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Disciplinary and dismissal procedures for school staff



Draft guidance

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Disciplinary and dismissal procedures for school staff

Audience	Governing bodies of all maintained schools in Wales; local authorities (LAs); school staff unions and diocesan authorities.
Overview	This document offers revised guidance to schools, governing bodies, LAs and school staff unions on the management of the conduct and discipline of staff at the school, including allegations involving issues of child abuse. It includes a model procedure in Annex I which it is recommended that governing bodies adopt.
Action required	All governing bodies must have regard to this guidance when reviewing and implementing their staff disciplinary policy and procedures and must liaise with the local staff unions over any changes to their staff disciplinary policy.
Further information	<p>Enquiries about this guidance should be sent to: School Governance and Organisation Branch Schools Management Division Department for Education and Skills Welsh Government Cathays Park Cardiff CF10 3NQ Tel: 029 2082 6051 e-mail: SMED2@wales.gsi.gov.uk</p> <p>Governing bodies should seek advice about staff disciplinary information matters from their local authority human resources (HR) advisor. Advice may also be obtained from Governors Wales' helpline (tel. 0845 6020100) e-mail: helpline@governorswales.org.uk</p>
Additional copies	This document can be accessed from the Welsh Government's website at www.gov.wales/educationandskills
Related documents	<i>Safeguarding children in education: handling allegations of abuse against teachers and other staff</i> (2014) Welsh Government circular no: 009/2014

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Section 1: Introduction

1.1 This is statutory guidance for maintained schools and local authorities on the school disciplinary and dismissal process. It is issued by Welsh Ministers under sections 35(8) and 36(8) of the Education Act 2002, which means that governing bodies must have regard to this guidance or have sound justification for not doing so.

1.2 The ACAS Code of Practice 1 – Disciplinary and Grievance Procedures¹ state that disciplinary procedures are necessary for promoting orderly employment relations and achieving fairness and consistency in the treatment of individuals and to minimise disagreements about disciplinary matters. It encourages the agreement of disciplinary procedures between employers and employee representatives so that they become part of contracts of employment.

1.3 Governing bodies are legally required to establish procedures for the discipline and conduct (including dismissal) of the staff for whom they are responsible and for ensuring compliance with their agreed disciplinary procedure. A model staff disciplinary and dismissal procedure is included at Annex I along with a suggested timeframe for the lesser and gross misconduct processes at Annex F. Governing bodies are encouraged to adopt the model procedure and suggested timeframe. However, it is not appropriate to switch between a governing body's agreed timescales and those in Annex F during the disciplinary process.

1.4 As a matter of good practice governing bodies should review their policies and procedures regularly. Consultation on revised procedures should take place with relevant parties and recognised trade unions in good time, prior to formal adoption.

1.5 It is not possible to address every eventuality which may arise and this guidance is not a substitute for legal or other advice relevant to individual circumstances.

The legal framework

1.6 The main legal provisions relating to staffing, disciplinary and conduct matters are contained in:

- the Employment Rights Act 1996
- the Employment Relations Act 1999
- the Education Act 2002 (sections 35-37)

¹ http://www.acas.org.uk/media/pdf/k/b/Acas_Code_of_Practice_1_on_disciplinary_and_grievance_procedures-accessible-version-Jul-2012.pdf

- the Staffing of Maintained Schools (Wales) Regulations 2006 ('the 2006 Staffing Regulations')
- the Staffing of Maintained Schools (Miscellaneous Amendments) (Wales) Regulations 2007 ('the 2007 Staffing Amendment Regulations')
- the Staffing of Maintained Schools (Wales) (Amendment) Regulations 2014 ('the 2014 Staffing Amendment Regulations')
- the Government of Maintained Schools (Wales) Regulations 2005 ('the 2005 School Government Regulations').

Section 2: Scope of the school disciplinary and dismissal procedures

2.1 A school governing body is required to adopt procedures to regulate the conduct and discipline of all school staff that are paid from the school's delegated budget which includes:

- teachers;
- support staff such as teaching assistants;
- office staff;
- caretakers
- laboratory technicians;
- learning support assistants and
- any other member of staff so paid.

2.2 However, this does not include:

- staff employed directly by an employment agency or umbrella company;
- staff employed as contractors or engaged under a contract for services;
- staff whose contract of employment is held by another body (e.g. teaching staff shared with the school in question via the collaborative process);
- staff employed and paid by the local authority (other than from the school's delegated budget);
- staff in a school with a delegated budget where an Interim Executive Board (IEB) has been established, as the IEB may adopt such reasonable procedures it deems appropriate (including the procedures in this guidance).
- Staff in a school which has had its delegated budget removed by the LA which means that the LA is responsible for staffing matters.

School staff employed directly by an agency

2.3 The agency is responsible for the discipline and dismissal of supply staff it directly employs under a contract of employment to work at a school. If, the content of an allegation is such that the headteacher or governing body (chair of governors) considers such a person should cease to work at the school they must notify the agency of that decision and the justification for it. They may also ask the person to leave the school premises. This is not a dismissal or a termination of contract by the school as the contract is held by the agency.

2.4. It will be for the agency, in discussion with the LA, to determine what action to take although both schools and agencies have a duty to make referrals to the Disclosure and Barring Service (DBS) where necessary - see Annex D for further details. The agency should consult the governing body to such extent as it sees fit to

obtain relevant information and evidence relating to the allegation, including names of witnesses before the agency takes action under its own disciplinary procedures. For allegations of abuse against agency staff see Section 8.

2.5 While in law there is no role for a governing body to become involved in disciplining staff employed by an agency, it may be helpful to share a copy of this guidance with the agency for information purposes.

Supply staff not engaged through an agency

2.6 Some schools engage supply staff through 'online networks' or staff who have expressed an interest in supply cover. As well as ensuring these persons have a valid Disclosure and Barring Service (DBS) check, in respect of disciplinary and dismissal matters, governing bodies and headteachers will need to consider whether such persons are engaged under a contract of employment or a contract for services. Supply teachers employed directly by the governing body to work at the school are likely to have a contract of employment and have tax and National Insurance deductions made under the school's arrangements. In these circumstances the governing body, in receipt of a delegated budget, will be responsible for any disciplinary proceedings. However, the school will not be responsible for tax and insurance arrangements for persons employed under a contract for services and the governing body is not responsible for the disciplinary and dismissal of such staff.

School staff employed by the LA

2.7 The LA is responsible for the discipline and dismissal of staff it directly employs to work at a school, such as school meals staff, centrally employed teaching staff, inclusion services staff, music support services staff, and literacy and numeracy tutors. Teachers and staff employed directly by the LA will have tax and National Insurance deductions made under the LA's arrangements. Before exercising these functions, the authority should consult with the governing body to such extent as the authority considers necessary.

2.8 If the content of an allegation is such that the headteacher or governing body (chair of governors) considers such a person should cease to work at the school they must notify the authority of that decision and the justification for it. They may also ask the person to leave the school premises. The authority must then require the person to cease working at the school. Following an appropriate disciplinary process the LA should inform the governing body whether the person can be re-employed at the school.

Schools without a delegated budget

2.9 Under Sections 35(7) and 36(7) of the Education Act 2002 where a school does not have a delegated budget staff disciplinary and dismissal issues are the responsibility of the LA which must have a policy for dealing with them. This means that neither the 2006 Staffing Regulations nor the 2007 and 2014 Staffing Amendment Regulations apply. Accordingly the specific regulatory requirements relating to the independent investigation of allegations that a teacher employed under a contract of employment at the school has abused a pupil registered at the school do not apply to staff at these schools.

2.10 It can be difficult to determine whether a person is an employee of the school or employed by other means. If in any doubt governing bodies should seek legal advice from the legal department of its relevant LA in the first instance.

Community, community special, voluntary controlled and maintained nursery schools which fall under Part 2 of the Staffing of Maintained Schools (Wales) Regulations 2006

2.11 The LA is the employer of staff in these schools and holds the contract of employment, but where the school has a delegated budget the governing body is treated as the employer in respect of certain employment functions. A representative of the LA is entitled in law to attend staff disciplinary and dismissal committee meetings to give advice to the governing body and ensure that the correct process is followed.

2.12 Where the governing body determines that a member of staff employed to work at the school should cease to work there, the governing body must provide the member of staff with an opportunity to appeal before notifying the LA in writing of its decision and the justification for it. If the member of staff concerned works solely at the school, and has not resigned or been successful in their appeal the LA must, within 14 days of receiving notification give that person notice terminating their contract of employment in accordance with their contract, or terminate the contract without notice if the decision is to summarily dismiss the member of staff. If the member of staff is not employed solely to work at the school, the LA must require the member of staff to cease working at the school with immediate effect.

Voluntary aided and foundation schools that fall under Part 3 of the Staffing of Maintained Schools (Wales) Regulations 2006

2.13 The governing body as the employer of most staff in foundation and voluntary-aided schools is responsible for the conduct and discipline of such staff in accordance with Regulations 28–31 of the 2006 Staffing Regulations. Before making a decision to dismiss a member of staff and terminate the contract of employment

the governing body must arrange for a hearing and give the member of staff the opportunity to appeal. The governing body must notify the member of staff of their decision giving such notice as required under their contract, or terminate the contract without notice if the decision is summary dismissal. A representative of the LA is entitled in law to attend staff disciplinary and dismissal committee meetings to give advice to the governing body and ensure that the correct process is followed.

2.14 If the school is a Church in Wales or Roman Catholic VA school, the relative diocesan authority has the same advisory rights as the chief education officer. If the school is a foundation school the governing body may grant advisory rights to the diocesan authority which must be confirmed in writing.

Section 3: The staff disciplinary and dismissal and disciplinary and dismissal appeals committees

3.1 In accordance with the 2006 Staffing Regulations and the 2007 and 2014 Amendment Regulations, where the school has a delegated budget, governing bodies are responsible for the conduct and discipline of school staff and any procedures for giving members of staff opportunities for seeking redress of any grievances relating to their employment.

3.2 The 2005 school government regulations require governing bodies to establish a staff disciplinary and dismissal committee and a staff disciplinary and dismissal appeals committee. In accordance with Regulation 55 the function of the staff disciplinary and dismissal committee is to determine whether a person:

- employed by the LA to work at the school should cease to work there (community, voluntary controlled, maintained nurseries or community special schools);
- should have their contract of employment terminated, or not have it renewed (voluntary aided and foundation schools);

and to hear representations in relation to such matters.

3.3 The governing body must delegate responsibility for considering appeals against decisions of the staff disciplinary and dismissal committee to a separate disciplinary and dismissal appeals committee. In lesser misconduct cases which result in action short of dismissal, the disciplinary and dismissal appeals committee will also hear appeals against decisions made by the headteacher in respect of members of staff and decisions of the chair of governors in respect of headteachers.

3.4 Under Regulation 55(3) of the 2005 school government regulations each committee must be made up of at least three governors. Having an odd number avoids the need for the chair of the committee to have a second or casting vote. The disciplinary and dismissal appeals committee cannot have fewer governors than the staff disciplinary and dismissal committee, although it may have more, and the membership of these committees must not overlap. It is therefore suggested that there should be no more than five governors on each committee

3.5 Where the disciplinary and dismissal hearing relates to an allegation that a teacher or member of staff employed under a contract of employment at the school has abused a pupil registered at the school, the staff disciplinary and dismissal committee and appeals committee must include at least two governors and an independent non-governor member with voting rights (Regulation 55 of the school government regulations as amended by the 2006 Staffing Regulations). The membership of the committees must not overlap. See Section 8 for further

information on handling allegations of abuse including details of the persons who are not considered independent.

3.6 Governors who have a conflict of interest or are tainted may not be members of either committee. The governing body will need to identify a sufficient number of untainted governors for the staff disciplinary and dismissal committee and the staff disciplinary and dismissal appeals committee. As the role of the local authority is to support governors to discharge their functions, it is expected that these governors will receive appropriate training. Further information on conflicts of interest and tainting can be found in section 4, paragraphs 4.2 to 4.16.

3.7 Governing bodies should establish and review the membership of their committees at least annually and record the names of committee members in the governing body minutes. It is good practice for this to be done at the first governing body meeting of the school year.

3.8 Both committees must be clerked in accordance with the 2005 school government regulations. It is the responsibility of the governing body to appoint a clerk. The clerk must have undertaken the mandatory clerk training. Wherever possible, the clerk to the governing body should clerk both committees. Further information on the role of the clerk can be found in Section 9, paragraphs 9.17 and 9.18.

3.9 The headteacher cannot be a member of either committee, but can attend meetings and disciplinary hearings to give advice, present the case or give evidence, providing they are not the subject of the allegation or a witness. The governing body may decide that teacher/staff governors should not be members of the staff disciplinary and dismissal committees so as not to compromise members of staff, although they may attend hearings to give evidence.

3.10 The chair of governors should not normally sit on either committee, given their likely involvement in the initial consideration of an allegation alongside the headteacher, which may mean they have prior knowledge which could lead them to form a judgement, depending on what was discussed. Should the governing body decide that the chair should be a member of the staff disciplinary and dismissal committee or the staff disciplinary and dismissal appeals committee (due to their expertise) this decision should be included in the staff disciplinary policy and clearly noted in the minutes of the governing body meeting at which the membership of the committees is decided and another governor (not involved in either committee) nominated to act as chair in respect of such allegations. This role would usually be undertaken by the vice chair subject to the necessary delegation and provided they are not tainted.

3.11 Governors who are suspended from the governing body should not be a member of either committee. Associate pupil governors may not attend any meetings or hearings of either committee; neither can they be present if these matters are referred to in a full governing body meeting. In exceptional circumstances, for gross misconduct matters that do not involve allegations of abuse, non-governors, including a governor of another school may be members of either committee but cannot vote in the proceedings.

Section 4: Fair procedures and impartiality

4.1 The whole disciplinary process must be seen to be fair and give expression to the principles of natural justice, to ensure that the disciplinary and dismissal committee's consideration and final assessment of the facts is considered, reasonable and justified. The governing body must follow its agreed procedures and must reach decisions in a procedurally fair way to ensure a fair hearing.

Conflicts of interest and tainting of governors

4.2 Committee members must be impartial and unbiased and must address the issues objectively and independently. Membership of the staff disciplinary and dismissal committee and staff disciplinary and dismissal appeals committee should be reviewed at the start of each case and any governor who has a conflict of interest, is tainted or otherwise compromised, should be replaced. This includes where a governor:

- is related to, or has a close relationship with the member of staff against whom an allegation of misconduct has been made or any of the parties involved;
- has a pecuniary interest;
- has demonstrated they cannot fulfil their role impartially, e.g. has indicated that they have predetermined the matter;
- is a person who instigates the allegation;
- is the subject of related complaints or grievances or has prior involvement in the allegation or events leading up to it.

4.3 Knowledge that an allegation has been made and its nature does not affect impartiality, provided a governor does not hear or read any evidence other than as part of the hearing arrangements as a member of the staff disciplinary and dismissal committee or appeals committee.

4.4 Members of the governing body must treat all information relating to allegations against members of staff with the utmost confidentiality at all times and must not discuss the case or potential evidence with fellow governors or anyone else. The chair's progress report to the governing body on a staff disciplinary matter should simply state that the matter is being dealt with in accordance with school procedures. No further discussion about the case should follow to reduce the possibility of members of the staff disciplinary and dismissal committee or appeals committee being subject to a claim that they are tainted having formed a view in advance.

4.5 If a situation arises where a substantial number of members are tainted by virtue of having discussed or otherwise acquired detailed knowledge of the substance of an allegation of gross misconduct, the chair of governors should

discuss arrangements for consideration of the allegation with the LA and where applicable the diocesan authority. The statutory responsibility for the staff disciplinary and dismissal process rests with the governing body, options available in such circumstances include:

- filling any vacancies on the governing body;
- enlarging the size of the governing body. The membership of governing bodies is set out in the Government of Maintained Schools (Wales) Regulations 2005. For some schools that have very small governing bodies it may be possible to increase the size of the governing body and revise the Instrument of Government. Should this be an option the governing body must increase the numbers in every category;
- removing governors and reappointing governors who are impartial. The governing body may remove governors they appoint i.e. community, partnership governors and parent governors they appoint. The LA and diocesan authority may remove their appointed governors. This may understandably cause concern if good governors have to be removed, but the outcome should achieve enough impartial governors to complete the disciplinary process.

4.6 Should the governing body consider it appropriate to use governors who may be perceived to be tainted they should take all possible measures to ensure that consideration of the case is fair and balanced and seen to be so. For example, non-governor members may be used on staff disciplinary and dismissal committees and appeals committees to assist with a balanced consideration of matters, although they would not have a vote. (These arrangements are outside the requirements to have a non-governor with voting rights for allegations of child abuse). This decision should be discussed with the LA.

4.7 Governing bodies should be aware that if they use governors who are perceived to be tainted and it can be shown they have not acted fairly, perhaps because there is evidence that they have predetermined the matter, they may be subject to a claim of unfair dismissal to an Employment Tribunal. If the Tribunal upholds the claim it could have financial implications for the school's delegated budget which may have to bear the costs.

4.8 The decision to identify governors to replace those initially agreed by the governing body must be taken by the whole governing body which could necessitate the governing body being called together quickly, using the emergency procedures, to avoid delays in the disciplinary process.

4.9 Alternatively, governing bodies may decide to identify reserve governor members, in a priority order, when the committees are set up, to cater for conflicts of interest, illness and holiday commitments and delegate permission to the chair of governors to contact these governors in the agreed priority order.

4.10 Another option is for the governing body to determine that if a member of the staff disciplinary and dismissal committee is tainted, a governor identified to be a member of the staff disciplinary and dismissal appeals committee should take over the role on the staff disciplinary and dismissal committee. This should allow sufficient time for the governing body to identify governors for the staff disciplinary and dismissal appeals committee by either calling a meeting of the governing body or selecting a reserve governor in priority order as agreed by the governing body.

4.11 Regulation 55(6) of the 2005 School Government Regulations prohibits members of the staff disciplinary and dismissal committee from taking part in the proceedings of the staff disciplinary and dismissal appeals committee.

4.12 Governing bodies must make alternative arrangements clear as part of the school's staff disciplinary procedures and must minute such decisions, including the decision to identify reserve governors and allow the chair to contact them. Where alternative arrangements have to be implemented all parties should be informed immediately and given the reasons.

Conflicts of interest

4.13 In accordance with Regulation 63(2) of the 2005 School Government Regulations where a governor has a conflict of interest they must declare that interest and withdraw from the meeting without voting. Where there is dispute about these matters the other governors present at the governing body or committee meeting must vote to decide whether the declared conflict of interest is such that the governor should withdraw from the committee and meeting (Regulation 63(5) of the 2005 School Government Regulations).

4.14 If a member of the staff disciplinary and dismissal committee or appeals committee declares an interest they should be replaced. If the declaration is made at a governing body meeting the governors can vote on a replacement or appoint the first governor on the 'priority reserve list' is (see paragraph 4.9 above). If a member of the staff disciplinary and dismissal committee or staff disciplinary and dismissal appeals committee declares an interest at a committee meeting, the committee should cease its work and report to the chair of governors who can either contact the first governor on the 'priority reserve list' or if no such arrangements have been agreed, call an emergency meeting of the full governing body to decide on a replacement.

4.15 Where a governor notifies the chair of governors of a conflict of interest outside a meeting, the chair may seek an alternative governor to be a member of the staff disciplinary and dismissal committee from a reserve list agreed by the full governing body, provided the chair has the written delegated authority to do so. If no such

delegation has been agreed the chair must call a full governing body meeting to agree a replacement.

4.16 It is for the chair of governors (subject to delegation of this responsibility by the governing body) to consider whether any objection to the membership of the staff disciplinary and dismissal committee is valid. The chair may discuss the matter with the LA and should take account of the advice received. If the objection is upheld the chair may contact governors on a pre-agreed reserve list in priority order (subject to having delegated authority to do so) or call a full governing body meeting and inform those involved who the substitute will be.

Section 5: Governing body training and access to advice

Training on staff disciplinary and dismissal procedures

5.1 Disciplinary matters must be handled in accordance with the law and the principles of natural justice. Cases can be extremely complex. Governors who are members of the staff disciplinary and dismissal committee and the appeals committee can feel unprepared when dealing with staff disciplinary matters, particularly where the outcome may result in a member of staff being dismissed. Governing bodies are largely made up of lay people and it is essential that their decisions, which are likely to have far-reaching consequences for those involved, are made in an informed and timely manner.

5.2 By law, LAs are required to provide training for governors free of charge on a range of issues to enable them to discharge their duties effectively. The expectation therefore is that the LA will have a training programme in place covering staff disciplinary issues.

5.3 The governing body should ensure that members of the staff disciplinary and dismissal committee and the staff disciplinary and dismissal appeals committee receive appropriate and timely training. Waiting until a disciplinary case arises may cause unnecessary delays in the disciplinary process. Wherever possible, committee members should receive refresher training when they have been made aware that they will have to deal with a disciplinary matter.

5.4 Training should include:

- relevant legislation including employment, education and equal opportunities and data protection legislation;
- Acas' Code of Practice 1 – Disciplinary and grievance procedures,
- Freedom of Information requests and case law
- essential features and principles of effective and fair governing body procedures;
- conduct of a disciplinary interview or hearing;
- skills and techniques for questioning;
- confidentiality and impartiality;
- child abuse/protection matters;
- whistleblowing;
- record keeping;
- notification to the Education Workforce Council (EWC) and the Disclosure and Barring Services (DBS).

Access to Advice

5.5 A governing body's agreed procedure should provide for the staff disciplinary and dismissal and staff disciplinary and dismissal appeals committees to have access to appropriate and timely professional advice, including legal and HR advice.

5.6 In most cases the LA (or diocesan body where appropriate) will be able to provide this advice and governing bodies are expected to approach them in the first instance. However, in some cases, the governing body (or the LA itself) may consider that independent advice should be sought, for example where the LA has been instrumental in bringing allegations to the attention of the governing body, or is providing support to individuals involved in the case. The LA should make it clear that the governing body is free to seek advice from other sources and not seek to impose its advice on the governing body.

5.7 Unless otherwise agreed with the LA (and/or diocesan authority as appropriate), any costs incurred in obtaining independent advice should be met from the school's delegated budget. The LA's scheme for financing its schools and/or a school's service level agreement with the LA should provide for this. Governing bodies should also bear in mind that under Section 37(5) of the Education Act 2002, LAs can charge costs they incur in dismissing a member of staff to the school's budget if they have good reason for doing so, for example where the LA has not been consulted about the dismissal, or its advice has not been considered, or has been rejected out of hand by the staff disciplinary and dismissal committee and/or appeals committee.

5.8 Where it is necessary for the staff disciplinary and dismissal committee to seek advice during a hearing such advice should be given in front of all parties and be recorded in full. It is recognised that any such advice could be challenged by any of the parties involved, which could lead to a delay in proceedings, if an adjournment is requested. Once the staff disciplinary and dismissal committee has received all the advice they need, the committee must debate and make their decision in private in the absence of any advisers.

