

Guidance for Schools

Disciplinary Procedure incl. guidance and model letters

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SECTION 1: GUIDANCE ON THE DISCIPLINARY PROCEDURE

1. INTRODUCTION

- 1.1 Schools have certain expectations of their employees' behaviour which should be specified within school procedures and handbooks and are also outlined in the 'Working in Worcestershire Schools' guidance document which contains a code of conduct.
- 1.2 This procedure is designed to help and encourage all employees to achieve and maintain high standards of conduct at work and to provide a mechanism for dealing with problems as and when they arise. Its aim is to provide a model procedure for adoption by the Governing Body of a school which ensures consistent and fair treatment for all employees and to assist the Governing Body to comply with its duty to set up disciplinary procedures under regulation 6(1)(a) of the School Staffing (England) Regulations 2009. This procedure complies with the ACAS Code of Practice on Disciplinary and Grievance Procedures.
- 1.3 **Probation – Support Staff only**
The purpose of the 6 month probationary period is to ensure that new employees understand and are encouraged to achieve and maintain the standards of conduct, performance and attendance required, within a reasonable time. If, after receiving sufficient guidance, support and training, an employee is unable to achieve and maintain acceptable standards his/her contract may be terminated without recourse to the full disciplinary procedures. The detailed Probation Policy & Procedures and further advice are available from Human Resources.
- 1.4 Church Schools may choose to adopt a disciplinary procedure from their relevant Diocesan Authority. Schools must therefore be clear at the outset which procedure they will be following.
- 1.5 Headteachers (and Governors) are recommended to seek advice from Human Resources at an early stage when considering disciplinary action.
- 1.6 There are certain situations when it would not be appropriate to follow this procedure until further advice has been sought:
- (a) when there is an allegation made against an employee of a **safeguarding** nature the 'Senior Adviser, Safeguarding Children in Education' should be contacted in the first instance and before any other action is taken. Basic enquiries may be made to determine whether the allegation could possibly have occurred or to establish the facts of the allegation.

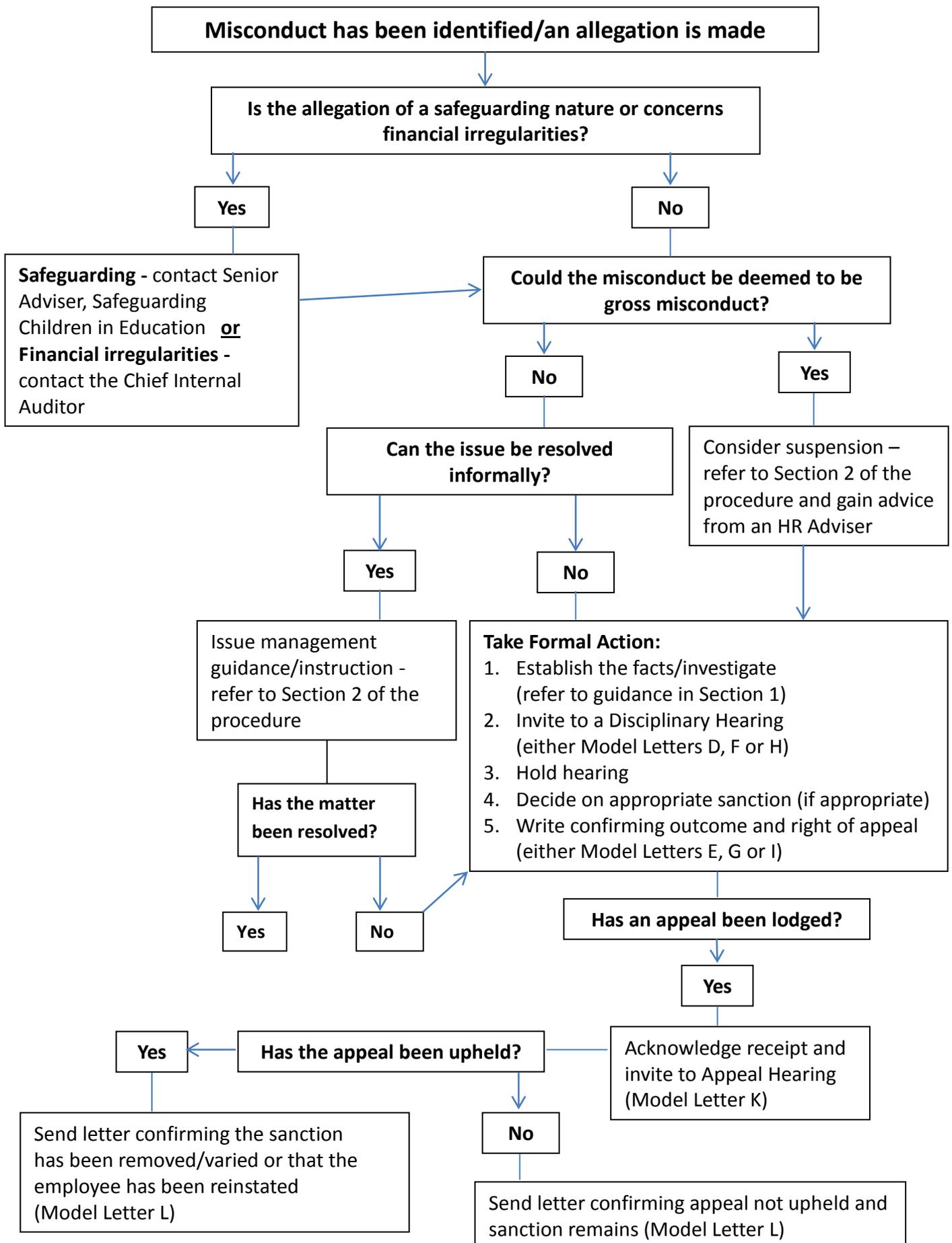
Refer to the Allegations of Abuse against Teachers and Other Staff guidance document for further information;
 - (b) the LA's Chief Internal Auditor must be notified immediately of any **loss or financial irregularity or suspected irregularity, or of any circumstances which may suggest the possibility of such loss including any cash or other property of the school;**

(c) where there may be **criminal proceedings**, schools should not take any action (investigation or disciplinary) without ensuring that it will not impact on the police investigation, although suspension (see Section 4) may be considered if it is felt that the employee's continued presence at work may pose a serious risk to safety or child protection.

1.7 Prior to taking any disciplinary action against employees who are **accredited trade union representatives** a discussion concerning the case should take place with a full-time senior trade union representative, after obtaining the employee's consent.

1.8 In some circumstances the school at which a person works will need to consider an allegation of misconduct where the person does not have an ongoing employment contract with them, for example: supply teachers, casual/agency workers, volunteers or contractors. It may be necessary to act jointly with another organisation or service provider.

In these cases the normal disciplinary procedures will not apply, but, **in the case of allegations relating to safeguarding**, it is necessary to investigate the allegation, reach a decision about whether to continue with the person's services and whether a referral to the DBS is needed. Contact Human Resources for further advice and refer to the document Managing Allegations of Abuse against Teachers and other staff. When the allegation has been made it will be necessary to consider whether that person should be prevented from working in any school/educational establishment until the outcome of the investigation is known.



