

# *St. Luke's C.E (Aided) Primary School*



## **Staff Disciplinary Procedures 2021-2022**



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2

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# **Nottinghamshire School Disciplinary Procedure**

## **Part 1 – Managing the Conduct of School Staff**

**September 2020**

**HR Advice, Support and Training Service**

## School Disciplinary Procedure – Part 1 Managing the Conduct of School Staff

### – Table of Contents

Heading	Page
Introduction	1
Equal Opportunities	3
Supply Teachers/staff not directly employed by the school	4
Aims of the policy	5
Guidance on Managing the Procedures	6
Roles and Responsibilities	7
Suspension of an Employee	10
Frustration of the disciplinary procedure	12
Investigating Alleged Misconduct	13
Disciplinary Responses	15
Management of a Disciplinary Hearing	17
Outcomes of a Disciplinary Hearing	18
Communication and recording the outcome	19
Appeals	20
Employment Tribunals	21
Settlement Agreements	22
Teaching Regulation Agency (TRA)	22
Referral to DBS	23
Monitoring and Review	23
Appendix 1: Formal Investigatory Meeting	24
Appendix 1a: Letter re Investigation notes	25
Appendix1b: Outcome letter, no formal action	26
Appendix 2: Notification of Suspension	27

Appendix 3: Notification of Hearing	29
Appendix 4a: Disciplinary – Order of Events	31
Appendix 4b – Governors Hearing Procedure	32
Appendix 4c - Guidance on governors’ hearing/appeal	34
Appendix 5: Notification of Outcome – Oral/Written Warning	36
Appendix 5a: Notification of Outcome – No sanction	37
Appendix 6: Final Warning	38
Appendix 7: Dismissal	39
Appendix 8: Notification of Appeal Hearing	40
Appendix 9: Outcome of Appeal – Dismissal	42
Appendix 9a: Outcome of Appeal against warning	43
Appendix 10: Review of Disciplinary Warnings	44
Appendix 10a: Confirmation of Outcome of Review of Warning	45
Appendix 11: Standards of Conduct Relating to School Employees	46
Appendix 12: Template Investigation report	49
Appendix 13: Summary of formal procedure – Flow Charts	52

# **School Disciplinary Procedure – Part 1 Managing the Conduct of School Staff**

**– Updated September 2020**

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Please also note that any changes to the original policy documentation will require your governing body or trust to re-consult with the secretaries of the recognised trade unions and staff in your school.

## **Introduction**

- 1.0 The Governing Body of St. Luke's C.E (Aided) Primary School adopted this Policy in the Autumn Term 2021-2022. The governing body will review and monitor the impact of the policy annually with the head teacher. The next review will take place in the Autumn Term 2022-2023.
- 1.1 The governing body has adopted the policy/procedure set out in this document (along with guidance and toolkit-delete if guidance and toolkit are not available) to provide an agreed framework for the exercise of its powers and discretions in relation to all staff employed in the school and paid from within the school budget.
- 1.2 The governing body understands its responsibilities and is committed to taking decisions in accordance with the principles of public life as listed in DfE guidance; objectivity, openness and accountability. Governing bodies should ensure that they are fully aware of their responsibilities under employment law in applying this procedure.
- 1.3 The governing body recognises the legal requirements placed upon them by the Education Act 2002 and subsequent legislation (refer to relevant legislation for this procedure). This document will apply to all staff, including apprentices, directly employed by the school.
- 1.4 The governing body has the responsibility for approving decisions relating to this policy and procedures.
- 1.5 References to the governing body should be taken to refer to the entity that is responsible for exercising governance functions for a maintained school or academy, which in the case of a multi-academy trust may be the trust board. Likewise references to governors should be taken to mean whoever is responsible for fulfilling governance functions. Where maintained schools are federated under a single governing body this will be the federated governing body.
- 1.6 In fulfilling staffing responsibilities, the governing body may delegate its staffing functions in accordance with its articles of government. In delegating functions, the governing body must not lose sight of the fact that it retains overall accountability for the decisions made by those to whom the function has been delegated. As a result, the governing body should regularly review their

arrangements for managing staffing functions and that the right people are fulfilling these roles on its behalf.

- 1.7 The School Staffing (England) Regulations 2009 confers the right of the County Council to send a representative to all proceedings of the governing body of a community or voluntary controlled school relating to the selection or dismissal of any teacher (including the head teacher and deputy) to offer advice. If the County Council decides to send a representative they must be allowed to attend. Any advice offered as a result must be considered by the governing body (or those to whom the function has been delegated) when reaching a decision. This will usually be a senior officer from the HR Service who may also advise the governing body/head teacher as appropriate. The same rights do not automatically apply in respect of maintained foundation, voluntary-aided and foundation special schools.
- 1.8 Article 6 of the Education (Modification of Enactments Relating to Employment) Order 2003 provides for a governing body to be the respondent in relation to any application to an employment tribunal alleging unfair dismissal. In law, Nottinghamshire County Council remains the employer for community and voluntary controlled schools and will therefore be primarily responsible for the payment of any compensation order by an employment tribunal in respect of a finding of unfair dismissal. This will only apply where the school has sought and followed the advice of the HR Service. Where it is reasonable to do so, the Council is empowered to deduct such compensation from the school's budget.
- 1.9 It is unlikely that the County Council would wish to adopt such a course of action in any case where an employee is dismissed at the request of the governing body for reasons relating to conduct or performance, provided that the governing body has sought and followed advice from the HR service, not acted contrary to law or in some other way failed to observe their agreed disciplinary code. In cases where the County Council is of the view that an Employment Tribunal is likely to find a dismissal unfair, the HR Service may advise the governing body of a maintained school that before the request for dismissal is acted upon that costs/compensation will be deducted from the school's budget in respect of an adverse finding.
- 1.10 It is recognised that a Foundation, Aided, Academy or Free schools may choose to adopt the procedures recommended by their Diocesan Authority or one determined by the employer. In such cases, the HR Service will still be able to provide bespoke advice based on separately agreed procedures.

#### Advice, support and Training

- 1.11 It is the responsibility of the head teacher to ensure that all relevant senior leaders understand their role and have access to appropriate support, advice and training in the application of these procedures. The head teacher should also ensure, in conjunction with the chair of Governors and the training co-ordinator, where appropriate, that in discharging their duties and responsibilities, governors have access to support, advice and training as appropriate.

#### Consultation and Agreement with the Recognised Trade Unions

- 1.12 This Policy is recommended for adoption by all community, voluntary aided, voluntary controlled, academy, foundation, and trust schools who purchase their HR Service from Nottinghamshire County Council.

- 1.13 The policy document has been agreed with the following Nottinghamshire recognised trade unions: ASCL; NAHT; NASUWT, NEU, UNISON and GMB.
- 1.14 These procedures have been agreed with all of the recognised trade unions through the JCNP process and meet legislative requirements. Due to the complexities of this area of employment and education law, governing bodies are strongly advised to adopt the attached procedures without amendment and seek advice on individual cases from their named Business Partner within the HR service. Should, exceptionally, a governing body seek to amend the recommended procedure they will need to consult/negotiate any changes collectively with all of the Secretaries of the recognised trade unions and confirm any amendments with the HR Service. Governing bodies are strongly recommended to seek advice from the HR Service before making any such changes

### **Equalities and Equal Opportunities**

- 2.0 The governing body recognises its legal responsibilities to staff under the Equality Act 2010 and this policy will ensure equality and fairness regardless of race, sex (gender), sexual orientation, religion or belief, gender re-assignment, pregnancy and maternity, marriage and civil partnership, disability or age. The Trade Union and Labour Relations (Consolidation) Act 1992, states that members of a trade union or trade union representatives have the right not to be victimised or treated unfairly because of their trade union membership or official trade union duties. Where required, the school will consider and make reasonable adjustments at all stages of the procedure where it is appropriate to do so.
- 2.1 All decisions will be taken in accordance with relevant equalities legislation, the Employment Relations Act 1999, the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000 and the Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002.
- 2.2 The governing body is aware of its responsibilities under the Freedom of Information Act 2000 to make available this policy to all staff at the school and its responsibilities to be compliant with the Data Protection Act 2018 and the General Data Protection Regulations 2018.

### **Supply Teachers/staff not directly employed by the school**

- 3.0 Where supply staff are engaged to work in a school other than under a contract of employment with the school or County Council e.g. a contract for the provision of services, the school must immediately notify the direct (agency) employer of any alleged breach of discipline by their employee.
- 3.1 It is the responsibility of the school to ensure that any disciplinary allegations made against a supply Teacher / other staff (not directly employed by the school), to be dealt with properly and appropriately. Additionally, in no circumstances should a school decide to cease to use a supply teacher due to safeguarding concerns without finding out the facts and liaising with the LADO to determine a suitable outcome. Heads/Governing bodies should discuss with the agency whether it is appropriate to suspend the supply teacher or redeploy them to another part of the school whilst they carry out their investigation. Agencies should be fully involved and co-operate in any enquiries from the LADO, police and social services, however, it is expected that the school will take the lead in resolving these matters (update - KCSIE 2020). Advice is available from the HR service in such situations.

## Aims of the Policy

### Preface

- 4.0 Part 1 of the School Staffing (England) Regulations 2009 requires the governing body of each school to establish disciplinary and dismissal procedures for all school employees and delegates to head teachers and governing bodies the power to decide all disciplinary and dismissal matters themselves. This guidance has been written to reflect this and other legislation relevant to the employment of staff in schools including the Employment Act 2008 and the requirements of the current version of the statutory guidance “Keeping Children Safe in Education” (KCSIE) and other statutory guidance relating to the management of school disciplinary and safer working procedures.
- 4.1 This is a complex area of employee relations and therefore governing bodies are advised by the DFE to take account of existing good practices by Local Authorities and guidance and statutory procedures from the Secretary of State for Education and ACAS procedures. Governing bodies should ensure that they are fully aware of their responsibilities under employment law in applying this procedure.
- 4.2 All maintained schools in Nottinghamshire are advised, therefore, to adopt the Nottinghamshire Schools Disciplinary Procedure, produced by the HR service of Nottinghamshire County Council. The procedure is set out in two parts:

**Part 1** - Managing the conduct of school staff

**Part 2** - Managing Allegations of Child Abuse against School Staff

## Part 1 - The conduct of school staff

### Introduction

- 5.1 The purpose of Part 1 of the Disciplinary procedures is to provide schools with
- a) guidance on the management of allegations of staff misconduct
  - b) a recommended disciplinary procedure for use in cases of staff misconduct
- 5.2 Any allegations of misconduct **involving abuse of trust or the physical, emotional or sexual abuse of a child by an employee** must be dealt with in line with Nottinghamshire's child protection procedures which are set out in Part 2 - Managing Allegations of Child Abuse and risk of harm against School Staff - of this procedure.
- 5.3 This procedure recognises that the governing body, advised by the Corporate Director of Children, Families and Cultural Services or nominated representative, has the power to consider employees' conduct and warn them with regard to future conduct or dismiss them. The governing body should delegate this responsibility to the head teacher and/or members of a committee of the governing body as set out in this procedure. Whilst it is recognised that under education regulations

this responsibility can be delegated to the head teacher alone, this course of action is not recommended by Nottinghamshire County Council HR Service as it could be potentially unfair.

5.4 Where governing bodies have adopted the procedure this will apply to all employees in primary, secondary and special schools where the governing body has a delegated budget and powers of local management. The procedure applies equally to head teachers save that in such cases the Chair of Governors or nominated representative, advised by the Corporate Director of Children, Families and Cultural Services or nominated representative, will assume the managerial responsibilities of the head teacher set out in this procedure.

- a) This procedure does not apply to employees in voluntary aided schools, unless the governing bodies of such schools have formally adopted it. Some voluntary aided schools may choose to adopt the procedures specified by the Diocese. Providing the governing body has decided to engage the services of the HR Service, then advice and support will be available on all procedures.
- b) The School Staffing (England) Regulations 2009 confers the right of the County Council to send a representative to all proceedings of the governing body of a community or voluntary controlled school relating to the selection or dismissal of any teacher (including the head teacher and deputy) to offer advice. If the County Council decides to send a representative they must be allowed to attend. Any advice offered as a result must be considered by the governing body (or those to whom the function has been delegated) when reaching a decision. This will usually be a HR Business Partner from the HR Service who may also advise the governing body/head teacher as appropriate. The same rights do not automatically apply in respect of maintained foundation, voluntary-aided and foundation special schools.

