.
- 1.2** To support this aim the procedure takes account of best practice, legislative requirements and guidance contained in the ACAS Code of Practice on Discipline and Grievance Procedures.

2. Scope and Principles

- 2.1** Governing bodies of schools with delegated budgets are responsible for determining arrangements for dealing with disciplinary matters. Governing bodies are required by law to set disciplinary procedures for the staff that they employ and to make them known to these staff. It is a legal requirement for governing bodies to establish a committee to consider disciplinary appeals. Except in exceptional circumstances (see Appendix5) governing bodies should formally delegate to Headteacher's the power to suspend and dismiss staff, and to the chair of the governing body the power to suspend the head teacher. These procedures have been agreed with the teaching and support staff trade unions and are commended to Ealing schools for adoption. Should schools wish to adapt these procedures they should consult with staff and staff side representatives regarding any changes.
- 2.2** These procedures apply to both teaching staff, including Headteacher's and deputy teachers, and support staff employed by the governing body to work in the school (for any non school funded posts the Personnel Manager will seek advice). They do not apply to school meals, facilities management and other staff employed in the school under contract arrangements with external providers.
- 2.3** Any actions and/or sanctions to deal with the conduct of a new member of support staff during the probationary period, or for all internal appointments (except for assimilations, redeployments and medical redeployments) during a performance review period should be dealt with under the School's probation and performance review procedure. This is contained in Part 2, paragraph 2.3 and Part 3, paragraph 2.3 to 2.7 of the Local Terms and Conditions of Service. Similarly teaching staff serving an induction period should be dealt with in accordance with the teacher's induction procedure.

- 2.4** Disciplinary procedures should not be seen primarily as a means of imposing sanction but rather as a way of encouraging improvement amongst employees whose conduct is unsatisfactory.
- 2.5** The procedure will apply to all matters relating to:
- Conduct and behaviour in the workplace;
 - Breaches of school policy such as the Code of Conduct, Fraud and Corruption and the Equality and Diversity policy, rules and standards;
 - Activities and behaviour outside the workplace which may bring the reputation of the school into disrepute;
 - Allegations of misconduct arising from action under other school policies and procedures such as Bullying and Harassment;
 - Inappropriate conduct towards children;
- 2.6** Separate procedures and guidance exist for dealing with the management of unsatisfactory performance, sickness absence and medical capability. Where in the course of investigating an incident of alleged misconduct it transpires that it is an issue of medical capability or unsatisfactory performance rather than misconduct, the matter should be referred for action under the relevant procedure. The same manager dealing with misconduct under the Disciplinary Procedure will normally deal the relevant capability or Medical Capability Review procedures.
- 2.7** The procedure is designed to help establish the facts of a case quickly and to deal consistently with disciplinary issues. No disciplinary action should be taken until the matter has been investigated and employees will be given the opportunity to state their case before decisions are reached.
- 2.8** Managers have the authority to initiate the procedure at any level depending on the specific circumstances of the case, and the application of their judgment (when considering whether informal or formal action is appropriate, however, no matter how brief, an investigation must take place prior to a formal disciplinary hearing).
- 2.9** The employee will have access to any evidence that the presenting manager wishes to rely on at the formal hearing, through witnesses or documentary evidence.
- 2.10** Minor instances of misconduct and poor practice should initially be dealt with in an informal way e.g. counselling, training, and setting clear standards for improvement. This could be in the form of an informal verbal warning, which should include confirmation of appropriate and expected standards. It should be stressed that such action does not form part of the formal disciplinary procedure, although it may be made clear to the employee that formal action might be taken on recurrence of the conduct in question.

- 2.11** The Headteacher is expected to take all disciplinary decisions against staff, including dismissal (with the exception of decisions against the Headteacher). Appeals against any formal disciplinary sanction imposed by the Headteacher, including dismissal, should be heard by the governing body appeal panel. It is a legal requirement for governing bodies to establish commitments to deal with disciplinary (including capability) and grievance issues. Other than in exceptional circumstances (see Appendix 5), the governing body should delegate the responsibility for staff disciplinary matters to the Headteacher. The Headteacher cannot delegate this responsibility to other members of staff in the school. However, where a Headteacher is on long-term sick leave, secondment or some other long-term absence, the governing body should consider whether it is necessary to pass full (or partial) delegated responsibility to the person acting in the Headteacher's absence.
- 2.12** The school will seek advice from the Personnel Manager/HR Provider. At hearings where dismissal is a possibility, the LA has a statutory right to be represented at the hearing and the school must make provision for this.
- 2.13** An employee should not be summarily dismissed (that is without notice) except in cases of a finding of gross misconduct. If an employee is dismissed for some other misconduct, such a dismissal will be with notice.
- 2.14** Employees have the right to appeal against any formal disciplinary sanction imposed. There is, however, no right of appeal against any informal action taken by a school manager.

3. Timescales

- 3.1** All parties to the proceedings have an obligation to co-operate in ensuring that processes and timescales set out in this procedure are followed. Where the handling of the case would be compromised by the need to comply with the timescales and/or in the event more time is needed, the timescales may be extended. In this case the employee must be informed in writing and given the reasons for the timescale extension.
- 3.2** Where a trade union representative or work colleague chosen by the employee (who is the subject of disciplinary action or an investigation) to accompany them at any stage of the formal procedure cannot attend on the date proposed, they should confirm this to the person conducting the hearing and an alternative date should be arranged. This should normally be within 5 working days, beginning with the first working day after the original date proposed by the employer.
- 3.3** The meeting would not normally be postponed a second time and this should be made clear in the communication which is sent agreeing the first postponement. However, where exceptional circumstances are involved, this may be agreed.

4. Right to Representation

- 4.1** Employees who are the subject of disciplinary action/investigation have the right to advice and guidance and to be accompanied/represented by a trade union representative or work colleague at any formal stage of the procedure.
- 4.2** In exceptional circumstances, a representative who is neither a work colleague, nor a trade union representative may be permitted, for example, if there are medical reasons. This will be at the sole discretion of the officer conducting the meeting (i.e. the Investigation Officer for Investigation Meetings, and the Hearing Officer for Disciplinary Hearings). Legal representation, specialist employment law advisors and similar will not be allowed.
- 4.3** Employees and their representatives should be consulted on the timing of meetings/hearings to consider an allegation under this procedure.

5. Application of Procedure

- 5.1** School leadership group staff or school governors who participate in any formal stage of the procedure must have an understanding of the operation and requirements of the Disciplinary Procedure.

6. Role of Personnel Manager / HR Provider.

- 6.1** At all stages in the Disciplinary Procedure, in addition to those stages where there is a specific requirement, the school will seek advice from their HR Provider.
- 6.2** Personnel Manager/ HR Provider role includes the following:
- Providing advice to Headteacher's and school managers on informal action;
 - Provide advice to Headteacher's or Chairs of Governors on taking a decision to suspend an employee;
 - Provide advice to Headteacher's or Chairs of Governors on taking formal disciplinary action, including advice on child protection or other complex cases, framing allegations, disciplinary hearing case documentation;
 - Ensuring that the investigating/hearing officers/appeal hearing governors are aware of the legal aspects and any other sensitive/complex aspects of a case;
 - Advising at disciplinary hearings and/or disciplinary appeals hearings;
 - Advising on letters which confirm the outcome of the hearing;
 - Advising on interpretation of school policy;
 - Monitoring suspensions and progress on disciplinary investigations/hearings to ensure that the process is completed as quickly as possible.
- 6.3** The role of the Personnel Manager at disciplinary/appeals hearings is primarily to provide advice and support to the Investigation/Hearing Officer on procedural matters. The Personnel Manager may also ask questions at disciplinary/appeals hearings to provide clarification.

7. Role of Investigating Officers

7.1 Investigating Officers will be drawn from the school leadership group. There will, however, be exceptional circumstances where it will be necessary to appoint an independent investigating officer. This will be where there are no members of the school leadership group who have not had prior involvement in the matter. Managers should be required to arrange for the following:

- Undertake investigations, prepare reports and draft allegations;
- Ensure that all relevant paperwork and full details of the allegations and witnesses are supplied to the employee;
- Make arrangements for administering the process including arranging for notes to be taken and written up by a clerk;

7.2 Where the responsibility has been delegated to them, the Headteacher should generally hear Disciplinary Hearings.

7.3 School managers should consult with the Personnel Manager before conducting a disciplinary investigation and at all stages of the process.

8. Disciplinary Rules

8.1 The following guide and further details in Appendix 2 are outline situations that could result in disciplinary action being taken. This list is not exhaustive and there may be actions that are not listed, but may nevertheless be the subject of disciplinary action.