2. DAY TO DAY MANAGEMENT OF INAPPROPRIATE CONDUCT

- 2.1 In some cases inappropriate conduct can be dealt with informally. Recourse to the formal procedure should only be necessary when informal measures have failed to resolve the situation or in cases of serious misconduct. Headteachers should first consider a "counselling approach" to improving conduct at work.
- 2.2 Headteachers or line managers should ensure that any issues are brought to the individual's attention without delay. Misconduct must not be ignored or tolerated and inaction may lead to matters becoming worse or even irreversible.
- 2.3 The Headteacher or line manager should identify the problem, ask for an explanation or any mitigation and propose support to improve the situation if possible, confirm timescales for improvement and explain how the situation will be monitored. The conversation should be documented and the employee should be given a letter (referred to as '**management guidance/instruction**') confirming the above and stating clearly that any further incident or a repeat of the incident could result in disciplinary action (refer to Model Letter C). If, during the discussion, it becomes obvious that the matter may be more serious, the meeting should be adjourned. The employee should be told that the matter will be continued under the formal disciplinary procedure.

As this is an informal meeting the employee does not have the right to be accompanied but the school could agree, in exceptional cases, to a work colleague accompanying them for support. It is advisable that the Headteacher/line manager has someone present to take notes so that there is no disagreement about what was said during the meeting. A copy of the letter issued to the employee (as above) should be kept on file and referred to in the future if a further incident occurs. The letter must make it clear that any breach of the instruction may lead to formal disciplinary action. Management guidance/instructions relating to safeguarding should remain on the employee's file indefinitely.

3. DELEGATION OF AUTHORITY

It should be clear, from the outset, who is responsible for each stage of the disciplinary procedure, prior to any disciplinary action being taken.

3.1 Investigation

Careful consideration should be given at this stage to who conducts the investigation into any disciplinary matter as **the investigating officer should not normally be the person who hears the case at any future hearings.**

Investigations may be undertaken by the Headteacher, a line manager, SLT member or other suitable person designated by the Headteacher. In some cases, the Headteacher may appoint an investigating officer external to the school, e.g. a Deputy Headteacher from another school or nominate a Governor to act as the Investigating Officer.

In cases involving the Headteacher the investigation would normally be carried out by the Chair of Governors or a nominated Governor.

3.2 Action short of dismissal

- 3.2.1 By adopting these procedures the **Governing Body delegates responsibility for matters of discipline relating to employees based at the school to the Headteacher**. For the avoidance of doubt, this includes the imposition of all disciplinary sanctions short of dismissal, but powers of suspension and dismissal could also be delegated to the Headteacher (refer to 3.3.1 below).

Where it would not be appropriate for the Headteacher to impose a disciplinary sanction, e.g. where he/she is the investigating officer or is a key witness, the Chair of Governors or other nominated Governor may lead the hearing and issue a sanction.

- 3.2.2 By adopting these procedures the **Governing Body delegates responsibilities for matters of discipline relating to the Headteacher to the Chair or to one or more Governors**. For the avoidance of doubt, this includes suspension and the imposition of all disciplinary sanctions short of dismissal.

3.3 Dismissal

- 3.3.1 **All employees other than the Headteacher** - under the School Staffing (England) Regulations 2009 the Governing Body may delegate its power to determine that any person employed or engaged by the LA to work at the school should cease to work there (Community, Voluntary Controlled, Community Special and Maintained Nursery) or to dismiss its staff (Foundation, Voluntary Aided, Foundation Special) to either:

- (a) a Dismissal Panel comprising one or more Governors and the Headteacher;
- (b) a Dismissal Panel comprising one or more Governors (ideally three Governors);
- (c) the Headteacher.

- 3.3.2 **Headteacher** - under the School Staffing (England) Regulations 2009 the Governing Body may delegate its power to determine that the Headteacher should cease to work at the school or be dismissed to one or more Governors.

For ease of understanding, those who have delegated authority to dismiss will be referred to in these proceedings as Decision-Makers.

3.4 Appeal

For the purposes of appeal rights, the Governing Body must appoint an Appeal Panel to hear appeals against disciplinary sanctions other than dismissal (Disciplinary Appeal Panel) or appeals against dismissal (Dismissal Appeal Panel). This should be a panel of three Governors, other than in exceptional cases. No Governor to whom the power to dismiss was delegated may sit on the Appeal Panel. The Headteacher may not sit on the Appeal Panel.

3.5 Rights of Attendance/Advisory Rights

Where the Governing Body has delegated powers to dismiss staff, other than the Headteacher, to one or more Governors, the Headteacher has a right under the 2009 Regulations to attend and give advice to all relevant meetings/hearings held by those Governors and they must consider that advice in coming to their decisions. That advice shall be given by the Headteacher in the course of the presentation of the case against the employee.

For Community, Voluntary Controlled, Community Special and Maintained Nursery schools, the LA has a statutory entitlement to send a representative and offer advice to all proceedings relating to the dismissal. The Decision-Makers must consider that advice in coming to their decision.

Note: The Clerk to the Governors will usually take notes at Dismissal Hearings. In the event of the Clerk to the Governors being unavailable notes may be taken by another person requested by the Decision-Makers.

SECTION 2: FORMAL DISCIPLINARY PROCEDURE

4. SUSPENSION

4.1 The decision to suspend an employee should be taken by the Headteacher or Chair of Governors (in the case of suspension of the Headteacher), if the authority to suspend an employee has been delegated to the Chair of Governors by the Governing Body.

The decision should be given careful consideration and will usually only be appropriate:

- (a) if an employee has acted in a manner which may constitute gross misconduct (refer to Section 8);
- (b) if there is serious reason to believe that the employee's presence at work will hinder the investigation;
- (c) where the employee's continued presence at work may pose a serious risk to safety or child protection.

4.2 Alternatives to suspension should always be considered and documented. These could include a temporary change of duties and/or location in school, if acceptable.

- 4.3** If suspension is deemed necessary, the Headteacher should meet with the employee and explain the following:
- (a) the reason for the suspension and why alternative working is not feasible;
 - (b) they are required to leave school immediately;
 - (c) suspension is a neutral act and is not intended as a disciplinary measure, nor does it pre-judge the outcome of the investigation;
 - (d) the employee will receive full pay during the period of suspension;
 - (e) they should contact their Trade Union or Professional Association for advice and support;
 - (f) they should be allocated an internal point of contact (someone not involved in the investigation) who will keep the employee informed of everyday developments in school in order to minimise any sense of isolation during the period of suspension. They should also be given the name of an HR Adviser who may update them on the progress of the investigation;
 - (g) with prior permission from the Headteacher, they may collect any personal belongings or evidence or gather witness statements from colleagues that they may need in preparation for their case (school property is precluded and should not be taken away);
 - (h) they should otherwise keep matters relating to the allegations/investigation confidential;
 - (i) that they will be required to attend an investigation meeting during their usual working time or at another mutually agreed time;
 - (j) a letter will be sent to them within one working day confirming the suspension (refer to Model Letter A).
- 4.4** If the employee is suspended, the investigation should be completed as soon as possible to determine that either:
- (a) there is no case to answer and the employee returns to school;
OR
 - (b) the employee returns to school and receives management guidance;
OR
 - (c) the employee returns to school and a Disciplinary Hearing is convened;
OR
 - (d) the employee remains suspended pending a Disciplinary Hearing.
- 4.5** In all cases the suspension should be regularly reviewed, every 20 working days as a minimum, by the Headteacher (refer to Model Letter A(i)).
- 4.6** If a suspended employee is certified by his/her GP as being unfit for work they should be paid in accordance with their sick pay entitlement for that period of certification. If they exceed their sick pay entitlement they should go on to nil pay until they are certified fit to work and then full pay would resume for the remainder of their suspension (refer to Model Letter A (ii)).

- 4.7 A suspension can only be ended by the Governing Body. However in certain circumstances the Governing Body may decide that it is in agreement for the Chair of Governors to undertake these functions on behalf of the Governing Body.
- 4.8 The Headteacher/Chair of Governors must inform the Governing Body and the Local Authority as soon as reasonably practicable of any suspension and the ending of a suspension.

