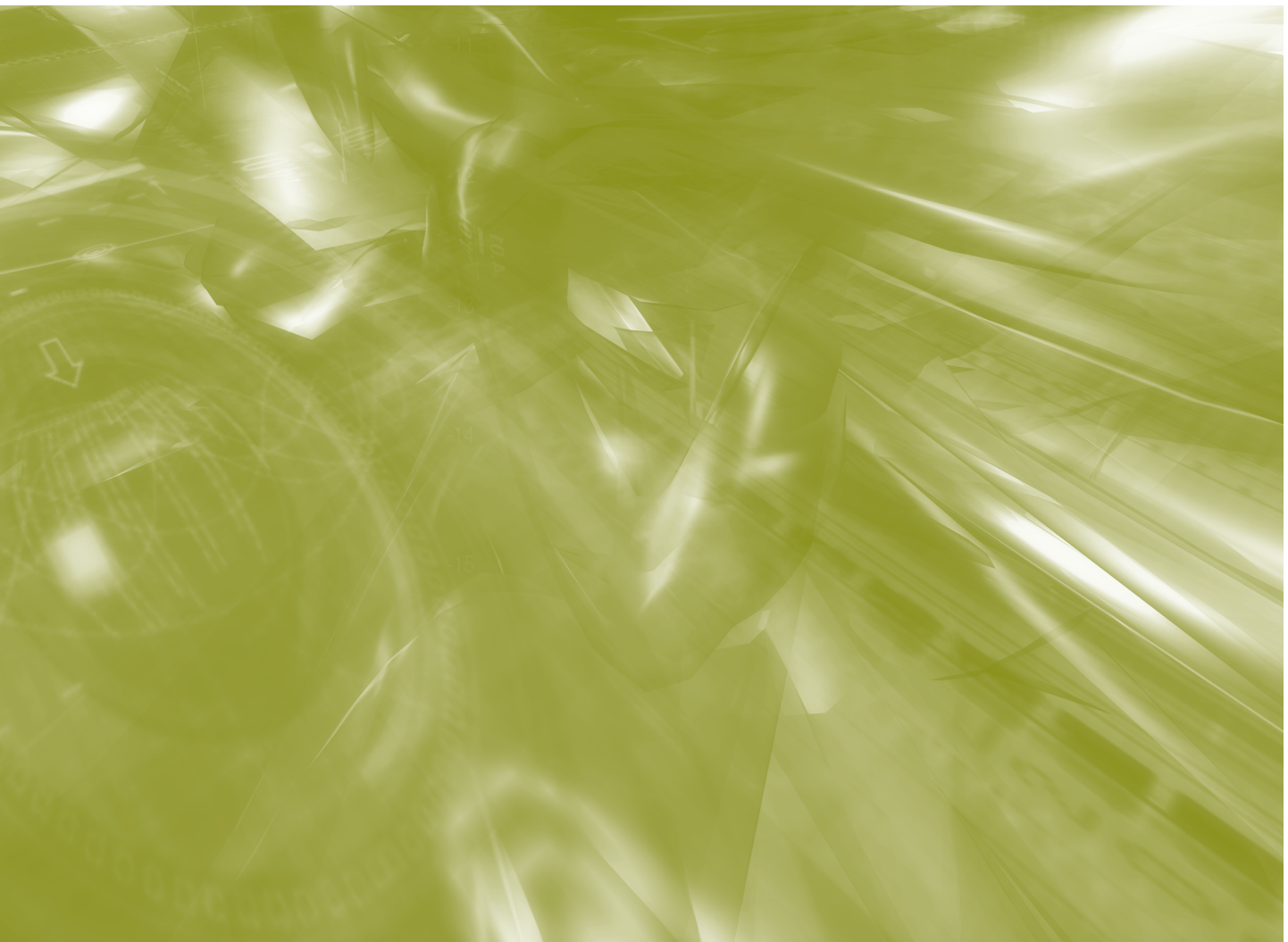


Disciplinary and dismissal procedures for school staff

Revised guidance for governing bodies



Guidance

Welsh Government circular no: 002/2020

Date of issue: February 2020

Replaces circular no: 002/2013

Disciplinary and dismissal procedures for school staff

Audience

Governing bodies of maintained schools, Interim Executive Boards (IEBs), local authorities (LAs), local authorities maintaining pupil referral units (PRUs), diocesan authorities and school staff unions. It may also be of interest to teaching agencies.

Overview

This document imposes requirements and offers guidance to governing bodies of maintained schools and local authorities on the management of the conduct and discipline of staff at maintained schools. These bodies must act in accordance with the guidance. There is a model procedure in Annex D which governing bodies are encouraged to adopt.

Action required

Governing bodies, Interim Executive Boards and local authorities must have regard to this guidance.

Further information

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Related documents

Safeguarding children in education: handling allegations of abuse against teachers and other staff

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Section 1: Introduction

- 1.1 This is statutory guidance for maintained schools, including pupil referral units (PRUs), 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 and local authorities **must** have regard to this guidance.
- 1.2 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.
- 1.3 The *Acas Code of Practice on discipline and grievance* gives practical guidance for handling these issues in the workplace. A copy of the latest Code can be accessed at www.acas.org.uk/.
- 1.4 Governing bodies are legally required to establish procedures for the discipline and conduct (including dismissal) of the staff for whom they are responsible and must ensure compliance with their agreed disciplinary procedures. A model staff disciplinary and dismissal procedure for maintained schools is included in Annex D along with a suggested timeframe for the lesser and gross misconduct processes in sections 6 and 7.
- 1.5 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.
- 1.6 Governing bodies should keep an accurate record of governors' training and suitability to carry out the duties required of the staff disciplinary and dismissal committee and the staff disciplinary and dismissal appeals committee.
- 1.7 This statutory guidance refers to the governing body when describing functions during the disciplinary/dismissal process. However, in order to maintain confidentiality and preserve the impartiality of the staff disciplinary and dismissal committee and disciplinary and dismissal appeals committee (the 'appeals committee'), the chair of governors ('chair'), will have been delegated responsibility by the governing body. The chair usually carries out a number of functions on behalf of the governing body provided they are not tainted. Further details on conflicts of interest and tainting are included in section 4.

The legal framework

1.8 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)
- The Staffing of Maintained Schools (Wales) Regulations 2006 (“the 2006 Staffing Regulations”), as amended
- The Government of Maintained Schools (Wales) Regulations 2005 (“the 2005 School Government Regulations”).

1.9 Governing bodies will also need to refer to the following legal provisions in carrying out their duties:

- Education Act 2002, section 175
- Education (Wales) Act 2014
- Employment Act 2002
- Employment Act 2008
- Data Protection Act 2018
- Freedom of Information Act 2000
- The Safeguarding Vulnerable Groups Act 2006
- The School Councils (Wales) Regulations 2005
- The Local Education Authorities and Children's Services Authorities (Integration of Functions) (Subordinate Legislation) (Wales) Order 2010.

Guidance

- School Governors' Guide to the Law <https://gov.wales/school-governors-guide-law>
- *Code of Practice 1: Code of practice on disciplinary and grievance procedures* www.acas.org.uk/
- *Safe and effective intervention – use of reasonable force and searching for weapons guidance document no: 097/ 2013* <https://gov.wales/safe-and-effective-intervention-guidance-schools-and-local-authorities>
- *Procedures for reporting misconduct and incompetence in the education workforce in Wales* guidance document no: 168/2015 (Welsh Government, 2015) <https://gov.wales/procedures-reporting-misconduct-and-incompetence-education-workforce>
- *Procedures for Whistleblowing in Schools and Model Policy* Welsh Assembly Government Circular No: 036/2007 (Welsh Assembly Government, 2007) <https://gov.wales/whistleblowing-schools-guidance-governors>
- *Complaints procedures for school governing bodies in Wales* Welsh Government circular no: 011/2012 (Welsh Government, 2012) <https://gov.wales/school-complaints-procedures-guidance>

- *Code of Professional Conduct and Practice for Registrants with the Education Workforce Council (EWC)* <https://www.ewc.wales/site/index.php/en/fitness-to-practise/code-of-professional-conduct-and-practice-pdf/file.html>
- *Education Workforce Council Disciplinary Procedures and Rules 2017* (EWC, 2017) <https://www.ewc.wales/site/index.php/en/documents/fitness-to-practice/153-disciplinary-procedures-and-rules.html>

Reference material related to child protection and safeguarding in education

- *Keeping learners safe: The role of local authorities, governing bodies and proprietors of independent schools under the Education Act 2002* guidance document no: 158/2015 (Welsh Government, 2015) <https://gov.wales/keeping-learners-safe>
- *Safeguarding children in education: handling allegations of abuse against teachers and other staff* Welsh Government Circular 009/2014 <https://gov.wales/handling-allegations-abuse-against-teachers-and-staff>
- *Safeguarding Children and Young People from Sexual Exploitation* Welsh Government Guidance <https://gov.wales/safeguarding-children-and-young-people-sexual-exploitation>
- *Wales Safeguarding Procedures* http://www.myguideapps.com/projects/wales_safeguarding_procedures/default/

Summary of changes from the Disciplinary and dismissal procedures for school staff circular 002/2013

1. Revisions to this guidance reflect the provisions laid out in the Staffing of Maintained Schools (Wales) (Amendment) Regulations 2014 in relation to the appointment of an independent investigator to investigate allegations of child abuse against teachers and other members of school staff.
2. They also reflect the content of statutory guidance in Welsh Government Circular 009/2014 *Safeguarding children in education: handling allegations of abuse against teachers and other staff*. That guidance sets out a clear process for dealing with allegations of abuse against teachers and other school staff and the involvement of key individuals.
3. We have removed any statements that indicated Interim Executive Boards (IEBs) were exempt from this statutory guidance. IEBs must follow this guidance in the same way as school governing bodies.
4. We have reviewed, refined and reordered circular 002/2013 and removed unnecessary duplication. We have also improved the flowcharts.

Section 2: Scope of the school disciplinary and dismissal procedures

2.1 A school governing body **must** 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 and site management staff
- laboratory technicians
- learning support assistants
- 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 that has had its delegated budget removed by the local authority, meaning that the local authority 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 nature of an allegation is such that the headteacher or chair 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 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. It will be for the agency, in discussion with the local authority and the school, 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 B for further details. For allegations of child abuse against agency staff see section 8.

Supply staff not engaged through an agency

- 2.5 Some schools engage supply staff through online networks or engage staff who have expressed an interest in supply cover. As well as ensuring these persons have a valid 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, this is not the case 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 local authority

- 2.6 The local authority is responsible for the discipline and dismissal of staff it directly employs to work at a school, e.g. school meals staff, centrally employed teaching staff, inclusion services staff, music support services staff, and literacy and numeracy tutors. Any disciplinary action taken will be in accordance with the local authority's own agreed procedures. Before exercising these functions the authority should consult with the governing body to such extent as the authority considers necessary.
- 2.7 If the content of an allegation is such that the headteacher or chair 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. This is not a dismissal or a termination of contract by the school, as the contract is held by the local authority.
- 2.8 Following an appropriate disciplinary process carried out by the local authority, the governing body should be informed by the local authority whether or not it is appropriate for the person to be re-employed at the school.

Pupil referral units

- 2.9 The provisions in the 2006 Staffing Regulations, as amended, also apply to pupil referral units by virtue of the Education (Pupil Referral Units) (Application of Enactments) (Wales) Regulations 2007.
- 2.10 References to the governing body in the 2006 Staffing Regulations should be read as references to the local authority maintaining the PRU – see paragraph 1 of Schedule 1 to the Education Act 1996.
- 2.11 The local authority, with input from the Management Committee of the PRU, has control over the conduct and discipline of staff, including grievance and capability issues, suspension and dismissal of staff. There will be procedures in place for these areas, which must be followed.

- 2.12 Management committees of PRUs should refer to *A Handbook for Management Committees of Pupil Referral Units* for further details:
<https://gov.wales/sites/default/files/publications/2018-11/handbook-for-management-committees-of-pupil-referral-units.pdf>.

Schools causing concern subject to intervention

- 2.13 In accordance with sections 35(7) and 36(7) of the Education Act 2002, where the governing body's right to a delegated budget has been suspended the local authority is responsible for the disciplinary and dismissal of staff.
- 2.14 If in any doubt about the employment terms of any staff members, governing bodies should seek legal advice from the legal department of its relevant local authority in the first instance.

Community, community special, voluntary controlled and maintained nursery schools which fall under Part 2 of the 2006 Staffing Regulations, as amended

- 2.15 The local authority 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 local authority 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. Voluntary controlled schools may agree to give the diocesan authority the same advisory rights as the local authority.
- 2.16 Where the governing body staff disciplinary and dismissal committee determines that a member of staff should cease to work there, the governing body **must** provide the member of staff with an opportunity to appeal before notifying the local authority in writing of its decision and the justification for it. If the member of staff works solely at the school, and has not resigned or been successful in their appeal the local authority **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 local authority **must** require the member of staff to cease working at the school where the disciplinary hearing has taken place with immediate effect.