8.2 Gross Misconduct

Gross misconduct is defined as misconduct of such a serious nature that the school is justified in no longer tolerating the employee's continued presence at work. Where the allegation is considered to potentially be gross misconduct, then this may result in the employee's immediate suspension from work. If the allegation(s) are proven, then this could result in summary dismissal without notice. Examples of gross misconduct are detailed in Appendix 2 although this is not an exhaustive list. Further information on suspension is provided in paragraphs 9.12 to 9.20 below.

8.3 Other Misconduct

There is also other misconduct, which might be serious enough to merit dismissal where the Hearing Officer decides that no lesser sanction would be sufficient. Misconduct of a serious or repeated minor nature may result in the issuing of a written, final or indefinite final written warning. Examples include, inappropriate behaviour e.g. hostility or rudeness, failure to comply with attendance or time-keeping requirements. Examples of misconduct are contained in Appendix 2.

8.4 Cumulative or repeated acts of misconduct may lead to dismissal with notice in situations where an act of misconduct is committed while an earlier warning is still in force.

9. About the Procedure

9.1 Confidentiality

At all stages of the procedure confidentiality must be observed. Circulation of information will be to those necessary to ensure a fair investigation and hearing. Unnecessary disclosure of confidential information at any stage could itself be a justification for disciplinary action.

9.2 Records

Where a sanction is imposed records of proceedings must be kept on the employees file and managed appropriately. Tape recording of meetings is not permitted. Headteacher's should keep their own records and the Personnel Manager should retain a record and the outcome retained on the employee's personnel file. Retention periods are dealt with later in this procedure.

9.3 Trade Union Representative

Where an employee under investigation is a representative of a recognised trade union, the local Branch Secretary for support staff or regional official for teaching staff, of that union must be informed before proceedings commence, except where immediate action may be required e.g. suspension.

9.4 Discipline and Grievance

Employees cannot generally raise a grievance to complain about or object to the fact that the school may take disciplinary action, including the fact that the school is commencing, or contemplating commencing the investigation stage of the procedure.

9.5 The only exception would be if the grievance was that the disciplinary action amounts to or would amount to unlawful discrimination, or that the true reason for the disciplinary action is not the reason given.

9.6 In such cases, consideration should be given to suspending the disciplinary procedure for a short period whilst this is looked into. The decision about whether or not to suspend the disciplinary action, and for how long, is at the sole discretion of the school.

9.7 In any cases involving the above, advice should be sought from HR Provider before commencing.

9.8 Criminal Offences

Sometimes an allegation about conduct at work or related to work, leads to criminal action against an employee, and/or investigation by the police, or an external agency, and/or an investigation by the Council's Audit and Investigation section. In these circumstances (and subject to the exceptions in paragraph 9.9), the school is not obliged to await the final outcome of the criminal proceedings or of the external investigation, but are strongly advised to consult with the police before beginning disciplinary action.

The school may conduct its own investigation and take its own disciplinary action. The school may, however, choose to await the final outcome of the criminal proceedings or of the external investigation before commencing its

own disciplinary action. In such cases, the delay between the date of the alleged misconduct and the date of the commencement of disciplinary action will not be a reason for the school to forego disciplinary action.

9.9 Allegations of Child Abuse

Notwithstanding paragraph 9.8, and notwithstanding the great obligation on the school to act promptly, there will sometimes be over-riding reasons to delay the commencement of disciplinary action. For example, where there are allegations of abuse against children (whether or not in the course of employment, the needs of the child might have to be addressed and investigated as a priority before disciplinary action is commenced. Procedures for dealing with allegations of child abuse by school based staff are available separately. In every case advice must be sought from the Head of Access and Inclusion who will consult with the Local Authority Designated Officer for Child Protection to assess whether the allegation meets the threshold of significant harm. If so, a child protection strategy meeting will normally be convened.

- **Other Sensitive Allegations**

There may also be specific legislation (for example money laundering or terrorism) which prevents the school notifying the employee of the alleged misconduct. In such cases, the delay between the date of the alleged misconduct and the date of the eventual commencement of the disciplinary action will not be a reason for the school to forego disciplinary action.

9.10 Criminal acts committed or alleged to have been committed, other than in the course of employment, may warrant disciplinary action where the offence affects the interest and/or reputation of the school, and/or the performance of the employee's contract of employment, or where the existence of the charge would seriously undermine the trust and confidence the employer must have in the employee.

9.11 Where disciplinary issues arise involving potential or actual criminal offences, advice will be sought from the school's HR Provider prior to making a decision.

9.12 Suspension

Suspensions must be authorised and carried out by Headteacher's (or their designated deputy when the Headteacher is not on site) or the Chair of Governors. Where this is not possible, for example, where it may prejudice an investigation, then he/she should be given general or broad reasons. The employee should be told that suspension is a neutral act.

9.13 An employee may be transferred to other duties or suspended from duty during formal disciplinary proceedings. Where there is a possibility of a charge or dismissal for gross misconduct or where there has been a serious breakdown in relationships, or where it may not be suitable for the employee

to remain at work i.e. if their presence at work potentially puts others at risk, then suspension would be appropriate. Decisions on this should be made by the Headteacher or Chair of Governors.

- 9.14** Alternatives to suspension must be considered where feasible, for example, transferring the employee to another workplace, working from home, or special leave. Consideration should also be given to the potential detrimental effect of suspension on both the employee and the service. The reason as to why suspension is considered appropriate should be provided to the employee.
- 9.15** The suspension should be confirmed in writing within two working days of the act of suspension, with the reasons for the suspension.
- 9.16** Consideration should be given to suspending an employee from any other positions a person may hold with the Council or Ealing schools, although alternatives to suspension must be considered as detailed above. The Personnel Manager will check whether an employee holds more than one contract of employment with the Council or Ealing schools.
- 9.17a -** If it is known that an employee is a trade union member, all reasonable steps should be taken to notify the employee's trade union representative prior to the suspension.
- 9.17b -** Reasonable efforts must also be made to enable the trade union representative colleague to accompany the individual, although this will not always be possible. The Personnel Manager should be present at the suspension meeting.
- 9.18** Suspension is a neutral act and should not be used as a punishment. An employee who is suspended pending a disciplinary investigation will be suspended on full contractual pay. NB: Full contractual pay" means basic salary, contractual overtime and any contractual allowances but does not include voluntary overtime. This may also: include any authorised deductions (e.g. for payment of rent etc) and/or be at half or nil pay in accordance with the schools sick pay scheme and/or be at a rate of pay appropriate to any contractual variation in effect at the time.
- 9.19** All suspensions must be reviewed by the Headteacher or Chair of Governors after 20 working days. Thereafter, a suspension must be reviewed every 20 working days and a written explanation provided for the continuation of the suspension, if the employee (or their representative) requests it. The Headteacher or Chair of Governors with the Chair of Governors authorisation must act promptly to lift the suspension if it becomes clear that there is no longer a justification for suspension (whether or not the disciplinary action is to continue).
- 9.20** Employees who are suspended will not be permitted to enter the school site except by prior agreement with the Headteacher or Chair of Governors. They must also not contact work colleagues during working hours by any means or for any reason, unless they have express written permission from the school

to do so. Employees must make themselves available as required during normal working hours and comply with the schools policies and procedures, e.g. sickness and leave arrangements.

10. Informal Action

- 10.1** The following section deals with minor disciplinary issues and should not be used for cases involving serious or gross misconduct, where formal action should be instigated immediately. Performance issues should be dealt with under the schools Capability Procedure.
- 10.2** Cases of minor infringement of rules and standards should be dealt with through counselling, management guidance, informal warnings, instructions and training; rather than the formal Disciplinary Procedure. The Line Manager should confirm informal discussion and actions to the employee in writing.
- 10.3** Before taking any formal disciplinary action, if appropriate, line managers should initially try and resolve the matter informally through discussions with the employee as part of their day-to-day management responsibilities. For example, this may involve counselling, training, setting clear standards for attendance and conduct and so on.
- 10.4** Where improvement in attendance or conduct is required, the employee should be told what standards are expected, how this will be reviewed and over what time period. Any informal disciplinary discussions should be noted, with a copy given to the employee concerned. Employees should also be made aware of what action could be taken if they fail to improve. A trade union representative or work colleague may attend with the employee, if desired.
- 10.5** If the employee subsequently achieves the required improvements, then the employee should be informed of the need to maintain that improvement. A copy should be placed in his/her personnel file. The employee may comment on the content of the note if he or she wishes, and this should also be placed in the personnel file. This note will be disregarded after a period of 6 months.
- 10.6** Where the required improvement is not reached or maintained, then the informal action may be referred to in any formal action subsequently taken under either the schools disciplinary or capability procedures.
- 10.7** If during an informal meeting it becomes clear that the matter is more serious than first thought, the meeting should be adjourned and a decision made as to whether formal action should be taken immediately. Managers should speak to the Headteacher who will seek further advice at this stage.