5. INVESTIGATION

- 5.1 Formal disciplinary action must not be taken until there has been an investigation to establish the facts. Please refer to Appendix 1 for guidance on conducting an investigation. An investigation should whenever possible involve a meeting with the employee concerned, who may be accompanied by a colleague or trade union representative (refer to Model Letter B). An HR Adviser should be contacted for further guidance and support which may include attendance at an investigation meeting.
- 5.2 Every effort should be made to ensure that an investigation is completed as quickly as possible and the employee made aware of the outcome without delay.
- 5.3 On completion of the investigation the investigating officer should make a recommendation to the Headteacher or Decision-Maker(s), that either:
- (a) **there is no case to answer**
if there is no substance to the allegations;
 - (b) **management guidance or instruction should be issued and further support/guidance and training should be provided**
the allegation/concern is not serious enough to warrant disciplinary action or there are mitigating factors;
 - (c) **a formal hearing is convened**
concerns/an allegation is well founded and there is supporting evidence.
- 5.4 In order to facilitate a quicker outcome for all parties, if an employee and their representative are in agreement, then the **10 working day notice period required for the hearing can be waived.**

6. DISCIPLINARY HEARING

- 6.1 If the Investigating Officer, following an investigation, recommends that a Disciplinary Hearing is necessary then the employee will be sent a letter inviting them to a hearing to consider **either** a sanction short of dismissal (refer to Model Letter D) or dismissal (refer to Model Letter F or H as appropriate). The hearing should be arranged during their normal working hours as far as possible. The employee **must** be given 10 working days' notice of the hearing, unless agreed otherwise (see 5.4). The trade union representative may be consulted prior to the hearing date being set to determine their availability. If this is not possible and the trade union representative or the employee is unable to attend on the specified date, the employee may offer a reasonable alternative time within five working days of the original date. Otherwise the hearing should be re-arranged to be held as soon as possible after the original date.

- 6.2** The following key information should be included in the letter inviting an employee to a hearing:
- (a) the date, time and location of the hearing;
 - (b) the nature of the allegation, giving enough detail to enable the employee to prepare a response, together with any documentary evidence which will be presented, including the investigation report/management statement;
 - (c) the right to be accompanied by a colleague or trade union representative; **
 - (d) that the outcome could be a disciplinary sanction or dismissal.

** In exceptional circumstances, e.g. where an employee's ability to pursue their career could be curtailed if the allegations are substantiated, consideration must be given to allowing representation by an alternative advocate, if requested.

- 6.3** The employee must provide a copy of any statements or documents and names of any witnesses they intend to call no later than 5 working days before the hearing.
- 6.4** The Headteacher or Chair of Governors/Governors (Decision-Makers) should follow the recommended procedure for a hearing (refer to Appendix 4) in order to ensure that the hearing is conducted in a fair and reasonable manner. An HR Adviser may be present for support and to advise on the procedure. The school should arrange for a note taker to be present who can take an accurate record of proceedings (usually the Clerk to Governors or the Headteacher's PA). A copy of the notes taken can be made available to the employee on request.
NB: if the case may result in dismissal, the decision **must** be formally minuted.
- 6.5** Sound and video recording is prohibited in the Investigation Meeting and Disciplinary Hearing, although appropriate adjustments may need to be made to assist employees or other attendees with disabilities.

7. OUTCOMES INCLUDING DISCIPLINARY SANCTIONS SHORT OF DISMISSAL

After careful consideration of the case presented by both sides the Headteacher/Chair may decide on one of the following options:

- 7.1 No further action**
The employee should be advised in writing why no further action is being taken, e.g. that the case has not been proved or that mitigating circumstances have been accepted.
- 7.2 Management guidance/instruction**
The employee should be advised of the standards of conduct expected and what support and or training will be provided. He or she should be advised that disciplinary action may be taken if there is a repeat of the misconduct or further unrelated misconduct is proven (refer to Model Letter C).

7.3 Written Warning

If it is established that the misconduct is sufficiently serious to warrant formal action and there is substance to the allegations then a written warning may be issued.

7.4 First Written Warning

Will usually remain in force for a minimum of 6 months but could be given for up to 12 months in more serious cases (consideration should be given to the timing/length of school holidays). An employee must be advised in the letter confirming the outcome that any further serious acts of misconduct could lead to dismissal.

7.5 Final Written Warning

Will remain in force for 18 months but could be given for 3 years as an alternative to dismissal in matters verging on gross misconduct. An employee must be advised in the letter confirming the outcome that any further acts of misconduct of any kind could lead to dismissal.

7.6 Wherever possible the decision made by the Headteacher/Chair will be given verbally and must be confirmed in writing within 5 working days of the hearing (refer to Model Letter E). A copy of the letter should be sent to the employee's representative and to the HR Adviser for inclusion on the employee's file.

7.7 Any further incidents of misconduct occurring during the period of the warning should be investigated and could lead to further action being taken including:

- an extension of the warning;
- a first written warning being increased to final written warning;
- some other sanction appropriate to the particular circumstances, e.g. recovery of misappropriated funds, property or allowances, demotion, delay in incremental progression;
- dismissal, especially in the case of a final written warning.

8. DISMISSAL WITH NOTICE

8.1 If, while a final written warning is still live, the employee's conduct is still unsatisfactory or there are further allegations of misconduct which are found proven, following an investigation and hearing the Decision-Maker(s) can determine that the employee should cease to work at the school following contractual/statutory notice. Wherever possible this decision will be given verbally on the same day as the hearing. The decision must be confirmed in writing within 5 working days, stating the grounds for the decision and the right of appeal (refer to Model Letter G). The employee will receive full pay during the notice period.

8.2 Community and Voluntary Controlled schools should inform the LA of the panel's determination and require the Local Authority (LA) to dismiss the employee (refer to Model Letter J). The LA will, within 14 days, issue the employee with notice of the contract's termination. Foundation and Voluntary Aided schools will themselves issue the formal confirmation of dismissal and inform their payroll provider (refer to Model Letter J(i)).

9. SUMMARY DISMISSAL (GROSS MISCONDUCT)

If, following an Investigation and Disciplinary Hearing, the Decision-Maker(s) is/are satisfied that an employee has committed an act of gross misconduct then a determination can be made to dismiss the employee without payment of notice or pay in lieu of notice. The decision must be followed up in writing within 5 working days confirming the reason for dismissal and the right of appeal (refer to Model Letter I). Schools must inform the employee and LA as outlined in Section 8 above.

Examples of gross misconduct are given in the Code of Conduct and may include:

- abuse of children;
- physical violence or bullying;
- serious insubordination;
- serious incapability brought on by drugs or alcohol;
- theft, fraud, deliberate falsification of records.

10. RETENTION OF WARNINGS

Warnings will be kept on the employee's personal file and considered active for the specified period. When a warning or extended warning expires without further action being taken it will be considered 'spent' although it may remain on file for the purpose of providing any information required by statute or for DBS purposes. No further action may be taken in respect of an expired warning although it may be relevant to consider the overall disciplinary record if there is an occurrence of misconduct in the future, e.g. to identify a pattern of behaviour. In the majority of cases expired warnings would not be referred to in references, the exception being any issues connected to safeguarding.

11. APPEALS

- 11.1** An employee has the right to appeal against any disciplinary sanction if they feel the action is wrong or unjust. An appeal should be lodged in writing using the appeal form (refer to Appendix 7) within 10 working days of an employee receiving the letter confirming the outcome of the hearing. The appeal form should be returned to the Headteacher or Chair of Governors (in the case of a Headteacher) and acknowledged.
- 11.2** The appeal should be heard by a panel of Governors appointed by the Governing Body. No Governor who has been involved in any previous stages of the case should sit on this panel. The recommended procedure for an Appeal Hearing is outlined in Appendix 6. An HR Adviser should be present to advise Governors.
- 11.3** An Appeal may take the form of a full re-hearing in some circumstances. By mutual consent this need not be the case, depending on the grounds of Appeal.

