



Disciplinary Procedures December 2015

Signed by the Chair of the Management Board

.....

Review Date:

Disciplinary Procedure

GREYBOOK

Local Conditions of Service for School Based Employees

Disciplinary procedure for school based employees (teaching and non teaching)

CONTENTS

	Page
1.0 Introduction	3
2.0 Misconduct V Gross Misconduct	4
3.0 Safeguarding Allegations	4
4.0 Criminal Offences	5
5.0 Protection of Trade Union Representatives	5
6.0 Suspension	6
7.0 Investigation	7
8.0 Procedures to be followed at Disciplinary Hearings (other than dismissal hearings)	7
9.0 Procedures to be followed at Disciplinary Hearings that could result in a dismissal	9
10.0 Rights of Appeal	10
11.0 Non Attendance	12
12.0 Statutory Regulatory Authorities	12
13.0 Absence during Disciplinary Action	12

APPENDICES

Appendix A -	Roles and Responsibilities;
Appendix B -	Matters of Discipline (general definitions)
Appendix C -	Guidance on Conducting an Investigation
Appendix D -	Procedures to be followed at a disciplinary hearing (including dismissal committee);
Appendix E -	Composition of a Staff Dismissal Committee
Appendix F -	Procedures to be followed at an Appeal Hearing
Appendix G -	What is the right to be accompanied
Appendix H -	Template Terms of Reference
Appendix J -	Statement Format
Appendix I -	Template Investigation Report

1.0 Introduction

- 1.1 Rules and procedures are designed to help employers, employees and their representatives deal consistently with all disciplinary situations in the workplace in a prompt, fair and equitable manner and are consistent with the Authority's policy on equal opportunities and legislation on the avoidance of discrimination. **It is strongly recommended that the Headteacher/Chair of Governors seek advice and support from the Schools' HR Provider to determine the appropriate procedure before commencing any case and to ensure attendance at relevant meetings/hearings/appeals.**
- 1.2 This disciplinary procedure has been written to conform to the following:
- The School Staffing (England) Regulations 2009
 - Equality Act 2010
 - Employment Rights Act 1996
 - ACAS Code of Practice
 - The requirements of DfE circulars "Safeguarding Children and Safer Recruitment in Education (2010)
 - Child Protection Procedures for Barring or Restricting People Working with children in Education (2004)
 - Conditions of Service for School Teachers in England and Wales
 - NJC Conditions of Service for Non Teaching staff
 - Any other relevant employment legislation
- 1.3 This procedure shall not be used in cases of employees experiencing issues of capability or grievance. **(Please see separate capability and grievance procedures contained in the Grey Book – Local Conditions of Service for School Based Employees).**
- 1.4 Measures such as medical suspension and dismissal on health grounds are not regarded as disciplinary proceedings and are dealt with separately.
- 1.5 Unless otherwise stated, these procedures will apply to all disciplinary proceedings brought against all teaching and non teaching staff employed at school. A copy of this procedure shall be made available at the start of the procedure.
- 1.6 The employee will be advised of the nature of the complaint by the Headteacher. Where the Headteacher is the subject of the complaint he/she will be advised by the Chair of Governors, on the advice of the Assistant Director – Education and Enterprise or his/her representative. Throughout this procedure the Headteacher shall be interpreted as Chair of Governors when the Headteacher is the subject of advice or a warning.
- 1.7 Parties concerned should always **try to resolve disciplinary issues informally, which may involve the Headteacher providing the individual with written informal guidance/advice on their conduct and/or behaviour.** The written informal guidance/advice should be removed from the individual's file following a successful designated monitoring period (which should ideally be no longer than 6 months). The formal procedure is intended

to be used for issues that are serious in themselves, or serious because they remain unresolved after informal steps have not achieved a satisfactory solution.

- 1.8 The employee has the right to be accompanied by an official of a trade union/professional association, or fellow worker. (please refer to Appendix G – What is the right to be accompanied).
- 1.9 The School Staffing (England) Regulations 2009 confer the right of the LA to be represented at all proceedings of the governing body of a community or voluntary controlled school relating to a decision that someone working at the school should be dismissed. In the case of an academy school the right to be represented at all proceedings is conferred to the academy trust.
- 1.10 It is strongly recommended that advice is sought from your HR Provider before instigating an investigation and formal disciplinary action.
- 1.11 At the outset of any formal disciplinary proceeding, it will be important to establish who will undertake the necessary roles and responsibilities as outlined in Appendix A.

2.0 Misconduct V Gross Misconduct

When instigating an investigation, a decision needs to be made whether the allegation constitutes misconduct or gross misconduct.

2.1 Misconduct

Misconduct is where an employee's behaviour or conduct falls below the standard required by the employer or is in breach of any school policy or rule. Examples of behaviour that might constitute misconduct are shown in **Appendix B.**

2.2 Gross Misconduct

Gross Misconduct is generally seen as misconduct serious enough to overturn the contract between the employer and employee thus justifying summary dismissal. **Acts which constitute gross misconduct must be very serious and could lead to dismissal.** Examples are shown in **Appendix B.**

It is strongly recommended that advice is sought from your HR Provider in the first instance.

3.0 Safeguarding Allegations

- 3.1 In respect of Safeguarding allegations discussion must take place with the Local Authority Designated Officer – Safeguarding concerning how and by whom Parents or carers of a child or children involved should be informed of the allegation progress and outcome of the case. In deciding what information to disclose, careful consideration should be given to duties under

the Data Protection Act 1998, the law of confidence and, where relevant, the Human Rights Act 1998.

4.0 Criminal Offences

- 4.1 If an employee is suspected of committing a criminal offence at or in connection with his/her work or otherwise and is charged by the Police, suspension of the employee may be appropriate for the protection of the employee or others, or to allow investigations to be carried out more fully. **If sufficient evidence is not available on which to form a reasonable view on whether or not to hold a disciplinary hearing, action should be deferred until further enquiries have been made or the matter settled by a court.**
- 4.2 However, suspension shall only be appropriate where it is believed that bringing a criminal charge compromises the employee's ability to continue working in his/her post during the period of investigation/consideration under the disciplinary procedures. It must be emphasised that the employer's interest in such a matter is in so far as it relates to the conduct of the school/service. It is for the Court alone to consider the criminality or otherwise of the employee's action.
- 4.3 All staff should clearly understand the need to maintain appropriate boundaries in their dealings with young people. Intimate or sexual relationships between a member of staff and a pupil will be regarded as a grave breach of trust. Any sexual activity between a member of staff and a pupil under 19 years of age and in the case of young people with a statement of special educational needs 24 years of age may be a criminal offence under the Sexual Offences Act 2003. **A caution is treated as a conviction for that offence.**
- 4.4 It should be assumed that normally it will be appropriate to await the outcome of the court hearing before disciplinary procedures are followed. However, where a criminal offence is alleged, the disciplinary procedures **may** be instigated **if appropriate** before the court hearing.
- 4.5 It is strongly recommended that advice is sought from your HR Provider.

5.0 Protection of Trade Union Representatives

- 5.1 Normal disciplinary standards apply to accredited representatives of recognised trade unions/professional associations but no formal disciplinary action other than suspension shall be taken against such an employee until the circumstances of the case have been discussed confidentially and with the employee's knowledge with a senior trade union/professional association representative or a full time officer of the union/association at regional level.

