ST PETER'S RC
PRIMARY SCHOOL

Managing Staff in Schools
Staff Disciplinary Procedure

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Introduction

1. This procedure is based on the model procedure contained within the Welsh Government circular 002/2020 and has been adopted by the governing body of this School. It also applies to employees in local authority maintained Pupil Referral Unit (PRUs) with disciplinary responsibilities being undertaken by officers of the local authority.

2. 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.

Purpose and Scope

3. 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.

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

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

6. The aim of the procedure is to ensure consistent and fair treatment for all employees within the school.

7. This staff disciplinary procedure applies to school staff (except for school-based staff employed by the Local Authority (LA), e.g., cleaners, catering staff, supply staff provided by agencies and any self-employed supply staff). It is important that all employees are aware of and understand this policy and know what is expected of them.

8. It is equally important that employees understand what will happen if they do not comply with the policies and procedures of the school or with any professional Codes of Conduct applicable, for example the Code of Professional Conduct for registrants with the Education Workforce Council.

9. Where required throughout this procedure the chair of governors will take appropriate action 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.

Matters outside the Scope of the Procedure

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

a) Where an employee raises a grievance because of disciplinary action. If, however, action under the staff grievance procedure results in the need for disciplinary action then this disciplinary and dismissal procedure will apply.

b) Termination during or at the end of a probationary period, whether or not it is extended beyond its originally specified duration. This applies to support staff only.

c) Matters which ought to be dealt with through the governing body's general complaints procedure and which do not raise employee disciplinary issues for individual members of school staff.

d) Where employment is terminated:

- by reason of redundancy
- by an employee reaching the end of a temporary or fixed-term contract where there are performance issues due to capability (in such cases the capability procedure will be used, schools should ensure a copy will be freely accessible to all staff).

The Legal Framework

11. This policy and procedure take account of the following guidance, regulation and legislation:

- Welsh Government Disciplinary and Dismissal Procedures for School Staff 002-2020
- The Staffing of Maintained Schools (Wales) Regulations 2006
- The Staffing of Maintained Schools (Miscellaneous Amendments) (Wales) Regulations 2007
- The Staffing of Maintained Schools (Wales) (Amendment) Regulations 2009
- The Staffing of Maintained Schools (Wales) (Amendment) Regulations 2014
- Government of Maintained Schools (Wales) Regulations 2005 (and amendments)
- The Employment Rights Act 1996
- The Employment Relations Act 1999
- The Education Act 2002 (sections 35-37)
- Trade Union and Labour Relations (Consolidation) Act 1992
- ACAS code of Practice 1 - discipline and grievance procedures
- Public Interest Disclosure Act 1998
- Data Protection Act 2018
- General Data Protection Regulations 2018
- The Safeguarding Vulnerable Groups Act 2006
- Safeguarding Wales Procedures 2019
- Education Workforce Council, Code of Professional Conduct and Practice 2022
- Keeping Learners safe Guidance 2015

- Safeguarding Children in Education Guidance 2014.
- Whistleblowing policy
- Complaints policy
- In line with the Welsh Language Compliance notice staff who have recorded their language preference as Welsh will have the right to have any correspondence and meetings conducted in Welsh or simultaneous translation will be provided upon request from the employee.

This list is subject to any amendments required as part of legislative process.

Principles

12. This procedure is a way of helping and encouraging improvement for employees whose conduct is unsatisfactory and is not to be viewed as simply a means of imposing sanctions or punishment.

13. In all cases, the school and governing body will ensure that disciplinary cases are dealt with in an unbiased, open, and fair manner.

14. All timescales and working days in the policy refer to Monday – Friday during term time only, unless otherwise agreed by all parties. All timescales included in this staff disciplinary procedure have been agreed by the governing body and consultation with the recognised trade unions. Depending on the circumstances of the case, there may be the need for flexibility with these timescales, e.g., where there is a large amount of paperwork or unavailability of employees.

15. The principles in summary are as follows:

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

b) On receipt of an initial allegation an assessment will be made on the seriousness of the allegation and whether a formal investigation is required (see paragraph 21-27) This should be considered by the headteacher (Chair of Governors if the allegation is against the HT). No formal disciplinary action will be taken against an employee until the case has been fully investigated by a person who has no connection with the case in question, unless the employee has admitted the allegations and has chosen to progress under the fast track procedure.

c) An investigator will be objective and impartial and will produce reports based on fact. If there are reasonable objections by the employee to an investigator relating to their inability to act impartially, or their competence for the role, the investigator will be changed. The employee

must clearly outline their reasons for objecting in writing to the chair of governors within 5 working days of being notified. The decision as to whether objections are reasonable, will rest with the chair of governors who will confirm the decision, with reasons, in writing within 5 working days. During this period, the investigation will be put on hold.

d) After an initial assessment, where it is decided to deal with a disciplinary matter through lesser misconduct procedures, examples of which are shown in Annex 1, the employee will be informed of the allegation/s against them, the date, time and place of any disciplinary hearing stage(s) before the headteacher, (or the chair of governors for allegations against the headteacher).

e) The employee will have the right to be accompanied by a work colleague or trade union representative during the investigation, the disciplinary hearing, and the appeal hearing. Legal representation is not permitted at any stage of the procedure.

f) If any new evidence comes to light during any part of the disciplinary procedure which has not been considered as part of the original allegations investigated, the employee must be advised, and the new matter must be investigated prior to it being determined at a disciplinary hearing.

g) Disciplinary action will not be taken against a recognised trade union official until the case has been discussed with a full time official of the trade union providing the employee has consented to disclosing this information.

h) Where there are reasonable grounds to suspect there has been misappropriation of school funds or other financial impropriety, the Section 151 Officer, must be informed. Under the Local Authority's Financial Procedure Rules, any matter that is considered to be evidence of a criminal act may be reported to the police.

i) An employee will not be dismissed for a first breach of discipline in cases of lesser misconduct (examples of lesser misconduct shown in Annex 1). However, should this lesser misconduct be repeated, it may result in the employee being escalated through the policy which may result in ultimately being dismissed for misconduct as they're not moderating or amending their behaviour\ conduct. This should be made clear to the employee when discussing behaviour and the improvements/changes expected.

j) In cases where the allegations could amount gross misconduct, (examples shown in Annex 2) or possible dismissal following a final written warning, the employee will be informed of the allegation, and given a minimum of 10 working days' notice of the date, time and place of any hearing which will take place before the governing body staff disciplinary and dismissal committee (subject to mutual agreement), the purpose of the hearing and the stage reached in the disciplinary procedure. The availability of the employee's trade union representative will be taken into account when scheduling the hearing.

k) The employee will be provided with the composition of the staff disciplinary and dismissal committee prior to a hearing. If there is genuine evidence that calls into question the ability of any committee member to act impartially in the circumstances of the case, the employee has the right to object. This must be done within 5 working days of receipt of the documents. The objection must be clearly outlined in writing. The chair of governors will be responsible for deciding if the objection is valid and decide appropriate course of action. The decision and rationale will be provided to the employee in writing. If the objection is accepted, the chair of governors may contact governors on the reserve list previously agreed by the governing body in priority order.

l) If a situation arises involving allegations of tainting against a substantial number of the members on the staff disciplinary and dismissal/appeals committee the governing body should consider reviewing the composition of the respective committees; if there is no other Governing Body member available to be co-opted on to this panel and there are no reserve governors available, please refer to para 4.2-4.17 of the WG guidance and seek advice from your Local Authority.

m) The employee will be provided, prior to the hearing, with the name of the presenting officer, the names of persons who will be present at the hearing and in what capacity, full details of the allegations, an outline of the evidence to be presented with copies of supporting documents, the names of any witness to be called and copies of written statements.

n) At the hearing, the employee must be given an opportunity to answer allegations made and present their evidence before any decision is reached. Detailed notes will be produced within an agreed reasonable timescale, any delays will be communicated.

o) Dismissal for gross misconduct will take place immediately following the decision of the staff disciplinary and dismissal committee or following the outcome of any appeal by the employee if appeal is lodged. Dismissal under these circumstances will be without notice or payment in lieu of notice.

p) An employee will have the right to appeal against any disciplinary sanction imposed.

q) Investigations and hearings will be conducted (all or part) in English or Welsh, or with access to interpretation, at the request of the employee.

r) Covert recording of any meetings under this procedure is not acceptable, all parties must agree to a meeting being recorded. Failure to do so will be considered a breach of GDPR which will be considered as a disciplinary matter.

s) If a hearing as part of a reasonable adjustment is recorded this will be with the agreement of all parties and this agreement should be formally recorded at the commencement of the meeting.