The employee should be kept informed of any decisions and advised of any timescales.

- 10.8** Any informal action of a related nature can be referred to if the matter is subsequently referred for formal action under this procedure.

11. Formal Action

- 11.1** The formal procedure is designed to be used only if attempts to resolve potential problems through normal supervision and discussion or informal action has been unsuccessful, or in cases of more serious misconduct. The object is to provide a framework for dealing with employees in a fair, equitable and expeditious manner.

11.2 Misconduct

Disciplinary action may be taken for misconduct and gross misconduct, examples of which are included in Appendix 2. The lists are not exhaustive.

11.3 Minor Misconduct – Informal Verbal Warning Procedure

If despite informal discussions, conduct does not meet acceptable standards, employees may be given a verbal warning. An informal verbal warning may also be given if appropriate, as a sanction for minor forms of misconduct without prior warning.

- 11.4** The employee's Line Manager should arrange to interview the employee concerned on a one to one basis (see procedure to the meeting in Appendix 1). An employee has the right to be accompanied by a trade union representative or work colleague.

- 11.5** If the outcome of the meeting is that a verbal warning should be given, then the manager will advise the employee of the reason for the warning, that the warning is the first stage of the disciplinary process, the improvements required and any time periods.

- 11.6** Employees should also be advised of their right to appeal against the decision to the Headteacher, or if the Headteacher made the decision, to the governing body appeal panel, within 5 working days of the verbal warning being given.

- 11.7** A brief note of the warning will be kept on the employee's personnel file and a copy given to the employee. However, the warning will lapse after six months, subject to a satisfactory conduct.

- 11.8** If the misconduct persists managers should consult the Headteacher and the Personnel Manager with a view to proceeding with formal action, as excessive use of verbal warning must be avoided.

- 11.9** Where a manager becomes aware of alleged or suspected serious misconduct by an employee, it should be reported to the Headteacher and advice must be sought on this matter. In all cases an investigation should be carried out. Suspension should also be considered where appropriate (see paragraphs 9.12 and 9.20 above).

12. Disciplinary Investigation

- 12.1** The Headteacher will appoint a person to investigate normally within 5 working days of the initial referral. It is important that investigations are undertaken promptly. The investigating officer must have had no prior involvement in the matter.
- 12.2** The investigating officer will usually be the employee's manager (or a member of the schools leadership team) although the school has the right to appoint any suitable employee, or in exceptional cases, a suitably qualified third party. Employees are required to co-operate with any investigation and, if requested to do so, attend an investigation meeting at which they may be represented by a trade union representative or work colleague.
- 12.3** The Personnel Manager should also ensure that the investigating officer is advised on any legal aspect or other sensitive aspects of the case.
- 12.4** Managers must consider whether any reasonable adjustments need to be made to the disciplinary process and appropriate arrangements made to meet any special needs. For example, an employee with a learning disability may ask if a friend can attend the hearing. It is permitted as a reasonable adjustment.
- 12.5** The purpose of the investigation is to establish:
- the nature of the alleged misconduct;
 - The employees response;
 - Any supporting evidence and,
 - Whether or not there is a case to answer;
- 12.6** The investigating officer will make a recommendation either that specific allegations should be dealt with at a formal hearing, or that there should be no formal disciplinary action.
- 12.7** In all cases, the investigating officer conducting the investigation should be as objective as possible and not pre-judge the issues of the case. The investigating officer will also need to determine whether any other parties should be involved such as Audit and Investigation Officers or the police and liaise with them accordingly.

- 12.8** The investigating officer should interview all the parties involved separately. Statements should be obtained from witnesses at the earliest opportunity and records kept of what was said. Where reasonably possible, notes of what was said will be supplied to the interviewee(s) who will be invited to confirm their agreement. However, the investigating officer can refer to the notes even if it is not reasonably possible to send copies to the interviewees, or if the interviewee fails to confirm agreement. Where the interviewee seeks to amend the note of what was said, then the investigating officer's report will comment on whether he/she agrees that the interviewee's amendment is merely correcting an inaccuracy in the original notes, or in the investigating officer's opinion, providing new evidence.
- 12.9** It may be necessary to interview parents or other members of the public, the police, children or vulnerable clients, audit and investigation etc. In such cases advice should be sought on the matter. Where it is necessary to interview children parental consent must first be obtained. When investigating allegations of child abuse the investigating officer should be informed of the outcome of any child protection strategy meetings in order that any recommendations made can be taken into account in the disciplinary investigation e.g. allegations dealt with under the procedure for dealing with allegations of child abuse against school staff. The investigating officer should ensure that any enquiries are not open to subsequent charges of collusion. For example, it is inappropriate to talk to individuals informally about an alleged incident and then send them away to think about it before taking a formal statement. It is also important that witnesses are interviewed separately.
- 12.10** The investigation should be completed as soon as possible, after the alleged misconduct depending on the complexity of the case, and the availability of witnesses and evidence. Except in exceptional circumstance, it should normally be completed within 20 working days, following appointment of the investigating officer. The outcome of the management investigation should be discussed with the Headteacher. Where it has not been possible to interview the employee during the investigation, then the investigating officer should consider deferring production of the report for a short while until that has been done. However, while the investigating officer will normally meet the employee that is not always essential. In particular, if there is evidence that the employee would be unable to attend a meeting in the immediate future, then it is permissible for the investigating officer to finalise their report in the absence of a meeting. In such cases, the employee should have the opportunity to make written representations if practical.
- 12.11** The investigating officer will draw up a report of the investigation and provide a recommendation as to whether or not they feel there is a case to answer. If there is a case to answer then a disciplinary hearing will be convened. This should normally be completed within 10 working days. If as a result of the investigation it is found that formal disciplinary action is not appropriate, the Headteacher (or Chair of Governors in cases involving the Headteacher) should decide whether any other action is necessary in accordance with school procedures or other guidelines (e.g. Medical Capability Review). The

employee should be notified of any decision in writing, normally within 5 working days of the completion of the decision.

12.12 If no further action is taken, records of the investigation will be removed from the employee's personnel file, except where there are allegations involving children, in which case the paperwork will be retained at least until the person reaches normal retirement age or for a period of 10 years from the date of the allegation if that is longer (in accordance with DCSF guidance). A copy of the investigation itself will be retained by the Headteacher and kept in accordance with all other employee relations' cases.

12.13 The investigating officer's report should set out the allegations. These should set out in detail every aspect of the misconduct, including the type of misconduct (see Appendix 2; times and dates, and where appropriate, refer to the standard the employee is alleged to have breached (for example, by referring to relevant sections of the School Code of Conduct).

13. Disciplinary Hearing

13.1 If the investigation confirms that there is a case to answer, then a disciplinary hearing will be arranged. The Headteacher should report the decision to the Chair of Governors. The Chair of Governors should then consider whether it is appropriate for the Headteacher to hear the matter of whether any aspect of Appendix 5 applies. The hearing will normally be arranged within 10 working days of the investigation being completed. Governing body disciplinary panel hearings may however take longer to arrange. The Headteacher will hear the case (except in cases involving the Headteacher) and will make the arrangements to hold the hearing with advice from the Personnel Manager/HR Providers. It is important that the Hearing Officer is impartial and has not had any previous involvement in the case.

13.2 Arrangements to hold a disciplinary hearing will then be made in accordance with the following paragraphs.

13.3 The Headteacher will make arrangements for a clerk to attend and to take notes on their behalf, a copy of which will be made available to the employee.

13.4 The Personnel Manager/HR Provider may attend to provide advice on procedure and practice to the Headteacher or governing body disciplinary panel, and ask questions for clarification where appropriate.

13.5 The investigating officer will normally present management's case at the disciplinary hearing.

13.6 The Headteacher must have had no prior involvement in the investigation and the investigating officer, Personnel Manager/HR Advisor, clerk or employees representative, should not be anyone who is implicated in the case.

13.7 The Headteacher must inform the employee by letter, at least 5 working days before the hearing of the following:

- The date, time and place of the hearing;
- The details of the alleged misconduct including whether it is deemed minor, serious or gross as well as the possible consequences including where relevant dismissal;
- The identity of the manager who will be presenting the case;
- The right to be accompanied by a trade union representative or work colleague;
- The right to call witnesses and to produce relevant information;
- Enclose a copy of the disciplinary procedure (Appendix 3), together with any supporting evidence (including the report of the investigating officer) if the case is particularly lengthy or complex then longer notice should be given;
- Notification that the investigation officer may call some or all of the witnesses who are referred to in the report. If the employee specifically wants to question any witnesses, then the employee should notify the Headteacher or governing body disciplinary panel chair and the investigating officer immediately, who may then choose to invite that witness to attend.