Voluntary aided and foundation schools that fall under Part 3 of the 2006 Staffing Regulations, as amended

- 2.17 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** establish a staff disciplinary and dismissal committee and an appeals committee if one is not already in place

and arrange for a hearing. They **must** also give the member of staff the opportunity to appeal against the decision of the first disciplinary and dismissal committee within the agreed timeframe before taking action on any decision. The staff disciplinary and dismissal committee or the appeals committee **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 to summarily dismiss. A representative of the local authority 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. Voluntary controlled schools may agree to give the diocesan authority the same advisory rights as the local authority.

- 2.18 If the school is a Church in Wales or Roman Catholic voluntary aided school the diocesan authority has the same advisory rights as the local authority. 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 Governing bodies **must** establish a staff disciplinary and dismissal committee and a staff disciplinary and dismissal appeals committee ('appeals committee'). In accordance with Regulation 55 of the 2005 School Government Regulations, 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)
 - determine whether a person should have their contract of employment terminated, or not have it renewed (voluntary aided and foundation schools)
 - hear representations in relation to such matters.
- 3.2 The governing body **must** delegate responsibility for considering appeals against decisions of the staff disciplinary and dismissal committee to a separate appeals committee. In lesser misconduct cases which result in action short of dismissal, the appeals committee will also hear appeals against decisions which have not gone through the staff disciplinary and dismissal committee but have been made by the headteacher in respect of members of staff, and decisions of the chair in respect of headteachers.
- 3.3 In accordance with 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 appeals committee **must not** 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.
- 3.4 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. The membership of the committees **must not** overlap. See section 8 for further information about allegations of child abuse, including details of the persons who are not considered independent.
- 3.5 Governors who have a conflict of interest or who are tainted **must not** be members of either committee. The governing body **must** identify for both the staff disciplinary and dismissal committee and the appeals committee a sufficient number of untainted governors who are capable of acting fairly. 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 prior to sitting on any staff disciplinary and dismissal committee.

- 3.6 Governing bodies **must** 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.
- 3.7 The governing body **must** appoint a clerk to both committees in accordance with the 2005 School Government Regulations. The clerk **must** have undertaken the mandatory clerk training. Wherever possible, the clerk to the governing body should clerk both committees. Given the often highly sensitive nature of the information contained within allegations it would be preferable if the clerk were not a member of the school support staff, i.e. the headteacher's secretary – particularly if the allegation is about the headteacher. Further information on the role of the clerk can be found in section 9.
- 3.8 The headteacher **must not** be a member of either committee, but may attend meetings and disciplinary hearings to respond to queries, to present the case (providing they are not the subject of the allegation or a witness) or to give evidence. It is at the governing body's discretion to decide if teacher/staff governors should not be members of the staff disciplinary and dismissal committees so as not to compromise them, although they may attend hearings to give evidence.
- 3.9 The chair of the governing body should not normally sit on either committee, given their likely involvement in the initial consideration of an allegation alongside the headteacher. If the governing body decides that the chair (due to their expertise) should be a member of the staff disciplinary and dismissal committee or the appeals committee this decision should be included in the school's staff disciplinary and dismissal policy and clearly noted in the minutes of the governing body meeting. An alternative governor (not involved in either committee) should be 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. If the chair is tainted or has a conflict of interest they should declare this as soon as possible so that the role of managing the disciplinary process can be given to the vice chair.
- 3.10 Governors who are suspended from the governing body **must not** be a member of either committee. Associate pupil governors **may not** be members of either committee and **may not** attend any meetings or hearings of either committee, nor can they be present if these matters are referred to in a full governing body meeting.

Section 4: Fair procedures and impartiality

4.1 The whole disciplinary process must be fair and be seen to be fair and give expression to the principles of natural justice, ensuring 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 the disciplinary and dismissal committees **must** reach decisions in a procedurally fair and balanced way to ensure a fair hearing.

Conflicts of interest and tainting of governors

4.2 It is usual for the chair of governors, having been delegated responsibility by the governing body, to carry out a number of functions on behalf of the governing body.

4.3 Where a chair of governors has a conflict of interest or is unable to act fairly, they should inform the headteacher, local authority and member of staff in writing as soon as possible that they are unable to act on behalf of the governing body. In these circumstances an alternative governor who is not tainted should be nominated. This would usually be the vice chair and this decision should be minuted.

4.4 Committee members **must** be impartial and unbiased and **must** address the issues objectively and independently. Membership of the staff disciplinary and dismissal committee and appeals committee **must** be reviewed at the start of each case and any governor who has a conflict of interest, is tainted or is otherwise compromised, **must** 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 with any of the parties involved, including witnesses
- 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 instigated the allegation
- is the subject of related complaints or grievances or has prior involvement in the allegation or events leading up to it.

4.5 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. Members of the committees should rely on evidence that is part of the hearing arrangements and disregard information about allegations that may have been shared through social media or other 'hearsay' mechanisms.

4.6 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 a claim that the members are tainted having formed a view in advance.

- 4.7 If a situation arises where a substantial number of governors are tainted by virtue of having discussed or otherwise acquired detailed knowledge of the substance of an allegation of gross misconduct, the chair 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. 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 tainted governors from the staff disciplinary and dismissal committee or appeals committee and appointing replacement governors. The governing body may remove governors they appoint, i.e. community, partnership and appointed parent governors. The local authority and diocesan authority or Trust may remove their appointed governors. The outcome should achieve enough impartial governors to complete the disciplinary process.
- 4.8 If the governing body considers it appropriate to use governors who may be perceived to be tainted, they **must** take all possible measures to ensure that consideration of the case is fair, balanced and seen to be so. For example, non-governor members with relevant experience and expertise 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. This decision should be discussed with the local authority. **Please note:** these arrangements are outside the requirements to have a non-governor with voting rights for allegations of child abuse.
- 4.9 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, 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.
- 4.10 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.

- 4.11 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.
- 4.12 Another option is for the governing body to determine that, if a member of the staff disciplinary and dismissal committee is unable to act fairly, a governor identified to be a member of the 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 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.
- 4.13 Governing bodies **must** make alternative arrangements clear as part of the school's staff disciplinary procedures and **must** minute such decisions. Where alternative arrangements have to be implemented all parties should be informed immediately and given the reasons.
- 4.14 Regulation 55(6) of the 2005 School Government Regulations prohibits members who have taken part in the staff disciplinary and dismissal committee from taking part in the proceedings of the appeals committee. The appeal panel and its procedures must both be fair and impartial. The staff disciplinary and dismissal committee should have taken a full note of its proceedings. The decision must be communicated in writing to the member of staff along with the reasons for it so that they can understand why the decision has been made. Therefore, the appeals committee should not need any further clarification of the decision by a member of the disciplinary and dismissal committee.

Conflicts of interest

- 4.15 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).
- 4.16 If a member of the staff disciplinary and dismissal committee or appeals committee declares an interest and withdraws, 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.
- 4.17 It is for the chair (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 local authority and should take account of their advice.

Section 5: Governing body training and access to advice

Training on staff disciplinary and dismissal procedures

- 5.1 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. While there is no mandatory training for governors on staff disciplinary matters the expectation is that the local authority will have a training programme in place covering staff disciplinary issues.
- 5.2 The governing body should ensure that members of the staff disciplinary and dismissal committee and the appeals committee receive appropriate and timely training from the LA. Waiting until a disciplinary case arises may cause unnecessary delays in the disciplinary process. If necessary, and wherever possible, committee members should receive refresher training when they have been made aware that they will have to deal with a disciplinary matter.
- 5.3 Examples of what the training should include are:
- relevant legislation, including employment, education, equal opportunities and data protection legislation
 - ACAS's Code of Practice 1 – discipline and grievance
 - 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, including specific training for the chair of the panel
 - 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).

Governing bodies should keep a record of the training members have received on disciplinary and dismissal issues along with the date undertaken.

Access to advice

- 5.4 A governing body's agreed procedure should provide for the staff disciplinary and dismissal and appeals committees to have access to appropriate and timely professional advice, including legal and HR advice.
- 5.5 In most cases the local authority (and/or regional consortium, and/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, the local authority 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.

- 5.6 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 local authority's scheme for financing its schools and/or a school's service level agreement with the local authority should provide for this. Governing bodies should also bear in mind that under section 37(5) of the Education Act 2002, local authorities can charge costs they incur in dismissing a member of staff to the school's budget if they have good reason for doing so, e.g. where the local authority has not been consulted about the dismissal, or the local authority's advice has not been considered, or has been rejected out of hand by the staff disciplinary and dismissal committee and/or appeals committee.
- 5.7 Where it is necessary for the staff disciplinary and dismissal committee to seek advice during a hearing, such advice should 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, although the local authority and union advisers may be on hand to deal with any queries that arise during the decision-making.

Section 6: Lesser misconduct

- 6.1 Lesser misconduct allegations should be dealt with in accordance with the school's disciplinary policy. This should detail under what circumstances the headteacher, or chair if the allegation is about the headteacher, may decide to take informal action such as advice, coaching or training as part of the normal management/supervisory role.
- 6.2 The aim of informal action is to help and encourage the member of staff to improve. To do so, they will need to understand:
- what they need to do in relation to their conduct
 - how future contact will be monitored and reviewed
 - the time period over which conduct will be monitored
 - that formal action might be taken if the required improvements in conduct are not made.
- 6.3 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 if the allegation is against the headteacher. This is a decision for the governing body to take and **must** be minuted. The governing body's disciplinary procedure should include reference to such delegation arrangements.
- 6.4 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
 - 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 through not having due regard
 - 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
 - use of mobile phones/text messaging/social networking sites which is incompatible with the school's acceptable use policy.

Lesser misconduct – hearing with headteacher or chair of governors (in respect of the headteacher) – suggested timescales

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). The investigation should commence as soon as possible following receipt of allegation. Suggested timescales are as follows.

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. If the former, the timescales suggested below do not apply.

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.

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

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

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

Days 21–23: Hearing takes place.

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

Lesser misconduct – appeal hearing – suggested timings

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

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

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

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

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

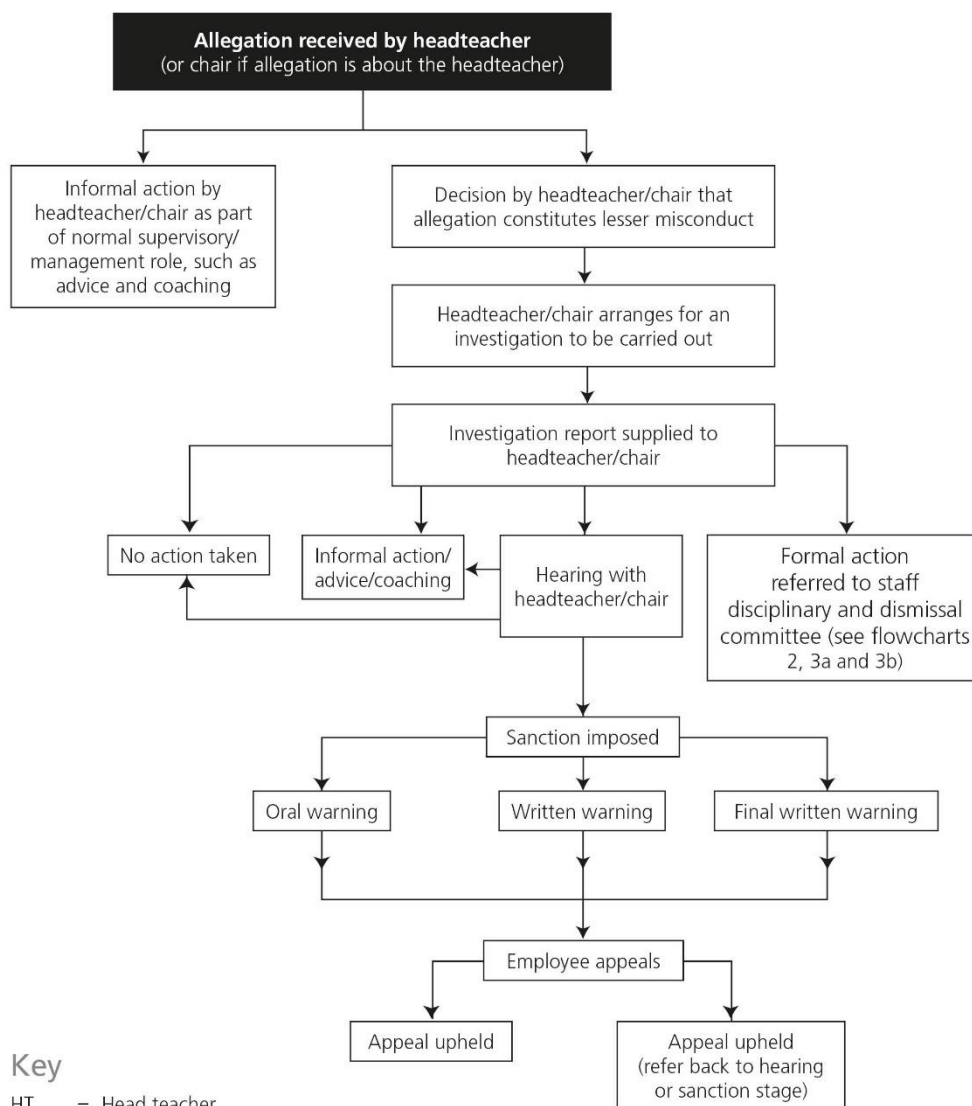
Days 19–22: Parties prepare for the hearing.