Section 6: Lesser misconduct

6.1 It is usual for consideration of alleged misconduct that could constitute lesser misconduct and result in sanctions short of dismissal (including a final written warning) to be delegated to the headteacher or the chair of governors if the allegation is against the headteacher. This is a decision for the governing body to take which must be minuted and the governing body's disciplinary procedure should include reference to such delegation arrangements. Annex B1 includes a list of behaviours that might be considered lesser misconduct. This list is not exhaustive and is provided for illustrative purposes only. Annex F provides suggested timescales in relation to lesser misconduct matters. Where lesser misconduct allegations are made they should be dealt with in accordance with the school's disciplinary policy.

Informal discussion with the headteacher and/or line manager

6.2 There will be occasions where it is appropriate for a member of staff's actions to be discussed with them as part of normal supervisory arrangements without recourse to formal procedures, this being a management process and not part of the disciplinary process. The facts of the matter would need to be established before any discussion took place. In such circumstances the member of staff will be given guidance and support from their line manager which could be in the form of counselling, training, instruction, coaching or other appropriate managerial strategies. Line managers should ensure that problems are discussed in order to encourage and help members of staff improve. It should be made clear to the member of staff:

- what they need to do in relation to their conduct in question;
- that conduct will be monitored and reviewed and over what period;
- that more formal action could be taken if there is a recurrence of the conduct in question, or if the member of staff fails to produce the necessary improvements (see paragraph 6.4).

6.3 Where discussions and support structures are put in place and do not lead to the necessary improvement or relevant changes in conduct, within the agreed timescale, the member of staff will normally be advised in writing of further action to be taken, which may be formal. An agreed record of the meeting should be kept, although the process would be considered informal. As these meetings form part of normal management meetings where members of staff are being asked to improve timekeeping or hand in work on time for example, it would not be expected for members of staff to have representation at these meetings.

Stage 1 – Formal process for lesser misconduct

6.4 On receipt of an allegation the line manager (which may be the headteacher or chair of governors if the allegation is about the headteacher) will consider the level of misconduct and whether it is in line with the misconduct listed in Annex B1 - 'lesser misconduct'. If so, the line manager may then consider whether it is appropriate in all the circumstances for the matter to be dealt with by informal discussion as in paragraphs 6.2 and 6.3. If the decision is that more formal procedures are required the line manager should refer the matter to the headteacher or chair of governors to complete formal action (assuming that the line manager is not the headteacher or the chair of governors). This is not a pre-judgement of the allegation but is merely determining the process that could be applied for dealing with the allegation. The member of staff should be informed of the allegation in writing as soon as possible and be given as much information as possible. Where line managers, the headteacher or chair of governors decide to deal with matters through informal procedures in paragraphs 6.2 and 6.3 above and the actions of the staff member are not improving following informal discussion with the line manager the headteacher or chair should be informed (if they are not the line manager), so they can commence the formal lesser misconduct procedures which would require investigation of the allegation(s).

6.5 The member of staff should be informed in writing as soon as possible that formal lesser misconduct procedures are being engaged and an investigation will commence. The member of staff should also be provided with a copy of the relevant policies. However, there may be instances where disclosure of detailed information at this stage might hamper the investigation and/or put vulnerable witnesses at risk of intimidation. In such situations the member of staff should be given as much information as appropriate.

Investigation

6.6 A full and thorough investigation must be completed, but its extent may depend on the particular issue in question and the information and evidence available. The investigation should be undertaken by someone other than the person who may be required to take informal action/formal action. This may be a member of the senior management team or other independent person from the LA or diocesan authority. Where the allegation is about the headteacher the chair of governors should arrange for the investigation to be carried out externally by the LA, diocesan authority or other independent person(s). Persons appointed to independently investigate lesser misconduct allegations are not the same as independent investigators required to investigate child abuse allegations and the law in the 2014 Staffing Regulations about who is classed as independent does not apply. The investigating officer should be provided with the contact details of an LA adviser.

6.7 The investigation will include gathering all evidence, interviewing all witnesses including those identified by the member of staff, considering all the facts and producing a report. The member of staff will be given the opportunity to respond to the allegation and will be advised of their right to be accompanied by a companion or a representative of their trade union at an investigation interview meeting. The member of staff will also be advised of their right to object to any investigator on the basis of evidence that calls into question their ability to act impartially in the circumstances of the case. It will be for the governing body (chair) to determine whether the circumstances of the objection are valid and accepted and to arrange for a new investigator to be appointed. Schools are expected to release staff members who are witnesses for interview, although witnesses cannot be mandated to speak to the investigator. Witnesses may prefer to present written statements to the investigator. It should be made clear to all parties that an investigation will not necessarily result in disciplinary action. If the headteacher or the governing body has any concerns they should seek advice from the LA's HR adviser.

6.8 Notes will be taken during interviews and minutes produced within two school days where possible using any agreed tape recordings, handwritten notes or records signed and dated by relevant parties. Oral statements should be written contemporaneously. Those present at the meetings will be asked to agree to the minutes as a true and accurate record of the interview. No undertaking of confidentiality will be given to witnesses; however, the overall confidentiality of the disciplinary process will be respected. Section 7 which gives guidance on dealing with allegations considered to be gross misconduct also contains information in paragraphs 7.20 – 7.33 about the conduct of an investigation, the framework for an investigation report and interviewing members of staff and witnesses. These principles can also be applied to investigations into allegations considered to be lesser misconduct.

6.9 As soon as practicable after the investigation has concluded the investigating officer should present the findings in a written report to the headteacher (or the chair of governors if the allegation is against the headteacher) who may determine that based on all the evidence and information available one of the following will apply:

- the allegation is false or unfounded and no further action will be taken;
- matters can be dealt with under the informal procedure (paragraphs 6.2 and 6.3);
- there appears to be sufficient evidence for a formal lesser misconduct hearing to be conducted with the headteacher (or the chair in respect of the headteacher) see paragraphs 6.12 to 6.24;
- there appears to be sufficient evidence that the allegation constitutes gross misconduct which requires a formal disciplinary hearing with the staff disciplinary and dismissal committee. Before informing the member of staff of this decision the headteacher should consult and discuss the matter with the chair of governors and the HR representative in the local authority. If the matter involves the headteacher

the chair of governors is urged to consult and discuss the matter with the local authority before taking any action.

6.10 The member of staff and their union representative should be informed in writing as soon as possible what action, if any, will be taken following the investigation. Where there is conflicting evidence the matter should be referred to a hearing before the headteacher or chair of governors (if formal lesser misconduct procedures are being applied), or a hearing before the staff disciplinary and dismissal committee as appropriate.

6.11 Where the outcome of the investigation indicates that the alleged misconduct demonstrates a breach of the conditions of an existing unspent final written warning, the case must be referred to a hearing before the staff disciplinary and dismissal committee.

Stage 2 – Lesser Misconduct (a case to answer) – disciplinary hearing with the headteacher or chair of governors

6.12 Where the investigation indicates there appears to be sufficient evidence to warrant a disciplinary hearing with the headteacher (or the chair of governors if the allegation is against the headteacher) a disciplinary hearing must be arranged. It is advisable for a LA HR representative to be present with the chair at a hearing against the headteacher. Section 9 provides detailed guidance on the disciplinary hearing process for allegations considered to be gross misconduct. The principles set out in that Section can be applied to the hearing before the headteacher or chair of governors in the lesser misconduct process except that references to the staff disciplinary and dismissal committee should be to the headteacher or chair of governors. However, the following paragraphs would not apply to allegations dealt with as lesser misconduct matters - 9.8, 9.10, 9.24, 9.25, and 9.26

6.13 The member of staff should be given as much information as possible, in writing, providing that it does not put vulnerable witnesses at risk of intimidation by identifying a pupil who may be a witness or a member of staff who has whistleblown. In such cases the member of staff should be given as much information as appropriate.

6.14 The information given to the member of staff should include:

- the nature of the alleged misconduct;
- the stage reached in the procedure;
- the date, time and place for the hearing;
- the possible sanctions that could apply if the allegation is upheld;
- a copy of the up-to-date procedure;
- their right to:

- ✓ produce written statements which will be circulated to all parties in advance of the hearing;
- ✓ ask questions relating to any written statements so produced;
- ✓ state their case in person and/or through a representative;
- ✓ produce witnesses;
- ✓ be accompanied by a companion, or a representative of the member of staff's trade union.

6.15 At the hearing, the member of staff must be given an opportunity to answer allegations made and present their evidence before any decision is reached. A contemporaneous record should be made of the meeting and a copy provided to the member of staff for amendment and/or agreement.

Stage 3 – Action following disciplinary hearing before the headteacher/chair of governors

Informal action

6.16 Following the hearing, the headteacher (or chair of governors in respect of the headteacher) with support from the LA HR adviser will decide whether matters can be dealt with by giving advice, counselling, training, instruction, coaching or other appropriate managerial strategies which may be delegated to a member of the senior management team or the chair of governors where the allegation is against the headteacher with advice and support from the LA HR advisor. Such actions or managerial strategies are not part of formal disciplinary procedures.

Possible sanctions/formal action

6.17 Where the headteacher or chair of governors (in respect of the headteacher) considers that the behaviour of the member of staff justifies a more formal sanction, or where the member of staff has failed to respond to informal action, it can usually be dealt with by means of one of the formal sanctions listed in paragraph 6.18.

Warnings

6.18 Subject to paragraph 6.19 this could be any one of the following:

- recorded oral warning
- first written warning
- final written warning
- referral to a disciplinary hearing before the governing body's staff disciplinary and dismissal committee.

6.19 It is not necessary for a warning to be given in the order listed above. In the event of a further allegation or an allegation of a more serious nature it may be possible to apply the disciplinary process at a stage that could result in the issuing of a first written or a final written warning thereby bypassing the oral warning and/or the first written warning stages. Where a formal warning, either oral or written, is given, the member of staff should be informed of:

- the action needed on their part to avoid any further disciplinary sanction;
- the consequences of any failure to take necessary action;
- their right of appeal against a warning.

Recording oral warning or written warnings

6.20 The member of staff should be informed of the sanction at the end of the hearing with their union representative present. Such warnings are formally issued to the member of staff in the form of a letter with a copy placed on the member of staff's personal file along with the staff member's acknowledgement of the warning and any written observations on it. A copy of the letter should also be provided to the chief education officer for staff employed in community, community special and voluntary controlled schools and the member of staff's companion subject to the member of staff's consent. A record of all warnings should be kept on the member of staff's file for the duration of the warning.

6.21 The warning must be for a fixed period of time expressly stated in the warning itself (see paragraph 6.23 for details). Where specific improvements are required these need to be detailed. For written warnings other than final warnings, the member of staff should be told that should the misconduct be repeated during the life of the current warning, the disciplinary process may be applied which could result in an extension to the current warning or the issuing of a final written warning.

6.22 A warning is described as a final warning when it is made clear to the member of staff that failure to address the behaviour in question will lead to consideration of the matter under the governing body's formal disciplinary procedure and/or could lead to dismissal.

Warning periods

6.23 Suitable periods might be:

- oral warning – 3 months
- first written warning – 6 months
- final written warning – 12 months.

6.24 It is important to note however that the duration of the warning can vary according to the detail of the offence and the required improvement. There is discretion for warnings to be placed on record for longer than the periods above.

6.25 Warnings should be expunged from the staff member's file after a specified period often referred to as ("the warning period") and not referred to again once spent.

Stage 4 – Appeals against formal action

6.26 The school's disciplinary procedures should provide for a member of staff to appeal against a formal warning, including that the sanctions imposed are inappropriate in relation to the failings identified or the decision itself, e.g. where the findings of the investigation are not consistent with the evidence produced.

6.27 The disciplinary and dismissal appeals committee is responsible for hearing any appeal. It may not always be necessary for an appeal to be a re-hearing, especially where the member of staff is appealing on a minor point or penalty imposed – they may ask that their appeal is a review of the evidence. However, when making a decision on the form of the appeal the staff disciplinary and dismissal appeal committee should take into account the views of the member of staff as to whether they wish to have a full re-hearing and the reasons why.

6.28 The appeal procedure should set a time limit for notification by the member of staff to the clerk to the disciplinary and dismissal appeals committee of the intention to, and reasons for, appeal and require these reasons to be provided along with the notice of intention to appeal. The member of staff should be informed in writing of the date and time of the appeal hearing in advance. Annex F contains suggested timescales but there may be some flexibility with timescales e.g. where there is a large amount of paperwork involved or unavailability of staff, subject to mutual agreement.

6.29 The appeals procedure to be followed for lesser misconduct cases should be the same as that set out in Section 9 paragraphs 9.27-9.31 for gross misconduct, cases considered by the staff disciplinary and dismissal appeals committee e.g. if the headteacher has awarded a sanction under lesser misconduct procedures the appeal will be referred to the staff disciplinary and dismissal appeal committee. An appeals body cannot impose a more severe penalty than that imposed at the first hearing.

Section 7: Gross misconduct (excluding child abuse allegations)

7.1 In this guidance the term gross misconduct refers to an act, or omission, or a series of actions or omissions which fundamentally repudiates the contract of employment so that the governing body would be justified in dismissing or asking the LA to dismiss the member of staff, following a disciplinary hearing. In such cases dismissal is likely to be without notice or payment in lieu of notice. Annex B2 includes a list of behaviours that might be considered to be gross misconduct. This is not an exhaustive list and is provided for illustrative purposes only. Gross misconduct offences should be clearly set out in the governing body's disciplinary procedure. Annex F provides suggested timescales in relation to gross misconduct matters.

Involvement of the governing body

7.2 A governing body is statutorily required to be involved in all gross misconduct matters requiring formal disciplinary action and must establish a staff disciplinary and dismissal committee and a staff disciplinary and dismissal appeal committee.

Receipt of allegation of gross misconduct

7.3 Allegations of gross misconduct should be referred to the headteacher (or the chair of governors if the allegation is against the headteacher). The headteacher should inform the chair of governors of all gross misconduct allegations that come to his/her attention.

7.4 On receipt of an allegation an assessment will need to be made on the seriousness of the allegation and whether if substantiated it could reasonably fall into the category of gross misconduct and warrant consideration by the staff disciplinary and dismissal committee. The headteacher or chair is not expected to make this decision in isolation, and it is recommended that they seek advice from the LA HR adviser and where appropriate the diocesan authority. If the allegation is about the headteacher, the chair is strongly recommended to contact the LA HR adviser.

7.5 The headteacher or chair of governors' assessment of the nature and circumstances of the allegation should establish:

- that an allegation has been made;
- what is alleged to have occurred;
- when and where the episode(s) is/are alleged to have occurred;
- who was involved;
- any other persons present.

This is not an investigation, merely an establishment of some basic facts.

7.6 If following this initial assessment the decision is that the allegation, if proven, constitutes gross misconduct, the chair of governors should inform the members of the staff disciplinary and dismissal committee that an allegation has been made and is being investigated and that they may be required to meet. If the headteacher/chair and LA HR adviser cannot agree on a way forward then gross misconduct procedures should be applied.

7.7 Taking all the circumstances into account the headteacher or chair of governors may consider suspension pending disciplinary proceedings. However suspension is a serious step and should not be an automatic response. Section 10 contains further information on suspension.

Investigation by the police

7.8 Where the allegation relates to a criminal offence the headteacher or chair should refer the allegation to the police and advise the LA of the referral. It is recommended that any investigation by the statutory authorities, including the police take priority over the school's disciplinary proceedings. No disciplinary action should be taken by the governing body while these authorities investigate the matter as it could jeopardise potential criminal proceedings. Furthermore, at this stage the governing body (chair of governors) is unlikely to have access to the full information from the statutory authorities, making it difficult to make a judgement. If in doubt governing bodies (chairs of governors) are advised to contact the LA to discuss. However, a decision to suspend a member of staff may be taken at any point. Section 10 contains further information on suspension.

Action by the governing body

7.9 Where disciplinary proceedings have to be held in abeyance pending investigation by the police, the governing body should confirm the membership of the staff disciplinary and dismissal committee and the staff disciplinary and dismissal appeals committee.

7.10 The governing body (chair of governors) should commence disciplinary proceedings including an investigation promptly after the police have concluded their consideration of the matter. Statements made to the police by potential witnesses may be made available to the investigator for use in disciplinary proceedings, provided consent is given by those who made the statement. The police should seek to disclose this information wherever possible to the school and the investigator so that the disciplinary and dismissal committee, presenting officer and member of staff

have access to all relevant information to ensure a fair and effective disciplinary process.

7.11 If the police investigation leads to a criminal conviction the governing body (chair of governors) should discuss the case and required action with the LA. The staff disciplinary and dismissal committee is still required to consider the case to determine what, if any, disciplinary sanctions to impose up to and including dismissal. In this instance the staff disciplinary and dismissal committee should consider not only the criminal behaviour, but the wider aspects of the member of staff's behaviour in relation to the allegation and whether that behaviour is incompatible with the ethos and precepts of the school and whether the school's policies have been breached.

7.12 An employee should not be dismissed or otherwise disciplined solely because they have been charged with or convicted of a criminal offence. The question to be asked is whether the conduct/conviction merits action because of its employment implications.

7.13 For many allegations the outcome is likely to be that referral to the police is not necessary or criminal prosecution does not take place, but there are nevertheless grounds for the school to conduct a staff disciplinary and dismissal process. It is not appropriate for the governing body to conclude that because there is no prosecution or a prosecution fails, consideration of disciplinary action is unnecessary. Governing bodies should recognise:

- that a higher standard of proof is required for criminal proceedings than for disciplinary proceedings;
- that disciplinary proceedings may well involve wider behavioural issues of the member of staff in relation to the allegation than those considered by the statutory authorities, e.g. did the member of staff fail to comply with a school procedure or a decision made by the headteacher or their line manager?
- the general duty of care the governing body has to pupils and others.

Informing the member of staff

7.14 The member of staff should be informed of the allegation as soon as possible and given as much information as possible providing that it does not put vulnerable witnesses at risk of intimidation by identifying a pupil who may be a witness or a member of staff who is a witness or has whistleblown. In such cases the member of staff should be given as much information as appropriate. Where the police are involved they should be consulted to agree what information should be shared.

7.15 The member of staff should also be informed in writing of their rights under the school's disciplinary procedure, including the right to be accompanied by a

companion or a representative of the member of staff's trade union at all meetings held in connection with the disciplinary matter (if such advice has not already been given). As disciplinary hearings are not courts of law, it is recommended that members of staff and witnesses do not appoint legal representations such as lawyers to act on their behalf.

The investigation

7.16 All gross misconduct allegations will be subject to investigation and staff disciplinary proceedings. The person making the allegation and the person against whom the allegation has been made should be notified that an investigation is to be undertaken. A full investigation must be completed, but its extent may depend on the particular issue in question and any information shared by the police or courts. Members of the staff disciplinary and dismissal or staff disciplinary and dismissal appeals committees should not be involved in carrying out the investigation in order to preserve their impartiality and objectivity.

7.17 Wherever possible the investigation should be carried out externally, by someone not associated with the case or the school. The LA (or diocese) may be able to advise on a suitable independent person. Often it will be possible for an officer from another LA to carry out the investigation. This should always be the case if the LA itself has brought the allegation to the attention of the headteacher or governing body.

7.18 However, if it is not possible to appoint an external independent person the person identified to investigate should be either a senior manager in the school, a LA or diocesan officer or another independent person who has no involvement in the issues surrounding the allegation. The LA and diocesan's views should be sought before the investigation takes place. If the LA undertakes the investigation it should be someone other than the person acting as the adviser or clerk to the governing body to avoid a conflict of interest. If the allegation is against the headteacher, the same principles of impartiality and objectivity apply and the person appointed to investigate the allegation should not be a member of staff in the school.

7.19 A member of staff may object to the person selected to carry out the investigation. They should send their objection including the grounds to the chair of governors. It is for the chair of governors (subject to delegation of this responsibility by the governing body) to consider whether the objection is valid. The chair may discuss the matter with the LA and should take account of the advice received. The chair should notify the member of staff in writing of the decision.

Conduct of the investigation

7.20 The responsibility of the investigator is to explore the facts relating to an allegation and produce a balanced factual report of the evidence in accordance with the suggested investigation framework in paragraph 7.32.

7.21 The person investigating should:

- be clear about the nature and content of allegation;
- read all the documentary evidence;
- define the areas to be investigated and the parameters of the investigation;
- draw up lists of people to be interviewed and the order of the interviews;
- draw up a list of issues/topics to be raised in the interviews to clarify the allegations;
- consider whether to use a note taker and/or to tape record interviews (in the latter case having sought the agreement of the person being interviewed);
- consider whether translation or interpretation facilities are required;
- consider confidentiality issues;
- ensure all interview notes are written up and signed and dated promptly;
- produce a report in accordance with the investigation framework set out below;
- submit all documents to the headteacher and chair of governors (or the chair and another governor where the allegation is against the headteacher);
- maintain a record of all documents. This record (list of contents) should be released to all parties along with all evidence should the matter proceed to a hearing.

7.22 To avoid any duplication of interviews the suggested order for interviews is:

- the person making the allegation;
- their witnesses;
- the member of staff against whom the allegation has been made;
- any witnesses identified by them.

7.23 The investigator should not investigate any matter that is not included in the referral from the governing body (chair of governors). Therefore the chair of governors has to be very clear about what issues require investigating. If the investigator is asked to investigate or otherwise identifies additional issues, they should immediately contact the chair of governors and await instructions about how to proceed.

7.24 The investigator should not give undertakings of confidentiality to those making allegations or being interviewed. Evidence compiled in the investigation must be made available to the parties in any subsequent disciplinary proceedings and those giving evidence should be informed before giving their evidence that this will happen.

7.25 The point at which the member of staff is first interviewed by the investigator will depend on the nature of the allegation(s) made and whether other procedures have been triggered (for instance there may be a delay if the matter is being investigated by the statutory authorities).

7.26 Where allegations are made against a trade union representative the investigator should where practicable, discuss the case with a senior representative or full-time official of that union prior to commencing the formal investigation.

Interviewing a member of staff

7.27 At the start of the investigation interview, the member of staff should be informed of the allegation(s) and be given as much information and evidence as possible and be invited to respond. However, there may be instances where disclosure of detailed information at this stage might hamper the investigation and/or put vulnerable witnesses at risk of intimidation. In such situations the member of staff should be given as much information as appropriate. The individual has the right to respond or to decline to respond.

7.28 The member of staff should be invited to identify any persons who may have information relevant to the investigation and they should be included in the list of people to be interviewed by the investigator.

Interviewing witnesses

7.29 A suitable venue and time should be arranged with witnesses, which may mean meeting outside school hours and/or off the school premises, e.g. the LA offices. Witnesses should be offered the opportunity to bring a companion, or their trade union representative with them. The written consent of the parents/carers should be requested before any child is interviewed and any child or vulnerable adult accompanied at interview by a parent/carer, or other person they wish to be present. At the beginning of each interview the interviewer should provide details of the allegation and explain the purpose of the investigation.

Record of interviews

7.30 A note should be taken of interviews and the minutes produced within two school days where possible, using any agreed tape recording, handwritten notes or records, including handwritten notes or records signed and dated by relevant parties. All present at the meeting should be asked to agree the minutes as a true and accurate record of the interview.