13.8 An employee may choose to submit written evidence prior to the disciplinary hearing. This must be provided to the Headteacher or governing body disciplinary panel chair and officer presenting the case at least 3 working days before the date of the disciplinary hearing, and include the names of any witnesses the employee proposes to call.

13.9 Evidence produced later than the timescales mentioned above will not necessarily be considered. The Headteacher or governing body disciplinary panel chair has discretion to allow evidence that has been submitted late in exceptional circumstances, having heard representations from both parties, and having taken into account the reasons for the delay, the importance of the evidence and whether or not a short postponement would be a fair and practical alternative to complete exclusion of the evidence.

13.10 Non-Attendance by Employee

If the employee does not attend the disciplinary hearing, the hearing may either proceed in their absence or be adjourned, taking into account the reasons for the non-attendance. **If the reason for not attending is non-availability of an employee's representative refer to paragraphs 3.2 and 3.3 of this procedure.**

13.11 If non-attendance is due to a medical reason, the employee must inform the hearing officer as soon as possible. Written confirmation together with a medical certificate must be submitted. The employee may also be referred to Occupational Health to ascertain whether they are fit to attend the hearing.

13.12 If it is decided to adjourn the disciplinary hearing, the hearing will be rearranged. If the employee again fails to attend, the hearing will normally go ahead in their absence after considering all the circumstances of the case. This should be confirmed in the letter to the employee setting out details of the reconvened hearing. Where an employee is unable to attend, they may arrange for representation at the hearing in their absence, or make written submissions.

13.13 Disciplinary Hearing Procedure

The disciplinary hearing will be conducted in accordance with the arrangements set out in Appendix 3. The Headteacher or governing body disciplinary panel chair should ensure that all the relevant facts have been presented by both parties prior to summing up and may decide that further information/witnesses are required. The Headteacher or governing body disciplinary panel chair may adjourn the hearing where appropriate for any reason. The parties will be given reasonable notice of the hearing being reconvened, and at least 5 working days notice of this. The Headteacher or panel chair will make the final decision on any matters raised at the hearing.

13.14 Decision

A decision will be taken following careful consideration of the evidence provided by both parties. Following completion of the disciplinary hearing, all parties other than the Headteacher or panel chair, the Personnel Manager/HR representative and the note taker will withdraw.

- If a decision is reached quickly, the Headteacher or panel chair may recall the parties to give this decision orally, and confirm in writing, within 5 working days of conclusion of the disciplinary hearing.
- If a decision is delayed or postponed, the Headteacher or panel chair will inform the parties of the decision in writing, within 5 working days of conclusion of the disciplinary hearing. Ideally the notes of the disciplinary hearing should accompany the letter, however, if these are not available they should be sent as soon as possible.

13.15 Disciplinary Measures/Outcomes

Disciplinary measures/outcomes that may be reached are as follows:

a. No Disciplinary Action to be Taken

All correspondence relating to the hearing should be removed from the individual's personnel file. The only exception being cases where there are allegations involving children in which case the paperwork will be retained in accordance with 12.12. The employee concerned and manager presenting the case should still receive confirmation of the outcome in writing, but should be advised, where appropriate, that no record (other than the above) has been kept on the personnel file.

b. A Formal Warning

This will be recorded and the employee should be advised that any further disciplinary lapse could result in further disciplinary action including dismissal. In reaching a decision about which sanction to apply, the Headteacher or disciplinary panel should take into account all of the circumstances of the case.

c. A Final Written Warning

The employee should be advised that any further disciplinary lapse could result in further disciplinary action, including dismissal. In exceptional

circumstances, an indefinite final written warning may be given (see paragraph 13.17 below).

d. Relegation to a Lower Point Within the Employee's Grade

Where a member of support staff is considered to be blameworthy of (an) allegation(s) but there are deemed to be mitigating circumstances to justify disciplinary action short of dismissal, the sanction may be relegation (downgrading). The relegation could also be accompanied by a transfer to a new work area/job and payment will be commensurate to the grade of the new post. The date this will take effect from should be provided.

e. A combination of (b) to (d) and above.

f. Demotion and/or Transfer (as an Alternative to Dismissal) to a Similar or Lower Graded Post

A transfer may be considered appropriate in circumstances where it would not be appropriate to allow the employee to return to their former work area. In cases of gross misconduct this would only be appropriate if there is substantial mitigation. A transfer would normally be accompanied by a written warning. Before reaching such a decision, the Headteacher or disciplinary panel must be content that there is a suitable vacancy into which the employee can transfer. For support staff payment would be made at the grade or pay rate applicable to the new job and not the rate applicable to the employee's previous job. If the employee refuses to accept the new employment then the original dismissal will stand. Where demotion or transfer or a member of support staff is proposed as an alternative to dismissal, payment will also be made at the rate applicable to the new job. An employee's refusal to accept such an offer will result in dismissal. If gross misconduct, then dismissal will be without notice and in all other cases dismissal with notice.

g. Dismissal With or Without Notice

Dismissal is an appropriate sanction for very serious misconduct or for further misconduct after previous warnings. Other than for gross misconduct, dismissal is without notice. In cases of gross misconduct, the school has the right to dismiss summarily (i.e. without notice).

13.16 Live Warnings

Warnings will cease to be "live" following the specified period of satisfactory conduct, except in cases involving children or other vulnerable clients (see paragraph 12.12). They will be disregarded for future disciplinary purposes only, but will be retained on an employee's personnel file for 5 years, following which they will be expunged. The following time periods shall apply to formal warning and in the event that an employee leaves the school, it will expire after the same time period:

- Formal verbal warnings will be disregarded after 6 months of satisfactory conduct;
- Formal written warnings will be disregarded after 12 months of satisfactory conduct;

- Formal final written warnings will be disregarded after 18 months of satisfactory conduct;

13.17 In all cases where a formal verbal or written warning is given to an employee, the employee will be notified in writing of the period over which the warning will be regarded as "live". A spent warning should be disregarded only for the purpose of future disciplinary proceedings. For other managerial purposes (e.g. appointments including promotions and secondments, references), the warning would remain on the record and be taken into account as appropriate for a period of 5 years, after which it will be expunged.

13.18 Written Notification

The letter to the employee should normally be sent within 5 days of the disciplinary hearing, together with a copy of the notes of the hearing. The outcome letter must set out the following, if relevant:

- The reason for the decision and the disciplinary sanction; covering details of the allegations, including which were upheld and why, the factual issues covered, how the decision was reached, which version of events was preferred and why this was;
- The implications and consequences of future misconduct;
- Recording arrangements for disciplinary warnings;
- The date (if any) from which any written warning or final written warning will be disregarded for the purposes of this procedure (in exceptional circumstances such warnings may be effective indefinitely);
- The effective date of dismissal;
- The right of appeal and,
- Any further action required, including the lifting of suspension (where appropriate) and date of return to work, relegation, training, standard setting etc.

14. Appeals

14.1 The appeal stage forms part of the statutory procedure and, whilst there is no compulsion on an employee to appeal, an employee has the right of appeal against disciplinary action taken under this procedure. An employee may appeal for a range of reasons, including:

- The process followed was flawed; the disciplinary sanction was not appropriate and/or reasonable in all the circumstances and/or;
- New evidence has come to light.

14.2 The intention to appeal must be registered within 5 working days of the date of the letter informing the employee of the outcome of the disciplinary hearing, and should be sent to the Headteacher. The grounds for the appeal, specifying the reasons should follow within a further 10 days (i.e. within 15 days of the date of the outcome letter), if not received within this timescale then the employee will be deemed to have failed to appeal and no further action will be taken in relation to the notice of appeal. If the employee wants

a short extension of time for lodging the full grounds of appeal, then the employee must make a written request with reasons within the time limit. The request will normally be granted where there is good reason. The duration of the extension will be at the discretion of the chair of the appeal panel, but will not normally be longer than 20 working days.

14.3 Appeals against disciplinary action will be heard by the governing body appeal panel. This should be a panel of three governors who have not previously been involved in the case (see Appendix 6).

14.4 If an employee lodges an appeal against dismissal, then the employee will not be reinstated, nor be entitled to have the termination date delayed, pending the outcome of the appeal hearing.

14.5 Timing of Appeal Hearing

The appeal hearing will be normally held no later than 20 working days from receipt of the notice of appeal or of the full grounds of appeal. The employee and (if appropriate) their representative, will be given at least 5 working days written notice of:

- The date, time and place of the hearing;
- Details of the panel hearing the appeal;
- The employee's right to attend and be represented at the appeal by a trade union representative or work colleague.