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

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

Flowchart 1

Lesser misconduct



Key

- HT = Head teacher
- LADO = Local authority designated lead officer for safeguarding in education
- DBS = Disclosure and Barring Service
- SDDC = Staff disciplinary and dismissal committee
- EWC = Education Workforce Council
- GB = Governing body
- VC = Voluntary controlled
- VA = Voluntary aided
- LA = Local authority

Stage 1 – Formal process for lesser misconduct

- 6.5 On receipt of an allegation, the line manager (which may be the headteacher or chair if the allegation is about the headteacher) will consider the level of misconduct and whether it is in line with the misconduct behaviours listed in the school's agreed disciplinary policy. If so, the line manager should consider whether it is appropriate for the matter to be dealt with by informal discussion or to refer the matter for formal action. This is not a prejudgement of the allegation but is merely to determine the process for dealing with the allegation.
- 6.6 The member of staff should be informed in writing as soon as possible that formal lesser misconduct procedures are being engaged and that 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

- 6.7 A full and thorough investigation must be completed, but its extent will 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/formal action. This may be a member of the senior management team or other independent person from the local authority or diocesan authority. Where the allegation is about the headteacher the chair should always arrange for the investigation to be carried out externally by the local authority, diocesan authority or other independent person(s).
- 6.8 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 work colleague or a representative of their trade union at an investigation interview meeting.
- 6.9 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 to consider. It will be for the chair to determine whether the circumstances of the objection are valid and therefore whether to arrange for a new investigator to be appointed. The chair may discuss the matter with the local authority and should take account of the advice received. The chair should notify the member of staff in writing of the decision.
- 6.10 Schools are expected to release staff members who are witnesses for interview. Witnesses cannot be mandated to speak to the investigator and may prefer to present written statements. It should be made clear to all parties that an investigation will not necessarily result in disciplinary action. If the headteacher or the chair has any concerns they should seek advice from the

local authority's HR adviser.

- 6.11 Notes will be taken during interviews and minutes produced within two school days where possible using any agreed recordings, handwritten notes or records signed and dated by relevant parties. Where possible a written record of oral statements should be made at the time the statement is made and be verified by a witness. 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. The principles detailed in section 7 about the conduct of an investigation, the framework for an investigation report and the interviewing of members of staff and witnesses can also be applied to investigations into allegations considered to be lesser misconduct.
- 6.12 As soon as practicable after the investigation is concluded the investigating officer should present the findings in a written report to the headteacher (or the chair if the allegation is against the headteacher) who will 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.
 - 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).
 - 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 and the HR representative in the local authority. If the matter involves the headteacher, the chair is advised to consult and discuss the matter with the local authority before taking any action.
- 6.13 The member of staff (and their union representative if requested by the member of staff) should be informed in writing as soon as possible what action, if any, will be taken following the investigation. This could be in the form of a hearing before the headteacher (or chair if the allegation is about the headteacher) if formal lesser misconduct procedures are being applied, or if the evidence supports, a hearing before the staff disciplinary and dismissal committee as appropriate. Where there is conflicting evidence the matter should be referred to a hearing before the headteacher or chair.
- 6.14 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

6.15 Where the investigation indicates sufficient evidence to warrant a disciplinary hearing with the headteacher (or the chair if the allegation is against the headteacher) a disciplinary hearing must be arranged. It is advisable for a local authority HR representative to be present with the chair at a hearing against the headteacher. The guiding principles for conducting both a lesser misconduct and/or gross misconduct hearing are set out in section 9. Where references are made to the staff disciplinary and dismissal committee, in lesser misconduct cases this may refer to the headteacher or chair. **Please note: in lesser misconduct cases the following paragraphs do not apply: 9.7, 9.9, 9.20, 9.21, 9.22 and 9.23.**

6.16 The member of staff should be given as much information as possible and appropriate, in writing, providing that it does not put anyone at risk of intimidation by identifying a pupil who may be a witness or a member of staff who has whistleblown.

6.17 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
- a copy of the investigation report and supporting documentation
- their right to:
 - produce written statements and/or other evidence which will be circulated to all parties in advance of the hearing
 - ask questions relating to any written statements and/or other evidence so produced
 - state their case in person and/or through a representative
 - produce witnesses
 - be accompanied by a work colleague or a representative of the member of staff's trade union.

6.18 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. Detailed notes of the meeting should be produced as soon as possible 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

6.19 Following the hearing, the headteacher (or chair in respect of the headteacher) with support from the local authority HR adviser will decide whether matters can be dealt with by giving advice, counselling, training, instruction, coaching or other appropriate managerial strategies. This may be delegated to a member of the senior management team with advice and support from the local authority HR adviser. A senior member of staff will not be involved where the chair is dealing with allegations against the headteacher.

Possible sanctions/formal action

6.20 Where the headteacher (or chair 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 6.21.

Warnings and sanctions

6.21 Subject to paragraph 6.20 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.

6.22 It is not necessary for a warning to be given in the order listed above; however, final warnings may not precede other warnings. 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 specified period of the warning
- 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

6.23 The member of staff should be informed of the sanction at the end of the hearing with their colleague or 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 union representative or work colleague, 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.

6.24 The warning must be for a fixed period of time expressly stated in the warning itself (see paragraph 6.25 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.

6.25 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, which could lead to dismissal.

Warning periods

6.26 Suitable warning periods might be:

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

6.27 These are suggested reasonable timescales. 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, and the timescales set out in the governing body's own agreed disciplinary procedure. There is discretion for warnings to be placed on record for different lengths of time than the periods above.

6.28 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

6.29 The school's disciplinary procedures must 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.

6.30 The disciplinary and dismissal appeals committee is responsible for hearing any appeal. It may not always be necessary for an appeal to be a rehearing, 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 appeals committee

should take into account the views of the member of staff as to whether they wish to have a full rehearing and the reasons why.

- 6.31 The appeal procedure should set a time limit for the member of staff to notify the clerk to the appeals committee of their intention and reasons for an appeal. The notice to appeal and the reasons for the appeal should be put in writing. The member of staff should be informed in writing of the date and time of the appeal hearing in advance. Subject to mutual agreement, there may be some flexibility with timescales, e.g. where there is a large amount of paperwork involved or unavailability of staff.
- 6.32 The appeals procedure to be followed for lesser misconduct cases should be the same as that set out in section 9 for gross misconduct cases considered by the appeals committee. For example, if the headteacher has awarded a sanction under lesser misconduct procedures the appeal will be referred to the appeals committee. An appeals committee 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 that fundamentally repudiate the contract of employment so that the governing body may be justified in dismissing or asking the local authority to dismiss the member of staff, following a disciplinary hearing where the evidence supports the allegation(s). In such cases, dismissal is likely to be without notice or payment in lieu of notice. Gross misconduct offences should be clearly set out in the governing body's disciplinary procedure.

7.2 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 to be gross misconduct, which might include:

- specified conduct that 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
- theft or fraud in and out of the workplace
- deliberate and serious damage to property belonging to the LA, the school, fellow staff or pupils
- violent behaviour, including physical assault towards adults
- continuous bullying of adults
- harassment or unlawful discrimination on any grounds
- sexual misconduct at work
- physical violence towards adults
- 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
- dishonesty (e.g. tampering with examination papers, revealing examination papers prior to examinations, or altering examination results and assessments)
- 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 or parents/carers.

Gross misconduct – hearing before the staff disciplinary committee – suggested timescales

The general timescales allow up to 40 school days, or eight school weeks, 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.

Days 1–10: A mutually agreed date for hearing is set and a letter confirming the date and full details is sent.

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

Days 20–25: Distribution of documentation between the person presenting the case and the member of staff.

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

Day 35: Papers sent to members of the staff disciplinary and dismissal committee (five days' notice required in accordance with the 2005 School Government Regulations).

Day 40: Date of hearing – oral outcome given if decision is agreed by committee (other than in exceptional circumstances).

Days 40–44: Written notification of outcome, detailing the right of appeal, is sent to the member of staff.

Gross misconduct – appeal hearing – suggested timescales

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).

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.

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

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

Days 26–34: Case for appeal is prepared.

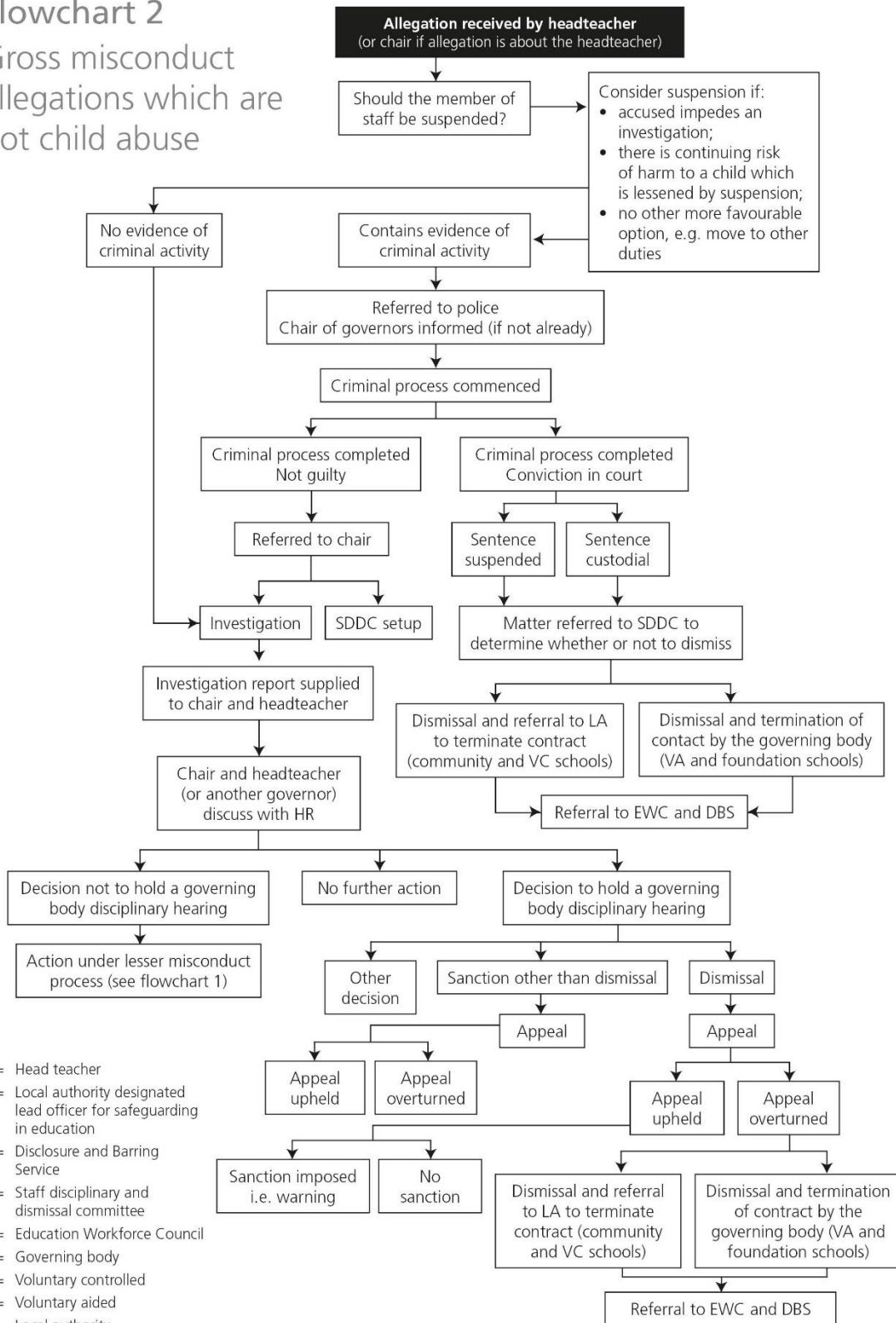
Day 35: Papers sent to the members of the staff disciplinary and dismissal appeals committee five days prior to the appeal in accordance with the 2005 School Government Regulations.

Day 40: Date of appeal hearing – oral outcome given if decision is agreed by committee (other than in exceptional circumstances).

Days 40–44: Written notification of outcome is sent to the member of staff.