## **Guidance on managing the conduct procedures**

### Roles and Responsibilities

- 6.0 At the outset of any investigation, it will be important to establish who will undertake the necessary roles and responsibilities in line with the school's agreed policy on such matters.
- 6.1 Sections 35 and 36 of the Education Act 2002 and the School Staffing (England) Regulations 2009 give governing bodies the right to delegate initial staff dismissal decisions (with the exception of head teacher dismissals) to the head teacher. Governing bodies may also delegate such decisions to an individual governor or group of governors, acting with or without the head teacher. As DFE guidance emphasises that governing bodies should delegate staffing responsibilities to the head teacher, other than in exceptional circumstances, there are implications for any investigation, particularly where dismissal is a potential outcome. The following roles will, therefore, need to be established by the school in the light of current legislation and the County Council's policy on staffing responsibilities under the Education Act 2002.

### Investigating Officer

- 6.2 The investigating officer will be responsible for conducting the investigation and presenting the findings to the head teacher and/or disciplinary panel. The arrangements for dealing with a disciplinary investigation will need to be considered within the framework of the current school

staffing regulations, employment law as well as the principle of natural justice. It is not, therefore, possible for the head teacher to be the investigating officer as well as the person responsible for deciding whether or not to dismiss the employee or to issue a formal warning. The head teacher can only be the investigating officer, therefore, in circumstances where they will not be given delegated responsibility for making any decisions about a potential staff dismissal.

- 6.3 Where the disciplinary decision is delegated to the head teacher, either on their own or as part of the Disciplinary Panel, another appropriate member of the leadership team should take on the role of Investigating Officer. In certain cases, for example where the head teacher is the subject of the investigation, the school is strongly advised to engage the services of the HR Service to conduct the investigation for which an appropriate rate will be charged. There is usually one lead Investigating Officer appointed, however in certain cases there may be more than one person appointed. Schools are advised to contact the HR Service for further advice on the role of the Investigating Officer before any action is taken.
- 6.4 The role of the head teacher includes consideration of the sensitivity, complexity of the situation and the welfare of the employee involved.
- 6.5 When an employee is notified about formal procedures/dates of hearings they should aim to inform employees at an appropriate time to ensure the employee has the opportunity to contact their union representative or other relevant person for support. We advise that Head teachers do this, wherever possible, towards the end of the day and that any confirmation letters are sent during the working week to avoid notifications arriving on a weekend or during the school holidays. Where this cannot be avoided due to procedural timescale head teachers are advised to offer to contact the trade union representative and their HR Business Partner to advise them of the content of the letter to enable the trade union representative to contact the employee if necessary.
- 6.6 Head teachers should avoid sending letters in the last three days of a term or half-term. Where this is unavoidable because of procedural timescales heads are advised to offer to alert the trade union representative that a letter is being sent and confirm the content of that letter, to enable the trade union representative to contact the employee if necessary.
- 6.7 Please see **appendix 12** for template investigation report/statement of case. Please note the content will need to be customised according to the specific case.

#### Disciplinary Panel

- 6.8 In relation to the 2009 Staffing Regulations, the HR Service strongly advises that dismissal decisions are best made by a panel rather than by one person acting on their own. It is recommended, therefore, that the Disciplinary Panel should normally consist of the head teacher supported by two governors or three governors, where the head teacher assumes the role of the Investigating Officer. Should there be insufficient numbers of impartial governors available to sit on a panel, the Chair of Governors may approach suitably experienced independent governors from other schools to sit on the panel as detailed in the Governor Handbook. It is critically important that panels are appropriately convened, and Advice and Support should be obtained in the first instance from your schools' named HR Business Partner.

#### Appeal Panel

- 6.9 All appeals against dismissal or other disciplinary outcomes must be heard by an Appeal Panel. This should consist of three governors who have had no previous involvement in the case.

#### Note Takers

- 6.10 Notes should be taken at all meetings. The school will take responsibility to ensure a note taker is present. This may include contacting the Governor Services Team if the school does not have capacity for a person to undertake this role. The Note Taker must understand the confidential nature of the meetings. Notes are not required to be a verbatim account but should be an accurate record of the content and decision of the meeting. It is the school's responsibility to ensure that notes from meetings are provided to those who were present. This does not prevent the individual or their representative from making their own written notes, although the employee is not able to bring an additional note taker to meetings. .
- 6.11 Meetings may only be recorded in the manner prescribed within the school's disciplinary policy. Any employee/representative/other attendee at the meeting who causes or permits any electronic recording to be made without advance approval from the chair concerned, will be subject to the school's disciplinary policy. Any trade union representative who causes or permits an unauthorised electronic recording to be made of any disciplinary meeting / hearing, without advanced approval from the chair concerned will be reported to the local authority and to the relevant Regional Trade Union official for the matter to be investigated in light of the protocol in place on the Engagement of Trade Union Representatives (Acting as Caseworkers) with Schools and Human Resources Business Partners.

#### Trade union and other representatives

- 6.12 During the process the employee will have the right to be accompanied or represented by one person which could be a trade union official or colleague as appropriate. The role of the representative is to support the individual and to provide advice, guidance and representation where appropriate. The right to be accompanied and the right to be represented are different.

- a) The right to be **accompanied** means that the employee may bring a trade union official/representative or colleague with them to support them at meetings. The individual employee must represent themselves and should answer and ask any questions themselves. They may wish to discuss their answers with their trade union representative or colleague before providing them.
- b) The right to be **represented** means that the employee may ask their trade union representative or colleague to speak on their behalf. This could include answering and asking questions or presenting all or part of the case at any hearing.

#### Training

- 6.13 It is the responsibility of the head teacher to ensure that they themselves and other relevant senior leaders understand and are fully trained in the application of these procedures. The head teacher should ensure, in conjunction with the chair of Governors and the training co-ordinator, that all governors understand these procedures and their role in making disciplinary decisions.

## **Other Considerations**

### Serious Misconduct

- 6.14 Alleged serious misconduct must be notified, as a matter of urgency, to the named HR Service Business Partner who will offer immediate advice. Where the allegations relate to a possible Child Protection issue, the head teacher or chair of governors (if the complaint is against the head teacher) should immediately seek the advice from the LADO who will undertake any necessary liaison with the police, the HR Service or other agencies as appropriate.

### Safeguarding Children and Young People

- 6.15 Any allegations of misconduct **involving abuse of trust or the physical or sexual abuse or risk of harm of a child by an employee** must be dealt with in line with Nottinghamshire's child protection procedures which are set out in **Part 2** of this procedure.

### Data Breaches

- 6.16 Any allegations which involves an employee having committed a personal data breach(es) as a result of deliberate or negligent action / inaction advice must be taken from the schools Data Protection Officer (or their nominee) about the risk to the individuals impacted by the data breach(es); whether to report the matter to the Information Commissioner's Office as well as the risk to the County Council. The school may need to seek advice from their HR contact and from the council DPO as appropriate at [DPO@nottscc.gov.uk](mailto:DPO@nottscc.gov.uk)

### Criminal Offences

- 6.17 An employee should not face disciplinary action solely because they have been charged with or convicted of a criminal offence. The question which needs to be addressed in such circumstances is whether the conduct which has led to such charges or conviction warrants disciplinary action because of its employment implications. In such circumstances, the facts of the matter should be investigated and, if disciplinary action is considered appropriate, the procedures outlined in this document should be followed. If it becomes known to the senior management of a school that the police are involved in a case involving an employee, the HR Service must be advised of the matter immediately.
- 6.18 In cases involving criminal charges or convictions, if sufficient evidence is not available on which to form a reasonable view on whether or not to hold a disciplinary hearing, advice should be sought from the HR Service on whether action should be deferred until further enquiries have been made or the matter settled by a court.
- 6.19 Where school employees are arrested, cautioned or charged with any offence by the Police they must be aware that their employer must be notified immediately.

### Mandatory duty to report known cases of female genital mutilation (FGM)

- 6.20 Teachers are under a mandatory duty to report known cases of FGM in under 18's to the police. Schools must consider any breach of the duty in accordance with the school's disciplinary procedure.

### Disciplinary action against a Trade Union Official

- 6.21 Disciplinary action against an employee who is a trade union official may lead to difficulties if it is seen as an attack on the union's function. Although normal disciplinary standards will apply to a

trade union representative's conduct as an employee, no disciplinary action should be taken following the investigation until the circumstances of the case have been discussed confidentially and with the employee's knowledge, with a senior trade union representative or a full-time officer of the trade union.

### Managing the Media and other School communications

- 6.22 Some potential disciplinary circumstances in school may require the head teacher or Chair of Governors to communicate directly with staff, parents, governors and/or the local or national media. This requires extreme sensitivity and advice should always be sought from the HR service and where appropriate, the Corporate Director, Children's, Families and Cultural Services and/or the Nottinghamshire County Council Media Team prior to making any verbal or written statements.

## **Suspension of an Employee**

- 7.0 At any stage prior to, during or following the investigation, the employee may be suspended. The suspension should only occur if one or more of the following applies:

- a) the continued presence of the employee at work may be prejudicial to a fair disciplinary investigation.
- b) there is evidence that the allegations are serious enough to warrant consideration of dismissal and/or may constitute gross misconduct. Where appropriate, this evidence shall be made available to the employee and their representative at the point of suspension.

- 7.1 In some circumstances it may not be possible to share detailed information relevant to the suspension at this time, for example, if there is an ongoing police investigation.

### Suspension Meeting

- 7.2 Where a decision to suspend is likely to be made the circumstances of the case will determine how this is managed. Advice should always be sought from the HR Service before making this decision and conducting a suspension meeting.

- a) In some circumstances it will not be appropriate to alert the employee to this possibility. In these circumstances the head teacher should make every effort to contact the employees' trade union official to alert them confidentially so that they may support the employee, either at the suspension meeting to make sure they get home safely or have support afterwards.
- b) In other circumstances the employee may be given advance notice of a meeting at which suspension is a possibility and the head teacher should strongly advise the employee to seek advice, assistance and support of their professional association or colleague.
- c) Prior to the meeting, the head teacher should consult with the HR Service and the chair of governors and carefully consider alternatives to suspension e.g. redeployment to another post on a temporary basis, deferring a decision until further information is known, or sending the employee home (short term).

At the suspension meeting the head teacher will:

- a) Explain the reasons for the decision based on the evidence known up to this point, making reference to a) and b) above.
- b) Explain that suspension is not in itself a disciplinary sanction and does not indicate or presume the outcome of any disciplinary process.
- c) Request that the employee returns school property immediately including computer equipment/documents/mobile phone/keys as appropriate. The employee may need supervised time to locate and take home personal property.
- d) Acknowledge and take into account the emotional impact of the suspension process and ask the employee what support is required. The school may need to consider a referral to the counselling service or occupational health. In all cases the school should identify a contact person in school who will be expected to regularly update the employee (suggested weekly calls are made), and where necessary their representative or colleague on progress, future actions and timescales. This will usually be the head teacher.
- e) Suspension is not a disciplinary sanction in itself, therefore the employee has no right of appeal against the decision

Following the meeting:

- a) The decision will be confirmed in writing to the employee (see Appendix 2) normally the next working day.
- b) The school will notify the employee that suspension is on full pay and will confirm this decision with the schools payroll provider.
- c) The head teacher must consult and inform the governing body of the suspension decision on a confidential basis. In the case of the suspension of the head teacher, the HR service will fully support the chair of governors to undertake these actions.
- d) Where the reason for suspension is related to concerns about an employee who has harmed, or who poses a risk of harm, to a child or vulnerable adult the school must consider a referral to DBS as soon as possible
- e) Where the reason for the concern is related to concerns about an employee who has harmed, or who poses a risk of harm, to a child or vulnerable adult and a decision is taken not to suspend but to redeploy the person to another area of work that is not regulated activity, the legal duty to refer the case to the DBS as soon as possible still exists.
- f) For further information see paragraph 12 Referral to DBS. [Appendix 2 - Notification of Suspension](#)

7.3 A suspension can only be lifted by the head teacher in consultation with the governing body. In community or voluntary controlled schools, the HR Service must also be informed about any decisions regarding the proposed suspension of a school employee in advance of the decision.