Outcome of investigation for allegations other than allegations of abuse

7.31 Once all the relevant persons have been interviewed and all evidence gathered the investigator should submit their report to the headteacher and chair of governors (or chair of governors and another governor in respect of the headteacher). The investigator should inform the LA that their investigation is complete and a report has been submitted to the governing body.

Suggested framework for the investigation report

7.32 The investigator's report should be factual and objective and based on evidence gathered. It should not contain expressions of personal opinion or judgement on the part of the investigator relating to evidence, witnesses or the staff member under investigation. The report should not contain recommendations or conclusions as to what action should be taken and should state this at the start of the report. A suggested framework for the report would be:

- date referral received by the investigator;
- name of the referrer (who should be the chair of governors unless they are tainted);
- details of the allegation;
- name of the person making the allegation;
- name of the member of staff against whom the allegation has been made;
- list of persons/witnesses interviewed;
- list of persons not interviewed and the reasons why;
- list of documents considered, i.e. school policy, reports, police/court evidence, etc;
- evidence and analysis of facts gathered;
- summary of the factual findings;
- name of the investigator;
- date investigation completed.

7.33 Where the investigation report as submitted is not fit for purpose, because it:

- does not meet the investigation criteria set out in the framework;
- does not deal with the allegations as set out in the brief;
- is not based on the facts or is in some material way prejudiced;

The chair should consider whether to re-open the investigation to ensure the report is complete and balanced. This should be done after seeking advice from the LA and with the consent of all parties.

Receipt of the investigation report

7.34 The role of the headteacher and chair of governors (or chair of governors and another governor in respect of the headteacher) is to decide, based on all the

evidence and information set out in the report, what action to take, which could be that:

- there is no evidence to support the allegation and therefore no disciplinary action needs to be taken in which case the decision and the justification for it should be recorded by the headteacher and chair or chair and other governor;
- the allegation(s) amount to lesser misconduct rather than gross misconduct, which can be dealt with by the headteacher, chair of governors or senior management of the school - see Section 6;
- the allegation(s) are supported by evidence and sufficiently serious to require full consideration by the disciplinary and dismissal committee of the governing body.

7.35 If there is contradictory evidence in the report or agreement cannot be reached on the way forward, the matter should be referred to a hearing before the staff disciplinary and dismissal committee. Only the chair of governors will receive an investigation report into allegations made about the headteacher. He/she should not make one of the decisions in paragraph 7.34 in isolation but should discuss the matter with the LA HR representative. The clerk to the governing body should be present at these meetings to record discussions and decisions made and ensure that appropriate letters can be written and arrangements for any hearing commenced. The member of staff should be informed of any decision made as soon as possible in writing by the clerk to the staff disciplinary and dismissal committee. See paragraph 9.2 for the information that should be sent to the member of staff.

7.36 The investigation report and any supporting documents should be stored securely until required for the disciplinary hearing. Guidance on the process to be followed for the disciplinary hearing before the staff disciplinary and dismissal committee is contained in Section 9.

Possible outcome of disciplinary hearing

7.37 Having considered all the evidence and taking into account advice provided the staff disciplinary and dismissal committee can conclude that:

- the allegation is unproven and no action is to be taken,
- the allegation is malicious and no action is to be taken
- the alleged behaviour constitutes lesser misconduct and a formal oral, written or final written warning should be issued - see Section 6 paragraphs 6.17–6.24 for further information,
- the allegation of gross misconduct is proven

7.38 Depending on the severity of the misconduct an appropriate sanction should be imposed, including:

- ✓ specified required training and development,
- ✓ relegation to a lower-grade position (if practical) and/or loss of salary,
- ✓ oral or written warning,
- ✓ summary dismissal

Section 8: Procedures for handling allegations of abuse against teachers and other staff

8.1 This section should be read in conjunction with Welsh Government Circular 009/2014 *Safeguarding Children in Education: Handling Allegations of Abuse against teachers and other members of staff*. <http://learning.wales.gov.uk/resources/allegations-of-abuse-against-teachers/?lang=en>

Receipt of allegation

8.2 In accordance with Circular 009/2014 all allegations of abuse against staff, volunteers and agency staff working in the school should be brought immediately to the attention of the headteacher (or chair of governors if the allegation is against the headteacher). The headteacher must inform the chair of governors of all allegations brought to his/her attention.

8.3 The headteacher or chair (if the allegation is about the headteacher) must immediately discuss the allegation with the Local Authority Designated Officer (LA Designated Officer) responsible for overseeing such allegations, liaising with the statutory authorities and providing advice to the employer. The LA Designated Officer must be informed of all cases where there is cause to believe that a teacher or member of staff (including volunteers or agency staff) in a school has:

- behaved in a way that has harmed a child, or may have harmed a child;
- possibly committed a criminal offence against or related to a child; or
- behaved towards a child or children in a way that indicated he or she would pose a risk of harm if they work closely with children.

8.4 The procedures for dealing with allegations need to be applied with common sense and judgement. Many cases may not meet the criteria set out above, in which case local arrangements, for example lesser misconduct procedures, should be followed to resolve cases without delay. The LA Designated Officer should be informed of all allegations that come to the school's attention and appear to meet the criteria above so they can consult children's social services and the police as appropriate.

8.5 The purpose of the initial discussion with the LA Designated Officer is to consider the nature, content and context of the allegation and agree a course of action. It should establish, based on enquiries made by the headteacher or chair of governors:

- that an allegation of abuse has been made;
- what is alleged to have occurred;

- when and where the episode(s) is/are alleged to have occurred;
- who was involved; and
- any other persons present.

8.6 The initial sharing of information and evaluation between the headteacher/chair and the LA Designated Officer may lead to a decision that the allegation is demonstrably false or unfounded and no further action is to be taken in which case the decision and justification for it should be recorded by the headteacher or chair and the LA Designated Officer and agreement reached on what information should be put in writing to the member of staff.

Informing the member of staff

8.7 The headteacher/chair should inform the accused person about the allegation as soon as possible after consulting the LA Designated Officer and provide them with as much information as possible at this time. However, where a strategy discussion is needed, or police or children's social services need to be involved the headteacher/chair should not do so until those agencies have been consulted and have agreed what information can be disclosed to the person. If the member of staff is a member of a trade union they should be advised to contact that organisation.

Referral to the police and social services

8.8 If the allegation is not demonstrably false or unfounded and there is a cause to suspect a child is suffering or likely to suffer significant harm, and/or a criminal offence against a child has been committed, the LA Designated Officer will arrange for a strategy discussion to be convened. The strategy discussion will share all of the information received/gathered to date and decide on the next course of action and whether a strategy meeting should be held which will decide whether further enquiries by the police and social services will proceed.

8.9 Whilst the statutory authorities are considering the allegation the governing body should take no action other than to review and confirm the membership of the staff disciplinary and dismissal committee and staff disciplinary and dismissal appeals committee, although they may consider suspension where appropriate at any point in the process - Section 10 gives further information on suspension.

8.10 The statutory authorities may decide to refer the matter to the Crown Prosecution Service because of potential criminal behaviour. Alternatively, the strategy discussion/meeting may decide an investigation by the police or children's services is unnecessary and the governing body should deal with the allegation in accordance with its own disciplinary procedures.

8.11 Where it is clear that an investigation by the police or children's social services is unnecessary, or the strategy discussion or initial evaluation decides that is the case, the chair of governors should discuss the next steps with the headteacher and the LA Designated Officer. In those circumstances the options open to the school depend on the nature and circumstances of the allegation and the evidence and information available. This will range from taking no further action (in which case the reason and justification for it should be recorded by the clerk or chair of governors, the headteacher and the LA Designated Officer), to a referral to a disciplinary hearing before the staff disciplinary and dismissal committee where dismissal may be an option, or a decision not to use the person's services in the future if the allegation is made against a volunteer or agency staff.

8.12 For many allegations the outcome may be that criminal prosecution does not take place but there are nevertheless grounds for the school to conduct a staff disciplinary and dismissal process. The avoidance of delay and duplication may be facilitated by a recommendation at the strategy meeting that the interviewing police officer and/or social worker seek consent from individuals being interviewed to share the information provided with the employer i.e. the governing body, the local authority or the agency and the independent investigator at the conclusion of the enquiries and/or court hearing.

8.13 The police or the CPS should inform the school and the LA Designated Officer immediately when a criminal investigation and any subsequent trial is complete, or if it is decided to close an investigation without charge, or not to continue to prosecute the case after the person has been charged. In those circumstances the LA Designated Officer should discuss with the chair of governors and the headteacher whether any further action, including disciplinary action is appropriate and if so how to proceed.

8.14 Although the governing body is not responsible for disciplining volunteers and agency staff in accordance with the policy and procedures in this guidance, the initial process set out above is to be followed on receipt of all allegations of abuse against school staff including volunteers and agency staff.

School staff not employed under a contract of employment at the school

8.15 Where the member of staff is not employed under a contract of employment at the school (i.e. employed directly by the local authority or an agency), once the statutory authorities have concluded their consideration of the allegation, the LA Designated Officer should discuss with the LA or Agency to agree a course of action. The employer should consult with the headteacher/chair to such extent as it sees fit before undertaking disciplinary and dismissal action. The headteacher and school governing body should be advised of the outcome of these discussions to inform

their decision on whether the person can continue to be employed at the school in the future.

8.16 Schools and supply agencies have a joint responsibility to refer information to the DBS - because one party has done so does not mean that the other party is not also required to do so - see Annex D for further information.

School staff employed under a contract of employment to work at the school

8.17 Where the allegation is that a member of staff employed under a contract of employment to work at the school has abused a pupil registered at the same school, the matter must be referred back to the governing body (chair of governors or vice chair if the chair is tainted) to complete the staff disciplinary and dismissal process once:

- the statutory authorities have completed their consideration of the allegation; and
- any criminal proceedings have concluded.

8.18 The chair/vice chair must consult the LA Designated Officer and the headteacher (unless the allegation is about the headteacher) and agree next steps. It is also advisable to include a representative from the LA's HR department in these discussions.

8.19 In cases where the school's delegated budget has been suspended the disciplinary and dismissal process will be conducted by the local authority maintaining the school. Therefore, in these circumstances it should not be referred back to the governing body.

Referral for independent investigation (for allegations that a member of staff employed under a contract of employment at the school has abused a pupil registered at the school)

8.20 Once the matter has been referred back to the governing body, the chair of governors, headteacher, and LA Designated Officer should also consider whether an independent investigation is required in accordance with the 2006 Staffing Regulations.

8.21 Section 7A(4) of the 2006 Staffing Regulations (as amended by the 2014 Staffing Amendment Regulations) places a duty on the governing body of a maintained school to appoint an independent investigator to investigate allegations that a teacher or member of staff employed under a contract of employment at the school has caused harm to a pupil registered at the school. The term "harm" means physical, sexual or emotional abuse.

8.22 However, section 7A(7) of the 2006 Staffing Regulations (as amended) provides that the governing body is not required to appoint an independent investigator where it is satisfied that:

- (a) beyond reasonable doubt the allegation is not true;
- (b) beyond reasonable doubt that there is no evidence to corroborate (that is support) the allegation;
- (c) the person about whom the allegation was made has admitted to having done what was alleged; or
- (d) the person about whom the allegation has been made has been convicted of a criminal offence arising from any investigation by the statutory authorities concerning the allegation.

8.23 In the case of (c) and (d) above the governing body is still required to complete the disciplinary process in order for the staff disciplinary and dismissal committee to formally determine whether or not the member of staff should be subject to disciplinary action including dismissal in accordance with the law in the 2006 Staffing Regulations.

8.24 Where there is evidence to support the allegation but there has been no admission of guilt or subsequent conviction the governing body is required to appoint an independent investigator. This must be done prior to the formal disciplinary hearing. This duty should be delegated to the chair of the governing body and recorded in the minutes.

8.25 The purpose of the independent investigation is to inform the staff disciplinary process of allegations of abuse against school staff of registered pupils which, if substantiated, would be subject to a staff disciplinary hearing and may result in dismissal and a referral to the Disclosure and Barring Service and the Education Workforce Council (EWC).

8.26 The governing body must therefore not appoint an independent investigator until the following have taken place:

- the headteacher (or chair of governors if the allegation is about the headteacher) has had an initial discussion with the LA Designated Officer for Child Protection on receipt of the allegation (see paragraph 8.3 above)
- the allegation has been considered by the statutory authorities (i.e. the police and LA's children's services),
- any police investigation or court proceedings arising from the allegation have concluded and the allegation has been referred back to the governing body (chair) for disciplinary action.

- the chair has consulted with the LA Designated Officer and the headteacher (unless the allegation is about the headteacher if so another governor) on the next steps and concluded that an independent investigation is required. If so the chair is responsible for making the referral and receiving the investigation report. It would be helpful if a HR representative is also consulted at this stage.

8.27 Regulation 7A(11) of the 2006 Regulations sets out who is not considered independent for the purposes of an independent investigation. The independent investigator cannot be:

- a governor of the school in question;
- a parent/carer of a current or former pupil of the school in question;
- a current or former member of staff from the school at which the person subject to the disciplinary hearing is employed;
- a member or employee of the LA that maintains the school;
- a trustee of the school;
- a member of the appropriate diocesan authority for the school;
- the person who appoints the foundation governors to the school governing body.

8.28 A governing body can choose who to appoint as an investigator. To assist governing bodies the Welsh Government currently funds the Independent Investigation Service (IIS) to investigate allegations that a member of staff employed under a contract of employment at the school has abused a pupil registered at the school. See Annex H for information on the IIS.

8.29 The Welsh Government will not fund the IIS to investigate:

- allegations which are demonstrably false;
- allegations which are unfounded i.e. beyond reasonable doubt there is no evidence to corroborate the allegation
- allegations the nature of which if substantiated would be considered lesser misconduct;
- allegations where the member of staff has admitted them or been convicted of a criminal offence in relation to the allegation.

8.30 A member of staff may object to the person appointed as the independent investigator. They should put their objections in writing to the chair of governors who must then decide whether a replacement investigator should be assigned and if so should write to the member of staff and the investigator (and the IIS if appropriate).

The role of the investigator

8.31 The role of the independent investigator is to ensure a completely impartial and unbiased investigation is carried out to inform the disciplinary and dismissal hearing. The report will not include recommendations, conclusions or personal opinions. The independent investigator must provide the governing body (the chair of governors) with a written report based on all the information and evidence available. An IIS appointed investigator will also attend a disciplinary hearing and appeal hearing on request to present their report. On completion of their investigation the investigator will inform the LA that they have concluded their investigation and that the report has been sent to the governing body. The investigator should operate within the investigation framework set out in Section 7. This may mean interviewing or re-interviewing witnesses although the investigator will try to minimise this where information can be obtained from documentary evidence including that shared by the statutory authorities.

8.32 The chair must give a copy of the investigation report to the headteacher unless the allegation is against the headteacher in which case a copy should be provided to the vice chair. The 2006 Staffing Regulations as amended do not require a decision to be made at this stage about whether a disciplinary and dismissal hearing takes place because once this stage has been reached the law requires a hearing to take place regardless of the findings in the investigation report. The chair (if they are not compromised) should therefore keep the report safe and ask the clerk to arrange a hearing. He/she should liaise with the LA HR representative over arrangements to send the papers and the investigation report to the member of staff, their representative and the person presenting the case to prepare for the disciplinary and dismissal hearing to meet the timescale set out in the governing body's agreed staff disciplinary procedure. Suggested timescales are set out in Annex F.

8.33 It is essential for those that have a copy of the investigation report to have regard to, and comply with, the Data Protection Act 1998. The parent/carer/pupil should be informed that following an investigation a decision has been reached.

8.34 Once the investigation report has been received by the chair the member of staff and union representative should be informed of its receipt and that arrangements are being made for the disciplinary and dismissal committee to meet.

8.35 The staff disciplinary and dismissal committee should be given the investigator's report and all other relevant documentation at the appropriate timescales as set out in the governing body's agreed procedures. Annex F suggests that this should be at least two days prior to the hearing. No party should remove evidence from the investigation report before it is sent to the governing body staff disciplinary committee.

8.36 Following the disciplinary hearing the disciplinary and dismissal committee must decide on appropriate action to take including whether the person should cease to work at the school. The clerk to the governing body should be present to record the decision of the Committee. A letter should be sent to the member of staff and their union representative as soon as possible confirming this decision and informing the member of staff of their right to appeal.

Confidentiality

8.37 Members of the governing body must treat all information they receive relating to allegations with the utmost confidentiality at all times and guard against unwanted publicity while an allegation is being investigated or considered. Section 141F of the Education Act 2002 (inserted by section 13 of the Education Act 2011) provides for reporting restrictions preventing the publication of any material that is likely to lead to the identification of a teacher who has been accused by, or on behalf of, a pupil from the same school (where that identification would identify the teacher as the subject of the allegation) of a relevant criminal offence. A 'relevant criminal offence' is an offence against the laws of England and Wales where a pupil at the same school as the teacher is the victim.

8.38 The reporting restrictions apply until the point that the accused person is charged with an offence, or until the Education Workforce Council publishes information about an investigation or decision in a disciplinary case arising from the allegation. The reporting restrictions cease to apply if the individual to whom the restrictions apply effectively waives their right to anonymity by going public themselves or by giving their written consent for another to do so, or if a judge lifts restrictions in response to a request to do so.

Appointment of independent non-governor member on staff disciplinary and dismissal committee and staff disciplinary and dismissal appeals committee

8.39 In accordance with Regulation 55(3) of the 2005 School Government Regulations (as amended by the 2006 and 2014 Staffing Amendment Regulations) the governing body must appoint an independent non-governor member to the staff disciplinary and dismissal committee and staff disciplinary and dismissal appeals committee where consideration of allegations that a member of staff employed under a contract of employment at the school has abused a registered pupil.

8.40 The independent member has voting rights and must not be:

- a governor of the school in question
- a parent/carer of a current or former pupil of the school in question
- a current or former member of staff from the school at which the person subject to the disciplinary hearing is employed

- a member or employee of the LA that maintains the school
- a trustee of the school;
- a member of the appropriate diocesan authority for the school
- the person who appoints the foundation governors to the school governing body

8.41 The independent member may, however, be a governor, parent/carer of a pupil or a member or former member of staff at another school either within or outside of the maintaining LA area, or an employee of another LA.

8.42 The non-governor should normally take the place of one of the three governors assigned to sit on the staff disciplinary and dismissal committee and the staff disciplinary and dismissal appeals committee. This maintains an odd number of governors and avoids the need for the chair of the committee to have a second or casting vote. The non-governor member cannot be chair of either committee. A different independent non-governor member is required for each committee

8.43 The non-governor member does not take the place of the adviser from the LA whose role is to provide procedural advice to the staff disciplinary and dismissal committee on the case in question. The role of the non-governor member is to carry out the same responsibilities as other governor members of the staff disciplinary and dismissal committee and help them focus on the facts available so that the decision is fair and based on evidence. Section 9 contains guidance on the process to be followed at the disciplinary/dismissal hearing.

Outcome of disciplinary hearing

8.44 In accordance with Welsh Government Circular 009/2014 Safeguarding Children in Education: Handling Allegations of Abuse against teachers and other staff the following definitions should be used when determining the outcome of investigations into abuse:

Substantiated: there is sufficient evidence to prove the allegation. (Evidence would be regarded as sufficient if it could be shown that it was more probable than not to be true);

False: there is sufficient evidence to disprove the allegation. (Evidence would be regarded as sufficient if it could be shown that it was more probable than not to be true);

Malicious: there is clear evidence to prove there has been a deliberate act to deceive and the allegation is entirely false;

Unfounded: there is no evidence or proper basis which supports the allegation

being made. It might also indicate that the person making the allegation misinterpreted the incident or was mistaken about what they saw. Alternatively they may not have been aware of all the circumstances.

Unsubstantiated: this is not the same as a false allegation. It means that there is insufficient evidence to prove or disprove the allegation and the term does not imply guilt or innocence.

Record keeping

8.45 Details of allegations that are found to have been malicious should be removed from personnel records. However, for all other allegations, it is important that a clear and comprehensive summary of the allegation, details of how the allegation was followed up and resolved, and a note of any action taken and decisions reached, is kept on the confidential personnel file of the accused, and a copy provided to the member of staff.

8.46 The purpose of the record is to enable accurate information to be given in response to any future request for a reference, where appropriate. It will provide clarification in cases where future DBS Disclosures reveal information from the police about an allegation that did not result in a criminal conviction, and it will help to prevent unnecessary re-investigation if, as sometimes happens, an allegation re-surfaces after a period of time. The record should be retained at least until the accused member of staff has reached normal retirement age, or for a period of 10 years from the date of the allegation if that is longer.

8.47 The Information Commissioner has published guidance on employment records in its Employment Practices Code and supplementary guidance, which provides some practical advice on employment retention
http://ico.org.uk/for_organisations/data_protection/topic_guides/employment

Action on conclusion of a case

8.48 If the allegation is substantiated and the person is dismissed or the employer ceases to use the person's services, the LA Designated Officer should discuss with the headteacher/chair and the Agency and refer the case to the Disclosure and Barring Service for consideration of inclusion on the barred lists and in the case of a member of teaching staff refer the matter to the Education Workforce Council. A link is provided to guidance on referral to the DBS.

<https://www.gov.uk/government/organisations/disclosure-and-barring-service>

8.49 Paragraph 9.35 gives specific advice on action to be taken where a member of staff resigns after an allegation has been made and information on settlement/compromise agreements.

Sharing of information

8.49 In a strategy discussion or initial evaluation of the case, agencies involved should share all relevant information they have about the person who is subject of the allegation and about the alleged victim. Where the police are involved, wherever possible the governing body should ask the police to obtain consent from the individuals involved to share their statements and evidence for use in the employer disciplinary process. This should be done as their investigation proceeds and will enable the police to share relevant information without delay at the conclusion of their investigation or any court case. Children's social services should adopt a similar procedure when making enquiries to determine whether the child or children in the allegation are in need of protection or services, so that any information obtained in the course of those enquiries which is relevant to a disciplinary case can be passed to the employer or independent investigator without delay.

8.50 The sharing of such information should take place within the framework of local multi-agency protocols, which are in place in each Local Safeguarding Children Board's area. There is a presumption that all information will be shared and that any information collected during the independent investigation will be shared with all parties.

Malicious/false allegations

8.51 If an allegation is determined to be unfounded or malicious, the LA Designated Officer should refer the matter to the children's social services to determine whether the child concerned is in need of services, or may have been abused by someone else. If an allegation is shown to be deliberately invented or malicious, the headteacher should consider whether any disciplinary action is appropriate against the pupil who made it, in accordance with the school's pupil disciplinary policy, or whether the police should be asked to consider if action might be appropriate against the person responsible, even if he or she was not a pupil.