- 11.4** For all appeals the Appeal Panel will have available all the documents presented in the original hearing, the letter confirming the outcome of the original Disciplinary Hearing and the appeal form. Notes of the hearing may be available as appropriate.
- 11.5** The employee must be given 10 working days' notice of the Appeal Hearing and advised of their right to be accompanied by a colleague or trade union representative (refer to Model Letter K).
- 11.6** The respondent at an appeal hearing will normally be the Headteacher, even in cases where they were not the Decision-Maker at the first hearing. The chair of the decision making panel should be called as a witness.
- 11.7** The outcome of the appeal will usually be given verbally on the day. In any case it must be confirmed in writing within 5 working days (refer to Model Letter L).

The decision will either be:

- (a) the appeal is upheld (either in whole or in part) and the panel either removes the sanction or reduces it;
 - (b) the appeal is dismissed and the original sanction is confirmed.
- 11.8** If an employee is reinstated following dismissal, reinstatement will be from the date of dismissal with continuity of service preserved. A copy of the letter should be sent to the LA.

12. FURTHER STATUTORY REQUIREMENTS

Statutory guidance exists which requires employers to see disciplinary cases linked to child safeguarding through to a conclusion. Even in a situation where an employee resigns from the school when they could have been dismissed, the case should be heard in accordance with this procedure so that a decision is reached and a decision made about whether a referral should be made to the Disclosure and Barring Service (DBS) and/or National College for Teaching and Leadership (NCTL) as appropriate.

12.1 Disclosure and Barring Service (DBS)

The Safeguarding Vulnerable Groups Act (SVGA) 2006 places a duty on employers of people working with children or vulnerable adults to make a referral to the DBS in certain circumstances. This is when an **employer has dismissed or removed a person from working with children or vulnerable adults (or would or may have if the person had not left or resigned)** because the person has:

- (a) been cautioned or convicted for a relevant offence;
OR
- (b) engaged in relevant conduct in relation to children and/or vulnerable adults, i.e. an action or inaction (neglect) that has harmed a child or vulnerable adult or put them at risk of harm;
OR
- (c) satisfied the harm test in relation to children and or/vulnerable adults, i.e. there has been no relevant conduct (no action or inaction) but a risk of harm to a child or vulnerable adult still exists.

12.2 National College for Teaching and Leadership (NCTL)

A referral should be made to the NCTL where the alleged **misconduct is so serious** that it warrants a decision on whether the teacher should be prevented from teaching. The decision on prohibition is made by the Secretary of State on a recommendation from the NCTL.

HR/JT/MJ/djc
June 2015

MODEL LETTER A

Letter informing an employee of his/her suspension from duty under Section 4 of the Disciplinary Procedure

Dear

I am writing to confirm that you have been suspended from work until further notice pending an investigation into allegations made against you of/that you have

** **[insert brief description of the alleged misconduct]**.

The investigation is intended to establish facts about the allegations and you should be aware that it could result in action being taken against you under the Disciplinary Procedure. (I must also advise you that misconduct of this nature, if substantiated, could be considered as gross misconduct for which dismissal without notice is a possible consequence.)

The suspension itself is not a disciplinary measure and should not be seen as pre-judging the outcome of the investigation.

During the period of suspension you must not enter the school site, undertake work activities or discuss this matter with school staff, Governors, pupils or parents. If you require access to the school to collect personal possessions or to prepare your case you must seek my permission. You will continue to receive your full salary during the period of suspension and must remain available for interview during normal working hours unless you have permission to be absent.

The suspension will be regularly reviewed, as a minimum every 20 working days, taking into account any external influences on the process (*e.g. police investigations*), school holiday periods and the length of the suspension, if no other action has been taken. It will not be necessary for you to attend although you, or your representative, may make written representations and may, if appropriate, be asked to discuss these at the review.

You will be contacted shortly by the investigating officer [insert name of investigating officer], to arrange a suitable time to undertake an investigation meeting.

You have been given a copy of the disciplinary procedure (a copy of the disciplinary procedure is enclosed) and are advised to familiarise yourself with it. You may wish to seek advice or support from an independent source such as a trade union representative or work colleague who is unconnected with the situation.

If there is anything you do not understand about the content of this letter, please speak to [insert name and contact details of manager through whom any contact should be made] or the Human Resources Adviser [insert name and contact details].

I recognise that this will be a stressful time for you. Counselling support may be available through [***your school's Occupational Health provider or your school's Employee Assistance Programme, if such a programme is in place.***] Alternatively, you can contact the Education Support Partnership (previously Teacher Support Network) offers practical and emotional support services to teachers and other staff in education. Its services can be accessed through its website: www.educationsupportpartnership.org.uk or by calling the support line on 08000 562 561 (which provides confidential telephone counselling and coaching).

Yours sincerely,

** in safeguarding cases, the following wording is recommended: "In the light of an allegation which is being investigated under locally agreed child protection procedures ..."

MODEL LETTER A (i)

Example of a letter to an employee advising the outcome of a suspension review meeting

Dear

Review of Suspension

I write further to my letter dated [date] notifying you of your suspension from duty. The circumstances leading to your suspension on [date] and subsequent actions taken were reviewed on [date]. The purpose of the review is to ensure that matters are moving forward and to advise you of progress. (I have also taken account of [written] representations made by you (colleague/trade union representative) on [date].)

[Insert brief outline of how the investigation is progressing, e.g. [It is expected that all witness statements will have been taken by insert date after which the investigating officer, [name], will contact you to arrange an investigation meeting.] I must remind you that you are to be available for interview during normal working hours and are expected to co-operate fully with the investigation.

I will keep you advised of further progress but if you wish to discuss the procedure, please contact me or the Human Resources Adviser, [insert contact details].

Yours sincerely,

MODEL LETTER A (ii)

Letter issued to an employee who, after being suspended due to allegations of misconduct, states that they are ill

Dear

Further to [our recent discussion and/or receipt of medical certification], you are now required to follow the School's Sickness Absence Reporting Procedures.

Please note that the formal investigation into allegations of [misconduct] will continue and that advice will be obtained from the Occupational Health provider/your medical practitioner, following an Occupational Health referral/receipt of further medical information, about whether you are fit to attend an interview as part of the investigation, or any subsequent disciplinary hearing although not fit for work.

You should also note that this episode of absence will be recorded as sickness absence and that you will be paid as per your contractual sick pay entitlement, information on which is also attached (Appendix F of Managing Sickness Absence in Schools).

If during this period of sickness absence your contractual sick pay entitlement ends, and you remain unfit to return to work, then your suspension will not resume until you are declared fit to return to work.

Once you are declared fit to return to work you are required to inform me immediately in order that we can consider whether to resume your suspension in order to allow the investigation to be completed or whether you should be allowed to return to work. You will be informed of this decision under separate cover and you should not return to work in the meantime.

If you have any queries relating to this letter or the actions taken to date please contact me on [insert details]. You will be contacted as soon as possible about your appointment with Occupational Health/about next steps.

Yours sincerely,

MODEL LETTER B

Letter inviting employee to an investigation meeting under Section 5 of the Disciplinary Procedure

Dear

I am writing to invite you to a meeting to investigate a complaint received relating to an incident at school on [date]/concerns I have about your conduct. It is alleged that you [insert details of the allegation].