#### Keeping suspension under review

7.4 Throughout the course of the investigation, the need for suspension should be reviewed regularly by the head teacher and the employee should be kept informed. Where evidence emerges from the investigation that fundamentally changes the needs for suspension, then it should be lifted, and the employee should return to work for the remainder of the investigation.

## **Frustration of the disciplinary procedure**

- 8.0 Other procedures must not be used to frustrate the action already being taken under these disciplinary procedures, for example, by the employee raising a grievance or claiming harassment. The Grievance Procedure Guidance, paragraph 1.8. makes it clear that in the vast majority of cases, it will be appropriate to deal with the grievance as part of the original (in this case, disciplinary) procedure. Where the grievance is unrelated to the original procedure the two procedures can run in parallel. However, there may be circumstances where there are grounds to support an employee's belief that other procedures are relevant to disciplinary procedures.
- 8.1 In such cases, the aggrieved employee should immediately specify the grounds for their complaint so that the matter can be urgently investigated. This does not necessarily mean that during such an investigation, the original procedures need to be suspended or implementation delayed pending the outcome of the investigation. Advice should be sought from the HR Service.

## **Investigating Alleged Misconduct**

- 9.0 When allegations of misconduct are made, an appropriate person should be appointed to investigate the allegations - the "investigating officer". This may be the head teacher. However, in line with the School Staffing Regulations 2009, the head teacher should normally nominate another senior member of the school staff to investigate the allegations. In certain circumstances the head teacher may request the services of a Business Partner of the HR Service to investigate the matter on behalf of the school. As a general rule, the investigating officer will present the case at any subsequent disciplinary or appeal hearing
- 9.1 Any allegation of misconduct should be dealt with as a matter of urgency and no disciplinary action taken until the case has been fully investigated.
- 9.2 Where an investigation involves the staff member having committed a personal data breach(es) as a result of deliberate or negligent action / inaction (e.g. unauthorised access to personal records; failing to take due care of information etc), advice must be taken from the Data Protection Officer (or their nominee) about the risk to the individuals impacted by the data breach(es); whether to report the matter to the Information Commissioner's Office as well as the risk to the County Council. That advice should be recorded as part of the investigation documentation. The school may need to seek advice from their HR contact and from the council DPO as appropriate

## **Conducting a Preliminary Investigation and Initial Meeting**

- 9.3 The purpose of the preliminary investigation and initial meeting with the employee is to try to establish the facts and gather enough information about what has happened to enable a decision to be made about what course of action to take next.
- 9.4 Depending on the nature of the allegation it may be necessary for the head teacher to gather information from other sources or witnesses prior to meeting with the employee. This should not unnecessarily delay meeting with the employee. Any witnesses providing statements as part of the preliminary investigation should sign and date their statements and should be advised that they may

be required to support their statements in person at any subsequent disciplinary hearing or professional conduct hearing (i.e. TRA) if required.

- 9.5 At the earliest practical opportunity the head teacher should meet with the employee to let them know what has been alleged. The head should also advise the employee to contact their trade union representative or work colleague for support and advice. The employee may request that their trade union or colleague accompany them to this initial meeting if they are immediately available. This meeting should not be postponed if the employee's chosen person is not available. The head teacher should give the employee an opportunity to make an immediate response only if they wish to do so. It may be appropriate to have an adjournment to allow the employee to think over the allegations or if accompanied to discuss the allegations with their union representative or work colleague. The employee should also be informed that the next stage may involve a formal investigation and they should be directed to the school's disciplinary procedure for further information.
- 9.6 Notes of the meeting should be made, and a copy provided to the employee for them to review and sign.
- 9.7 The head teacher should then consider all of the information gathered and the responses provided by the employee to determine the next course of action. Possible outcomes of this initial investigation and meeting include not taking any further action, particularly if the allegations are malicious; proceeding to a formal investigatory meeting or suspension of the employee
- 9.8 The head teacher is strongly advised to seek immediate advice from the HR Service if considering proceeding to a formal investigatory meeting or suspending an employee, so that the employee can be informed of the decision as soon as possible.
- 9.9 Depending on the nature of the allegations a preliminary investigation and initial meeting may not be necessary, and the head teacher may decide it is appropriate to proceed straight to a formal investigatory meeting. In these circumstances preparatory advice should be sought from the HR Service. Suspension may also need to be potentially considered and planned for at this point (see suspension of an employee).

#### Conducting the Formal Investigation

- 9.10 If, following the preliminary investigation, the decision is taken to initiate the formal disciplinary process there will have to be a formal investigation. Please see flowchart in Appendix 15(a) and 15(b) for a summary of the process.

#### Interviewing and obtaining evidence from witnesses

- 9.11 If a formal investigation is required, witness statements obtained as part of an initial investigation should be examined and a decision taken as to whether the witness should be re interviewed formally to check the facts. If the witness up this point has only submitted a written statement they must be formally interviewed at this stage. Interviews with and obtaining evidence from witnesses should be completed before interviewing the employee against whom allegation are made.
- 9.12 At this stage further consideration may need to be given as to whether the employee should be suspended.

### Interviewing and obtaining evidence from the employee

- 9.13 A formal investigatory meeting should be arranged which needs to be confirmed in writing to the employee (see Appendix I) giving 5 working days' notice of that meeting and informing them of their right to be accompanied by a trade union representative or colleague and has no right of representation at this stage of the process. The meeting will be minuted. The letter should also confirm the nature of the allegations/ investigation. This should be on the clear understanding that the employee is being accompanied and not represented as the investigating officer will need to ask questions of the employee at the meeting and will expect answers from them.
- 9.14 At the meeting the investigating officer will make clear to the employee exactly what misconduct is being alleged. They must also advise the employee that the matter may result in a formal disciplinary hearing at which meeting they may be represented.

### Formal Interviews – General

- 9.15 Investigation interviews with witnesses and the employee should be carefully prepared in advance. This requires providing advance notice, making suitable arrangements, preparing documentation and questions (using the evidence available so far) and arranging for a note taker. (Appendix 1).
- 9.16 It should be acknowledged that formally interviewing the employee and any other relevant witnesses may be a stressful process for all parties. For this reason, the alleged offender should be strongly advised to contact their recognised trade union or colleague for support and to be accompanied by them at all meetings. At the beginning of an investigatory meeting, the investigating officer should explain the purpose of the meeting, and confirm that, as far as possible, confidentiality will be maintained. The purpose and process of the interview should also be explained. When interviewing the alleged offender, the investigating officer should state precisely what the complaint is, outline the case briefly and ask detailed questions based on the evidence available so far in order to establish the facts.
- 9.17 The main purpose of the investigation interviews is to ask detailed questions of witnesses and the employee, listen carefully, and carefully record what is being said. Facts obtained from other sources/witnesses should be checked and clarified for consistency. When interviewing witnesses, it is not necessary to state all the facts of the case, only those on which the witness has something relevant to say. For all such interviews, the tone adopted by the investigating officer should not be accusatory. A list of open questions should have been prepared prior to the interview, which should be followed up with prompts as necessary, e.g. *'And what happened after that?'*, *'I'm not quite sure what you meant when you said ....'*. The questions should be used to clarify the facts and to check that what has been said is understood by all.
- 9.18 The investigating officer should ensure fairness to both parties in their questioning, which may need, at times, to be direct and probing in an attempt to establish the facts. Listening attentively and being sensitive to silence can be a constructive way of encouraging the interviewee to be more forthcoming. If the interviewee becomes emotionally distressed during the interview a short break should be suggested to allow them to compose themselves before continuing.
- 9.19 At the conclusion of each interview the investigating officer should acknowledge, where necessary, that the process may have been difficult and thank the interviewees for their time and contribution. All parties, including any witnesses, should be told what will happen next and the likely timescales. They should also be told to maintain confidentiality and, therefore, not to discuss the complaint with other parties or work colleagues, other than those providing support as agreed. After the interviews,

a witness statement should be prepared and sent to each party under confidential cover to check, sign and date, verifying that it is an acceptable and accurate version of the interview.

- 9.20 All records of meetings with the employee will be made available to them and their trade union representative or colleague. (See Appendix 1a - letter regarding Investigation Notes).
- 9.21 Unlike a Court of Law, the disciplinary hearing does not need to establish guilt on the basis of “beyond reasonable doubt” but on the lower test of “the balance of probabilities” i.e. “*Is there a reasonable suspicion amounting to a belief in the guilt of the employee of the alleged complaint and are there reasonable grounds for that belief?*” The investigation process should establish the facts to enable the investigator to decide if there is sufficient evidence for the case to proceed to a hearing. It is for the disciplinary hearing to determine an outcome / disciplinary response.

## **Disciplinary Responses**

- 10.0 After establishing the facts through the investigation process, the head teacher or investigating officer will need to make a decision on how the case proceeds. Either way, the employee and their representative/colleague should be informed at this stage.
- 10.1 The investigating officer or head teacher may consider that there is no need to resort to the formal procedure and that it is sufficient to manage the outcome through discussion with the employee concerned in a counselling capacity. There must be clarity about the difference between *counselling* of this kind and *an oral or written warning* issued as a part of the formal procedure. The employee should be left in no doubt about which sort of action has been taken.
- 10.2 The investigating officer will need to consider a number of issues before deciding whether to counsel the member of staff or take more formal disciplinary action. It is always important to recognise that the purpose of any counselling or warning is to prevent further misconduct by the employee. In some disciplinary cases, therefore, counselling may achieve the desired outcome without recourse to the formal procedures. Other factors to consider may include: -
- a) any circumstances outside of the control of the employee which may have been a contributory factor
  - b) personal difficulties or health issues which may have affected the employee’s judgement and/or behaviour
  - c) lack of clear procedures, policies or guidance, support and supervision which may have contributed to the situation
  - d) the level of responsibility and/or experience of the employee involved.
  - e) capability issues which need to be addressed separately
  - f) whether the misconduct represents an isolated incident or follows previous incidents which have been addressed with this employee
  - g) the level of seriousness of the offence
  - h) any other mitigating circumstances relevant to the situation
  - i) the School Employee Code of Conduct and other appropriate professional standards i.e. the Teachers’ Standards and or the Head Teacher Standards 2020.

## **Counselling**

- 10.3 Whilst making it clear that the behaviour is inappropriate and must not be repeated, counselling should also be seen as constructive and helpful to the employee. As a means of rectifying unacceptable conduct, other support mechanisms may be implemented as appropriate e.g. a programme of professional support and training, mentoring, referral to occupational health and/or counselling service etc.
- 10.4 Schools are advised to convene a specific counselling meeting at which the employee may wish to be accompanied by their trade union representative or colleague. The head teacher may also involve another senior member of staff e.g. deputy head or chair of governors. Although the matter should remain confidential a record of the counselling interview and outcome should be kept on the employee's personal file along with details of any support and guidance given.

### Formal Disciplinary Action

- 10.5 Following the investigation, if the facts indicate that formal disciplinary action should be taken, the employee and their trade union representative/colleague should be informed at this stage. The employee should be told that the investigation is completed, and the matter will be referred to a disciplinary panel. A view should be formed on whether or not the conduct is severe enough to warrant dismissal on the grounds of gross misconduct (see Appendix 11) or because the offence follows a previous disciplinary warning which has not been "spent". In certain circumstances the governing body panel may include the head teacher providing that they are not the investigating officer and have had no previous involvement with the case. Whichever course of action is pursued, a Business Partner from the HR service will provide advice at the disciplinary hearing. In considering the evidence obtained at any stage it is important to note that the standard of proof in disciplinary procedures is "the balance of probability".
- 10.6 Where the conduct of a head teacher is under consideration and some form of minor warning is felt to be appropriate, the chair of the governing body or a governor nominated by the Chair will hear the case, again advised by a Business Partner from the HR Service. In more serious cases a panel of governors should be convened for the formal disciplinary hearing.