14.6 Provided the employee has been given the appropriate notice of the date of the hearing, the appeal may be considered on the basis of the available evidence in the absence of the individual where no reasonable excuse has been provided.

14.7 Appeal Hearing Procedure and Process

Appeal hearings will be conducted in accordance with the arrangements set out in Appendices 4 and 5. The appeal hearing will take the form of a review of the original hearing and not a full rehearing of the issues. The appeal hearing should address the arguments set out in the grounds of appeal and determine whether the decision made at the original hearing was reasonable in all the circumstances.

14.8 The Headteacher or chair of the original disciplinary hearing will prepare a statement in response to the employee's submission. This should be provided to the employee within 10 working days of receipt of the notice of the appeal or of the full grounds of the appeal, if sent later. If further clarification or elaboration is considered necessary, either or both parties will be asked to provide this information, at least 2 working days before the appeal hearing.

14.9 Outcomes

Possible outcomes of Appeal Hearing considering appeals against a warning:

- A decision to uphold the employee's appeal and either revoke the decision completely or impose a lesser sanction;

- Deny appeal and confirm decision to issue reprimand, warning or withhold annual increment;
- Submit case back to employing department for a new hearing.

14.10 The decision of the governing body appeal panel will be final.

14.11 Possible outcomes of appeal hearing considering appeals against demotion or dismissal are:

- An adjournment to allow for additional evidence and/or witnesses and/or information to be made available;
- A decision to uphold the employee's appeal and either revoke the decision completely or impose a lesser sanction;
- To make any other appropriate recommendation;
- Any combination of the above, or;
- To submit the case back for a new hearing by a newly constituted governing body disciplinary panel (in the event that the panel believe that a disciplinary hearing was so faulty as to render the decision unsafe or that important evidence was either not available or not appropriately considered at the original hearing, and feel unable to rehear the case and/or substitute a new decision for the original then the case may be remitted for a new hearing subject to the agreement of all parties to cooperate) or;
- To deny the appeal and confirm the relegation/dismissal.

The appeal panel will not, however, be empowered to impose a more severe penalty that was imposed at the original disciplinary hearing.

14.12 The decision of the governing body appeal panel will be final.

14.13 Notification of Decision

The decision will be given orally on the day of the hearing, unless it is not practical to do so. In all cases, the decision of the appeal will be confirmed in writing within 5 working days of the conclusion of the hearing.

14.14 Where the disciplinary action is rescinded, all records will be removed from the employees personnel file and destroyed except in cases involving children and other vulnerable clients. A copy of the investigation will be retained in accordance with the school's record keeping practices.

15. Monitoring and Review

This procedure will be reviewed on a regular basis and changes and improvements made where necessary by the school. The employees and recognised trade unions will be consulted on any proposed changes to this procedure.

1. Initial Disciplinary Action – Informal Verbal Warning

- 1.1** It is important that minor incidents of misconduct or poor working practice are dealt with quickly as soon as they arise. Firstly, so the employee is made aware of the problem and given the opportunity to correct it, thus removing the need for further formal disciplinary action. Secondly, should there be further incidents it can be demonstrated that the employee's attention has been drawn to the problems and the expected standards explained to them.
- 1.2** Action taken can be in the form of an informal verbal warning that sets out what standards are required of the employee, depending on the nature and extent of the problem.
- 1.3 Procedure**
An informal verbal warning is appropriate for isolated or minor incidents of misconduct. In relation to the process, the employees' line manager should arrange to interview the employee concerned on a one to one basis. An employee has the right to be accompanied to this meeting by a trade union representative or work colleague.
- 1.4 Meeting**
The procedure for the meeting should take place as follows:
- 1.5** At the outset of the meeting, the manager should advise the employee of the reason for the discussion and reminded of the standards expected of him/her for improvement in working practices, attendance or conduct e.g. lateness, failure to follow procedures etc. Where appropriate, issue an informal verbal warning, advising him/her that any further incidents could lead to further formal disciplinary action being taken. The manager should try and establish why this breach has occurred and explore any underlying reasons for the misconduct/poor working practices with the employee and provide support as appropriate e.g. training or coaching.
- 1.6** The employee should be told the period of time the school intends to allow for improvement of conduct and what will happen if they do not improve within this period. If appropriate, the employee should be advised that it might be necessary to proceed to the next stage of the formal disciplinary procedure.
- 1.7** A record should be kept of the informal verbal warning and any actions recommended should be confirmed to the employee in writing and a copy placed in the employees personnel file. The employee may comment on the

content of the note if he/she wishes and this should also be placed in the personnel file.

- 1.8** If the required standards are reached then this should be confirmed in writing to the employee and a copy placed in the personnel file for six months. If the required standards are not reached/maintained, then the manager may issue a further informal verbal warning or proceed to other formal disciplinary action as appropriate.
- 1.9** Verbal warnings and standard setting letters may be used as evidence in formal action taken under either the disciplinary or capability processes and procedures.
- 1.10** **Appeal Process**
The employee must appeal within 5 working days of the informal verbal warning being given to the Headteacher.
- 1.11** Any appeal must be in writing and clearly state the reasons. Employees cannot appeal against the right of the manager to issue a verbal warning, only about whether the warning was justified in all the circumstances.
- 1.12** The appeal hearing should take place within 14 days of receipt of the full grounds of appeal.

Types of Misconduct

Gross Misconduct

If an employee is found guilty of gross misconduct then the normal consequence will be dismissal without notice. Offences of the following nature are likely to amount to gross misconduct.

- Serious failure to comply with or operate the Schools Equality and Diversity policies. Examples include: serious acts of discrimination, harassment, or verbal abuse against employees, clients, parents or members of the public on grounds of race, sex, disability, age, sexual orientation or religious beliefs, the display or circulation within the workplace or school community of any literature or material (such as pornographic or racist materials) via any medium that could offend other persons;
- Serious bullying or harassment;
- Serious infringement of the schools Health and Safety policy, procedures or guidance;
- Serious failure to comply with or operate the schools Code of Conduct e.g. holding unauthorised paid employment during paid school time; conducting inappropriate relationships with vulnerable clients; not declaring a personal interest which may infringe the employees impartiality;
- Serious negligence that causes or might cause unacceptable loss, damage or injury;
- Bringing the reputation of the school or Council into serious disrepute;
- Incapability whilst on duty brought on by alcohol or illegal drugs;
- Serious failure to comply with or operate the school information systems and security standards e.g. gaining unauthorised access to passwords and breaches of the use of the email and internet policy including emails with pornographic attachments;
- Serious breach of financial regulations or procedures;
- Unauthorised removal, possession, use or theft of property belonging to the school, an employee, client, parent or member of the public;
- Acts of violence including the assault of an employee, client, parent or member of the public during working hours or in connection with their employment of work;
- Falsification of qualifications or information to obtain employment with the school, or which are a statutory or essential requirement of employment, or which result in additional remuneration;
- Deliberate falsification of records i.e. attendance sheets, timesheets, subsistence and expense claims etc;
- Acceptance of bribes or other corrupt or fraudulent practices;

- Defrauding the school, the Council, or any other Council e.g. in relation to housing or council tax benefit, grants and housing property;
- Disclosure of highly confidential matters to public sources or the deliberate unauthorised use or disclosure of any information or computer generated information from which a living individual can be identified (Subject to the Public Interest Disclosure Act 1998);
- Committing a criminal or civil offence at or away from work that renders the employee unsuitable to remain in the school's employment or which may seriously damage the school's reputation. Or where there are reasonable grounds to believe that a serious criminal offence has been committed which may be connected or unconnected with their employment.

Other Types of Misconduct

Other types of misconduct are listed below (the list is not exhaustive). These will usually result in a sanction that is less than dismissal, but dismissal may sometimes be the result depending on the circumstances and/or in cases where the misconduct is repeated.

a. Attendance and Time-Keeping

Failure to comply with attendance and time-keeping requirements. Failure to follow procedures for booking and returning from leave; persistent absence and/or excessive absence without medical reason.

b. Telecommunication Related Issues

Abuse of telephone, fax, e-mail or internet for personal reasons; inappropriate use of e-mail or internet (gross misconduct in serious cases). Recording conversations or meetings without having been given permission by the employee/manager concerned.

c. Behaviour

Failure to follow a legitimate management instruction; prolonged time wasting. Inappropriate behaviour towards a colleague, manager, pupil, or person in the care or charge of the school, parent or member of the public (gross misconduct in serious cases).

d. Poor Working Practices

Failure to maintain proper records; failure to follow school procedures e.g. financial regulations, safety standards.

e. Malicious Complaints/Grievances Made Against Another Employee or Manager (gross misconduct in serious cases)

Other breaches of the school's Code of Conduct.