Flowchart 2

Gross misconduct allegations which are not child abuse



Key

- HT = Head teacher
- LADO = Local authority designated lead officer for safeguarding in education
- DBS = Disclosure and Barring Service
- SDDC = Staff disciplinary and dismissal committee
- EWC = Education Workforce Council
- GB = Governing body
- VC = Voluntary controlled
- VA = Voluntary aided
- LA = Local authority

Receipt of allegation of gross misconduct

- 7.3 Allegations of gross misconduct should be referred to the headteacher (or the chair if the allegation is against the headteacher). The headteacher should inform the chair of all gross misconduct allegations that come to their 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 therefore 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 local authority HR adviser, and where appropriate, the diocesan authority. If the allegation is about the headteacher, the chair is strongly recommended to contact the local authority HR adviser.
- 7.5 The headteacher or chair's 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 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 local authority HR adviser cannot agree on a way forward, then gross misconduct procedures should be applied.
- 7.7 Taking all the circumstances into account, and with support from local authority HR services, the headteacher or chair may consider reassignment to other duties or suspension pending disciplinary proceedings. Suspension does not determine the person's guilt or innocence in respect of the allegations; however, it is a serious step and should not be an automatic response. Suspension is likely to have consequences for the person suspended, e.g. reputational damage, whether or not they are ultimately vindicated. Other courses of action such as reassignment to other duties should also be considered depending on the allegation. Section 10 contains further information.

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 local authority of the referral. Investigation by the police takes priority over the school's disciplinary proceedings. The chair or staff disciplinary and dismissal committee should take no disciplinary action, including investigation, while the police investigate the matter as it could jeopardise potential criminal proceedings. Furthermore, at this stage, the chair is unlikely to have access to the full information from the statutory authorities, making it difficult to make a judgement. If in doubt, chairs are advised to contact the local authority to discuss. However, a decision to suspend a member of staff or reassign them to other duties may be taken at any point.

Action by the governing body

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

7.10 The chair should commence disciplinary proceedings, including arranging for 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 staff 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 chair should discuss the case and necessary action with the local authority. 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 also the wider aspects of the member of staff's behaviour in relation to the allegation, 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. consider whether the member of staff has failed 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 and appropriate, providing that it does not put anyone 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. 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 work colleague or a representative of the member of staff's trade union at all meetings held in connection with the disciplinary matter. As disciplinary hearings are not courts of law, it is recommended that members of staff and witnesses do not appoint legal representatives 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. **Please note: independent investigations in the case of allegations of harm caused to a child are covered in section 8.** Members of the staff disciplinary and dismissal or 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 local authority (or diocese) may be able to advise on a suitable independent person. Working in collaboration with other authorities this may be an officer from another local authority or a person from a list held by the local authority. This should always be the case if the local authority 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 local authority or diocesan officer, or another independent person who has no involvement in the issues surrounding the allegation. The local authority's and diocesan's views should be sought before the investigation takes place. If the local authority 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. It will be for the chair to determine whether the circumstances of the objection are valid and if necessary to arrange for a new investigator to be appointed. The chair may discuss the matter with the local authority 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, gather evidence from the member of staff and witnesses relating to an allegation and produce a balanced factual report of the evidence.

7.21 The person investigating should:

- be clear about the nature and content of the 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
- ensure that the investigation is thorough but seek to avoid interviewing more people than strictly necessary
- 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 record interviews (in the latter case having sought the agreement of the person being interviewed)
- consider whether translation or interpretation facilities are required
- consider accessibility issues
- 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 (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.

It is also good practice to agree the remit of the investigation with the member of staff against whom the allegation has been made.

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
- any other individual as deemed relevant by the investigator.

7.23 The investigator should not investigate any matter that is not included in the referral from the chair, which means that the chair has to be very clear about what issues need to be investigated. If the investigator is asked to investigate or otherwise identifies additional issues, they should immediately contact the chair and await instructions about how to proceed. The chair should seek advice from the local authority on any additional issues raised and 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 paid union 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), 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 witnesses at risk of intimidation. 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 so that they are 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 local authority offices. Witnesses should be offered the opportunity to bring a work colleague, or their trade union representative with them. The written consent of the parents/carers should be requested before any child is interviewed and/or is asked to produce a written statement, and any child or vulnerable adult should be 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 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 child 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 (or chair and another governor in respect of the headteacher). The investigator should inform the local authority that their investigation is complete and that a report has been submitted to the headteacher/chair.

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 include:

- the date the referral was received by the investigator
- the name of the referrer (normally the chair of governors, unless they are tainted)
- details of the allegation
- the name of the person making the allegation
- the name of the member of staff against whom the allegation has been made
- a list of persons/witnesses interviewed
- a list of persons not interviewed and the reasons why

- a list of documents considered, e.g. school policy, reports, police/court evidence, etc.
- evidence and analysis of facts gathered
- a summary of the factual findings
- the name of the investigator
- the date the investigation was completed.

7.33 The chair may consider that 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.

7.34 After seeking advice from the local authority and with the consent of all parties, the chair should consider whether to reopen the investigation to ensure the report is complete and balanced, and addresses the concerns above. This may include the appointment of a different independent investigator.

7.35 It is also possible that the member of staff, their work colleague or union representative may object to the report on one of the grounds listed above. Should this occur the chair should consult the local authority for a decision on whether to reopen the investigation.

Receipt of the investigation report

7.36 The role of the headteacher and chair (or chair 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 may be that:

- there is insufficient evidence to support the allegation(s) 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 another governor in respect of the headteacher)
- the allegation(s) amount to lesser misconduct rather than gross misconduct, which can be dealt with by the headteacher, chair or senior management of the school – see section 6
- the allegation(s) is/are supported by evidence and are sufficiently serious to require full consideration by the governing body's disciplinary and dismissal committee.

7.37 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 will receive an investigation report into allegations made about the headteacher. They **must** not make a decision about how to proceed in isolation but **must** discuss the matter with the local authority HR representative. The clerk to the governing body **must** be present at these meetings to record discussions and decisions made and to ensure that appropriate letters can be written and arrangements

for any hearing commenced. The member of staff must be informed of any decision made as soon as possible in writing by the clerk to the staff disciplinary and dismissal committee.

7.38 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 a disciplinary hearing

7.39 Having considered all the evidence and taken 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 for further information
- the allegation of gross misconduct is proven.

If an allegation is judged to be malicious the governing body **must** consider the circumstances and what action should be taken (including a separate investigation and possible disciplinary action) against the person making the allegation.

7.40 Depending on the severity of the misconduct an appropriate sanction should be imposed if the allegation is upheld, including:

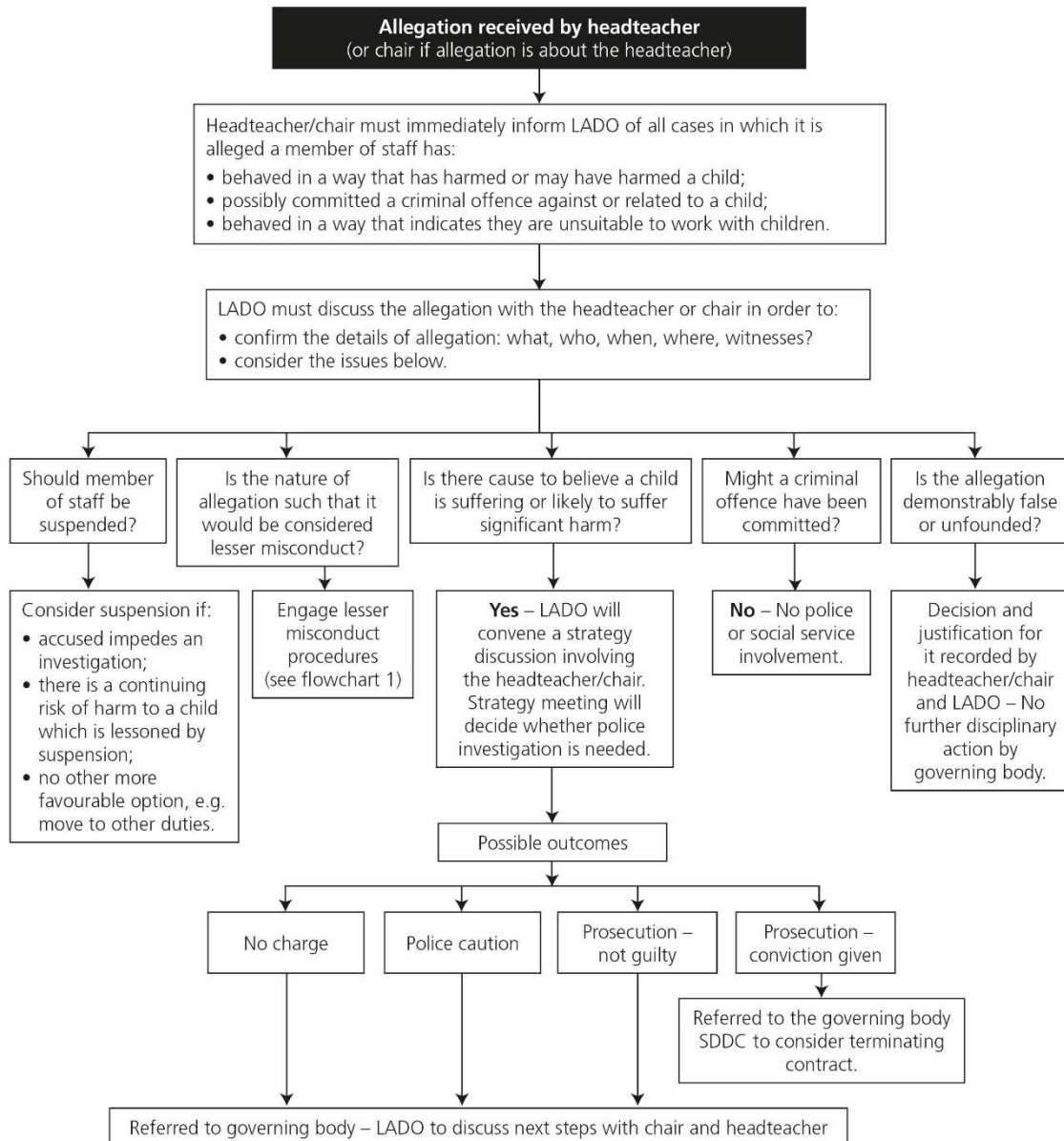
- specified required training and development
- relegation to a lower-grade position (if practical) and/or loss of salary
- an oral warning, a written warning, or a final written warning
- summary dismissal.

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

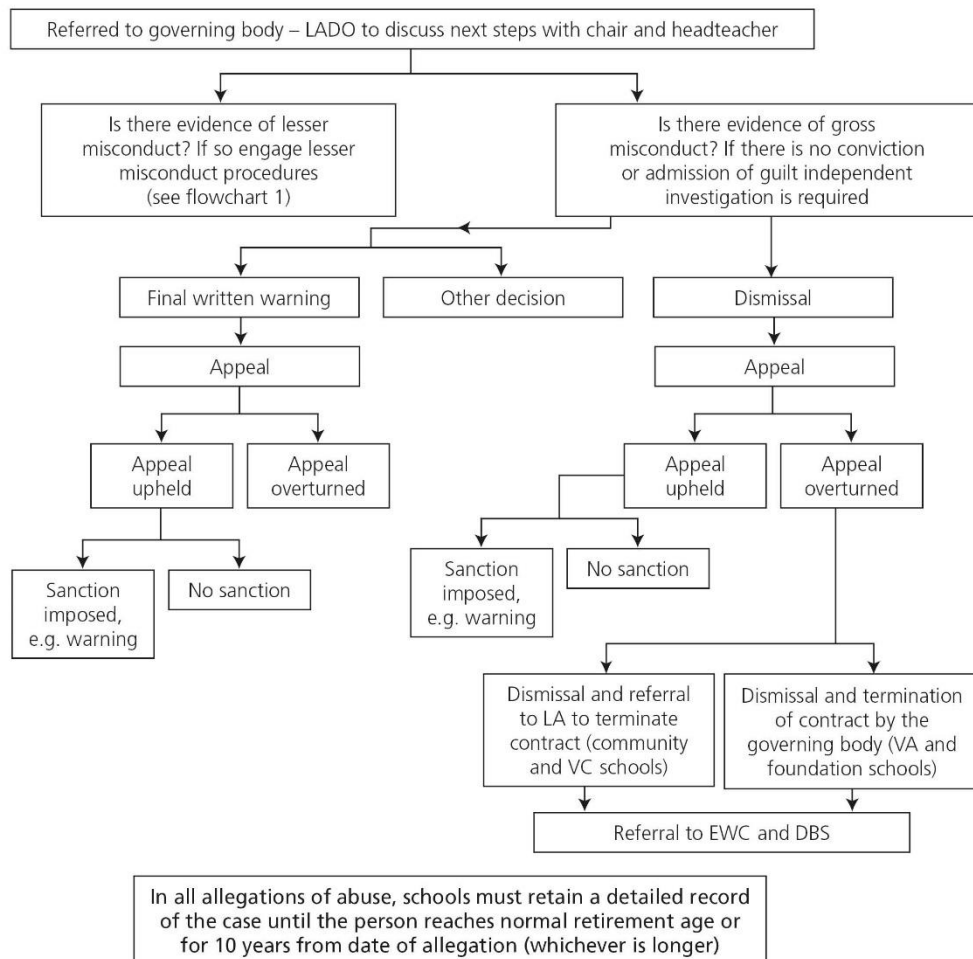
- 8.1 Welsh Government guidance circular 009/2014 *Safeguarding children in education: handling allegations of abuse against teachers and other staff* at <https://gov.wales/sites/default/files/publications/2018-11/safeguarding-children-in-education-handling-allegations-of-abuse-against-teachers-and-other-staff.pdf> sets out a clear process for local authorities, headteachers, school staff, governing bodies and proprietors of independent schools to follow when dealing with all such allegations. Governing bodies **must** have regard to this guidance when carrying out their duties relating to the handling of allegations against teachers and other staff.
- 8.2 The process set out in *Safeguarding children in education: handling allegations of abuse against teachers and other staff* applies equally to volunteers, staff employed directly by the local authority and agency staff. However, the governing body is not responsible for undertaking the disciplinary and dismissal process for these staff or staff employed in a school that has had its delegated budget removed.
- 8.3 This chapter relates specifically to allegations that a teacher or member of staff employed under a contract of employment at the school has abused a pupil at the school, for which the governing body is responsible for undertaking the disciplinary process.
- 8.4 The Staffing of Maintained Schools (Wales) (Amendment) Regulations 2014 set out the procedures that must be followed, reflecting Welsh Government guidance circular 009/2014 *Safeguarding children in education: handling allegations of abuse against teachers and other staff*.