### Management of a Disciplinary Hearing

- 11.0 The date of the disciplinary hearing should be confirmed in writing to the employee together with the relevant papers to be considered at the hearing, as soon as possible and at least ten working days before the due date. The investigating officer should ensure that the panel receive a copy of all the papers sent to the employee at least ten working days before the hearing. (See Appendix 3 – Notification of Hearing) The employee must be notified of their statutory right to be represented at that meeting by their trade union representative or colleague. The employee should be given the opportunity to send any written submission or evidence to the panel which should be received no later than 5 working days prior to the hearing so that it may be circulated and properly considered. A copy of any such submission should also be made available to the investigating officer within the same timeframe.

- 11.1 If their Union representative or colleague is unable to attend on the date of the meeting, the Employment Relations Act 1999 requires that a further date should be set within five working days of the original date. To avoid unnecessary delays, therefore the date of the hearing should always be set in consultation with both the employee's trade union representative/colleague and the HR Service. This is to ensure not only that the employee's trade union representative is available but that an appropriate HR Business Partner is also available to attend and advise the panel on any procedural aspects or matters of employment law. It should be noted that the HR Business Partner is NOT a member of the governing panel and that their role is advisory.
- 11.2 The procedure for conducting a disciplinary hearing is set out below and the order of events is summarised in Appendix 4. The same outline procedure applies to disciplinary hearings conducted by a head teacher where the role of the disciplinary panel will be taken solely by the head teacher and the role of the head teacher in presenting the case to the panel will be taken by the investigating officer. The selection of governors for a disciplinary panel must ensure that there is no conflict of interest which may arise in hearing the case. It is generally considered unwise for staff governors to take part in such a disciplinary hearing.
- 11.3 In view of the sensitivity of the situation, particular consideration will need to be given to the arrangements for the hearing. For example, the venue will need to comfortably accommodate all parties during the course of the meeting with a private meeting room for the employee and their representative/colleague to adjourn and to provide a suitable room for any witnesses waiting to give evidence.
- 11.4 The school should arrange for an appropriately experienced member of staff to take detailed confidential notes of the meeting.

#### Conducting the Disciplinary Hearing/Appeal

- 11.5 At the hearing the investigating officer will be responsible for presenting the evidence to the disciplinary panel in the presence of the employee and representative/colleague. Witnesses may be called individually by the investigating officer in support of the case. Detailed guidance on conducting the disciplinary hearing is included in Appendix 4(a), 4(b) and 4(c).
- 11.6 The procedure outlined above will also be followed to hear any appeals against decisions to issue oral, formal and written warnings or to dismiss.

#### **Outcomes of a Disciplinary Hearing**

- 12.0 The formal disciplinary responses available to the disciplinary panel (and also where the governing body has delegated such powers to the head teacher) are:-

##### An oral warning

- 12.1 In the cases of minor offences the employee should be given an *oral warning* and advised that the warning constitutes the first formal stage of the disciplinary procedure. The oral warning should be confirmed in writing (see **Appendix 5**) and be kept for reference only on the employee's personal file and a copy sent to the employee for their retention. A reasonable time limit should be established after which the warning becomes spent (see **Appendix 10** – Review of Disciplinary warnings).

### A written warning

- 12.2 In the case of more serious offences or where there is an accumulation of minor offences, the employee should be given a *written warning*. (See Appendix 5 – Notification of outcome letter). A copy of the written warning and any evidence presented to the disciplinary hearing should be kept confidentially on the employee's personal file. A copy of the warning should be sent to the employee for their retention. A reasonable time limit should be established after which the warning becomes spent (see Appendix 10 – Review of Disciplinary warnings).

### A final written warning

- 12.3 Following an earlier warning for misconduct or in response to serious misconduct, the employee may be issued with a *final written warning* which will contain a statement that any further incidents may lead to dismissal. There may be occasions when misconduct is regarded as being insufficiently serious to justify consideration of dismissal but sufficiently serious to warrant only one written warning which, in effect, is both a first and final warning (See Appendix 6 - Final Warning). Again, a copy of the warning and any evidence presented to the disciplinary hearing should be kept confidentially on the employee's personal file. A reasonable time limit should be established after which the warning becomes spent (see Appendix 10 – Review of Disciplinary warnings).

### Dismissal

- 12.4 Except for cases of *gross misconduct*, an employee should not be dismissed for a first breach of discipline. Where potential gross misconduct is being investigated, the school must notify their named school Business Partner at the earliest possible stage and advice sought. The HR service will provide support throughout the investigation stage and review the investigation and details of the case before the disciplinary panel is convened so that appropriate advice may be given (see Appendix 11 – Standards of Conduct) To ensure the decision of the disciplinary panel or head teacher is reasonable in all the circumstances of the case, account should be taken of:

- a) the employee's previous disciplinary record
- b) the employee's general record, position, age, length of service and state of health
- c) the penalty imposed in similar cases in the past
- d) has the disciplinary panel/head teacher considered all potential outcomes?
- e) the potential impact on the employee's career (particularly if there is a duty or elective referral to a professional governing body to be considered)
- f) any mitigating circumstances which might make it appropriate to lessen the severity of the penalty

- 12.5 In addition, before any decision to dismiss is finally determined and communicated to the Strategic Director for Children, Families and Cultural Services, the disciplinary panel or head teacher must address the following questions:

- a) Has there been as much investigation as is reasonable in the circumstances?
- b) Does the disciplinary panel/head teacher feel that they have all the relevant information to enable them to reach a reasoned decision?

- c) Does the disciplinary panel/head teacher genuinely believe “on the balance of probability” that the employee has committed the misconduct?
- d) Has the disciplinary panel/head teacher reasonable grounds on which to sustain that belief?
- e) Is the misconduct sufficiently serious to justify the disciplinary decision being contemplated?
- f) Has the disciplinary panel/head teacher balanced the potential impact on the employee’s career with the seriousness of the misconduct?
- g) Is the decision within the band of reasonable responses of a reasonable employer in the circumstances?

(See Appendix 7 – Dismissal )

## **Communication and recording the outcome**

13.0 Any decision of a disciplinary hearing must be confirmed to the employee in writing within three working days.

### Oral, Written, Final Warnings

13.1 Details of any disciplinary action retained in an employee's personal file will normally be reviewed in consultation with the employee and their representative after a minimum period of twelve months with a view to determining whether the warning is 'spent'. If the warning remains current, further reviews should take place at six monthly intervals. Unless exceptional circumstances prevail, the maximum period for regarding a warning as current shall be three years but should be proportionate, for example, 12 months for an oral warning and 18 months for a written warning. Naturally, the decision on the length of time that a warning remains current will be determined by the nature of the disciplinary issue and the likelihood of any re-occurrence of misconduct. The employee should be informed, in writing, of any decision to regard a warning as 'spent'. A copy of the warning should remain in the employee's personal file along with an attached note confirming that, for disciplinary purposes, the warning is spent. However, the requirements of safeguarding children legislation mean that the school should keep records of any investigations and/or warnings arising from the allegations of abuse indefinitely. Reference should not be made to spent warnings when producing employment references unless they are related to safeguarding issues. See HR Guidance (Schools) contained within the Recruitment and Selection of School Staff / Appendix 7 References available on the Schools Portal . Guidance on the process of reviewing warnings is attached at Appendix 10 - Review of Disciplinary Warnings.

### Dismissal

13.2 Where the governing body determines that an employee should be dismissed in these circumstances it will normally be on the grounds of conduct. The individual should be advised of their right of appeal against such a decision and their right to representation in accordance with the procedures using the template letter at Appendix 7.

13.3 Where the employee is employed by a voluntary aided, foundation school or an academy the school / academy will write to the employee to terminate the contract of employment. Where the employee is employed in a community or voluntary controlled school a recommendation should be made to the Strategic Director for Children's, Families and Cultural Services via the HR Service to terminate the contract of employment with Nottinghamshire County Council. In accordance with the School

Staffing (England) Regulations 2009 the request will be actioned within 14 days. Where an employee is summarily dismissed their employment will end on the date that the decision to dismiss was made. This will usually be the date of the disciplinary hearing. Should the member of staff choose to exercise their right of appeal and the appeal is upheld the contract will be reinstated. In the case of a teacher the school in conjunction with the HR service must consider the circumstances of the dismissal to determine whether a referral to a professional body, e.g. TRA is required in line with Teacher misconduct: Guidance on referring a case.

## **Appeals**

- 14.0 An employee has a right to appeal against any decision to issue an oral, written or final warning or any decision to dismiss. The employee will be advised of this right in the conveying of any such decision by a head teacher or member of a governing body who constitute a disciplinary panel. This will also be confirmed in writing as part of the outcome letter. The employee will also be advised that he/she has 10 working days from the date of the hearing to lodge an appeal.

**Appendix 8 – Notification of Appeal Hearing**

**Appendix 9 – Outcome of Appeal (Dismissal)**

- 14.1 An appeal will be heard by a panel of governors who have played no part in the initial disciplinary hearing. In the case of an appeal against a decision taken by a disciplinary panel of governors, the appeal must be heard **by the same number** of governors as comprised the original disciplinary panel, normally three.
- 14.2 The procedure for hearing an appeal will be the same as that for the disciplinary hearing itself, see **Appendix 4 (a), (b) and (c)**. Every effort should be made for the appeal hearing to be convened as soon as possible and timescales for hearing an appeal may be reduced if agreed by all parties. Should an appeal against a dismissal be upheld the contract of employment will be reinstated. There are no further rights of appeal against the decision other than to an Employment Tribunal, should an employee have the qualifying employment rights.

## **Employment Tribunals**

- 15.0 Employment tribunals hear complaints lodged against employers on the grounds that they have discriminated against individuals or failed to respect their rights under employment law.
- 15.1 The governing body will be the respondent in relation to an application to an employment tribunal alleging unfair dismissal although, in law, the County Council remains the employer (other than in Academy, Trust, Foundation and Voluntary Aided Schools). The first that a school may know of a referral to an employment tribunal will often be the receipt of a document from the employment tribunal numbered ET1. This ET1 document is the originating application which will set out the applicant's grounds of application to an employment tribunal. The respondent then has fourteen days in which to fill in the form ET3, the notice of tribunal appearance. Schools must act urgently and seek immediate advice from the HR Service.
- 15.2 Because of the peculiar legal relationship between the County Council and governing bodies, former employees may not always know who the proper respondent is in their application.

- 15.3 Given the timescales, even though an extension of time may be granted by a tribunal, it is essential that as soon as an ET1 is received by a school, a copy should be passed to the Head of the HR Service at County Hall. Advice will then be given on whether or not the County Council need to be involved in producing the notice of appearance. By the same token, when an ET1 is received at County Hall, a copy will be made available as soon as possible to the head teacher with appropriate comments. **It is vitally important that this mutual procedure be followed strictly, since in the event of default an applicant may obtain judgement without either the school or the County Council having the opportunity of defending the matter.**
- 15.4 A tribunal can order an employee to be re-instated and they can award compensation.
- 15.5 The County Council will be primarily responsible for the payment of any compensation order by an employment tribunal in respect of a finding of unfair dismissal for employees in maintained schools. However, where it is reasonable to do so the County Council is empowered to deduct such compensation from the school budget. However, providing the school has purchased advisory support from the HR Service and has sought and followed the advice given to them, this is unlikely to happen.
- 15.6 In cases where the governing body and council are in agreement over the matter of dismissal then, subject to HR Service purchased, the governing body of maintained schools will receive financial support to defend ET cases subject to the limits set out in the Services for Schools document. Governors will need to give very careful consideration to the nature of the evidence before an employment tribunal. Evidence may have to be given by witnesses and other members of staff and members of the governing body, particularly those governors who chaired the disciplinary panel and the appeal panel.
- 15.7 The law relating to dismissals has been complicated in recent years by the emergence of a large body of case law. There are many pitfalls, but provided a fair procedure is adopted and followed it should be possible for a governing body to defend a decision to dismiss provided it relates to grounds for dismissal which is recognised by law.
- 15.8 Where dismissal is a possibility, a Business Partner from the HR Service will attend and will arrange for appropriate legal advice to be available to the head teacher/disciplinary panel if necessary.
- 15.9 Whilst it is anticipated that disciplinary issues coming before the governing body will be the exception rather than the rule, there is nevertheless a clear need for training of both governors, head teachers and other senior staff in this complex area. The HR Service will, therefore, continue to incorporate such training into its overall programme for governors and school staff.