Procedure to be Followed at Disciplinary Hearings

- 3.1** The Headteacher or chair of the governing body disciplinary panel will invite both parties into the room at the same time, introduce all parties present and explain the purpose of the hearing. Both parties should be asked if they intend to bring witnesses, although failure to name witnesses at this stage does not mean that they cannot be called later within the hearing.
- 3.2** The employee will then be asked to state whether he/she admits or denies the allegations.
- 3.3** **Where Employee Admits the Allegations**
If the employee admits the allegations, the employee will be invited to present any mitigating circumstances to the Headteacher/Disciplinary Panel. The presenting manager, the Headteacher or panel members and the Personnel Manager may then ask questions of the employee in turn.
- 3.4** In addition, the Headteacher/Disciplinary Panel may require that witnesses/evidence should be called/produced in order to ensure that all the necessary facts can be considered before making a decision on the case. The Headteacher/Disciplinary Panel may decide to adjourn the hearing to allow for this if necessary.
- 3.5** It is for the Headteacher/Disciplinary Panel to manage the process and intervene where appropriate.
- 3.6** **Summing-Up Stage**
Both parties will then have an opportunity to sum up, with management summing up first, followed by the employee/representative. This summing up may take into account statements made during the proceedings, but may not introduce new evidence.
- 3.7** **Deliberation**
The Headteacher/Disciplinary Panel will then ask both parties to withdraw apart from the Personnel Manager and note taker. The Headteacher/Disciplinary Panel should indicate to the parties whether they should wait to be recalled for the decision. The Headteacher/Disciplinary Panel should then reach a decision on the basis of the evidence presented in the course of the hearing with advice from the Personnel Manager/HR Provider as necessary.
- 3.8** **The Decision**

The Headteacher/Disciplinary Panel chair may give the decision verbally at the end of the hearing or in writing later. In any event the decision must be confirmed in writing, within 5 working days of the hearing, to the employee and copied to their representative and to the manager presenting the case. The Personnel Manager will provide advice on the content of the outcome of the letter.

3.9 Where Employee Denies Allegations Management Presentation with Witnesses

The management representative will present the case.

3.10 The other parties may ask questions on the presentation in the following order:

- Employee and/or trade union representative/work colleague;
- Headteacher/Disciplinary Panel members;
- Personnel Manager/HR Provider

3.11 The manager presenting the case will then call witnesses.

3.12 The other parties may ask questions of the witnesses in the following order:

- Employee and/or trade union representative/work colleague;
- Headteacher/Disciplinary Panel members;
- Personnel Manager/HR Provider

3.13 Employees Presentation with Witnesses

Following completion of the management case, the presentation is then reversed, with the employee and/or trade union representative/work colleague having the chance to put their case. Questions may be asked on this presentation by the presenting manager, the Headteacher/Disciplinary Panel members and the Personnel Manager in that order.

3.14 The employee/trade union representative/work colleague will then call witnesses. The Headteacher/Disciplinary Panel chair will explain to the witness the procedure to be followed. The employee/trade union representative/work colleague may then ask questions of the witness. The other parties may ask questions in the following order:

- Manager presenting the case;
- Headteacher/Disciplinary Panel
- Personnel Manager/HR Provider

3.15 Following questioning by the other party, the witnesses may be re-examined once more by the manager, employee (trade union representative/work colleague), Headteacher/Disciplinary Panel members or Personnel Manager. If necessary, to clarify any points raised during the cross-examination.

3.16 It is for the Headteacher/Disciplinary Panel chair to manage the process and intervene where appropriate.

- 3.17** Once each party has completed their questioning, witnesses should not normally be recalled. However, the Headteacher/Disciplinary Panel has the right to recall witnesses or seek further information if this is required. If this does happen, both sides should be recalled into the hearing.

In addition, the Headteacher/Disciplinary Panel may require that other witnesses/evidence should be called/produced in order to ensure that all the necessary facts can be considered before making a decision on the case. The Headteacher/Disciplinary Panel may decide to adjourn the hearing to allow for this if necessary.

3.18 Summing-Up Stage

Both parties will then have an opportunity to sum up, with management summing up first, followed by the employee/representative. This summing up may take into account statements made during the proceedings, but may not introduce new evidence.

3.19 Deliberation

The Headteacher/Disciplinary Panel will then ask both parties to withdraw apart from the Personnel Manager and note taker. The Headteacher/Disciplinary Panel should indicate to the parties whether they should wait to be recalled for the decision. The Headteacher/Disciplinary Panel should then reach a decision on the basis of the evidence presented in the course of the hearing with advice from the Personnel Manager as necessary.

3.20 The Decision

The Headteacher/Disciplinary Panel chair may give the decision verbally at the end of the hearing or in writing later. In any event the decision must be confirmed in writing, within 5 working days of the hearing, to the employee and copied to their representative and to the manager presenting the case. The Personnel Manager will provide advice on the content of the outcome of the letter.

The Disciplinary Appeal Process

- 4.1** The intention to appeal must be notified to the Headteacher within 5 working days of the date of the written confirmation of disciplinary action. The Headteacher will arrange for a hearing of the governing body panel to take place following receipt of the full grounds of appeal.
- 4.2** The appellant must then provide a written statement outlining in detail the grounds of the appeal against the decision together with any supporting documentation within 15 working days of receipt of the written confirmation of the disciplinary action. The appellant should clearly state with full reasoning, the basis on which he/she believes the decision to be at fault (i.e. why he/she believes that the procedure was incorrectly applied and/or that the evidence did not substantiate the allegations and /or that the sanction is too severe and/or that specific relevant evidence was not available or was not taken into account at the original hearing). No hearing shall be arranged until such a detailed statement has been received.
- 4.3** If further information, clarification or elaboration in support of the case is considered necessary, then the appellant will be asked to provide this information at least 3 clear working days before the date set for the appeal hearing if it is to be used. A hearing will be arranged and the employee notified of the date, time and place of the hearing.
- 4.4** The employee shall be given notice in writing at least 5 working days in advance of the time and place of the hearing that: he/she shall be allowed to be represented by his/her trade union representative, a work colleague or other representative of his/her choice and; may call witnesses and; refer to previously submitted documents relevant to his/her appeal; at the hearing. The employee will also be informed of the case and the he/she should restrict his/her presentation to arguments about the reasonableness of the decision and/or procedural faults of failure.
- 4.5** The governing body appeal panel should ensure that there is a clerk to take notes. The appeal panel chair will invite the parties into the room, introduce all parties present and explain the purpose of the hearing. The appeals process will not normally take the form of a rehearing and witnesses will be allowed with the permission of the hearing officer and where it is relevant to the issue of the appeal. Both parties should therefore be asked if they intend to bring any witnesses. Failure to name witnesses at this stage does not mean that they cannot be called later within the hearing.

- 4.6** The management representative(s) will present his/her justification of the disciplinary decision, in the presence of the appellant and his/her representative. The management representative(s) may also call witnesses to the appeal hearing.
- 4.7** The appellant (or his/her representative) will then have the opportunity to ask questions of the management representative on the evidence given by him/her and any witnesses who he/she may call.
- 4.8** The members of the panel may ask questions of management's representatives and witnesses.
- 4.9** The appellant (or his/her representative) will present his/her case against the reasonableness of the disciplinary decision in the presence of the schools representative and to call such witnesses as he/she wishes.
- 4.10** The management representative will then have the opportunity to ask questions of the appellant and his/her witnesses.
- 4.11** The panel may ask questions of the appellant and his/her witnesses.
- 4.12** The management representative and the appellant (or his/her representative) will then have the opportunity to sum up their case if they so wish.
- 4.13** The panel supported by the Personnel Manager will deliberate in private, only recalling the management representative and the appellant to clear points of uncertainty on evidence already given. If recall is necessary both parties are to return notwithstanding only one is concerned with the point giving rise to doubt.
- 4.14** Course of action open to the appeal panel are:
- An adjournment to allow for additional evidence and/or witnesses and/or information to be made available;
 - A decision to uphold the employee's appeal and either revoke the decision completely or impose a lesser sanction;
 - To make any appropriate recommendation;
 - Any combination of the above or;
 - To submit the case back to the Headteacher for a new hearing (in the event that the panel believe that a disciplinary hearing was so faulty as to render the decision unsafe or that important evidence was either not available or not appropriately considered at the original hearing and feel unable to rehear the case and/or substitute a new decision for the original then the case may be remitted for a new hearing subject to the agreement of all parties to cooperate); or
 - To deny the appeal and confirm the disciplinary sanction.
- 4.15** The appeal panel will announce the decision to the management representative and appellant personally if practical and this will in any case be