Grievances (complaints) raised during a disciplinary

16. Where an employee raises a grievance during a disciplinary process the process may be temporarily suspended in order to deal with the grievance. Where the Grievance and discipline cases are related it may be appropriate to deal with both issues concurrently.

Confidentiality

17. All proceedings under this procedure shall be held in private and shall be confidential.

18. Records are confidential and must be held in a confidential and secure manner. The issues raised under this procedure are often particularly sensitive, and it is essential that information is kept in accordance with the Data Protection Act 2018 and General Data Protection Regulations.

19. Members of the governing body always need to treat any information that they received regarding disciplinary allegations against employees with the utmost confidentiality. Governors who have knowledge of evidence or potential evidence must not discuss this with any fellow governors or anyone else outside the disciplinary process.

20. The requirement for confidentiality applies to all parties involved in any disciplinary process.

Initial Assessment

21. The purpose of an initial assessment is to determine how the alleged misconduct/incident should be progressed.

22. When an allegation of an employee's misconduct has been highlighted to the line manager/headteacher. It is important the line manager/headteacher must be able to clearly define between initial assessment and disciplinary investigations. This includes communicating the difference to employees involved in the process.

23. An 'initial assessment' process is often a necessary preliminary step in determining whether a disciplinary investigation is warranted.

24. Following an incident or complaint, the Head (or Chair of Governors) or appropriate line manager must speak to involved parties to obtain objective information and determine whether the event merits a more detailed investigation.

25. Alternatively, the results may be sufficient to establish that there was no misconduct, or that the results of any further investigation are unlikely to provide any clear determination. Initial assessment may initially be a fairly informal process, although it should still be clearly documented.

26. It is extremely important that employees are made aware that an initial assessment process is simply that – not accusatory but only to gather information.

27. By contrast, once an investigation has commenced, the process becomes much more detailed and formal. It is important to bear in mind that the point of a disciplinary investigation is to protect the rights of an individual subject to potential disciplinary proceedings.

Informal discussion with the headteacher/line manager – outside of disciplinary process

28. There will be occasions when it is appropriate for an employee's actions to be discussed with them, on a one-to-one basis, as part of normal line management arrangements and without recourse to the formal procedures. In these circumstances the employee 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.

29. Such activity may be delegated to a member of the senior management team. In respect of the headteacher however, this would be carried out by the chair of governors with advice and support from the LA Human Resources (HR) advisor.

30. The aim of this action is to ensure that problems are discussed to encourage and help the employee to improve and understand:

- what they need to do in relation to their conduct
- how future conduct will be monitored and reviewed.
- the period of time over which conduct will be monitored – this must not exceed 6 working months -that formal action might be taken if the conduct in questions recurs.

31. Where discussions and support structures which have been put in place to help the employee and following a review meeting do not lead to the necessary improvement or the relevant changes in conduct, within the agreed timescale, the employee will normally be advised in writing of further action to be taken, which may be formal.

    For the sake of clarity, the above does not constitute formal sanctions under the policy.

Formal Procedure for Lesser Misconduct (e.g. shown at Annex 1)

32. Responsibility for disciplinary matters where the allegation could constitute lesser misconduct is delegated by the governing body to the headteacher. This delegation is accepted upon adoption of policy.

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

The investigation

34. As soon as the alleged breach of discipline has been brought to the attention of the headteacher or the chair of governors (in the case of the headteacher) an initial assessment is carried out by the Headteacher or chair of governors in discussion with the LA HR advisor. If there is evidence the allegation occurred, a full investigation must be carried out. The investigation may be undertaken by a member of the senior management team (unless the investigation is about the headteacher) or an independent person, e.g., officer from the LA, diocesan authority, governor from another school or external source (the cost of the investigation will be met from the school's budget). In order to expedite the process, the investigation may continue during school closure subject to agreement/availability of all employees concerned. The investigating officer will advise the employee of the likely duration of the process and advice of any extensions.

35. The employee who is the subject of the alleged breach of discipline will be informed in writing of the allegations to be investigated.

36. The employee will be invited to an investigation meeting where they will be given the opportunity to respond to the allegation(s). The employee has the right to be accompanied by a work colleague or a trade union representative and will be provided within 10 working days' notice to attend, this could be less if agreed by all parties.

37. The employee and all witnesses will be interviewed and requested to sign a copy of their statement. Notes will be taken at all investigation meetings and a copy of relevant documents given to the parties involved. If there are any factual inaccuracies in the notes, these should be noted in the documentation. No undertaking of confidentiality will be given to witnesses; however, the overall confidentiality of the disciplinary process will be respected.

38. Once the investigation has been concluded, the investigating officer will present the findings to the headteacher or the chair of governors (in the case of a headteacher) in a written report. This will be done as soon as practicable after the conclusion of the investigation. The investigation report will be based on matters of fact and not opinions and will not contain any conclusions or recommendations.

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

- the allegation is false or unfounded and no further action will be taken.
- matters can be dealt with through informal procedures.
- 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 employee 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.

Fast tracking process – lesser misconduct only

40. The fast-track disciplinary procedure is applicable for incidents / misconduct which could result in no higher than a second written warning and use of the procedure must be agreed with the employee. It allows for matters to be dealt with in a timely manner. This is a discretionary route as an alternative to the more formal route.

41. It is applicable only where the employee has admitted in full all allegations made against them at either an initial meeting with the headteacher or with the investigating officer early in the investigation.

42. This process may not require an appointment of an investigating officer (depending on when the fast-track procedure is first instigated) and will not require a full investigation if the employee admits in full all allegations at an early stage in the process. A fast-track decision meeting should be held as soon as possible after consent to proceed has been received from all parties. The employee is allowed to be accompanied by a trade union representative or work colleague. Any delay to the procedure should be for exceptional circumstances only. The fast-track decision meeting is the opportunity for the employee and/ or companion to put forward comments and statements including mitigating circumstances. No witnesses will be called.

43. The employee will have a right of appeal against the sanction and should do so in writing within 5 working days of receipt of the outcome letter.

44. The fast-track disciplinary procedure is not suitable for:

- Circumstances where there is potential gross misconduct.
- Cases of repeat misconduct where the employee has already received a written warning.
- Any matters that include a safeguarding issue, a police matter or fraud / financial impropriety.

45. Where it would appear that a fast-track disciplinary procedure may be applicable, the headteacher, the employee and their trade union representative must consent to a fast-track disciplinary process in writing by completing the fast-track consent form (Annex 3). It is recommended that HR advice is sought when considering use of the fast-track process.

46. It is not acceptable for a headteacher/chair of governors to actively seek new

evidence with the sole intention of making a fast-track procedure ineligible.

Lesser misconduct – the hearing before the headteacher or chair of governors

47. Conduct that is considered to fall within the scope of lesser misconduct has been delegated to the headteacher. The chair of governors will deal with lesser misconduct allegations against the headteacher. A hearing will take place with the headteacher or the chair of governors (in respect of the headteacher) supported by advice from the LA or diocesan authority (where appropriate). Should the chair of governors be compromised this role should be delegated to the vice chair (providing the vice chair is not compromised).

48. In many cases lesser misconduct can be dealt with in the first instance by informal action. However, there may be occasions when it will be appropriate to give an employee a first or second written warning. The sanctions used will depend on the conduct issues under consideration. See Annex 1 and 2.

49. Wherever possible a mutual date for the hearing will be agreed with the employee, and their trade union representative or work colleague.

50. The employee will be sent a copy of these procedures and a copy of the investigation report, including all supporting evidence and interview notes, and will be informed in writing of the following information giving a minimum of 10 working days' notice of the hearing:

- The nature of the alleged misconduct
- the stage reached in the procedure.
- the date, time and place for the hearing.
- the possible outcome of the hearing.