## **Settlement Agreements**

- 16.0 Settlement Agreements are legally binding contracts which can be used to end an employment relationship on agreed terms. Academy schools must comply with the Academies Financial Handbook if they are considering a settlement agreement.
- 16.1 Settlement agreements include a confidentiality clause, but this cannot be used to prevent someone from making a protected disclosure e.g. whistleblowing complaint. They must not be used to prevent an allegation being followed up and/or a decision on whether a referral should be made to DBS or TRA.

16.2 Settlement agreements should only ever be used in certain circumstances and maintained schools must seek and follow the advice of the County Council HR Service at all times. This is a complex area.

### **Teaching Regulation Agency (TRA)**

17.0 Where a teacher is dismissed for reasons of misconduct or would have been dismissed had they not resigned first, all schools have a legal duty to consider making a referral to the TRA. The school should work closely with the HR service to consider this immediately following a disciplinary decision. Panel Governors and staff members acting as an investigating officer or as a witness may be required to attend a TRA Professional Conduct Panel.

17.1 The TRA is required to review such cases and consider whether they should be referred to a Professional Conduct Panel. Where a teacher is found by such a Committee to have fallen short of the standards expected, the TRA may issue a disciplinary order.

17.2 Detailed guidance issued by the DFE is available here:

[Teacher misconduct: Guidance on referring a case](#)

17.3 It should be noted that the County Council may directly dismiss school staff in its employment where the Secretary of State has prohibited further employment of any member of staff because of their previous conduct or capability.

### **Referral to DBS**

18.0 Schools have a legal duty to refer to the DBS any member of staff has harmed or poses a risk of harm to a child, or vulnerable adult where :

- a) The harm test is satisfied in respect of that individual;
- b) The individual has a received a caution or conviction for a relevant offence, or if there is a reason to believe that the individual has committed a listed relevant offence; and
- c) The individual has been removed from working in regulated activity (paid or unpaid) or would have been removed had they not left.

18.1 The legal duty to refer applies equally in circumstances where an individual is deployed to another area of work that is not regulated activity, or they are suspended. Referrals should be made as soon as possible after the resignation, removal or redeployment of the individual. Please refer to the latest version of KCSIE.

18.2 Where a teacher's employer, including an agency, dismisses or ceases to use the services of a teacher because of serious misconduct, or might have dismissed them or ceased to use their service had they not left first, they must consider whether to refer the case to the Secretary of State. The Secretary of State may investigate the case and decide whether to make a prohibition order in respect of that person.

- 18.3 Before making a referral to either the DBS and TRA cases where there is alleged serious teacher misconduct involving harm or risk of harm to a child please see Part 2 – Managing Allegations and seek advice from (a) the LADO and (b) the HR Service.

### **Monitoring and Review**

- 19.0 Where changes to this policy are proposed the governing body will undertake an Equality Impact Assessment (EQIA). The governing body will make available to staff the outcomes of the Equality Impact Assessment.
- 19.2 The governing body will monitor the outcomes and impact of this policy annually. As part of this review it that will monitor trends on progression across all groups of staff, the school's continued compliance with equalities legislation and the provisions of the STPCD, the Burgundy Book and the Green Book – NJC Conditions of Service. A document to support this review is included as Appendix 9.

## Appendix 1: Formal Investigatory Meeting

### Private and Confidential

*Name*

*Address*

Dear

### **Schools Disciplinary Procedure - Conduct Formal Investigatory Meeting**

Further to our recent discussion regarding the allegations made against you, I wish to inform you that you are now required to attend a formal investigatory meeting within the remit of the schools disciplinary procedure.

This meeting will be held with (*Name*) in (*Office*) at (*location*) on (*date*) at (*time*). You are advised to be accompanied at this meeting by a representative of your Recognised Trade Union or a colleague.

Specifically, the meeting will address the following issues:-

(List each allegation (as known at this point in time), include information such as date, time, place of incident etc.)

I must inform you that this meeting will be minuted and, depending on the outcome, a decision will be taken on whether formal disciplinary action will be taken under the school's Disciplinary Procedure.

Please confirm with me by (*date*) that you are able to attend and who will be accompanying you.

Yours sincerely

Head teacher/Investigating Officer

Copies to: HR Business Partner, HR service  
Trade Union Representative/colleague

## Appendix 1a: Letter re. Investigation Notes

### STRICTLY CONFIDENTIAL

Dear

#### **Schools Disciplinary Procedure - Conduct Outcome of Investigatory Meeting**

Further to our meeting on <date> I enclose for your information two copies of the notes taken.

I should be grateful if you would read the notes carefully and return to me a signed copy of the notes indicating that this is a true record of the meeting. If you have any comments or alterations to the details of these please indicate in red pen.

Please return these notes to me by <dates> and retain the second copy for your personal reference.

Thank you for your co-operation.

Yours sincerely

HR Business Partner / Investigating Officer

## Appendix 1b – Outcome letter, no formal action or no action

FIRST CLASS

**PERSONAL**

Name

Address

Dear

**(Name of) School - Disciplinary Procedure**

Further to the preliminary / formal investigatory meeting held on (date) my decision is that no formal action / no action will be taken in respect of the following allegations:

*(List allegations)*

*(If informal action or recommendations have been made or taken please explain these here).*

Yours sincerely

Head teacher

Copy to: HR Business Partner, HR Service  
TU Representative/colleague

## Appendix 2: Notification of Suspension

### Private and Confidential

[Name]  
Address

Dear

### Schools Disciplinary Procedure – Notification of Suspension

Further to our recent discussion, I confirm that in view of the incident(s) which has/have come to light (*give reasons*) regarding your alleged inappropriate behaviour towards a pupil), you are suspended from your post as \* at this school, with immediate effect. As suspension is not a disciplinary measure you have no right of appeal against this decision. However, you will remain on full pay pending the outcome of the investigation into the alleged incidents outlined above.

Whilst I cannot confirm at this stage when the investigation will be completed, I can assure you that I am aware of how difficult this situation must be for you and the investigation will take place without delay. However, I consider that by the nature of your employment, i.e. supervision of children/seriousness of the allegations (*or other reason*), your continued presence at work may be prejudicial to the situation. I must advise you that during the period of your suspension you should refrain from entering the school premises and communicating directly with anyone involved in the case. However, this does not prevent you from communicating informally with friends or colleagues about issues not connected with the case. The school will treat this matter with complete confidentiality and will expect you as an employee of the school to do the same.

If you should wish to contact the school for any reason, you can do so through a number of channels:

- [name & post of link officer] [telephone number xxxx] has agreed to act as your link officer during your suspension
- you can also contact [name of line manager] [telephone xxxx]
- In addition you can also contact [name and post of contact in HR] [telephone xxxx]. If [name of HR person] is unavailable another member of the HR team will be able to assist you.

If, at any point, you wish to speak to me personally about your situation or the procedures then please do not hesitate to contact me. Further support can also be obtained from your Trade Union or colleague [change as appropriate]

[Add in any other support arrangement in place – including the offer of counselling and OHU referral if applicable].

[If there is any school property to be returned add in here]

For School Support Staff only add this information on taking annual leave:

During your period of suspension annual leave should be taken in accordance with the normal procedures and should be approved in the normal way. You should be aware that there is no provision for the carry-over of annual leave from one leave year to the next.

Yours sincerely

Head teacher

Copy to: HR Business Partner, HR Service  
Trade Union Representative/colleague

## Appendix 3: Notification of Hearing

[NB: It is most important that the school seeks advice from their named HR Business Partner on the wording of disciplinary allegations which must be carefully worded based on the facts resulting from the investigation of each case]

### FIRST CLASS

*Name & Address*

Dear

#### **(Name of) School Disciplinary Procedure – Conduct of staff**

Further to our recent discussions, I wish to inform you that you are required to attend a meeting within the framework of the school's disciplinary procedure. A copy of this procedure is available in school in *(place)* for your information. (A copy of this procedure is enclosed – *if suspended*). Please confirm receipt of this letter by *(date and time)*

The meeting will be with myself as investigating officer and the governors' disciplinary panel and will be held in *(place)* at the school on *(date)* at *(time)*. Specifically, the meeting will consider your conduct relating to *(carefully word each allegation, include information such as date, time, place of incident etc.)*

*(The following paragraph needs careful wording - If dismissal is a possible outcome of the hearing, i.e. as a result of gross misconduct or following previous warnings, this must be clearly stated in letter).*

I must advise you that one possible outcome of the hearing is that you may be dismissed from your post as *(job title)*, for gross misconduct *or* as you already have a final written warning.

Within the provisions of the school's disciplinary procedure you are entitled to receive copies of the documents which will be considered at the hearing. I attach, for your information, copies of the following documents:- *(List the appendices in order, starting with statement of case)*

You have the right to present evidence to support your case. If it is your intention to submit evidence to the panel you must let me have this by *(date)* so that I can circulate copies prior to the meeting. Otherwise any documents you wish to rely on may not be considered by the panel. As part of the presentation of the case, I will be calling the following witnesses *(include name and post title/other)*:

You will, as part of the presentation have an opportunity to question the witnesses on the evidence they have provided.

You are strongly advised to be represented at the meeting by your trade union representative or a colleague. You may, if you wish, call witnesses to support your case and, if this is your intention,

please let me know in advance of the meeting so that arrangements can be made to accommodate them. Please confirm by (*date*) the names of any witnesses you intend to call and that you and your representative are able to attend this meeting on the date and times given.

I will assume that you will be attending the hearing unless I hear from you by (5+ days time (*date*)) to the contrary. You should be aware that the hearing is likely to proceed in your absence unless you provide appropriate notice and explanation for your non attendance.

Please provide the second copy of these papers to your representative / or / A copy of these papers have been sent to (name of representative/colleague).

Yours sincerely

Head teacher

Copy to: HR Business Partner, HR Service,  
Governors Panel

## Appendix 4a - Disciplinary

### Order of events

1. The Investigating Officer, which may be the head teacher (or senior leader nominated by the head teacher) or chair of governors (in the case of head teacher) will present the case. The purpose of the disciplinary hearing/appeal is to establish the facts and determine an appropriate way forward, including, where required, the disciplinary sanction determined by the panel.
2. The Investigating Officer will present their report, including any witnesses. Witnesses may be asked to attend the meeting to support their evidence.
3. The employee, supported by their trade union representative or colleague, will be provided with an opportunity to respond to the evidence, to make their own case in relation to the concerns about their conduct and to make any relevant representations, supported as appropriate by their trade union representative or colleague.
4. The hearing/appeal will be conducted in line with the Order of Events after which there will be an adjournment, during which the head teacher (or their nominated senior leader) or chair of governors or disciplinary panel will consider the evidence and confirm their decision.

## Appendix 4b – Disciplinary Procedure - Governors Hearing Procedure

# DISCIPLINARY PROCEDURE – CONDUCT OF SCHOOL STAFF

### GOVERNORS' HEARING Order of Events

1. Investigating officer presents the case to Head teacher/Panel<sup>1</sup>.
2. Questions from employee and/or employee representative.
3. Questions from Head teacher/Panel.
4. Employee (or representative) presents their case to Head teacher/panel<sup>2</sup>.
5. Questions from investigating officer.
6. Questions from Head teacher/Panel.
7. Investigating officer sums up.
8. Employee (or representative) sums up.
9. Both parties withdraw.
10. Head teacher / Panel reviews evidence/makes decision.
11. All parties reconvene. Decision given to employee.
12. Decision confirmed to employee in writing within 3 working days (including notice of right to lodge appeal within 10 working days – if appropriate).

#### N.B.

- Where a senior leader is the Investigation officer, s/he will present the case to the head teacher/governors panel.
- If the head teacher assumes the role of investigation officer he/she will present the case to a panel of 3 governors who will decide on the outcome. Should an appeal be required, a different panel of 3 governors will be required.

---

<sup>1</sup> Where the head teacher/investigating officer calls a witness to support the management case, the following procedure applies :

- The witness will be asked questions by the investigating officer
- The witness may be asked questions by the employee or their representative or colleague.
- The witnesses may then be asked further questions by the head teacher/investigating officer.
- Members of the Disciplinary Panel may ask questions of the head teacher/investigating officer and witnesses on the evidence submitted.