Section 9: Gross misconduct allegations – a case to answer – process for child abuse and non-child abuse allegations

Disciplinary hearing

9.1 Where an investigation demonstrates that there appears to be sufficient evidence to warrant a disciplinary hearing before the staff disciplinary and dismissal committee or where following an independent investigation there is evidence to support gross misconduct relating to an allegation of abuse, a hearing must be arranged. It is advisable for the headteacher or chair (if the allegation is about the headteacher) to contact the LA HR department for all gross misconduct hearings. The member of staff should be given as much information as possible, in writing, providing it does not compromise or place a member of staff or pupil in a difficult situation, e.g. by identifying a pupil who may be a witness, or identifying a member of staff who has whistleblown.

9.2 The information given to the member of staff should include:

- the date, time and place of the hearing;
- details of the allegation(s) together with any supporting documents;
- names of any witnesses to be called if appropriate;
- name of the advisor to the headteacher or chair of governors
- a copy of the up-to-date procedure;
- the right to be accompanied by a companion or a representative of the member of staff's trade union
- the purpose of the hearing and possible outcomes;
- the membership of the staff disciplinary and dismissal committee and appeals committee;
- the name of the person presenting the case against the member of staff
- the date by which all relevant documentation must be returned to the clerk.

9.3 The member of staff and their representative should have a reasonable amount of time to prepare for the hearing (see Annex F for suggested timescales).

Arranging the hearing

9.4 The clerk to the governing body should arrange a date, time and venue for all interested parties.

Provision of written documents

9.5 The member of staff should supply the clerk with a list of witnesses and any supporting documentation. Papers should be given to members of the staff disciplinary and dismissal committee before the hearing to give them time to read and absorb the information in accordance with the timescales in the governing body's own agreed disciplinary procedures -Annex F suggests at least two days before the hearing. Submission of any written documentation and additional witnesses at the hearing will be permitted at the discretion of the committee.

9.6 The hearing should be held privately in a place where there will be no interruptions. The member of staff may offer a reasonable alternative time within five school days of the original date if either they or their chosen companion cannot attend. The committee may also arrange another meeting if an employee fails to attend due to circumstances outside their control, such as illness (refer to paragraphs 9.32-9.34 for further information).

Attendance and advice of chief education officer and diocesan representative

9.7 In all maintained schools, the chief education officer or their representative are entitled to attend for the purpose of giving advice on all proceedings relating to any decision to dismiss or discipline a member of staff. In voluntary-aided schools, the diocesan officer or their representative has the same advisory rights as those given to the chief education officer. In foundation schools the governing body may agree with the diocesan authority to award those same advisory rights to the diocesan officer or their representative. The chief education officer or their representative and the diocesan director should be notified of the meeting at the same time as the member of staff and the person presenting the case against the member of staff. Governing bodies must take into consideration any advice offered by these persons before making a decision.

Attendance and advice of the headteacher

9.8 The headteacher is entitled to attend all hearings of the staff disciplinary and dismissal committee and the staff disciplinary and dismissal appeals committee to give advice, unless the headteacher is the person against whom disciplinary action is being taken, a witness or the presenting officer.

Role of the advisor

9.9 The person(s) advising the staff disciplinary and dismissal committee and staff disciplinary and dismissal appeals committee should provide advice on legal or procedural issues so that decisions are sound and based on evidence and fact to avoid the case ending in a referral to an employment tribunal. They should not express opinions on the merits of the case, the people involved or the evidence. The advisor should not remain with the committee during their deliberation on the case,

but if possible should remain available in case the committee wishes to clarify and matters.

Role of the presenting officer

9.10 At the hearing, the case against the member of staff and the evidence should be detailed by the presenting officer, which is usually the headteacher (unless the allegation is about the headteacher) in which case the chair of governors or a LA officer may present the case. The presenting officer cannot be the investigating officer or a witness nor should they be a member of the LA advising and supporting the governing body. It should be made clear to all parties who will undertake this role. Witnesses may be called (if appropriate) and can be questioned by the other party and/or by the staff disciplinary and dismissal committee. At the end of the hearing the presenting officer and the member of staff or their companion/union representative will have the opportunity to make a final submission to the committee.

Role of the committee chair

9.11 The committee chair should:

- check everyone present has the correct papers;
- explain the remit of the staff disciplinary and dismissal committee at the beginning of the hearing which is to deal with the allegations investigated and any evidence relating to those allegations;
- set out the order of proceedings;
- ensure all parties have the opportunity to make their contribution without undue interruption;
- decide whether questioning by committee members should take place during the presentation of the case or on completion of the presentation and, similarly, how questioning of the member of staff (or their representative) and witnesses should be handled;
- ensure the key facts are drawn out;
- ensure that the disciplinary hearing is conducted in a manner conducive to all parties being treated with respect;
- ensure that witnesses are put at ease;
- make appropriate arrangements to hear evidence from any child witnesses including the need for advocacy support, and ensure that the venue and time are accessible and non-intimidating for children;
- adjourn the hearing for an appropriate period if it becomes aggressive or confrontational so as to calm the situation;
- act with impartiality and without bias.

9.12 At the conclusion of the hearing the chair should ask the parties if they have been treated fairly and consider the questions listed in Annex G.

Role of committee members

9.13 The members of the staff disciplinary and dismissal committee should read all of the papers carefully before the hearing.

9.14 The functions of the committee members are to:

- consider the evidence;
- establish the facts in light of the evidence presented;
- after the hearing, come to a decision based on the factual evidence;
- decide on any sanction to be imposed;
- ensure that the clerk accurately records their discussions and decision and the reasons for the decision in writing and that the minutes are accurate.

Role of the companion or union representative

9.15 The companion who may or may not be a union representative depending on the member of staff's choice should be allowed to:

- attend the hearing on behalf of the member of staff;
- address the hearing;
- present the member of staff's case;
- represent the interests of the member of staff;
- seek clarification on behalf of the member of staff;
- confer with the member of staff during the hearing;
- answer questions on behalf of the member of staff in their absence.
- sum up the member of staff's case;

9.16 In the absence of the member of staff the companion/union representative cannot be required to answer on matters of evidence. A governing body or committee may not disadvantage, discriminate or victimise and blame a member of staff on the basis of advice or representations made on their behalf.

Role of the clerk to the committee

9.17 The clerk must have attended the mandatory clerk training. Before the hearing the clerk's key tasks (with advice from the LA) are to:

- arrange a suitable date, time and place for the disciplinary hearing, seeking agreement from all parties including committee members, the member of staff, witnesses appearing in person and the LA and diocesan authority, as appropriate;

- inform the member of staff in writing of the purpose of the hearing and the range of possible outcomes;
- confirm the right of the member of staff to be accompanied by a companion or a representative of the member of staff's trade union;
- inform the member of staff in writing of the committee membership and the name of the advisers to the committee;
- inform the member of staff and the person presenting the case against them of the full details of the allegation, the evidence to be presented and the names of any witnesses to be called;
- inform the member of staff and any other parties of the date by which all relevant documentation should be received by the clerk prior to the hearing;
- arrange for the documentation from both parties, including up-to-date procedures, to be distributed to the member of staff and their representative prior to the hearing and in accordance with the timescales in the policy.

Suggested templates of letters are at Annex J

9.18 During the hearing the clerk should record the proceedings, including discussions by the committee in private, decisions and reasons for those decisions and all procedural advice provided.

Hearing procedure

9.19 The following are the suggested stages for the ordering of proceedings:

- the chair introduces the members of the committee and the clerk.
- the presenting officer sets out the allegations against the member of staff, presents any written or other evidence and calls and questions witnesses.
- the member of staff and/or their representative ask questions of the presenting officer and/or witnesses. Members of the staff disciplinary and dismissal committee question the presenting officer and/or any parties called to give evidence against the member of staff.
- the member of staff and/or their representative presents their case, including any relevant written or other evidence, and calls witnesses.
- the presenting officer and/or members of the staff disciplinary and dismissal committee question the member of staff and any witnesses called on behalf of the member of staff.
- witnesses leave the room after they have given evidence and been questioned by both parties but should remain on hand in case of further questioning by the staff disciplinary committee.
- the presenting officer and the member of staff or their representative each sums up their case. If these persons do not wish to hear the advice from the advisors they should leave the hearing at this point.

- all parties hear any advice which the chief education officer and, if applicable, the diocesan director or their representatives, may wish to offer. The advisers, the presenting officer and the member of staff or their representative, then leave the hearing.
- the staff disciplinary and dismissal committee continues in private, other than the clerk, to make its decision.
- the staff disciplinary and dismissal committee can adjourn the hearing at any time for all parties to consider new evidence or for private discussion. Any party should be able to request an adjournment at any point.

9.20 After the hearing it is the clerk's task to:

- prepare a letter on the school's headed paper using templates at Annex J to this guidance, or prepared by the LA, to notify the member of staff of the disciplinary and dismissal committee's decision and the reasons for it. This letter should be signed by the chair of the disciplinary and dismissal committee or the chair of governors (provided the chair is not tainted). A copy of the letter should be given to the headteacher, provided the allegation is not about the headteacher, and the chair of governors notified of the decision (provided they are not tainted and have not signed the letter). The letter should also inform the member of staff of the appeal process
- send notes/minutes taken by the clerk during the hearing to all parties, excluding the complainant and any witnesses.

9.21 At the conclusion of the hearing all parties will be expected to:

- have understood the nature of the proceedings;
- have been given proper opportunity to speak, put evidence forward and respond to questions;
- have been given an opportunity to say everything they wished to say;
- feel that they have been treated courteously;
- feel that the staff disciplinary and dismissal committee has listened to and understood all the points made;
- be clear as to when they will be informed of the staff disciplinary and dismissal committee's decision. Annex G lists a checklist for hearings.

Decision reached after the hearing has taken place

9.22 When reaching their decision the members of the staff disciplinary and dismissal committee should determine whether all the evidence relevant to the allegation has been considered and whether the evidence presented supports the allegation.

9.23 Where possible the member of staff and/or their companion/union representative should be informed of the decision and justification for it at the end of the hearing. Whether or not the decision is delivered orally, it should be confirmed in writing to the member of staff as soon as possible after the end of the hearing. Where the committee decides to issue a warning or impose a penalty or if the outcome is dismissal, this decision and the reasons for the decision should be set out in the letter.

9.24 Where the decision is to dismiss the member of staff and the LA holds the contract of employment (for staff in maintained nurseries, community and voluntary controlled schools), the staff disciplinary and dismissal committee must copy the letter to the chief education officer, once the period allowed for the member of staff to appeal has expired and they have not appealed. The LA is required to dismiss the member of staff and should do so within 14 school days of notification of the decision by the staff disciplinary and dismissal committee or the disciplinary and dismissal appeals committee.

9.25 Where a decision to dismiss the member of staff is taken in voluntary aided and foundation schools the staff disciplinary and dismissal committee's letter of confirmation to the member of staff should include notification of dismissal and any appropriate period of notice.

9.26 Refer to Annex D for notification to the Disclosure and Barring Service and the Education Workforce Council as appropriate for dismissal of staff in any category of school.

Disciplinary hearing – appeal

9.27 The member of staff is entitled to appeal against a decision of the staff disciplinary and dismissal committee. The notice of the intention to appeal should be lodged with the clerk to the disciplinary and dismissal appeals committee within a specified time limit as set out in the disciplinary policy. The grounds for the appeal and all supporting documentation must then be submitted to the clerk prior to the appeal hearing within the timescales set out in the agreed policy. See Annex F for suggested timescales. The appeal notice should set out the grounds for the appeal which could be that:

- there has been a procedural flaw in the first hearing;
- the findings are inconsistent with the evidence produced;
- the sanctions are inappropriate;
- the investigation or disciplinary procedure was in some way unfair or biased;
- new evidence has come to light that was not considered at the original hearing.

9.28 The purpose of the appeal hearing is to enable the disciplinary and dismissal appeals committee to consider the grounds for appeal as submitted by the member of staff or their union representative. The appeal should be heard within a specified time. Appeal hearings will focus on the issues set out in the appeal notification, therefore the appeal process may not always take the form of a complete hearing. However, when making a decision on the form of the appeal the staff disciplinary and dismissal committee should take into account the views of the member of staff as to whether they wish to have a full re-hearing and the reasons why. However, under certain circumstances, i.e. where new evidence comes to light or the first hearing process was flawed or biased, it is likely to be appropriate to rehear part, if not all, of the case. The member of staff should be given notice of the date and time of the appeal hearing. Mutually agreeable times and dates should be arranged for all parties concerned.

9.29 The procedure for an appeal hearing should be the same as the procedure for the disciplinary hearing, except that the committee should have regard to the record of the original disciplinary hearing and its findings.

9.30 The disciplinary and dismissal appeals committee can uphold the decision of the staff disciplinary and dismissal committee, impose a lesser penalty or conclude that no action should be taken against the staff member. The committee must not impose a more severe penalty. The member of staff should be given copies of the minutes of the appeal hearing and the staff disciplinary and dismissal appeals committee's conclusions. The decision of the staff disciplinary and dismissal appeals committee will be final and the staff member will be informed in writing.

9.31 If, as the result of an appeal, disciplinary action is withdrawn, all details will be expunged from the member of staff's personal file and they will be informed accordingly. The member of staff will be given a copy of the minutes of the appeal hearing and a copy of the disciplinary and dismissal appeals committee's conclusions.

Absence due to illness

9.32 In some cases, it may be deemed reasonable to rearrange a staff disciplinary investigation/hearing, within agreed timescales, where the member of staff is unavailable due to sickness. If, however, this continues, advice should be sought from the occupational health unit as to the member of staff's ability to attend a meeting. Governing bodies should be sensitive to the possibility that approaches which defer disciplinary matters create uncertainty for the school and added stress for the member of staff.

9.33 If the member of staff is expected to be sick for an indeterminate time, it may be reasonable to proceed with the disciplinary hearing provided the member of staff and

their representative have been advised of this and the member of staff is given the opportunity to use a representative or submit written evidence to present their case. The representative must have the same opportunity the staff member would have had to present evidence, call witnesses and sum up the staff member's case.

9.34 If the member of staff were to decline the opportunity to use a representative to present their case and their own state of health would cause an extended delay in the proceedings, the disciplinary and dismissal committee should go ahead on the basis that the member of staff had been afforded reasonable opportunity to make their case and that the hearing has to be arranged to conclude the case. The staff disciplinary and dismissal committee should however consider whether this would be consistent with the need to act fairly and within its own procedures and whether the staff member might be able to mount a claim for breach of contract or unfair dismissal.

Resignations and settlement/compromise agreements

9.35 A member of staff may resign while disciplinary procedures are pending or incomplete. Where the allegations relate to gross misconduct the headteacher (or the chair of governors in the case of allegations against the headteacher) should advise the staff member that disciplinary procedures will continue to completion.

9.36 In many cases the period of notice for resignation will allow the governing body sufficient time to conclude the disciplinary proceedings. If the time is insufficient the governing body must give the member of staff the opportunity to attend, but it cannot compel a former staff member to attend a disciplinary hearing. Nonetheless the governing body must complete the process and arrive at a view on the basis of the available evidence as to whether dismissal would have been the appropriate outcome.

Duty to refer to the Disclosure and Barring Service

9.37 Schools and supply agencies have a joint responsibility to refer information to the DBS where allegations of abuse have been made. Because one party has made the referral does not mean that the other party is not also required to do so.

9.38 The duty to refer information to the DBS applies to schools in relation to staff supplied by a supply agency, as well as their own internal staff. The duty to refer information to the DBS may apply if a school asks the supply agency to stop supplying a person, or stops them from carrying out regulated activity because:

- The harm test is satisfied.
- They have engaged in 'relevant conduct'.

- They have been convicted of, or cautioned for an automatic barring offence.

9.39 Teaching is an example of regulated activity. For further information about the harm test, relevant conduct and automatic barring offences, see the DBS Referral Guidance - Frequently Asked Questions. As the decision to end the supply of the person is made by the school the school should clarify the reason the assignment was ended to help the agency determine whether it is required to make a referral to the DBS. This ensures that all parties are able to meet their legal obligations.

9.40 Supply agencies have a similar duty to refer information to the DBS about candidates they have provided to clients who are removed from carrying out regulated activity for the reasons above.

9.41 The LA Designated Officer should liaise with the employer to ensure that where necessary relevant referrals are made to the DBS and the EWC and followed up to ensure such referrals are made. The headteacher and school governing body should be advised on the outcome of these discussions as they will want to know whether that person can be employed again.

9.42 Annex D gives details as to the action a governing body must take to notify their decision to the appropriate bodies- the Disclosure and Barring Service for allegations of abuse and the EWC for all cases of misconduct where the decision has been taken to cease to use a teacher's services or would have ceased to use them where they have resigned.

9.43 A settlement/compromise agreement which prevents the school from making a DBS referral (where the criteria are met) would likely result in a criminal offence being committed as the school would not be complying with its statutory duty to make a referral. The local authority must be informed if the staff disciplinary and dismissal committee's decision is to terminate the contract - Annex D contains further advice concerning supply of information.

Review

9.44 On completion of the case and especially if a member of staff is convicted of a criminal offence and/or subsequently dismissed, the governing body should take the opportunity to consider whether there is a need to review and/or revise any of its policies or procedures to guard against recurrence of the issue. The name of the member of staff should not be revealed. Should this result in a proposed change to the agreed staff disciplinary procedures this should be agreed with the professional associations/ teacher trade unions.

Section 10: Suspension

10.1 Where a school has a delegated budget both the governing body and the headteacher have the power to suspend staff. In accordance with Regulation 50 of the 2005 School Government Regulations, governing bodies may delegate this function to a governor or committee, but pragmatically this would be the chair of governors. The decision to delegate this function must be minuted.

10.2 Where the headteacher is the subject of an allegation, it would be usual for the chair of governors to have delegated responsibility for any suspension. In the absence of the chair the vice chair (or any other governor) may take over this responsibility subject to the necessary delegation. Only the governing body (or its delegate(s)) can end a suspension. As well as the chair of governors, the governing body could delegate responsibility to end a suspension to the chair of the staff disciplinary and dismissal committee or appeals committee. This decision must be minuted.

10.3 There is no requirement in law for the headteacher and governing body (chair) to consult each other **prior** to suspending a member of staff, although they may do so as a matter of courtesy.

Community, community special, maintained nurseries and voluntary controlled schools

10.4 Where a suspension involves a member of staff at a community, community special, maintained nursery or voluntary controlled school the headteacher or chair of governors (if responsibility has been delegated to the chair) must inform the chief education officer of the local authority and each other that they have suspended a member of staff. It is advised that this is confirmed in writing to the chief education officer. When ending a suspension the governing body (or its delegates) must inform the chief education officer of the LA and the headteacher (if the suspension concerns a member of staff).

Voluntary aided and foundation schools

10.5 For staff in voluntary aided and foundation schools the headteacher or governing body (or its delegates) must inform one another of the suspension and on ending the suspension the governing body (or its delegates) must inform the headteacher (unless the allegation is about the headteacher). It is considered good practice for the chief education officer of the LA to be informed in writing of any suspension in voluntary aided or foundation schools.

Decision to Suspend or other action

10.6 Before taking the decision to suspend a member of staff, the headteacher and/or chair of governors should consider if other options are available, such as undertaking work that does not involve contact with pupils, or working from home. They may wish to seek advice from their HR adviser and, where appropriate, the LA Designated Officer in respect of child abuse allegations, before suspending an individual.

10.7 Police and social services involvement does not make it mandatory to suspend a member of staff neither should a member of staff be suspended automatically. This decision should be taken on a case-by-case basis following a thorough risk assessment by the headteacher (or chair of governors) and the LA Designated Officer which should be shared with the members of the strategy group. However, suspension pending disciplinary proceedings should be considered in any case where:

- it appears to be necessary to exclude the member of staff from the school, for the protection of pupils, other staff or property or the orderly conduct of the school
- the continued presence at work of the member of staff would be an obstacle to proper investigation of the allegations made against that member of staff.
- there is cause to suspect a child or other children at the school is/are at risk of significant harm, and/or where the allegation warrants a criminal investigation by the police or the case is so serious that it might be grounds for dismissal.

The headteacher or chair of governors should give appropriate weight to any advice from the LA Designated Officer (in respect of child abuse allegations) as well as the LA HR representative when making a decision to suspend a member of staff.

Suspension interview

10.8 Where suspension is being considered, an interview should be arranged between the headteacher and the member of staff or the chair and the headteacher. The headteacher/member of staff should be informed at the start of the interview that an allegation has been made and that, on conclusion of the interview, suspension may occur. It should also be made clear to the headteacher/member of staff at the outset that the interview is not a formal disciplinary hearing, but is for the purposes of addressing a serious matter, and could lead to consideration under the governing body's formal disciplinary procedures.

10.9 The headteacher or chair of governors should give the headteacher/member of staff as much information as possible providing it does not put vulnerable witnesses at risk of intimidation by identifying a pupil who may be a witness or a member of

staff who has whistleblown. In such cases the member of staff should be given as much information as appropriate, including the reasons for any proposed suspension. Where the allegation relates to a criminal offence the advice of the police should be sought on what information can be shared in order not to interfere with the investigation. The headteacher/member of staff should be given an opportunity to make representations concerning the suspension, and offered a brief adjournment prior to responding.

10.10 Where, at the end of the interview, it is deemed appropriate to suspend the member of staff, written confirmation should be issued within one working day, giving as much detail as appropriate for the reasons for the suspension. It should be made clear to the employee that suspension is not a presumption of guilt or a disciplinary penalty pending investigation.

10.11 It is not acceptable for the school to leave a person who has been suspended without any support. The person should be informed in writing, at the point of their suspension, who is their named contact within the organisation and be provided with their contact details. This nominated person does not take the place of the member of staff's union representative, but is a source of additional support and point of contact about school issues. Any suspension under the 2006 Staffing Regulations must be without loss of emoluments (salary).

10.12 Suspensions need to be reviewed at regular intervals which should be set out in the governing body's disciplinary procedure. It is expected that the governing body will delegate responsibility for these reviews to the headteacher (or the chair of governors if the allegation is against the headteacher), or another governor if the chair is tainted or is a member of the staff disciplinary and dismissal committee or appeals committee. The outcome of a suspension review should be conveyed to the member of staff in writing and reasons given if suspension is to continue.

Section 11: General issues

Fair penalties

11.1 The ACAS Code of Practice 1 – Disciplinary and Grievance Procedures states:

‘When deciding whether [and what] disciplinary penalty is appropriate and what form it should take, consideration should be given to:

- whether the rules of the organisation indicate what the likely penalty will be as a result of the particular misconduct
- whether standards of other employees are acceptable, and that this employee is not being unfairly singled out
- the employee’s disciplinary record (including current warnings), general work record, work experience, position and length of service
- any special circumstances which might make it appropriate to adjust the severity of the penalty
- whether the proposed penalty is reasonable in view of all the circumstances
- whether any training, additional support or adjustments to the work are necessary; and
- any representation made by the employee or on his behalf in relation to possible sanctions.’

11.2 These factors should only be considered for the purpose of deciding whether a disciplinary penalty is appropriate after the decision on the merits of a case has been taken. Governors should not take any of the factors listed above into account when considering or determining a case.