Flowchart 3a

Gross misconduct allegations of child abuse



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



Key

- HT = Head teacher
- LADO = Local authority designated lead officer for safeguarding in education
- DBS = Disclosure and Barring Service
- SDDC = Staff disciplinary and dismissal committee
- EWC = Education Workforce Council
- GB = Governing body
- VC = Voluntary controlled
- VA = Voluntary aided
- LA = Local authority

Receipt of an allegation

- 8.5 Governing bodies (including governors involved in disciplinary and dismissal procedures relating to allegations of abuse) should familiarise themselves with the full content of Welsh Government Guidance Circular 009/2014 *Safeguarding children in education: handling allegations of abuse against teachers and other staff* at <https://gov.wales/handling-allegations-abuse-against-teachers-and-staff>.
- 8.6 In summary, all allegations of child abuse against teachers and members of staff must be reported immediately to the headteacher, or chair of governors if the allegation is about the headteacher. The headteacher or chair must immediately discuss the allegation with the local authority designated lead officer for safeguarding in education who is responsible for overseeing such allegations, liaising with the statutory authorities and providing advice to the school governing body. The school should be aware who their local authority designated officer is. If in any doubt they should seek confirmation from the local authority. The headteacher must inform the chair of governors of **all** such allegations that come to their attention.
- 8.7 The purpose of the initial discussion is to consider the nature, content and context of the allegation and agree a course of action, **but not to investigate**. It will 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 and any other persons present.
- 8.8 The initial sharing of information and evaluation between the headteacher or chair and local authority designated lead officer for safeguarding in education may lead to a decision that the allegation is demonstrably false or unfounded and no further action is to be taken. In such cases, the decision and justification for it should be recorded by the headteacher or chair and the local authority designated lead officer for safeguarding in education, and agreement reached on what information should be put in writing to the member of staff.
- 8.9 Where the allegation is not demonstrably false or unfounded and a referral is made to the statutory authorities, the governing body should take no action other than to review and confirm the membership of the staff disciplinary and dismissal committee and appeals committee. However, a decision to suspend a member of staff or reassign them to other duties where necessary may be made at any stage of the process – see section 10.
- 8.10 Once the statutory authorities have completed their consideration of the allegation, the matter is referred back to the governing body to complete the staff disciplinary process. The local authority designated lead officer for safeguarding in education should consult with the chair and the headteacher, unless the headteacher is the subject of the allegation, and discuss the next steps.

Appointment of an independent investigator

8.11 In accordance with the 2006 Staffing Regulations¹, where the allegation is that a teacher or member of staff employed under a contract of employment at the school has harmed a pupil registered at the school, the governing body is required to appoint an independent investigator to investigate the allegation prior to any disciplinary and dismissal proceedings. Harm is defined in the regulations as physical, sexual or emotional abuse.

8.12 However, the governing body must not decide to appoint an independent investigator until:

- the headteacher (or chair of governors) on receipt of the allegation has consulted with the local authority designated lead officer for safeguarding in education
- the local authority designated lead officer for safeguarding in education has notified the governing body that they have discussed the allegation with the statutory authorities as appropriate
- the statutory authorities have notified the governing body that they have concluded their investigation (if any), and that any criminal proceedings arising from any such investigation by the statutory authorities and which concern the allegation have been discontinued or have otherwise concluded
- the governing body has consulted with the local authority designated lead officer for safeguarding in education and the headteacher (unless the allegation is made against the headteacher).

8.13 The governing body must ensure that a written record is made of the outcome of any consultation above.

8.14 The governing body does not have to appoint an independent investigator where it is satisfied that, beyond reasonable doubt the allegation is not true, or that there is no evidence to corroborate the allegation. Similarly, there is no requirement to appoint an independent investigator where the member of staff has admitted the allegation or been convicted of a criminal offence in relation to it.

8.15 In these cases, the disciplinary and dismissal committee would still be required to meet to determine whether to terminate the contract or take other action. However, there should be sufficient evidence from the initial meeting between the headteacher and the local authority designated lead officer for safeguarding in education, the deliberation of the statutory authorities and the courts, etc., to enable the governing body to proceed to the staff disciplinary and dismissal process without the need for an independent investigation.

8.16 It is recommended that at this stage advice should be sought from the local authority HR representative. The governing body, on behalf of the staff disciplinary and dismissal committee, may also seek its own legal advice, which

¹ As amended in the Staffing of Maintained Schools (Wales) (Amendment) Regulations 2014.

will be funded from the school's delegated budget. Where they do so, the governing body must be confident that the advice provided complies with relevant education, employment and equalities legislation.

8.17 The chair of governors can choose who to appoint as an independent investigator, subject to restrictions imposed by the 2006 Staffing Regulations which stipulate that the person must not be:

- a member of the governing body making the appointment
- a governor from another school within the federation of schools
- a parent/carer of a current or former pupil of the school in question
- a current or former member of staff of the school
- a member or employee of the local authority that maintains the school
- a trustee of the school
- a member of the appropriate diocesan authority for the school
- the body that appoints the foundation governors to the school governing body.

8.18 The chair of governors should seek advice from the local authority on who to appoint as an independent investigator. Some local authorities already provide for an independent investigation of allegations, as part of the personnel services that schools can buy in from the local authority or in coordination with neighbouring local authorities. 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. It will be for the chair (subject to delegation of this responsibility by the governing body) to determine whether the circumstances of the objection are valid and if so to arrange for a new investigator to be appointed. The chair may discuss the matter with the local authority and should take account of the advice received. The chair should notify the member of staff and the investigator in writing of the decision.

The role of the independent investigator

8.19 The role of the independent investigator is to ensure a completely impartial and unbiased investigation is carried out to inform the disciplinary and dismissal process. A suggested framework for the investigation and the investigation report is contained in section 7 of this guidance. The report will not include recommendations, conclusions or personal opinions. The independent investigator **must** provide the governing body with a written report on their findings and all available information and evidence. On completion of the independent investigation, the chair of governors should inform the local authority that the investigation has concluded and that the report has been received by the chair of the governing body.

8.20 The governing body **must** provide a copy of the report to the headteacher unless the allegation is about the headteacher. The member of staff should be informed that the chair has received a copy of the independent investigation report and that arrangements are being made for the staff disciplinary and

dismissal committee to meet.

- 8.21 The 2014 amendment to the 2006 Staffing Regulations and the Welsh Government's guidance on handling allegations of child abuse against members of staff have structured the process so that any questions about the seriousness of the allegation and whether an independent investigation is required are discussed and determined at an early stage. Once the stage has been reached where an independent investigation is required and has been carried out, irrespective of the evidence in the investigation report, a disciplinary hearing must be held.
- 8.22 The governing body should keep the report safe and ask the clerk to arrange a hearing. It is essential for those that have a copy of the investigation report to have regard to, and comply with, the Data Protection Act 2018 and the General Data Protection Regulation (GDPR).
- 8.23 No party should remove evidence from the investigation report before it is sent to the governing body staff disciplinary and dismissal committee.
- 8.24 The independent investigator should be available to attend the disciplinary hearing and appeal hearing on request to present their report.

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

- 8.25 The governing body must appoint an independent non-governor member to the staff disciplinary and dismissal committee and appeals committee in respect of allegations that a teacher or other member of staff employed under a contract of employment at the school has caused harm (abused) a pupil registered at the school.
- 8.26 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 local authority 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.
- 8.27 The non-governor normally takes 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.

- 8.28 The non-governor member does not take the place of the adviser from the local authority whose role is to provide procedural advice to the staff disciplinary and dismissal committee on the case in question.

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 child abuse, a hearing must be arranged. It is advisable for the headteacher or chair (if the allegation is about the headteacher) to contact the local authority 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 by 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
- the name of the adviser to the headteacher or chair of governors
- a copy of the up-to-date procedure
- the right to be accompanied by a work colleague 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 staff disciplinary and dismissal 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 **must** be given a reasonable amount of time to prepare for the hearing.

Arranging the hearing

9.4 The clerk to the staff disciplinary and dismissal committee should arrange a date, time and venue suitable for all interested parties.

9.5 The hearing should be held privately in a place where there will be no interruptions. It should be borne in mind that the school may not always be the most appropriate venue for hearings, depending on the nature and sensitivity of the allegations. Clerks should therefore consider the use of a neutral venue.

Provision of written documents

- 9.6 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 – this must be at least five days before the hearing in accordance with requirements in the 2005 School Government Regulations. Submission of any written documentation and additional witnesses at the hearing will only be permitted at the discretion of the committee.
- 9.7 The member of staff may offer a reasonable alternative time within five school days of the original date if either they or their union representative or chosen work colleague cannot attend. The committee may also arrange another meeting if an employee fails to attend due to circumstances outside their control, such as illness.

Attendance and advice of chief education officer and diocesan representative

- 9.8 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 meetings at the same time as the member of staff and the person presenting the case against the member of staff. The headteacher or chair or members of the staff disciplinary and dismissal committee and appeals committee (depending on the purpose of the meeting) **must** take into consideration any advice offered by these persons before making decisions.

Attendance and advice of the headteacher

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

Role of the adviser

- 9.10 The person(s) advising the staff disciplinary and dismissal committee and 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 adviser 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 matters.

Role of the presenting officer

9.11 At the hearing, the case against the member of staff and the evidence should be given by the presenting officer, which is usually the headteacher (unless the allegation is about the headteacher) in which case the chair or a local authority officer may present the case. The presenting officer **cannot** be the investigating officer or a witness, nor should they be a member of the local authority advising and supporting the governing body. 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 union representative or work colleague will have the opportunity to make a final submission to the committee.

Role of the committee chair

9.12 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 the member of staff and any 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.

9.13 At the conclusion of the hearing the chair should ask the parties whether they feel they have been treated fairly and consider the questions listed in Annex C.

Role of committee members

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

9.15 The functions of the committee members are to:

- consider the evidence
- establish the facts in light of the evidence presented
- after the hearing, to 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 ensure that the minutes are accurate.

Role of the work colleague or union representative

9.16 The accompanying work colleague 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
- where appropriate, answer some limited questions on behalf of the member of staff in their absence
- sum up the member of staff's case.

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

Role of the clerk to the committee

9.18 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 local authority 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 work colleague or a representative of the member of staff's trade union
- inform the member of staff in writing of the committee membership and the names 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 template letters can be found in Annex E.

9.19 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

9.20 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 asks 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.
- Members of the committee can ask questions of any witness or presenter.
- 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 and dismissal 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 advisers 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.

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

- have understood the nature of the proceedings
- have been given a 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.

Outcome of disciplinary hearing

9.22 Following the disciplinary hearing the staff disciplinary and dismissal committee must decide on appropriate action to take, including whether the person should cease to work at the school. 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. Annex C provides a checklist of key considerations.

9.23 The committee discussion should be carried out in private following any advice from the local authority HR representative, and the member of staff's union representative. These persons may remain on hand during the committee's discussion as they may be called on to provide further advice. The clerk to the governing body must be present to record the decision of the committee. A letter should be sent to the member of staff as soon as possible confirming this decision and informing the member of staff of their right to appeal.

9.24 The parent/carer/pupil should be informed that following an investigation a decision has been reached.

9.25 Where possible the member of staff and/or their union representative or work colleague 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 within agreed timescales. Where the decision is to issue a warning or impose a penalty, or where the outcome is dismissal, this decision and the reasons for the decision should be set out in the letter.

9.26 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 governing body must give the member of staff the opportunity of appealing the decision. If the member of staff does not appeal or if the appeals committee upholds the decision to dismiss, the

governing body must write to the local authority notifying the LA of its decision to dismiss. The LA is required to dismiss the member of staff and should write to give notice or terminate the contract without notice if applicable within 14 school days of notification of the decision by the staff disciplinary and dismissal committee or the appeals committee.

9.27 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. The governing body must give the member of staff the opportunity of appealing the decision before the letter is sent.

9.28 Refer to Annex B for notification to the DBS (for child abuse cases) and the EWC as appropriate for dismissal of staff in any category of school.