They will also be advised of their right to:

- produce written statements which will be circulated to all parties in advance of the hearing (must be given within 5 working days of receipt of letter)
- ask questions relating to any written statements so produced.
- state their case in person and/or through a representative
- produce witnesses.
- be accompanied by a trade union representative or work colleague.

51. The suggested timescales will follow that set out in Annex 4.

52. The process for conducting the hearing is shown in Annex 6.

53. There are six possible outcomes/sanctions following on from such a hearing which must be confirmed in writing:

- There is no evidence to support the allegation so no further action necessary.
- Informal action
- First written warning
- Second written warning
- Final written warning
- Referral to a disciplinary hearing before the governing body's staff disciplinary and dismissal committee.

54. The sanctions an employee could receive will be in line with the nature and severity of the allegation. However, there may be occasions where an employee has had repeated lesser misconduct allegations against them and has not altered or improved their behaviour. This may result in a more severe sanction being given, e.g., a final written warning. Alternatively, the lesser misconduct behaviour may be serious enough to warrant an immediate final written warning instead of any other sanction.

Informal action

55. As a result of the hearing, if no sanction has been awarded the headteacher or the chair of governors (in respect of the headteacher), with support from the LA HR advisor, may deal with matters by giving advice, counselling, training instruction, coaching or other managerial strategies as is appropriate. Such activity may be delegated to a member of the senior management team. In respect of the headteacher however this will be carried out by the chair of governors with advice and support from the LA HR advisor.

Warnings

56. Where the employee's conduct is satisfactory for the specified period of a warning such warnings will be expunged from the employee's file after a specified period. Suggested periods would be:

- First written warning – 6 months
- Second written warning – 9 months
- Final written warning – 12 months.

The duration of the warning may vary according to the detail of the offence and the detail of the required improvement Warnings should not extend past 12 months unless there are exceptional circumstances.

First and second written warning

57. If at the conclusion of the hearing it is decided to proceed with disciplinary action by way of a first or second written warning, the headteacher or the chair of governors (in respect of the headteacher) will issue the first or second written warning to the employee in the presence of their trade union representative or work colleague if accompanied.

58. A first or second written warning will be confirmed in writing within 5 working days of the hearing, and will state:

- The nature of the misconduct
- The stage reached in the procedure
- What is expected for the future
- The time limit required for improvement
- The right to appeal, the time limit within which the appeal should be made, and how the appeal should be made.

The decision to share copies of any documentation associated with the hearing with their trade union representative or work colleague, will rest with the employee.

59. The employee will be required to indicate receipt of the written confirmation of the first or second written warning. A record of the warning will be placed on the employee's file. Where the employee's conduct is satisfactory for the specified period following a first written warning, such warnings shall be disregarded and therefore cannot be referred to again once spent.

Final written warning

60. A final written warning may be issued where lesser misconduct recurs despite attempts by senior managers to support the employee and improve their behaviour or conduct. A final written warning may also be issued where a single instance of proven misconduct is considered to be of a serious nature but not warranting gross misconduct.

61. Final warnings may be given following a hearing before the headteacher or the chair of governors (in respect of the headteacher) who will issue a final written warning to the employee in the presence of their trade union official or work colleague.

62. The employee will be issued with a final written warning within 5 working days of the hearing which will state: -

- The nature of the misconduct
- The stage reached in the procedure
- What is expected for the future
- The time limit required for the improvement
- That the next stage will be dismissal

· The right to appeal, the time limit within which the appeal should be made, and how the appeal should be made.

63. A record of the warning will be placed on the employee's file.

64. If there is a further breach of conduct at any time during the warning period, the matter will be investigated in line with the normal procedure and may be referred to the staff disciplinary and dismissal committee for a formal hearing which could result in dismissal. The employee must be informed of this at the time the final written warning is issued.

Appeals against formal warnings

65. There is a right of appeal against any disciplinary sanction (refer to paragraphs 133- 145 of this procedure for information on appeals). The deadline for lodging the appeal is 5 working days from receipt of the outcome letter as set out in Annex 4.

Referral for consideration for gross misconduct (see Annex 2)

66. There may be rare occasions where, at the end of an investigation into lesser misconduct matters, the evidence in the investigation report indicates that the behaviour constitutes gross misconduct. If the headteacher (or chair of governors in respect of the headteacher) with support from the LA or diocesan officer or another agreed appropriate person, concludes that this is the case, a referral for formal disciplinary action for gross misconduct may be justified. In these circumstances the employee will be informed of the decision made, provided with a copy of the investigation report, including all interview notes, and that the matter is being referred to the staff disciplinary and dismissal committee for their consideration. The most appropriate way for an employee or headteacher to be informed of this decision will be through a meeting with the headteacher or chair of governors (in respect of the headteacher). As this is likely to be a rare occurrence this meeting does not form part of the lesser misconduct process.

Formal Procedure for Gross Misconduct (not child protection issues) Examples in Annex 2

67. The term gross misconduct is used to mean an act, or omission, or a series of actions or omissions by an employee 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 following an appropriate investigation process. The staff disciplinary and dismissal committee and staff disciplinary and dismissal appeals committee shall each have a minimum of three governors who have not had any prior involvement in the process. The staff disciplinary and dismissal appeals committee must have at least the same number of governors as the staff disciplinary and dismissal committee. No governor will be a member of both committees. Each committee will be supported by a HR Advisor.

68. Where alleged gross misconduct is to be considered, responsibility for the arrangements to set up a disciplinary investigation rests with the chair of governors through the clerk to the governing body.

69. Gross misconduct allegations are usually sent to the headteacher or chair of governors (if the allegation is about the headteacher). On receipt of an allegation the headteacher or chair of the governors will make an initial assessment of the situation (but not investigate) to determine that an allegation has been made, what is alleged to have occurred, who it involved, when and where, any witnesses. If the conclusion is that the allegation may be true, the employee will be informed that the formal disciplinary process is being engaged. The employee will be given as much information as possible at this stage provided it does not compromise witnesses (employees or pupils) or hinder a police investigation. For matters relating to child protection see paragraph 81-93 below.

· suspension or reassignment to other duties may be considered at this point see Annex 9.

· The employee should be advised to contact their trade union.

· The headteacher or chair of governors will arrange for the allegation to be thoroughly and fairly investigated. At this point, the employee may be suspended by the headteacher or chair of governors, on full pay and contractual benefits and in line with the governing body's agreed procedure. It is important that alternatives to suspension are carefully considered and must not be an automatic option (See Section on Suspension).

· 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 police have confirmed, they have concluded initial investigations. The police will be asked what information can be shared with the employee and employer. The matter will then be referred to the governing body (usually this would be the chair of governors) to be considered in accordance with the disciplinary procedure. Dependant on the case during the period of the police investigation witnesses may be requested to make notes and retain these to ensure recollections of facts and events and keep any evidence safe until the investigation can be undertaken by the school.

· However, if after making the initial assessment of the allegation the conclusion of the headteacher or chair of governors (in respect of an allegation against the headteacher) is that beyond any doubt it is impossible for the allegation to be true, the headteacher or chair of governors may take no further disciplinary action. The employee will be informed immediately of this decision and advised to contact their trade union representative, a follow up with an explanatory letter/ email will be provided.

The investigation

70. As a possible outcome for gross misconduct hearings is dismissal, it is important that investigations into gross misconduct allegations are unbiased and thorough. 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.

71. 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.

72. The chair of governors is responsible for controlling and managing all aspects of the disciplinary process including the engagement of an appropriate investigator.

73. The employee has the right to object to an investigator if they have reasonable doubts as to their ability to act impartially.

74. Prior to the investigation, the employee will be informed in writing of their rights under the school's disciplinary procedure, including the right to be accompanied by a trade union representative or a work colleague, at meetings held in connection with the disciplinary matter.

75. Notes of meeting should be signed and returned to investigator to confirm they are an accurate reflection of the meeting within agreed timescales. This may be extended if agreed with the investigator/employee/TU representative. If the employee disputes any part of the notes, they should send them back to the investigator identifying areas they feel are not accurately reflected. The investigator can agree any amendments requested or, if they do not believe they reflect the meeting, this should be noted, and both sets of notes included in the report.