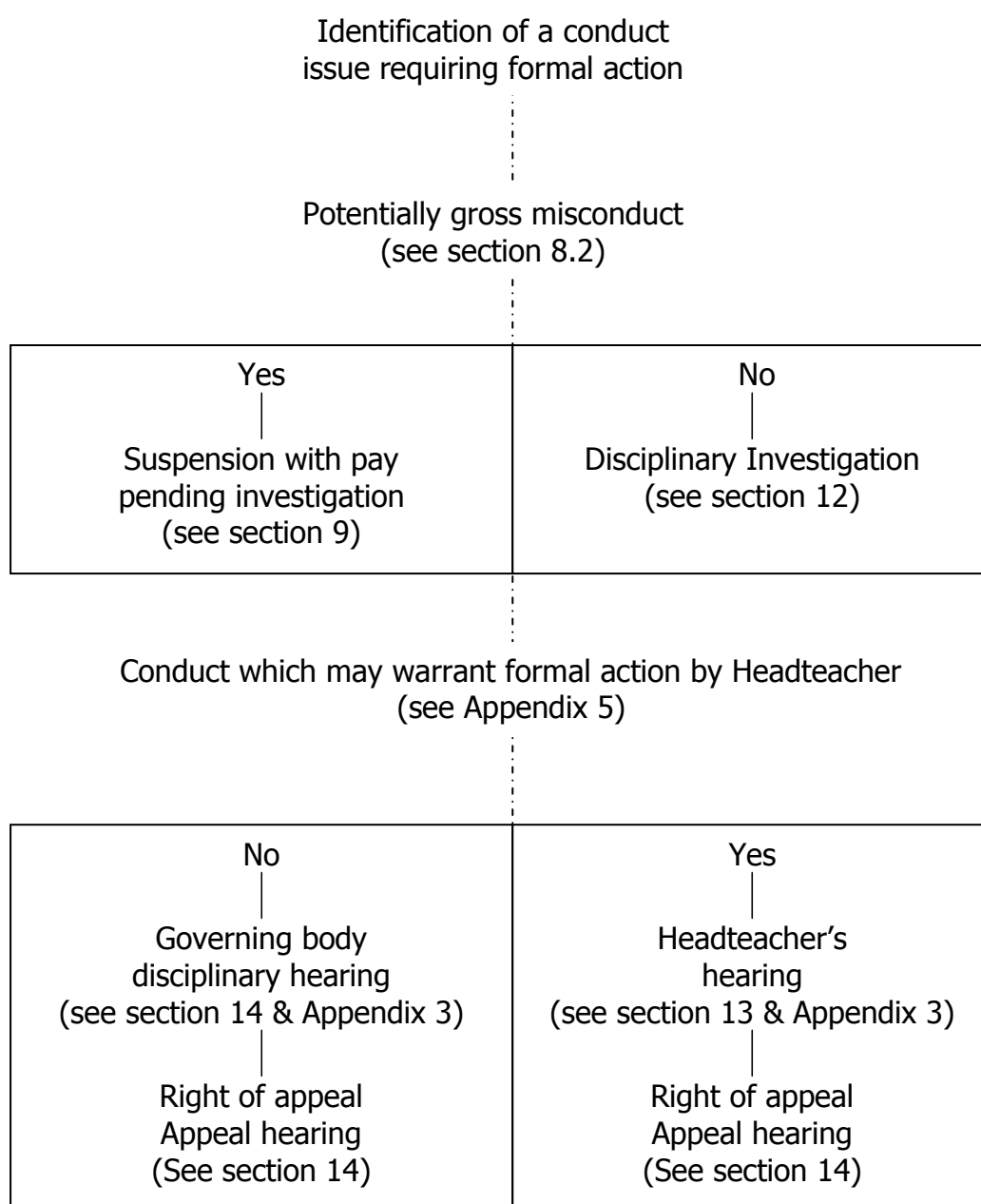
confirmed in writing together with the reasoning behind the decision. The employee will also be reminded that there are no further rights of appeal.

Appendix 5

Alternative Arrangements

- 5.1** In certain circumstance the governing body may feel that it is not appropriate for the Headteacher to exercise delegated responsibility for staff disciplinary matters and may consider applying alternative arrangements. This would involve a governing body disciplinary panel exercising responsibility. The circumstances in which delegated responsibility for staff disciplinary matters may be exercised by the governing body are as follows:
- 5.2** Where the Headteacher has been directly involved in disciplinary procedures leading to dismissal (other than in initiating investigation), has had some prior involvement in an issue of misconduct involving a member of staff which could be seen to prejudice a Headteacher's impartiality, or is a witness of particular conduct giving grounds for the dismissal in question.
- 5.3** Where a Headteacher is subject to suspension, disciplinary or capability procedures, or disciplinary sanction.
- 5.4** Where the LA has made representations to the chair of the governing body on grounds of serious concerns about the performance of the Headteacher.
- 5.5** Where the Headteacher has failed to abide by financial limits agreed by the governing body for any school purpose.
- 5.6** A Headteacher who is unwilling to perform these functions and whose previous history of service at the school did not include any such responsibilities (this would give the existing Headteacher the option of preserving their working arrangements, but when the governing body considers a new appointment for the Headteacher post the normal expectation for the Headteacher to undertake these responsibilities should apply).
- 5.7** The governing body should review, at least annually or otherwise where necessary, the continuation of any circumstances where the Headteacher does not lead on these staffing matters because of concerns about their conduct or performance. The Headteacher should have the opportunity to make representations on any decisions to discontinue or continue delegated responsibility.

Flow Chart – Disciplinary Procedure



Appendix 7

Dear

Disciplinary Hearing

You are instructed to attend a Disciplinary Hearing at (time) on (date) in (specify venue). The hearing will consider the following allegation(s):

List Allegation(s)

These allegations if proven at the Disciplinary Hearing could be deemed to constitute gross misconduct and may result in the termination of your employment.

The Chair of the Disciplinary Hearing will be (name and title) and the panel will also include (names)/ or specify the name of the relevant Headteacher. The Management Case will be presented by (name). A representative from Schools Human Resources will attend to advise.

You may be accompanied by a recognised trade union representative or a work place colleague.

I enclose the papers to which Management will refer at the hearing (specify). There will be no management witnesses(or show names). You must supply (name) with any papers to which you intend to refer not less than three working days prior to the hearing together with the names of any witnesses you intend to call to speak on your behalf.

You are instructed to attend this hearing and failure to attend without prior notification of a valid reason may itself constitute a separate disciplinary offence. Non-attendance due to sickness must be supported by a valid doctors medical certificate, which relates specifically to your inability to attend the hearing. The Council on production of a valid receipt will pay for the cost of this. You may submit a written statement if you are unable to attend for any reason whatsoever and/or be represented in your absence by a trade union representative or a workplace colleague. The hearing may in any event be held in your absence.

I enclose a copy of the Disciplinary Procedure.

Yours sincerely

Headteacher/Chair of Disciplinary Panel

Draft Letter of Suspension

Recorded Delivery
Personal and Confidential

Name
Address
Date

Dear

Suspension from Duties

I am writing to confirm your suspension from your duties as
(designation and location)..... on.....
(date)..... * and that accordingly you returned the site keys in
your possession to the Headteacher.

You were suspended from duty pending investigation into (details the allegations)

.....
.....
.....

Suspension is a natural act, carrying no implication of guilt.

Whilst you are suspended from duty, the following conditions will apply:

1. You should not enter the school site for any reason.
2. You should not contact any member of staff during school hours or their working hours.
3. During your working hours you should remain available to be contacted if required.

I confirm that you are suspended on full pay. I have advised the school payroll provider accordingly.

Enclosed is a copy of the Schools Disciplinary Procedure for your information.

If there is anything you are unsure of or you wish to clarify please contact (school contact) You are advised to contact your trade union/professional association.

Yours sincerely
* delete as appropriate

Appendix 9

Draft 1st Written Warning

Dear

Written Warning

I am writing to confirm the decision of the Headteacher's/Governing Body Disciplinary Panel (as appropriate) which met on (date). The hearing/panel was convened (as appropriate) to consider:

.....
.....
.....

(details of misconduct/unsatisfactory performance)

I gave/the panel gave (as appropriate) serious and careful consideration to all of the evidence presented to me/them and decided that you should be issued with a first written warning in accordance with section 13.16 of the schools adopted disciplinary procedure. You are required to:

.....
.....

(details of any conduct/performance improvements required and timescale for improvement). You are hereby warned that should you fail to meet the improvements required further action will result.