The meeting will be held at [name] School on [date] at [time]. [name], Human Resources Adviser (Schools), will also be present. This meeting is to be held under the provisions of the Disciplinary Procedure, a copy of which is enclosed.

The purpose of this meeting is to discuss the allegation with you, to establish your version of events and to ask and answer related questions. You should be aware that the outcome of this meeting may be that we determine:

- (a) there is no case to answer;
- (b) that the incident, though serious, does not merit the use of the formal disciplinary procedure, but it may be appropriate to give management guidance;
- (c) that the issue is sufficiently serious that it must be dealt with as a disciplinary matter and you will be invited to a formal disciplinary meeting at a later date.

You are entitled to be accompanied to the investigative meeting by a colleague or trade union representative.

Please confirm your attendance at this meeting, and whether or not you will be accompanied. If you have any questions in the meantime please contact me or the HR Adviser on [telephone number].

Yours sincerely,

Headteacher

MODEL LETTER C

Letter to an employee issuing management guidance/instruction

Dear

I am writing to follow up our conversation on [date] following concerns raised about [insert details].

I have conducted an initial investigation and having now spoken to you about the concerns, I consider that this is unacceptable behaviour.

This is the first time such concerns have been raised/I have previously spoken to you about this (*delete as applicable*) and you are therefore expected to [insert details of expectations and/or conduct which must not occur].

Having considered the matter I have decided not to take any formal action on this occasion in relation to any of the issues above. However, please be advised that although this letter does not form part of the formal disciplinary process at this stage, should any further instances of misconduct or inappropriate conduct of any kind occur, then formal action may be pursued through the Disciplinary Procedure.

I expect to have no further concerns, but if you are unclear about what is expected of you please ask me.

Yours sincerely,

Headteacher/Line Manager
(*delete as appropriate*)

MODEL LETTER D

Letter inviting an employee to a hearing under Section 7 of the Disciplinary Procedure (action short of dismissal)

Dear

Further to my letter dated [date] I can now confirm that [name] has/have concluded his/her/my investigation into the alleged misconduct. It is alleged that you [insert details].

I feel that the issues raised are sufficiently serious to warrant formal action being taken against you under the Disciplinary Procedure. You are therefore required to attend a disciplinary hearing with me / the Chair of Governors / other nominated Governor under Section 7 of the Procedure at [place] at [time] on [date] when you will be asked to offer your explanations for the matters raised by the report. If there is any reason why you cannot attend, please inform me as soon as possible. A room will be made available from [time] for you to meet with your representative if you wish.

The following documents, which will be referred to at the hearing, are included with this letter:

[examples include]

1. Investigation report
2. Witness statement from
3. Witness statement from
4. Copy of school staff handbook
5. Copy of previous Management Guidance

I must advise you that the allegations, if substantiated, are sufficiently serious to warrant the issue of a written or final written warning. Please note that if you do not attend, the hearing may take place in your absence.

** The investigating officer [name] will attend the hearing to present the management case and answer any questions arising from his/her report and will call the following individuals as witnesses: [list any other witnesses who will be called]. A Human Resources Adviser will also be present to advise me / the Chair of Governors / other nominated Governor on procedural issues.

You have the right to be accompanied or represented at the hearing by a work colleague or trade union representative. You will also have the right to appeal if any formal disciplinary sanction is issued against you.

Any written evidence you wish to be considered must be submitted to me no later than 5 working days before the hearing, together with the names of any witnesses and/or representative. No new written evidence may be introduced during the hearing.

You should also let me know if anyone attending on your behalf has any special requirements, e.g. because of a disability. It is your responsibility to ensure the availability of anyone attending on your behalf.

If you have any queries about the hearing please contact me as soon as possible.

Yours sincerely,

Headteacher

** **NB:** if the Headteacher is the Investigating Officer, the case should be heard by the Chair of Governors or other nominated Governor, and the wording of this letter amended accordingly.

MODEL LETTER E

Letter issued under section 7 of the Disciplinary Procedure (informing an employee of the outcome of a disciplinary hearing)

Dear

Following the hearing held at [location] on [date], having given the matter very careful consideration and having taken appropriate advice I have decided to issue you with [type of warning] under the terms of the Disciplinary Procedure. This is a very serious matter and you should take note of the following points.

This warning is issued in relation to [details of case/allegation referring to any current warning].

As a consequence of this you are expected to [brief description of conduct required and specific instructions: e.g. you must not leave the school site without prior permission from your line manager/you must follow the school's procedure for recording your working time and signing in and out]. If you believe that you require any support, assistance or training to achieve this you must discuss this with me.

[Insert, if applicable, details of any monitoring and/or support arrangements, e.g. weekly meetings with line manager.]

You must note that further unsatisfactory conduct may lead to further and more serious disciplinary action being taken against you including possible dismissal.

This warning will be placed on your personal file and will remain active for disciplinary purposes for [insert number] months after the date of the hearing [insert date]*, after which time I expect to have no further cause for concern.

(* **NB:** if the decision is not given at the hearing, the warning will be effective from the date of this letter.)

You have a right to appeal against the issue of this warning and I draw your attention to Section 11 of the Disciplinary Procedure. You have a right to be accompanied by a colleague or trade union representative at any appeal. If you wish to appeal you must inform me, in writing, on the enclosed Appeal Form within 10 working days of receipt of this letter. If you decide not to lodge an appeal you may submit a statement of mitigation to be held on your file with this warning.

A copy of this letter has been sent to [name of person] who represented/accompanied you at the hearing.

The issue of this warning is a serious matter and I require you to take careful note of the points made in this letter.

Yours sincerely,

Headteacher/[Chair of Governors / Nominated Governor]
(delete as appropriate)

MODEL LETTER F

Letter inviting an employee to a hearing under Section 8 of the Disciplinary Procedure: Dismissal Procedures

Dear

I write to ask you to attend a hearing to be held before *** [insert details] under the provisions of Section 8 of the Disciplinary Procedure, a copy of which is enclosed.

This hearing will be held at [location] on [date] at [time].

You have a right to be accompanied by a colleague or trade union representative at this hearing and you also have a right to call witnesses if you wish. Please note that details of any witnesses together with copies of any documentation you wish to submit at this hearing must be provided to the Headteacher not later than 5 working days before the hearing.

The matter to be considered at this hearing is [details of case/allegation; give the name of the person making the allegation if it is someone other than the Headteacher].

I enclose the following documents which will be considered at the hearing:

[list of documents].

[examples include]

1. Investigation report
2. Witness statement from
3. Witness statement from
4. Copy of school staff handbook
5. Copy of previous Management Guidance

You should be aware that the consequences of this hearing could be very serious and may include your dismissal. It is therefore very important that you make every attempt to attend and I must advise you that, if you do not attend, the hearing may take place in your absence.

If either you or your colleague or representative are unclear about the procedures being followed please contact me as soon as possible. Please also advise me if you intend to be accompanied.

Yours sincerely,

Headteacher

*** This will depend upon who has the delegated power to dismiss.

This may be:

- (a) a nominated Governor (or Governors); and/or
- (b) the Headteacher.

MODEL LETTER G

Letter issued to an employee under Section 8 of the Disciplinary Procedure: Dismissal Procedures

Dear

Following the hearing held before *** [insert details] at [location] on [date] at [time], I have to inform you that having regard to all the circumstances, [*** insert details] has decided that you should cease to be employed at [name of school] with effect from [date of termination].

The reason for this decision is [details of unsatisfactory conduct].

You have the right to appeal against this decision and I draw your attention to Section 11 of the Disciplinary Procedure. If you wish to appeal, you should lodge the appeal in writing on the enclosed Appeal Form, within 10 working days of receipt of this letter. You have the right to representation, by a colleague or trade union representative at such an appeal and I enclose a copy of the relevant procedures. (If you choose to appeal and your appeal is successful, you would be reinstated with effect from the date of dismissal.)