Sharing information

11.3 Information can be disclosed to third parties where this is necessary to avoid injury to persons or damage to property, e.g. to assist the statutory authorities in ongoing investigations or to protect children. The governing body must comply with any legal duty to disclose such information and should always check with the specialist officer in the LA or Diocese (where relevant) before releasing any information.

Written records of proceedings, including records of governing body meetings

11.4 The governing body’s disciplinary procedure should require that a written, contemporaneous record is kept of:

- the allegation(s)

- all steps taken in each case
- all meetings involving the governing body, LA representatives, diocesan representatives (if applicable), the member of staff or their adviser/companion/union representative
- the investigation, including interview records, documentary evidence and the investigator's report
- the record of the staff disciplinary and dismissal hearing as well as the staff disciplinary and dismissal committee's conclusions and the basis for them
- any appeal made by the member of staff
- the record of the staff disciplinary and dismissal appeal hearing (even if it is not a full rehearing of the case) and the staff disciplinary and dismissal appeals committee's conclusions and the basis for them
- all professional advice, including legal and personnel advice, given at any time during the process. All records of proceedings will be supplied to the individual employee upon request.

11.5 It is essential that this record gives in full the reasons for any decisions made. This is as important as making sure that the decision itself is lawful because such records are the means by which a decision can be shown to be lawful.

11.6 The minutes of the meetings of a governing body and its committees are public documents which must be made available for inspection at the school to anyone who asks, in accordance with regulations 48 and 62 of the 2005 School Government Regulations.

11.7 However, it is inappropriate for any details of disciplinary proceedings to be contained in the ordinary minutes of the governing body meetings. Appropriate references should be made in the governing body minutes that a matter has been passed to the staff disciplinary and dismissal committee to consider, or that a matter has been dealt with through staff disciplinary procedures.

11.8 A separate record of confidential matters which are not available for public scrutiny should be made. It should contain enough information to record progress through the various stages of the disciplinary procedure e.g. that an allegation has been received and referred to the staff disciplinary and dismissal committee; any comments made by the governors (excluding members of the disciplinary and dismissal committee and appeal committee who should not be present) the date the report was received and given to the disciplinary and dismissal committee; date the case was concluded. These records were considered to be exempt from public scrutiny. However, Section 19 of the Freedom of Information Act 2000 requires governing bodies to have a publication scheme in place, detailing the information they will make public. The documents and minutes of all governing body and committee meetings fall within the criteria of this scheme must now be made available to anyone who asks, subject to the relevant exceptions.

11.9 Sensitive material and personal information that is likely to be included in such minutes is potentially exempt from publication because of the Data Protection Act 1998. Where the governing body concludes that the minutes contain exempt information, this must be redacted before the material is made available. Exempt information could include references to names of pupils, members of staff and witnesses, health information, any records of conduct or discipline or anything else which is considered to be personal data. Guidance for schools on the Freedom of Information Act and model publication schemes for schools is contained on the Information Commissioner's Office website.

11.10 The governing body will have to consider any requests for information against the requirement placed on them by these Acts. Each request should be judged on its own merits before any decision is taken to withhold or release the information, or to release the information with redactions. Further information is available from the Information Commissioners Office at www.ico.gov.uk

Annex A: Matters outside the scope of the staff disciplinary procedures

1.1 Those responsible for operating disciplinary procedures must satisfy themselves on receipt of an allegation or complaint that they are dealing with a matter of misconduct. Disciplinary procedures must be separate and are quite distinct from grievance and capability procedures. However, in accordance with the *ACAS Code of Practice 1: Disciplinary and grievance procedures*, it is permissible on specific occasions to deal with combined issues under combined proceedings by the same committees (see paragraph 2.4 below). In order to ensure matters are dealt with promptly and appropriately care should be taken in determining the correct procedure to follow.

Grievance procedures

2.1 Grievances are concerns and problems that employees raise with their employers². Occasionally the substance of a grievance may include misconduct behaviours which would be more appropriately dealt with as a lesser or gross misconduct matter. If this is the case the person raising the matter should be informed of the process that will be used for dealing with the issue they raise.

2.2 Employees should aim to settle most grievances informally with their relevant line manager in the first instance. The person who receives the 'grievance' (the chair if the grievance is about the headteacher) should decide, after seeking advice from the LA or diocesan authority, whether the issue is one that is properly considered to be a grievance, whether it is a staff disciplinary matter, or whether it should be dealt with under another relevant procedure. If action under the staff grievance procedure results in the need for disciplinary action, then the disciplinary procedure will then apply.

2.3 Where a member of staff raises a grievance during a disciplinary process, the disciplinary process may be temporarily suspended at the discretion of the staff disciplinary and dismissal committee or the headteacher in respect of lesser misconduct matters, in order to deal with the grievance. Where the grievance and disciplinary cases are related it may be appropriate to deal with both issues concurrently. However, the committee(s) should be mindful of vexatious or delaying grievances and governing bodies should ensure that delays are minimal.

2.4 There is no law requiring a governing body to have a separate staff grievance committee. The staff disciplinary and dismissal committee or staff disciplinary and dismissal appeals committee may also hear a staff grievance. This should be clearly minuted when the governing body decides on its committee structure and

membership. Should this occur, it must be made clear to the governors that they are acting for the purposes of dealing with a grievance and not a disciplinary/dismissal matter. If the outcome of a staff grievance leads to disciplinary action being taken, those governors who have sat on the staff grievance and staff grievance appeals committee cannot be members of the staff disciplinary and dismissal committee or staff disciplinary and dismissal appeals committee that consider the matter. However, as referred to previously, careful consideration should be taken as to the nature of the grievance. If it relates to behaviours that could be misconduct, where a sanction could be imposed it may be more appropriate to deal with the matter as misconduct rather than a grievance.

Complaints

3.1 A complaint is 'an expression of dissatisfaction in relation to the school, a member of its staff or the governing body, that requires a response from the school.'³ Complaints can be from an external party. If a complaint is made by a member of staff that relates to their employment this should be dealt with as a grievance.

3.2 There may be occasions when complaints, which are initially considered under the governing body's complaints may include actions and conduct of members of staff which should more appropriately be dealt with under the school's disciplinary procedures. If concern about the behaviour and conduct of the member of staff, if proven, would likely result in disciplinary proceedings being instigated, then the matter should be dealt with under the disciplinary procedure. The complainant and the member of staff and their union representative should be advised where the matter is being dealt with as a staff disciplinary issue using the school's agreed process. If the matter is determined to be a disciplinary issue, it cannot be referred back to be dealt with under the complaints procedure.

3.3 Further information on complaints procedures can be found in *Complaints procedures for school governing bodies in Wales* Welsh Government Guidance Circular no: 011/2012 (2012).

Capability procedures

4.1 Where capability is an issue and improvement is required from the member of staff the capability procedures should be applied. Capability procedures are successful when the member of staff cooperates, makes the necessary improvements and sustains them with help, guidance and support. If this is not achieved, this could lead to further capability procedures or disciplinary proceedings. However, where poor performance arises from perceived negligence or lack of care by the member of staff, then the application of disciplinary procedures is appropriate

without first instigating capability procedures. The Welsh Government's guidance on dealing with capability of members of staff can be found at:

<http://wales.gov.uk/topics/educationandskills/publications/guidance/guidance-on-capability-procedures-for-use-with-school-teaching-staff/?lang=en>

Whistleblowing

5.1 Governing bodies should have procedures in place for whistleblowing. All members of staff should be able to raise concerns about conduct or practice within the school which is potentially illegal, corrupt, improper, unsafe or unethical, or which amounts to malpractice. They should be able to do so without fear of victimisation and with confidence that their concerns will be taken seriously and dealt with properly – see Welsh Assembly Government Circular Guidance No: 36/2007 *'Procedures for Whistleblowing in schools and Model Policy'*.

Annex B1: Examples of lesser misconduct behaviour

The list below is offered only by way of example to indicate how behaviour may be regarded. This is not an exhaustive list and is provided for illustrative purposes only. Judging the level of misconduct and how it must be handled has to be undertaken on the facts of each case.

Lesser misconduct might include:

- specified conduct which is incompatible with the ethos and precepts of the school as set out in the school's prospectus, website, school staff terms and conditions of employment, etc.
- poor timekeeping and/or unauthorised absence (e.g. absence from the workplace during school sessions without permission or in line with the school's policy)
- refusal to carry out a reasonable instruction
- causing damage to property/equipment through negligence/not having due regard to school property
- causing unintentional superficial injury to a member of staff/pupil
- using inappropriate language
- petty theft, e.g. making unauthorised private telephone calls or sending personal mail at the school's expense
- breach of dignity at work policies
- unauthorised use of mobile phones/text messaging/social networking sites during lesson time.

Annex B2: Examples of gross misconduct behaviour

The list below is offered only by way of example to indicate how behaviour may be regarded. This is not an exhaustive list and is provided for illustrative purposes only. Judging the level of misconduct and how it must be handled has to be undertaken on the facts of each case. The disciplinary and dismissal procedure should set out what is considered as gross misconduct which might include:

- specified conduct which is incompatible with the ethos and precepts of the school as set out in the school's prospectus, website, school staff terms and conditions of employment, etc.
- fraudulent acts or theft of property belonging to the LA, the school, fellow members of staff or pupils
- deliberate and serious damage to property belonging to the LA, the school, fellow members of staff or pupils
- violent behaviour including physical assault
- continuous bullying
- harassment or unlawful discrimination on any grounds.
- physical, sexual or emotional abuse of pupils
- sexual misconduct at work
- physical violence
- gross negligence
- causing loss, damage or injury through serious negligence
- serious incapability at work brought on by alcohol or other illegal substances on school premises
- serious insubordination
deliberately accessing offensive or obscene material via internet sites, social networking sites or by messaging
- inappropriate texting
- theft or fraud in and out of the workplace
- dishonesty (e.g. tampering with examination papers, revealing examination papers prior to examinations or altering examination results)
- serious violation of the LA or the school's health and safety rules and standards
- criminal misconduct outside the workplace which reflects adversely upon the school or the member of staff's suitability to continue to be employed at the school
- knowingly providing false information on any matter relating to the member of staff's employment
- disclosure of confidential personal information
- serious breaches of health and safety
- humiliation of staff, victimisation of colleagues, parents/carers or pupils.

Annex C: Legislation guidance and other documents relevant to staff disciplinary procedures

Legislation

- Education Act 2002, section 175
- Employment Rights Act 1996
- Employment Act 2002
- Employment Relations Act 1999
- Employment Act 2008
- Data Protection Act 1998
- The Government of Maintained School (Wales) Regulations 2005
- The School Councils (Wales) Regulations 2005
- The Staffing of Maintained Schools (Wales) Regulations 2006
- The Staffing of Maintained Schools (Miscellaneous Amendments) (Wales) Regulations 2007
- The Staffing of Maintained Schools (Wales) (Amendment) Regulations 2009
- The Staffing of Maintained Schools (Wales) (Amendment No. 2) Regulations 2009,
- The Staffing of Maintained Schools (Wales) Amendment Regulations 2014, and
- The Local Education Authorities and Children's Services Authorities (Integration of Functions) (Subordinate Legislation) (Wales) Order 2010.

Guidance

- School Governors' Guide to the Law 2009
- ACAS Code of Practice 1: Disciplinary and grievance procedures (Acas, 2009)
- Safe and effective intervention – use of reasonable force and searching for weapons Welsh Assembly Government Guidance Document No: 041/ 2010 (2010)
- Reporting Misconduct and Incompetence in the Education Service Welsh Assembly Government Circular No: 018/2009 (2009)
- Procedures for Whistleblowing in Schools and Model Policy Welsh, Assembly Government Circular No: 36/2007 (2007)
- Disciplinary Procedures and Rules 2012 (General Teaching Council for Wales, 2012)
- Code of Professional Conduct and Practice for Registered Teachers (General Teaching Council for Wales)

Reference material related to child protection

- Working Together to Safeguard Children: Handling Allegations of Abuse against teachers and other staff - Welsh Government Circular 009/2014 (2014)

- Keeping Learners Safe – The role of local authorities, governing bodies and proprietors of independent schools under the Education Act 2002 – Welsh Government Circular 158/2015
- Safeguarding Children: Working Together Under the Children Act 2004
<http://wales.gov.uk/topics/childrenyoungpeople/publications/safeguardingunder2004act/?lang=en>
- All Wales Child Protection Procedures 2008
- Joint NEOST/Teacher Union Guidance on Education Staff and Child Protection: Staff Facing an Allegation of Abuse – Guidelines on Practice and Procedure (2002)

Key definitions and concepts

The definitions and concepts below are taken from Welsh Government Circular 158/2015 'Keeping Learners Safe – The role of local authorities, governing bodies and proprietors of independent schools under the Education Act 2002'

Abuse: emotional - The persistent emotional ill-treatment of a child such as to cause severe and persistent adverse effects on the child's emotional and behavioural development.

Abuse: physical - Hitting, shaking, throwing, poisoning, burning or scalding, drowning, suffocating, or otherwise causing physical harm to a child. Physical harm may also be caused when a parent or carer fabricates or induces illness in a child whom they are looking after.

Abuse: sexual - Forcing or enticing a child or young person to take part in sexual activities, whether or not the child is aware of what is happening, including:

- physical contact, including penetrative or non-penetrative acts
- non-contact activities, such as involving children in looking at, or in the production of, pornographic material or watching sexual activities
- encouraging children to behave in sexually inappropriate ways.

Annex D: Supply of information

The Safeguarding Vulnerable Groups Act 2006 and the Education (Supply of Information) (Wales) Regulations 2009

All employers (including teacher supply agencies) in Wales have a legal duty to report cases under the Safeguarding Vulnerable Groups Act 2006 and the Education (Supply of Information) (Wales) Regulations 2009.

In cases where employers have removed an individual from a regulated activity because the employer thinks they have engaged in relevant conduct or posed a risk of harm to children, the Safeguarding Vulnerable Groups Act 2006 provides that employers must report the case to the Disclosure and Barring Service (DBS). For governing bodies this means that where the staff disciplinary and dismissal committee has determined, following a disciplinary hearing, to dismiss a member of staff because of allegations of abuse, the governing body must inform the DBS of their decision. The same would apply where the governing body would have dismissed the staff member but the staff member resigned or retired before dismissal could take place.

Agency Staff

Schools and supply agencies have a joint responsibility to refer information to the DBS. Because one party has made the referral does not mean that the other party is not also required to do so.

The duty to refer information to the DBS applies to schools in relation to staff supplied by a supply agency, as well as their own internal staff. The duty to refer information to the DBS may apply if a school asks the supply agency to stop supplying a person, or stops them from carrying out regulated activity because:

- The harm test is satisfied.
- They have engaged in 'relevant conduct'.
- They have been convicted of, or cautioned for an automatic barring offence.

Teaching is an example of regulated activity. For further information about the harm test, relevant conduct and automatic barring offences, see the DBS Referral Guidance - Frequently Asked Questions. As the decision to end the supply of the person is made by the school the school should clarify the reason the assignment was ended to help the agency determine whether it is required to make a referral to the DBS. This ensures that all parties are able to meet their legal obligations.

Supply agencies have a similar duty to refer information to the DBS about candidates they have provided to clients who are removed from carrying out regulated activity for the reasons above.

The LA Designated Officer should liaise with the employer to ensure that where necessary relevant referrals are made to the DBS and the Education Workforce Council (EWC) and follow up to ensure such referrals are made. The headteacher and school governing body should be advised on the outcome of these discussions as they will want to know whether that person can be employed again.

In other cases the Education (Supply of Information) (Wales) Regulations 2009 provide that employers are required to make a report to the EWC in cases where employers cease to use a registered teacher's services on grounds of:

- misconduct, or would have ceased to use their services had they not resigned
- professional incompetence or conviction of a relevant offence where the conduct does not involve the harm, or risk of harm, to a child (as defined in the Safeguarding and Vulnerable Groups Act 2006).

Further guidance on the circumstances when a referral should be made and the information that should be supplied to the relevant authority can be found in Welsh Assembly Government Circular 18/2009 '*Reporting Misconduct and Incompetence in the Education Service*' which can be found in the following link

<http://wales.gov.uk/topics/educationandskills/publications/circulars/reportingmisconductcircular/?lang=en>

Information to be supplied by an employer

This should include:

- (a) a statement of reasons for ceasing to use the person's services
- (b) employer's records relating to the cessation of the use of the person's services or any contemplated cessation, including notes and minutes of meetings, interview notes, and evidence supplied to or obtained by the employer
- (c) employer's records relating to the conduct which eventually led to the cessation of the use of the person's services or might, but for the person having ceased to provide those services, have led the employer to cease to use the person's services, including notes and minutes of meetings, interview notes, and evidence supplied to or obtained by the employer
- (d) employer's letters, warnings or notices issued to a person in relation to the cessation of the use of their services or contemplated cessation, or the conduct which eventually led to the cessation of the use of the person's services or might, but for the person having ceased to provide those services, have led the employer to cease to use the person's services, and the person's replies or representations in relation thereto

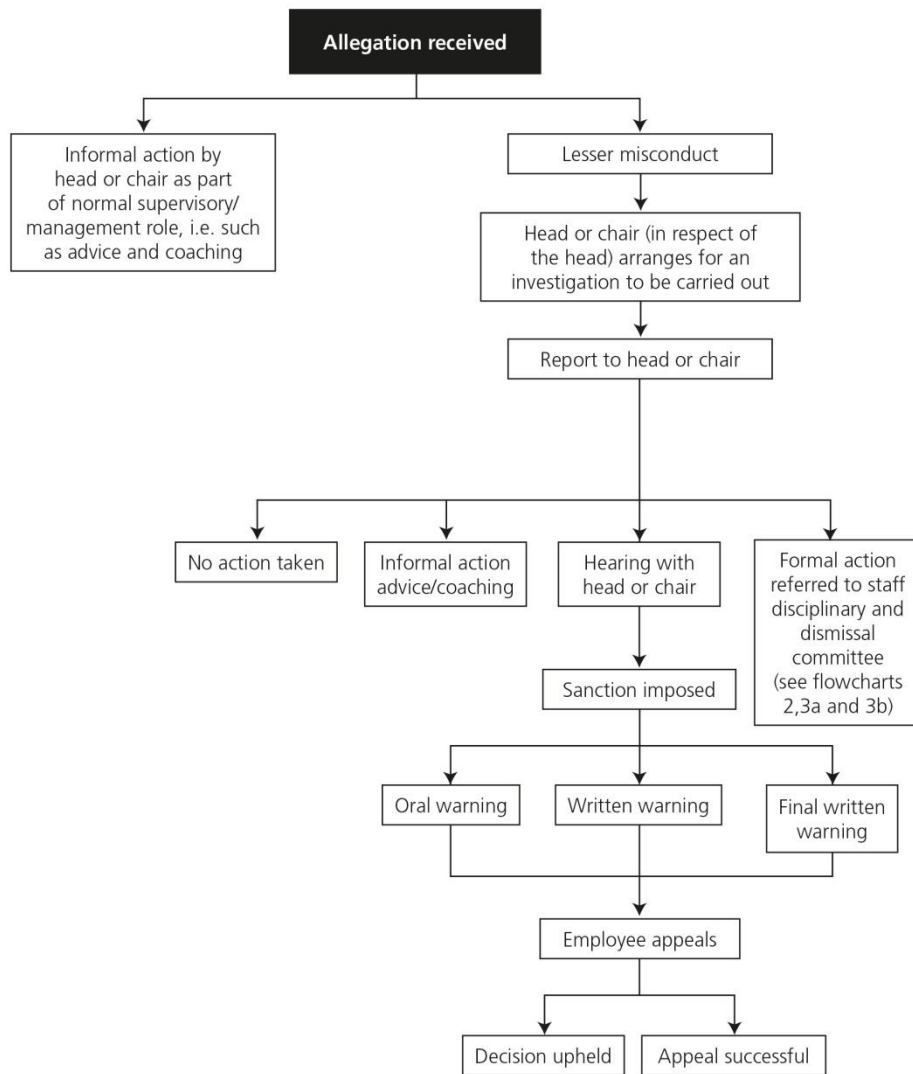
(e) any other statements, representations and evidence submitted by a person to the employer in relation to the cessation of the use of the person's services or contemplated cessation, or the conduct which eventually led to the cessation of the use of the person's services or might, but for the person having ceased to provide those services, have led the employer to cease to use their services

(f) a letter advising a person's intention to cease to provide services

(g) any other document or information which the employer considers is relevant to any investigation which may be carried out by an investigating committee or any proceedings which may be taken by a committee against a registered teacher.