Receipt of the investigation report

76. The role of the headteacher (unless the HT is a witness) 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 no evidence to support the allegations and the matter is closed
- The alleged conduct does not amount to gross misconduct but to lesser misconduct which can be dealt with by the headteacher/chair of governors in line with this procedure
- Based on evidence, the alleged conduct does amount to gross misconduct and is required to be referred to a staff disciplinary and dismissal committee hearing.

77. Where the matter is against the headteacher, if there is contradictory evidence in the report or agreement cannot be reached on the way forward, the matter should be referred to the school disciplinary and dismissal committee.

78. If the allegation is against the headteacher the chair will receive an investigation report and must discuss the matter with another governor (who is not on either panel or has any connection with the employee on the matters being investigated) and the LA HR advisor.

79. This discussion and decision will be minuted by the clerk to the governors. The employee will be advised of the outcome of the investigation as soon as possible, ideally within 5 working days the employee will receive notification in writing by the clerk to the staff disciplinary and dismissal committee.

80. A copy of the investigation report, including all interview notes, will be given to the employee against whom the allegation has been made, within 5 working days of the decision, if the case is to proceed as outlined above.

Formal Procedure Where the Allegation Relates to Child Protection /Safeguarding/Safeguarding Issues – Receipt of an Allegation

81. Allegations involving issues of child protection/ safeguarding will be brought immediately to the attention of the headteacher or the chair of governors (if the allegation is in respect of the headteacher) and the designated safeguarding officer in the school.

82. The headteacher or chair of the governors (in respect of the headteacher) will make an initial assessment (but not investigate) to determine the nature and circumstances of the allegation, i.e. what is the allegation, when and where it occurred, who is involved and witnesses etc. If the conclusion of all parties is that it is impossible for the allegation to be true, the headteacher or chair of governors may not take any further action against the employee and no referral to the statutory authorities is required. This should be minuted. If there is any doubt and agreement between these parties cannot be reached, the matter will be referred to the statutory authorities, this should be minuted by the clerk.

83. If, however, the initial assessment by the headteacher or chair (if the allegation is about the headteacher), in discussion with the LA lead child protection officer or nominated deputy, indicates that an allegation might be true, there will be an immediate referral for a strategy discussion involving the statutory authorities (Social Services and/or the Police), in accordance with Wales Safeguarding procedures.

84. Information that can be shared with the employee is limited and should be done in accordance with the guidance Safeguarding Children in Education: Handling Allegations of Abuse against teachers and other employees and advice from Human Resources and the Education Safeguarding Officer or LADO (or deputy).

85. The case manager will normally be the headteacher.

86. The employee will normally be informed of the decision, as agreed by the statutory authorities that a referral is being made by the case manager. However, there may be some circumstances where this will not be appropriate, for example to avoid evidence being tampered with or if there is concern about the employee's wellbeing, this may require a referral to occupational health, counselling via the employee assistance support programme, and a nominated support officer if requested by the employee or signposted to the available support services.

87. Suspension will not be an automatic response but may be informed by a thorough risk assessment which should be documented by the headteacher or Chair. (Suspension form Annex 9).

88. If the employee is advised of the referral and it is deemed appropriate, the headteacher or chair of governors (if the allegation is about the headteacher) may suspend the employee, on full pay, and any contractual benefits in line with the governing body's agreed procedures and subject to conditions outlined in paragraph 94-99. Suspensions will be reviewed every 25 working days and the outcome reported to the employee in writing and the governing body under 'confidential matters'.

89. Once the statutory authorities (e.g., the police and social services) have completed their consideration of the allegation, it will be referred back to the headteacher and chair of governors or chair of governors and another governor (if allegation is about the headteacher) to consider if the matter needs to be dealt with under the staff disciplinary process. This will happen even if the statutory authorities take the decision not to pursue a criminal investigation.

90. The headteacher and chair of governors or the chair of governors and another governor (if the headteacher is the subject of the allegation), and having consulted with the local authority designated lead officer for safeguarding in education will discuss:-

· whether the allegation is of a child protection nature and the behaviour could, if proven, constitute potential gross misconduct which requires it to be independently investigated prior to any disciplinary hearing, this will then be forwarded to the Staff Disciplinary

Dismissal Committee following the investigation report being concluded.

· whether the allegation is not deemed (following the strategy meeting) to be of a child protection nature and therefore is not required by law to be investigated by an independent investigator, but there is evidence of potential misconduct the formal procedure for misconduct should be followed. This could be the procedure for either lesser or gross misconduct.

· where it is considered beyond reasonable doubt that the allegation is not true and there is no evidence no further action is required.

91. If there is any doubt at all, or agreement cannot be reached as to whether the matter is a child protection issue, the allegation will be independently investigated.

Suspension

92. Suspension pending disciplinary proceedings will normally only be considered where allegations relate to gross misconduct behaviour and where:

· It appears to be necessary to exclude the employee from the school, for the protection of pupils, other employees or property or the orderly conduct of the school
· The continued presence at work of the employee would be an obstacle to proper investigation of the allegations made against that employee.

93. The decision to suspend will be discussed with the headteacher, chair of governors (or vice chair if the chair is not available) in consultation with the chief education officer representative of the LA and, where applicable, the diocesan authority, prior to implementing any suspension or redeployment.

94. Before taking the decision to suspend an employee the headteacher and/or the chair of governors should consider if other realistic and reasonable options are available, such as undertaking work that does not involve contact with pupils or working from home, these will be documented along with considerations and rationale as to why they were not appropriate in the letter confirming suspension. (Refer Annex 9).

95. Suspension although not part of the disciplinary process is a serious step and will not be used in a punitive way. If possible, alternatives to suspension should be considered but this must be considered taking account the safeguarding of pupils, protection of employee from further allegations, etc. To ensure thorough consideration is undertaken before suspension, the suspension checklist provided at Annex 9 should be completed.

96. Suspension will be on full pay and contractual benefits. The employee is expected to be available for any meetings arranged during term time. The continued effect of the suspension will be kept under review and the outcome of the review reported to the

employee and the governing body. The review period will normally be 25 working days. In the event the employee reports in sick the suspension may be lifted, and the employee will be recorded as sick.

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

Suspension Interview

98. Where suspension is being considered an interview will be arranged between the headteacher/chair of governors and the employee. This meeting can be held off site if necessary or undertaken by telephone phone or teams/zoom if exceptional circumstances prevent a meeting being held. A follow up meeting can be arranged to facilitate attendance of a Trade Union representative.

99. If an employee submits a fit note indicating they are unable to attend work/meetings during the period of suspension, they will be eligible for sick pay under their conditions of service and in accordance with the school's policies and procedures.

100. Where the employee is a trade union representative the case should be discussed with a paid union/ Senior branch official before the interview is arranged, with the employee's consent.

101. The employee will be advised to seek the advice of their trade union representative at the earliest opportunity.

102. The employee will be informed at the start of the interview that an allegation has been made and that suspension may occur.

103. The employee will be given as much information as possible concerning the allegation (taking account of any advice from statutory authorities), including the reasons for any proposed suspension.

104. The employee will be given the opportunity to respond, this may be extended with agreement for the employee to consider and provide alternative options.

105. If, at the end of the interview the headteacher/chair of governors considers that suspension is necessary the employee will be advised:

· whether they are suspended from duty or not if not,
· Whether they are subject to restricted duties etc.

106. Written confirmation of suspension, detailing the reasons must be sent to the employee as soon as possible following the meeting and no later than 5 working days after. The employee should be offered appropriate support during the period of suspension such as access to occupational health and counselling services and will be offered the name of a

person not involved in the investigation with whom they can discuss employment matters and any support needs.

107. The headteacher/chair of governors shall give written notice of the suspension to the chair or governors, the local authority and, where applicable, to the diocesan authority.

Absence due to Illness

108. An employee is expected to attend any meetings arranged during term time. Failure to attend may lead to suspension of pay and/or disciplinary action, reasons for the non-attendance should be explored before taking such action which may include a referral to Occupational Health for support and guidance.

109. If an employee is unable to attend an investigation meeting, they may be offered one rearranged date, or they can choose to submit responses to set questions if this is feasible dependant on the circumstances which may require a follow up discussion. The investigation report will be completed based on the information available.