6.0 Suspension

- 6.1 Suspension is a precautionary measure and does not prejudice any disciplinary action that may follow.
- 6.2 To avoid suspension at any time during the operation of these procedures, discussions may take place about the possibility of transferring the employee to any alternative post within the school, by mutual agreement as an alternative to suspension.
- 6.3 Suspension in itself is not a disciplinary sanction and does not indicate or presume the outcome of any disciplinary hearing. It may be necessary to allow investigation of any serious allegation against an employee or may occur pending a hearing before the appropriate Committee of the Governing Body or any appeal following a disciplinary hearing.
- 6.4 **Suspension should only occur if** the continued presence of the employee at work may be prejudicial to a fair disciplinary investigation and/or there is evidence that the allegations are serious enough to warrant consideration of dismissal and/or may constitute gross misconduct. Where possible this evidence about the allegation shall be made available to the employee and their representative. Account should be taken of the emotional impact of the suspension process and in certain circumstances consideration should be given to informing the employee's recognised trade union/professional association confidentially in advance so that arrangements can be made for their member to be supported, for example to ensure they can return home safely.
- 6.5 The suspended employee will receive full pay. The Strategic Director – Education and Enterprise or his/her representative or Headteacher will confirm any suspension in writing to the employee together with the reasons for suspension. In the case of a Headteacher the Chair of Governors will confirm any suspension in writing together with the reasons for suspension. **Suspension will be reviewed by the Initiator after five weeks. The Initiator will continue to review the suspension at five week intervals until a resolution is achieved. The outcome of the suspension review will be confirmed in writing to the suspended employee.**
- 6.6 Any suspended employee who desires access to the school premises for the purpose of preparing his/her case. In the case of a Headteacher, inform the Chair of Governors who will advise the Strategic Director – Education and Enterprise or his/her representative. Access will be allowed under the supervision of an Officer of the Authority or Chair of Governors.
- 6.7 Employees who fall sick whilst on suspension should follow the normal absence reporting procedure and normal contractual entitlements to sick pay will apply.

7.0 Investigation

7.1 Any allegation of misconduct should be dealt with as a matter of urgency; a full investigation should be carried out **promptly incorporating the principles of natural justice** (in accordance with the guidelines at **(Appendix C)**). The process should inform the employee of the allegations, provide the employee the opportunity to respond and **to determine if there is a case to answer**.

8.0 Procedures to be followed at disciplinary hearings (other than dismissal hearings)

8.1 If, upon receipt of the Investigator's report, the Initiator concludes that a employee's conduct is such as to warrant the holding of a formal disciplinary hearing, the Initiator shall convene such a hearing. **The formal notice must be issued to the employee in writing at least five school working days before the date of the hearing** and must advise him/her of the following:

- (i) that he/she has the right to be accompanied/represented throughout the procedure by a trade union/professional association official or fellow worker;
- (ii) that he/she will be given the opportunity to challenge any evidence presented and to state his/her case;
- (iii) that a copy of the Investigation Report, accompanied by witness statements, (including a statement of truth at the end of each witness statement, which states that the party believes the facts stated to be true and accurate). In the case of children, these statements will be made anonymous. For the purposes of the operation of these procedures, confidentiality must be very strictly respected and information limited to those who have a need to know;
- (iv) the details of any witness the Initiator intends to call;
- (v) that he/she has the right to call witnesses, subject to the Initiator being advised of his/her intention to do so **no later than three school working days notice prior to the hearing**;
- (vi) that he/she has the right to submit documentary evidence subject to the initiator being provided with such documentation no later than three school working days prior to the hearing (late submissions may not be accepted).

8.2 The disciplinary hearing shall be conducted in accordance with the procedure detailed at **Appendix D**.

8.3 **At the conclusion of the hearing**, the following courses of action are open to the **Disciplinary Committee** to take:-

- (i) No Action or the following sanctions:
- (ii) Formal Advice
- (iii) Formal Warning
- (iv) Formal Written Warning

} Further details are given below

(v) **Formal Final Written Warning**

In awarding formal sanctions under this procedure it must be noted that the process is cumulative, therefore an employee cannot be awarded at the same time two sanctions at the same level, i.e. 2 formal warning offences will equate to a formal written warning, a formal warning with a formal written warning on file will equate to a formal final written warning etc.

8.3.1 No Action

Where the Disciplinary Committee considers that the complaint/allegation is unfounded, it will take no action.

8.3.2 Formal Advice

The Disciplinary Committee can arrange to give appropriate advice for the purpose of improving the future conduct of that employee. The advice given will be confirmed in writing to the employee. The written formal guidance/advice should be removed from the individual's file following a successful designated monitoring period (which should ideally be no longer than 6 months).

8.3.3 Formal Warning

Where the Disciplinary Committee is satisfied that the allegation is well founded, then he/she may give a formal warning to the employee concerned. The record of this warning will be retained on the employee's personal file. All records of the formal warning, which constitutes the first formal stage of the disciplinary procedure, shall be expunged after a **period of six months' satisfactory conduct** (see exception in paragraph 5.3.6). Conduct will not be deemed to have been satisfactory if a further warning relating to the original misconduct is given within the six month period.

8.3.4 Formal Written Warning

In more serious cases, or where a formal warning appears not to have had the desired effect, and is still current on file, a formal first written warning may be issued by the Committee. All records of the formal first written warning shall be expunged after a **period of one year's satisfactory conduct** (see exception in paragraph 5.3.6). Conduct will not be deemed to have been satisfactory if a further warning relating to the original misconduct is given within the one year period.

8.3.5 Formal Final Written Warning

A formal final written warning may be issued after more than one formal or formal written warning appears not have had the desired effect, and is still live on file, or for serious incidents of misconduct where misconduct is regarded as being sufficiently serious to issue one final written warning whether or not any disciplinary action has previously been taken. All records of the formal final written warning shall be expunged after a **period of two year's satisfactory**

conduct (see exception in paragraph 5.3.6). Conduct will not be deemed to have been satisfactory if a further warning relating to the original misconduct is given within the two year period.

- 8.3.6 All warnings will be confirmed in writing five school working days after the meeting and shall include:
- (i) a statement of the complaint against the employee;
 - (ii) details of the improvement in conduct which is expected along with any advice or instruction to the employee as to how this may be achieved;
 - (iii) the timescale within which the improvement is required;
 - (iv) the likely consequence of further misconduct;
 - (v) the right of appeal, including the submission of a statement of mitigation (from formal warning only);

8.4 *Safeguarding allegations*

It is important that employers (the LA or appropriate authority) keep a clear and comprehensive summary of any allegations made, details of how the allegation was followed up and resolved, and details of any action taken and decisions reached, on a person's confidential personnel file and give a copy to the individual. Such information should be retained on file, including for people who leave the organisation, at least until the person reaches normal retirement age or for 10 years if that will be longer.

The purpose of the record is to enable accurate information to be given in response to any future request for a reference. It will provide clarification in cases where a future DBS reveals information from the police that an allegation was made but did not result in a prosecution or a conviction. And it will prevent unnecessary re-investigation if, as sometimes happens, allegations re-surface after a period of time.