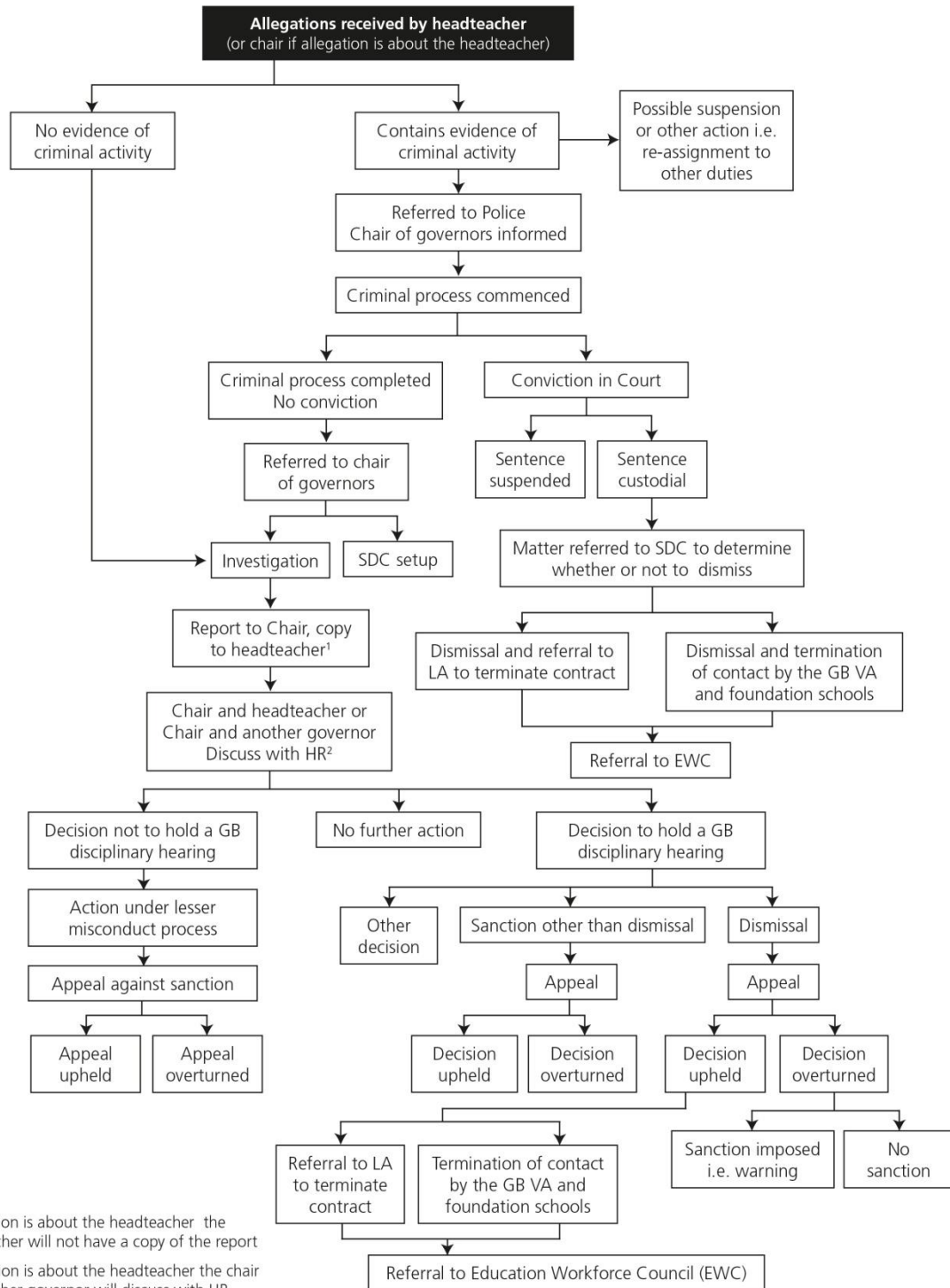
Annex E: Flowcharts

Flowchart 1
Lesser misconduct



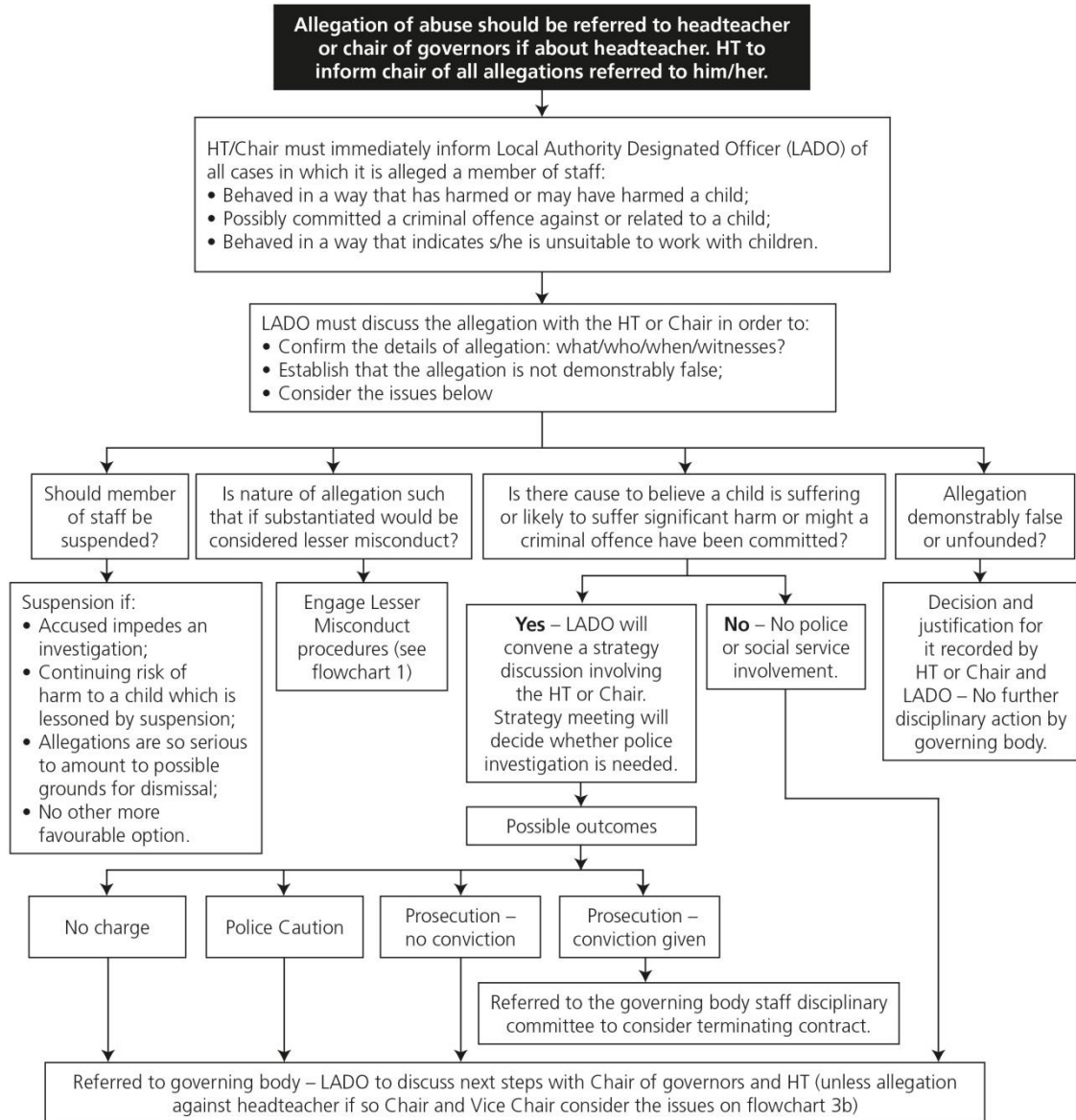
Flowchart 2

Gross misconduct allegations which are not child abuse

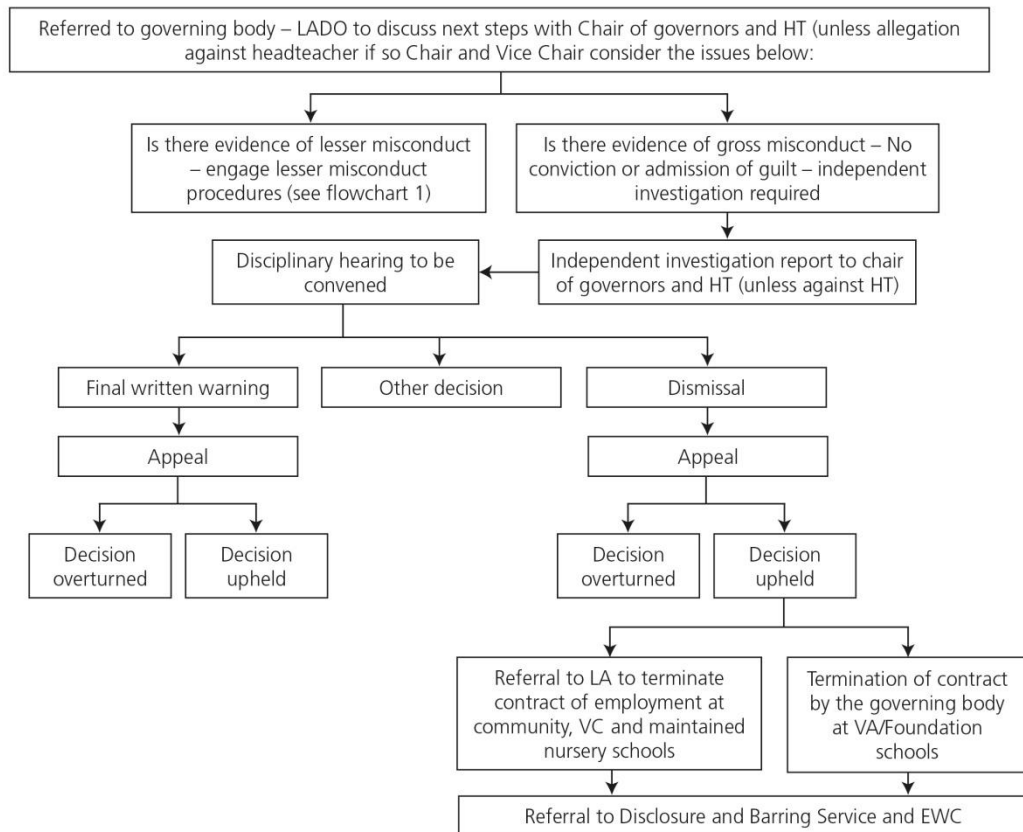


Flowchart 3a

Gross misconduct allegations of child abuse



Flowchart 3b (continued from Flowchart 3a) Gross misconduct allegations of child abuse



In all allegations of abuse, school must retain a detailed record of the case until the person reaches normal retirement age or for 10 years from date of allegation (whichever is longer)

Key

- HT = Head Teacher
- LADO = Local Authority Designated Officer
- DBS = Disclosure & Barring Service
- SDC = Staff Disciplinary Committee
- EWC = Education Workforce Council
- SSD = Social Services Department
- GB = Governing Body
- VC = Voluntary Controlled
- VA = Voluntary Aided
- LA = Local Authority

Annex F: Suggested timescales for hearings (in school days)

Please note that a brief outline of timescales is provided in this annex. All staff disciplinary matters should be dealt with as quickly as possible whilst ensuring a fair and thorough process. This avoids undue stress on everyone involved and disruption to the school, staff and pupils is limited whilst ensuring these matters are handled effectively and efficiently.

The timescales in this Annex are therefore indicative and must be read in conjunction with the relevant sections in the guidance. There may be a need to be flexible with timescales, e.g. where there is a large amount of paperwork or unavailability of staff. Timescales may be shortened or extended by mutual agreement between all relevant parties. Allegations received out of the school term should be addressed promptly once term recommences and earlier wherever possible.

1) Lesser misconduct – hearing with headteacher or chair of governors (in respect of the headteacher).

The lesser misconduct process should generally take no more than 25 school days or five school weeks to complete (with a further 25 days for an appeal hearing if needed). Suggested timescales are as follows:

Investigation commenced as soon as possible following receipt of allegation.

All times are calculated from receipt of the investigation report.

Day 1: Investigation report received and decision taken to deal with the matter informally as part of the management process or to have a hearing with the headteacher or chair of governors.

Between days 1–5: A mutually agreed date for the hearing before the headteacher

Between days 1–5: A mutually agreed date for the hearing before the headteacher or chair is set and a letter confirming the date is sent to the member of staff.

Between days 5–10: Documentation from the member of staff to be received by the chair of governors or the headteacher.

Between days 10–15: Member of staff and headteacher/chair of governors receive all documentation.

Between days 15–20: Parties have time to prepare the case.

Between days 21–23: Hearing takes place.

Between days 24–25: Written notification of outcome, detailing the right of appeal, is sent to the member of staff.

2) Lesser misconduct – appeal hearing

All times are calculated from notification of the outcome of the chair/headteacher hearing.

Between days 1–5: Lodge notice of intention to appeal to the clerk within five working days after receipt of notification of outcome.

Between days 5–10: A mutually agreed date for the appeal hearing is set and a letter confirming the date is sent.

Between days 10–15: Documentation from either party to be forwarded to the clerk of governors.

Between days 15–18: Documentation is sent to all parties by the clerk.

Between days 19–22: Parties prepare for the hearing.

Day 23: Date of appeal hearing – oral outcome given (other than in exceptional circumstances).

Between days 24–25: Written notification of outcome sent to the member of staff.

3) Gross misconduct – hearing before the staff disciplinary committee

The general timescales have allowed up to 40 school days for a hearing and a further 40 school days for an appeal hearing. These periods may be shortened or lengthened as needed.

All times calculated from receipt of investigation report.

Day 1: Investigation report received and decision taken to go to a hearing.

Between days 5–10: A mutually agreed date for hearing is set and a letter confirming the date and full details.

Between days 10–20: Documentation from both parties to be forwarded to the clerk.

Between days 20–25: Exchange of documentation between the parties undertaken by the clerk.

Between days 26–34: Member of staff and presenting officer to prepare the case.

Day 33: – Papers sent to members of the staff disciplinary and dismissal committee.

Day 35: Date of hearing – oral outcome given if decision is agreed by committee (other than in exceptional circumstances).

Between days 36–40: Written notification of outcome, detailing the right of appeal, is sent to the member of staff.

4) *Gross misconduct – appeal hearing*

All times calculated from notification of the outcome of the gross misconduct hearing

Day 1–5: Lodge notice of intention to appeal (five working days after receipt of decision by committee).

Between days 5–10: A mutually agreed date for the appeal hearing is set and a letter confirming the date and details is sent by the clerk of governors to the member of staff.

Between days 10–20: Grounds for appeal and all supporting documentation to be sent to the clerk.

Between days 20–25: Documentation sent to the member of staff/union representative and presenting officer by the clerk.

Between days 26–34: Preparing a case for appeal

Day 33: – Papers sent to the members of the staff disciplinary and dismissal appeals committee.

Day 35: Date of appeal hearing – oral outcome given if decision is agreed by committee (other than in exceptional circumstances).

Between days 37–40: Written notification of outcome is sent to the member of staff.

Annex G: Checklist for disciplinary hearings

Before reaching a decision in a disciplinary hearing the person or persons hearing the case should consider the following questions. The four questions should be considered in respect of each allegation and the remainder before deciding what penalty if any to impose. Each allegation requires a separate finding, but one decision can be made in respect of all of them. Responses should be recorded and kept with the other records of the disciplinary hearing.

1. Has there been as much investigation as is reasonable in the circumstances?
2. Were the investigation and the presentation of the investigation report factual, impartial, reliable, comprehensive and unbiased?
3. Have the requirements of the disciplinary procedure been properly complied with up to this point, including advance notice to the employee of the matter(s) to be considered at this hearing?
4. Have I paid sufficient regard to any explanations put forward by or on behalf of the member of staff?
5. Have I a genuine belief, based on evidence and reasonable grounds that the allegation against the employee proven and that the employee is guilty of the misconduct as alleged?
6. Is the misconduct sufficiently serious to justify the disciplinary decision I am contemplating?
7. If the circumstances (including any mitigating factors) are indistinguishable from one or more earlier or concurrent disciplinary proceedings against members of staff in a similar position to this member of staff in the school, is the decision I am contemplating reasonably consistent with decisions in those instances, or am I justified in distinguishing one from the other?
8. Is the decision I am contemplating free of bias against the member of staff and not related to the member of staff's sex, marital status, racial origin, disability, sexuality, religion, or trade union activities (membership or non-membership)?
9. Have I provided the member of staff and/or their representative with an opportunity at this hearing to put forward any points for me to consider in mitigation before deciding the disciplinary sanction, and have I had regard to these and to any response to them by the senior management's representative?
10. Is the decision within the band of reasonable responses of a reasonable employer in the circumstances?

Annex H: Welsh Government-funded independent investigation service for allegations of abuse against teachers and members of staff in schools

Under the Staffing of Maintained Schools (Wales) Regulations 2006 as amended by the Staffing of Maintained Schools (Amendment) Regulations 2014 (which came into force on 16 July 2014) the governing body must appoint an independent investigator to investigate allegations that a teacher or member of staff employed under a contract of employment at the school has abused a pupil registered at the same school. The purpose of the investigation is to ensure independence in the consideration of allegations of abuse which if substantiated would be considered gross misconduct, would be subject to a disciplinary hearing and may result in dismissal and a referral to the DBS.

The governing body is not required to appoint an independent investigator where:

- a) beyond reasonable doubt the allegation is not true;
- b) there is no evidence to support the allegation;
- c) the member of staff against whom the allegation was made has admitted to the allegation;
- d) the member of staff has been convicted of a criminal offence relating to the allegation.

In the case of c) and d) there should be sufficient evidence to inform the disciplinary and dismissal process without the need for an independent investigation under the 2014 Staffing Amendment Regulations.

The decision to appoint an independent investigator must not be made until:

- the headteacher or chair of governors has had an initial discussion with the local authority designated officer (LADO);
- the statutory authorities have concluded their consideration of the case and any criminal proceedings have concluded and the allegation has been referred to the governing body for disciplinary and dismissal action; and
- the chair of governors has consulted with the headteacher and the LA Designated Officer and based on all the evidence and information available concluded that an independent investigation is required.

The governing body is free to appoint an independent investigator of their choice but to assist governing bodies the Welsh Government currently funds an independent investigation services to undertake independent investigations which fall within the criteria above.

The IIS will not accept referrals that do not comply with these requirements. The contact details of the Independent Investigation Service currently provided by Servoca are as follows:

John Wood, Operational Manager, Servoca PLC, 41 Whitcomb Street, London WC2H 7DT Tel: 0203 031 4783, Fax: 0845 073 780, Mob: 07823 530262
e-mail: <mailto:john.wood@servoca.com>, Web: www.servoca.com or e-mail: enquiries@servoca.com

Annex I: Model staff disciplinary procedure for maintained schools

Name of school:

Introduction

This model procedure presupposes that a delegation is in place allowing the headteacher to deal with allegations constituting lesser misconduct. Where this is not the case, suitable adjustments will need to be made.

1. This staff disciplinary procedure applies to school staff employed under a contract of employment with the school. It does not apply to staff employed directly by the LA, by an employment agency, staff whose contract of employment is held by another body i.e. is shared with another school; or staff engaged under a contract to provide services. Members of staff have been made aware of this procedure and copies will be given to any member of staff who is the subject of any allegation.

2. All timescales included in this staff disciplinary procedure have been agreed by the governing body and the school's local staff unions. Depending on the circumstances of the case, there may need to be flexibility with these timescales, e.g. where there is a large amount of paperwork or unavailability of staff.

3. Where required throughout this procedure the chair of governors will take appropriate action (as delegated by the governing body) unless they are compromised, in which case the vice chair of governors will take over the role and actions normally carried out by the chair. If the vice chair is also compromised the governing body will have to select another governor who is not compromised and minute this decision.

Purpose and scope

4. The governing body is responsible for the conduct and discipline of school staff and is required to have a procedure in place for dealing with staff disciplinary matters.

5. Disciplinary procedures are necessary for promoting orderly employment relations, achieving fairness and consistency in the treatment of individuals and minimising disagreement about disciplinary matters.

6. This disciplinary procedure is intended to help and encourage employees to achieve and maintain acceptable standards of conduct and to make clear to all concerned the procedure to be followed by this school and governing body to address concerns about an individual's behaviour or conduct and any subsequent disciplinary action that may be taken.

7. The aim of the procedure is to ensure consistent and fair treatment for all members of staff within the school.

Matters outside the scope of the procedure

8. The following matters are outside the scope of this disciplinary procedure:

a) where employment is terminated:

(i) by reason of redundancy

(ii) by an employee reaching the end of a temporary or fixed-term contract

b) where any deficiencies in performance on the part of the staff member arise from a lack of aptitude or skill. In such cases the capability procedure will be used although it is possible that at some point the matter may eventually become a gross misconduct issue in which case this procedure may apply

c) staff grievances - that employees raise with their employer. If, however, the outcome of a staff grievance is that there may be a need for disciplinary action, then action under the grievance procedure will stop and this disciplinary and dismissal procedure will apply

d) termination during or at the end of a probationary period, whether or not extended beyond its originally specified duration

e) matters which should be dealt with through the governing body's general complaints procedure and which do not raise staff disciplinary issues for individual members of school staff

Key points

9. This procedure is a way of helping and encouraging improvement in members of staff whose conduct is unsatisfactory and is not to be viewed as simply a means of imposing sanctions or punishment. In all cases, the school and governing body will ensure that disciplinary cases are dealt with in an unbiased, open and fair way.

10. The key points in summary, are as follows:

a) Where appropriate, every effort will be made to address concerns about behaviour or conduct without recourse to formal procedures.

(b) No disciplinary action will be taken against a member of staff until the case has been fully investigated, where possible by someone who has no connection with the case in question.

(c) An investigator will be objective and impartial. Reasonable objections to an investigator relating to their inability to act impartially, or their competence for the role, will mean that the investigator will be changed. It will be for the governing body (chair) to determine whether the circumstances of the objection are valid and accepted and the investigator changed.

(d) Where the matter is to be dealt with through lesser misconduct procedures, the member of staff will be informed of the allegation against them and will be given the opportunity to defend the allegation at the disciplinary hearing before the headteacher, or the chair of governors for allegations against the headteacher.

(e) A member of staff will not be dismissed for a first breach of discipline in cases of lesser misconduct but may receive a sanction in the form of a warning. Should the lesser misconduct be repeated it may result in a more severe sanction under the lesser misconduct process or the member of staff being disciplined for gross misconduct as they are not moderating or amending their behaviour.

(f) The member of staff and their union representative will be informed of all warnings at the end of the hearing. The warnings will be confirmed in writing.

(g) Where it is decided that the allegations amount to gross misconduct which could lead to dismissal if proved, the member of staff will be informed of the allegation and the arrangements for the hearing before the governing body staff disciplinary and dismissal committee (subject to mutual agreement).

(h) The member of staff will be provided with the membership of the staff disciplinary and dismissal committee prior to a hearing and advised of their right of objection to any committee member on the basis of evidence that calls into question their ability to act impartially in the circumstances of the case. It will be for the governing body (chair) to determine whether the circumstances of the objection are valid and accepted and a member of the committee is removed. The chair will need to follow the governing body's agreed procedure for appointing a replacement governor.

(i) The member of staff will be provided with all relevant information prior to any hearing.

(j) The member of staff will have the right to be accompanied by a companion or a representative of their trade union during the investigation, the disciplinary hearing and the appeal hearing.

(k) Dismissal for gross misconduct is likely to take place immediately following the decision of the staff disciplinary and dismissal committee or following the outcome of any appeal by the member of staff. Dismissal under these circumstances is likely to be without notice or payment in lieu of notice.

(l) A member of staff will have the right to appeal against any disciplinary sanction imposed by the headteacher or chair of governors (in respect of lesser misconduct matters), or the staff disciplinary and dismissal committee (in respect of gross misconduct matters).

(m) The process will be supportive towards the needs of the member of staff.

(n) Investigations and hearings will be conducted in English or Welsh, or with access to interpretation, at the request of the member of staff.

Informal discussion with the headteacher and/or line manager—outside of disciplinary process

11. There will be occasions when it is appropriate for a member of staff's actions to be discussed with them as part of normal supervisory arrangements without recourse to the formal procedures. In such circumstances the member of staff will be given guidance and support from their line manager. This could take the form of advice, counselling, training instruction, coaching or other managerial strategies as is appropriate. Such activity may be delegated to a member of the senior management team. In respect of the headteacher this would be carried out by the chair of governors with advice and support from the LA HR advisor.

12. The aim of this action is to ensure that problems are discussed so as to encourage and help the member of staff to improve and understand:

- what they need to do in relation to their conduct;
- how future conduct will be monitored and reviewed;
- the period of time over which conduct will be monitored;
- that formal action might be taken if the conduct in question recurs or if the member of staff fails to produce the necessary improvements.

13. Where discussions and support structures put in place do not lead to the necessary improvement or relevant changes in conduct, within the agreed timescale, the member of staff will normally be advised in writing of further action to be taken, which may be formal. A record of these discussions will be retained and agreed by both parties. As they form part of the normal supervisory arrangements and will not result in formal disciplinary sanction it would not be expected for a member of staff to have representation at these meetings.

Formal process for lesser misconduct

14. Responsibility for disciplinary matters where the allegation could constitute lesser misconduct has been delegated by the governing body to the headteacher.

15. If an allegation which could constitute lesser misconduct is made against the headteacher, the chair of governors will be responsible for disciplinary action.