<sup>2</sup> Where the employee or representative/ colleague calls a witnesses in support of their case, the following procedure applies :

- The witnesses will be asked questions by the employee / representative or colleague.
- The witness may then be asked questions by the investigating officer.
- The witnesses may then be asked further questions by the employee, representative or colleague.
- Members of the Disciplinary Panel may ask questions of the employee and her/his representative or colleague and witnesses on the evidence submitted.

- Where the head teacher is subject to these procedures the Chair of governors is strongly advised to engage the services of the HR Service to investigate and present the case to a panel of 3 governors who will determine the outcome.

**Note:** *After completion of the above stages any witnesses will be:*

- a) Instructed not to discuss the case in any way until after the hearing has been determined*
- b) Asked to retire. Unless otherwise determined by the parties to the hearing, the witnesses may be subject to recall*

## **Appendix 4c – Guidance on Governors’ hearing/appeal**

### **DISCIPLINARY PROCEDURE – CONDUCT OF SCHOOL STAFF**

#### **GOVERNORS’ PANEL HEARING**

1. It is recommended that the Disciplinary Panel should normally comprise three governors drawn, where possible, from the Pupils and Personnel Committee. In line with the 2009 School Staffing Regulations, the head teacher is also able to take disciplinary decisions, if s/he is not acting as the investigating officer. In relation to disciplinary decisions, the County Council strongly advises schools that dismissal decisions are best made by a panel rather than by one person acting alone. It is therefore recommended that the panel should also include two governors in cases so that where the head teacher is not the investigating officer they form one member of the three member panel convened to consider dismissal. The selection of governors must also ensure that there is no conflict of interest which may arise in hearing the case. Staff governors should not be involved, where there is a potential conflict of interest.
2. The date of the disciplinary hearing should be agreed with the employee as soon as possible and at least 10 working days before the due date, unless an earlier date is mutually agreed between the parties. The employee should be given the opportunity to send any written submission of evidence to the Panel prior to the hearing. A copy of any submission should also be made available to the investigating officer. The Investigating officer should submit their report, the letter setting out the allegations and supporting evidence setting out the facts of the case in writing to the panel with a copy to the employee. This must be sent in time to ensure this is received by the employee at least 10 working days before the date of the hearing, unless an earlier date is mutually agreed between the parties.
3. The date of the disciplinary hearing should always be determined in consultation with the employee, their representative or colleague, witnesses and the HR Service to ensure that (a) an appropriate officer is available to attend and advise the panel on any procedural aspects or matters of employment law, (b) the employee’s trade union or colleague is available to attend. For community schools, it is the panel’s duty to consider the advice given by the County Council. This is particularly important where the hearing or appeal relates to a decision to dismiss.
4. At the hearing the investigating officer will be responsible for presenting the evidence to the disciplinary panel in the presence of the employee and their trade union representative or colleague. Witnesses may be called individually by the Investigating officer in support of the case and to provide evidence and/or support their written statements or formally recorded interview.
5. The head teacher/investigating officer and any witnesses called may be asked questions by the employee or their representative or colleague.
6. The witnesses may then be asked further questions by the head teacher/ investigating officer.

7. Members of the disciplinary panel may ask questions of the investigating officer and witnesses on the evidence submitted.

**Note:** After completion of the above stages the witnesses will be:

- a) *Instructed not to discuss the case in any way until after the hearing has been determined*
- b) *Asked to retire. Unless otherwise determined by the parties to the hearing, the witnesses may be subject to recall*

8. The employee or representative will state her/his case in the presence of the investigating officer. Witnesses may be called by the employee in support of her/his case.

9. The employee and any witnesses called may then be asked questions by the investigating officer.

10. The witnesses may then be asked further questions by the employee or their representative/colleague.

11. Members of the disciplinary panel may ask questions of the employee and her/his representative and any witnesses called. **Note:** After completion of the above stages the witnesses will be:

- a) *Instructed not to discuss the case in any way until after the hearing has been determined*
- b) *Asked to retire. Unless otherwise determined by the parties to the hearing, the witnesses may be subject to recall*

12. The investigating officer shall then have the opportunity to sum up the case against the employee.

13. The employee or her/his representative shall have the opportunity to sum up on her/his behalf and offer the disciplinary panel details of any mitigating circumstances she/he would wish to be taken into account.

14. The employee, trade union representative/colleague and investigating officer shall then withdraw.

15. The disciplinary panel (together with the HR adviser and any other officer(s) acting as clerk/secretary to the panel) will then deliberate in private, only recalling the employee (and her/his representative) and the investigating officer to clear points of uncertainty on evidence already given. If recall is necessary, both parties will return, notwithstanding that only one of them is concerned with the point giving rise to doubt.

16. After deliberating, the disciplinary panel will announce the decision to the employee, representative and investigating officer personally. Any right of appeal against the decision will also be explained. The panel will formally write to the employee within three working days confirming the decision and any appeal rights.

## 17. APPEALS

The procedure outlined above will also be followed to hear any appeals against decisions of formal, final warnings or dismissal given by the head teacher or disciplinary panel.

## Appendix 5: Notification of Outcome – Oral/Written Warning

(NB: Advice must to sought about the specific working for each case)

FIRST CLASS

**PERSONAL**

Name

Address

Dear

### **(Name of) School - Disciplinary Procedure - Conduct**

I wish to confirm the outcome of your hearing with the Disciplinary Panel/head teacher on (*date*) in the presence of ((*name*) HR Business Partner) and **either** your representative (*name, T.U.*)/**or** (*despite being advised of your right to representation you chose not to exercise it*). The meeting was arranged within the framework of the school's disciplinary procedure.

At this hearing reference was made by the investigating officer (*name*) to (*details of disciplinary issues*). Having fully considered the evidence the governors' disciplinary panel/head teacher decided to issue an *oral/written warning* in respect of your conduct. This *oral/written* warning will remain on your personal file for a period of

12 months, after which time it will be reviewed. I must also warn you that any further problems which occur concerning your conduct or capability will be viewed very seriously indeed and may result in further disciplinary action.

*If employee was suspended include following paragraph*

Your period of suspension will end on (*date*) and you should contact (*person*) before this date to discuss your return to work.

At the hearing you were notified of your right to appeal this decision and a provisional date was set for (*date*) and (*time*).

1). If you wish to appeal against this decision you may do so in writing to me at the above address within 10 working days stating briefly the grounds of your appeal. You will be offered the opportunity to be heard in person by the governors' Appeal Panel accompanied, if you so wish, by your trade union representative or a person of your own choosing.

Yours sincerely

Head teacher

Copy to: (*name*) HR Business Partner, HR Service  
(*name*) Representative/colleague

## Appendix 5a: Notification of Outcome – No sanction

FIRST CLASS

**PERSONAL**

Name

Address

Dear

### **(Name of) School - Disciplinary Procedure - Conduct**

I wish to confirm the outcome of your hearing with the Disciplinary Panel/head teacher on (*date*) in the presence of ((name) HR Business Partner) and **either** your representative (*name, T.U.*)/**or** (*despite being advised of your right to representation you chose not to exercise it*). The meeting was arranged within the framework of the school's disciplinary procedure.

At this hearing reference was made by the investigating officer (*name*) to (*list the allegations*). Having fully considered the evidence the governors' disciplinary panel/head teacher decided not to issue a warning in respect of your conduct.

The following recommendations and expectations were made by the panel / head teacher (*list these here*)

***(recommendations made about conduct only – do not use if no case to answer)***

**Although no sanction has been issued on this occasion any further problems which may occur concerning your conduct or capability will be investigated in line with the appropriate procedure.**

**I now consider this matter to be concluded and should you require any support following this process please contact X.**

Yours sincerely

Head teacher

Copy to: (name) HR Business Partner, HR Service  
(name) Representative/colleague

## Appendix 6: Final Warning

### **FIRST CLASS**

### **PERSONAL**

*Name*

*Address*

Dear

### **(Name of) School - Disciplinary Procedure - Conduct**

I wish to confirm the outcome of your hearing with the Disciplinary Panel/head teacher on (*date*) in the presence of ((*name*) HR Business Partner) and your representative (*Name, Trade Union*)/or (*despite being advised of your right to representation you chose not to exercise it*). The meeting was arranged within the framework of the school's disciplinary procedure.

At this hearing reference was made by the investigating officer (*name*) to (*details of disciplinary issue*).

Having fully considered the evidence, the (*name*) Disciplinary Panel/head teacher decided to issue a **final warning** in respect of your conduct. This warning will remain on your personal file for a period of (*state period – minimum 12 months*), after which time it will be reviewed. I must warn you that any further instances concerning your conduct/capability may lead to further disciplinary action which could result in your dismissal.

*If employee was suspended include following paragraph*

Your period of suspension will end on (*date*) and you should contact (*person*) before this date to discuss your return to work.

At the hearing you were notified of your right of appeal and a provisional date was set for (*date, location and time*).

If you wish to appeal against this decision you may do so in writing to me at the above address within 10 working days stating briefly the grounds of your appeal. You will be offered the opportunity to be heard in person by the governors' Appeal Panel accompanied, if you so wish, by your trade union representative or a person of your own choosing.

Yours sincerely

Head teacher

Copy to: (*name*) HR Business Partner, HR Service  
(*name*) Representative/colleague

## Appendix 7: Dismissal

(\*NB - Advice must be sought about specific wording for each case)

### **FIRST CLASS PERSONAL**

Name

Address

Dear

#### **(Name of) School - Disciplinary Procedure - Conduct**

I wish to confirm the outcome of your hearing with the Disciplinary Panel/head teacher *on (date) together with ((name) HR Business Partner) and either your representative (Name, Trade Union) or (despite being advised of your right to representation you chose not to exercise it)*. The meeting was arranged within the framework of the school's disciplinary procedure.

At the hearing, reference was made by the investigating officer (named) to *(details of disciplinary issues) (\*Advice must be sought about specific working for each case)*.

I confirm the decision that in view of the circumstances *(e.g. the Panel considered that your behaviour constituted gross misconduct or/and in view of the fact that you had already received a previous warning/final warning)*, the governors' Disciplinary Panel/head teacher decided that you should cease to work at the *(name)* school with effect from..... In accordance with the School Staffing Regulations 2009 they will inform the Strategic Director for Children, Families and Culture that you be dismissed from your post as \* on the grounds of ..... Your employment terminates today and the Authority will confirm this decision in writing then issue you with a notice of dismissal from your employment with this school.

At the hearing you were notified of your right to appeal and a provisional date was set for (date and time)

If you wish to appeal against this decision you may do so in writing to me at the above address within 10 working days stating briefly the grounds of your appeal. You will be offered the opportunity to be heard in person by the governors' Appeal Panel accompanied, if you so wish, by your trade union representative or colleague. If your appeal is upheld, the county Council/Trust will be informed and, where appropriate, will re-instate your contract of employment.

Please confirm receipt of this letter by.....

Yours sincerely

Head teacher

Copy to: (name) HR Business Partner, HR Service  
(name) Representative/colleague

## Appendix 8: Notification of Appeal Hearing

### **FIRST CLASS**

### **PRIVATE AND CONFIDENTIAL**

Name

Address

Dear \*

### **\* (Name) SCHOOL DISCIPLINARY PROCEDURE - CONDUCT**

Further to the disciplinary hearing held on \* and to my letter dated \* informing you of the governors' Disciplinary Panel's/head teacher's decision, I understand from your letter dated \* that you now wish to appeal against the decision *to issue you with a \* warning / dismiss you from your post as \* at the School*).

In accordance with the school's disciplinary procedure, I wish to inform you that I have arranged a meeting to consider your appeal. A copy of the disciplinary procedure is available in school in the HR Guidance for Schools, *(state where available)* for your information. *(If the person is suspended include the following sentence - A copy of the disciplinary procedure is attached for your information).*

The meeting will be with myself and an Appeal Panel of the Governing body and will be at \* on \*. Specifically the meeting will consider \* *(detail here the same information as sent in the initial hearing letter)*

Within the provisions of the school's disciplinary procedure you are entitled to receive copies of the documents relating to the case which will be considered at the Appeal. I attach for your information, copies of the following documents:-

- a) *list and send all of the information as previously sent out for the initial hearing including documents previously submitted by the employee*
- b) *list and send any information submitted by the individual either before the initial hearing or at the hearing.*

If there is any further information relating to this case that you would like to submit to the Governors for their consideration, will you please arrange for this to be sent to me as soon as possible and by \* at the latest. I can then circulate copies to members of the Appeal Panel in plenty of time for their consideration before the meeting.