9.0 Procedures to be followed at disciplinary hearings that could result in a dismissal

- 9.1 If there is a reason for further serious concern after an unexpired final written warning or where it alleged that misconduct has occurred of such gravity that, if proven, the employee might properly be dismissed, the matter will be referred by the Initiator to the **Staff Dismissal** Committee. The Initiator shall notify the employee with 5 school working days notice, in writing, giving the reasons. The employee shall be entitled to be heard by the Staff Dismissal Committee or his/her nominee in accordance with the procedure set out in **Appendix D**.
- 9.2 The composition of the Staff Dismissal Committee (Appendix E), shall comply with the School Governance Procedures England Regulations 2003/1377. (Part 4)
- 9.3 At the conclusion of the hearing, the decision of the Staff Dismissal Committee shall be one of the following:

- (a) to exonerate the employee and direct that all reference to the matter in question be removed from his/her personal file;
- (b) to find that the alleged breach of discipline is proven in whole or in part and
- (c) to resolve that no action be taken; or

Issue one or more of the following sanctions:

- (i) issue a warning; or
- (ii) such other action as appropriate to the nature of the misconduct; or
- (iii) as an alternative to dismissal or other formal sanction, and only with agreement of the employee, suspend from duty for a period without pay. **Any period of suspension shall not exceed two weeks;** or
- (iv) as an alternative to dismissal or other formal sanction, and only with agreement of the employee, agree that incremental progression for an identified period be withheld; or
- (v) as an alternative to dismissal from employment with the School, or other formal sanction, and only with agreement of the employee, that the employee be dismissed from his/her current post with an offer of another post in the same school/service (of lower status and/or salary) which, in the opinion of the Staff Dismissal Committee would be more suitable. This decision would constitute demotion and would require a resolution in accordance with (vii) below, and a further recommendation offering the employee the alternative post immediately following the termination of his/her existing post; or
- (vi) that the employee should cease work at the school or establishment and be dismissed from his/her post with appropriate period of notice in accordance with the contract or the minimum prescribed in employment legislation;
- (vii) **SUMMARY DISMISSAL** will take place if there is a breach of disciplinary rules which is so serious as to be considered **GROSS MISCONDUCT** (i.e. between the employer and employee and make any further working relationship and trust impossible). **If this is the case, the Dismissal will occur without notice.**

9.4 The decision of the Staff Dismissal Committee shall be given to the employee in writing and a copy shall be retained by the Assistant Director – Education and Enterprise.

9.5 Where an employee is under suspension and the Staff Dismissal Committee resolves to take no action or issue a further warning the suspension shall be lifted with effect from the day following the making of that decision or as soon as practicable thereafter.

10.0 Rights of Appeal

10.1 A employee may appeal against any formal disciplinary action including dismissal, by giving notice in writing **within ten school working days** of receipt of the written decision referred to in paragraph 4 above, to the Chair of the Dismissal Appeal Committee, who shall call a meeting of the Appeal Panel as soon as practicable (and normally **within fifteen school days**) and

arrange for all concerned to be **advised of the date, time and venue of the hearing at least five school working days beforehand.**

10.2 In lodging an appeal the employee should indicate the grounds of appeal. Grounds for appeal should be one of the following:

- The finding or penalty is unfair, stating reasons;
- New evidence has come to light (state the nature of the new evidence)
- The disciplinary procedure was not used correctly, stating how.

The appeal will not be a re-hearing, but will be concerned with the grounds of appeal which should be set out in the letter from the employee.

10.3 The composition of the Dismissal Appeal Committee shall comply with The School Governance (Procedures) (England) Regulations 2003/1377 Part 4 (See Appendix E).

10.4 An employee subject to the appeal procedure will have the right:

- (a) to be represented by an official of a trade union/professional association or fellow worker (or legal representative); each representative may be accompanied by a colleague who shall assist their party but take no active role in the presentation of the matter;
- (b) to **receive at least five school working days' notice** of the date, time and place of the meeting;
- (c) to be given a copy of all written material which is to be produced at the hearing;
- (d) to be notified of the name and status of the presenter of the case;
- (e) be advised of any witnesses to be called;
- (f) to be advised that he/she has the right to call witnesses, subject to the initiator being advised of his/her intention to do so and the details of such witnesses **no later than three school working days prior to the hearing;**
- (g) to submit documentary evidence no later than **three school working days** prior to the hearing (a late submission may not be accepted);

10.5 The employee shall be entitled to be heard by the Dismissal Appeal Committee in accordance with the procedure set out in **Appendix F.**

10.6 The Chair of the Disciplinary Committee will present the case at any appeal against a disciplinary decision.

10.7 The decision of the Appeals Committee will be one of the following:

- Appeal not upheld – confirm the original outcome;
- Reduce the penalty given;
- Appeal upheld

10.8 The decision of the Dismissal Appeal Committee and the reasons for it shall be communicated in writing to the employee. The decision of the Dismissal

Appeal Committee will be final and there will be no further appeal.

- 10.9 In the event of a dismissed employee being reinstated records of the dismissal must be removed from the personal file and destroyed, any subsequent warning replacing the dismissal will be substituted in its place. In the event of a warning being set aside, all records of such a warning must be destroyed immediately. If the severity is to be reduced, all records of the original warning must be destroyed and appropriate documentation produced in accordance with the decision of the Panel.

11.0 Non Attendance

- 11.1 Where an employee is persistently unable or unwilling to attend a disciplinary meeting (including investigation meetings or a disciplinary hearing) without good cause then the case may proceed in his/her absence and a decision made on the information available.

12.0 Statutory Regulatory Authorities

- 12.1 Where an allegation is substantiated, it may be necessary to make a referral to the appropriate Statutory Regulatory Authority.
- 12.2 It is a legal requirement to refer cases to the Disclosure and Barring Service (DBS) in cases where it is thought that an individual has engaged in conduct that harmed (or is likely to harm) a child or if a person otherwise poses a risk of harm to a child.

In such circumstances, the duty to refer an individual to the DBS arises where:

- An employer has removed the individual from relevant work with children;
- Where the employee has ceased to work in circumstance where they would have been removed had they not done so.

- 12.3 Professional gross misconduct cases should be referred to the relevant regulatory body e.g. The Teaching Agency.

13.0 Absence during Disciplinary Action

- 13.1 If sickness absence is triggered by the commencement of the disciplinary process, the case will be dealt with in accordance with the School's absence policy. The individual will be referred to Occupational Health to assess their health and fitness to engage in the disciplinary process. If the individual fails to provide consent for the referral, then the disciplinary process may continue without obtaining a statement from the employee.
- 13.2 Any individual reporting in as sick during a period of suspension will have their suspension rescinded for that period and will be paid in accordance with the relevant sick pay scheme.

Roles and Responsibilities

Establishing Roles

1. At the outset of any formal disciplinary proceeding, it will be important to establish who will undertake the necessary roles and responsibilities.
2. Sections 35 and 36 of the Education Act 2002 and the School Staffing (England) Regulations 2003 give Governing Bodies the right to delegate initial staff dismissal decisions (with the exception of Headteacher dismissals) to the Headteacher.
3. The Governing Body may delegate discipline procedures to one or more Governors, to the Headteacher or to one or more Governors and the Headteacher together, but it must not allow any outside body or persons to take decisions for it.
4. Natural Justice is an umbrella term for the legal standards of basic fairness. All Parties must ensure that all aspects of the case are considered in a fair and unbiased way.