* { [insert details] will inform the Local Authority of their decision that you should cease to work at the school, and the Local Authority as your employer, will then take the necessary steps to terminate your employment, with [insert relevant notice period] weeks' notice. }

Yours sincerely,

Headteacher or Chair of Panel
(as appropriate)

* Voluntary-Aided/Foundation Schools replace paragraph with:
"As a result of this decision your employment with this school will terminate on [date]."

*** Those with the delegated power to dismiss.
This may be:
(a) a nominated Governor (or Governors); and/or
(b) the Headteacher.

MODEL LETTER H

Letter inviting an employee to a hearing under Section 9 of the Disciplinary Procedure: Gross Misconduct

Dear

I write to ask you to attend a hearing to be held before [*** insert details] under the provisions of Section 9 of the Disciplinary Procedures, a copy of which is enclosed.

This hearing will be held at [location] on [date] at [time].

You have the right to be accompanied by a colleague or trade union representative and you also have a right to call witnesses if you wish. Please note that details of any witnesses together with copies of any documentation you wish to submit at this hearing must be provided to the Headteacher not less than 5 working days before the hearing.

The matter to be considered at this hearing is [details of case/allegation; give the name of the person making the allegation if relevant, i.e. if other than the Headteacher].

I enclose the following documents which will be considered at the hearing:

[list of documents].

[examples include]

1. Investigation report
2. Witness statement from
3. Witness statement from
4. Copy of school staff handbook
5. Copy of previous Management Guidance

You should be aware that if the allegation is substantiated it will constitute gross misconduct and you may be dismissed from your employment without the benefit of a notice period or payment in lieu of notice. It is therefore very important that you make every attempt to attend and I must advise you that, if you do not attend, the hearing may take place in your absence.

If either you or your colleague or trade union representative are unclear about the procedures being followed please contact me as soon as possible. Please also advise me if you intend to be accompanied.

Yours sincerely,

Headteacher

*** This will depend upon who has the delegated power to dismiss.

This may be:

- (a) a nominated Governor (or Governors); and/or
- (b) the Headteacher.

MODEL LETTER I

Letter issued to an employee under Section 9 of the Disciplinary Procedure Dismissal for Gross Misconduct

Dear

Following the hearing held before [*** insert details] at [location] on [date] at [time], I have to inform you that having regard to all the circumstances, [insert details] has decided that you should cease to be employed at [name of school] with immediate effect.

The reason for this decision is [details of unsatisfactory conduct]. This was found to constitute gross misconduct and, consequently, your contract is to be terminated without notice.

You have the right to appeal against this decision and I draw your attention to Section 11 of the Disciplinary Procedure. If you wish to appeal, you should lodge the appeal in on the enclosed Appeal Form, within 10 working days of receipt of this letter. You have the right to representation, by a colleague or trade union representative at such an appeal and I enclose a copy of the relevant procedures. If you choose to appeal and your appeal is successful, you would be reinstated with effect from the date of dismissal.

* { [insert details] will inform the Local Authority of their decision that you should cease to work at the school, and the Local Authority as your employer, will then take the necessary steps to terminate your employment. }

Yours sincerely,

Headteacher or Chair of Panel
(as appropriate)

* Voluntary-Aided/Foundation Schools replace paragraph with:
"As a result of this decision your employment with this school will terminate with effect from today's date."

*** Those with the delegated power to dismiss.
This may be:
(a) a nominated Governor (or Governors); and/or
(b) the Headteacher.

MODEL LETTER J

**Notification of dismissal to LA
(not Aided or Foundation Schools)**

Team Manager
School Employee Services
County Hall
Spetchley Road
Worcester
WR5 2NP

Dear

Re: [name of employee]

A hearing was held on [date] before the [Headteacher/Governor/Staff Dismissal Panel* acting on behalf of the Governing Body of [name of School]].

I write to inform you that following representations, the [Headteacher/Governor/Staff Dismissal Panel* has/have determined that the above-named employee cease to be employed at this school by reason of misconduct/gross misconduct [delete as applicable] with effect from [date].

I enclose a copy of the letter which has been sent to [name of employee] and which advises of the right of appeal against this decision. Should such an appeal overturn this decision, the Governing Body will notify the LA without delay.

The LA is now required to give notice of the termination of this contract of employment.

Yours sincerely,

[Headteacher/Governor/Staff Dismissal Panel]*

(* delete as appropriate)

MODEL LETTER J(i)

**Notification of dismissal to LA
(Voluntary Aided / Foundation Schools)**

Team Manager
School Employee Services
County Hall
Spetchley Road
Worcester
WR5 2NP

Dear

Re: [name of employee]

A hearing was held on [date] before the [Headteacher/Governor/Staff Dismissal Panel]* acting on behalf of the Governing Body of [name of School].

I write to inform you that following representations, the [Headteacher/Governor/Staff Dismissal Panel]* has/have determined that the above-named employee has been dismissed from this school by reason of misconduct/gross misconduct [delete as applicable] with effect from [date].

I enclose a copy of the letter which has been sent to [name of employee] and which advises of the right of appeal against this decision. Should such an appeal overturn this decision, the Governing Body will notify the LA without delay.

Yours sincerely,

[Headteacher/Governor/Staff Dismissal Panel]*

(* delete as appropriate)

MODEL LETTER K

Letter informing an employee of arrangements for the hearing of an Appeal against the issue of a disciplinary sanction

Dear

Appeal Against Disciplinary Action

Following your letter of [date] lodging your appeal against [sanction] I have arranged for your appeal to be heard by the (Dismissal) Appeal Panel at [location] on [date] at [time].

You have the right to be represented by a colleague or trade union representative at this hearing and I enclose a copy of the procedure which will be followed at the meeting.

The Appeal Panel will be provided with the documentation which was available at the initial hearing. If you have any supplementary documentation which you wish to be submitted to the Appeal Panel it must be provided to the Headteacher, along with details of witnesses, not less than 5 working days before the hearing.

I understand that you will be represented by [name] at the Appeal hearing.

Yours sincerely,

Headteacher/Clerk to Governors

MODEL LETTER L

Letter informing an employee of the outcome of a Disciplinary Appeal Hearing

Dear

Appeal Against Disciplinary Action

Following your appeal against [sanction] on [date] at [time] I have to inform you that having regard to all the circumstances the Appeal Panel has decided to:

(i)

allow your appeal. The action taken against you at the [hearing] held on [date] is therefore revoked and will cease to be effective.

(ii)

allow your appeal in part. The action taken against you at the [hearing] held on [date] is therefore revoked and replaced by [sanction] which is a lesser sanction under the terms of the disciplinary arrangements.

(iii)

dismiss your appeal. The action taken against you at the [hearing] held on [date] therefore stands and [details of sanction].

In reaching their decision the Appeal Panel were particularly mindful of the following points [details].

Yours sincerely,

Chair of Dismissal Appeal Panel

Copy to: *Headteacher*
Local Authority

GUIDANCE FOR THE INVESTIGATING OFFICER

As Investigating Officer your role in the case is crucial. This is just as important in a relatively minor matter which will be resolved by a warning as in a very serious case of gross misconduct which may lead to dismissal.

There are 4 main sources of information which may be relevant to the case:

- evidence from individuals
- documentary evidence
- background information
- your analysis.

Evidence from individuals

This should be gathered from all those involved in the matter including the employee whose conduct is under investigation and should limit itself to what they did, saw or heard directly: it should not move into conjecture or assumption.