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

- prepare a letter on the school's headed paper using templates in Annex E, or prepared by the LA, to notify the member of staff of the disciplinary and dismissal committee's decision and the reasons for it and inform the member of staff of the appeals process. 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)
- send a copy of the letter to the headteacher, provided the allegation is not about the headteacher, and the chair notifying them of the decision (provided they are not tainted and have not signed the letter)
- send notes/minutes taken by the clerk during the hearing to all parties, excluding the complainant and any witnesses.

Disciplinary hearing – appeal

9.30 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 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. 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.

9.31 The purpose of the appeal hearing is to enable the appeals committee to consider the grounds for appeal as submitted by the member of staff or their

union representative or work colleague. 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 appeals committee should take into account the views of the member of staff as to whether they wish to have a full rehearing and the reasons why. Under certain circumstances, e.g. 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.

- 9.32 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.
- 9.33 The 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 **may not** impose a more severe penalty. The member of staff should be given copies of the minutes of the appeal hearing and the appeals committee's conclusions. The decision of the appeals committee will be final and the staff member will be informed in writing.
- 9.34 If, as the result of an appeal, no sanction is given and no disciplinary action is taken 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 appeals committee's conclusions.

Absence due to illness

- 9.35 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 and participate in the hearing. Governing bodies should be sensitive to the possibility that approaches that defer disciplinary matters create uncertainty for the school and added stress for the member of staff.
- 9.36 If the member of staff is expected to be sick for an indeterminate time, it may be reasonable to proceed with the disciplinary hearing in their absence 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.
- 9.37 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 staff disciplinary and dismissal committee should go ahead on the basis that the member of staff has 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

- 9.38 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 in the case of allegations against the headteacher) should advise the staff member that disciplinary procedures will continue to completion. Schools must not make a compromise or early settlement agreement where child abuse allegations are being considered.
- 9.39 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.

Action on conclusion of a case

Duty to refer to the DBS and the EWC

- 9.40 There is a legal requirement for employers, including governing bodies and supply agencies, to make a referral to the DBS where they think that an individual has engaged in conduct, including inappropriate sexual conduct, that harmed, or is likely to harm, a child, or if a person otherwise poses a risk of harm to a child. In such circumstances, the duty to refer to the DBS remains where the governing body has removed the individual from relevant work with children or the person has chosen to cease relevant work in circumstances where they would have been removed had they not done so. Referrals should be made as soon as possible after the resignation or removal of the member of staff involved and within one month of ceasing to use the person's services.
- 9.41 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 B for further information.
- 9.42 Referrals should be made as soon as possible after the resignation or removal of the member of staff involved and within one month of ceasing to use the person's services.
- 9.43 Schools and other bodies all have a statutory duty to make reports, and to provide relevant information to the DBS. Under the Education (Supply of

Information) (Wales) Regulations 2009 employers of teachers registered with the General Teaching Council for Wales (GTCW) and supply agencies must report cases of misconduct and professional incompetence to the GTCW where the teachers have not harmed, or posed a risk of harm, to children and/or vulnerable adults.

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: Risk management during disciplinary processes, including suspension

Decision to suspend or other action

- 10.1 Before taking the decision to suspend a member of staff, the headteacher and/or chair 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 must consult the local authority designated lead officer for safeguarding in education in respect of child abuse allegations, before deciding if the best course of action is to suspend an individual.
- 10.2 The headteacher and/or chair should consider the potential impacts on the member of staff's mental health and well-being of any actions taken to manage the risk to pupils and other members of staff.
- 10.3 Police and social services involvement does not make it mandatory to suspend a member of staff, and 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. Where child abuse allegations have been raised the local authority designated lead officer for safeguarding in education should be included in the discussion, which can then 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
 - the allegation warrants a criminal investigation by the police
 - the case is so serious that it might be grounds for dismissal.

The headteacher or chair should give appropriate weight to any advice from the local authority designated lead officer for safeguarding in education as well as the LA HR representative when making a decision to suspend a member of staff.

Powers to suspend

- 10.4 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.

10.5 Where the headteacher is the subject of an allegation it would be usual for the chair 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 and/or recorded in the committee's terms of reference.

10.6 There is no requirement in law for the headteacher and 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

10.7 Where a suspension involves a member of staff at a community, community special, maintained nursery or voluntary controlled school the headteacher or chair (if responsibility has been delegated) 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 should be confirmed in writing to the chief education officer. When ending a suspension the governing body's 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

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

Suspension interview

10.9 Where suspension is being considered, an interview should be arranged between the headteacher and the member of staff, or the chair and the headteacher (if the allegation is against the headteacher). The 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 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.

- 10.10 It is good practice to permit the member of staff to be accompanied by a trade union representative at the suspension interview, as part of the employer's duty of care.
- 10.11 The headteacher or chair should give the member of staff as much information as possible, providing it does not put anyone 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 member of staff should be given an opportunity to make representations concerning the suspension, and offered a brief adjournment prior to responding.
- 10.12 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 a neutral act and is not a presumption of guilt or a disciplinary penalty pending investigation.
- 10.13 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, of who their named contact is 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).
- 10.14 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 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 Governing bodies should consult the Acas Discipline and grievance at work guidance www.acas.org.uk when determining appropriate penalties.

Sharing information

11.2 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

11.3 The governing body's disciplinary procedure should require that a detailed written 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/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 appeal hearing (even if it is not a full rehearing of the case), as well as the appeals committee's conclusions and the basis for them
- all professional advice, including legal and HR advice, given at any time during the process. All records of proceedings will be supplied to the individual employee upon request.

11.4 It is essential 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.

11.5 The minutes of the meetings of a governing body and its committees are public documents that 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.

- 11.6 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.
- 11.7 A separate record of confidential matters, which is 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 staff disciplinary and dismissal committee and appeals committee who should not be present), the date the report was received and given to the disciplinary and dismissal committee and the date the case was concluded.
- 11.8 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 and **must** 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 2018 and GDPR. 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 that is considered to be personal data. Guidance for schools on the Freedom of Information Act 2000 and model publication schemes for schools is contained on the Information Commissioner's Office website <https://ico.org.uk/>.
- 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 Commissioner's Office website.

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

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: Code of Practice on disciplinary and grievance procedures at <https://beta.acas.org.uk/code-of-practice-on-disciplinary-and-grievance-procedures#code>, it is permissible on specific occasions to deal with combined issues under combined proceedings by the same committees. In order to ensure matters are dealt with promptly and appropriately, care should be taken in determining the correct procedure to follow.

Informal discussion with the headteacher and/or line manager

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. It should be made clear to the member of staff:

- what they need to do in relation to their conduct
- how 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.

Where discussions and support structures are put in place and do not lead to the necessary improvements 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, it would not be expected for members of staff to have representation at these meetings.

Grievance procedures

Grievances are concerns and problems that employees raise with their employers. In accordance with the 2006 Staffing Regulations, all governing bodies must have a grievance procedure for allowing members of staff to redress any grievance relating to their work at the school. Occasionally the substance of a grievance may include misconduct behaviours that 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.

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, during consideration of a grievance the decision is that the behaviour of the member of staff against whom the grievance has been made constitutes misconduct, any action under the grievance procedure should cease and action continued under the lesser or gross misconduct procedure. The member of staff should be informed immediately of this decision.

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 (or chair) 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 grievances or those intended merely to delay proceedings, and governing bodies should ensure that delays are minimal.

The staff disciplinary and dismissal committee or 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 committee 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

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. 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.

There may be occasions when complaints, which are initially considered under the governing body's complaints procedure, 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 that 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.

Further information on complaints procedures can be found in Complaints procedures for school governing bodies in Wales Welsh Government guidance circular no: 011/2012 (Welsh Government, 2012) at

gov.wales/sites/default/files/publications/2018-03/complaints-procedures-for-school-governing-bodies-in-wales-guidance.pdf.

Capability procedures

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 or headteacher, then the application of disciplinary procedures is appropriate without first instigating capability procedures.

The Welsh Government's guidance documents on dealing with capability of members of staff and headteachers can be found at <https://gov.wales/capability-school-teaching-staff-guidance> and <https://gov.wales/capability-headteachers-guidance>.

Whistleblowing

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 *Procedures for Whistleblowing in Schools and Model Policy* Welsh Assembly Government Circular Guidance No: 36/2007 at <https://gov.wales/whistleblowing-schools-guidance-governors>.

Annex B: Supply of information

The Safeguarding Vulnerable Groups Act 2006 and the Education Workforce Council (Main Functions) (Wales) Regulations 2015 place a legal duty on all employers (including teacher supply agencies) in Wales to report cases of misconduct and/or incompetence in the education workforce to either the DBS or the EWC, subject to the relevant conditions outlined below.

Disclosure and Barring Service (DBS)

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 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 child 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. This duty may also 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 Disclosure and Barring Service – Referral Guidance: Frequently asked questions (DBS, 2012) at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/143692/dbs-referral-faq.pdf. 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 who are removed from carrying out regulated activity for the reasons above.

The local authority designated lead officer for safeguarding in education should liaise with the employer to ensure that where necessary relevant referrals are made to the DBS and the EWC and follow up to ensure such referrals are made. The headteacher and the chair should be advised on the outcome of these discussions, as they will want to know whether that person can be employed again.

Education Workforce Council (EWC)

In other cases where the employer ceases to use, or would have ceased to use had they not resigned, a registered person's services on grounds of:

- misconduct or professional incompetence
- a 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 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 Government guidance no: 168/2015 *Procedures for reporting misconduct and incompetence in the education workforce in Wales* at gov.wales/sites/default/files/publications/2018-03/procedures-for-reporting-misconduct-and-incompetence-in-the-education-workforce-in-wales.pdf.

Information to be supplied by an employer

This should include:

- a statement of reasons for ceasing to use the person's services
- 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
- 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
- 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
- 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
- a letter advising a person's intention to cease to provide services

- any other document or information that the employer considers is relevant to any investigation that may be carried out by an investigating committee or a fitness to practice committee against a registered person. The EWC regulates by maintaining a register of education practitioners in Wales, and by looking at the detail of a registered person's conduct (behaviour inside or outside of an educational establishment) or competence (ability as an education practitioner) where it comes into question.

Annex C: Checklist for disciplinary hearings

Before reaching a decision in a disciplinary hearing, the persons hearing the case should consider the following questions. The first six 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. Was 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 is proven?
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 from bias against the member of staff and not related to the member of staff's age, disability, gender reassignment, marriage or civil partnership, pregnancy or maternity, race, religion or belief, sex, sexual orientation, 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 D: 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 ('the chair') will take appropriate action on behalf of the governing body 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. The aim of this procedure is to ensure consistent and fair treatment for all members of staff within the school.

Matters outside the scope of the procedure

6. Matters outside the scope of this disciplinary procedure include:
 - 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
- c. staff grievances that employees raise with their employer
- d. termination during or at the end of a probationary/induction period, whether or not extended beyond its originally specified duration
- e. matters that should be dealt with through the governing body's general complaints procedure.

Key points

- 7. In all cases, the school and governing body will ensure that disciplinary cases are dealt with in an unbiased, open and fair way.
- 8. The key points 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 (for allegations of harm (abuse) caused to a child the investigation will be independent).
 - c. An investigator will be objective and impartial but a member of staff may object to an investigator. The chair will determine whether the circumstances of the objection are valid and accepted and whether the investigator should be changed.
 - d. Where it is considered that the allegation(s) amount to lesser misconduct the matter will be dealt with through lesser misconduct procedures. The member of staff will be informed of the allegation(s) against them and will be given the opportunity to defend the allegation(s) at a disciplinary hearing held before the headteacher, or the chair 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 a referral to the staff disciplinary and dismissal committee where it constitutes gross misconduct.
 - f. The member of staff will be informed of any warnings at the end of the hearing, including the length of time they are to remain 'live'. The warnings will be confirmed in writing. At the member of staff's request, a copy of the warning will be sent to their union representative.
 - g. Where it is considered that the allegation(s) amount to gross misconduct, the member of staff will be informed of the allegation(s) and will be given the opportunity to defend the allegation(s) at a hearing held before the governing body staff disciplinary and dismissal committee.
 - h. The member of staff will be provided with details of the membership of the staff disciplinary and dismissal committee prior to a hearing and advised of their right of objection to any committee member. It will be for the chair to determine whether the circumstances of the objection are valid and accepted and whether a member of the committee is removed.

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

- i. The member of staff has the right to be accompanied by a work colleague or a representative of their trade union during the investigation, the disciplinary hearing and the appeal hearing.
- j. Dismissal for gross misconduct, following the decision of the staff disciplinary and dismissal committee or following the outcome of any appeal, is likely to be without notice. Note that for teaching staff and school meals staff in community, community special, voluntary controlled and maintained nursery schools, the local authority will issue notice or dismiss. For voluntary aided and foundation schools, this is the responsibility of the governing body.
- k. A member of staff has the right to appeal against any disciplinary sanction.
- l. The process is supportive towards the needs of the member of staff.
- m. 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

9. 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.
10. It will be made clear to the member of staff:
 - what they need to do in relation to their conduct
 - how conduct will be monitored and reviewed, and over what period of time
 - that 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.
11. Where discussions and support do not lead to the necessary improvements or relevant changes in conduct, within the agreed timescale, the member of staff will 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.