The Role of the Initiator

1. The Initiator is the appointed person who commences, and manages the case throughout the procedure. This may be the Headteacher, a senior member of staff, the Chair of Governors or an individual Governor.
2. The Initiator, after full consideration will decide whether to suspend the employee.
3. The Initiator will agree the terms of reference with the investigation officer from the outset of the investigation (Appendix H).
4. The Initiator will consider the report produced by an Investigating Officer and make a decision regarding the next stage. This will depend on whether there is a case to answer or not.
5. If there is a case to answer, the Initiator will decide whether or not to proceed to a Disciplinary Hearing. If the decision is to proceed, the Initiator appoints a Presenting Officer. **The Initiator cannot take part in the Disciplinary hearing.**
6. If a Headteacher is subject of a investigation the Initiator should be the Chair of Governors and he or she should consult with the Assistant Director – Education and Enterprise and the Schools' HR Provider. NB The Governing Body may be required to hear the case should it be necessary.

The Role of the Investigating Officer (includes external consultant)

1. The Investigating Officer is appointed by the Initiator and should be an officer with appropriate seniority to the employee involved, and someone who has

not had any prior involvement in the matter. In some circumstances, the Initiator may wish to commission an external consultant to carry out an investigation. It behoves the school to demonstrate that any external consultant is appropriately qualified to do the job and follows the schools disciplinary procedure.

2. The Investigating Officer will from the outset draft the terms of reference (Appendix H) which will be agreed by the Initiator.
3. The Investigating Officer will carry out an investigation into the allegations. He/she will **consider all of the available evidence, both written and oral, and produce a written factual report to the Initiator.** The Investigating Officer will if necessary, interview witnesses and others in order to produce a balanced report that can lead to a fair judgement.
4. The Investigating Officer has an obligation to obtain reliable, **corroborated evidence.**
5. It may be necessary to interview parents or other members of the public, the police, children or vulnerable clients and members from the Audit team for example. In such cases advice should be sought from the Schools' HR Provider.
6. Where it is necessary to interview children parental consent must first be obtained. When investigating allegations of child abuse the Investigating Officer should be informed of the outcome of any child protection strategy meetings in order that any recommendations made can be taken into account in the disciplinary investigation. The Investigating Officer should ensure that any enquiries are not open to subsequent charges of collusion.
7. **The Investigating Officer will conclude his/her report (Appendix J) including evidence to support the complaint with a view on the 'balance of probabilities' about what happened i.e. whether or not there is a case to answer. He/she must not, however, take a view about whether a disciplinary hearing is appropriate or whether a disciplinary sanction is justified. The decision to proceed to a disciplinary hearing is made by the Initiator. Any sanction applied will be the responsibility of the Disciplinary Hearing Panel.**
8. The Investigating Officer may be the Presenting Officer at a disciplinary hearing.
9. **Model letters and templates are available from the Schools' HR Provider**

The Role of the Presenting Officer

1. The Presenting Officer (can be the Investigating Officer) presents the case and evidence gathered to a Disciplinary Committee and answers any questions on points of information.
2. The Presenting Officer may call witnesses as they deem appropriate. Where

the Investigating Officer is not the Presenting Officer, the Investigating Officer can be called upon as a witness.

3. The Presenting Officer will summarise the main points of the case.

The Role of Governing Bodies

1. The Governing Body has overall responsibility for staffing issues within the school and has the power to delegate the responsibility for disciplinary action and dismissals to the Headteacher, an individual governor or a group of governors with or without the Headteacher.
2. Where the Governing Body has delegated the responsibility for disciplinary and dismissal procedures to an individual governor or a group of governors the Headteacher has a right to attend all meetings to offer advice.
3. Headteachers who have had direct involvement in disciplinary procedures that lead to disciplinary hearings should not be involved in decisions to impose disciplinary sanctions or initial staff dismissals.
4. Where the Governing Body has delegated responsibility for disciplinary hearings (Misconduct) to the Headteacher, this cannot be delegated to another person by the Headteacher. In the absence of the Headteacher, both short and long term absence, this process applies to the Deputy/Acting Headteacher.
5. All appeals will be heard by the Governing Body Disciplinary/Dismissal Appeals Committee.
6. Any Governor who has been involved in a particular action taken or who is called as a witness, or is in any material way an interested party, should not participate as a Governor in a Disciplinary Hearing.

The Role of Witnesses (See also Appendix C)

1. If children (of compulsory school age) are witnesses advice should be taken from the Schools' HR Provider.
2. In the case of children, these statements will be made anonymous. Where children are witnesses, they should be afforded all the protection as in a court of law.
3. Witnesses that are employees of the school should be made aware of their duty of fidelity to the employer by virtue of the implied duty of fidelity, employees impliedly agree to serve the employer loyally and in good faith and not to act against the employer's interests. This is an especially wide-ranging duty that subsists throughout the employment up to the termination date,
4. Witnesses must be informed that they may be called to give evidence at any subsequent hearing. If the subject of disciplinary action specifically wants to question any witnesses at any subsequent hearing or call their own relevant

witnesses to a disciplinary hearing, then the employee should notify their Trade Union Representative, or the school in cases where they are not a member of a recognised Trade Union/Professional Association,

5. Witnesses will be invited to sign their statement confirming that they believe the facts written in the witness statement to be true and accurate. **In signing the statement the witness is also agreeing that they may be called as a witness in any subsequent hearing (see Appendix I – Statement Format).**

Matters of Discipline – general definitions

Misconduct	Gross Misconduct
<p>The following list illustrates conduct likely to signify misconduct:</p> <p>Persistent absenteeism and lateness:</p> <p>(leaving the place of work during normal working hours without proper permission and sufficient cause for absence;</p> <p>frequent failure to attend work punctually;</p> <p>failure to notify the School on the first and fourth calendar day of absence;</p> <p>failure to ensure a doctor’s statement (fit note) is received by your Line Manager on the eight calendar day of absence. If your doctor has indicated on the fit note that you “may be fit for some work” you must contact your Line Manager immediately, to discuss. Subsequent fit notes must be submitted to cover the period of absence. Any period without a fit note will be without salary.</p>	<p>The following list illustrates conduct likely to signify gross misconduct:</p> <ul style="list-style-type: none"> (i) allegations of misconduct involving abuse of trust or the physical, emotional or sexual abuse of a child by an employee; (ii) violent behaviour towards children or young people; (iii) failure to follow child protection procedures; (iv) failure to safeguard the health & safety of pupils on school trips; (v) a sexual, or otherwise inappropriate, relationship with a pupil (regardless or whether the pupil is over the legal age of consent); (vi) a sexual offence against someone over the age of 16; (vii) any offence involving serious violence; (viii) trafficking of illegal drugs and other drug related offences; (ix) being under the influence of alcohol or other illegal drugs whilst undertaking professional duties; (x) possession of prohibited firearms/knife weapons, which has a blade or is sharply pointed except for a folding pocket-knife which has a cutting edge to