The investigation

16. As soon as the alleged breach of discipline has been brought to the attention of the headteacher or the chair of governors (in the case of the headteacher) a full investigation will be carried out. This investigation will be undertaken by someone other than the person who may be required to take informal action/formal action, which may be a member of the senior management team or other independent person from the LA or diocesan authority (if appropriate). Where the allegation is about the headteacher the chair of governors will where possible arrange for the investigation to be carried out externally, by the LA, diocesan authority (if appropriate) or other independent person.

17. The member of staff will be advised of their right to object to any investigator on the basis of evidence that calls into question their ability to act impartially in the circumstances of the case. It will be for the governing body (chair) to determine whether the circumstances of the objection are valid and accepted and to arrange for a new investigator to be appointed.

18. The member of staff and all witnesses will be interviewed. Notes will be taken during interviews and minutes normally produced within two school days where possible using any agreed tape recordings, handwritten notes or records signed and dated by relevant parties. All present at the meetings will be asked to agree to the minutes as a true and accurate record of the interview. No undertaking of confidentiality will be given to witnesses; however, the overall confidentiality of the disciplinary process will be respected.

19. The member of staff will be given the opportunity to respond to the allegation and will be advised of their right to be accompanied by a companion or a representative of their trade union at an investigation interview meeting.

20. Once the investigation has concluded, the investigating officer will present the findings to the headteacher or the chair of governors (in the case of a headteacher) in a written report a copy of which will be provided to the member of staff. This will be done as soon as practicable after the conclusion of the investigation. The investigation report will be based on matters of fact and will not contain opinions; references to or expressions of views on the personalities of individuals.

21. The headteacher or chair of governors (in the case of a headteacher) may conclude that:

- the allegation is false or unfounded and no further action will be taken
- matters can be dealt with through informal procedures (refer to paragraphs 12–14 of this procedure)
- there appears to be sufficient evidence for a hearing before the headteacher or chair of governors (if the headteacher is to be disciplined) and the possible outcome may be sanctions short of dismissal
- there appears to be sufficient evidence that the allegation constitutes potential gross misconduct which should be considered at a disciplinary hearing before the staff disciplinary and dismissal committee.

22. Where there is conflicting evidence the matter will be referred to a hearing before the headteacher or chair of governors (in respect of lesser misconduct matters), or a hearing before the staff disciplinary and dismissal committee if the findings in the report show that the allegation is considered to constitute gross misconduct. Where dismissal could result because a member of staff is currently on a final written warning, the case must be referred to the staff disciplinary and dismissal committee.

The hearing before the headteacher or chair of governors

23. A hearing will take place before the headteacher or the chair of governors (in respect of the headteacher) supported by advice from the LA or diocesan authority (where appropriate). Should the chair of governors be compromised this role will be delegated to the vice chair (providing the vice chair is not compromised).

24. The member of staff will be sent a copy of these procedures and will be informed in writing of the following information:

- the nature of the alleged misconduct
- the stage reached in the procedure
- the date, time and place for the hearing
- the possible outcome/sanctions of the hearing if the allegation is upheld

and be advised of their right to:

- produce written statements which will be circulated to all parties in advance of the hearing
- ask questions relating to any written statements so produced
- state their case in person and/or through a representative
- produce witnesses

– be accompanied by a trade union representative or companion of their choice.

25. There are five possible outcomes following on from such a hearing:

- informal action
- recorded oral warning
- first written warning
- final written warning
- referral to a disciplinary hearing before the governing body's staff disciplinary and dismissal committee.

26. The sanctions do not have to be given in the order set out above but will depend on the circumstances and severity of the member of staff's behaviour.

27. Further advice on each of these sanctions is set out below. However, there may be occasions where a member of staff has had repeated lesser misconduct allegations against them and has not altered or improved their behaviour. This may result in a more severe sanction being given, e.g. a final written warning. Alternatively, the lesser misconduct behaviour may be serious enough to warrant an immediate final written warning instead of any other sanction.

ACTION

INFORMAL

28. As a result of the hearing, the headteacher or the chair of governors (in respect of the headteacher), with support from the LA HR advisor, may deal with matters by giving advice, counselling, training instruction, coaching or other managerial strategies as appropriate. Such activity may be delegated to a member of the senior management team. In respect of the headteacher however this will be carried out by the chair of governors with advice and support from the LA HR advisor. The intended purpose and outcome of this action is the same as set out in paragraph 13 above.

29. Where discussions and support structures, which have been put in place to help the member of staff, do not lead to improvement or the relevant changes in conduct in the agreed timescale, the member of staff will normally be advised in writing of further action to be taken.

FORMAL

Warnings

30. Suitable periods might be:

- recorded oral warning – 3 months
- first written warning – 6 months
- final written warning – 12 months.

31. However, the duration of the warning can vary according to the detail of the offence and the detail of the required improvement. There is discretion for warnings to be placed on record for longer than the periods set out (see section 6.23 of the guidance).

32. Where the member of staff's conduct is satisfactory for the specified period of a warning such warnings will be expunged from the staff member's file after a specified period and will not be referred to again once spent.

Final written warning

33. A final written warning may be issued where lesser misconduct recurs despite attempts by senior managers to support the member of staff and improve their behaviour or conduct. A final written warning may also be issued where a single instance of proven misconduct is considered to be of a serious nature. It will also be made clear to the member of staff that failure to address the behaviours which are the subject of a final written warning could lead to the engagement of disciplinary proceedings which could lead to dismissal.

34. Every warning given will include the following information:

- what action/improvement/outcome is expected for the future and the action needed on their part to avoid any further disciplinary action
- the consequences of any failure to take the necessary action the right to appeal, the time limit within which the appeal should be made and how the appeal should be made.

Records of warnings

35. All warnings should be issued to the member of staff at the conclusion of the hearing, and in front of the member of staff's trade union representative or companion. The warning will be confirmed in writing with a copy going to the member of staff's trade union representative/companion unless the member of staff states that they do not wish this to happen. The member of staff will be required to indicate receipt in writing of any warning given. A record of the warning will be placed on the member of staff's file. The information that should be included in any warning is set out in paragraphs 34 above. Copies of all warnings issued should also be sent to the LA Chief Education Officer in respect of staff in community, community special or voluntary controlled schools.

Appeals against formal warnings

36. There is a right of appeal against any disciplinary action (refer to paragraphs 80-86 of this procedure for information on appeals in respect of both lesser and gross misconduct allegations). The appeal procedure will set a time limit for notification by the member of staff to the clerk of the staff disciplinary and dismissal appeals committee of the intention to and reasons for appeal and require these reasons to be provided along with the notice of intention to appeal. The member of staff will be informed in writing of the date and time of the appeal hearing in advance. Suggested timescales are contained in this policy but these may vary depending on the circumstances eg where there is a large amount of paperwork involved or unavailability of staff, subject to mutual agreement. All appeals against sanctions given under the lesser misconduct process will be heard by the staff disciplinary and

dismissal committee. An appeals body cannot impose a more severe penalty than that imposed at the first hearing.

Referral for consideration under procedures for gross misconduct

37. There may be rare occasions where, at the end of an investigation into lesser misconduct matters, the evidence in the investigation report indicates that the behaviour constitutes gross misconduct. If the headteacher (or chair of governors in respect of the headteacher) with support from the LA or diocesan officer or another agreed appropriate person, concludes that this is the case, a referral for formal disciplinary action for gross misconduct may be justified. The member of staff will be informed immediately of this decision in writing.

Gross misconduct (where the allegation does not relate to allegations of child abuse)

38. The term gross misconduct is used to mean an act, or omission, or a series of actions or omissions by a member of staff that fundamentally repudiates the contract of employment. All gross misconduct allegations will be subject to a formal disciplinary hearing before the governing body's staff disciplinary and dismissal committee. The staff disciplinary and dismissal committee and staff disciplinary and dismissal appeals committee shall each have a minimum of three governors. The staff disciplinary and dismissal appeals committee must have at least the same number of governors as the staff disciplinary and dismissal committee but the appeal committee may have more. No governor will be a member of both committees and both committees will have separate advisers.

39. Where alleged gross misconduct is to be considered responsibility for the arrangements to set up a disciplinary investigation rests with the chair of governors (unless the chair is tainted or compromised in which case the vice chair should take over) through the clerk to the governing body. The Welsh Government sets out the circumstances that constitute tainting in their revised guidance on staff disciplinary procedures issued in 2015..

Allegations other than child abuse

40. Gross misconduct allegations are usually referred to the headteacher or chair of governors (if the allegation is about the headteacher). On receipt of an allegation the headteacher or chair of the governors will make an initial assessment of the situation (but not investigate) to determine the nature and circumstances of the allegation. This decision is not a pre-determination of the case but is a decision about which process (lesser or gross misconduct) should be followed to deal with the allegation, based on the information in the allegation and obtained from the assessment. The headteacher or the chair of governors will seek advice from the LA HR adviser. If the conclusion is that, based on the information obtained so far, the allegation may have some basis the member of staff and their trade union representative will be informed of the allegation immediately and that the formal disciplinary process is being engaged. The member of staff should be informed of the allegation and given as much information as possible at this stage provided it does not compromise witnesses (staff or pupils) or hinder a police investigation.

41. If the allegation involves potential criminal activity a referral will be made to the Police. If this happens the governing body will take no further action until the Police confirm that they

have concluded their consideration and investigation of the matter and it is referred back to the governing body to complete the disciplinary process. The Police will also be asked to agree what information can be released to the member of staff

42. The headteacher or chair of governors will arrange for the allegation to be thoroughly and fairly investigated, though its extent will depend on all the circumstances and information available including that provided by the police. At this point the member of staff may be suspended by the headteacher or governing body on full pay and in line with the governing body's agreed procedure. Suspension should not be an automatic action but should be taken following a thorough risk assessment. Both the headteacher and governing body can suspend staff but only the governing body can end a suspension. It would be normal practice for the governing body to delegate responsibility for suspension and ending a suspension to the chair of governors. The chair of the staff disciplinary and dismissal committee and the chair of the appeal committee may also be delegated responsibility for ending a suspension. These decisions must be minuted. Suspensions will be reviewed by the chair of governors at intervals set out in this disciplinary procedure and the outcome reported to the member of staff and the governing body.

43. However, if after making the initial assessment of the allegation the conclusion of the headteacher or chair of governors (in respect of an allegation against the headteacher) is that beyond any doubt it is not possible for the allegation to be true, the headteacher or chair of governors may take no further action. The member of staff and their union representative will be informed immediately of this decision. This decision should be minuted by the clerk.

The investigation

44. As a possible outcome for gross misconduct hearings is dismissal, the investigations will be unbiased and thorough and wherever possible, all investigations will be carried out externally by an appropriate person who has no connection with the case and has the relevant skills. This may be an officer from another LA within the consortia especially if the LA itself has made the allegation.

45. However, if the appointment of an independent person is not possible advice will be sought from the LA and/or diocesan authority (if appropriate) before an investigator is appointed. This person may be either a senior manager in the school (but not for allegations against the headteacher) a LA or diocesan officer or other agreed appropriate person, who has no involvement in the allegation. The LA person carrying out the investigation will be a different person and act independently from any LA officer who is acting as the adviser or clerk to the governing body to avoid any conflict of interest.

46. Prior to the investigation, the member of staff will be informed in writing of their rights under the school's disciplinary procedure, including the right to be accompanied by a companion or a representative of their trade union, at all meetings held in connection with the disciplinary matter.

47. Notes will be taken of the meeting and a copy given to the member of staff and their trade union representative following the meeting. No undertaking of confidentiality will be given to witnesses however the overall confidentiality of the disciplinary process will be respected.

48. The member of staff has the right to object to an investigator where there is concern, supported by evidence, about an individual's ability to act impartially and without bias. The objection should be in writing to the chair of governors. It will be for the chair of governors, seeking advice from the LA if necessary, to decide whether an objection is upheld.

The investigation report

49. The completed report will be given to the headteacher and the chair of governors (or chair of governors and another governor in respect of allegations against the headteacher) who will decide whether, based on the findings of the report:

- there is no evidence to support the allegations and the matter is closed – the decision should be recorded
- there is clear evidence to prove the allegation is malicious and there has been a deliberate act to deceive and the allegation is false and the matter is closed
- based on evidence, the conduct does not amount to gross misconduct but to lesser misconduct which can be dealt with by the appropriate person
- based on evidence, the conduct does amount to gross misconduct and is required to be referred to a staff disciplinary and dismissal hearing.

50. If there is contradictory evidence or agreement cannot be reached a disciplinary hearing before the staff disciplinary and dismissal committee will be held. The LA should be advised that the investigation is complete and the report has been submitted. Only the chair of governors will receive an investigation report into allegations made about the headteacher. In these circumstances the chair will seek advice of the LA HR representative before decisions are taken.

51. This discussion and decision will be minuted by the clerk. The member of staff will be advised of the outcome of the investigation as soon as possible in writing by the clerk to the staff disciplinary and dismissal committee.

52 If the decision is to proceed to a formal hearing a copy of the investigation report, including all interview notes and supporting papers , will be provided to the member of staff against whom the allegation has been made, the person presenting the case at the hearing and the local authority within the timescales set out in this disciplinary procedure.

ALLEGATIONS OF ABUSE – RECEIPT OF AN ALLEGATION

53. Allegations of abuse must be brought immediately to the attention of the headteacher or the chair of governors (if the allegation is against the headteacher). The headteacher must inform the chair of governors of all such allegations that come to his/her attention.

54. The headteacher or chair of the governors must immediately discuss the allegation with the Local Authority Designated Officer (LA Designated officer) responsible for overseeing allegations of abuse where there is cause to believe that a member of staff has:

- behaved in a way that has harmed a child or may have harmed a child,
- possibly committed a criminal offence against or related to a child, or

- behaved towards a child or children in a way that indicates he/she would pose a risk of harm if they work closely with children.

55. The LA Designated Officer will also provide advice to the governing body. This initial discussion will consider the nature, content and context of the allegation i.e. what is alleged to have occurred; when and where it is alleged to have occurred, who was involved and any other person present and agree a course of action

56. Where the initial discussion concludes the allegation is demonstrably false or unfounded this decision and the justification for it will be recorded by the headteacher/chair and the LA Designated Officer and agreement reached on what information should be put in writing to the member of staff. No further disciplinary action needs to be taken. The chair of governors will be informed of this decision.

57. If the initial discussion and assessment indicates that an allegation might be true, and there are concerns about the welfare of a child/children the LA Designated Officer will arrange for a Strategy Discussion to take place involving the statutory authorities (i.e. social services and/or the police), in accordance with local child protection procedures.

58. The headteacher or chair will inform the member of staff about the allegation as soon as possible after consulting the LA Designated Officer. However, if a strategy discussion is needed, or police or children's social services need to be involved, no information will be given until those agencies have agreed what information can be disclosed to the member of staff.

59. At any point the headteacher or chair of governors (if the allegation is about the headteacher) may suspend the member of staff, on full pay, in line with the governing body's agreed procedures. Both the headteacher and chair of governors can suspend a member of staff but only the governing body (chair or chair of the staff disciplinary and dismissal committee or appeal committee) can end a suspension subject to the necessary delegation which should be minuted. Suspension will not be an automatic action but will be informed by a thorough risk assessment. Other alternatives such as re-assignment of duties will be considered and discussed with the LA Designated Officer and the LA HR Advisor. Suspensions will be reviewed by the chair of governors (if they are not tainted) at intervals set out in the disciplinary policy and the decision to extend or end a suspension and the justification for it reported to the member of staff and the governing body.

60. Once the statutory authorities (e.g. the police and social services) have concluded their consideration of the allegation, it will be referred back to the governing body to complete the staff disciplinary process. This will happen even if the statutory authorities take the decision not to pursue a criminal investigation.

61. Before taking any action the chair of governors will consult the headteacher, and the LA Designated Officer to discuss:

- whether the allegation is false or unfounded and no further action is required;
- whether the allegation is malicious and no further action is required;
- whether there is evidence of misconduct which should be treated as lesser misconduct;

- whether there is evidence of gross misconduct where the member of staff has admitted or been convicted of a criminal offence which can proceed to disciplinary and dismissal panel.
- whether there is evidence of gross misconduct, which has not resulted in a conviction or admittance of guilt, which requires an independent investigation.

62. If there is any doubt or agreement cannot be reached as to whether the matter is a gross misconduct issue the allegation will follow the gross misconduct procedures and unless the allegation is false, unfounded or there has been an admission of guilt or conviction will be independently investigated.

Referral for an independent investigation

63. Subject to the exclusions at paragraph 64 below all child abuse allegations, which, if proven, are considered to be gross misconduct, will be referred for an independent investigation, prior to a hearing before the governing body staff disciplinary and dismissal committee. This will be done by the chair of governors unless they are tainted and the independent investigator's contact in relation to the running of the investigation will be with the chair of governors and not the LA or headteacher.

64. An independent investigator will not be appointed until the statutory authorities have concluded their consideration of the allegation and referred it back to the governing body (chair) for disciplinary action. An independent investigator is not required in law for allegations:

- which beyond reasonable doubt are false or unfounded,
- where beyond reasonable doubt there is no evidence to corroborate the allegation
- which have been substantiated due to the member of staff admitting the allegation,
- where the member of staff has been convicted of a criminal offence in relation to it.

In the last two cases there should be sufficient evidence to undertake the disciplinary process without an independent investigation.

The independent investigation

65. The independent investigator will set the parameters of the investigation and interview all witnesses in order to ensure a completely impartial and unbiased investigation is carried out. The report will not contain any personal views or comments, conclusions or recommendations as these are matters for the committee to determine.

The independent investigation report

66. The report, once completed, will be given to the chair of governors. The chair of governors must give a copy of the report to the headteacher or another governor if the allegation is about the headteacher and must keep the report safely stored. The chair will inform the clerk that a disciplinary committee is required and to liaise with the LA HR representative over the date of the hearing and distribution of papers and the members of the staff disciplinary and dismissal committee. The member of staff and trade union representative will be informed of the arrangements.

67. The chair of governors through the clerk/ LA will ensure that all relevant papers, including the full investigation report, are sent to the member of staff and/or their union representative, the person presenting the case against the member of staff, members of the staff disciplinary and dismissal committee and local authority within the timescales set out in this procedure.

68. No evidence will be removed by any party from the investigation report.

Appointment of independent non-governor member on staff disciplinary and dismissal committees and staff disciplinary and dismissal appeals committees dealing with allegations of child abuse involving registered pupils

69. The law requires that the staff disciplinary and dismissal committee and the staff disciplinary and dismissal appeals committee to have at least two governors plus an independent non-governor with voting rights. The appeal committee will have the same number of governors as the first committee (but could have more). The membership of the committees must not overlap.

70. A disciplinary hearing will be held as soon as it can be arranged by the clerk to the staff disciplinary committee even if the member of staff has subsequently resigned or is on sick leave.

71. The member of staff will be provided with a copy of the agreed disciplinary and dismissal procedure and informed in writing of:

- the date, time place for the disciplinary hearing
- details of the allegations(s) together with any supporting document;
- names of any witnesses to be called if appropriate;
- name of the advisor to the headteacher or chair of governors
- a copy of the up-to-date procedure;
- their right to be accompanied by a companion or a representative of the member of staff's trade union;
- the purpose of the hearing and the range of possible outcomes;
- the membership of the staff disciplinary and dismissal committee and staff disciplinary and dismissal appeals committee;
- the name of the person presenting the case against the member of staff; and
- the date by which all relevant documentation must be returned to the clerk.

72. The clerk will arrange for the documentation from both parties to be distributed to the member of staff and their representative prior to the hearing, including up-to-date procedures, in accordance with the timescales set out in this procedure.

73. The staff member will be afforded the right to object to any member of the committee or the investigator on the basis of evidence that calls into question their ability to act impartially in the circumstances of the case. Objections should be sent to the chair provided they are not compromised. It will be for the chair to decide whether an objection is upheld.

At the hearing

74. The hearing will be conducted in a fair manner with all parties having the opportunity to present evidence and call and question witnesses. There will also be an opportunity for the presenting officer and the member of staff and/or their trade union representative to summarise their case. The clerk to the governing body will be present to record the hearing in detail.

75. Once this part of the hearing is completed there will be an opportunity for the staff disciplinary and dismissal committee to receive advice. Once this is received members of the committee will be left alone with the clerk to discuss the evidence and make their decision.

Decision reached after the hearing has taken place

76. Having considered all the evidence and taken into account advice provided, the staff disciplinary and dismissal committee will make their decision which will range from informal supportive action such as coaching or training etc, relegation to a lower grade, an oral warning, a written warning, a final written warning or dismissal. Dismissal will not be an option where lesser misconduct allegations are being determined.

77. Where possible this decision will be given verbally at the end of the hearing. If for some reason this is not possible the committee's decision will be given in writing to the member of staff as soon as possible after the hearing. At this point the member of staff will also be informed of their right to appeal and the timescale within which this must be made.

78. Details of allegations that are found to be malicious will be removed from the personal records of the member of staff. However, for all other allegations, a clear and comprehensive summary of the allegation, details of how the allegation was followed up and resolved and a note of any action taken and decisions reached will be kept on the confidential personnel file of the member of staff. In respect of child abuse allegations a copy of this documentation will also be provided to the member of staff

Disciplinary hearing – appeal

79. A member of staff is entitled to appeal against a decision of the staff disciplinary and dismissal committee or the headteacher or chair of governors (in respect of sanctions imposed under the lesser misconduct process). The notice of the intention and grounds for appeal needs to be lodged with the clerk to the staff disciplinary and dismissal appeals committee within the specified time limit set out in this procedure.

80. The appeal for both lesser and gross misconduct allegations will be heard by the disciplinary and dismissal appeals committee within a specified time set out in this procedure. Appeal hearings will focus on the issues set out in the appeal notification and may not always take the form of a complete hearing. The form of the disciplinary hearing will be a matter for the staff disciplinary and dismissal appeal committee to decide based on the nature of the staff members appeal and any comments they make. However, under certain circumstances, e.g. where new evidence comes to light or the first hearing process was flawed or biased, it may be appropriate to rehear part, if not all, of the case. The member of staff will be given notice of the date and time of the appeal hearing. Agreeable times and dates will be arranged for all parties concerned where possible.

81. The staff disciplinary and dismissal appeals committee may, after considering all the facts presented to it, including any new evidence, come to one of three conclusions:

- uphold the decision of the staff disciplinary and dismissal committee or headteacher or chair of governors (in respect of lesser misconduct proceedings);
- impose a lesser penalty; or
- conclude that no disciplinary action should be taken against the member of staff.

82. The staff disciplinary and dismissal appeals committee will not impose a more severe penalty than that imposed by the headteacher or chair of governors (in respect of the headteacher in lesser misconduct cases) or the staff disciplinary and dismissal committee (in gross misconduct cases).

83. The decision of the staff disciplinary and dismissal appeals committee will be final and the staff member will be informed in writing.

84. The member of staff will be given a copy of the minutes of the appeal hearing and a copy of the disciplinary and dismissal appeals committee's conclusions.

85. If, as the result of an appeal, disciplinary action is withdrawn, all details thereof will be expunged from the member of staff's personal file and they will be informed accordingly. The member of staff will be given a copy of the minutes of the appeal hearing and a copy of the disciplinary and dismissal appeals committee's conclusions.