You have the right of appeal against the decision. If you wish to exercise this right, you should confirm in writing the grounds or basis for the appeal to the Headteacher at the school, within 5 working days of receipt of this letter. The appeal will be considered by the Governing Body Appeals Panel.

The Governing Body have decided that your suspension will end on and you should report for duty on The Headteacher will be discussing with you the arrangements for your return in due course (as appropriate).

A copy of this warning will be placed in your personnel file. You may, following a period of 12 months from the date of this letter, submit a written request to the Headteacher/Governing Body (as appropriate) for deletion of this record and, if refused, at 6 monthly intervals thereafter.

Yours sincerely

Headteacher/Chair of Governing Body Disciplinary Panel (as appropriate)

Appendix 10

Draft Final Written Warning

Personal and Confidential

Dear

Final Written Warning

I am writing to confirm the decision of the Headteacher/Governing Body Disciplinary Panel which met on (date). The panel was convened to consider:

.....
.....
.....(details of misconduct/unsatisfactory performance).

The panel gave serious and careful consideration to all of the evidence presented to them and decided that you should be issued with a final written warning in accordance with section 13.16 of the schools adopted disciplinary procedure. You are required to:

.....
.....
.....
(details of conduct/performance improvements required, timescale for improvement and any support/training to be provided where necessary). You are hereby warned that should you fail to meet the improvements required further action will follow which may lead to your dismissal.

You have the right of appeal against this decision. If you wish to exercise this right, you should confirm in writing the grounds or basis for the appeal to the Headteacher at the school, within 5 working days of receipt of this letter. The appeal will be considered by the Governing Body Appeals Panel.

The Governing Body have decided that your suspension should end on..... (date). You should report for duty on (Date). The Headteacher will be discussing with you the arrangements for your return in due course (if appropriate).

A copy of this warning will be placed in your personnel file. You may, following a period of 18 months from the date of this letter, submit a written request to the Governing Body for deletion of this record and, if refused, at 6 monthly intervals thereafter.

Your sincerely

Investigation Checklist

Purpose

The purpose of an investigation is to obtain and analyse information and to collect evidence to determine whether there is a prima facie case to answer. The Governing Body or Headteacher will normally appoint an investigating officer to collect evidence which will form the basis of the decision regarding whether there is a disciplinary case to answer. A decision on whether or not to progress a case would rest on the facts that a disciplinary panel would consider. It is important to remember that it isn't just management representatives who present evidence; both parties together with witnesses will do so. A good investigation should aim to establish all the relevant information, not just enough to support a management decision.

Cases Involving Potentially Criminal Acts

Governing Bodies or Headteacher's will have considered possible police involvement before appointing an investigating officer to conduct a disciplinary investigation. In such cases an internal investigation should be delayed until police investigations are complete.

Process

The process is one of gathering information from the following sources:

- The people involved. This may include staff, parents and, where avoidable, children. Where it is necessary to speak to children in connection with a disciplinary investigation, the prior consent of the children's parents, or guardian should be obtained.
- Documentation, letters, procedures, receipts etc.
- Physical evidence – damaged property, photographs, equipment etc (subject to obtaining the owners consent where necessary).
- Personal observation e.g. site/area inspection where appropriate.

The evidence gathered should enable the investigating officer to be clear about three main aspects of the case:

- What has happened? The sequence of events, who was involved, when and where this took place etc.
- What rules and standards apply? What is the established practice that should be followed? How are these rules and standards made known to staff?
- Any background to the incident. What led up to the incident? Are there any issues regarding the management, communication and staff support in the work area concerned?

The information gathered may constitute evidence for a management case for disciplinary action so it is important that it is collected in a manner consistent with this disciplinary procedure and that all information is carefully recorded and securely stored.

Gathering Evidence – Good Practice Principles

- Collect any evidence speedily. Ensuring that items or property which may be needed are kept securely.
- Be aware of the need for confidentiality.
- Where possible collect original items rather than copies.
- Collect any documentation covering the three key aspects of the case, what has happened, established practice and the background.

Collecting Information from People – General Good Practice

- Collect information, including written witness statements, as quickly as possible while the events are still fresh in peoples' minds and before discussion starts to influence people. If possible, prevent witnesses from talking to each other before providing evidence. This is especially important where staff are suspended.
- Maintain confidentiality
- Ensure privacy when collecting evidence and treat people with sensitivity and courtesy.
- Keep an open mind. Don't make assumptions. Try not to become personally involved and be as objective as possible. Even a sceptical approach can be appropriate.
- Ascertain the facts and check them where possible. Dates especially can easily be mistaken or confused.
- See the employee against whom the allegations have been made last, once the evidence is clear.
- Remember that all complaints against those handling investigations are not uncommon.

Recording

- Double check that everything has been covered and that any information gained is clear.
- Summarise the main points and check that the interviewee has no further points to make.
- Tell the person that a further meeting may be necessary. Explain what happens next.

Taking statements

- Ideally people should write their own statement. If necessary it may be dictated. The statement should be consistent with what the person remembers of the incident.
- Statements should be signed and dated on each page. Check the signatures and date are correct.

- Ensure people know how their statements will be used. Inform interviewees that if the statement is used as part of a case they may be required to attend a hearing and answer questions about their statement.

Conducting an Investigation Interview

- Prepare/arrange meetings in advance. Ensure that staff involved understand the purpose of the investigation, the procedure and that they have been advised of their right to be represented if they are the subject of allegations which may lead to formal action.
- If considered necessary have someone present when interviewing witnesses.
- Witnesses should be informed that they can be accompanied at an investigation interview by a trade union representative, friend or colleague.
- Be prepared for a range of feelings and behaviours from those being interviewed. These may range from anger and hostility to distress and great anxiety.

The Interview

- Ensure suitable conditions are in place for the interview. Make sure that the person concerned knows that this is a disciplinary investigation, that they will be asked to make a statement (if they have not already done so), that information they give may be used at a disciplinary hearing, and that they may be asked to appear as witnesses in a hearing.
- Ensure that staff against whom allegations have been made are aware of their right to be represented by a trade union representative, friend or colleague. Even if this has been done before, do it again!
- Explain how the investigation will proceed in broad terms. Tell the person that the role of the investigating officer is to collect evidence, and to determine if there is a prima facie case to answer.
- Explain that notes will be taken.
- Assure those being interviewed that any findings will be treated as confidential. However, don't give assurance that their information will remain with the investigating officer. Confirm that it may be needed as evidence at a hearing.

Questioning

- Remember that information is best gathered from a conversation, rather than an interrogation. Do not dominate, allow the interviewees to feel that they can answer freely. It is not good practice to pressure somebody who could be a potential witness at a hearing. Such pressure can bring into question the role of the investigating officer and can cause problems in relation to the whole investigation process.
- Plan questions in a logical and orderly sequence and be prepared to supplement your list. Use open questions, keeping them short and simple to encourage the person to talk. Closed questions should be used to check points of detail and where the interviewee is vague. Probing questions should be used to obtain detailed information and to clarify some answers.
- Avoid leading questions.

- Concentrate and listen to the answers (don't miss points thinking about the next question).
- Don't imply criticism. The interview is to obtain facts. Personal criticism or judgment will inhibit the interviewee and make your task harder. The rights and wrongs of a case are for a hearing to decide.
- Recap throughout the interview to ensure that the facts are agreed and understood. As a principle, focus on facts, what the person saw or heard, who was there, where, when etc. Ensure you distinguish between the facts the person is giving and their opinions/assumptions. Ask how they know things they state as fact. Ask how they know that the things they are stating as factual are true. Ask for specific examples or clarification where necessary.
- Take special care where the matter under consideration involves issues of race and/or sex.

Writing the Report of the Investigation

An investigating officer's report should include the following:

- The purpose of the investigation and by whom it was conducted.
- A summary of the investigation – brief description of the events and findings.
- Background information and how the issue was brought to light.
- Details of the investigation, including a list of those interviewed, records and details of interviews, statements, documents inspected and details of other actions taken e.g. personal inspection of site or damage etc.
- Care should be taken to include all information whether it supports the management case or weakens it. Otherwise this could be challenged by a member of staff under investigation and is not fair or reasonable to them. The report must contain all relevant information so that the case may be objectively assessed. It should not however include a recommendation by the investigation officer.

Evidence

Any evidence included with the report should be:

- Authentic – it must be verifiable
- Relevant – to the issue in question
- Accurate – check the dates, figures etc tally
- Easy to use – list, number, index, label etc

Assessing the Case

The information from the investigation will be assessed by the Governing Body or Headteacher before a decision on how to proceed is taken. The evidence needs to show that the case has been thoroughly investigated before that decision can be reached.