Matters of Discipline – general definitions

Misconduct	Gross Misconduct
<p>Dishonesty – petty wrongs:</p> <ul style="list-style-type: none"> (i) making unauthorised telephone calls; (ii) sending unauthorised personal mail/e mails/faxes. 	<p>its blade not exceeding 3 inches, whilst undertaking professional duties, except for <i>bona fide</i> reasons</p>
<p>Neglect of duty:</p> <ul style="list-style-type: none"> (i) failure to adopt safe working practices/use protective equipment when required by law or management; (ii) negligent use of property in such a way as is likely to cause serious damage or loss; (iii) failure to discharge obligations placed on the employee by statute or contract of employment; (iv) failure to carry out reasonable instructions given by the Headteacher; (v) failure to exercise proper control or supervision of pupils or students; (vi) failure to report any loss/damage of any property issued to or by the employee in connection with his/her employment. 	<ul style="list-style-type: none"> (xi) indecent assault; (xii) inflicting bodily harm; (xiii) benefit fraud; (xiv) stealing Authority/School property or monies; (xv) deception in relation to employment for example false claims about qualifications, or failure to disclose past convictions; (xvi) failure to disclose any conviction which results in a sentence of more than 12 months imprisonment; (xvii) repeated misconduct or multiple convictions or <u>cautions</u> (please note for individuals working in one of the professions or occupations specifically in relation to protection of the vulnerable, including children, the police report any conviction or caution to the Criminal Records Bureau) <p><i>It must be emphasised that it is not an exhaustive list</i></p> <p>In addition, the following list of examples illustrates conduct likely to amount to gross misconduct: the list is not exhaustive:-</p>

Matters of Discipline – general definitions

Misconduct	Gross Misconduct
<p>Abusive, threatening, offensive discriminatory, malicious or insulting behaviour or language which arises directly out of or in connection with work and is prejudicial to proper professional relationships;</p> <p>Carrying out discriminatory practices or acts of harassment/bullying/victimisation;</p> <p>Deliberate, unauthorised disclosure of information classified as confidential taking into account the safety, wellbeing and protection of pupils are the paramount consideration in all decisions staff make about confidentiality ;</p> <p>NOTE: <i>Neglect of duty usually involves a measure of personal blame arising, for example, from lack of motivation or inattention to detail for which some sort of disciplinary action will normally be appropriate</i></p> <p><i>Lack of ability on the other hand, is due to lack of skills or experience or inadequate training. Such latter issues shall be dealt with under the Capability Procedure and NOT this Disciplinary Procedure. In making such a decision it is strongly recommended that advice is sought from the Schools' HR Team</i></p>	<p>(a) Dishonesty, for example:-</p> <ul style="list-style-type: none"> (i) theft or wilful misappropriation of property belonging to the Council or any other Authority, a contractor, pupil, or other third party; (ii) falsification of records or expenses claims; (iii) demanding or accepting monies or other considerations as a bribe including the use of Council property/School/Academy/provision of services; (iv) falsification of factual information given on an application form for a school based post in order to gain advantage whether pecuniary or otherwise; (v) falsification of registration of pupils or students and inciting others to do the same; (vi) examination fraud <p>(b) Negligence, (as per “Neglect of duty” under misconduct but at a greater level) for example:-</p> <ul style="list-style-type: none"> (i) refusal to carry out a reasonable and lawful and safe

Matters of Discipline – general definitions

Misconduct	Gross Misconduct
	<p>(ii) instruction within the normal duties of the post; gross negligence caused by unreasonably failing to attend to or to carry out the normal duties of the post;</p> <p>(iii) gross disregard for the Health and Safety of any person;</p> <p>(iv) breaches of confidentiality seriously prejudicial to the interests of the School, the Authority or an individual;</p> <p>(v) acts of vandalism or physical or verbal violence in the course of employment:-</p> <p>(vi) Malicious damage to property;</p> <p>(vii) Physical or verbal violence towards Members/officers of the Authority, other members of the school staff/parents/pupils/governors/members of the public;</p> <p>(viii) sexual misconduct/indecent assault.</p> <p>Discrimination, Harassment and Bullying – if the employee is the subject of a complaint that he/she harassed/bullied any other employee the matter should be investigated and dealt with in accordance with the procedures detailed in the Anti-bullying/harassment policy in the Local Conditions of Service for School Based Employees (GREYBOOK)</p> <p>Criminal offences – please refer to Section 4.0</p>

Guidance on Conducting an Investigation

(Model letters and templates are available from the Schools' HR Provider)

1 Introduction

- 1.1 The aim of an investigation is to obtain, as far as possible, a fair and balanced picture through a written record. The aim is not to prove or disprove an allegation. The investigation is a fact finding exercise and is preliminary to considering the appropriateness or not of disciplinary action.
- 1.2 **Evidence compiled in the investigation must be made available to the participants involved in the process in any subsequent disciplinary proceedings and those giving evidence as part of the investigation should be so informed.** Parents making complaints/allegations should be interviewed to record their complaint/allegation in the form of signed and dated statements. They should be informed that their statements may be used in subsequent disciplinary action and that they should assume that they will be called to give evidence at any subsequent disciplinary hearing. (see also 3.4 below)

2 Preliminary Stages

- 2.1 The Investigator should seek specialist advice as necessary, for example, from the Authority, and should familiarise him/herself with any relevant procedures and guidelines.
- 2.2 The Investigator should:
- (i) define areas to be investigated using the terms of reference (Appendix H);
 - (ii) draw up a provisional list of those to be interviewed and a list of topics to be discussed, extended as required during the investigation;
 - (iii) check corroborative evidence;
 - (iv) assess the credibility of the person making the allegation.

3 The Investigation Process

- 3.1 The employee would normally be **advised promptly** of the following:
- (i) the allegation/complaint against him/her;
 - (ii) that he/she has the right to be accompanied/represented throughout the procedure by a fellow worker who may be a professional association/ trade union official.
- 3.2 **The investigation interview(s) should be carried out as soon as practicably possible. Delays should be kept to a minimum.**
- 3.3 It may be necessary to interview an individual more than once.

- 3.4 There will be a requirement that witnesses must sign to state that:-
- (i) their statement/notes of interview(s) is/are a factual account;
 - (ii) their statement/notes of interview(s) may be released to authorised parties associated with the said investigation;
 - (iii) witnesses must sign that they understand they may be called to give evidence at any subsequent hearing.
- 3.5 If necessary, the investigator should have access to assistance to record the interview.
- 3.6 It should be determined whether the services of an interpreter are required.
- 3.7 A suitable venue and time should be selected to encourage co-operation and the entitlement to be accompanied/represented by a fellow worker who may be a professional association/trade union representative should be offered.
- 3.8 Subject to the caveats given in the introduction a general explanation of the purpose of the investigation should be provided at the beginning of the interview.
- 4 Interviewing the member of staff who is the subject of complaint/allegation**
- 4.1 The point at which this occurs will depend upon the nature of the allegation and the investigation process.
- 4.2 If not advised previously, the member of staff must be advised of the allegation/complaint against him/her and strongly advised of his/her rights under the establishment's disciplinary procedure, including the right to be accompanied/represented by a fellow worker who may be a trade union/professional association official at a subsequent meeting which shall **be convened normally within five school working days.**
- 4.3 At this subsequent meeting, the member of staff should be invited to respond and to make a statement. The member of staff has the right to:
- (i) respond; or
 - (ii) decline to respond; or
 - (iii) to request a further period in which to respond in order to provide more detailed information to the investigator. Such a request will not be unreasonably refused.
- 4.4 Full notes should be taken of the interview and the member of staff invited to read and sign them as a true record after the interview. A copy of the notes will be given to the member of staff. It is the view of the member of staff that must be recorded.
- 4.5 The member of staff should be invited to identify any persons who have information relevant to the investigation. These names may be added to the list of those to be interviewed.