110. If the employee is absent due to sickness, the staff disciplinary and dismissal committee will usually rearrange the hearing once. However, if employee is still unable to attend, advice should be sought from the occupational health unit as to the employee's ability to attend a meeting and reasonable adjustments will be made where possible to facilitate attendance. Where the employee may be absent for an indeterminate period, the staff disciplinary and dismissal committee may decide to hold the hearing provided that it has informed the employee and their representative and has offered the employee the opportunity to send a representative or submit written evidence to present their case. The representative will have the same opportunity as the employee to present evidence, call witnesses and sum up the employee's case. If the employee were to decline the opportunity to submit written representations or use a representative to present their case and their own state of health would cause an extended delay in the proceedings, the disciplinary and dismissal committee should still go ahead on the basis that the employee has been afforded reasonable opportunity to make their case and that the hearing has to be arranged to conclude the case.

Referral for an independent investigation

111. The requirement in education law is that the governing body must refer child protection allegations for independent investigation. In order to make the process easier this task has been delegated to the chair of governors and the governing body's decision to this effect has been minuted. This must be done prior to the hearing of any disciplinary proceedings. The independent investigator's contact in relation to the running of the investigation will be with the governing body (e.g. the chair of governors) and not the LA or headteacher. The purpose of an independent investigation is to enable the governing body to comply

with the law and to provide members of the staff disciplinary and dismissal committee with a thorough and unbiased investigation report, produced by persons with appropriate skills and training, to enable them to reach fair and balanced decisions.

112. 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 allegations was made has admitted to having done what has been alleged or 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.

113. In the circumstances referred to above, the disciplinary and dismissal committee would still be required to meet to determine whether to terminate the contract or take other action.

114. However, there should be sufficient evidence from the initial meeting between the headteacher and the local authority designated lead officer for safeguarding, 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.

115. 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 employee 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.

116. The governing body must not appoint an independent investigator until:

- The local authority has notified the governing body that it has discussed the allegations with all appropriate parties
- The statutory authorities have notified the governing body that:
- They have each concluded their investigation (if any)

- Any criminal proceedings have been discontinued or concluded subject to discussions and agreement with the police to proceed.
- The governing body has consulted with:
  the local authority designated lead officer for safeguarding in education
  the headteacher (unless the allegation is made against them).

117. If there is any reasonable doubt or agreement cannot be reached the allegation will follow the gross misconduct procedure and will be independently investigated.

The independent investigation

118. The chair of governors will set the terms of reference of the investigation and the independent investigator will set the parameters of the investigation. The report will not contain any conclusions and recommendations as these are matters for the committee to determine.

The independent investigation report

119. The report, once completed, will be given to the chair of governors who will give a copy to the headteacher, or chair of governors and another governor in respect of investigations into the conduct of the headteacher. No evidence will be removed from the report. In accordance WG guidance 8.21 and 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 for child protection cases.

120. The employee will be informed of the decision that a hearing is being arranged as soon as reasonably practicable ideally this should be within 5 working days. The employee will be advised to seek advice from their trade union representative.

121. On progressing to a hearing, the chair of governors will ensure that all relevant papers that will be relied on including the full investigation report and supporting documents, are sent to the employee, the person presenting the case against the employee, and members of the staff disciplinary and dismissal committee within a minimum of 10 working days of the hearing (this may be extended if the pack if considerably large and complex, equally this may be reduced with agreement). When dealing with child protection allegations an independent non-governor member on the staff disciplinary and dismissal committees and staff disciplinary and dismissal appeals committees must be appointed.

122. As required in law the staff disciplinary and dismissal committee and the staff disciplinary and dismissal appeals committee will have at least two governors plus an independent non-governor with voting rights who have had no prior involvement in the case. The appeal committee will have the same number of governors as the first committee. The governors, including the independent non-governor on the appeal committee will be different from those on the first committee.

Formal Hearing Procedure for All Gross Misconduct and Cases Which Could Result in Dismissal

123. 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 employee has subsequently resigned or is on sick leave.

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

125. The employee will be given a minimum 10 working days' notice and be informed in writing of:

- The date, time and place for the disciplinary hearing, seeking agreement to dates from members of the committee, the employee any witnesses appearing in person and the LA and diocesan authority (if appropriate)
- The purpose of the hearing and the range of possible outcomes
- The right of the employee to be accompanied by a trade union representative or work colleague
- The membership of the staff disciplinary and dismissal committee and dismissal appeal committee
- The name of the person presenting the case against the employee
- The full details of the allegation, the evidence to be presented and the names of any witnesses to be called, etc. This will be provided concurrently to the panel members
- Who is to be the advisor to the staff disciplinary and dismissal committee The date by which all relevant documentation must be received by the clerk - within a minimum of 5 working days of the hearing.

126. The clerk will arrange for the documentation from both parties (timescales for submission in Annex 4) to be distributed to the employee prior to the hearing, including up-to-date procedures.

127. The employee will be afforded the right to object to any member of the panel based on evidence that calls into question their ability to act impartially in the circumstances of the case. This should be done within 5 working days of notification of the panel members. The chair of governors will determine the validity of the objection unless the Chair of

Governors is the person against whom the objection is made in which case it will be a Vice Chair who is not a panel member.

128. 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 employee and/or their trade union representative to summarise their case. The clerk to the governing body will be present to record the hearing in detail. The suggested procedure to be followed at the hearing is set out in Annex 7.

129. Once this part of the hearing is completed there will be an opportunity for the staff disciplinary and dismissal committee to receive advice from LA officer and/or dioceses representative (if applicable). Once this is received members of the committee will be left alone to discuss the evidence and make their decision. The Clerk will be present at this time to record discussions. Where possible the decision and reason for it should be given verbally at the end of the hearing and followed up in writing. If for some reason a verbal decision cannot be relayed, the committee's decision will be given in writing to the employee within 5 working days. At this point the employee will also be informed of their right to appeal and the timescale within which this must be made.

Decision reached after the hearing has taken place

130. Each case will be dealt with on its merits, and the following factors will be taken into account:

- The employee's current disciplinary record
- Any mitigating circumstances
- The proposed penalty is reasonable in the circumstances.

- Having considered all the evidence and taken into account advice provided, the staff disciplinary and dismissal committee may conclude that:

  a) There is insufficient evidence to support the allegation and there is no action to be taken
  b) There is evidence that the alleged behaviour constitutes lesser misconduct
  c) There is evidence to support the allegation of continued/repeated misconduct following a final written warning
  d) The allegation of gross misconduct is proven and, depending on the severity of the misconduct, an appropriate sanction shall be imposed.

Possible outcomes may be:

- Specified required training and development
- Relegation to a lower-grade position (if practical) with related loss of salary
- A written warning, or a final written warning (see para 56)
- Summary dismissal.

Appeals against disciplinary hearing outcomes (lesser, gross misconduct and dismissal)

131. An employee is entitled to appeal against any disciplinary sanction. The notice of the intention to appeal needs to be lodged with the clerk to the staff disciplinary and dismissal appeals committee (SDDAC) within 5 working days of receipt of letter confirming outcome of disciplinary hearing. The appeal letter will need to include the grounds for the appeal which should be on one of the following reasons:

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

132. The employee should provide specific details within 15 working days of the appeal hearing and advise if they wish to have a review or a rehearing. The SDDAC will consider if the hearing will be a review or a rehearing, if it is a review this will be communicated to all parties prior to the hearing.

Review or Rehearing

133. The purpose of the appeal hearing is to enable the appeals committee to consider the grounds for appeal as submitted by the employee or their representative.

134. 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 employee and or their representative as to whether they wish to have a full rehearing and the reasons why.

135. 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 employee should be given notice of the date and time of the appeal hearing. 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.

136. The appeal will be heard by the disciplinary and dismissal appeals committee ideally within 25 working days of the notice of appeal.

137. Ideally mutually agreed date for the appeal hearing will be set and a letter confirming the date sent by the clerk of the governors to the employee, giving a minimum of 10 working days notices taking account of the suggested timescales in Annex 4. If no date can be mutually agreed then a date will be provided if this is not suitable it can be rearranged within a reasonable timescale on one further occasion. The notification will include the following:

- The date and time of the appeal hearing
- The purpose of the hearing and range of possible outcomes
- The right to be accompanied by a trade union representative or work colleague
- The membership of the staff disciplinary and dismissals appeal committee
- Details of other persons to be present and in what capacity
- The full details of the allegation, an outline of the evidence to be presented and the names of any witnesses to be called.