Suspension

86. Suspension (or other action such as re-deployment to another post outside of school) pending disciplinary proceedings will normally be considered for gross misconduct allegations where:

- it appears to be necessary to exclude the member of staff from the school, for the protection of pupils, other staff or property or the orderly conduct of the school; or
- the continued presence at work of the member of staff would be an obstacle to proper investigation of the allegations made against that member of staff.

87. Suspension is a serious step and will not be used in a punitive way. Suspension will be on full pay and without loss of emoluments. The continued effect of the suspension will be kept under review and the outcome of the review reported to the member of staff and the governing body.

88. The decision to suspend can be taken by the headteacher or the chair of governors but only the governing body can end a suspension. However the governing body can delegate the task of ending a suspension to the chair of governors and/or the chair of the staff disciplinary and dismissal committee and the chair of the appeals committee.

89. Before taking a decision to suspend or take other action the headteacher or chair of governors will seek advice from the LA HR adviser and/or diocesan authority if appropriate. For child abuse allegations the advice of the LA Designated Officer and where the statutory authorities are involved their views will also be considered. The member of staff will be

called to an interview with the headteacher or chair before a suspension is implemented. Written notice will be given to all relevant parties following a decision to suspend.

Absence due to illness

90. If the staff member is absent due to sickness, the staff disciplinary and dismissal committee will usually postpone the hearing. However, where the staff member may be absent for an indeterminate period, the staff disciplinary and dismissal committee may decide to hold the hearing provided that it has informed the member of staff and their representative and has offered the opportunity to send a representative or submit written evidence to present their case. The representative will have the same opportunity as the staff member to present evidence, call witnesses and sum up the staff member’s case.

Summary

91. In adopting this procedure the governing body has taken due regard of advice and guidance from the LA and the Welsh Government in their Circulars on *‘Revised Staff Disciplinary and Dismissal Procedures for Maintained Schools in Wales’* in Circular xxxxxxx and *Safeguarding Children in Education: handling allegations of abuse against teachers and other staff’* – Circular 009/2014. It has also consulted the local trade union representatives.

92. The governing body will also consult further before any amendments are made to this disciplinary procedure.

Signed by chair of governors on behalf of the governing body:

Date approved:Date of review(by full governing body)

Date sent to LA

Annex J: Model letters

This Annex contains sample letters for schools and governing bodies to use at various stages of the staff disciplinary process.

Letter (i)

Lesser Misconduct - Sample letter for headteacher or chair of governors to send to member of staff informing them that an allegation has been made

Date

Dear

Allegation made on xxxxxxxx

On xxxxxxxx I received a letter from xxxxxxxx making an allegation of misconduct against you.

It is alleged that on xxxxxxxx at xxxxxxxx you – *give details of the allegation*

As set out in the governing body's agreed staff disciplinary procedures I am arranging for this matter to be investigated and you will shortly receive a letter inviting you and your union representative to a meeting with the investigator. I am also enclosing a copy of the governing body's staff disciplinary procedure which sets out your rights , including the right to be accompanied by a companion or a representative of your trade union at all meetings held in connection with any disciplinary action.

Yours sincerely

Headteacher (or Chair of Governors if the allegation is about the headteacher.)

Letter(ii)

Gross Misconduct - Sample letter for headteacher or chair of governors to send to member of staff informing them that an allegation has been made

Date

Dear

Allegation made on xxxxxxx

On xxxxxxx I received a letter from xxxxxx making an allegation of misconduct against you.

It is alleged that on xxxxxxxx at xxxxxxxx you xxxxxxx – *give details of the allegation*

As set out in the governing body's agreed staff disciplinary procedures I am arranging for this matter to be investigated, and you will shortly receive a letter inviting you and your union representative to a meeting with the investigator.

I am also enclosing a copy of the governing body's staff disciplinary procedure which sets out your rights , including the right to be accompanied by a companion or a representative of your trade union at all meetings held in connection with any disciplinary action.

OR the following for child abuse allegations

On xxxxxxx I received a letter from xxxxxx making an allegation of misconduct against you.

It is alleged that on xxxxxxxx at xxxxxxxx you xxxxxxx – *give details of the allegation*

This allegation includes behaviours which amount to potential child abuse. As I am required in law, I have referred the matter to the Local Authority Designated Officer (LADO). He/she has referred the matter to the statutory authorities and I am awaiting his/her advice as to the next stage and what information I can give you about the allegation. I am also enclosing a copy of the governing body's staff disciplinary procedure which sets out your rights , including the right to be accompanied by a companion or a representative of your trade union at all meetings held in connection with any disciplinary action.

Yours sincerely

Headteacher (or Chair of Governors if the allegation is about the headteacher.)

Letter (iii)

Sample letter inviting a member of staff to attend an investigation meeting in respect of misconduct allegations

Date

Dear

Ref: Investigation meeting on

I refer to my letter dated xxxxxx notifying you about an allegation that has been made against you.

I write to request your attendance at an investigation meeting with who is investigating the allegations made against you, as below:

a).....

b).....

c).....

The meeting will be held on at

You are entitled to be accompanied by a companion or trade union representative.

Yours sincerely

Headteacher or Chair of Governors (if allegation is about the headteacher)

Letter (iv)

Sample letter inviting a witness to attend an investigation meeting in respect of misconduct allegations

Date

Dear

I am writing to request your attendance at an investigation meeting with who is investigating an allegation made against

The meeting will be held onat

Select one of the following:

- a) As a member of staff you are entitled, if you wish to be accompanied by a companion or trade union representative.

Or for a witness that is not a member of staff the following

- b) You may be accompanied by a friend or companion if you wish

Yours sincerely

Headteacher or Chair of Governors (if the allegation is about the headteacher)

Letter (v)

Sample letter to a witness to request their attendance at a disciplinary hearing for either lesser or gross misconduct

Hearing in respect of lesser misconduct allegations before the headteacher (or chair of governors if the allegation is about the headteacher).

Date

Dear

Re: Disciplinary hearing on.....

I am writing to inform you that you are required to attend as a witness at the disciplinary hearing of The hearing will take place on and will commence at

I will be hearing evidence concerning the allegation(s).

Should you wish to discuss this matter please feel free to contact me on the above number.

Yours sincerely

Headteacher or Chair of Governors (if allegation is about the headteacher)

Sample letter for gross misconduct allegations to be heard by the governing body staff disciplinary and dismissal committee

Date

Dear

Re: Disciplinary hearing on.....

I am writing to inform you that you are required to attend as a witness at the disciplinary hearing of The hearing will take place on and will commence at

The governing body staff disciplinary and dismissal committee will be hearing evidence concerning the allegation(s).

Should you wish to discuss this matter please feel free to contact me on the above number.

Yours sincerely

Chair of the Staff Disciplinary and Dismissal Committee or Clerk to the staff disciplinary and dismissal committee

Letter (vi)

Sample letter to member of staff to request their attendance at a disciplinary hearing for either lesser or gross misconduct

Lesser misconduct allegations would be heard by the headteacher (or chair of governors if allegations are about the headteacher).

Date

Dear

Re: Disciplinary hearing on.....

I am writing to inform you that you are required to attend a disciplinary hearing into allegations made against you on xxxxxx which, if proved, would amount to lesser misconduct under the school's disciplinary policy. The hearing will take place on and will commence at

I will be hearing evidence concerning the(se) allegation (s).

You are also entitled to be accompanied by a companion or trade union representative.

Should you wish to discuss this matter please feel free to contact me on

Yours sincerely

Headteacher (or chair of governors if the allegations is about the headteacher)

Gross misconduct allegations to be heard before the staff disciplinary and dismissal committee

Date

Dear

Re: Disciplinary hearing on.....

I am writing to inform you that you are required to attend a disciplinary hearing before the staff disciplinary and dismissal committee into allegations made against you on xxxxxx which, if proved would amount to gross misconduct under the school's disciplinary policy. The hearing will take place on and will commence at

You are also entitled to be accompanied by a companion or trade union representative.

Should you wish to discuss this matter please feel free to contact me on

Yours sincerely

Chair or clerk of the Staff Disciplinary and Dismissal Committee

Both letters should also include the following information:

- details of the allegation(s) and any supporting documents
- names of any witnesses being called
- name of the advisor to the headteacher or chair of governors
- a copy of the up-to-date procedures
- the purpose of the hearing and possible outcomes
- the name of the person presenting the case against the member of staff
- the date by which all relevant documentation must be sent to the clerk to the governing body,
- the right to produce written statements which will be circulated to all parties in advance of the hearing; to ask questions relating to any written statements; to state their case in person and/or through a representative ;
- details of the possible sanctions that could apply; and
- the membership of the staff disciplinary and dismissal committee and the appeal committee (for a staff disciplinary and dismissal committee hearing)

Letter (vii)

Sample letter: Lesser Misconduct - Conclusion from a disciplinary hearing with the headteacher/chair of governors (if about the headteacher)

Notice of final written warning

Date

Dear

Final written warning

I refer to the disciplinary hearing before me which you attended on I am writing to confirm the decision taken that you be given a final written warning under the provisions of the school's staff disciplinary procedure.

The unsatisfactory conduct in respect of which this warning is given was *please give details*

The conduct/improvement expected is:

- xxxxxxxx
- xxxxxxxx
- xxxxxxxx

This warning will be placed on your personal file, but will be disregarded for disciplinary purposes after a period of XXX months, subject to the maintenance of satisfactory conduct. For the avoidance of doubt this means that this warning will remain in effect until **[insert date]**.

The likely consequence of further misconduct/insufficient improvement **[delete as appropriate]** during the period of this final written warning is that more formal action will be taken through the governing body's staff disciplinary and dismissal committee which may result in your dismissal. .

You have the right of appeal against this decision in writing to the clerk of the governing body within **[insert number]** working days of receipt of this letter. Your letter should clearly set out the grounds of your appeal.

Yours sincerely

Headteacher or Chair of Governors (if allegation is about the headteacher)

Letter (viii)

Sample letter: Lesser Misconduct – Conclusion from a disciplinary hearing with the headteacher/chair of governors (if about the headteacher)

Oral warning/written warning/training and/or development

Date

Dear

Oral warning/written warning/training and/or development

I refer to the disciplinary hearing before me which you attended on I am writing to confirm the decision taken that you be given an oral warning/written warning/training and/or development under the provisions of the staff disciplinary procedure.

The unsatisfactory conduct in respect of which this warning / training /development arrangement is given was - *please give details*

The conduct/improvement expected is:

- xxxxxxx
- xxxxxxx
- xxxxxxx

This warning will be placed on your personal file, but will be disregarded for disciplinary purposes after a period of **[insert number]** months, subject to the maintenance of satisfactory conduct. For the avoidance of doubt this means that this warning will remain in effect until **[insert date]**.

The likely consequence of further misconduct or insufficient improvement during the period of this warning may be further disciplinary action which could result in a final written warning or a referral to the staff disciplinary and dismissal committee where dismissal may be an outcome.

You have the right of appeal against this decision and your appeal, which should include the grounds, must be made in writing to the clerk of the governing body staff disciplinary and dismissal appeal committee within **[insert number]** working days of receiving this disciplinary decision.

Yours sincerely

Headteacher or Chair of Governors (if allegation is about the headteacher)

Letter (ix)

Sample letter: Lesser Misconduct – notice of appeal hearing with the staff disciplinary and dismissal appeals committee

Date

Dear

Invitation to attend a staff disciplinary appeal hearing

You have appealed against the training / development/oral warning/written warning/final written warning **[delete as appropriate]** given to you by the headteacher [or chair of governors in respect of the headteacher], and which was confirmed in writing to you on

The appeal hearing **[you should specify whether a complete rehearing or an appeal on specific grounds is required]** will take place on **[date]** at **[place]** at **[time]** a.m./p.m., as agreed. It will be conducted by the staff disciplinary and dismissal appeals committee of the governing body.

You have the right to be accompanied by a companion or trade union representative. If your chosen representative is unable to attend the appeal hearing at the time given above, you may propose another date and time for the meeting to take place.

You should ensure that a copy/copies/agreed bundles of any written submissions, upon which you wish to rely at the appeal hearing, are submitted at least **[insert number]** working days before the hearing, together with the names of any witnesses that will be attending on your behalf. The members of the staff disciplinary and dismissal appeals committee are.....

The decision on this appeal hearing is final and there is no further internal right of review. The possible outcomes from the appeal hearing are:

- **[insert details]**.

If there is any aspect of this letter or of the staff disciplinary procedure, to the extent that it applies to you, that requires further clarification, please contact me.

Yours sincerely

Clerk of the Governing Body's Staff Disciplinary and Dismissal Appeals Committee

Letter (x)

Sample letter: Lesser Misconduct - Conclusion of an appeal hearing before a governing body disciplinary appeal committee against the training/development/verbal warning/written warning given by the headteacher or chair of governors

Date

Dear

Confirmation of outcome of staff disciplinary appeal hearing

You appealed against the decision made at the disciplinary hearing held on when you were given a warning/training/development in accordance with the staff disciplinary procedure. The appeal hearing, before the governing body staff disciplinary and dismissal appeals committee was held on

I am now writing to confirm the decision taken by the staff disciplinary and dismissal appeals committee, which is that the decision of stands/the decision of is to be revoked [**amend as appropriate – specify if no disciplinary action is being taken or what the new disciplinary action is**].

You have now exercised your right of appeal under the staff disciplinary procedure. The decision on the appeal hearing is final and there is no further internal right of review.

Yours sincerely

Clerk to the Governing Body Staff Disciplinary and Dismissal Appeal Committee Note

Note: If the headteacher appeals against a warning given or any action suggested by the chair of governors under lesser misconduct procedures, the appeal would also be heard by the staff disciplinary and dismissal appeals committee.

Letter (xi)

Sample letter: Gross Misconduct – notice of a disciplinary hearing before the staff disciplinary and dismissal committee

Date

Dear

Invitation to attend a staff disciplinary and dismissal committee hearing on [insert date]

I am writing to advise you that as a result of the investigation into allegations that **[set out summary details of the staff member's alleged misconduct]**, your attendance is required at a formal disciplinary hearing before the governing body staff disciplinary and dismissal committee. If the allegation(s) is/are proven this could lead to the issuing of a written warning/final written warning or the termination of your employment.

The hearing will take place on **[date]** at **[place]** at **[time]** a.m./p.m. as agreed. It will be conducted by the staff disciplinary and dismissal committee of the governing body. The names of the committee members are

You have the right to be accompanied by a companion or trade union representative. If your chosen representative is unable to attend the hearing at the time given above, you may propose another date and time for the meeting to take place within five days of the date suggested in this letter for the hearing.

You also have the right to provide written submissions and to invite witnesses to give evidence in support of your case. You should ensure that a copy/copies/agreed bundles of any written submissions upon which you wish to rely at the hearing are submitted toat least **[insert number]** working days before the hearing, together with the names of any witnesses that will be attending on your behalf.

I confirm that Mr/Mrs/Miss/Ms **[insert name]**, who will be the presenting officer, has indicated that the following witnesses will be attending the hearing as part of the management case **[Insert details]**.

You will also have the right to appeal against the decision of the staff disciplinary and dismissal committee.

If there is any aspect of this letter or the staff disciplinary procedure, as it applies to you, that requires further clarification, please contact me.

Yours sincerely

Clerk of the Governing Body's Disciplinary and Dismissal Committee

Letter (xii)

Sample letter: Gross Misconduct – conclusion from a disciplinary hearing with the staff disciplinary and dismissal committee

Dear

Date

Specified training and/or development/oral warning/written warning/final written warning/confirmation of decision to dismiss you from your employment [delete as appropriate]

You attended a disciplinary hearing before the governing body oninto allegations that..... I am writing to confirm the decision taken that you be given specified training and/or development; or oral warning/written warning/final written warning; or that you be dismissed in accordance with the staff disciplinary procedure.

A. The following words should be used for any sanction other than dismissal. This applies to any category of school

Either - The training and development requirements identified are:..... A letter confirming these training and development requirements will be placed on your personal file but will be disregarded after a period of **[insert actual date of expiry]** provided the required training and development has been satisfactorily undertaken,

Or - This oral/written/final written **[delete as appropriate]** warning will be placed on your personal file but will be disregarded for disciplinary purposes after a period of months **[i.e. insert actual date of sanction expiry]**, provided that: **List the behaviours or improvements required or is/are to be achieved within the life of this warning.**

You have the right of appeal against this decision and your appeal should be made in writing to the clerk of the governing body within **[insert number]** working days of receiving this disciplinary decision. Your letter should include the grounds of your appeal.

B. The following words should be used for a sanction of dismissal

For community, community special and voluntary controlled schools and maintained nurseries the LA will issue the notice of dismissal within 14 working days of being notified of the decision of the staff disciplinary and dismissal committee or the staff disciplinary and dismissal appeal committee.

The staff disciplinary and dismissal committee considered all the information received and the reason for recommending to the LA your dismissal is as follows: **insert the reasons for dismissal.**

You have the right of appeal against this decision and your appeal should be made in writing to the clerk of the governing body staff disciplinary and dismissal appeal committee within **[insert number]** working days of receiving this disciplinary decision and must include the grounds of appeal.

Yours sincerely

Clerk to the Governing Body's Staff Disciplinary and Dismissal Committee

For voluntary aided and foundation schools the governing body is the employer and will terminate the contract of employment

The staff disciplinary and dismissal committee considered all the information received and the reason for your dismissal is as follows.....:

You have the right of appeal against this decision and your appeal should be made in writing to the clerk of the governing body within **[insert number]** working days of receiving this disciplinary decision. Your letter should include the grounds of your appeal.

Yours sincerely

Clerk of the Governing Body's Disciplinary and Dismissal Appeals Committee

Letter (xiii)

Sample letter: Gross Misconduct – notice of appeal hearing before the staff disciplinary and dismissal appeals committee

Date

Dear

Invitation to attend disciplinary appeal hearing

You have appealed against the written warning/final written warning/dismissal **[delete as appropriate]** confirmed in writing to you on

The appeal hearing will be xxxx **You should specify whether it will be a full re-hearing or some other arrangement . Your views about the form of the appeal have been taken into account** [The hearing will take place on **[date]** at **[place]** at **[time]** a.m./p.m., as agreed. It will be conducted by the staff disciplinary and dismissal appeals committee of the governing body. The members of the staff disciplinary and dismissal appeals committee are.....

You have the right to be accompanied by a companion or trade union representative. If your chosen representative is unable to attend the appeal hearing at the time given above, you may propose another date and time for the meeting to take place.

You should ensure that a copy/copies/agreed bundles of any written submissions, upon which you wish to rely at the appeal hearing, are submitted at least **[insert number]** working days before the hearing, together with the names of any witnesses that will be attending on your behalf.

The decision on this appeal hearing is final and there is no further internal right of review. The possible outcomes from the appeal hearing are:

- **[insert details]**.

If there is any aspect of this letter or the staff disciplinary procedure, as it applies to you, that requires further clarification, please contact me.

Yours sincerely

Clerk of the Governing Body's Disciplinary and Dismissal Appeals Committee

Letter (xiv)

Sample letter: Gross Misconduct – conclusion of the appeal hearing against warning/dismissal

Date

Dear

Confirmation of outcome of disciplinary appeal hearing before the staff disciplinary and dismissal appeals committee

You appealed against the decision made at the disciplinary hearing held on when you were given a warning/or you were dismissed, in accordance with the staff disciplinary procedure. The appeal hearing was held on

I am now writing to confirm the decision taken by the appeals committee who conducted the appeal hearing. The decision of stands **or** the decision of is to be revoked **[amend as appropriate – specify if no disciplinary action is being taken or what the new disciplinary action is]**.

You have now exercised your right of appeal under the staff disciplinary procedure. The decision on the appeal hearing is final and there is no further internal right of review.

Yours sincerely

Clerk of the Governing Body's Disciplinary and Dismissal Appeals Committee

Letter (xv)

Sample letter: Misconduct – confirming suspension from duty or other action following suspension meeting

Date

Dear

Suspension from duty with effect from [insert date] or Re-assignment of duties/working from home /undertaking work not involving contact with pupil etc

Either - Thank you for attending the meeting today. In accordance with the governing body's agreed staff disciplinary procedure I am writing to confirm your suspension from duty as from **(date)** pending the current investigation into the misconduct allegation **[insert details]**. **[Insert name]** has been assigned the role of investigating officer.

Or - Thank you for attending the meeting today. I am writing to confirm your suspension from duty as from **(date)**. In accordance with the governing body's agreed staff disciplinary procedure, I shall write to you again when I am in a position to be able to confirm who has been appointed to the role of investigating officer.

I would like to remind you that the act of suspension is not disciplinary action and does not imply a presumption of guilt, but given the nature of the allegations against you I consider it necessary to ensure that a full and fair investigation can take place.

Also enclosed is a copy of the school's staff disciplinary procedure. Please read the section entitled 'Suspension' as this details all the conditions relevant to you and your employment status while you are suspended from your place of work. You will note from the procedure that you may be accompanied at the above-mentioned meeting by a companion or trade union representative if you wish.

Alternative letter for non suspension

Thank you for attending the meeting today to consider the immediate arrangements for your employment whilst the allegations against you are being investigated and dealt with. In accordance with the staff disciplinary procedure, I am writing to confirm that – **Please choose one of the following or insert another option:**

- you have been re-assigned to other duties (give details), or
- arrangements have been made for you to work from home, or
- arrangements have been made for you to work at(give details)

You will be contacted in the near future to attend a meeting, so that you may be given the opportunity to comment and provide a statement to the investigating officer on the above allegation.

Please provide your written undertaking that you will not contact other members of staff or visit your place of work during the suspension period, save where it is not reasonably practicable and where authorised in advance by myself or the headteacher. I am also mindful of the isolation suffered by some members of staff who find themselves in such circumstances, I will make arrangements for the LA occupational health unit to contact you directly to offer you any support and any help required. The continued effect of the suspension will be kept under review and I will write to you to notify you if it is considered that the suspension should continue or should come to an end, and the reasons for that decision.

Notwithstanding the above, I hope that matters can be concluded promptly under the provisions of the school's disciplinary procedure.

***optional** I understand you are a member of union and that you may wish your representative to be party to all correspondence we send to you. I would be grateful if you could let me know who your representative will be by return post. I have included a prepaid envelope for this purpose.

Yours sincerely

Chair of the Governing Body/Headteacher

The chair will sign the letter in respect of the headteacher

Letter (xvi)

Sample Letter – Gross Misconduct - Ending Suspension

Note – this letter can be signed by the chair of governors, vice chair , or another governor such as the chair of the staff disciplinary and dismissal committee of the chair of the appeal committee if authority has been delegated by the governing body

Date

Dear

This letter is to confirm that your suspension implemented on is now ended. You will be contacted shortly about arrangements for you to start work again.

OR

This letter is to confirm that your alternative working conditions implemented on will cease fromYou will be contacted shortly about arrangements for you to commence work again.

Yours sincerely

Chair or governors (or any other governing body delegate that has been delegated responsibility)