- 4.6 If, during the course of the investigation, further complaints or allegations are uncovered which may or may not enlarge the original investigation, the member of staff must normally be informed immediately
- 4.7 Dependent upon the nature of any further complaint/allegation, a decision will be made by the initiator in consultation with the investigating officer as to whether these can be considered in the context of the original investigation, or whether it would be appropriate to commission a separate investigation.

5 Compiling a Report

- 5.1 Once all the relevant persons have been interviewed and all the relevant issues have been explored, the investigation is complete. The findings and conclusions of the investigation should then be compiled into an investigation report (See Appendix J). Any evidence will be attached as appendices.
- 5.2 The investigating officer submits his/her report to the initiator in line with Appendix A – roles and responsibilities (role of investigating officer)

6 Subsequent Action

- 6.1 The Investigators report will be forwarded to the Initiator who will make a decision on whether further action should be taken under paragraphs 8 or 9 of the agreed disciplinary procedure i.e. whether or not to proceed to a Disciplinary Hearing.
- 6.2 If the decision is to proceed to a hearing, it should, where possible, be held within **15 school working days**.

7 INVOLVEMENT OF PUPILS IN THE INVESTIGATION*

- (a) The Investigating Officer reserves the right to determine whether it is appropriate for a pupil to be interviewed as part of the investigative procedures. Determination of this right will be based upon an assessment of the best interests of the pupil.
- (b) The pupil's age and any special educational needs must be taken into account with specialist advice sought if deemed appropriate.
- (c) **Initially, following an allegation a pupil may be interviewed at the start of the procedure as laid down in appendix a – roles and responsibilities.**
- (d) Any pupil may only be interviewed formally with the approval of his/her parent or guardian who shall also be entitled to be present at the interview.
- (e) Pupils may be interviewed concerning an allegation against a member of staff. However, in all cases, the investigator will be present when the representative/fellow worker of the employee who is the subject of the allegations interviews the child.

- (f) Where an employee is the subject of disciplinary action and is not represented, he/she shall not be allowed to interview the pupil him/herself. However, should such an employee wish an interview with the pupil to take place, this can only be undertaken on his/her behalf by a third party nominated by the employee.

In the interests of transparency, if the investigating officer interviews pupils, the representative / third party should be informed and given the opportunity to interview the pupils. Any interviews with the pupils should be held during the investigation stage and any requests should be made to the Investigating Officer.

- (g) Where a child of any age has contributed to the investigation process (as given above), it is not expected that he/she will be called as a witness at any subsequent disciplinary hearing concerning the allegation.**

** The interviewing of pupils is based on paragraphs 11B of the Home Office Code of Practice (The Police and Criminal Evidence Act 1984).*

Procedures to be followed at a disciplinary hearing (including dismissal committee)

1 Preliminary Matters

- 1.1 Any Governor who has been involved in a particular action taken or who is called as a witness, or is in any material way an interested party, shall not participate as a Governor in the proceedings.**
- 1.2 The meeting shall take place in private session and all parties shall be reminded that proceedings are confidential. In these circumstances, "confidential" does not inhibit the parties concerned seeking further information/evidence for the purpose of preparing for an appeal. Interested third parties may have access to the hearing with the agreement of the Committee's discretion.
- 1.3 The subject and presenter shall have the right to call witnesses and all participants shall have the right to be accompanied/represented by a fellow worker who may be a trade union/professional association official.
- 1.4 It should be established whether the services of an interpreter are required.
- 1.5 Facilities shall be provided for each side to meet separately.
- 1.6 Parties should be aware of external demands made on witnesses and take care to advise their witnesses of developments and timescales, etc.

2 Outline of determination of procedures to be followed

- 2.1 It shall be confirmed that the preliminary matters in paragraph 1 above have been carried out.
- 2.2 At the commencement of the meeting a procedure shall be agreed which it is suggested should follow the format set out below.
- 2.3 The witnesses shall be instructed not to discuss the matter outside the hearing and advised at which point they may no longer be required. Witnesses will only be present in the hearing when giving evidence or being questioned.
- 2.4 The parties to the matter, with their representatives, if any, should be invited into the meeting. (five school working days notice)

3 Opening remarks by the Chair of the Staff Dismissal Committee

- 3.1 Introducing those present at hearing.

- 3.2 Advising that an adjournment may be requested at any time during the hearing.
- 3.3 Outlining the procedure to be followed.
- 3.4 Outlining the reason(s) for calling the disciplinary hearing.

4 The Procedure

4.1 The Case against the Employee

- 4.1.1 The Presenting Officer (can be the Investigating Officer) will present the case against the employee, including supporting evidence to corroborate the findings.
- 4.1.2 The subject or his/her representative and Members of the Committee may question the presenter of the case on any evidence which has been given.
- 4.1.3 The presenter may then call and question the first witness.
- 4.1.4 The subject of the action and/or his/her representative may then question the witness. Members of the committee may also ask questions of the witness on the evidence presented. The witness then withdraws.
- 4.1.5 Subsequent witnesses may then be called and treated in the same manner. In the light of evidence presented further questions may be asked of the presenter.
- 4.1.6 In exceptional circumstances, witnesses may be recalled.

4.2 The Case for the Employee

- 4.2.1 The employee and/or their representative (fellow worker/trade union/professional association official) present their case including any evidence he/she may wish to offer.
- 4.2.2 The presenter/Members of the committee may question the subject of the case or his/her representative on any evidence which he/she has given.
- 4.2.3 The subject may then call and question the first witness.
- 4.2.4 The presenter of the action may then question the witness. Members of the committee may also ask questions of the witness on the evidence presented. The witness then withdraws.
- 4.2.5 Subsequent witnesses may then be called and treated in the same manner. In the light of evidence presented further questions may be

asked of the subject.

4.2.6 In exceptional circumstances witnesses may be recalled.

4.3 Closing statements which **shall not include new material** will be made by:

- (i) the presenter;
- (ii) the subject.

4.4 **The Decision**

4.4.1 All parties will then withdraw. The Committee will consider the evidence presented to determine the facts of the case. The Committee may seek the advice of any attending officer from the LA on questions of law and procedures only. Should the Committee decide to **recall either side to clarify any points, then both parties will be invited to return for that clarification.**

4.4.2 At the end of the hearing having reached a decision the Chair of the Committee will if practicable endeavour to inform all parties of their decision. In the case of longer deliberation being necessary the committee will endeavour to inform all parties as soon as practicable

4.4.3 This decision will be confirmed in writing to all parties by the Chair of the Committee within five school working days.