Committees

12. The staff disciplinary and dismissal committee and staff disciplinary and dismissal appeals committee will each have a minimum of three governors, although the appeals committee may have more. No governor will be a member of both committees and both committees will have separate local authority advisers.

13. The chair (unless the chair is tainted or compromised in which case the vice chair should take over) and the clerk to the governing body will make the arrangements for disciplinary hearings.

A. Formal procedure for lesser misconduct

14. Responsibility for disciplinary matters considered to be lesser misconduct has been delegated by the governing body to the headteacher.
15. Any lesser misconduct allegations made against the headteacher will be dealt with by the chair.
16. 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 concludes that this is the case, a referral for formal disciplinary action where dismissal may be an option may be justified. The member of staff will be informed immediately of this decision in writing.

The investigation

17. As soon as an allegation has been brought to the attention of the headteacher or the chair 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. 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. A member of the senior management team will never be engaged to investigate allegations against the headteacher.
18. The member of staff will be advised of their right to object to any investigator. It will be for the chair to determine whether the circumstances of the objection are valid and accepted.
19. The member of staff and all witnesses will be interviewed, having been given information and advance notice. Notes will be taken during interviews and minutes normally produced within two school days. No undertaking of confidentiality will be given to witnesses; however, the overall confidentiality of the disciplinary process will be respected.
20. 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 work colleague or a representative of their trade union at an investigation interview meeting. Witnesses may also be accompanied when giving evidence if they so wish.
21. Once the investigation has concluded, the investigating officer will present the findings to the headteacher or the chair 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.

22. Based on the evidence and findings in the investigation report the headteacher or chair may conclude that:
- the allegation is false or unfounded and no further action will be taken
 - matters can be dealt with through informal procedures
 - there appears to be sufficient evidence of lesser misconduct for a hearing before the headteacher or chair
 - there appears to be sufficient evidence of lesser misconduct for a hearing to take place but, because the member of staff currently has a final written warning, the case should be referred to the staff disciplinary and dismissal committee
 - there appears to be sufficient evidence that the allegation constitutes potential gross misconduct to be considered at a disciplinary hearing before the staff disciplinary and dismissal committee.
23. Where there is conflicting evidence the matter will be referred to a hearing before the headteacher or chair 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.

The hearing before the headteacher or chair of governors

24. A hearing will take place before the headteacher or the chair, supported by advice from the LA or diocesan authority (where appropriate).
25. The member of staff will be sent a copy of this procedure and a copy of the investigation report and supporting documentation, and will be informed in writing of:
- the nature of the alleged misconduct
 - the relevant procedure being followed and why
 - the date, time and place for the hearing
 - the possible outcome/sanctions from the hearing if the allegation(s) are upheld.

They will also 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
 - state their case in person and/or through a representative
 - produce witnesses
 - be accompanied by a trade union representative or work colleague of their choice.
26. The six possible outcomes following on from such a hearing are:
- informal action

- a recorded oral warning
- a first written warning
- a final written warning
- a referral to a disciplinary hearing before the governing body's staff disciplinary and dismissal committee
- the allegation is not upheld.

Informal action

27. As a result of the hearing, the headteacher or the chair 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, the chair will refer for additional training as appropriate.
28. Where discussions and support structures do not lead to improvement or the relevant changes in conduct in the agreed timescale, the member of staff will be advised orally and in writing of further action to be taken.

Formal action

Warnings

29. Standard warning periods are as follows:
- recorded oral warning – [insert time period]
 - first written warning – [insert time period]
 - final written warning – [insert time period].
30. The duration of the warning may vary according to the detail of the offence and the detail of the required improvement. Warnings can be placed on record for different lengths of time than the periods set out.
31. If 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 the specified period ends and will not be referred to again once spent.
32. A final written warning may be issued where lesser misconduct recurs despite attempts by senior managers to support the member of staff to 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 further disciplinary proceedings which could lead to dismissal.
33. Every warning given will include:
- the specified period of the warning

- what action/improvement/outcome is expected for the future and the action needed 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
- how the appeal should be made.

Records of warnings

34. All warnings will 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 work colleague as appropriate. The warning will be confirmed in writing with a copy going to the member of staff's trade union representative/work colleague, if requested by the member of staff. The member of staff must confirm receipt in writing of any warning given. A record of the warning will be placed on the member of staff's file.
35. Copies of all warnings issued will 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. An appeal must be lodged within [insert number] days to the clerk of the staff disciplinary and dismissal appeals committee. The appeal must be in writing and set out the grounds for appeal. The member of staff will be informed in writing of the date and time of the appeal hearing in advance. The appeals committee cannot impose a more severe penalty than that imposed at the first hearing.

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

37. The term gross misconduct means 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.
38. Gross misconduct allegations are usually referred to the headteacher or chair who 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 predetermination of the case. The headteacher or the chair will seek advice from the local authority HR adviser on the most appropriate procedure to follow. The member of staff will be given as much information as possible at this stage provided it does not compromise witnesses (staff or pupils) or hinder a police investigation.

39. If the allegation involves potential criminal activity a referral will be made to the police. If this happens the governing body will normally take no further action until the matter 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.
40. If after making the initial assessment of the allegation the conclusion of the headteacher or chair is that beyond reasonable doubt it is not possible for the allegation to be true, the headteacher or chair may take no further action. The member of staff will be informed immediately of this decision, which will be minuted by the clerk.

The investigation

41. **Please note: refer to paragraph 49 for allegations of child abuse.** As soon as an allegation has been brought to the attention of the headteacher or the chair (if it concerns 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. 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. Consideration will be given as to any connection or prior involvement the appointed investigator may have with the member of staff as well as ensuring they have the relevant skills to undertake the investigation. A member of the senior management team will never be engaged to investigate allegations against the headteacher.
42. The member of staff will be advised of their right to object to any investigator. It will be for the chair to determine whether the circumstances of the objection are valid and accepted.
43. The member of staff and all witnesses will be interviewed, having been given information and advance notice. Notes will be taken during interviews and minutes normally produced within two school days. No undertaking of confidentiality will be given to witnesses; however, the overall confidentiality of the disciplinary process will be respected.
44. 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 work colleague or a representative of their trade union at an investigation interview meeting. Witnesses may also be accompanied when giving evidence if they so wish.
45. Once the investigation has concluded, the investigating officer will present the findings to the headteacher or the chair 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.
46. Based on the evidence and findings in the investigation report the headteacher or chair may conclude that:

- the allegation is false or unfounded and no further action will be taken
- matters can be dealt with through informal procedures
- there appears to be sufficient evidence of lesser misconduct for a hearing before the headteacher or chair
- there appears to be sufficient evidence of lesser misconduct for a hearing to take place but, because the member of staff currently has a final written warning, the case should be referred to the staff disciplinary and dismissal committee
- there appears to be sufficient evidence that the allegation constitutes potential gross misconduct to be considered at a disciplinary hearing before the staff disciplinary and dismissal committee.

C. Allegations of child abuse – receipt of an allegation

49. Allegations of child abuse will be brought immediately to the attention of the headteacher who must inform the chair. The chair will receive allegations against the headteacher.
50. The headteacher or chair will immediately discuss the allegation and possible action with the local authority designated lead officer for safeguarding in education who has responsibility for discharging the local authority's safeguarding duties in terms of education where there is cause to believe that a member of staff has harmed a pupil who is registered at the school.
51. Where this discussion concludes that beyond reasonable doubt the allegation is not true this decision and the justification for it will be recorded by the headteacher/chair and the local authority designated lead officer for safeguarding in education, and agreement reached on what information should be put in writing to the member of staff. No further disciplinary action will be taken. The chair will be informed of this decision.
52. 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 local authority designated lead officer for safeguarding in education 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.
53. The headteacher or chair will inform the member of staff about the allegation as soon as possible after consulting the local authority designated lead officer for safeguarding in education. 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.
54. At any point the headteacher or chair may suspend the member of staff, on full pay, in line with the governing body's agreed procedures. Suspension will not be an automatic action but will be informed by a thorough risk assessment, which will be documented by the headteacher or chair. Other alternatives such as reassignment of duties will be considered and discussed with the local

authority designated lead officer for safeguarding in education and the local authority HR adviser. Suspensions will be reviewed by the chair (if they are not tainted) at intervals of [insert interval]. The decision to extend a suspension, and the justification for it, will be reported to the member of staff and the governing body.

55. Only the governing body or their delegates (chair of the staff disciplinary and dismissal committee or chair of the appeals committee) can end a suspension, subject to the necessary delegation (which should be minuted).
56. 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 consider the next steps. This will happen even if the statutory authorities take the decision not to pursue a criminal investigation.

Referral for an independent investigation

57. Governing bodies must appoint an independent investigator to investigate allegations of harm caused to a registered pupil, except where it is satisfied:
 - beyond reasonable doubt that the allegation is not true
 - beyond reasonable doubt that there is no evidence to corroborate the allegation
 - that the person about whom the allegation was made has admitted to having done what has been alleged
 - that the person about whom the allegation has been made has subsequently been convicted of a criminal offence in relation to the same allegation following criminal proceedings.

A person is not to be regarded as independent if the person is:

- a member of the governing body making the appointment
 - a governor from another school within the federation of schools
 - a parent/carer of a current or former pupil of the school in question
 - a current or former member of staff of the school
 - a member or employee of the local authority that maintains the school
 - a trustee of the school
 - a member of the appropriate diocesan authority for the school
 - the body that appoints the foundation governors to the school governing body.
58. The governing body must not appoint an independent investigator until:
 - the local authority has notified the governing body that it has discussed the allegation with all appropriate parties
 - the statutory authorities have notified the governing body that:
 - (i) they have each concluded their investigation (if any)
 - (ii) any criminal proceedings have been discontinued or concluded

- the governing body has consulted with:
 - (i) the local authority designated lead officer for safeguarding in education
 - (ii) the headteacher (unless the allegation is made against them).
59. If there is any reasonable doubt or agreement cannot be reached the allegation will follow the gross misconduct procedures and will be independently investigated.
 60. 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.
 61. The completed report will be given to the chair who will give a copy to the headteacher, or delegate if the allegation is about the headteacher. The chair will keep the report safely stored and inform the clerk that a disciplinary committee hearing is required. They will also liaise with the local authority HR adviser over the date of the hearing, distribution of papers and the members of the staff disciplinary and dismissal committee.
 62. The chair will ensure that all relevant papers, including the full investigation report, are sent to the member of staff, their union representative or work colleague (if requested), 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.
 63. No evidence will be removed by any party from the investigation report.

Appointment of an 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

64. The staff disciplinary and dismissal committee and the staff disciplinary and dismissal appeals committee will each have at least two governors plus an independent non-governor with voting rights (as required in law). The appeals committee may have more governors but membership of the committees will not overlap.
65. A disciplinary hearing will be held as soon as it can be arranged by the clerk to the staff disciplinary and dismissal committee even if the member of staff has subsequently resigned, or is on sick leave if this is for an indeterminate period of time and the committee deems it appropriate and necessary.
66. 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 and place for the disciplinary hearing
 - details of the allegation(s) together with any supporting document

- names of any witnesses to be called if appropriate
 - name of the adviser to the headteacher or chair
 - a copy of the up-to-date procedure
 - their right to be accompanied by a work colleague or a representative of their trade union
 - the purpose of the hearing and the range of possible outcomes
 - the membership of the staff disciplinary and dismissal committee and the staff disciplinary and dismissal 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.
67. 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. In accordance with the law, all papers will be issued at least five working days prior to the hearing.
68. The staff member will be afforded the right to object to any member of the committee or the independent member 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 and it will be for the chair to decide whether an objection is upheld.

The hearing

69. 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/work colleague to summarise their case. The clerk to the governing body will be present to record the hearing in detail.
70. There will be an opportunity for the staff disciplinary and dismissal committee to receive advice after which 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 for all gross misconduct allegations

71. Having considered all the evidence and taken into account advice provided the staff disciplinary and dismissal committee will make their decision, their options including specifying required training and development, relegation to a lower grade, an oral warning, a written warning, a final written warning or dismissal and referral to the Education Workforce Council and Disclosure and Barring Service.
72. Where possible this decision will be given verbally at the end of the hearing. The committee's decision will also be given in writing to the member of staff as soon as possible after the hearing. The member of staff will also be informed of their right to appeal and the timescale within which this must be made.

73. Details of allegations found not to be upheld will be removed from the personnel records for the member of staff. However, for upheld 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 for the relevant period of time. A copy of this documentation will also be provided to the member of staff.