It is particularly important that this should be gathered as soon as possible after the start of the investigation before recollections begin to fade. **If the allegation is of a Safeguarding nature, you must seek the advice of the Senior Adviser, Safeguarding Children in Education, before commencing any investigation.**

When planning to gather evidence, you will need to consider the following:

- The sequence in which witnesses will be interviewed (including the employee under investigation)
- What points actually need to be brought out/proved
- How a particular witness will contribute to the investigation
- What questions need to be asked to establish appropriate facts.

Any of the people you seek to interview may request that they have another person present which may be agreed if appropriate. If the investigation is likely to lead to disciplinary action, the employee under investigation has a right to be accompanied by a colleague or trade union representative. Anyone interviewed as part of the investigation should be treated fairly and reasonably, with courtesy and respect, according to the school's equality and diversity principles. You may need to consider carrying out the interviews away from the school site.

(NB: References to witnesses in this guidance mean anyone giving evidence to the investigating officer, regardless of whether the evidence supports the employee under investigation or the allegation.)

Take particular care when interviewing pupils: **(See Appendix 2 for advice on gathering evidence from pupils.)**

When you interview an individual do so in as relaxed and informal manner as possible without interruption, putting them at their ease and allowing them to tell their own story.

Do not ask leading questions but keep them to the point and pursue any areas which you feel require more detail. Do not be afraid to ask them to repeat or clarify any comments you do not fully understand.

Evidence from individuals can be in the form of a written statement, **signed and dated**, prepared by the individual themselves. You should advise the witnesses that their evidence will be shared with the employee concerned and that they may be asked to attend a disciplinary hearing at which they may be asked questions by the Decision-Makers, the employee concerned and/or his/her union representative. Evidence from individuals can if necessary be gathered on a non-attributable basis. Whilst this may be helpful to you in reaching your overall conclusion, its credibility at a hearing will be limited.

Your notes of interviews should be as full as possible. In less formal interviews it may be appropriate to take the notes yourself, however in more formal sessions you should consider having a note-taker present to keep a detailed record.

It is important that individuals are asked to check these notes/statements and then sign and date them to confirm accuracy. Where there is disagreement individuals should be asked to provide amendments or a further statement and both copies should be included in the report.

Documentary Evidence

You will need to collect copies of all documents which have a direct bearing on the case. If you have the originals keep them safe and if you cannot keep the original take a good quality photocopy.

If you extract part of a longer document make certain that it is properly referenced.

Background Information

This includes information or evidence which may not have a direct bearing upon the case but sets it in context.

This should include a simple career history of the employee concerned and a copy of their job description if relevant to the particular allegations.

It is important to note that "spent" warnings should not be used although formal management instructions may be relevant.

General testimony about the employee's conduct, capability or behaviour will also be valuable.

Expert Analysis

Where the allegation relates to financial mismanagement or misappropriation, you should seek the advice of the County Council Audit Section. Similarly, you may find it helpful to refer concerns over the misuse of computer equipment to IBS Schools for expert support.

Your Analysis

Once you have gathered a reasonable amount of information you will begin to formulate your opinion of the case. If you determine at an early stage that there is no case to answer you must advise the Decision-Maker(s) and the employee concerned as soon as possible.

As your thinking develops be prepared to go back to witnesses or documents to seek further clarification about any issues. Are there any inconsistencies in the evidence you have obtained? Do the witness statements corroborate one another? Always be critical of your assumptions and try to view evidence through the eyes of the other party.

When you are coming to your overall conclusion gather together all the relevant papers, witness statements, documents, descriptions etc. and place them in order (normally chronological) with an index listing them by title and date.

Your analysis should be in the form of a Management Statement which outlines the case with reference to the documentation, describes your analysis and makes a recommendation about the action which should be taken. You may be required to present your report to the Decision-Maker(s). Remember that this document will be open to scrutiny by the employee and his/her representative.

In reaching your conclusion you will need to bear in mind the overall balance of the evidence you have gathered set in the context of your own school and the post of the employee concerned. You should test the evidence for factual accuracy and reach a conclusion whenever possible. You must remember however that cases, particularly serious ones, are hardly ever straightforward. Actions or statements may be open to differing interpretations, allegations may be denied, there may be no way of verifying claims etc. Your concluding decision is whether you believe the alleged misconduct took place "on the balance of probabilities".

Human Resources will be available to assist you with your investigation and an example outline of a Management Statement is included below.

Management Statement (sample outline)

Background

Brief summary of the employee's role in school, date employed from etc.

Allegations

List all specific allegations with dates.

Investigation

Describe how the matters were investigated and refer to notes of meetings and statements. For ease of reference number all accompanying documents and cross reference them with an index.

Findings

Your conclusions based on the evidence.

Summary

Recommendations

Name
Designation
Date

GUIDANCE ON OBTAINING EVIDENCE FROM PUPILS

Based upon experience in various cases we offer the following advice on how to obtain evidence from pupils which will stand up to the test of being examined in a disciplinary or similar formal process.

This guidance will need your interpretation to suit the circumstances:

- If the allegation indicates that a child has been harmed by an adult or a criminal offence has been committed, then **no statements should be obtained before discussing with the Senior Adviser for Safeguarding Children in Education.**
- Whatever the incident, act quickly before memories fade.
- Isolate the pupils concerned from each other and, if they are of appropriate age and literacy, obtain a written statement.
- In the case of younger pupils, or if there is a literacy difficulty, interview with another adult present to record the statement then reproduce it, read the statement back to the pupil and request them to sign and date it as a true record.
- Avoid as much as possible **any** opportunity for pupils to discuss the incident that might result in common statements. A common line of defence is to discredit these statements.
- Ensure that pupils are always accompanied when interviewed about an incident, i.e. if you are interviewing, have another member of staff with you. This should be someone that the child trusts and could be a TA or other member of support staff. This second adult should understand and expressly agree to the necessary confidentiality of the investigation.
- Depending on the circumstances being investigated, it may be necessary to take pupil witnesses to the scene of the incident and ask them to place themselves where they were at the time of the incident. This is to confirm that they could have experienced what it is alleged to have happened by sight, hearing or being involved.
- If a whole class is involved and you need statements from them all, obtain the statements as soon as possible, act quickly, giving no forewarning of what you are going to do. Obtain statements under examination conditions.
- If, as a result of your investigations in other areas, there is a need to speak again to the pupils, follow the same processes.
- However tempting it may appear to be, do **not** tape record interviews with pupils. To do so would be an infringement of their rights.
- Take written statements from any adults present at the time: ask them to date and sign statement.

- At an initial interview with a pupil, do not ask leading questions: ask only open questions, e.g. *"Did anything that worried you happen during Mrs. Blogg's lesson?"*
- The only time when a more specific question might be asked is when you are seeking confirmation, e.g. *"What did Mr. Brown do with the stapler?"* - when you think the stapler was thrown at a child.
- It may be necessary for you to carry out a second interview on the basis of what earlier investigations have revealed.

GUIDANCE FOR DECISION-MAKERS ON THE CONDUCT OF DISCIPLINARY HEARINGS AND APPEAL HEARINGS

Disciplinary hearings are necessarily formal meetings and follow a prescribed order of business designed to allow those involved to participate fully and gain a clear understanding of the possible outcomes. Hearings should be conducted in a manner which encourages those present to be open and honest, allowing sufficient flexibility and time for both parties to present their case and to ask and respond to appropriate questions.

Being responsible for making a disciplinary decision either solely, with another Governor or as part of a Decision-Makers' panel is a complex job, as it is your task to weigh up the representations and evidence and reach a clear judgement. If you are acting as Chair of a hearing you have the additional duty of leading the Decision-Makers and may be asked to attend any subsequent appeal hearing as a witness.