I would like to take this opportunity to inform you that you are strongly advised to be represented at this meeting by your Trade Union representative or colleague and you may, if you wish, call witnesses to support your case. Please let me know if you are intending to do this so that arrangements to accommodate your witnesses can be made. I have enclosed an additional copy of this letter and accompanying details for you to give to your Union Representative. Please confirm with me by (date/time) + 5 days time) that you are able to attend this meeting on the date and times given.

I will assume that you will be attending the hearing unless I hear from you to the contrary. You should be aware that the hearing is likely to proceed in your absence unless you provide appropriate notice and explanation for your non attendance.

Yours sincerely

Head teacher/Investigating Officer

Copy to: (name) HR Business Partner, HR Service  
(name) Representative/colleague

## Appendix 9: Outcome of Appeal - Dismissal

### FIRST CLASS PERSONAL

Name

Address

Dear

#### **(Name of) School Disciplinary Procedure – Appeal Hearing**

I wish to confirm the outcome of your appeal hearing with the Disciplinary Appeal Panel of the Governing body on *(date)* in the presence of the investigating officer, together with *((name) HR Business Partner* and either your representative *(Name, Trade Union)* or *(despite being advised of your right to representation you chose not to exercise it)*. The meeting was arranged within the framework of the school's disciplinary procedure.

At the hearing, reference was made to *(details of disciplinary issues)*. (Explain what the panel found in relation to each allegation) Having fully considered the evidence, the decision of the Appeal Panel was that you should cease to work at the \*\* school and that the LA be asked to dismiss you from your post of \* *with effect from \* / with immediate effect on the grounds of .....*

As you were dismissed from your post at your disciplinary hearing on *(date)* I have previously notified the Strategic Director for Children, Families and Cultural Services of the decision of this Panel and the Strategic Director has written to you to formally terminate your contract of employment with Nottinghamshire County Council. I will inform them that the Appeal Panel have not decided to re-instate your contract with Nottinghamshire County Council.

Yours sincerely

**Head teacher**

Copy to: *(name) HR Business Partner, HR Service*  
*(name) Representative/colleague*

## Appendix 9a: Outcome of Appeal against warning

### FIRST CLASS PERSONAL

Name

Address

Dear

#### **(Name of) School Disciplinary Procedure – Appeal Hearing**

I wish to confirm the outcome of your appeal hearing with the Disciplinary Appeal Panel of the Governing body on *(date)* in the presence of the investigating officer, together with *(name)* HR Business Partner and either your representative *(Name, Trade Union)* or *(despite being advised of your right to representation you chose not to exercise it)*. The meeting was arranged within the framework of the school's disciplinary procedure.

At the hearing, reference was made to *(list allegations here)*.

*Explain what the panel found in respect of each allegations*

2). The panel's decision therefore was to uphold the *oral / written / final written* warning that was issued to you on *(date)* and confirmed in writing on *(date)*, as the panel consider that this is an appropriate and reasonable form of action due to the *(serious)* nature of the case. This warning will remain on your personal file for a period of *(number (minimum 12 months))* months, after which time it will be reviewed.

3).

4). OR

5). The panel's decision therefore was to overturn the *oral/written/final written warning* that was issued to you on *date* and confirmed in writing on *(date)*. The panel decided to issue you with *no sanction / oral / written /final written warning, (If issued a warning)* This warning will remain on your personal file for a period of *(number)* months, after which time it will be reviewed

6).

7). The notes from the meeting will be sent to you as soon as they are available.

Yours sincerely

Head teacher

Copy to: *(name)* HR Business Partner, HR Service  
*(name)* Representative/colleague

## **Appendix 10: Review of Disciplinary Warnings**

### **Introduction**

Although it is usual for formal warnings to be issued for a period of 12 months, this will vary depending on the circumstances of each case. It will be necessary for head teachers to formally monitor and review such warnings in accordance with the appropriate disciplinary procedure. Advice on methods of monitoring warnings can be obtained from the HR Service.

The purpose of reviewing disciplinary warnings is to consider the continued validity of the warning rather than its physical removal from the personal file. Such information should never be removed as it may be required as evidence later, if disciplinary problems re-occur which result in an Employment Tribunal. If the warning has been reviewed and confirmed as “spent” (this should be clearly recorded along with the original warning), it will not be taken into account if further disciplinary sanctions are being considered. However, it is acceptable evidence at an Employment Tribunal to look at the history of employment in deciding whether an employer has acted reasonably in all the circumstances, hence the need to retain documentary evidence of a spent warning. In addition it is essential that any information regarding disciplinary action relating to allegations of abuse against employees is retained as required by legislation, currently indefinitely. Even where such warnings have expired, this information may be required in relation to any further allegations or for recruitment procedures (see Part 2)

### **Oral warnings**

Whilst there is no specific requirement to review oral warnings, the disciplinary document implies that all warnings should be reviewed. Therefore, it is necessary for oral warnings to be reviewed on the same basis as written warnings. As oral warnings should only be given for minor offences, it is unlikely they would survive after a year.

### **Written warnings**

The key questions that a review should address are:-

- Has the conduct of the individual improved?
- Is there likely to be re-occurrence of the offence?
- Was the original offence deemed to be a serious matter by the governing body?

To answer these questions, it would seem appropriate that the head teacher and/or the appropriate committee of the governors should review the warning with the employee and their representative. Technically, of course, it is a matter for governing bodies to determine this matter, but in such cases, it may be appropriate to consult with the HR Service, who could provide a wider perspective to the matter.

The review should be initiated by the head teacher, who would make a recommendation to the appropriate governors' committee and would also advise the individual in writing as to whether the warning is regarded as 'spent', extended, or otherwise.

There is no appeal against the outcome of a review. However, both the individual and the head teacher could raise a grievance on any matter including the outcome of the review.

### **Further information**

Further guidance on this matter can be obtained from the HR Service.

## Appendix 10a: Confirmation of outcome of review of warning

### FIRST CLASS PERSONAL

Name

Address

Dear

### **(Name of) School Disciplinary Procedure – Review of warning**

I wish to confirm the outcome of the review of the *oral / written / final written* warning that was issued to you on *(date)* for a period of *(number)* months.

#### *Option 1 – conduct satisfactory*

The warning has been reviewed by (head / governors) and confirmed as spent, it will not be taken into account if further disciplinary sanctions are being considered.

#### *Option 2 – conduct not satisfactory*

The warning has been reviewed by (head / governors) and confirmed as not spent. The warning will remain on your record for a further (number) months due to (explain why here). The warning will then be reviewed again. It will continue to be taken into account if further disciplinary sanctions are being considered.

You are not able to appeal against this decision.

Yours sincerely

Head teacher

Copy to: (name) HR Business Partner, HR Service  
(name) Representative/colleague

# Appendix 11: Standards of Conduct Relating to School Employees

## 1. General Standards of Conduct

The public expects the conduct of teachers and other staff working in schools to be of the highest standard. As with all employees of the County Council, those staff employed by the County Council in community and voluntary controlled schools should be aware of their duty to:

- maintain conduct in keeping with the interests and standards of the school and the County Council
- be honest, trustworthy and beyond the reach of suspicion and dishonesty
- maintain at all times a high standard of integrity and conduct
- not put their private interest or those of relatives or friends before their duty to the school/County Council
- not use their position to further private interests or those of relatives or friends
- faithfully perform the duties specified in their contract of employment, to observe the school's policies, values and regulations

## 2. School Employee Code of Conduct

Keeping Children Safe in Education (KCSIE) requires the governing body of all schools to adopt an Employee code of Conduct. The HR service has recommended that all schools adopt the Nottinghamshire school employee Code of Conduct . This Code should be read and considered in conjunction with the School Staff Induction Policy , the Whistleblowing and Confidential Reporting Policy and the disciplinary procedures.

The code sets out the standards of personal and professional conduct including the standards relating to safeguarding children.

## 3. Professional Standards

### a) Teachers Standards

Teachers Standards Preamble

Teachers Standards (full)

Teachers Standards - Guidance on how to use them

These standards published by the Secretary of State for Education set the minimum requirements for teachers' practice and conduct introduced in September 2012. They apply to teachers in maintained schools who are covered by the 2012 appraisal regulations.

Use of the standards in academy and free schools depends on the specific establishment arrangements in that school.

### b) Head Teachers Standards 2020

These standards issued on 13 October 2020, replace the national standards of excellence for headteachers 2015. They are non-statutory and intended as guidance to be interpreted in the context of each individual headteacher and school. They are designed to be relevant to all headteachers and are available here: [Headteachers' standards - GOV.UK](#)

Teachers are subject to the framework of professional standards established by the Teaching Regulation Agency (TRA). When considering cases of serious misconduct, the NCT, acting on behalf of the Secretary of State for Education must have regard to the personal and professional standards set out in the Teachers' Standards. Staff working in Foundation and Voluntary Aided schools may be subject to the specific requirements relating to the ethos of the school. Schools should ensure that all staff are made aware of any guidance issued by the DFE and the HR Service and/or County Council relating to the conduct of school employees, for example restraint procedures, searching and screening of pupils etc.

#### 4. Gross Misconduct

Gross misconduct will normally result in dismissal after the appropriate hearings and will be without notice. Each case of misconduct will be carefully considered and appropriately, taking into account the specific circumstances and any mitigating circumstances. Acts which may constitute gross misconduct are those resulting in a serious breach of contractual terms. It is not possible to specify all possible or potential acts of gross misconduct, but they may include:

- Theft, fraud and deliberate falsification of records.
- Falsification of examination papers or assessment data.
- Physical violence.
- Serious bullying or harassment.
- Improper conduct with children and young people.
- Deliberate damage to property.
- Refusal of a reasonable instruction.
- Misuse of the school/County Council's property or name.
- Bringing the school/LA into serious disrepute.
- Serious incapability whilst on duty as a result of the use of alcohol or illegal drugs.\*1
- Serious negligence which causes or might cause unacceptable loss, damage or injury.
- Serious infringement of health and safety responsibilities or rules.
- Serious breach of confidence (subject to the Public Interest (Disclosure) Act 1998).
- Conduct which fails to uphold public trust in the profession; fails to have proper and professional regard to the ethos, policies and practices of the school; or fails to act within the statutory frameworks which set out their professional duties and responsibilities, as set out in the Teachers' standards and other relevant professional standards

6 \*1 Note: As an employer, the school has a duty of care to employees where there is evidence of alcohol or substance dependency issues. In managing these situations schools must consider support available within the "[Drugs-and-alcohol-misuse-guidance](#)" so that where conduct is affected by alcohol or drug dependency, additional advice and specialist support can be sought in progressing the case. Account will be taken of the degree to which an individual employee engages with any appropriate programme of support

7 In some instances, offences which would normally constitute gross misconduct may be considered as misconduct because of mitigating circumstances. Similarly, certain issues which would normally be treated as misconduct may, in certain circumstances, be considered so serious that they constitute gross misconduct. The decision about what is, or is not, gross misconduct will be determined in all of the circumstances by the appropriate panel and the context of the misconduct will be taken into consideration (Section 98(4) Employment Rights Act 1996).

**Appendix 12 - [EXAMPLE TEMPLATE]**

***Note for information- remove from final report : This report is very important to concluding the case and allegations should be carefully and appropriately worded and supported by evidence from the investigation***

**Strictly Private and Confidential: INVESTIGATION REPORT**

**Disciplinary Procedure**

**REPORT FOLLOWING AN INVESTIGATION UNDER  
DISCIPLINARY PROCEDURE FOR SCHOOL STAFF**

**NAME OF EMPLOYEE**

**Job Title:**

**Name of school:**

---

Investigating Officer(s):

Date of Report:

**CONTENTS**

**Page Number**

1. Introductions and background
2. Allegations
3. Investigation Process
4. Analysis of Evidence
5. Conclusion
6. Recommendations
7. Summary of APPENDICES

## 1. **Introduction and background to investigation**

1.1 [This report has been compiled following a request by [head teacher] to investigate allegations that [xxx]].