Suspension

74. Suspension (or other action such as redeployment to another post outside of school) pending disciplinary proceedings may 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 for 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.
75. Suspension will not be used in a punitive way and will be on full pay and without loss of emoluments. 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.
76. The decision to suspend can be taken by the headteacher or the chair but only the governing body can end a suspension. The governing body may delegate this responsibility to the chair, the chair of the staff disciplinary and dismissal committee or the chair of the staff disciplinary and dismissal appeals committee. This decision will be minuted.
77. Before taking a decision to suspend or take other action the headteacher or chair will seek advice from the LA HR adviser and/or diocesan authority if appropriate. For child abuse allegations the advice of the local authority designated lead officer for safeguarding in education and any statutory authorities that are involved, i.e. police or LA social services, will also be considered. The continued effect of the suspension will be kept under review by the chair and the outcome of the review reported to the member of staff and the governing body.

Disciplinary hearing – appeal

78. A member of staff is entitled to appeal against a decision of the staff disciplinary and dismissal committee or the headteacher or chair (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.

79. 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 rehearing. The form of the disciplinary appeal hearing will be a matter for the staff disciplinary and dismissal appeals committee to decide based on the nature of the appeal and any comments made. 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.
80. The staff disciplinary and dismissal appeals committee will come to one of three conclusions after considering all the facts presented to it, including any new evidence. These are to
- uphold the decision of the staff disciplinary and dismissal committee or headteacher or chair (in respect of lesser misconduct proceedings)
 - impose a lesser penalty
 - conclude that no disciplinary action should be taken against the member of staff.
81. The staff disciplinary and dismissal appeals committee will not impose a more severe penalty than that imposed by the headteacher or chair (in respect of the headteacher in lesser misconduct cases) or the staff disciplinary and dismissal committee (in gross misconduct cases).
82. The decision of the staff disciplinary and dismissal appeals committee will be final and the staff member will be informed in writing.
83. The member of staff will be given a copy of the minutes of the appeal hearing and a copy of the staff disciplinary and dismissal appeals committee's conclusions.
84. If, as the result of an appeal, no disciplinary action is taken, all details thereof will be expunged from the member of staff's personnel 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 staff disciplinary and dismissal appeals committee's conclusions.

Absence due to illness

85. If the staff member is absent due to sickness, the staff disciplinary and dismissal committee may decide to postpone the hearing. However, where the staff member may be absent for an indeterminate period, the staff disciplinary and dismissal committee can decide to hold the hearing. Where this decision is made the chair of the staff disciplinary and dismissal committee will inform the member of staff and offer the opportunity for a representative to attend in their place (i.e. a union representative or work colleague) 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

86. In adopting this procedure the governing body has taken due regard of advice and guidance from the local authority and the Welsh Government in their circulars on *Disciplinary and dismissal procedures for school staff* guidance and *Safeguarding children in education: handling allegations of abuse against teachers and other staff*. It has also consulted the local trade union representatives.
87. 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 local authority:

Annex E: 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 to send to member of staff informing them that an allegation has been made

Date

Dear

Allegation made on [insert date]

On **[insert date]** I received a letter from **[insert name]** making an allegation of misconduct against you.

It is alleged that on **[insert date]** at **[insert time]** you – **[insert details of 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 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 work colleague 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 to send to member of staff informing them that an allegation has been made

Date

Dear

Allegation made on [insert date]

On **[insert date]** I received a letter from **[insert name]** making an allegation of misconduct against you.

It is alleged that on **[insert date]** at **[insert time]** you **[insert details of 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 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 work colleague 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)

****Or the following for allegations of harm caused to a child****

Date

Dear

Allegation made on [insert date]

On **[insert date]** I received a letter from **[insert name]** making an allegation of misconduct against you.

It is alleged that on **[insert date]** at **[insert time]** you **[insert details of 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 lead officer for safeguarding in education who has responsibility for discharging the local authority's safeguarding duties in terms of education. They have referred the matter to the statutory authorities and I am awaiting their 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 work colleague or a representative of your trade union at all meetings held in connection with any disciplinary action.

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 [insert date]

I refer to my letter dated **[insert date]** notifying you about an allegation that has been made against you.

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

- a. **[insert details of the allegations]**
- b. **[insert details of the allegations]**
- c. **[insert details of the allegations]**

The meeting will be held on **[insert date]** at **[insert location]**.

You are entitled to be accompanied by a work colleague 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

An allegation has been made against **[insert name]**.

I am writing to request your attendance at an investigation meeting with **[insert name]** who is investigating the allegation as you were a witness to the incident of **[insert details of allegation]**, which took place on **[insert date]** at **[insert time]**

The meeting will be held on **[insert date]** at **[insert location]**.

[Select one of the following:]

[For a member of staff]

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

[Or for a witness that is not a member of staff]

You may be accompanied by a friend if you wish.

Yours sincerely

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

****Alternative letter for the investigator to send****

Date

Dear

I have been appointed by the headteacher/chair of governors to investigate allegations made against **[insert name]**, a member of staff at **[insert name]** school.

I have been informed that you were a witness to the incident of **[insert details of allegation]**, which took place on **[insert date]** at **[insert time]**, and am inviting you to meet with me to give me your version of events/witness statement.

I suggest we meet at **[insert time/date]** if this is convenient for you. If not, please contact me and let me know.

Yours sincerely

Investigator

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 if the allegation is about the headteacher).

Date

Dear

Re: Disciplinary hearing on [insert date]

I am writing to inform you that you are required to attend as a witness at the disciplinary hearing of **[insert name]**. The hearing will take place on **[insert date]** and will commence at **[insert time]**.

I have received a copy of the investigation report and 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 [insert date]

I am writing to inform you that you are required to attend as a witness at the disciplinary hearing of **[insert name]**. The hearing will take place on **[insert date]** and will commence at **[insert time]**.

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 the 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 if allegations are about the headteacher).

Date

Dear

Re: Disciplinary hearing on [insert date]

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

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

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

Should you wish to discuss this matter please feel free to contact me on **[insert details]**.

Yours sincerely

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

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

Date

Dear

Re: Disciplinary hearing on [insert date]

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 **[insert date]** which, if proved, would amount to gross misconduct under the school's disciplinary policy. The hearing will take place on **[insert date]** and will commence at **[insert time]**.

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

Should you wish to discuss this matter please feel free to contact me on **[insert details]**.

Yours sincerely

Chair or clerk of the staff disciplinary and dismissal committee

Both letters should also include:

- details of the allegation(s) and any supporting documents
- the names of any witnesses being called
- the name of the adviser 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
- information about 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, and to state their case in person and/or through a representative
- details of the possible sanctions that could apply
- the membership of the staff disciplinary and dismissal committee and the appeals committee (for a staff disciplinary and dismissal committee hearing for gross misconduct).

Plus the member of staff's right to:

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

Letter (vii) Sample letter: lesser misconduct – conclusion of a disciplinary hearing with the headteacher (or chair if allegations are 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 **[insert date]**. 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 **[insert details]**.

The conduct/improvement expected is:

[insert details]

[insert details]

[insert details]

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/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 of a disciplinary hearing with the headteacher/chair (if allegation is 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 **[insert date]**. 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 **[insert details]**.

The conduct/improvement expected is:

[insert details]
[insert details]
[insert details].

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 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.

You may specify your preference for a full rehearing, including the grounds or whether the appeal is to focus on specific issues. However, the decision on the format of the appeal will be for the staff disciplinary and dismissal appeals committee to take, having considered your wishes.

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 in respect of the headteacher]**, and which was confirmed in writing to you on **[insert date]**.

The appeal hearing will take place on **[insert date]** at **[insert place]** at **[insert time]**, 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 work colleague 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.

The timescale for issuing committee papers set out in the Government of Maintained Schools (Wales) Regulations 2005 is at least five clear working days prior to the meeting. You should therefore ensure that a copy/copies/agreed bundles of any written submissions, upon which you wish to rely at the appeal hearing, are submitted in time for the papers to be distributed at least five clear working days before the hearing. The information must also include the names of any witnesses that will be attending on your behalf.

The members of the staff disciplinary and dismissal appeals committee are **[insert names]**.

The decision of 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 staff disciplinary appeals committee against the training/development/verbal warning/written warning given by the headteacher or chair

Date

Dear

Confirmation of outcome of staff disciplinary appeal hearing

You appealed against the decision made at the disciplinary hearing held on **[insert date]** when you were given a **[insert details]** 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 **[insert date]**.

I am now writing to confirm the decision taken by the staff disciplinary and dismissal appeals committee, which is that the decision of **[insert details]** stands/the decision of **[insert details]** 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 of 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 appeals committee

Please 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 **[insert details]**, 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 **[insert date]** at **[insert place]** at **[insert time]**, as agreed. It will be conducted by the staff disciplinary and dismissal committee of the governing body. The names of the committee members are **[insert names]**.

You have the right to be accompanied by a work colleague 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. The timescale for issuing committee papers set out in the Government of Maintained Schools (Wales) Regulations 2005 is five clear working days prior to a meeting. You should therefore ensure that a copy/copies/agreed bundles of any written submissions upon which you wish to rely at the hearing are submitted in time to meet this deadline. The information should also include the names of any witnesses that will be attending on your behalf.

I confirm that **[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 are any aspects of this letter or 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 disciplinary and dismissal committee

Letter (xii) Sample letter: gross misconduct – conclusion from a disciplinary hearing with the staff disciplinary and dismissal committee

Date

Dear

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 on **[insert date]** into allegations that **[insert details]**. 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 [delete as appropriate]; 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 **[insert details]**. A letter confirming these training and development requirements will be placed on your personal file but will be disregarded after a period of **[insert details]**, i.e. **[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 **[insert number]** months, i.e. **[insert actual date of sanction expiry]**, provided that **[list the behaviours or improvements required or 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 appeals 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 within **[insert number]** working days of receiving this disciplinary decision. Your letter should include the grounds of your 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: **[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 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 **[insert date]**.

The appeal hearing will be a full rehearing/or some other arrangement **[delete/specify as appropriate]**. Your views about the form of the appeal have been taken into account. The hearing will take place on **[insert date]** at **[insert place]** at **[insert time]**, 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 **[insert names]**.

You have the right to be accompanied by a work colleague 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.

The timescale for issuing committee papers set out in the Government of Maintained Schools (Wales) Regulations 2005 is five clear working days prior to a committee meeting. You should therefore ensure that a copy/copies/agreed bundles of any written submissions upon which you wish to rely at the appeal hearing are submitted in time to meet this deadline. The information should also include 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, to the extent that 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 **[insert date]** when you were given a **[insert details]** warning/or you were dismissed **[delete as appropriate]**, in accordance with the staff disciplinary procedure. The appeal hearing was held on **[insert date]**.

I am now writing to confirm the decision taken by the appeals committee who conducted the appeal hearing. The decision of **[insert details]** stands/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 – inviting member of staff to a suspension meeting or reassignment of duties/working from home, etc.

Date

Dear

Possible suspension from duty or reassignment of duties/working from home/undertaking work not involving contact with pupil.

You have been informed that an allegation has been made against you concerning **[insert details]**.

Given the seriousness of the allegation I am inviting you to attend a meeting with me on **[insert date]** at **[insert time]** at **[insert location]** where I will consider whether suspension from duty **[or other option]** is appropriate. You have the right to be accompanied by a work colleague or a representative of your union.

At this meeting I will provide you with as much information as I can about the allegation and you will be given an opportunity to make representations before I make my decision.

I am also enclosing 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, should you be suspended from your place of work.

Yours sincerely

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

Letter (xvi) Sample letter: misconduct – confirming suspension from duty or other action following suspension meeting

Date

Dear

Suspension from duty with effect from [insert date] or Reassignment 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 **[insert date]** pending the current investigation into the misconduct allegation **[insert details]**. **[Insert name]** has been assigned the role of investigating officer.

[Or]

[This alternative wording may be suitable where child abuse allegations have been raised and are held in abeyance pending investigation by the statutory authorities]

Thank you for attending the meeting today. I am writing to confirm your suspension from duty as from **[insert 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.

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.

I would like to remind you that the act of suspension is a neutral act and 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 that you should not remain in school at this time.

Please provide your written undertaking that you will not contact other members of staff or visit your place of work during the suspension period, unless authorised in advance by myself or the headteacher.

I am 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. For further support or advice during this time, please contact **[insert name]** at **[insert name]** authority.

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.

Sample letter for alternative to suspension

Thank you for attending the meeting today to consider the immediate arrangements for your employment while the allegations against you are being investigated and dealt with. In accordance with the staff disciplinary procedure, I am writing to confirm that **[choose one of the following or insert another option]** you have been reassigned to other duties **[give details]**/arrangements have been made for you to work from home/arrangements have been made for you to work at **[give details]**.

[Optional]

I understand you are a member of **[insert name]** union and that you may wish your representative/work colleague 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.

I will also be informing the local authority of your suspension (and the chair if the headteacher has imposed the suspension).

Yours sincerely

Chair of the governing body/headteacher

Letter (xvii) Sample letter: gross misconduct – ending suspension

Please 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 or the chair of the staff disciplinary and dismissal appeals committee if authority has been delegated by the governing body.

Date

Dear

[Either]

This letter is to confirm that your suspension implemented on **[insert date]** 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 **[insert date]** will cease from **[insert date]**. You will be contacted shortly about arrangements for you to commence your normal work again.

Yours sincerely

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