138. The employee may submit additional evidence as per suggested timescales in Annex 4.

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

- Uphold the decision of the headteacher, chair of governors or staff disciplinary and dismissal committee
- Impose a lesser penalty
- Conclude that no disciplinary action should be taken against the employee.

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

141. The decision of the staff disciplinary and dismissal appeals committee will be final, and the employee will be informed in writing within 5 working days.

142. The employee will be given a copy of the notes of the appeal hearing and a copy of the disciplinary and dismissal appeals committee's conclusions.

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

Supply of Information

144. The governing body will comply with their legal duty to report cases under the Safeguarding Vulnerable Groups Act 2006 and the Education (Supply of Information) Wales Regulations 2009.

145. Employees will be informed of this duty in cases which could result in dismissal from employment.

146. If an employee resigns while disciplinary procedures are pending or are incomplete and where the allegations could: -

- Amount to gross misconduct; and/or
- Be defined as a reportable incident; and/or
- Otherwise lead to the termination of the individual's employment

147. The disciplinary procedure will continue to its completion. The staff disciplinary and dismissal committee will have to determine whether the evidence available would have led to a dismissal. Where this is the case the investigation papers will be forwarded to the Education Workforce Council and/or the Disclosure and Barring Service.

148. In adopting this procedure and all delegations contained herein, the governing body has taken due regard of advice and guidance from the LA and the Disciplinary and dismissal procedures for school staff Welsh Government circular no: 002/2020 (2020). Consultation has also taken place with trade union representatives.

149. Further detailed guidance on the stages of this policy can be found in the revised *Disciplinary and dismissal procedures for school staff* Welsh Government circular no: 002/2020

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

…….……..

Date approved: ……...……

Date sent to LA ……

Annex 1

Examples of Lesser Misconduct

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

Breaches of discipline under this heading will not normally result in dismissal for a first offence but may result in dismissal if repeated. Lesser misconduct might include:

- specified conduct which is incompatible with the ethos and precepts of the school as set out in the school's employees handbook, code of conduct, prospectus, website, school employee's terms and conditions of employment etc
- Persistent 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)
- Wilful 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 an employee/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
- Inappropriate use of mobile phone/text messaging/social networking sites during lesson time and/or which is incompatible with the school's acceptable use policy
- Misuse of school facilities such as internet and email
- Deliberately falsifying work records
- Non-compliance with Data Protection principles
- Smoking on premises.

Annex 2

Examples of Gross Misconduct

Gross misconduct can be defined as an act, or series of actions, that fundamentally repudiates the contract of employment so that the governing body would be justified in no longer tolerating the continued presence at work of the employee. These acts may justify summary dismissal without notice or payment in lieu of notice. 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.

Gross misconduct might include:

- Specified conduct which is incompatible with the ethos and precepts of the school as set out in the school's employees handbook, code of conduct, prospectus, website, school employee's terms and conditions of employment etc
- Fraudulent acts or theft of property belonging to the LA, the school, fellow employees or pupils
- Deliberate and serious damage to property belonging to the LA, the school, fellow employees or pupils
- Violent behaviour including physical assault towards pupils or adults
- Continuous bullying of adults
- Harassment or unlawful discrimination on any grounds
- Physical, sexual or emotional abuse of pupils
- 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

- Theft or fraud out of the workplace that brings about a breach of trust and confidence
- Inappropriate texting
- Dishonesty (e.g. tampering with exam papers, revealing exam papers prior to examinations or altering exam results)
- Serious violation of the LA or the school's health and safety rules and standards
- Criminal misconduct outside the workplace which reflects adversely upon the school or the employee's suitability to continue to be employed at the school
- Knowingly providing false information on any matter relating to the employee's employment
- Disclosure of confidential personal information
- Serious beaches of health and safety
- Serious breach of dignity at work policies
- Breach of child protection policies and procedures
- Corrupt or improper practice for private gain
- Relevant criminal offences
- Engaging in other employment during working hours without permission.

Annex 3

FAST TRACK DECISION FORM: RECORD OF MEETING

FAST TRACK DECISION FORM: RECORD OF MEETING	
Date of meeting:	
Time and venue for meeting:	
Name of employee(s) subject to the fast track decision	
Name and job title of all parties attending the meeting:	1. 2. 3. 4.
Allegation(s):	

PART A. CONSENT TO PROCEED WITH A FAST TRACK PROCEDURE

I consent to matters being dealt with using a fast track procedure.

Signed: 1. …… 2. ……...

3. …… 4. ……

I do not consent to matters being dealt with using a fast track procedure.

REASONS FOR REFUSAL:

Signed:

NOTES OF MEETING:

(Continue on a separate sheet if required)

OUTCOME:

SIGNED: (DISCIPLINING OFFICER)

Annex 4

Days are working days

10	Notice to the employee of investigation interview or less with agreement
	Investigation to be completed in a timely manner. Employee to be provided with updates when this exceeds 6 weeks
10	From receipt of report, for CoG /HT to make a decision
5	From the date of the decision, for the employee to be informed
	Clerk to arranged hearing in a timely manner
	When panel is agreed, employee is informed of this; this doesn't have to wait until a date is agreed as this may only delay things particularly if the employee objects to a panel member and the clerk has to look for another member and their availability which may not be the original date agreed
5	For the employee to object to a panel member
	Clerk to rearrange hearing in a timely manner - no specific timeframe
10	All parties to receive documents 10 days before the hearing
5	Minimum time for employee to provide documents to the clerk and ideally prior to this
	Documents from employee to go to panel asap after receipt.
5	Decision on the day or in writing
5	Days to lodge an appeal - this must specify if a rehearing or review is requested.

	Clerk to arrange - no timescales
	As above when panel is agreed employee to be informed of names
5	To object to a panel member
	Clerk to rearrange hearing in a timely manner - no specific timeframe
10	All parties to receive documents 10 days before the hearing
5	Minimum time for employee to provide documents to the clerk and ideally prior to this
	Documents from employee to go to panel asap after receipt.
5	Decision on the day or in writing

ANNEX 5

DISCIPLINARY HEARING – LESSER MISCONDUCT

A disciplinary meeting for lesser misconduct cases conducted by the headteacher or chair of governors (for cases against the headteacher).

INTRODUCTION

Welcome and introduce everyone present at the interview.

Confirm employee has received all related paperwork including a copy of the disciplinary policy and procedure.

REPRESENTATION

The representative can present the employee's case and give a summary but should not answer questions directed to the employee although discussion between them is acceptable – a reasoned approach is required to allow the employees the opportunity of having a fair hearing.

If they are alone, ask them to confirm they have elected not to be represented.

PROCEDURE TO BE FOLLOWED DURING MEETING

1. State the following:

"This hearing will be conducted in accordance with the school's staff disciplinary procedure to establish the facts and issue any disciplinary sanction, if necessary, as a result of the concerns expressed about your conduct as detailed in correspondence submitted to you previously. State the allegation(s)

The disciplinary sanction, if any, that may be taken, will be decided at the end of the hearing after the information has been very carefully considered and all relevant factors taken into account. This should include any special or mitigating circumstances you wish to advise me of, including any personal or outside issues affecting this matter which should be considered."

2. Explain the procedure of the hearing as follows:

- the investigating officer will outline the allegation and the findings of the investigation.
- employee will then be given opportunity to respond and present any relevant information supporting their case or advising if there are any special circumstances to be taken into account
- questions may be asked by all parties in order to clarify issues
- if necessary, parties may sum up their cases
- meeting will then adjourn to consider the facts and make a decision.

3. The following points should be covered:

- ensure the employees understands what has been said
- check if they have any questions about the hearing/disciplinary process
- explain that notes will be taken throughout the meeting and they might be asked to clarify things from time to time
- explain that anyone present is free to ask questions at any time to clarify matters
- the hearing will be conducted in a formal and polite manner and the employee encouraged to speak freely so that all facts can be taken into consideration
- either party may ask for an adjournment at any time of the hearing.