Before the hearing or appeal you should familiarise yourself with the Disciplinary Procedure so that you are comfortable with the principles and the main stages of the procedure and the terminology used.

As part of your preparation you will be able to seek advice from Human Resources in order to clarify points and run through procedures. You can, of course, seek help from your Headteacher but as he/she may be presenting the case you must avoid any discussion of the case before the hearing as this could be seen to influence your position.

Before the day of the hearing or appeal ensure that a suitable room has been booked. The key requirements are that it is of sufficient size to accommodate everyone comfortably and that it will be free from interruptions. Water should be available throughout the hearing and it may be appropriate to offer hot drinks, depending on the anticipated length of the hearing. A waiting area should be provided for witnesses, as well as a separate room for the employee and his/her representative. Depending on the nature of the allegations and the sensitivity of the case, it may be appropriate to hold the hearing away from the school site.

Prior to the hearing the head-teacher or whoever is presenting the management case should ascertain whether anyone due to attend the hearing has any special requirements such as a hearing induction loop.

You may wish to arrange a brief training session for those hearing the case, but in any event you will receive a briefing session before the hearing or appeal by an adviser from Human Resources who has not been involved in the case up to this point.

During the hearing or appeal the chair of the Decision-Makers' panel must ensure that the order of business is strictly adhered to. All those involved have an opportunity to state their case or ask questions.

If at any time something is unclear or muddled ask for clarification and do not allow matters to progress until you are happy. If you have any technical or procedural questions ask the adviser to the Decision-Maker(s). It is useful to agree with him/her before the meeting whether you want to be interrupted if the adviser believes that there are problems emerging.

Treat all those before you in the same polite but firm manner. Ensure that the employee concerned has every opportunity to state his/her case.

If any of the participants require a break, then it is quite appropriate to take a short adjournment. In complex cases where there is a lot of evidence be prepared to adjourn and meet at a later date, but if you do this make certain that you break at an appropriate point and that all have agreed the date when the hearing will be re-convened.

In the concluding statements ensure that no new evidence is introduced.

Both sides presenting their cases will normally provide a set of papers and will then use these as they make their case. If the bundle of papers has not been indexed do this at the meeting.

When both sides have made their presentations and withdrawn it will be for the Decision-Makers to reach their conclusion. The test is whether the allegations are true "on the balance of probability".

If an employee subsequently submits a claim to an Employment Tribunal (for example, claiming unfair dismissal) the test is whether the action the employer took was reasonable in all the circumstances.

Once you have reached a decision write it down together with the main reasons for reaching it. This can be read to the parties when they are recalled. The text of this statement will form the basis of the letter sent to the employee confirming the outcome of the hearing.

At the end of the hearing or appeal collect all the papers and have them stored in a safe place for the duration of the warning or, if the case is a dismissal for at least twelve months after the effective date of dismissal.

**Recommended procedure for disciplinary hearing
(Dismissal or action short of dismissal)**

Order of Business:

1. Pre-meeting of the Decision-Maker(s), Clerk (to take notes for the Decision-Maker(s)) and HR Adviser to clarify any procedural matters.
2. Hearing: In addition to those attending the pre-meeting:

Employee and trade union representative/work colleague
Management (Presenting officer and/or Investigating officer; accompanied by
HR Adviser, if appropriate)

(Any witnesses will be called as required and will be present only during the time in which they give their evidence and answer questions.)

- (a) The Decision-Maker(s) will introduce those present, explain the order of business and confirm the allegation(s) being considered.

All parties will be reminded of the confidential nature of the proceedings, that the Clerk will take notes for the Decision-Maker(s) and that the employee and/or their work colleague or trade union representative may take notes for their own use.

- (b) Management will put forward the case by going through the evidence and calling their witnesses, who will either read their witness statements or they may be taken as read.
- (c) The employee and/or their work colleague or trade union representative may ask questions of management/management's witnesses.
- (d) The decision-maker(s) and HR Adviser may ask questions of management/management's witnesses.
- (e) The employee/their representative will state their case.
- (f) The employee/their representative will call any witnesses, who will either read their witness statements or they may be taken as read.
- (g) Management may ask the employee and their witnesses questions - these should be answered by the employee or witness not the representative.
- (h) The decision-makers and HR Adviser may ask the employee and their witnesses questions - these should be answered by the employee or witness not the representative.
- (i) Management may sum up but will introduce no new factors.
- (j) The staff member/their representative may sum up but will introduce no new factors.
- (k) The employee/their representative and management withdraw while the Decision-Maker(s) consider their decision, taking advice as appropriate from the HR Adviser.
- (l) Wherever possible the employee/their representative and management will be recalled and informed of the decision, and the employee will be informed of the right of appeal. The employee will also be informed that the decision will be confirmed in writing within 5 working days of the meeting.

Note: HR Advisers may attend disciplinary hearings, ask questions at any point and advise the Decision-Maker(s) as appropriate.

Recommended procedure for Appeal Hearing

1. Pre-meeting of Governing Body representatives, Clerk (to take notes for the Governors' panel) and HR Adviser to clarify any procedural matters.
2. Hearing: In addition to those attending the pre-meeting:

Employee and representative as Appellant
Headteacher and other management as Respondent (accompanied by an HR Adviser as appropriate)

(Any witnesses will be called as required and will be present only during the time in which they give their evidence and answer questions.)

Order of Business:

- (a) Chair to introduce the members of the Panel and others present and to outline the order of business.
- (b) Chair to remind those present of the confidential nature of the proceedings.
- (c) Chair to clarify that that the Clerk will take notes for the Governors and that the employee and/or their work colleague or trade union representative may take notes for their own use.
- (d) The Chair will either read or circulate to all those present a copy of the decision against which the Appeal is being made.
- (e) The Appellant will state his/her case and may call witnesses.
- (f) The Respondent may ask questions of the appellant and witnesses.
- (g) The Governors and the HR Adviser may ask questions of the Appellant and witnesses as appropriate.
- (h) The Respondent will state his/her case and may call witnesses.
- (i) The Appellant may ask questions of the Respondent and witnesses.
- (j) The Governors and the HR Adviser may ask questions of the respondent and witnesses as appropriate.
- (k) The Respondent may re-examine the witnesses.
- (l) The Appellant or representative will conclude with a summary of the case but will introduce no new factors.
- (m) The Respondent will conclude with a summary of the case but will introduce no new factors.
- (n) The Appellant and Respondent will withdraw while the Governors consider the case taking advice as appropriate from the HR Adviser.

- (o) The Governors will consider the case and the action open to them and reach a decision.
- (p) Appellant and Respondent will be recalled and informed of the decision by the Chair. Notification of the decision will be confirmed in writing within 5 working days of the meeting.
- (q) A formal minute will be made of the outcome of the hearing.
- (r) The decision must be confirmed to the Appellant in writing within 5 working days.

Note: HR Advisers may attend the Appeal hearing, ask questions at any point and advise the Governors' Panel as appropriate.

APPEAL FORM

This form is intended to help you make a clear statement of your Appeal.
(PLEASE PRINT)

Your name:

Your post:

School:

Telephone contact number:

Name and address plus contact number of your representative:
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.....

What are you appealing against?
[State date and decision of hearing (disciplinary sanction/dismissal) and name of manager taking action]
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.....
.....

State clearly the grounds of your Appeal:
[In particular, are you appealing against the findings of and/or the sanction issued at the hearing? Also, state reasons clearly]
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Describe any additional/new information that you think should be taken into account:

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(Please continue on a separate sheet if necessary)

Signed: **Date:**

Please return this form to the Headteacher. If you or your representative are unclear about this, please contact HR Consultancy for Schools.