4.5 **Possible sanctions against Employees (other than headteachers)**

Stages		Action By	Appeal
1	Formal Advice	Headteacher	None
2	Formal Warning	Headteacher	Appeal Committee
3	Formal Written Warning	Headteacher	Appeal Committee
4	Formal Final Written Warning	Headteacher	Appeal Committee
5	Dismissal	Staff Dismissal Committee	Appeal Committee

4.6 Possible sanctions against Headteachers

Stages		Action By	Appeal
1	Formal Advice	Chair of Governors	None
2	Formal Warning	Chair of Governors	Appeal Committee
3	Formal Written Warning	Chair of Governors	Appeal Committee
4	Formal Final Written Warning	Chair of Governors	Appeal Committee
5	Dismissal	Staff Dismissal Committee	Appeal Committee

Composition of a Staff Dismissal Committee

- 1 Subject to paragraph (6) of The School Governance (Constitution) (England) Regulations 2007, the **staff dismissal committee** referred to in regulation 42(2)(a) shall include **fewer than three members of the governing body**.
- 2 The **dismissal appeal committee shall include no fewer members of the governing body than the staff dismissal committee** the decision of which is subject to appeal. **Appeal Panels should consist of three Governors who have had no previous involvement in the case.**
- 3 Where a dismissal appeal committee is considering an appeal against a decision of the staff dismissal committee, no member of the staff dismissal committee whose decision is subject to appeal shall take part in the proceedings of the dismissal appeal committee.
- 4 The Headteacher of the school shall not be a member of the staff dismissal committee or the dismissal appeal committee.
- 5 No member of the staff dismissal committee or the dismissal appeal committee who is not a member of the governing body shall be entitled to vote in any proceedings of the committee in question.

Procedures to be followed at an Appeal Hearing

1 Preliminary Matters

- 1.1 Any member of the Appeal Panel who has been involved in the particular action taken, or who is to be called as a witness, or who is in any material way an interested party, shall not participate in the proceedings.
- 1.2 The meeting shall take place in private session and all parties shall be reminded that proceedings are confidential.
- 1.3 The subject and presenter shall have the right to call witnesses and all participants shall have the right to be accompanied by a fellow worker who may be a Trade Union /Professional Association Official. (Legal representation is clarified under appendix b)
- 1.4 It should be established whether the services of an interpreter are required.
- 1.5 Facilities shall be provided for each side to meet separately.

2 Outline of Procedure to be followed

- 2.1 The Clerk to the Panel shall confirm that the Panel is correctly constituted and that the preliminary matters in paragraph 1 above have been carried out.

Note: In the case of an appeal hearing the appellant makes the first presentation.

- 2.2 The Panel shall, at the commencement of the meeting, agree a procedure which it is suggested should follow the format set out below.
- 2.3 The witnesses shall be instructed not to discuss the matter outside the hearing and advised at which point they may no longer be required. Witnesses will only be present in the hearing when giving evidence or being questioned.
- 2.4 The parties to the matter, with their representatives, if any, should be invited into the meeting. (five school working days notice)

3 Opening Remarks by Chair of the Panel

- 3.1 Introducing those present at appeal
- 3.2 Advising that an adjournment may be requested at any time during the appeal.
- 3.3 Outlining the reason(s) for calling the hearing.
- 3.4 Advising in the case of an appeal that the Committee is considering **all of the**

original facts of the case concerning the original decision made by the formal disciplinary hearing/staff dismissal committee.

4 The Procedure

4.1 The case for the Employee

- 4.1.1 The employee and/or their representative (fellow worker/trade union/professional association official) present their case including any evidence he/she may wish to offer.
- 4.1.2 The presenter and members of the Panel may question the subject of the case or his/her representative on any evidence which he/she has given.
- 4.1.3 The subject may then call and question the first witness.
- 4.1.4 The presenter of the action and any member of the Panel may also ask questions of the witness on the evidence presented. The witness then withdraws.
- 4.1.5 Subsequent witnesses may then be called and treated in the same manner. In the light of evidence presented further questions may be asked of the subject.
- 4.1.6 In exceptional circumstances witnesses may be recalled.

4.2 The case Against the Employee

- 4.2.1 The Presenting Officer (Chair of the original disciplinary panel) presents the case including any evidence he/she may wish to offer.
- 4.2.2 The subject or his/her representative and members of the Panel may question the presenter of the case on any evidence which he/she has given.
- 4.2.3 The presenter may then call and question the first witness.
- 4.2.4 The subject of the action and/or any member of the Panel may also ask questions of the witnesses on the evidence presented. The witness then withdraws.
- 4.2.5 Subsequent witnesses may be called and treated in the same manner. In the light of evidence presented further questions may be asked of the presenter.
- 4.2.6 In exceptional circumstances, witnesses may be recalled.
- 4.2.7 Closing statements which shall not include new material will be made by
 - (i) the subject or his/her representative.
 - (ii) the presenter

4.3 The Decision

- 4.3.1 All parties will then withdraw. The Panel will consider the matter to determine the facts of the case. They may seek the advice of any attending officer on questions of law and procedures only. If the Panel decides to recall either side to clarify any points, then both parties will be invited to return for that clarification.
- 4.3.2 The Panel shall reach a decision and inform all parties.
- 4.3.3 This decision will be confirmed in writing to all parties by the Clerk to the Panel.

What is the right to be accompanied?

1. When does the right apply?

1.1 Employees have the right to be accompanied at meetings that could result in:

- a formal warning being issued to a worker (ie a warning that will be placed on the worker's record);
- the taking of some other disciplinary action (such as suspension without pay, demotion or dismissal) or other action; or
- the confirmation of a warning or some other disciplinary action (such as an appeal hearing).

1.2 Informal discussions, counselling sessions or investigatory meetings do not attract the right to be accompanied. Meetings to investigate an issue are not disciplinary meetings. If it becomes apparent that formal disciplinary action may be needed then this should be dealt with at a formal meeting at which the employee will have the statutory right to be accompanied.

2. What is a reasonable request?

2.1 Whether a request for a companion is reasonable will depend on the circumstances of the individual case and, ultimately, it is a matter for the courts and tribunals to decide. However, when workers are choosing a companion, they should bear in mind that it would not be reasonable to insist on being accompanied by a colleague whose presence would prejudice the hearing or who might have a conflict of interest. Nor would it be reasonable for a worker to ask to be accompanied by a colleague from a geographically remote location when someone suitably qualified was available on site. The request to be accompanied does not have to be in writing.

3. The companion

3.1 The companion may be:

- a fellow worker (ie another of the employer's workers)
- an official employed by a trade union
- a workplace trade union representative, as long as they have been reasonably certified in writing by their union as having experience of, or having received training in, acting as a worker's companion at disciplinary or grievance hearings. Certification may take the form of a card or letter.

- 3.2 Some workers may, however, have additional contractual rights to be accompanied by persons other than those listed above (for instance a partner, spouse or legal representative).
- 3.3 Reasonable adjustment may be needed for a worker with a disability (and possibly for their companion if they are disabled). For example the provision of a support worker or advocate with knowledge of the disability and its effects.
- 3.4 Workers may ask an official from any trade union to accompany them at a disciplinary or grievance hearing, regardless of whether or not they are a member or the union is recognised.
- 3.5 Fellow workers or trade union officials do not have to accept a request to accompany a worker, and they should not be pressurised to do so.
- 3.6 Trade unions should ensure that their officials are trained in the role of acting as a worker's companion. Even when a trade union official has experience of acting in the role, there may still be a need for periodic refresher training. Employers should consider allowing time off for this training.
- 3.7 A worker who has agreed to accompany a colleague employed by the same employer is entitled to take a reasonable amount of paid time off to fulfil that responsibility. This should cover the hearing and it is also good practice to allow time for the companion to familiarise themselves with the case and confer with the worker before and after the hearing.
- 3.8 A lay trade union official is permitted to take a reasonable amount of paid time off to accompany a worker at a hearing, as long as the worker is employed by the same employer. In cases where a lay official agrees to accompany a worker employed by another organisation, time off is a matter for agreement by the parties concerned.