4. The investigating officer will outline the case and/or present findings of the investigation.

5. The employee will outline their case and to respond to the investigating officers presentation.

6. All parties should be allowed to ask questions during the meeting.

7. The investigating officer and member of staff are invited to summaries any points.

8. The headteacher, on conclusion of discussions will sum up and ensure that no party has anything further to add.

9. Adjourn to consider the facts and consider if the allegation is upheld and if so what level of sanction is appropriate (refer to schools' disciplinary policy 48 - 60). This decision rests with the headteacher. The HR Advisor must not be involved in decision making process but can offer advice. The investigating officer must not be involved in the decision-making process.

10. If possible, call back employee to convey decision. If the decision cannot be reached within a reasonable time scale on the day, either:

- Agree to re-convene the meeting on a future mutually convenient date

or

- Agree decision will be confirmed verbally and confirmed in writing.

11. If decision is reached on the day, advice of right of appeal and that outcome will be confirmed in writing

12. The decision must be confirmed in writing within 5 working days.

ANNEX 6

STAFF DISCIPLINARY AND DISMISSAL COMMITTEE

Procedure for Disciplinary Hearing for gross misconduct/possible dismissal

GENERAL PRINCIPLES: -

The chair of the staff disciplinary and dismissal committee will ensure that: -

- all parties keep to a sensible time framework
- all parties have the opportunity to state their case, ask questions, present evidence and call witnesses
- sufficient time is devoted to questioning and discussion, using an adjournment, if necessary, to ensure so far as is practicable, all the facts are established
- all persons present at the hearing are treated with respect
- the main points are summarised to ensure that nothing has been missed
- the decision is based upon an assessment of all matters raised and can be regarded as the action of a "reasonable employer" having regard to all the circumstances
- that matters of fact that have been relied on are clearly recorded in order that they can be made available to an appeal hearing.

The Role of The HR Advisor Advising the Staff Disciplinary And Dismissals Committee

The person(s) advising the staff disciplinary and dismissal committee will provide advice in private (to be agreed at outset of hearing) or in front of all parties and this should be fully recorded in writing by the clerk to the staff disciplinary and dismissal committee. The role of the person(s) advising the staff disciplinary and dismissal committee should be to:

- provide advice on legal or procedural issues but not express opinions on the merits of the case, the people involved or the evidence
- seek, through their advice, to ensure that deliberations of the governing body are sound to avoid the case ending in an employment tribunal.
- The advisor will not remain with the committee during their deliberations on the case but if possible should remain available in case the committee wishes to clarify matters.

The Role of Presenting Officer

The presenting officer, which is usually the headteacher (unless the allegation is about the headteacher or the Headteacher is a witness) in which case the chair or a local authority officer may present the case.

At the hearing, the presenting officer, will set out the allegations against the employee, present any written or other evidence and call and question any witnesses.

The presenting officer will call the investigating officer into the hearing at the appropriate time so that they can provide the findings of their investigation and answer any necessary questions.

Questions can be asked of the presenting officer by any party involved in the hearing. The presenting officer can also ask questions of any party involved.

At the end of the hearing the presenting officer is required to sum up to the case to the committee

The presenting officer will present at all stages unless there are circumstances which prevent this.

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.

The Role of The Representative (trade union representative or work colleague)

The representative can present the employee's case and give a summary but should not answer questions directed to the employee although discussion between them is acceptable – a reasonable approach is required to allow the employee the opportunity of having a fair hearing.

Procedure for Disciplinary Hearing

- the chair of the committee will make introductions of those present:
- the panel members
- the presenting officer
- the employee, and their representative, if present
- HR support
- note taker – clerk to the governing body.
- where witnesses are called, including the investigator, they are only present for the period of questioning.

- the chair of the staff disciplinary and dismissal committee will set out the allegations of misconduct. The following may be said:

  This hearing will be conducted in accordance with the schools staff disciplinary policy and procedure to establish the disciplinary sanction, if any, to be taken as a result of the concerns expressed about your conduct (as outlined in the disciplinary letter).

  The disciplinary sanction that may be taken, if any, will be decided when all the information from all parties and other relevant factors have been taken into account. This should include any special or mitigating circumstances you wish to advise us of, including any personal or outside issues affection this matter which you believe need to be considered.

As you have been previously advised, this matter may potentially result in dismissal from employment (either as a result of gross misconduct or following a final written warning). However, no decision will be made until you have had the opportunity to present your case and all evidence has been carefully considered.

- The presenting officer to put their case in the presence of the employee and to call such witnesses as they wish.
- The employee (or their representative) to have the opportunity to ask questions of the presenting officer and their witnesses.
- The committee may ask questions of the presenting officer and their witnesses.
- The presenting officer to have the opportunity to question their witnesses.
- Where there has been an allegation of safeguarding concern and the employee concerned is being charged with gross misconduct the independent investigator will be invited to attend the disciplinary hearing as a witness for the employer's side.
- Both parties and the governing body panel will have the opportunity to ask questions of the independent investigator to clarify matters raised in the report.
- The employee (or their representative) shall reply to the issue(s) raised, in the presence of the presenting officer and may call witnesses.
- The presenting officer to have the opportunity to ask questions of the employee and their witnesses.
- The committee may ask questions of the employee (or their representative) and their witnesses.
- The employee (or their representative) to have the opportunity to re-examine their witnesses.
- The presenting officer to have the opportunity to sum up their case.
- The employee (or their representative) to have the opportunity to sum up their case.
- The person(s) advising the committee to do so in front of all parties, unless otherwise agreed to be done in private.
- The presenting officer and the employee (or their representative), and the person(s) advising the committee to withdraw.
- The staff disciplinary and dismissal committee to deliberate in private to determine whether misconduct has taken place. The clerk to note their discussion.
- If necessary, the staff disciplinary and dismissal committee may recall the presenting officer,

the employee and the person(s) advising the committee to clear points of uncertainty on evidence already given. If recall is necessary, all parties are to return notwithstanding only one is concerned with the point giving rise to doubt.

- The hearing may also be adjourned at the deliberation stage in order to allow for further investigation if the staff disciplinary and dismissal committee feels that there are points that require clarification.

- The presenting officer, the employee and the person(s) advising the committee to be recalled and advised verbally as to the determination of the panel on whether misconduct has occurred. Unless further deliberation is necessary, the committee will also advise what sanction will be applied.

- If further deliberation is necessary before confirming the sanction, the staff disciplinary and dismissal committee will then provide the employee with an opportunity to present any mitigation.

- The hearing will then be adjourned again for the committee to consider any mitigation provided and to determine what (if any) disciplinary sanction to apply.

- The presenting officer, the employee and the person(s) advising the committee to be recalled and wherever possible, for the determination of the Committee to be conveyed verbally. This will be confirmed in writing, outlining reasons for decision within 5 working days of the date of the hearing and the employee informed of their right to appeal. Notes of the meeting will either be sent with this letter or as soon as possible after.

ANNEX 7

STAFF DISCIPLINARY AND DISMISSAL APPEAL COMMITTEE PROCEDURE FOR DISCIPLINARY APPEAL HEARING

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. The employee will be given notice of the date and time of the appeal hearing as detail in Annex 4. Agreeable times and dates will be arranged for all parties concerned where possible.

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.

GENERAL PRINCIPLES: -

The chair of the staff disciplinary, dismissal and appeal committee will ensure that: -

- the allegations of misconduct are clearly outlined
- all parties are advised of the format of the appeal meeting either a rehearing or a review
- all parties keep to a sensible time framework
- all parties have the opportunity to state their case, ask questions, present evidence and call witnesses
- sufficient time is devoted to questioning and discussion, using an adjournment if necessary, to ensure so far as is practicable, all the facts are established
- all persons present at the hearing are treated with respect
- the main points are summarised to ensure that nothing has been missed
- the decision is based upon an assessment of all matters raised and can be regarded as the action of a “reasonable employer” having regard to all the circumstances.

Procedure for Disciplinary Appeal Hearing

The chair of the committee will make introductions of those present:

- the panel members
- the presenting officer
- the employee, and their representative, if present
- HR support
- Note taker – clerk to the governing body.