1.2 [The purpose of this investigation is to present the findings of the investigation to enable the appropriate body to determine whether there is a case to answer in respect of the allegations. The allegations are set out in paragraph 2.

1.3 [name] is a (job title) employed at (name of school). How long employed at this and other workplaces. What other posts held if relevant?

1.4 Include any relevant structural/line management/complaint/witness details

1.5 Explain

- How potential allegations came to light, and when; describe each incident in detail
- Explain detail
- Accurate dates and times
- Action taken by the school as a result (i.e. suspension, investigation)
- Format of investigation (who you spoke to, what evidence you considered etc.)
- The relevance of any previous concerns and warning relating to conduct

## 2. **Allegations**

This report provides a summary of the investigation into the following allegations: (carefully word allegations which should clearly set out the misconduct and where applicable which school or statutory procedures have been breached)

2.1 Allegation 1

2.2 Allegation 2

2.3 Allegation 3

(Note: Allegations must be carefully worded, be specific, include names, dates and times where appropriate. Advice should always be sought from your HR Business Partner)

## 3. **Process of Investigation**

1.1 Who interviewed and when?

1.2 Other documentary evidence considered

1.3 Involvement of other agencies including the Police or LADO

1.4 Process of suspension

## 4. **Analysis of Evidence**

*(NOTE: This section should draw all the evidence together under each specific allegation and analyse it in order to enable the appropriate body to reach a conclusion and decision on each allegation.)*

*This is usually done in chronological order of events.*

*The above should make specific reference to numbered appendices setting out the evidence from the employee and witnesses, and other relevant documentary evidence, including specific reference to named school policies and statutory requirements, explaining how these have been breached and evidenced by the investigation.*

*This analysis should be balanced and factual, based on the evidence obtained and should make reference to the detail of the investigation highlighting where evidence is/ is not corroborated.*

*Highlight any operational or educational impact on the school, including reputational impact if applicable, impact on children/parents and include any mitigating factors*

## **5. Conclusion**

- This section should specify that based on the evidence collated and presented to the meeting it is for the appropriate body hearing the case to make a determination on each separate allegation based on the facts.
- Has the employee offered any mitigation/ or are there other factors to be taken into account in determining the sanction
- Are there any other factors which the appropriate body should take into account in reaching any such determination?

## **6. Recommendations**

*The report should be specific in this section about what is recommended*

*(a) That the report should be considered by a panel of the governing body to determine whether the alleged misconduct warrants formal disciplinary action \**

*(b) anything else which has been uncovered (e.g. better communication of procedures, or changing system, or changing policy, or training needs, etc.).*

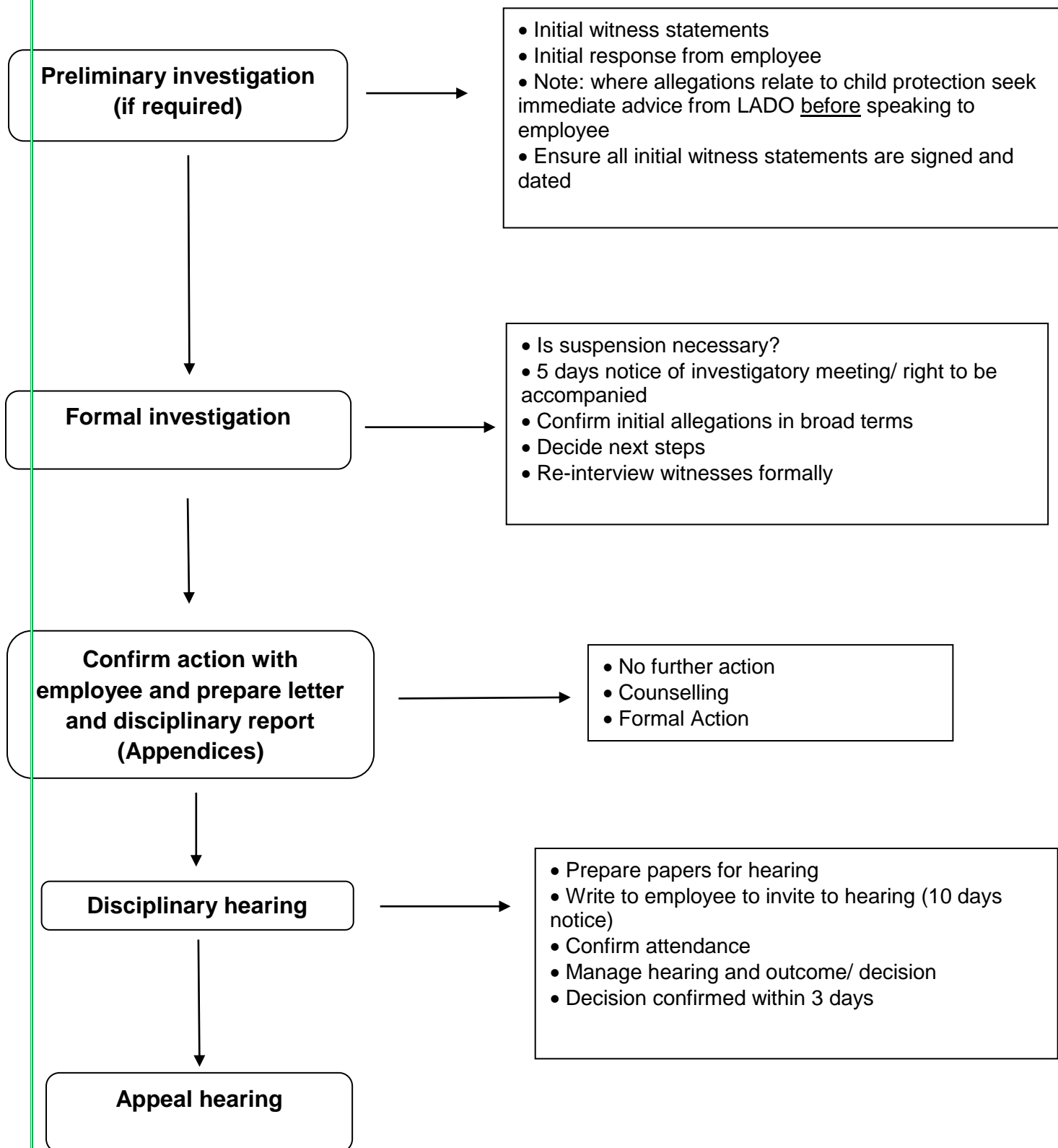
\*(Important - Please note): If the employee is suspended and the allegations are considered serious enough to warrant consideration of dismissal on the grounds of gross misconduct or by notice this must be stated so that both the employee and representative / work colleague is warned of this in advance of the meeting.

## **APPENDICES**

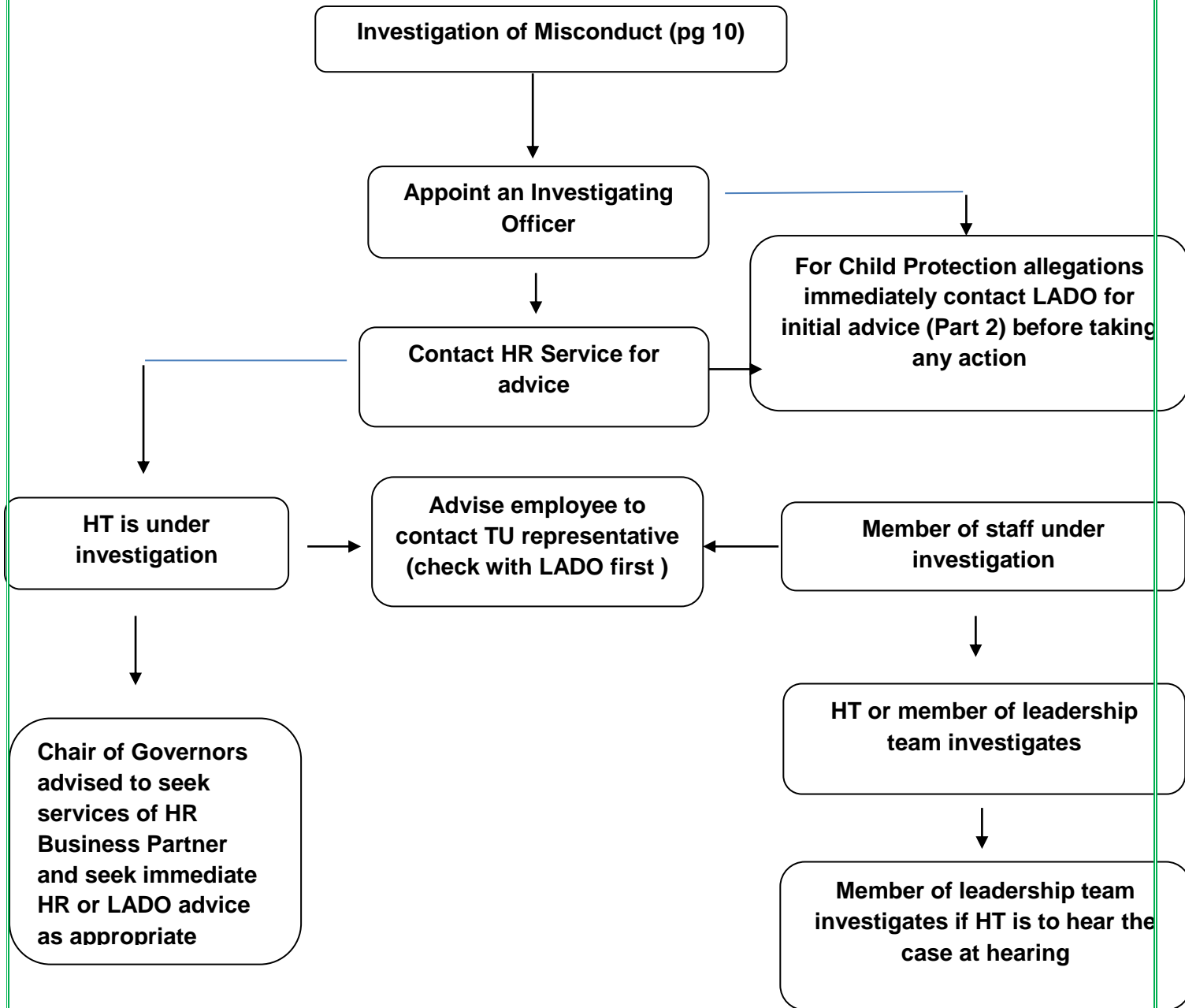
Appendix 1 – Name of Appendix – date of Appendix [xxx]

Appendix 2 – Name of Appendix – date of Appendix [xxx]

## Appendix 13: Summary of formal procedure – conduct of employees



The following flowchart outlines the key points to consider when investigating the misconduct of school staff, for further details please refer to the 'Disciplinary Procedure for School Staff'. Relevant sections from the procedure are signposted using page numbers throughout the flowchart.



**Preliminary Investigation (pg 10)**



**Is there an immediate threat to staff or pupils or will the employee's presence impede the preliminary investigation?**



**Prepare for and conduct witness interviews**



- 1) Witnesses interviewed, sign and date statements**
- 2) employee interviewed last**
- 3) If necessary, re-interview witnesses again**
- 4) Re-interview employee last**
- 5) Response from employee and other signed statements form part of the case papers**
- 6) Witnesses told how information will be used and may be called to support their evidence at a hearing**



**Decide whether there is a case to answer?**



**Yes**



**Carefully word allegations**



**Proceed to formal investigation**

**No**



**Formal proceedings stop at this point – informal action may be required. This could include counselling or other support mechanisms as appropriate. Details of the**

**JCNP Staffing Regulations Working Party**

<b>Lead HR Business Partner</b>	<b>Julie Dawkins</b>
<b>Date policy updated</b>	<b>September 2020</b>
<b>Review date</b>	<b>September 2021</b>
<b>Lead HR Senior Business Partner</b>	<b>Andy Wilson</b>

**Documents end**