4. Applying the right

- 4.1 The employer should allow a companion to have a say about the date and time of a hearing. If the companion cannot attend on a proposed date, the worker can suggest an alternative time and date so long as it is reasonable and it is not more than five working days after the original date.
- 4.2 Before the hearing takes place, the worker should tell the employer who they have chosen as a companion. In certain circumstances (for instance when the companion is an official of a non-recognised trade union) it can be helpful for the companion and employer to make contact before the hearing.
- 4.3 The companion should be allowed to address the hearing in order to:
 - put the worker's case
 - sum up the worker's case
 - respond on the worker's behalf to any view expressed at the hearing.

- 4.4 The companion can also confer with the worker during the hearing. It is good practice to allow the companion to participate as fully as possible in the hearing, including asking witnesses questions. The employer is, however, not legally required to permit the companion to answer questions on the worker's behalf, or to address the hearing if the worker does not wish it, or to prevent the employer from explaining their case.
- 4.5 Workers whose employers fail to comply with a reasonable request to be accompanied may present a complaint to an employment tribunal. Workers may also complain to a tribunal if employers fail to re-arrange a hearing to a reasonable date proposed by the worker when a companion cannot attend on the date originally proposed. The tribunal may order compensation of up to two weeks' pay.
- 4.6 It is unlawful to disadvantage workers for using their right to be accompanied or for being companions. This could lead to a claim to an employment tribunal.

Any further requests for representation must also be submitted for consideration in writing up to 3 school working days prior to the hearing. Employees who decide to be represented by an independent representative run the risk of having trade union /professional association support withdrawn.

Terms of Reference Template

Investigation into allegations that on (date), (name) (details of allegations)

Purpose

The investigation is to be conducted on behalf (name), as the Initiator, in order to inform an appropriate course of action in response to the allegations made against (name).

Background

(details of how the allegations came to light)

Nature of Allegations

(details of allegations)

Objectives and Scope of the Investigation

To fully investigate the allegations under the Disciplinary Policy and:-

- Interview all persons directly involved in the allegations / incidents.
- Interview any other persons who may contribute substantive evidence in relation to the allegations
- Scrutinise all documentary evidence that is substantive to the allegations. All request for documentary evidence or reports should be directed to the Initiator.
- Obtain evidence to assess how all parties involved have conducted themselves during the course of events with specific regard to the application of the appropriate Policy and Procedures.
- Produce a written report to close the investigation detailing the Findings, Conclusions and Recommendations, including whether there is a case for action to be taken against (name).

Key Timescales

The investigation will start on (date) and is expected to be completed by (date). Any extension to the timescale set will be at the discretion of the Initiator.

During the course of the investigation all complaints regarding the Investigating Officer or process should be made directly to the Initiator in writing.

Statement Format

Interview Name:
 Job Title:
 Employee Representative:
 Investigating Officer:
 Place of Interview:
 Date of Interview:

In opening the interview, the Investigating Officer outlined the following points:

- *Investigating Officer's role in the investigation*
- *Description of the Terms of Reference for the investigation*
- *Confirmation that the interview will be noted and that an account provided to (name) to verify its accuracy*
- *(name) offered the opportunity to ask questions for clarification*

Comments from (name) are shown in normal type font. **Questions or comments from the Investigating Officer are shown in bold italics.**

1. ***(question asked)***
2. (response of interviewee)
3. ***(question asked)***
4. (response of interviewee)

Etc

The interview was concluded by outlining the following points:-

- Plan for the investigation through to the initial planned date for submission of the report
- The potential outcomes from the investigation for the interviewee
- Requested to maintain the confidentiality of the interview
- How complaints about the investigation process or officer could be made
- If the person has been suspended re-iterate the terms of suspension.

Please tick and sign as appropriate:

- I, (name) confirm that I believe the above to be a true and accurate and understand that a copy of the statement will not be disclosed to any other person(s) other than those detailed in the disciplinary procedure (if a decision is made that there is no case to answer). In signing this statement I am agreeing that I may be called to give evidence and to attend any subsequent hearing(s).
- I, (name) made amendments on the document and agree that this is an accurate review of the interview.

I, (name) have attached additional comments.

Signed: (name)

Date:

Investigation Report Template

REPORT OF THE INVESTIGATION INTO ALLEGATIONS AGAINST (NAME) (JOB TITLE), (SCHOOL)

1. INTRODUCTION AND BACKGROUND

1.1 (name) has been employed at (school) as (job title) since (date)

1.2 (give back ground to job/educational setting where relevant)

2. ALLEGATION

2.1 (details of allegations)

3. TERMS OF REFERENCE

3.1 XXX, initiated this investigation in response to (XXXXX).

3.2 XXX was appointed as Investigating Officer and the Terms of Reference was finalised (Appendix 1).

3.3 The specific objectives and scope of the investigation were to conduct an investigation within the parameters of the Disciplinary Policy by:

- Interviewing all persons directly involved in the allegations / incidents.
- Interviewing any other persons who may contribute substantive evidence in relation to the allegations
- Scrutinising all documentary evidence that is substantive to the allegations. All request for documentary evidence or reports should be directed to the Initiator.
- Obtaining evidence to assess how all parties involved have conducted themselves during the course of events with specific regard to the application of the appropriate Policy and Procedures.
- To produce a written report to close the investigation detailing the Findings, Conclusions and Recommendations, including whether there is a case for action to be taken against (name).

4. PROCESS OF THE INVESTIGATION

4.1 In order to gather evidence and to establish the facts, a schedule of interviews were carried out as follows:

	Name	Job Title	Interview Date
1			
2			
3			
4			

4.2 The following additional relevant documentation was also considered:

- XXXX
- XXXX

5. FINDINGS

5.1 Interview with XX (See Appendix X for full and verified statement)

5.1.1 (details of interview)

5.2 Interview with XX (See Appendix X for full and verified statement)

5.2.1 (details of interview)

5.3 Interview with XX (See Appendix X for full and verified statement)

5.3.1 (details of interview)

6. CONCLUSIONS

6.1 Allegation 1 - XXXXXXXXX

6.1.1 It is concluded that.....

6.2 Allegation 2 - XXXXXXXXX

6.2.1 It is concluded that.....

7. RECOMMENDATIONS

7.1 Based on the findings described in Section 5 of this report, the supplementary documents provided and the conclusions drawn in Section 6 it is recommended that:

7.1.1 XXXXXXXXXXXXXXXXXXXXX

7.1.2 XXXXXXXXXXXXXXXXXXXXX

7.1.3 XXXXXXXXXXXXXXXXXXXXX

Investigating Officer: **Name & Position/role**
Date: **XXXXX**