- where witnesses are called, including the investigator, they are only present for the period of questioning
- the chair of the staff disciplinary and dismissal appeal committee will set out the allegations of misconduct and the reasons for appeal.
- The presenting officer to put their case in the presence of the employee and to call such witnesses as they wish
- The employee (or their representative) to have the opportunity to ask questions of the presenting officer) and their witnesses
- The presenting officer to have the opportunity to question their witnesses
- The committee may ask questions of the presenting officer and their witnesses
- The employee (or their representative) shall reply to the issue(s) raised, in the presence of the presenting officer and may call witnesses
- The presenting officer to have the opportunity to ask questions of the employee and their witnesses
- The employee (or their representative) to have the opportunity to re-examine their witnesses
- The committee may ask questions of the employee (or their representative) and their witnesses
- The presenting officer to have the opportunity to sum up their case
- The employee (or their representative) to have the opportunity to sum up their case.

Appeal on specific point as outlined in appeal letter

A copy of the appeal letter to be provided to the presenting officer in advance

- The employee (or their representative) to put their case in the presence of the presenting officer and to call such witnesses as s/he wishes
- The presenting officer to have the opportunity to ask questions of the employee (or their representative) and their witnesses

- The presenting officer shall reply to the issue(s) raised, in the presence of the employee (or their representative) and will call, the investigating officer and the chair of the disciplinary and dismissal committee as witnesses.

- The employee to have the opportunity to ask questions of the presenting officer and any witnesses

- The committee may ask questions of the employee (or their representative) and presenting officer

- The employee (and/or representative) to have the opportunity to sum up their case

- The presenting officer to have the opportunity to sum up their case.

All Hearings

- The person(s) advising the committee to do so in front of all parties (unless otherwise agreed).
- The presenting officer and the employee (or their representative), any witnesses and the person(s) advising the Committee to withdraw.
- The staff disciplinary and dismissal appeal committee, to deliberate in private only recalling the presenting officer, the employee and the person(s) advising the committee to clear points of uncertainty on evidence already given. If recall is necessary, all parties are to return notwithstanding only one is concerned with the point giving rise to doubt. The clerk to the committee to note discussions.
- The staff disciplinary and dismissal appeal committee to announce the decision to the parties personally or in writing as may be determined, but in any case, written confirmation is to be sent within five working days of the hearing.
- The staff disciplinary and dismissal appeal committee must not impose a more severe penalty than that given by the staff disciplinary and dismissal committee, but it can: -
    - confirm the decision of the original determining officer or staff disciplinary and dismissal committee
    - impose a lesser penalty
    - conclude that no action should be taken against the employee.

- The outcome will be confirmed in writing, outlining reasons for decision within 5 working days of the date of the hearing. Notes of the meeting will either be sent with this letter or as soon as possible after.

ANNEX 8

Consideration of suspension checklist

Suspension is a serious step and will not be used in a punitive way. If possible, alternatives to suspension should be considered but this must be considered taking account the safeguarding of pupils, protection of employee from further allegations, etc.

Suspension should only be considered if one or more of the following apply:

- It appears to be necessary to exclude of the employee from work for the protection of children and/or vulnerable adults, other employees or property or the orderly conduct of the workplace, OR
- The continued presence at work of the member of employees would be an obstacle to proper investigation of the allegations made against that member of employees; AND
- There is no other suitable option available – e.g., restricting the duties of the member of employees.

Please ensure you have discussed this matter with your LA Safeguarding Officer and HR Advisor BEFORE determining if suspension is necessary.

It is recommended that you meet with the employee to inform them that an allegation has been made and that suspension is an option.

It is recommended that a decision to suspend should only be taken after an adjournment to this meeting and following completion of this form.

The assessment may need to be reviewed at various stages: -

- Receipt of initial allegation
- Following strategy discussions
- Following strategy meetings

Details	
Date:	
Name of employee:	
Post title (if the employee has more than one job, please include details of all posts held)	
Service/School	
Name of manager/headteacher completing	

assessment		
Nature of incident		
Has there been a critical incident and/or serious allegation(s) made?	Yes/No	Details:
Does the employee have the required work permit/Visa?	Yes/No	Details:
Does the employee have a current registration to practice from the required regulatory or professional registration body, which is mandatory to the post?	Yes/No	Details:
Has the employee been remanded in police custody?	Yes/No	Details:
If there is a serious allegation, does it involve an allegation of abuse (e.g. child protection)?	Yes/No	Details
Is there clear evidence that the child/adult has suffered harm?	Yes/No	Details:
Could the allegation potentially be considered as gross misconduct and/ or serious dereliction of duty that would (if substantiated) fundamentally repudiate the contract of employment.	Yes/No	Details:

Describe the event(s) or circumstances that have occurred:		
Procedures		
If child protection, has the case been discussed with the schools safeguarding lead and LA safeguarding lead?	Yes/No	Details:
Has a social services referral been made?	Yes/No	Details:
Has a strategy discussion been convened?	Yes/No	Details:
Has the potential to suspend been discussed with chair of governors (or vice chair if the chair is not available) in consultation with the chief education officer representative and, where applicable, the diocesan authority?	Yes/No	Details:
Risks		
Has an initial factfinding exercise been undertaken? If so, does this confirm that the allegation is not demonstrably false?	Yes/No	Details:
From initial enquiries, is there any other	Yes/No	Details:

evidence to support the allegation e.g., CCTV?		
Are pupils, other employees and/ or the employee concerned considered to be at risk of physical, verbal, sexual, psychological and/ or racial abuse/ assault/ intimidation/ bullying or harassment?	Yes/No	Details:
Is the presence of the employee likely to hinder /or attempt to interfere with the disciplinary investigation?	Yes/No	Details:
Is there a risk that the employee will (or will attempt to) tamper with, remove, or destroy any incriminating evidence?	Yes/No	Details:
Is there a risk that the employee will (or will attempt to) damage goods, property or data (hard copy and/ or electronic data) belonging to the school which would damage the School's business?	Yes/No	Details:
Is the employee under investigation considered to be at risk of physical, verbal, sexual and/ or racial abuse/ assault/ intimidation/ bullying or harassment from colleagues?	Yes/No	Details:
Does the employee's continued presence at work create a health and safety risk to themselves or others, e.g., under the influence of alcohol or non-prescription drugs?	Yes/No	Details:
Is there a substantial risk that the employee will repeat the alleged misconduct?	Yes/No	Details:
Has there been a breakdown in relationships between the employee and pupils or other work colleague(s)?	Yes/No	Details:

Alternatives to suspension		
Is there a workable alternative to suspension (deployment to another work area, restriction of work duties)?	Yes/No	Details:
Is it possible for the employee to work (with regular supervision) with different pupils/clients?	Yes/No	Details:
Is it possible for the employee to undertake different or restricted duties within the same workplace?	Yes/No	Details:
Is it possible to relocate the employee to an alternative workplace by agreement?	Yes/No	Details:
Can the employee work from home?	Yes/No	Details:
What would be the risks associated with this approach?		Details:
How can this risk be managed/mitigated?		Details:
If there is no alternative why this is?		Details:

I confirm that all potential alternatives to suspension have been considered. Decision/Reason: Signed:		
Suspension meeting		
Has consideration for appropriate timing/notice of meeting been given	Yes/No	Details:
Is the employee an accredited Trade Union representative and the case discussed with the relevant Full Time Officer before the interview is arranged (if agreed by employee)	Yes/No	Details:
Is it possible to allow employee time to have a representative with them at the meeting? If not, advise employee to seek advice at earliest opportunity.	Yes/No	Details:
Has the employee been informed that an allegation has been made and that suspension may occur?	Yes/No	Details:
Has the employee been given as much information as possible concerning the allegation, including the reasons for any proposed suspension?	Yes/No	Details:
Has the member of employees been given the opportunity to respond?	Yes/No	Details:
Follow up actions		
Have you allocated an impartial contact	Yes/No	Details:

officer to support the employee?		
Has the correspondence address, telephone numbers, email address and preferred method of contact been confirmed?	Yes/No	Details:
Has details of the authority's counselling services been provided?	Yes/No	Details:
Has a referral to occupational health been made, if necessary	Yes/No	Details:
Has the next review date been agreed?	Yes/No	Details:
Signed:		Date: