Disciplinary Procedure for School Staff Policy

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DISCIPLINARY PROCEDURE FOR SCHOOL STAFF

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DISCIPLINARY PROCEDURE FOR SCHOOL STAFF

PREFACE

Part 1 of the School Staffing (England) Regulations 2003 requires the governing body of each school to establish disciplinary and dismissal procedures for all school employees and delegates to head teachers and governing bodies the power to decide all disciplinary and dismissal matters themselves. This guidance has been written to reflect this and other legislation relevant to the employment of staff in schools including the Employment Act 2008 and the requirements of DfES circulars **"Safeguarding Children and safer Recruitment in Education" (2007) and "Child Protection: Procedures for Barring or Restricting People Working with children in Education" (2004).**
As this is a delicate area of industrial relations, governing bodies are advised by the DFE to take account of existing good practices by LA's, guidance and statutory procedures from the Secretary of State for Education and ACAS procedures.

All schools in Nottinghamshire LA have been advised, therefore, to adopt the LA's standard code for disciplinary procedures which is in three parts:

Part A1 - dealing with matters of alleged misconduct

Part A2 - dealing with allegations of child abuse against employees

Part B - dealing with matters of capability or under performance (please refer to separate procedure)

These procedures have been agreed with all of the recognised trade unions through the JCNP process and meet the Government's requirements. Due to the complexities of this area of employment and education law, governing bodies are strongly advised to adopt the attached procedures without amendment and seek advice on individual cases from the Children, Families and Cultural Services (CFCS) HR Team. Should, exceptionally, a governing body seek to amend the recommended procedure they will need to consult/negotiate any changes collectively with all of the Secretaries of the recognised trade unions and confirm any amendments with the LA. Governing bodies are strongly recommended to seek advice from the CFCS HR Team in these circumstances.

It is recognised that some Foundation or Aided schools may choose to adopt the procedures recommended by their Diocesan Authority or other personnel service provider.

Article 6 of the Education (Modification of Enactments Relating to Employment) Order 2003 provides for a governing body to be the respondent in relation to any application to an employment tribunal alleging unfair dismissal. In law, the Local Authority remains the employer for community and voluntary controlled schools, and will therefore be primarily responsible for the payment of any compensation order by an employment tribunal in respect of a finding of unfair dismissal. However, where it is reasonable to do so, the Local Authority is empowered to deduct such compensation from the school's budget.

It is unlikely that the Local Authority would wish to adopt such a course of action in any case where an employee is dismissed at the request of the governing body for reasons relating to conduct or performance, provided that the governing body has not acted contrary to law or in some other way failed to observe their agreed disciplinary code. In cases where the Local Authority is of the view that an Employment Tribunal is likely to find a dismissal unfair, the LA may well advise the governing body before the request for dismissal is acted upon that costs/compensation will be deducted from the school's budget in respect of an adverse finding.

Where staff are engaged to work in a school other than under a contract of employment with the school or LA e.g. a contract for the provision of services, the employer must be notified immediately of any alleged breach of discipline by their employee. It will then be the responsibility of the employer to take appropriate disciplinary action which may include their withdrawal from the school. It should be noted that the employment status of supply staff may in some cases, be on the basis of a service contract with the Agency rather than a contract of employment with the school. Advice is available from the CFCS HR Team regarding such situations.

Equalities and Equal Opportunties

The school and governing body recognises its legal responsibilities to staff under the Equality Act 2010 and this policy will ensure equality and fairness regardless of race, sex (gender), sexual orientation, religion or belief, gender re-assignment, pregnancy and maternity, marriage and civil partnership, disability, age or trade union membership. The policy will be applied and all decisions will be taken in accordance with relevant equalities legislation, for Employment Relations Act 1999, the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 and the Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002.

PART A1 - THE CONDUCT OF SCHOOL STAFF

INTRODUCTION

The purpose of this section of the Disciplinary procedures is to provide schools with

- guidance on the management of allegations of staff misconduct
- a recommended disciplinary procedure for use in cases of staff misconduct

Any allegations of misconduct **involving abuse of trust or the physical or sexual abuse of a child by an employee** must be dealt with in line with Nottinghamshire's child protection procedures which are set out in **Part A2** of this procedure.

This procedure recognises that the governing body, advised by the Strategic Director for Children, Families and Cultural Services or nominated representative, has the power to consider employees' conduct and warn them with regard to future conduct or dismiss them. The governing body should delegate this responsibility to the Head Teacher and/or members of a committee of the governing body as set out in this procedure. Whilst it is recognised that under education regulations this responsibility can be delegated to the head teacher alone, this course of action is not recommended by Nottinghamshire LA as it could be potentially unfair.

Where governing bodies have adopted the procedure this will apply to all employees in primary, secondary and special schools where the governing body has a delegated budget and powers of local management. The procedure applies equally to head teachers save that in such cases the Chair of Governors or nominated representative, advised by the Strategic Director for Children, Families and Cultural Services or nominated representative, will assume the managerial responsibilities of the Head Teacher set out in this procedure.

This procedure does not apply to employees in voluntary aided schools, unless the governing bodies of such schools have formally adopted it. Some voluntary aided schools may choose to adopt the procedures specified by the Diocese. Providing the governing body has decided to engage the services of the CFCS HR Team, then advice and support will be available on all procedures.

The School Staffing (England) Regulations 2003 confers 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. This will usually be a senior officer from the CFCS HR Team who may also advise the governing body/head teacher as appropriate.

GUIDANCE ON MANAGING THE CONDUCT PROCEDURES

Roles and Responsibilities

At the outset of any investigation, it will be important to establish who will undertake the necessary roles and responsibilities in line with the school's agreed policy on such matters.

Sections 35 and 36 of the Education Act 2002 and the School Staffing (England) Regulations 2009 give governing bodies the right to delegate initial staff dismissal decisions (with the exception of head teacher dismissals) to the head teacher. Governing bodies may also delegate such decisions to an individual governor or group of governors, acting with or without the head teacher. As DFE guidance emphasises that governing bodies should delegate staffing responsibilities to the head teacher, other than in exceptional circumstances, there are implications for any investigation, particularly where dismissal is a potential outcome. The following roles will, therefore, need to be established by the school in the light of current legislation and the LA's policy on staffing responsibilities under the Education Act 2002.

- **Investigating Officer**

The investigating officer will be responsible for conducting the investigation and presenting the findings to the head teacher and/or disciplinary panel. The arrangements for dealing with a disciplinary investigation will need to be considered within the framework of the current school staffing regulations as well as the principle of natural justice. It is not, therefore, possible for the head teacher to be the investigating officer as well as the person responsible for deciding whether or not to dismiss the employee or to issue a formal warning. The head teacher can only be the investigating officer, therefore, in circumstances where they will not be given delegated responsibility for making any decisions about a potential staff dismissal.

Where the disciplinary decision is delegated to the head teacher, either on their own or as part of the Disciplinary Panel, another appropriate member of the leadership team should take on the role of Investigating Officer. In certain cases, for example where the head teacher is the subject of the investigation, the school is strongly advised to consider engaging the services of a senior LA officer to conduct the investigation for which an appropriate rate will be charged. There is usually one lead Investigating Officer appointed, however in certain cases there may be more than one person appointed. Schools are advised to contact HR for further advice on the role of the Investigating Officer.

The role of the Head Teacher includes consideration of the sensitivity of the situation and the welfare of the employee involved.

When Head Teachers are notifying employees about formal procedures/dates of hearings they should aim to inform employees at an appropriate time to ensure the employee has the opportunity to contact their union representative or other relevant person for support. We advise that Heads do this, wherever possible, towards the end of the day and that any confirmation letters are sent during the working week to avoid notifications arriving on a weekend or during the school holidays. Where this cannot be avoided due to procedural timescale head teachers are advised to offer to contact the trade union representative and their HR support to advise them of the content of the letter to enable the trade union representative to contact the employee if necessary.

Head Teachers should avoid sending letters in the last three days of a term or half-term. Where this is unavoidable because of procedural timescales heads are advised to offer to alert the trade union representative that a letter is being sent and confirm the content of that letter, to enable the trade union representative to contact the employee if necessary.

Please see appendix 12 for template investigation report/statement of case.

- **Disciplinary Panel**

In relation to the 2009 Staffing Regulations, the HR Service strongly advises schools that dismissal decisions are best made by a panel rather than by one person acting on their own. It is recommended, therefore, that the Disciplinary Panel should normally consist of the head teacher supported by two governors or three governors, where the head teacher assumes the role of the Investigating Officer

- **Appeal Panel**

All appeals against dismissal or other disciplinary outcomes must be heard by an Appeal Panel. This should consist of three governors who have had no previous involvement in the case.

- **Note Takers**

Notes should be taken at all meetings. The school will need to arrange a note taker, this can be done through Governor Services if the school does not have an appropriate person to undertake this role. The Note Taker must understand the confidential nature of the meetings. Notes are not verbatim but are a record of the content of the meeting. It is the school's responsibility to ensure that notes from meetings are provided to those who were present. This does not prevent the individual or their representative from making their own notes, although the employee is not able to bring an additional note taker to meetings. Meetings may not be recorded

- **Trade union and other representatives**

During the process the employee will have the right to be accompanied or represented by one person which could be a trade union official or other representative of their choosing. The role of the representative is to support the individual and to provide advice, guidance and representation where appropriate. The right to be accompanied and the right to be represented are different.

- The right to be **accompanied** means that the employee may bring a representative with them to support them at meetings. They must represent themselves and should answer and ask any questions themselves. They may wish to discuss their answers with their representative before providing them.
- The right to be **represented** means that the employee may ask their representative to speak on their behalf. This could include answering and asking questions, or presenting all or part of the case at any hearing.
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Advice, Support and Training

It is the responsibility of the head teacher to ensure that all relevant senior leaders understand their role and have access to appropriate support, advice and training in the application of these procedures. The headteacher should also ensure, in conjunction with the chair of Governors and the training co-ordinator, where appropriate, that in dischargining their duties and responasibilities, governors have access to support, advice and training as appropriate.

Other Considerations

Serious Misconduct

Alleged serious misconduct must be notified, as a matter of urgency, to the CFCS HR Team who will offer immediate advice and undertake any necessary liaison with the police, the LA Designated Safeguarding Officer (LADO) or other agencies as appropriate.

Safeguarding Children and Young People

Any allegations of misconduct **involving abuse of trust or the physical or sexual abuse of a child by an employee** must be dealt with in line with Nottinghamshire's child protection procedures which are set out in **Part A2** of this procedure.

Criminal Offences

An employee should not face disciplinary action solely because they have been charged with or convicted of a criminal offence. The question which needs to be addressed in such circumstances is whether the conduct which has led to such charges or conviction warrants disciplinary action because of its employment implications. In such circumstances, the facts of the matter should be investigated and, if disciplinary action is considered appropriate, the procedures outlined in this document should be followed. If it becomes known to the senior management of a school that the police are involved in a case involving an employee, the CFCS HR Team must be advised of the matter immediately.

In cases involving criminal charges or convictions, 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.

Mandatory duty to report

Teachers are under a mandatory duty to report known cases of FGM in under 18's to the police. Schools must consider any breach of the duty in accordance with the schools disciplinary procedure.

Disciplinary action against a Trade Union Official

Disciplinary action against an employee who is a trade union official may lead to difficulties if it is seen as an attack on the union's function. Although normal disciplinary standards will apply to a trade union representative's conduct as an employee, no disciplinary action should be taken following the investigation until the circumstances of the case have been discussed confidentially and with the employee's knowledge, with a senior trade union representative or a full-time officer of the trade union.

Managing the Media and other School communications

Some potential disciplinary circumstances in school may require the head teacher or Chair of Governors to communicate directly with staff, parents, governors and/or the local or national media. This requires extreme sensitivity and advice should be sought from the HR service and where appropriate, the Corporate Director, Children's, Families and Cultural Services and/or the Nottinghamshire County Council Media Team prior to making any verbal or written statements.

Suspension of an Employee

At any stage prior to, during or following the investigation, the employee may be suspended. Suspension does not constitute disciplinary action and does not imply any assumption of guilt. The suspension should only occur if one or more of the following applies:

a) the continued presence of the employee at work may be prejudicial to a fair disciplinary investigation.

b) there is evidence that the allegations are serious enough to warrant consideration of dismissal and/or may constitute gross misconduct. Where appropriate this evidence shall be made available to the employee and their representative at the point of suspension

Suspension Meeting

Where a decision to suspend is likely to be made the circumstances of the case will determine how this is managed. Advice should always be sought from the HR Service before making this decision and conducting a suspension meeting.

- In some circumstances it will not be appropriate to alert the employee to this possibility. In these circumstances the head teacher should contact the HR Service for advice to determine whether it is possible to contact the employees' trade union official, **if known**, to alert them confidentially so that they may support the employee either at the suspension meeting to make sure they get home safely or to provide support afterwards.The involvement of the trade union at this stage, if possible, is intended to be helpful to the employee but the overriding responsibility for the employees welfare rests with the head teacher or the chair of governors.
- In other circumstances the employee may be given advance notice of a meeting at which suspension is a possibility and the head teacher should strongly advise the employee to seek advice, assistance and support of their professional association or colleague.
- Prior to the meeting, the head teacher should consult with the HR service and the chair of governors and carefully consider alternatives to suspension e.g. redeployment to another post on a temporary basis, deferring a decision until further information is known, or sending the employee home (short term).

At the suspension meeting the head teacher will:

a) Explain the reasons for the decision based on the evidence known up to this point, making reference to a) and b) above.
b) Explain that suspension is not in itself a disciplinary sanction and does not indicate or presume the outcome of any disciplinary process.
c) Request that the employee returns school property immediately including computer equipment/documents/mobile phone/keys as appropriate. The employee may need supervised time to locate and take home personal property.
d) Acknowledge and take into account the emotional impact of the suspension process and ask the employee what support is required. The school may need to consider a referral to the counselling service or occupational health. In all cases the school should identify a contact person in school who will be expected to regularly update the employee (suggested weekly calls are made), and where necessary their representative or colleague on progress, future actions and timescales. This will usually be the head teacher.
e) Suspension is not a disciplinary sanction in itself, therefore the employee has no right of appeal against the decision

Following the meeting:

a) The decision will be confirmed in writing to the employee (see Appendix 2) normally the next working day.
b) The school will notify the employee that suspension is on full pay and will confirm this decision with the schools payroll provider.
c) The head teacher must consult and inform the governing body of the suspension decision on a confidential basis. In the case of the suspension of the head

teacher, the HR service will fully support the chair of governors to undertake these actions.

d) Where the reason for suspension is related to concerns about an employee who has harmed, or who poses a risk of harm, to a child or vulnerable adult the school must consider a referral to DBS as soon as possible, which is normally at the conclusion of the internal disciplinary process in line with statutory guidance.

e) Where the reason for the concern is related to concerns about an employee who has harmed, or who poses a risk of harm, to a child or vulnerable adult and a decision is taken not to suspend but to redeploy the person to another area of work that is not regulated activity, the legal duty to refer the case to the DBS as soon as possible still exists.

For further information see paragraph 12 Referral to DBS

- **Appendix A2 - Notification of Suspension**

A suspension can only be lifted by the head teacher inconsultation with the governing body. In community or voluntary controlled schools the LA must also be informed about any decisions regarding the proposed suspension of a school employee in advance of the decision.

Keeping suspension under review

Throughout the course of the investigation, the need for suspension should be reviewed regularly by the head teacher and the employee should be kept informed. Where evidence emerges from the investigation that fundamentally changes the needs for suspension, then it should be lifted and the employee should return to work for the remainder of the investigation.

Frustration of the disciplinary procedure

Other procedures must not be used to frustrate the action already being taken under these disciplinary procedures, for example, by the employee raising a grievance or claiming harassment. The Grievance Procedure Guidance, paragraph 1.8. makes it clear that in the vast majority of cases, it will be appropriate to deal with the grievance as part of the original (in this case, disciplinary) procedure. Where the grievance is unrelated to the original procedure the two procedures can run in parallel. However, there may be circumstances where there are grounds to support an employee's belief that other procedures are relevant to disciplinary procedures.

In such cases, the aggrieved employee should specify the grounds for their complaint so that the matter can be urgently investigated. This does not necessarily mean that during such an investigation, the original procedures need to be suspended or implementation delayed pending the outcome of the investigation. Advice should be sought from the HR Team.

Investigating Alleged Misconduct

When allegations of misconduct are made, an appropriate person should be appointed to investigate the allegations - the "investigating officer". This may be the Head Teacher. However, in line with the School Staffing Regulations 2009 the Head Teacher should normally nominate another senior member of the school staff to investigate the allegations. In certain circumstances the head teacher may request the services of an officer of the CFCS HR Team or another officer from the Local Authority to investigate the matter on behalf of the school. As a general rule, the investigating officer will present the case at any subsequent disciplinary or appeal hearing.

Any allegation of misconduct should be dealt with as a matter of urgency and no disciplinary action taken until the case has been fully investigated.

Conducting a Preliminary Investigation and Initial Meeting

The purpose of the preliminary investigation and initial meeting with the employee is to try to establish the facts and gather enough information about what has happened to enable a decision to be made about what course of action to take next.

Depending on the nature of the allegation it may be necessary for the head teacher to gather information from other sources or witnesses prior to meeting with the employee. This should not unnecessarily delay meeting with the employee. Any witnesses providing statements as part of the preliminary investigation should sign and date their statements and should be advised that they may be required to support their statements in person at any subsequent disciplinary hearing or professional conduct hearing (i.e. TRA) if required.

At the earliest practical opportunity the head teacher should meet with the employee to let them know what has been alleged. The head should also advise the employee to contact their trade union representative or other colleague for support and advice. The employee may request that their trade union or colleague accompany them to this initial meeting if they are immediately available. This meeting should not be postponed if the employee's chosen person is not available. The head teacher should give the employee an opportunity to make an immediate response only if they wish to do so. It may be appropriate to have an adjournment to allow the employee to think over the allegations or if accompanied to discuss the allegations with them. The employee should also be informed that the next stage may involve a formal investigation and they should be directed to the school's disciplinary procedure for further information.

Notes of the meeting should be made and a copy provided to the employee for them to review and sign.

The head teacher should then consider all of the information gathered and the responses provided by the employee to determine the next course of action. Possible outcomes of this initial investigation and meeting include not taking any further action, particularly if the allegations are malicious; proceeding to a formal investigatory meeting or suspension of the employee (see guidance on **suspension of an employee**).

The head teacher is strongly advised to seek immediate advice from the HR Service if considering proceeding to a formal investigatory meeting or suspending an employee, so that the employee can be informed of the decision as soon as possible.

Depending on the nature of the allegations a preliminary investigation and initial meeting may not be necessary and the head teacher may decide it is appropriate to proceed straight to a formal investigatory meeting. In these circumstances preparatory advice should be sought from the HR Service. Suspension may also need to be potentially considered and planned for at this point (see **suspension of an employee**).

4.2 Conducting the Formal Investigation

If, following the preliminary investigation, the decision is taken to initiate the formal disciplinary process there will have to be a formal investigation. Please see flowchart in Appendix 15(a) and 15(b) for a summary of the process.

Interviewing and obtaining evidence from witnesses

If a formal investigation is required, witness statements obtained as part of an initial investigation should be examined and a decision taken as to whether the witness should be re interviewed formally to check the facts. If the witness up this point has only submitted a written statement they must be formally interviewed at this stage. Interviews with and

obtaining evidence from witnesses should be completed before interviewing the employee against whom allegation are made.

At this stage further consideration may need to be given as to whether or not the employee should be suspended.

Interviewing and obtaining evidence from the employee

A formal investigatory meeting should be arranged which needs to be confirmed in writing to the employee **(see Appendix I)** giving 5 working days' notice of that meeting and informing them of their right to be accompanied by a trade union representative or colleague and has no right of representation at this stage of the process. The meeting will be minuted. The letter should also confirm the nature of the allegations/ investigation.This should be on the clear understanding that the employee is being accompanied and not represented as the investigating officer will need to ask questions of the employee at the meeting and will expect answers from her/him.

At the meeting the investigating officer will make clear to the employee exactly what misconduct is being alleged. They must also advise the employee that the matter may result in a formal disciplinary hearing at which meeting they may be represented.

Formal Interviews – General

Investigation interviews with witnesses and the alleged offender should be carefully prepared in advance. This requires providing advance notice, making suitable arrangements, preparing documentation and questions (using the evidence available so far) and arranging for a note taker. (Appendix 1).

It should be acknowledged that formally interviewing the alleged offender and any other relevant witnesses may be a stressful process for all parties. For this reason the alleged offender should be strongly advised to contact their recognised trade union or colleague for support and to be accompanied by them at all meetings. At the beginning of an investigatory meeting, the investigating officer should explain the purpose of the meeting, and confirm that, as far as possible, confidentiality will be maintained. The purpose and process of the interview should also be explained. When interviewing the alleged offender, the investigating officer should state precisely what the complaint is, outline the case briefly and ask detailed questions based on the evidence available so far in order to establish the facts.

The main purpose of the investigation interviews is to ask detailed questions of witnesses and the alleged offender, listen carefully, and carefully record what is being said. Facts obtained from other sources/witnesses should be checked and clarified for consistency. When interviewing witnesses it is not necessary to state all the facts of the case, only those on which the witness has something relevant to say. For all such interviews, the tone adopted by the investigating officer should not be accusatory. A list of open questions should have been prepared prior to the interview, which should be followed up with prompts as necessary, e.g. *'And what happened after that?', 'I'm not quite sure what you meant when you said ….'.* The questions should be used to clarify the facts and to check that what has been said is understood by all.

The investigating officer should ensure fairness to both parties in their questioning,which may need, at times, to be direct and probing in an attempt to establish the facts. Listening attentively and being sensitive to silence can be a constructive way of encouraging the interviewee to be more forthcoming. If the interviewee becomes emotionally distressed during the interview a short break should be suggested to allow them to compose themselves before continuing.

At the conclusion of each interview the investigating officer should acknowledge, where necessary, that the process may have been difficult and thank the interviewees for their time

and contribution. All parties, including any witnesses, should be told what will happen next and the likely timescales. They should also be told to maintain confidentiality and, therefore, not to discuss the complaint with other parties or work colleagues, other than those providing support as agreed. After the interviews, a witness statement should be prepared and sent to each party under confidential cover to check, sign and date, verifying that it is an acceptable and accurate version of the interview.

All records of meetings with the employee will be made available to them and their trade union representative or colleague. (See **Appendix 1a** - letter regarding Investigation Notes).

Unlike a Court of Law, the disciplinary investigation and any subsequent disciplinarhearing does not need to establish guilt on the basis of "beyond reasonable doubt" but on the lower test of "the balance of probabilities" i.e. *"Is there a reasonable suspicion amounting to a belief in the guilt of the employee of the alleged complaint and are there reasonable grounds for that belief?"*

Disciplinary Responses

After establishing the facts, the investigating officer or Head Teacher will need to make a decision on how the case proceeds. Either way, the employee and their representative/colleague should be informed at this stage.

The investigating officer or head teacher may consider that there is no need to resort to the formal procedure and that it is sufficient to manage the outcome through discussion with the employee concerned in a counselling capacity. There must be clarity about the difference between *counselling* of this kind and *an oral or written warning* issued as a part of the formal procedure. The employee should be left in no doubt about which sort of action has been taken.

- any circumstances outside of the control of the employee which may have been a contributory factor
- personal difficulties or health issues which may have affected the employee's judgement and/or behaviour
- lack of clear procedures, policies or guidance, support and supervision which may have contributed to the situation
- the level of responsibility and/or experience of the employee involved.
- capability issues which need to be addressed separately
- whether the misconduct represents an isolated incident or follows previous incidents which have been addressed with this employee
- the level of seriousness of the offence
- any other mitigating circumstances relevant to the situation.
- the School employee Code of conduct and other appropriate professional standards

Counselling

Whilst making it clear that the behaviour is inappropriate and must not be repeated, counselling should also be seen as constructive and helpful to the employee. As a means of rectifying unacceptable conduct, other support mechanisms may be implemented as appropriate e.g. a programme of professional support and training, mentoring, referral to occupational health and/or counselling service etc.

Schools are advised to convene a specific counselling meeting at which the employee may wish to be accompanied. The head teacher may also involve another senior member of staff e.g. deputy head or chair of governors. Although the matter should remain confidential a record of the

counselling interview and outcome should be kept on the employee's personal file along with details of any support and guidance given.

Formal Disciplinary Action

Following the investigation, if the facts indicate that formal disciplinary action should be taken, a view should be formed on whether or not the conduct is severe enough to warrant dismissal on the grounds of gross misconduct (*see* **Appendix A11)** or because the offence follows a previous disciplinary warning which has not been "spent". If this is the case, the matter must be referred to a governors' disciplinary panel comprising appropriate members of the governing body. In certain circumstances the panel may include the head teacher providing that they are not the investigating officer or has had no previous involvement with the case. Whichever course of action is pursued, a senior officer from the CFCS HR Team will provide advice at the disciplinary hearing. In considering the evidence obtained at any stage it is important to note that the standard of proof in disciplinary procedures is "the balance of probability".

Where the conduct of a head teacher is under consideration and some form of minor warning is felt to be appropriate, the chair of the governing body or a governor nominated by him or her will hear the case, again advised by a senior officer from the CFCS HR Team. In more serious cases a panel of governors should be convened for the formal disciplinary hearing.

Management of Disciplinary Hearing

The date of the disciplinary hearing should be confirmed in writing to the employee as soon as possible and at least ten working days before the due date. The employee should be given the opportunity to send any written submission or evidence to the panel prior to the hearing. A copy of any such submission should also be made available to the investigating officer. The investigating officer should always submit the evidence in writing to the panel with a copy to the employee. This must also be sent at least ten working days before the end of the statutory hearing. (**See Appendix A3 – Notification of Hearing**) The employee must be notified of their statutory right to be represented at that meeting by their trade union representative or colleague. The employee should be given the opportunity to send any written submission or evidence to the panel which should be received no later than 5 working days prior to the hearing so that it may be circulated and properly considered. A copy of any such submission should also be made available to the investigating officer within the same timeframe.

If their Union representative or friend is unable to attend on the date of the meeting, the Employment Relations Act 1999 requires that a further date should be set within five working days of the original date. To avoid unnecessary delays, therefore the date of the hearing should always be set in consultation with both the employee's trade union and the CFCS HR Team. This is to ensure not only that the employee's trade union representative is available but that an appropriate LA officer is also available to attend and advise the panel on any procedural aspects or matters of employment law. It should be noted that the LA Officer is NOT a member of the panel and that their role is advisory.

The procedure for conducting a disciplinary hearing is set out below and the order of events is summarised in **Appendix A4**. The same outline procedure applies to disciplinary hearings conducted by a head teacher where the role of the disciplinary panel will be taken solely by the head teacher and the role of the head teacher in presenting the case to the panel will be taken by the investigating officer. The selection of governors for a disciplinary panel must ensure that there is no conflict of interest which may arise in hearing the case. It is generally considered unwise for staff governors to take part in such a disciplinary hearing.

In view of the sensitivity of the situation, particular consideration will need to be given to the arrangements for the hearing. For example, the venue will need to comfortably accommodate all parties during the course of the meeting and provide a suitable room for any witnesses waiting to give evidence.

The school should arrange for an appropriately experienced and confidential minuting clerk to take detailed notes of the meeting.

Conducting the Disciplinary Hearing

At the hearing the investigating officer will be responsible for presenting the evidence to the disciplinary panel in the presence of the employee and representative/colleague. Witnesses may be called individually by the investigating officer in support of the case. Detailed guidance on conducting the disciplinary hearing is included in **Appendix 4(a), 4(b) and 4(c)**.
The procedure outlined above will also be followed to hear any appeals against decisions to issue oral, formal and written warnings or to dismiss.

Outcomes of a Disciplinary Hearing

The formal disciplinary responses available to the disciplinary panel (and also where the governing body has delegated such powers to the head teacher) are:-

- **an oral warning**

In the cases of minor offences the employee should be given an oral warning and advised that the warning constitutes the first formal stage of the disciplinary procedure. The oral warning should be confirmed in writing (see **Appendix 5**) and e be kept for reference only on the employee's personal file and a copy sent to the employee for his/her retention. A reasonable time limit should be established after which the warning becomes spent (see **Appendix 10** Review of Disciplinary warnings).

- **a written warning**

In the case of more serious offences or where there is an accumulation of minor offences, the employee should be given a written warning. (See **Appendix A5**). A copy of the written warning and any evidence presented to the disciplinary hearing should be kept in a sealed envelope on the employee's personal file. A copy of the warning should be sent to the employee for his/her retention. A reasonable time limit should be established after which the warning becomes spent (see **Appendix 10** Review of Disciplinary warnings).

- **a final written warning**

Following an earlier warning for misconduct or in response to serious misconduct, the employee may be issued with a final written warning which will contain a statement that any further incidents may lead to dismissal. There may be occasions when misconduct is regarded as being insufficiently serious to justify consideration of dismissal but sufficiently serious to warrant only one written warning which, in effect, is both a first and final warning **(See Appendix A6 - Final Warning)**. Again, a copy of the warning and any evidence presented to the disciplinary hearing should be kept in a sealed envelope on the employee's personal file. A reasonable time limit should be established after which the warning becomes spent (see **Appendix 10** Review of Disciplinary warnings).

- **dismissal**

Except for cases of gross misconduct, an employee shall not be dismissed for a first breach of discipline. Where possible gross misconduct is being investigated, a senior officer of the CFCS

HR Team must be notified at the earliest possible stage and advice sought. The senior officer from the CFCS HR Team will review the investigation and details of the case before the disciplinary panel is convened so that appropriate advice may be given (**see Appendix A11 – Standards of Conduct).**

To ensure the decision of the disciplinary panel or head teacher is reasonable in all the circumstances of the case, account should be taken of:

- the employee's previous disciplinary record
- the employee's general record, position, age, length of service and state of health
- the penalty imposed in similar cases in the past
- any mitigating circumstances which might make it appropriate to lessen the severity of the penalty

In addition, before any decision to dismiss is finally determined and communicated to the Strategic Director for Children, Families and Cultural Services, the disciplinary panel or head teacher must address the following questions:

- Has there been as much investigation as is reasonable in the circumstances?
- Does the disciplinary panel/head teacher genuinely believe "on the balance of probability" that the employee has committed the misconduct? It should be noted that the civil test of guilt on the balance of probability also contains a clause which says that the level of probability should be proportionate to the severity of the sanction being considered i.e. if the recommendation is to dismiss then the level of probability must be proportionately greater.
- Has the disciplinary panel/head teacher reasonable grounds on which to sustain that belief?
- Is the misconduct sufficiently serious to justify the disciplinary decision being contemplated?
- Is the decision within the band of reasonable responses of a reasonable employer in the circumstances?

(See Appendix A7- Dismissal)

Communication and recording the outcome

Any decision of a disciplinary hearing must be confirmed to the employee in writing within three working days.

a) **Oral, Written, Final Warnings**

Details of any disciplinary action retained in an employee's personal file will be reviewed in consultation with the employee and their representative after twelve months with a view to determining whether the warning is 'spent'. If the warning remains current, further reviews should take place at six monthly intervals. Unless exceptional circumstances prevail, the maximum period for regarding a warning as current shall be three years but should be proportionate, for example, 12 months for an oral warning and 18 months for a written warning. Naturally, the decision on the length of time that a warning remains current will be determined by the nature of the disciplinary issue and

the likelihood of any re-occurrence of misconduct. The employee should be informed, in writing, of any decision to regard a warning as 'spent'. A copy of the warning should remain in the employee's personal file along with an attached note confirming that, for disciplinary purposes, the warning is spent. However, the requirements of safeguarding children legislation mean that the school should keep records of any investigations and / or warnings arising from the allegations of abuse indefinitely. Reference should not be made to spent warnings when producing employment references unless they are related to safeguarding issues. See Wired / HR Guidance (Schools) Community / Recruitment and Selection of School Staff / Appendix 7 References. Guidance on the process of reviewing warnings is attached at **Appendix A10 - Review of Disciplinary Warnings**.

b) **Dismissal**

Where the governing body chooses to dismiss a member of staff in these circumstances it will normally be on the grounds of conduct. The individual should be advised of their right of appeal against such a decision and their right to representation in accordance with the procedures using the template letter at **Appendix 7**.

Where the employee is employed in a community or voluntary aided schools a recommendation should be made to the Strategic Director for CFCS via the HR Team to terminate the contract of employment with Nottinghamshire County Council. In accordance with the School Staffing (England) Regulations 2009 the request will be actioned within 14 days. Where an employee is summarily dismissed their employment will end on the date that the decision to dismiss was made. This will usually be the date of the disciplinary hearing. Should the member of staff choose to exercise their right of appeal and the appeal is upheld the contract will be reinstated. In the case of a teacher the school in conjunction with the HR service must consider the circumstances of the dismissal to determine whether a referral to a professional body, e.g. TRA is required in line with Teacher misconduct: Guidance on referring a case.

Appeals

An employee has a right to appeal against any decision to issue an oral, written or final warning or any decision to dismiss. The employee will be advised of this right in the conveying of any such decision by a Head Teacher or member of a governing body who constitute a disciplinary panel. This will also be confirmed in writing as part of the outcome letter. The employee will also be advised that he/she has 10 working days from the date of the hearing to lodge an appeal.

- **Appendix A8 - Notification of Appeal Hearing**
- **Appendix A9 - Outcome of Appeal - Dismissal**

An appeal will be heard by a panel of governors who have played no part in the disciplinary hearing itself. In the case of an appeal against a decision taken by a disciplinary panel of governors, the appeal must be heard **by the same number** of governors as comprised the original disciplinary panel, normally three.

The procedure for hearing an appeal will be the same as that for the disciplinary hearing itself.

- **Appendix A4**

Every effort should be made for the appeal hearing to be convened as soon as possible and timescales for hearing an appeal may be reduced if agreed by all parties. Should an appeal against a dismissal be upheld the contract of employment will be reinstated. There are no further rights of appeal against the decision other than to an Employment Tribunal, should an employee have the qualifying employment rights.

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Employment Tribunals

Employment tribunals hear complaints lodged against employers on the grounds that they have discriminated against individuals or failed to respect their rights under employment law.

The governing body to be the respondent in relation to an application to an employment tribunal alleging unfair dismissal although, in law, the LA remains the employer (other than in Foundation and Voluntary Aided Schools). The first that a school may know of a referral to an employment tribunal will often be the receipt of a document from the employment tribunal numbered ET1. This ET1 document is the originating application which will set out the applicant's grounds of application to an employment tribunal. The respondent then has fourteen days in which to fill in the form ET3, the notice of tribunal appearance. Schools must act urgently and seek immediate advice from the HR Service.

Because of the peculiar legal relationship between the Local Authority and the governing bodies, former employees may not always know who the proper respondent is in their application.

Given the timescales, even though an extension of time will often be granted by a tribunal, it is essential that as soon as an ET1 is received by a school, a copy should be passed to the Head of CFCS HR at County Hall. Advice will then be given on whether or not the County Council need to be involved in producing the notice of appearance. By the same token, when an ET1 is received at County Hall, a copy will be made available as soon as possible to the Head Teacher with appropriate comments. **It is vitally important that this mutual procedure be followed strictly, since in the event of default an application may obtain judgement without either the school or the Local Authority having the opportunity of defending the matter.**

A tribunal can order an employee to be re-instated and they can award compensation.

The County Council will be primarily responsible for the payment of any compensation order by an employment tribunal in respect of a finding of unfair dismissal, although where it is reasonable to do so the LA is empowered to deduct such compensation from the school budget. However, providing the school has purchased the CFCS HR Team's services through Management Choices and has taken the advice given to them, this is unlikely to happen.

In cases where the governing body and Authority are in agreement over the matter of dismissal then, subject to availability of resources it should be possible for the Authority to represent the governing body at any tribunal hearing. Governors will also need to give very careful consideration to the nature of the evidence before an employment tribunal. Under present arrangements it is often possible for the employer's evidence to be given by an officer of the Authority. However, evidence may also have to be given by members of the governing body, particularly those governors who chaired the disciplinary panel and the appeal panel.

The law relating to dismissals has been complicated in recent years by the emergence of a large body of case law. There are many pitfalls, but provided a fair procedure is adopted and followed it should be readily possible for a governing body to defend a decision to dismiss provided it relates to grounds for dismissal which are recognised by law.

Where dismissal is a possibility, a senior officer of the HR Team will attend and will arrange for appropriate legal advice to be available to the head teacher/disciplinary panel if necessary.

Whilst it is anticipated that disciplinary issues coming before the governing body will be the exception rather than the rule, there is nevertheless a clear need for training of both governors, head teachers and other senior staff in this complex area. The LA will, therefore, continue to incorporate such training into its overall programme for governors and school staff.

1. Settlement Agreements

Settlement Agreements are legally binding contracts which can be used to end an employment relationship on agreed terms. Academy schools must comply with the Academies Financial Handbook if they are considering a settlement agreement.

Settlement agreements include a confidentiality clause but this cannot be used to prevent someone from making a protected disclosure e.g. whistleblowing complaint. They must not be used to prevent an allegation being followed up and/or a decision on whether a referral should be made to DBS or TRA.

Settlement agreements should only ever be used in certain circumstances and maintained schools must seek and follow the advice of the County Council HR service at all times. This is a complex area.

2. Teaching Regulation Agency (TRA)

Where a teacher is dismissed for reasons of misconduct, or would have been dismissed had they not resigned first, all schools have a legal duty to consider making a referral to the TRA. The school should work closely with the HR service to consider this immediately following a disciplinary decision.

The TRA is required to review such cases and consider whether they should be referred to a Professional Conduct Panel. Where a teacher is found by such a Committee to have fallen short of the standards expected, the TRA may issue a disciplinary order.

Detailed guidance issued by the DFE is available here:

Teacher misconduct: Guidance on referring a case

It should be noted that the County Council may directly dismiss school staff in its employment where the Secretary of State has prohibited further employment of any member of staff because of their previous conduct or capability.

3. Referral to DBS

Schools have a legal duty to refer to the DBS any member of staff who has harmed or poses a risk of harm to a child, or vulnerable adult where :

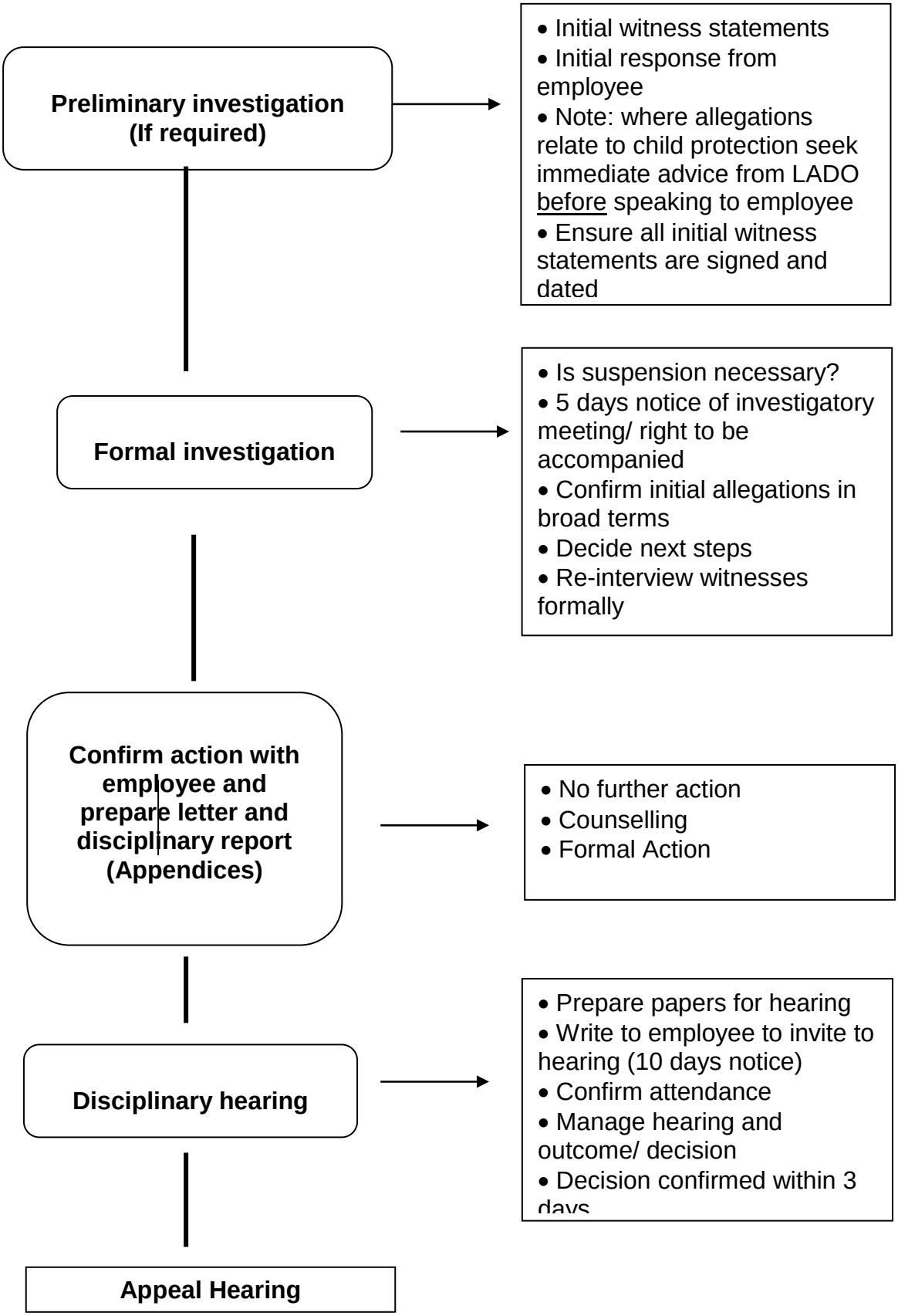
1. The harm test is satisfied in respect of that individual;
2. The individual has received a caution or conviction for a relevant offence, or if there is a reason to believe that the individual has committed a listed relevant offence; and
3. The individual has been removed from working in regulated activity (paid or unpaid), or would have been removed had they not left.

The legal duty to refer applies equally in cicumstances where an individual is deployed to another area of work that is not regulated activity, or they are suspended. Referrals should be made as soon as possible, and ordinarily on conclusion of an investigation, when an individual is removed from working in regulated activity, which could include being suspended, or is redeployed to work that is not regulated activity. Please refer to KCSIE 2018 paragraph 157 – 160 and by following the attached link on GOV.UK:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/638129/DBS_referral_guidance_completing_the_form_v1_2_August_2017.pdf

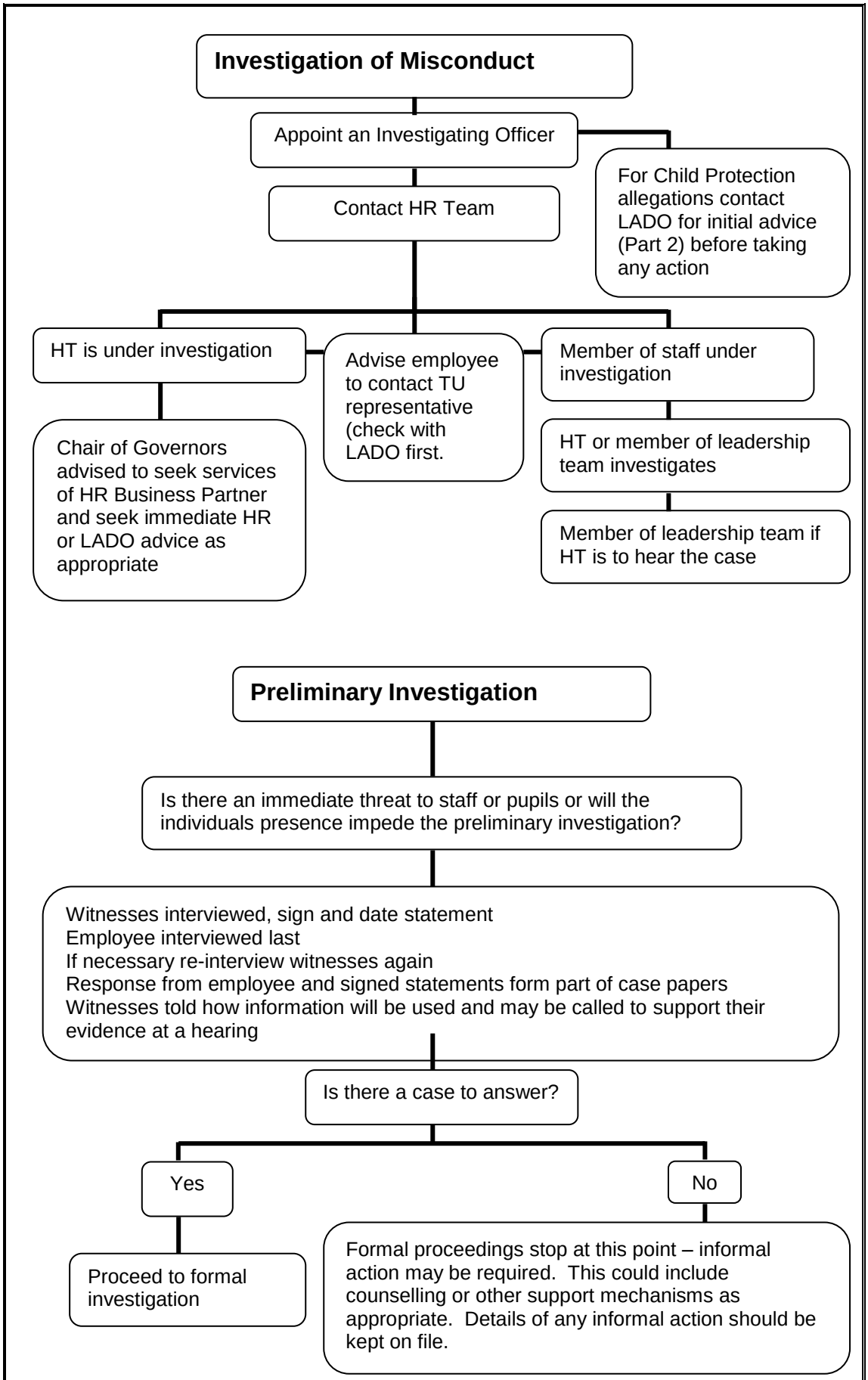
Where a teacher's employer, including an agency, dismisses or ceases to use the services of a teacher because of serious misconduct, or might have dismissed them or ceased to use their service had they not left first, they must consider whether to refer the case to the Secretary of State. The Secretary of State may investigate the case and decide whether to make a prohibition order in respect of that person.

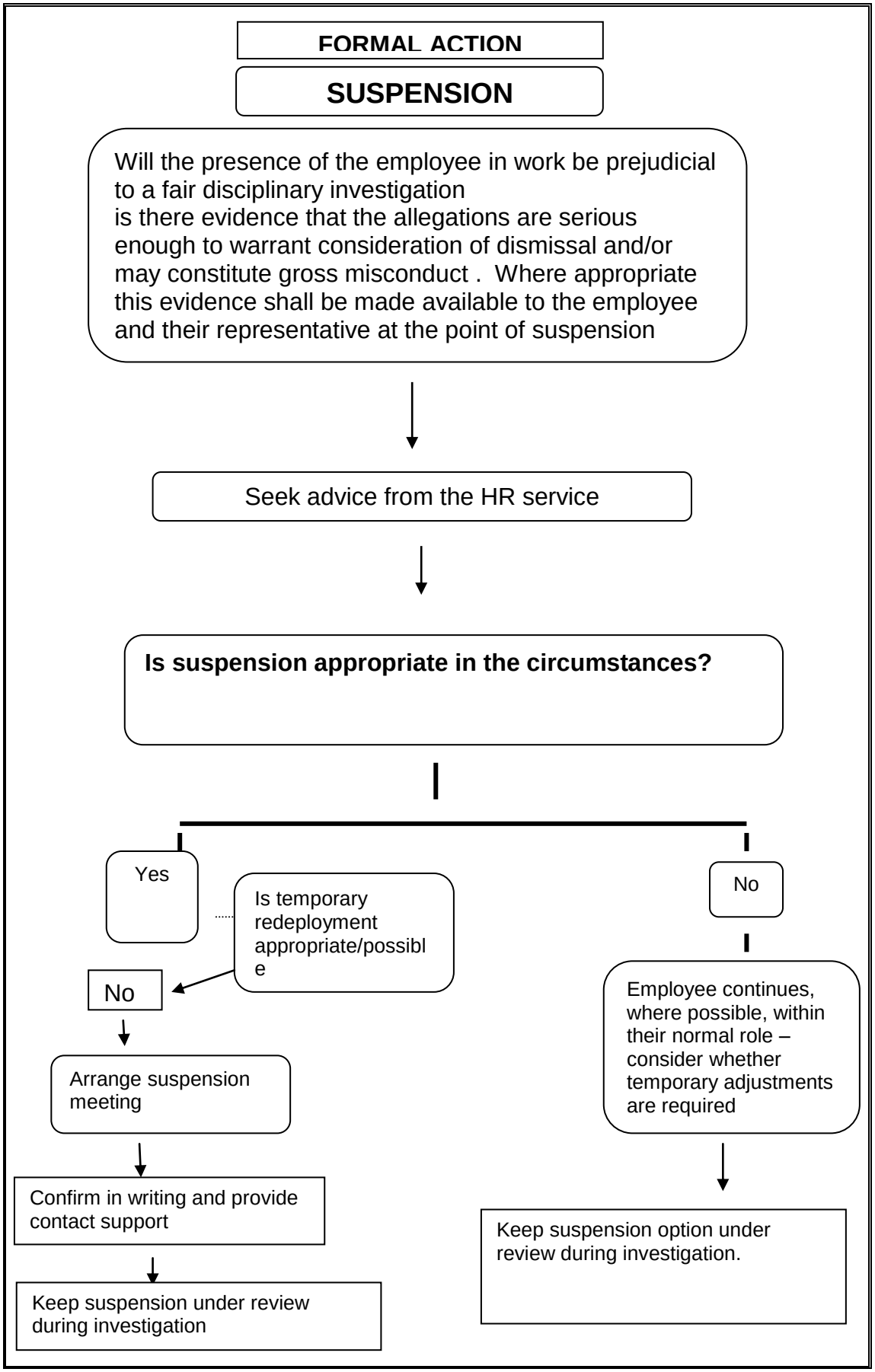
Before making a referral to either the DBS and TRA cases where there is alleged serious teacher misconduct involving harm or risk of harm to a child please see Part 2 – Managing Allegations and seek advice from the HR Service.

Summary of formal procedures – conduct of employees



The following flowchart outlines the key points to consider when investigating the misconduct of school staff, for further details please refer to the 'Disciplinary Procedure for School Staff' (current version can be found on WIRED – HR Guidance). Relevant sections from the procedure are signposted using page numbers throughout the flowchart.


Investigation of Misconduct
Appoint an Investigating Officer
Contact HR Team
For Child Protection allegations contact LADO for initial advice (Part 2) before taking any action
HT is under investigation
Advise employee to contact TU representative (check with LADO first.
Member of staff under investigation
Chair of Governors advised to seek services of HR Business Partner and seek immediate HR or LADO advice as appropriate
HT or member of leadership team investigates
Member of leadership team if HT is to hear the case
Preliminary Investigation
Is there an immediate threat to staff or pupils or will the individuals presence impede the preliminary investigation?
Witnesses interviewed, sign and date statement
Employee interviewed last
If necessary re-interview witnesses again
Response from employee and signed statements form part of case papers
Witnesses told how information will be used and may be called to support their evidence at a hearing
Is there a case to answer?
Yes
No
Proceed to formal investigation
Formal proceedings stop at this point – informal action may be required. This could include counselling or other support mechanisms as appropriate. Details of any informal action should be kept on file.


FORMAL ACTION
SUSPENSION
Will the presence of the employee in work be prejudicial to a fair disciplinary investigation
is there evidence that the allegations are serious enough to warrant consideration of dismissal and/or may constitute gross misconduct . Where appropriate this evidence shall be made available to the employee and their representative at the point of suspension
Seek advice from the HR service
Is suspension appropriate in the circumstances?
Yes
Is temporary redeployment appropriate/possible
No
Arrange suspension meeting
Confirm in writing and provide contact support
Keep suspension under review during investigation
No
Employee continues, where possible, within their normal role – consider whether temporary adjustments are required
Keep suspension option under review during investigation.

Formal investigation

Obtain full witness statements and any other material evidence/documentary evidence relevant to the allegations

Interview witnesses and ensure that the statements are signed and dated

Arrange formal investigatory meeting with the employee

Advise of the right to be accompanied by a representative of the Recognised Trade Union or person of their choosing and confirm the nature of the allegations(s). Ensure that 5 working days notice is given.

Undertake investigatory meeting with employee (Remember it may be necessary to re-interview witnesses based on subsequent information from other witnesses or employee). If this is required you must re-interview employee to seek their response to additional evidence prior to concluding the investigation

Consideration of the Evidence

On the basis of the evidence available is there still a case to answer?

Yes, proceed to formal action

Disciplinary Action

Investigating Officer to arrange for case to be heard

Prepare statement of case & disciplinary paperwork including letter/appendices ensuring all documents are signed, dated and numbered

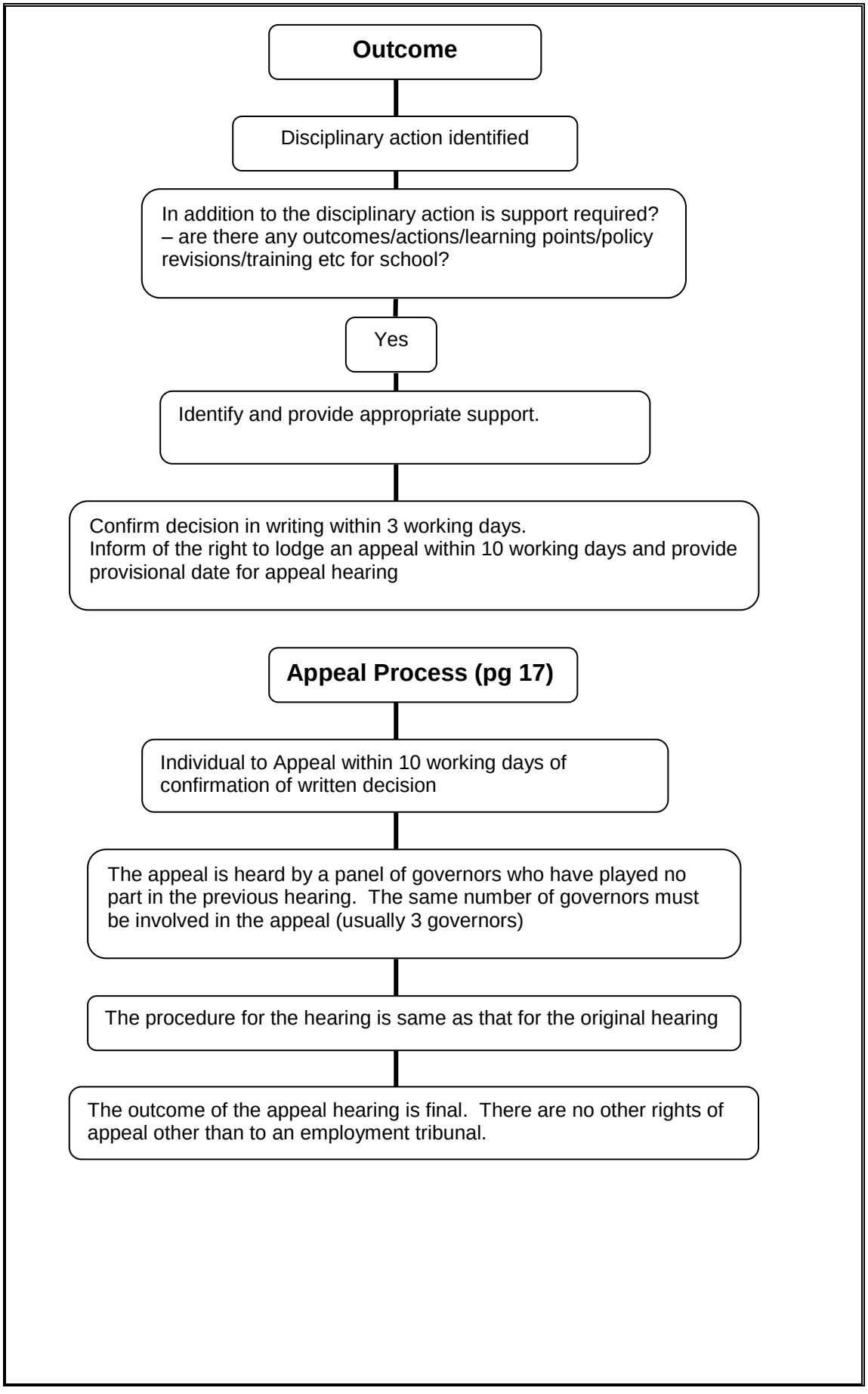
Arrange disciplinary hearing (10 working days notice to those involved including paperwork and Statement of Case). HR Officer and governors involved to be advised. Arrange for the meeting to be minuted. Advise the individual of their right to representation.

Decision made by Headteacher/Panel of Governors

No

No further formal action, other than to inform those concerned. Provide support if required eg counselling
Is informal action now required?
Are there any actions/learning points for the school?
Is there any remedial action that the school or any institution should take?

Matter resolved


Outcome
Disciplinary action identified
In addition to the disciplinary action is support required? – are there any outcomes/actions/learning points/policy revisions/training etc for school?
Yes
Identify and provide appropriate support.
Confirm decision in writing within 3 working days.
Inform of the right to lodge an appeal within 10 working days and provide provisional date for appeal hearing
Appeal Process (pg 17)
Individual to Appeal within 10 working days of confirmation of written decision
The appeal is heard by a panel of governors who have played no part in the previous hearing. The same number of governors must be involved in the appeal (usually 3 governors)
The procedure for the hearing is same as that for the original hearing
The outcome of the appeal hearing is final. There are no other rights of appeal other than to an employment tribunal.

Appendix A1: Formal Investigatory Meeting

Private and Confidential
Name
Address

Dear

Schools Disciplinary Procedure-Conduct
Formal Investigatory Meeting

Further to our recent discussion regarding the allegations made against you, I wish to inform you that you are now required to attend a formal investigatory meeting within the remit of the schools disciplinary procedure.

This meeting will be held with (Name) in (Office) at (location) on (date) at (time). You are advised to be accompanied at this meeting by a representative of your Recognised Trade Union or a collegue.

Specifically, the meeting will address the following issues:-
(List each allegation, include information such as date, time, place of incident etc)

I must inform you that this meeting will be minuted and, depending on the outcome, a decision will be taken on whether formal disciplinary action will be taken under the school's Disciplinary Procedure.

Please confirm with me by (date) that you are able to attend and who will be accompanying you.

Yours sincerely

Head Teacher/Investigating Officer

Copies to: Chair of Governors
HR Business Partner HR Team

STRICTLY CONFIDENTIAL

*
*
*
*
*

Dear *

Schools Disciplinary Procedure - Conduct
Outcome of Investigatory Meeting

Further to our meeting on * I enclose for your information two copies of the notes taken.

I should be grateful if you would read the notes carefully and return to me a signed copy of the notes indicating that this is a true record of the meeting. If you have any comments or alterations to the details of these please indicate in red pen.

Please return these notes to me by (date + 5 days) and retain the second copy for your personal reference.

Thank you for your co-operation.

Yours sincerely

Copy to: HR Business Partner, HR Service
Trade Union Representative/colleague

Appendix A1b – Outcome letter, no formal action or no action

FIRST CLASS
PERSONAL
Name
Address

Dear

(Name of) School - Disciplinary Procedure

Further to the preliminary / formal investigatory meeting held on (date) my decision is that no formal action / no action will be taken in respect of the following allegations:

(List allegations)

(If informal action or recommendations have been made or taken please explain these here).

Yours sincerely

Head Teacher

Copy to: Business Partner, HR Team
TU Representative/colleague

Appendix A2: Notification of Suspension

Private and Confidential
Name
Address

Dear

Schools Disciplinary Procedure – Confirmation of Suspension

Further to our recent discussion, I confirm that in view of the incident(s) which has/have come to light (give reasons) regarding your alleged inappropriate behaviour towards a pupil), you are suspended from your post as * at this school, with immediate effect. As suspension is not a disciplinary measure you have no right of appeal against this decision. However, you will remain on full pay pending the outcome of investigations into the alleged incidents outlined above.

Whilst I cannot confirm at this stage when the investigation will be completed, I can assure you that I am aware of how difficult this situation must be for you and the investigation will take place without delay. However, I consider that by the nature of your employment, i.e. supervision of children (or other reason), your continued presence at work may be prejudicial to the situation. I must advise you that during the period of your suspension you should refrain from entering the school premises and communicating directly with anyone involved in the case. However, this does not prevent you from communicating informally with friends or colleagues about issues not connected with the case. The school will treat this matter with complete confidentiality and will expect you as an employee of the school to do the same.

If you should wish to contact the school for any reason, you can do so through a number of channels:

- [name & post of link officer] [telephone number xxxx] has agreed to act as your link officer during your suspension
- you can also contact [name of line manager] [telephone xxxx]
- In addition you can also contact [name and post of contact in HR] [telephone xxxx]. If [name of HR person] is unavailable another member of the HR team will be able to assist you.

If, at any point, you wish to speak to me personally about your situation or the procedures then please do not hesitate to contact me. Further support can also be obtained from your Trade Union.

<u>For School Support Staff only add this information on taking annual leave:</u>

During your period of suspension annual leave should be taken in accordance with the normal procedures and should be approved in the normal way. You should be aware that there is no provision for the carry-over of annual leave from one leave year to the next.

Yours sincerely

Head Teacher
Copies to: HR Business Partner, HR Team
Trade Union Representative/colleague

Appendix A3: Notification of Hearing

FIRST CLASS
PERSONAL
Name
Address

Dear

(Name of) School - Disciplinary Procedure- Conduct of staff

Further to our recent discussions, I wish to inform you that you are required to attend a meeting within the framework of the school's disciplinary procedure. A copy of this procedure is available in school in (place) for your information. (A copy of this procedure is enclosed – if suspended). Please confirm receipt of this letter by…….

The meeting will be with myself as investigating officer and the governors' disciplinary panel and will be held in (place) at the school on (date) at (time). Specifically, the meeting will consider your conduct relating to (List each allegation, include information such as date, time, place of incident etc)

(Include the following paragraph If dismissal is a possible outcome of the hearing, i.e. as a result of gross misconduct or following previous warnings, this must be clearly stated in letter).
I must advise you that one possible outcome of the hearing is that you may be dismissed from your post as (job title), for gross misconduct or as you already have a final written warning.

Within the provisions of the school's disciplinary procedure you are entitled to receive copies of the documents which will be considered at the hearing. I attach, for your information, copies of the following documents:-

(List the appendices in order, starting with statement of case)

You have the right to present evidence to support your case. If it is your intention to submit evidence to the panel you must let me have this by (date) so that I can circulate copies prior to the meeting. Otherwise any documents you wish to rely on may not be considered by the panel. As part of the presentation of the case, I will be calling the following witnesses (include name and post title/other):
You will, as part of the presentation have an opportunity to question the witnesses on the evidence they have provided.

You are strongly advised to be represented at the meeting by your trade union representative or a person of your own choosing. You may, if you wish, call witnesses to support your case and, if this is your intention, please let me know in advance of the meeting so that arrangements can be made to accommodate them.

Please confirm by (date) the names of any witnesses you intend to call and that you and your representative are able to attend this meeting on the date and times given.

I will assume that you will be attending the hearing unless I hear from you to the contrary. You should be aware that the hearing is likely to proceed in your absence unless you provide appropriate notice and explanation for your non attendance.

Yours sincerely
Head Teacher Copy to: HR Partner, HR Team, Governors Panel

Appendix A4: Procedure for Hearing/Appeals

Order of Events

1. Investigating Officer presents the case.

2. Questions from employee and/or employee representative.

3. Questions from the Disciplinary Panel.

4. Employee (or representative) presents their case.

5. Questions from Investigating Officer.

6. Questions from the Disciplinary Panel.

7. Investigating Officer sums up.

8. Employee (or representative) sums up.

9. Both parties withdraw.

10. Panel decision.

11. All parties reconvene. Decision given.

12. Decision confirmed in writing by Head Teacher within 3 working days – including notice of right to lodge an appeal within 10 working days of the hearing.

APPEAL

Same procedure but 3 Governors not previously involved in the case.

No further appeal.

Appendix A5: Notification of Outcome – Oral/Written Warning

FIRST CLASS
PERSONAL
Name
Address

Dear

(Name of) School - Disciplinary Procedure

I wish to confirm the outcome of your hearing with the Disciplinary Panel/Head Teacher on (date) in the presence of (LA Officer) and **either** your representative (name, T.U.)/**or** (despite being advised of your right to representation you chose not to exercise it). The meeting was arranged within the framework of the school's disciplinary procedure.

At this hearing reference was made by the investigating officer (name) to (details of disciplinary issues). Having fully considered the evidence the governors' disciplinary panel/Head Teacher decided to issue an oral/written warning in respect of your conduct. This oral/written warning will remain on your personal file for a period of
12 months, after which time it will be reviewed. I must also warn you that any further problems which occur concerning your conduct or capability will be viewed very seriously indeed and may result in further disciplinary action.

If employee was suspended include following paragraph
Your period of suspension will end on (date) and you should contact (person) before this date to discuss your return to work.

If you wish to appeal against this decision you may do so in writing to me at the above address within 10 working days stating briefly the grounds of your appeal. You will be offered the opportunity to be heard in person by the Governors' Appeal Panel accompanied, if you so wish, by your trade union representative or a person of your own choosing.

Yours sincerely

(Head Teacher)
Copy to: CFCS HR Team

Appendix A5a: Notification of Outcome – No sanction

FIRST CLASS
PERSONAL
Name
Address

Dear

(Name of) School - Disciplinary Procedure

I wish to confirm the outcome of your hearing with the Disciplinary Panel/Head Teacher on (date) in the presence of (LA Officer) and **either** your representative (name, T.U.)/**or** (despite being advised of your right to representation you chose not to exercise it). The meeting was arranged within the framework of the school's disciplinary procedure.

At this hearing reference was made by the investigating officer (name) to (list the allegations). Having fully considered the evidence the governors' disciplinary panel/Head Teacher decided not to issue a warning in respect of your conduct.

The following recommendations and expectations were made by the panel / Head Teacher (list these here)

(recommendations made about conduct only – do not use if no case to answer)
Although no sanction has been issued on this occasion any further problems which may occur concerning your conduct or capability will be investigated in line with the appropriate procedure.

I now consider this matter to be concluded and should you require any support following this process please contact X.

Yours sincerely

Head Teacher

Copy to: CFCS HR Team

FIRST CLASS
PERSONAL
Name
Address

Dear

(Name of) School - Disciplinary Procedure

I wish to confirm the outcome of your hearing with the Disciplinary Panel/Head Teacher on (date) in the presence of (LA Officer) and your representative (Name, Trade Union)/or (despite being advised of your right to representation you chose not to exercise it). The meeting was arranged within the framework of the school's disciplinary procedure.

At this hearing reference was made by the investigating officer (name) to (details of disciplinary issue).

Having fully considered the evidence, the (name) Disciplinary Panel/Head Teacher decided to issue a **final warning** in respect of your conduct. This warning will remain on your personal file for a period of 12 months, after which time it will be reviewed. I must warn you that any further instances concerning your conduct/capability may lead to further disciplinary action which could result in your dismissal.

If employee was suspended include following paragraph
Your period of suspension will end on (date) and you should contact (person) before this date to discuss your return to work.

If you wish to appeal against this decision you may do so in writing to me at the above address within 10 working days stating briefly the grounds of your appeal. You will be offered the opportunity to be heard in person by the Governors' Appeal Panel accompanied, if you so wish, by your trade union representative or a person of your own choosing.

Yours sincerely

Head Teacher

Copy to: CFCS HR Team.

Appendix A7: Dismissal

(NB - Advice must be sought about specific wording for each case)

FIRST CLASS
PERSONAL
Name
Address

Dear

(Name of) School - Disciplinary Procedure

I wish to confirm the outcome of your hearing with the Disciplinary Panel/Head Teacher on (date) together with (LA Officer) and **either** your representative (Name, Trade Union)/ **or** (despite being advised of your right to representation you chose not to exercise it). The meeting was arranged within the framework of the school's disciplinary procedure. Please confirm receipt of this letter by…….

At the hearing, reference was made by the investigating officer (named) to (details of disciplinary issues).

In view of the circumstances (e.g. the Panel considered that your behaviour constituted gross misconduct or/and in view of the fact that you had already received a previous warning/final warning), the Governors' Disciplinary Panel/Head Teacher decided that you should cease to work at the (name) school with effect from……. In accordance with the School Staffing Regulations 2009 they will inform the LA that you be dismissed from your post as * on the grounds of …… The Authority will then issue you with a notice of dismissal from your employment with this school.

If you wish to appeal against this decision you may do so in writing to me at the above address within 10 working days stating briefly the grounds of your appeal. You will be offered the opportunity to be heard in person by the Governors' Appeal Panel accompanied, if you so wish, by your trade union representative or a person of your own choosing. If your appeal is upheld, the Local Authority will be informed and will re-instate your contract of employment.

Yours sincerely

Head Teacher

Copy to: CFCS HR Team

Appendix A8: Notification of Appeal Hearing

FIRST CLASS
PRIVATE AND CONFIDENTIAL
Name
Address

Dear *

*** (Name) SCHOOL - DISCIPLINARY PROCEDURE**

Further to the disciplinary hearing held on * and to my letter dated * informing you of the Governors' Disciplinary Panel's/Head Teacher's decision, I understand from your letter dated * that you now wish to appeal against the decision to issue you with a * warning / dismiss you from your post as * at the School).

In accordance with the school's disciplinary procedure, I wish to inform you that I have arranged a meeting to consider your appeal. A copy of the disciplinary procedure is available in school in the HR Guidance for Schools, (state where available) for your information. (If the person is suspended include the following sentence - A copy of the disciplinary procedure is attached for your information).

The meeting will be with myself and an Appeal Panel of the Governing Body and will be at * on *. Specifically the meeting will consider * (detail here the same information as sent in the initial hearing letter)

Within the provisions of the school's disciplinary procedure you are entitled to receive copies of the documents relating to the case which will be considered at the Appeal. I attach for your information, copies of the following documents:-

a) list and send all of the information as previously sent out for the initial hearing including documents previously submitted by the employee
b) list and send any information submitted by the individual either before the initial hearing or at the hearing.

If there is any further information relating to this case that you would like to submit to the Governors for their consideration, will you please arrange for this to be sent to me as soon as possible and by * at the latest. I can then circulate copies to members of the Appeal Panel in plenty of time for their consideration before the meeting.

I would like to take this opportunity to inform you that you are strongly advised to be represented at this meeting by your Trade Union representative or a person of your own choosing and you may, if you wish, call witnesses to support your case. Please let me know if you are intending to do this so that arrangements to accommodate your witnesses can be made. I have enclosed an additional copy of this letter and accompanying details for you to give to your Union Representative. Please confirm with me that you are able to attend this meeting on the date and times given.

I will assume that you will be attending the hearing unless I hear from you to the contrary. You should be aware that the hearing is likely to proceed in your absence unless you provide appropriate notice and explanation for your non attendance.

Yours sincerely
Head Teacher/Investigating Officer

Copy to: CFCS HR Team

Appendix A9: Outcome of Appeal - Dismissal

FIRST CLASS
PERSONAL
Name
Address

Dear

(Name of) School – Disciplinary Procedure – Appeal Hearing

I wish to confirm the outcome of your appeal hearing with the Disciplinary Appeal Panel of the Governing Body on (date) in the presence of the investigating officer, together with (LA Officer) and either your representative (Name, Trade Union) or (despite being advised of your right to representation you chose not to exercise it). The meeting was arranged within the framework of the school's disciplinary procedure.

At the hearing, reference was made to (details of disciplinary issues). Having fully considered the evidence, the decision of the Appeal Panel was that you should cease to work at the ** school and that the LA be asked to dismiss you from your post of * with effect from * / with immediate effect on the grounds of ……..

As your were dismissed from your post at your disciplinary hearing on (date) I have previously notified the Strategic Director for Children, Families and Cultural Services of the decision of this Panel and s/he has written to you to formally terminate your contract of employment with Nottinghamshire County Council. I will inform him/her that the Appeal Panel have not decided to re-instate your contract with Nottinghamshire County Council.

Yours sincerely

Head Teacher

Copy to: CFCS HR Team

FIRST CLASS
PERSONAL
Name
Address

Dear

(Name of) School – Disciplinary Procedure – Appeal Hearing

I wish to confirm the outcome of your appeal hearing with the Disciplinary Appeal Panel of the Governing Body on (date) in the presence of the investigating officer, together with (LA Officer) and either your representative (Name, Trade Union) or (despite being advised of your right to representation you chose not to exercise it). The meeting was arranged within the framework of the school's disciplinary procedure.

At the hearing, reference was made to (list allegations here).

Explain what the panel found in respect of each allegations

The panel's decision therefore was to uphold the oral / written / final written warning that was issued to you on (date) and confirmed in writing on (date), as the panel consider that this is an appropriate and reasonable form of action due to the (serious) nature of the case. This warning will remain on your personal file for a period of (number) months, after which time it will be reviewed.

OR
The panel's decision therefore was to overturn the oral/written/final written warning that was issued to you on date and confirmed in writing on (date). The panel decided to issue you with no sanction / oral / written /final written warning, (If issued a warning) This warning will remain on your personal file for a period of (number) months, after which time it will be reviewed

The notes from the meeting will be sent to you as soon as they are available.

Yours sincerely

Head Teacher

Copy to: CFCS HR Team

Appendix A10: Review of Disciplinary Warnings

Introduction

Although it is usual for formal warnings to be issued for a period of 12 months it will be necessary for head teachers to formally monitor and review such warnings in accordance with the appropriate disciplinary procedure. Advice on methods of monitoring warnings can be obtained from the CFCS HR Team.

The purpose of reviewing disciplinary warnings is to consider the continued validity of the warning rather than its physical removal from the personal file. Such information should never be removed as it may be required as evidence later, if disciplinary problems re-occur which result in an Employment Tribunal. If the warning has been reviewed and confirmed as "spent" (this should be clearly recorded along with the original warning), it will not be taken into account if further disciplinary sanctions are being considered. However, it is acceptable evidence at an Employment Tribunal to look at the history of employment in deciding whether an employer has acted reasonably in all the circumstances, hence the need to retain documentary evidence of a spent warning. In addition it is essential that any information regarding disciplinary action relating to allegations of abuse against employees is retained as required by legislation. Even where such warnings have expired, this information may be required in relation to any further allegations or for recruitment procedures (see section A2)

Oral warnings

Whilst there is no specific requirement to review oral warnings, the disciplinary document implies that all warnings should be reviewed. Therefore, it is necessary for oral warnings to be reviewed on the same basis as written warnings. As oral warnings should only be given for minor offences, it is unlikely they would survive after a year.

Written warnings

The key questions that a review should address are:-

- Has the conduct of the individual improved?
- Is there likely to be re-occurrence of the offence?
- Was the original offence deemed to be a serious matter by the governing body?

To answer these questions, it would seem appropriate that the head teacher and/or the appropriate committee of the governors should review the warning with the employee and their representative. Technically, of course, it is a matter for governing bodies to determine this matter, but in such cases it may be appropriate to consult with the CFCS HR Team, who could provide a wider perspective to the matter.

The review would be initiated by the head teacher, who would make a recommendation to the appropriate governors' committee, and would also advise the individual in writing as to whether the warning is regarded as 'spent' or otherwise.

There is no appeal against the outcome of a review. However, both the individual and the Head Teacher could raise a grievance on any matter including the outcome of the review.

Further information

Further guidance on this matter can be obtained from the CFCS HR Team.

Appendix A10a: Confirmation of outcome of review of warning

FIRST CLASS
PERSONAL
Name
Address

Dear

(Name of) School – Disciplinary Procedure – Review of warning

I wish to confirm the outcome of the review of the oral / written / final written warning that was issued to you on (date) for a period of (number) months.

Option 1 – conduct satisfactory
The warning has been reviewed by (head / governors) and confirmed as spent, it will not be taken into account if further disciplinary sanctions are being considered.

Option 2 – conduct not satisfactory
The warning has been reviewed by (head / governors) and confirmed as not spent. The warning will remain on your record for a further (number) months due to (explain why here). The warning will then be reviewed again. It will continue to be taken into account if further disciplinary sanctions are being considered.

You are not able to appeal against this decision.

Yours sincerely

Head Teacher

Copy to: CFCS HR Team

Appendix A11: Standards of Conduct Relating to School Employees

General Standards of Conduct

The public expects the conduct of teachers and other staff working in schools to be of the highest standard. As with all employees of the County Council, those staff employed by the LA in community and voluntary controlled schools should be aware of their duty to:

- maintain conduct in keeping with the interests and standards of the school and the County Council
- be honest, trustworthy and beyond the reach of suspicion and dishonesty
- maintain at all times a high standard of integrity and conduct
- not put his/her private interest or those of relatives or friends before his/her duty to the school/County Council
- not use his/her position to further private interests or those of relatives or friends
- faithfully perform the duties specified in his/her contract of employment, to observe the school's policies, values and regulations

Teachers are also subject to the framework of professional standards established by the General Teaching Council. Under the Education (Prohibition from Teaching or Working with Children) Regulations 2003, cases relating to safety and welfare of children may need to be referred to the Secretary of State. Staff working in Foundation and Voluntary Aided schools may be subject to the specific requirements relating to the ethos of the school. Schools should ensure that all staff are made aware of any guidance issued by the DFE and the LA relating to the conduct of school employees, for example restraint procedures, searching and screening of pupils etc.

Gross Misconduct

Gross misconduct will normally result in dismissal after the appropriate hearings. This will be <u>without notice.</u> Acts which constitute gross misconduct are those resulting in a serious breach of contractual terms. It is not possible to specify all possible or potential acts of gross misconduct but they may include:

- Theft, fraud and deliberate falsification of records.
- Falsification of examination papers or assessment data.
- Physical violence.
- Serious bullying or harassment.
- Improper conduct with children and young people.
- Deliberate damage to property.
- Refusal of a reasonable instruction.
- Misuse of the school/County Council's property or name.
- Bringing the school/LA into serious disrepute.
- Serious incapability whilst on duty as a result of the use of alcohol or illegal drugs.
- Serious negligence which causes or might cause unacceptable loss, damage or injury.
- Serious infringement of health and safety rules.
- Serious breach of confidence (subject to the Public Interest (Disclosure) Act 1998.

In some instances, offences which would normally constitute gross misconduct may be considered as misconduct because of mitigating circumstances. Similarly, certain issues which would normally be treated as misconduct may, in certain circumstances, be considered so serious that they constitute gross misconduct.

Appendix A12

Strictly Private and Confidential: INVESTIGATION REPORT

REPORT FOLLOWING AN INVESTIGATION UNDER DISCIPLINARY PROCEDURE FOR SCHOOL STAFF

SUBJECT: [name]

Job Title:

Name of school:

Subject of Allegations:

Investigating Officer(s):

Date of Report:

CONTENTS

Page Number

1. Investigation Brief/Allegations
2. Process of Investigation
3. Background
4. Analysis of Evidence
5. Conclusion
6. Recommendations
7. APPENDICES

1. Investigation Brief/Allegations

1.1 [This report has been compiled following a request by [Head Teacher] to investigate allegations that [xxx]].

1.2 [The purpose of this investigation is to determine whether there is a case to answer in respect of the allegations that (name of employee) has…….]

2. Process of Investigation

3. Background

3.1 [[name] is a (job title) employed at (name of school). Include any relevant structural/line management/complaint/witness details

3.2 Explain:

- how potential irregularity came to light, and when;
- action taken by the school as a result (ie suspension, investigation)
- format of investigation (who you spoke to, what evidence you considered, etc)]

4. Analysis of Evidence

This section needs to draw all the evidence together and analyse it in order to demonstrate how you have reached conclusions.

Also evidence from the key witness and any other witnesses.

Concentrate on incident on the day as one element, and then draw in any other allegations made about potential previous incidents.

Do not include personal comments/conclusions/statements:

5. **Conclusion**

Is the allegation proven "on the balance of probabilities" in your view?

What is the mitigation?

Are there any other conclusions you have drawn from the evidence?

You are looking (from your analysis) for corroboration of evidence

6. Recommendations

Need to make recommendations about:

(a) a disciplinary hearing

(b) anything else which has been uncovered (eg better communication of procedures, or changing system, or changing policy, or training needs, etc).

APPENDICES

Appendix 1 - [xxx]
Appendix 2 – [xxx]

Attach appendices – all evidence.

PART A2 – MANAGING ALLEGATIONS OF CHILD ABUSE AGAINST SCHOOL STAFF

INTRODUCTION

This second part to the School Disciplinary Procedure specifically sets out the additional procedures for managing allegations of child abuse against school staff. It complements and should be read in conjunction with the Disciplinary Procedure Part 1 – Managing the Conduct of School Staff and provides schools with:

- Information and guidance about managing allegations of potential child abuse against employees, volunteers and school governors.
- Details of the statutory procedures for such allegations.

Where allegations of child abuse are made, such cases must be addressed through the agreed processes, in line with current legislation, current statutory guidance and County Council policy and procedures. It is most important that all allegations of child abuse against school staff should be reported immediately to the head teacher, or in the case where the allegation is against the head teacher, the Chair of Governors. Before taking any further action, the head teacher or Chair of Governors should seek **immediate** advice from the Local Authority Designated Officer (LADO) to agree a course of action on how the allegation(s) should be managed, taking into account the nature, content and context, including the involvement of the police and/or HR service.

Managing allegations of child abuse against employees require the school and the governing body to act in accordance with the locally and nationally agreed procedures. The definitions of child abuse are contained within the Nottinghamshire Safeguarding Children Board (NSCB) Procedures. This document is available on the School Portal and a copy should be made available to staff in every school. In applying these procedures, reference should also be made to the latest version of the Department of Education guidance on Keeping children safe in education – September 2018 and should be read alongside Working together to safeguard children 2018.

This document provides guidance on managing cases of allegations that might indicate a person would pose a risk of harm if they continue to work in regular or close contact with children in their present position, or in any capacity. It should be used in respect of all cases in which it is alleged that a teacher or member of staff (including volunteers) in a school that provides education for children under 18 years of age has:

- behaved in a way that has harmed a child, or may have harmed a child;
- possibly committed a criminal offence against or related to a child; or
- behaved towards a child or children in a way that indicates he or she may pose a risk of harm to children.

This document relates to members of staff and volunteers who are currently working in any school regardless of whether the school is where the alleged abuse took place. Allegations against a teacher who is no longer teaching should be referred to the police. Historical allegations of abuse should also be referred to the police. Keeping Children

Safe In Education 2018, Paragraph 188, provides a link to the Disclosure and Barring Service website which explains the harm test on GOV.UK.

Legislation

The Children Act 1989 established the legislative framework for the protection of children and the Children Act 2004 strengthened the duty of organisations and individuals to safeguard and promote their wellbeing. Section 175 of the Education Act (2002) places specific duties on governing bodies, LA and Trust employers to carry out their functions in relation to the safeguarding and promoting the welfare of children. Keeping children safe in education, which is updated each year, provides specific guidance to maintained schools, academies and local authorities on their role in helping to protect children from abuse.

All Local Authority maintained schools, academy schools and other educational establishments have a statutory duty to assist Local Authority Children's Social Care acting on behalf of children in need or conducting enquiries into allegations of child abuse. All schools, irrespective of their governance arrangements, must act within the requirements of the local NSCB procedures when abuse is suspected and take the appropriate action when a teacher or other school employee is accused of abuse against a child.

This procedure has been agreed locally by the recognised Trade Unions and the Nottinghamshire Safeguarding Children Board. **Governing bodies are, therefore, strongly advised to adopt these principles and policy as Part 2 of the School's Disciplinary Procedure and Child Protection Policy.**

The School Staffing (England) Regulations 2009 confers the right of the County Council to send a representative to all proceedings of the governing body of a community or voluntary controlled school relating to the selection or dismissal of any teacher (including the head teacher and deputy) to offer advice. If the County Council decides to send a representative they must be allowed to attend. Any advice offered as a result must be considered by the governing body (or those to whom the function has been delegated) when reaching a decision. This will usually be a senior officer from the HR Service who may also advise the governing body/head teacher as appropriate. The same rights do not automatically apply in respect of maintained foundation, voluntary-aided and foundation special schools.

The guidelines have been drawn up in recognition of the particular sensitivity surrounding allegations of abuse by school staff and the need for support to be given to the accused employee.

The Sexual Offences Act 2003 established a criminal offence for the abuse of a position of trust. This affects teachers and others who are in a relationship of trust with under 18 year olds. Standards of conduct relating to schools staff are detailed in the Nottinghamshire School Employee Code of Conduct and Teachers Standards.

Equalities and Equal Opportunties

The school and governing body recognises its legal responsibilities to staff under the Equality Act 2010 and this policy will ensure equality and fairness regardless of race, sex (gender), sexual orientation, religion or belief, gender re-assignment, pregnancy and maternity, marriage and civil partnership, disability, age or trade union membership. The policy will be applied and all decisions will be taken in accordance with relevant equalities legislation, for Employment Relations Act 1999, the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 and the Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002.

Advice, Support and Training

It is the responsibility of the head teacher to ensure that all relevant senior leaders understand their role and have access to appropriate support, advice and training in the application of these procedures. The headteacher should also ensure, in conjunction with the chair of Governors and the training co-ordinator, where appropriate, that in discharging their duties and responsibilities, governors have access to support, advice and training as appropriate.

GUIDANCE ON MANAGING THE PROCEDURES

Principles

These guidelines are consistent with good employment practice, principles of natural justice and Part 4 of Keeping Children Safe in Education (Allegations of abuse made against teachers and other staff).

- Because of their daily contact with children in a variety of situations, teachers and school support staff are particularly vulnerable to accusations of abuse. Staff working with children and young people are, therefore, expected to ensure their conduct and behaviour with children and young people is appropriate and to take all reasonable steps to minimise the risk of their actions being construed as illegal or professionally inappropriate.

It is recognised that the nature of relationships between school staff and pupils may lead to allegations being made against them by colleagues, pupils or parents. Allegations may be substantiated, false, malicious or unsubstantiated.

- Where an allegation is made, this must be reported to the head teacher immediately. In the case of an allegation against the head teacher, the matter should be reported to the Chair of Governors. Before taking <u>any</u> further action the head teacher or the Chair of Governors should seek <u>immediate</u> advice from the Local Authority Designated Officer (LADO) and must not interview or discuss the allegation with the employee.

- The LADO will provide advice on how the allegation(s) should be managed, taking into account the nature, content and context, including the involvement of the police and/or the HR service. Seeking advice on the next actions at this stage is critical as it may be important for information not to be shared with the employee. The LADO will guide head

teachers through these important initial stages liaising as required with the Police and Social Care colleagues.

- Every effort should be made by all parties to resolve cases as quickly as possible consistent with the need for a fair and thorough examination of the allegations (see Part 4 KCSIE – Timescales).

- The County Council is required to record and monitor the progress of all such cases and any subsequent investigations. (details are contained in Part 4 KCSIE – Record Keeping).

- Employers have a duty of care to their employees. The school should ensure that the person who is the subject of the allegations is kept informed of the progress of the case and offered appropriate support. However, in some circumstances the police and / or social care services may require information to be withheld if it could prejudice their enquiries. (see Part 4 KCSIE – Supporting those involved).

Other Considerations

Managing Communications

When allegations are made against school employees, it is very important to manage and coordinate communication to the employee and other parties, when it's agreed this can happen. All communication should be discussed and agreed in advance with the LADO, the police, the HR service and the Corporate Director (or their representative) as appropriate to the management of the case. Parents and carers of any children directly involved should also be kept informed, appropriate to the case, about the allegation and the progress of any subsequent procedures. They are also entitled to be told in general terms of the outcome relating to an internal disciplinary hearing.

It is extremely important to maintain confidentiality while an allegation is being considered or is under investigation. It is therefore most important that all staff, governors, parents and carers are only informed at an appropriate point and that stage made aware of the requirement for total confidentiality. The legal position is that if any party (including parents) reveal the name of the employee in speech, writing (including Facebook) it would be considered a breach of the reporting restriction in the Education Act 2010. Where an allegation is reported to the LADO, the HR Service will assist the school in securing appropriate media support and in providing advice on information that should be included in letters to governors, staff and parents. Should the case attract **media enquiries** at any stage of the procedures, immediate advice should be sought from the Media Relations Team at County Hall before any information is given or a statement made. Any briefings to staff and governors should be agreed in advance with the HR Service and Media Relations Team to ensure the information provided is appropriate to the case and does not impact on police or other enquiries. The need to avoid breaches of confidentiality and media coverage should be emphasised at this point. Staff have the protection of the Human Rights Act 2000 in relation to their privacy regarding such allegations.

Suspension

Head Teachers / Chairs of Governing Body should always refer to Part 1 – Managing the Conduct of School Staff paragraphs 3.7 whenever suspension is being considered. Consideration of suspension should always be discussed in advance with the LADO and the school's nominated HR Business Partner who will provide advice on how this should be managed to ensure it is co-ordinated with action being taken by other agencies, including the police and social care. The employee against whom the allegation has been made should not be automatically suspended. However, in the case of an immediate referral to children's social care, it may be agreed that immediate suspension may be necessary. Whilst clarity over the facts is sought in the initial stages, the employees may be instructed not to attend their place of work, with a decision for the employee to return to work or be suspended taken over the following day or so. In other circumstances, suspension may subsequently be considered at any stage of the investigation if the situation warrants such action to be taken. It may also be considered at any multi-agency strategy meetings called in relation to the case.

4.2.2 Suspension should not be undertaken without good reason and does not constitute disciplinary action and does not imply any assumption of guilt. The reason for the suspension will be kept under review and the period of suspension will be no longer than necessary. Alternatives to suspension may include transferring the employee to other duties /location, removal from contact with the pupil or agreeing a short period of paid leave. It is also important to be able to demonstrate that the decision to suspend is based on evidence that the allegations are serious and likely to be substantiated. Circumstances which would normally warrant suspension include:

a) where there is evidence that a child or children continue to be at risk and no other action can be taken to minimise this risk.

b) where the allegations are so serious that they potentially constitute gross misconduct and there is sufficient evidence to suggest that the allegations may be true.

c) where it is necessary to allow the conduct of the child protection enquiries/investigation to proceed unimpeded.

d) where a police investigation is being undertaken and the police have indicated that suspension would be appropriate.

e) to protect the interests of the employee (this should be discussed with the employee prior to suspension).

Following discussion with the LADO, the police and HR Service, where it is considered that the threshold for suspension is met, the employee should be informed. The head teacher or Chair of Governors should clarify with the LADO exactly what information can be shared with the employee. In serious cases it will not be possible to share any detail of the allegation at all at this initial stage. If, as a result of an allegation or a strategy meeting, the police decide to conduct a criminal investigation relating to the case, the school must not arrange a meeting with the employee to consider suspension without prior consultation with the LADO who will liaise with the police officer in charge of the case.

Where there is no police involvement, or it has been agreed that an initial interview can take place, it should be arranged in line with the following procedures:

a) The head teacher is strongly advised to seek advice from their named HR Business Partner before arranging and then conducting this meeting.

b) Where a recommendation to suspend is a possible outcome of the interview the employee should be advised by the head teacher to seek the advice and assistance of his or her trade union or colleague. Wherever possible, attempts should be made to inform the appropriate trade union of the need for them to attend the meeting to act as a support for their member at this meeting.

c) At the outset of the interview the employee should be informed that an allegation has been made and that suspension might occur. The employee, where accompanied, should be offered the opportunity of a meeting with the representative or colleague before the interview. It should be made clear, however, that the interview is not a formal disciplinary hearing but is for the purpose of putting forward a serious matter which could lead to a recommendation to suspend pending further investigation.

d) The employee should only be given information as agreed can be shared at this stage with the LADO / Police or HR Business Partner, including reasons for any proposed suspension, as is consistent with not interfering with enquiries about the allegation. This information is likely to be very limited. The meeting is not, therefore concerned with an examination of the evidence, but is an opportunity for the employee to make representations concerning any possible suspension. An adjournment should be offered to enable the employee and their representative to meet in privacy to consider their response.

e) If, as a result of the interview or following a decision of a strategy meeting that suspension is required, the head teacher considers that a recommendation to suspend is necessary while the enquiries about the allegation are pursued, the employee should be advised accordingly.

f) The employee should be asked to return school possessions, including keys, phones, other mobile devices and other school based documents / information.

g) The school should ensure that there are appropriate arrangements in place for the employee to get home safely.

4.3 Support for Employee

Care should be taken at this stage to acknowledge the effect the allegations and the suspension may have on the employee and consider providing appropriate employee support and counselling if necessary. The HR Service can give advice about appropriate strategies to support the employee. The suspension of any employee in relation to such investigations shall be with full pay. The HR Service will provide advice on the suspension process, including confirming the decision in writing.

Action following a decision to suspend

Following a decision to suspend pending further enquiries/investigation, the head teacher should inform the chair of governors as soon as possible. Further advice on managing the suspension in line with the guidance below can be obtained from the school's named HR Business Partner

The head teacher should then take the following actions:

a) A letter will be sent to the employee giving reasons for the suspension as soon as possible. This should normally be the next working day. Since suspension is not a disciplinary sanction, an employee has no right of appeal against the decision. The letter should also include the name of an LA officer (normally a CFCS HR Officer) as an information contact. The main role of the contact person is to provide information regarding the progress of the case. In some cases, appropriate welfare support and counselling may need to be given (see sample letter - **Appendix A2 –** Notification of Suspension in the Disciplinary Procedure Part 1 – Managing the Conduct of School Staff)

b) Arrangements should also be made for the employee, or his or her representative, to be contacted regularly with information on progress and developments on the case (as agreed with the LADO / HR Business Partner) either via the head teacher, the Chair of Governors (in the case of a head teacher) or the named HR Business Partner acting on the schools behalf

c) The employee should also be advised not to contact parents and pupils or discuss the case with members of the governing body and the wider school community unless with permission from the head teacher for legitimate reasons. However, social contact with colleagues should not be denied, provided the confidentiality regarding the allegations is maintained.

d) Consideration will also need to be given as to what information should be conveyed to school staff, parents and pupils. The HR Service will support the school with this communication in conjunction with the relevant Media Relations Team, LADO and where applicable, the Police. It is most important that information at this stage is co-ordinated effectively. In the case of the suspension of the headteacher, the HR Service and where appropriate, the Support to Schools Service, will fully support the chair of governors to undertake these actions.

e) Where agreed, arrangements should be made for the appropriate enquiries/investigations to be conducted by the school as speedily as possible consistent with establishing the full facts following agreement with any other agencies / partners involved in the case, including the LADO, Social Care and the Police.

f) Support will need to be considered for the child or children making the allegations and their parents. Consideration will also need to be given as to what support may be needed for others at the school, both staff and parents, according to the circumstances of the case. Advice may be obtained from the LADO, Children's Social Care, as appropriate.

g) Work closely with the schools named HR Business Partner and take steps to review the continuation of the suspension during the course of the investigation.

g) Where the reason for suspension is related to concerns about an employee who has harmed, or who poses a risk of harm, to a child or vulnerable adult the school must consider a referral to DBS as soon as possible, and ordinarily on conclusion of an investigation.

h) Where the reason for the concern is related to concerns about an employee who has harmed, or who poses a risk of **harm**, to a child or vulnerable adult and a decision is taken not to suspend but to redeploy the person to another area of work that is not regulated activity, the legal duty to refer the case to the DBS as soon as possible, or ordinarily on conclusion of an investigation, still exists. Keeping Children Safe In Education 2018, Paragraph 188, provides a link to the Disclosure and Barring Service website which explains the harm test on GOV.UK.

i) For further information see paragraph 15.4 Referral to DBS

Action following a decision not to suspend

The head teacher should arrange a meeting to explain to the employee concerned the circumstances which led to consideration of suspension and further explain any follow-up action which it is proposed to take. The employee may be accompanied, at this meeting, by their trade union representative or colleague. According to the circumstances of the case, appropriate assistance or advice may be offered to the employee, including counselling or other relevant welfare support.

If an employee has not been suspended but the head teacher nonetheless has concerns about aspects of their conduct, a full internal investigation should be undertaken before making a decision about further action under disciplinary procedures for school staff.

4.6 Police Investigations

Where the police are involved in ongoing investigations it may not be possible for the school to conduct its own internal investigations straightaway. The head teacher should seek advice from the LADO / HR Business Partner in these circumstances. In general a police investigation will take precedence and the school investigation will be held in abeyance pending Police / court actions.

Where there has been police involvement, any statements made to the police in the course of their investigation by the employee or other potential witnesses to an incident are not automatically available to the school or employer. If it is necessary to obtain statements from the Police investigation to support an internal disciplinary process, a formal request to the Police is required. The individual will need to give explicit written consent to the Police. There is also a cost, payable by the school to the Police. Further advice on this can be obtained from the HR Service who request such evidence from the police on behalf of the school for use in the course of an internal disciplinary investigation.

Roles and responsibilities

- **All school employees / governors**
- Governing bodies should ensure that they are fully aware of their responsibilities under employment law in applying this procedure. All school staff and governors have a responsibility to respond in accordance with the schools procedure and statutory guidance to any allegations about members of staff which could constitute abuse of a child or young person. Such allegations may be related to physical and / or sexual abuse; they may be at a level which constitutes inappropriate behavior or unprofessional conduct; they may meet the threshold of a criminal offence. In particular, head teachers, designated persons, chairs of governors and nominated governors are advised to ensure they are familiar with their responsibilities as outlined in the Education Act 2002 and the latest guidance contained within their own school child protection procedures. In particular, reference should be made to Keeping Children Safe in Education Part 4.
-
- School staff should have access to information, training and support on local (Nottinghamshire Safeguarding Children Board) child protection procedures and always comply with the school safer working practices and School Code of Conduct. Such information should be provided to all new employees at induction and at whole school refresher training events.

- **Designated Person**

All schools must ensure that a senior member of the school leadership team is given the specific responsibility for co-ordinating action in the school and for liaising with Children's Social Care and other agencies over suspected child abuse. In many schools this will be the Head Teacher. Another staff member should also to be identified in case the designated person is not in school when an incident arises. Where this role is delegated to another senior member of staff, the head teacher should be kept informed of any allegations made and the actions taken. The role of the designated safeguarding lead is outlined in full in Part 2 of Keeping Children Safe in Education.

- **Nominated Governor**

This governor will be responsible for liaising with the head teacher/designated person at the school over matters regarding child protection issues which are consistent with local NSCB procedures. This involves:-

a) ensuring, in liaison with the head teacher/designated person, that the school has a child protection policy and procedures in place which are consistent with NSCB procedures and other statutory requirements.

b) ensuring that an annual item is placed on the governors' agenda to report on changes to child protection policy/procedures, training undertaken by the designated person, other staff and governors, the termly report about the number of incidents/cases referred to Children's Social Care (without details or names) and the place of child protection issues in the school curriculum.

c) liaison (with due regard to issues of confidentiality) with the head teacher/designated person re allegations of child abuse.

d) responsibility for the oversight of procedures relating to liaison with the Children, Families and Cultural Services Department, Children's Social Care and the police in relation to any allegations of child abuse made against the Head Teacher, including possible attendance at strategy group meetings. The nominated safeguarding governor will be required to facilitate enquiries into any complaint against the head teacher, and ensure that arrangements are put in place so that allegations are appropriately investigated.

- **LA Designated Officer (LADO)**
  The LADO has responsibility for co-ordinating policy and action on child protection for all schools, irrespective of their governance arrangements. This is a wide-reaching role which covers all maintained, academy, trust, foundation and church schools within Nottinghamshire. This officer is recognised by the NSCB and will be involved in maintaining local procedures, including arrangements for Designated Persons and will be the local authority point of contact with Children's Social Care and other agencies. The school must contact the LADO immediately for advice and guidance following an allegation and before taking any action against the employee. (See **Annex 1** – Advice and guidance for contact points)

- **Notts County Council- HR Service**

A nominated HR Business Partner should be contacted after discussing the case with the LADO for advice and guidance about the personnel implications of such an allegation. Initial enquiries may also be made to the HR Service HR Contact list can be found on the Schools' portal. . (See **Annex 1** Advice and guidance for contact points)

Mandatory duty to report known cases of female genital mutilation (FGM)

Section 5B of the Female Genital Mutilation Act 2003 introduced a mandatory reporting duty on all health, social care professionals and teachers to report known cases of FGM in under 18's to the police. "Known" cases are those where in the course of professional duties teachers are either informed by a girl under the age of 18 or they observe physical signs which appear to show an act of FGM has been carried out. Any breach in duty to report must be considered by the school in accordance with its disciplinary procedure.

First Response

Any member of staff who witnesses abusive behaviour by another employee or receives such a complaint from a parent, child, governor, colleague or other person has a duty to respond appropriately and in line with these procedures, including the statutory guidance Keeping Children Safe in Education. **Annex 2** addresses the particular issues that arise if the head teacher is the subject of the complaint.

A child reporting to a member of staff that they have been abused by another adult or member of school staff must be listened to. It is often difficult for an employee to believe that a colleague may have behaved in the manner alleged. They must therefore keep an open mind regarding the circumstances of the allegation. However, it is essential that the following guidance is taken into account when dealing with such an allegation, particularly if made directly by a child:

- The child should be listened to but not interviewed or asked to repeat their account.
- Avoid asking direct questions, particularly leading questions wherever possible.
- The child should not be interrupted when recalling significant events.
- All information should be noted carefully. As far as possible details such as timing, setting, who was present and what was said should be recorded in the child's own words and be as near verbatim as possible.
- The listener must take care not to make assumptions about what the child is saying or to make interpretations.
- The adult must, on no account, offer suggestions or alternative explanations for the child's concerns.
- A written record of the allegations should be signed and dated by the person who received them as soon as possible.
- All subsequent actions must be recorded in writing.

No promises of **confidentiality** should be made to pupils who make allegations. Instead, the child should be encouraged to agree that the matter must be taken further in the knowledge of what this may involve. Whilst acknowledging the need to create an environment conducive to speaking freely, it should be made clear to the child by the member of staff that in all cases they have a duty to pass on what the child has told them to ensure the protection of child(ren). The child should be assured that the matter will only be disclosed to those people who need to know about it. Support may need to be offered by the school, LA or the appropriate agency. Consideration must be given at this point as to whether the allegation may be malicious. If it is obvious that the incident could not have taken place or it is reasonable to suspect that the allegation is malicious then further advice should be sought from the LADO before making any decisions.

A written dated **record of the allegations** must be made as soon as possible, but certainly within 24 hours. If, however, a decision is made to take no further action, a written record of this should be made including the reason for the decision.

The LADO will liaise with the HR Service as appropriate and provide advice to the head teacher or nominated governor about what information should be recorded in writing. The head teacher or nominated governor must obtain details of the allegation in writing, signed and dated by the person who receives the allegation(not from the child who made or is the subject of the allegation) and countersigned by the head teacher or nominated governor. Any information about times, dates, locations and names of potential witnesses should be recorded.

Initial assessment

At this stage the head teacher (or nominated governor) must urgently consider whether there is sufficient substance in the allegation (anonymous or otherwise) to warrant further action. To assist in making this decision, therefore, the Head Teacher or in the case of an allegation

against the head teacher, the nominated governor -must immediately inform and seek advice from the LADO. In some cases it may also be necessary to seek immediate advice from the local Children's Social Care duty team. A joint agency strategy discussion between the school, the LADO, Social Care, HR officers and police may be instigated at this stage to determine the appropriate action to be taken.

Even in cases where it does not appear that the child has suffered significant harm it is important to act quickly. It is also important to recognise the distinction between establishing whether an allegation warrants further investigation and deciding whether or not an allegation is well founded. In making this initial assessment, the head teacher (or nominated governor where the allegation is against the head teacher) should not attempt to conduct an investigation into the allegation, interview pupils or discuss the allegation with the member of staff. Instead, the head teacher (or nominated governor) must first make an initial assessment of the situation and decide, having consulted the LADO, whether the allegation requires further investigation and if so, by whom. However, only in those cases where the allegation is trivial or demonstrably false, will further investigations **not** be warranted.

If a child makes an allegation that is considered to be a **potential criminal act** within the scope of the child protection legislation or indicates that they have suffered, are suffering or are likely to suffer significant harm, the head teacher (or designated governor) must refer the matter immediately in line with the local child protection procedures. This should either be via direct contact with police or children's social care officers, or the LADO or their representative. If there is any doubt about this, advice must be sought immediately from the LADO.

Allegations that do not warrant referral

It is recognised that in some circumstances the allegations will not warrant referral under NSCB procedures. For example:

- Where the allegation clearly relates to the use of reasonable force to restrain a pupil in accordance with current guidance and legislation (including new guidance re powers to discipline pupils issued in Behaviour and Discipline in Schools, DfE guidance January 2016 , it will be appropriate for the Head Teacher to deal with the matter at school level. However, an allegation of assault beyond the use of reasonable force must be dealt with in accordance with the NSCB procedures described above.

- Where, following initial consideration by both the head teacher and the LADO, it is absolutely clear that the allegation is demonstrably false i.e. the immediate circumstances of the allegation show that it would not be possible for the allegation to be true, the matter can be dealt with at school level. However, there may be other issues relating to the child's needs which should be addressed in consultation with Children's Social Care or other appropriate agencies.

- The allegation may represent inappropriate behaviour or poor practice by a member of staff which should be considered under the school's disciplinary procedures. (School Disciplinary Procedures -**Section A1**- Managing the Conduct of Employees)

Allegations that warrant further investigation and/or referral

Where the initial assessment by the LADO and the head teacher (or, where the allegation is against the head teacher, the nominated governor) concludes **that the allegation warrants investigation,** there will be either:

- a referral to one or more of the agencies with statutory responsibilities to make enquiries; or
- an investigation under the school's disciplinary procedures where the school and LADO are wholly satisfied that the child or children is/are not at risk of significant harm or that a potential crime has not been committed.

Outcomes of Initial Assessment

Following the initial assessment, a decision must be taken regarding appropriate courses of action. There are four possible outcomes:-

a) Where the pupil has suffered, is suffering or is **likely to suffer significant harm**, there should be an immediate referral to children's social care under the local child protection procedures. (See section below – "Referral to children's social care and/or police").

b) Where the child has alleged that a **criminal offence has been committed** within the scope of child protection legislation, a referral to children's social care under local child protection procedures will be necessary. The police may then decide to carry out a criminal investigation. (See section below – "Referral to children's social care and/or police").

c) Where it is considered that the allegation was prompted by **inappropriate behaviour or bad practice** by the employee which does not fall into either of the above categories, it should be dealt with under the school's disciplinary procedures (see School Disciplinary Procedures - **Part 1**- Conduct and Appendices of this guidance) In such cases the DFE recommends that, if a disciplinary hearing is required and can be held without further investigation, it should be held within 15 working days. However, the arrangements will also need to comply with the timescales set out in the school's disciplinary procedures - Part A1. See also the section below - "Internal Investigations."

d) Where it has been demonstrated that **the allegation is without foundation** consideration must be given as to what other appropriate action needs to be taken . (See section – "Outcome of Internal Investigation") In such cases, the DFE recommends that the head teacher should take any such appropriate action within 3 working days.

Referral to Children's Social Care and / or Police

If the initial assessment concludes that a child may have suffered or is at risk of significant harm and/or in need of protection, there should be an immediate referral to the Children's Social Care Area Office in accordance with the agreed procedures established by the NSCB.

Where allegations of abuse are referred to Children's Social Care or the police, subsequent action by all of the agencies involved will be in accordance with the local child protection procedures. This means that any preliminary action to establish the nature of the allegation and to assist consideration of whether it should be investigated should be undertaken in such a way

that it does not prejudice any subsequent action. Schools must contact the LADO for advice immediately and if not available the MASH (Multi Agency Safeguarding Hub – see Contacts Annex 1) There must then be no interference with evidence and, in particular, no staff or governors should attempt to interview children about these matters. The sections "First Response"- and "Conducting the investigation "- give specific guidance on listening to and interviewing children in these circumstances.

In some cases the police may wish to interview the member of staff against whom the allegation is made before any approach is made by the head teacher / designated person (or nominated governor in cases where allegations involve the head teacher). The police may need to act independently, particularly where the alleged offence does not arise from the individual's professional duties in the school. Police Officers should be given every assistance with their enquiries and, in the interest of the individual and the school, confidentiality must be maintained. The employee concerned should be advised and given every opportunity to contact their recognised trade union who will arrange for the appropriate support to be available.

When police are involved, parents will be contacted and formal interviews with children should not normally take place on school premises but, where necessary, provision should be made for these to be held in the presence of a member of school staff of the child's own choosing, if appropriate. It would be expected that appointments should be made for such interviews to take place at reasonable times.

The police or the joint agency strategy discussion may decide that the investigation would be hindered by an approach to other parties at an early stage. In such cases, the head teacher, in consultation with the LA, must ensure there is no objection by the police before contacting any of the parties involved. Subject to there being no objection, the head teacher (or nominated governor in cases involving allegations against the head teacher) should:-

(a) inform the child, children or parent making the allegation about the referral and explain the likely course of action.

(b) ensure that the parents of the child who is the alleged victim have been informed of the facts of the allegation and of the likely course of action.

(c) inform the member of staff against whom the allegation is made, explain the likely course of action and strongly advise them that they should urgently contact their recognised trade union.

(d) inform the chair of governors/nominated governor of the school.

Where the police object to action being taken as outlined in (a) – (d) above, the head teacher/nominated governor and the LA should be informed accordingly and arrangements made to keep him/her informed as to when these notifications may take place with the police. A written record of the action taken under this section should be made by the head teacher (or nominated governor).

Formal Investigations

There are three possible types of investigation which may result from such allegations:

a) an enquiry conducted by Children's Social Care under local NSCB procedures.

b) related police investigations into possible criminal offences.

c) an internal investigation under the school's agreed disciplinary procedures.

Any investigation by the police or child protection agencies will normally take priority over an internal disciplinary investigation by the school. Therefore, any internal investigations must be held in abeyance pending either the completion of the external enquiries or an agreement by all parties, that the school can proceed with a disciplinary investigation.

Before a decision is taken about whether any enquiries will be undertaken by the police and/or Children's Social Care, **a multi-agency strategy meeting** will be held in accordance with the NSCB Procedures. This will usually involve the head teacher (or nominated governor where the allegation is against the head teacher), the LADO (or their representative), as well as officers from social care, HR and the police. Other agencies such as health may also be represented as appropriate to the case. The strategy meeting will be convened by Children's Social Care in line with Section 47 of the Children Act 1989.

The purpose of the strategy meeting is to share all available information about the allegation and the alleged victim(s) and perpetrator(s) and to plan what action, if any, needs to be taken and by whom. In particular the meeting will consider:

- whether an enquiry or investigation needs to be conducted,
- the type of enquiries or investigation to be conducted and by whom
- how such an enquiry or investigation will be conducted and the timeline
- whether any other children are likely to have been at risk in the light of the allegation
- the implications for the employee and the child involved
- whether it may be necessary to review any previous allegations made against the member of staff
- any appropriate action to be taken by the school in relation to the employee e.g. whether suspension (see section below) is necessary, levels of information and support to be offered by the employer, whether or not any internal investigation should be conducted

Internal Investigations

There are likely to be two possible types of internal investigation arising from an allegation of abuse against an employee:

- **Preliminary investigation**

The aim of the preliminary investigation is to obtain, as far as possible, a fair and balanced picture through a written record of the known events. The aim is not to prove or disprove an allegation. This investigation is an initial fact-finding exercise. Its purpose is to enable the head teacher to consider the appropriateness of disciplinary or other action following an initial assessment that no child protection or criminal investigations are necessary.

- **Internal Disciplinary Investigation**

An internal disciplinary investigation is one that is conducted by the school, or other delegated investigating officer, in line with the school's disciplinary procedures. It may be conducted:

- following an initial assessment and / or preliminary investigation of the situation where it is agreed that there is no requirement for a police investigation or social service enquiry;
- as a result of a joint agency strategy discussion / meeting concluding that the matter should be investigated and dealt with under the school's internal disciplinary procedures;
- following a police investigation which has led to the matter being addressed by a court of law, regardless of the outcome. It is important to recognise that the burden of proof in a court of law is "beyond reasonable doubt"; that for a disciplinary hearing is "the balance of probabilities". However it should be noted that the civil test goes on to say that this balance of probability should be proportional to the level of sanction being considered.

Following any preliminary or further investigation undertaken by the head teacher or other agencies, a meeting should be held to inform the employee of the next steps. The employee may be accompanied by a trade union representative or person of their own choosing.

Conducting the investigation

Further guidance and support is available in Part 1 of the school Disciplinary Procedure

Investigating officer

A decision should be taken in consultation with LADO as to who should take on this role, depending on the circumstances. In most case it will be appropriate for the head teacher to conduct the investigation. In other more serious or complex cases it will be appropriate for the investigation to be conducted by someone independent of the school and the governing body may request that an investigation be undertaken by the HR Service.

Confidentiality

Undertakings of confidentiality should not be given to a person making allegations or anyone who is likely to be interviewed. Evidence compiled in the investigation should be made available to the parties in any subsequent disciplinary proceedings or child protection investigation and those giving evidence in the investigation should be so informed.

If statements are made in the course of an internal investigation then they may be passed to the police, should the matter become the subject of a police investigation. As a matter of good practice, the authors of such statements should be informed of this before the interview takes place and before the statements are provided to the police. In the case of statements or other evidence made available to the police, they can only be provided to the school as part of a disciplinary investigation with the consent of the police and the signatories. The HR Service can provide further guidance regarding the use of such evidence.

Planning the investigation

The person undertaking the investigation should seek specialist advice from the LADO and the CFCS HR officer regarding appropriate procedures. Following this, the person investigating should:

- establish a provisional timescale for the investigation (see below)

  a) - define areas to be investigated as far as possible at this stage. The scope of the investigation may change as more information becomes available.

- draw up a provisional list of those to be interviewed and a list of topics to be discussed as required during the investigation

- check corroborative evidence

- assess the credibility of the person making the allegation

Timescales

It is in everyone's interest to resolve cases as quickly as possible consistent with a fair and thorough investigation. All allegations should be investigated as a priority to avoid any delay. Target timescales are shown below: the time taken to investigate and resolve individual cases depends on a variety of factors including the nature, seriousness and complexity of the allegation, but these targets should be achieved in all but truly exceptional cases. The statutory guidance Keeping Children Safe in Education states that it is expected that 80 per cent of cases should be resolved within one month, 90 per cent within three months, and all but the most exceptional cases should be completed within 12 months. This timescale may not always be achievable, but the person conducting the investigation should be able to account for the period of investigation and time taken to conclude a particular case.

During the course of an investigation, the investigating office should constantly keep the emerging evidence under review and consider how the evidence obtained impacts on the conduct of the remaining investigation. This may lead to interviewing additional witnesses, further contact with the Police or social care and / or review of suspension.

The timescales will also need to take account of the requirements of the school disciplinary procedures regarding the sharing of papers and the minimum 10 working days' notice of a disciplinary hearing.

Interviews

Once the LADO agrees that the internal investigation can proceed, interviews should be carried out as soon as possible. A statement should be taken from each person, signed and dated. The person carrying out the investigation should have access to assistance as necessary to record the interview. A suitable venue and time should be selected to encourage co-operation and the opportunity to be accompanied by a trade union representative or colleague should be offered. At the beginning of an interview, reference should be made to the initial statement and there should be a general explanation of the purpose of the investigation and a set of expectations should be provided.

If, at any stage during the investigation, new evidence emerges which suggests that a referral may be necessary under local child protection procedures or to the police, the investigation should be held in abeyance immediately pending the outcome of such a referral. The LADO and HR Service should be consulted immediately if there is concern as to appropriate action to take at this stage. Consideration should also be given as to whether suspension should be either rescinded or re-considered in such circumstances. The disciplinary investigation should only be resumed if the responsible child protection agency and/or the police indicate that resumption will not interfere with any child protection enquiries or criminal investigations. By agreeing to be interviewed, the employee must also agree to their evidence being used as part of the evidence in the case and to attending in person, where required, to provide verbal evidence at a formal hearing or appeal. In serious cases, an employee should also be informed that evidence provided may also be used in a further referral to the DBS, TRA or other professional body.

- **Interviewing the subject of an allegation**

The point at which this occurs will depend upon the nature of the allegation and the investigation process. Where it has been agreed that it is appropriate for the employee to be informed of the allegation, the employee should:-

- be strongly advised to contact their trade union for advice and support

a) - be informed of his/her rights under the school's disciplinary procedures, including the right to be accompanied at an investigation interview and right to representation at a formal hearing

- be informed of the allegations, in writing, and invited to respond and to make a statement. The employee has the right either to respond or decline to respond

- be invited to identify any persons who may have information relevant to the investigation. These names should be added to the list of those to be interviewed

Full notes should be taken of the interview and the employee invited to read and sign them as a true record at the end of the interview.

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- **Interviewing children**

The person to whom an allegation or concern is first reported should treat the matter seriously and keep an open mind. They should not:

- Investigate or ask leading questions if seeking clarification;
- Ask a child to write a statement or write down their version of events;
- Make assumptions or offer alternative explanations;
- Promise confidentiality, but give assurance that the information will only be shared on a 'need to know' basis.

They should:

- Make a written record of the information (where possible in the child / adult's own words), including the time, date and place of incident/s, persons present and what was said;
- Sign and date the written record;
- Immediately report the matter to the Designated Senior Officer, or the deputy in their absence.

Subsequent Action

Once all the appropriate people have been interviewed and all the relevant issues have been explored, the investigation is complete. The details obtained and the statements taken should then be compiled into a report and discussed with the LA Designated Officer and/or CFCS HR Officer. Consideration will again be given as to whether initial information considered by the Police / social care has changed, meaning that the case should be referred under local child protection procedures or to the police and whether suspension is appropriate. If there is such a referral, further proceedings at school level should be held in abeyance. If not, the case should proceed within the school disciplinary procedures.

In conducting an internal disciplinary investigation, the head teacher will need to balance the welfare of the accused member of staff and the interests of the investigation, bearing in mind the need to minimise the degree of stress caused to anyone who may be wrongly accused.

Outcome of internal investigations

There are two potential outcomes of the investigation:

- **Disciplinary action**

  If the outcome of the investigation is a decision that disciplinary action is needed, any further action should then be in line with the usual disciplinary procedures.

- **Allegation is unsubstantiated**

  In cases where the head teacher, in consultation with the LADO, HR service and other appropriate agencies, believes that the allegation is without foundation, (unsubstantiated) the following courses of action will need to be considered:

a) whether the child might have been abused by someone else and whether a referral should, therefore, be made under the local child protection procedures to assess the situation;

b) arrange a meeting to inform the accused employee of the allegation and the fact that no further action is to be taken under disciplinary or child protection procedures. This should be confirmed in writing. The employee may be accompanied by a trade union representative or colleague;

c) whether counselling and/or informal professional advice to the employee is appropriate and the form either might take;

d) inform the parents of the child or children of the decision not to take any further action;

e) consider appropriate counselling and support for the child or children who made the allegation(s) and, where appropriate, their parents. In particular, take into account a child's individual needs where a false or malicious allegation has been made. Support and advice regarding appropriate action must be sought from the LADO, Children's Social Care and EPS in these circumstances;

f) prepare a confidential report embodying a) to e) above and giving reasons for the conclusion that the allegation is without foundation;

g) consider any other appropriate action in relation to the child concerned. Advice should be sought, where appropriate, from the LADO

Reviewing Suspension

If the employee has been suspended and if at any point during the suspension period the facts indicate that there is no intention to proceed with any form of disciplinary action or to dismiss, the continuation of the suspension should be immediately considered. Where it is lifted this should be confirmed in writing and the chair of governors informed accordingly. The head teacher should then arrange to meet the employee to discuss arrangements for their return to work. Informal counselling, appropriate support and training may be offered as appropriate in order to rebuild the employee's confidence and address any issues affecting other staff.

Concluding any disciplinary proceedings

On the conclusion of an investigation which has resulted in disciplinary proceedings being taken against the employee, the following action will need to be taken:

a) The child or children who made the allegations and their parents / carers should be advised that appropriate action has been taken in line with statutory school procedures and informed informed that the internal disciplinary matter has been concluded. The parents should be informed of the outcome in general terms i.e. that the appropriate school procedures have been followed and that appropriate employee has or will return to work or that the employee has been dismissed. Parents / carers are not entitled to any details about the governors' deliberations

and the information taken into account when making their decision. This information should be conveyed prior to the employee's return to school if he or she has been suspended;

b) Appropriate counselling and support should be offered to the child before the employee returns to school. In particular, this should take into account a child's individual needs where a false or malicious allegation has been made and the school may need to consider appropriate sanctions. Appropriate support and advice may be sought from the LADO, Children's Social Care and EPS. If a child who has made a false or malicious allegation against an employee transfers to another school, advice should also be sought regarding appropriate information to be passed on;

c) In some circumstances, for example if they have been wrongly accused, it may be appropriate to make appropriate arrangements to minimise the child's contact with the employee;

d) In view of the ongoing historic child abuse review, all documents relating to the case and any investigation must be retained together with a written record of the outcome of the investigation. Where disciplinary action has been taken, a record should be retained on the employee's personal and confidential file indefinitely.

b) If the allegation is substantiated and the person is dismissed the employer ceases to use the person's services, or the person resigns or otherwise ceases to provide his or her services, the designated officer(s) should discuss with the case manager and the named HR Business Partner whether the school should make a referral to the DBS for consideration of inclusion on the barred list; and in the case of a member of teaching staff, whether to refer the matter to the Teaching Regulation Agency (TRA) to consider prohibiting the individual from teaching in their capacity as regulators of the teaching profession.

c) Please remember, that the duty to refer to the DBS applies equally in certain circumstances of harm or risk of harm to a child or vulnerable adult where an individual has been redeployed to another area of work that is not regulated activity, or where they have been suspended. Where the employee has already been referred to the DBS in these circumstances an update to the DBS will be required on the conclusion of the case.

There is a legal requirement for employers to make a referral to the DBS where they think 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. See Guidance on referrals to the DBS.

Record keeping and confidentiality

Where a pupil has made an allegation, a copy of the statement or the record made of it must be kept in a separate confidential file which is not open to disclosure, together with a written record of the outcome of the investigation. The pupil's school file should be marked with a red C to indicate that there is a confidential file which is held separately. If criminal or civil proceedings should be necessary, records may be subject to disclosure. No assurances can therefore be given of confidentiality to pupils or other employee witnesses in this respect.

Allegation against Head Teacher

Where the head teacher has been the subject of the investigation the chair of governors will need to consider the wider issues arising from this situation. As well as the need to provide personal and professional support to the head teacher other implications such as appropriate communications to staff and the wider community and the impact of the situation on the school generally will need to be considered. Further support and advice will, therefore, be available from the LADO, the police and the LA HR service and Media Relations Team as appropriate to the circumstances of the case.

Review

Following a difficult incident, the head teacher, governing body and local authority may find it helpful to consider whether there are any general matters arising from it which could warrant a review of school or local policy and procedures. Specific training needs of staff should be considered along with implications for all staff, pupils and their parents. Consideration should also be given to addressing concerns of staff, especially where false allegations have been made.

Annex 1

ALLEGATIONS OF CHILD ABUSE AGAINST SCHOOL STAFF ADVICE AND GUIDANCE

1) Telephone Contact Points

LA Designated Officer (LADO)	0115 804 1498
MASH	0300 500 80 90
HR Duty Desk	0115 977 4433
Notts County Council's Media Relations Team	(0115) 977 3881

2) Reference Documents

Nottinghamshire Safeguarding Children Board (NSCB) Procedures.

Whole School Child Protection Policy 2016

Working together to safeguard children HM Government 2018

Keeping children safe in education DfE Statutory Guidance. - 2018

Nottinghamshire School Employee Code of Conduct

Annex 2

ALLEGATIONS OF CHILD ABUSE AGAINST HEAD TEACHERS

In dealing with allegations of abuse against the head teacher, the procedures to be followed are broadly similar to those which apply to other employees. However, in these circumstances, some additional issues will need to be considered, including the leadership of the school the increased sensitivities relating to the high profile nature of the head teacher's role in the community and the need for the matter to be dealt with directly by governors.
Governing Bodies and Trusts of maintained schools and academies who purchase their HR services from Nottinghamshire County Council will be able to access advisory support from the HR service.

Allegations made against the head teacher may come via a parent or a pupil, another employee or member of the community. A member of the governing body receiving such an allegation should report the matter immediately to the nominated governor. She/he must then take immediate action in line with the general guidance detailed in the main body of this advice and the particular issues addressed in this section. In the first instance, the need for confidentiality must be stressed and an assurance given that the allegations will be taken seriously. Advice should be sought immediately from the LADO and Senior HR Business Partner.

A teacher receiving an allegation against the head teacher should, after consideration of the section "Initial Response" report this immediately to the designated person who should inform the nominated governor. If the head teacher is also the designated person, the allegation must be referred directly to the nominated safeguarding governor.

At this point, the nominated governor will need to take on many of the responsibilities of the head teacher as outlined in the Initial Response section of this guidance. The nominated governor should, therefore, contact the LADO or Senior HR Business Partner as soon as possible for support and guidance in managing this difficult situation on behalf of the governing body.

The first consideration will be to undertake an initial assessment in conjunction with the LADO to decide the next steps it is most important that external advice is sought form the LADO as the first step. The likely outcomes are either:

a) **A need for immediate referral to Child Protection Agencies**

If after consultation with the appropriate LADO, this appears to be necessary, the LADO or nominated governor as appropriate must report the matter to the appropriate agencies. Child protection enquiries will then be conducted by Children's Social Care under NSCB Procedures.

or

b) **Further consideration of whether the allegations call for urgent referral to Child Protection Agencies**

The nominated governor will be required to act promptly at this stage. The nominated governor is not expected to investigate the allegation itself or to interview pupils. Their role at this stage is to consult the LADO and consider whether the allegation warrants further investigation and, if so, by whom and within what timescale.

In consultation with the LADO or Senior HR Business Partner the nominated governor should then be advised to:

- obtain details of the allegation in writing, signed and dated by the person who received the allegation (not the child who is the subject of the allegation) and countersigned and dated by the teacher or nominated governor

- record any information about times, dates, locations and the names of any potential witnesses
- Stress the need for absolute confidentiality

Where the nominated governor, in consultation with the LADO, believes that the allegation warrants formal enquiries/investigations he or she should either:

a) make an immediate referral in line with NSCB Procedures

or

b) consider the need for internal disciplinary action if it is clear that children are not at risk and that there are no outstanding issues which warrant social care or police investigation. If such action is needed it will need to be investigated by the school in line with the guidance above and the usual disciplinary procedures (see Disciplinary Procedure Part 1 – Managing the Conduct of School Staff

In cases where suspension of the head teacher and/or an internal investigation have been agreed, the HR Business Partner will provide advice and support to the governing body in line with the Disciplinary Procedure Part 1 – Managing the Conduct of School Staff

Annex 3 – Summary of Formal Procedure (Part 2 – Allegations of Child Abuse against Employees)

Any allegations of child abuse against employees require the Governing Body to act in accordance with the locally and nationally agreed procedures as summarised below. Reference should also be made to the government document Keeping Children Safe in Education – part 4 (Allegations of Abuse made against Teachers and other Staff).

First response

- Inform the LA Designated Officer (LADO) immediately and seek detailed advice on next steps and on what information can be shared, if any, with alleged perpetrator.
- Record allegations and action taken within 24 hours.
- Joint agency strategy discussion may be instigated.

Initial assessment

- In conjunction with LADO, decision taken regarding appropriate courses of action.
- Possible outcomes:-
    - Immediate referral to children's social care under the local child protection procedures / possible police investigation.
    - Inappropriate behaviour or bad practice by the employee to be dealt with under the school's disciplinary procedures.
    - Other appropriate action where allegation is agreed to be without foundation.
    -

Formal investigations

- Three possible types of investigation may arise from such allegations:-
    - Enquiry conducted by Children's Social Care (NSCB procedures.)
    - Related police investigations into possible criminal offences.
    - Internal investigation (school's disciplinary procedures.)
- Consideration of suspension of employee.

Internal investigations

1. Preliminary investigation to obtain a written record of known events.
2. Formal investigation conducted by the school in line with the school's disciplinary procedures following:-
    - an initial assessment and / or preliminary investigation of the situation where it is agreed that there is no requirement for a police investigation or social service enquiry.
    - a joint agency strategy discussion / meeting concluding that the matter should be dealt with under the school's internal disciplinary procedures.
    - a police investigation which has led to the matter being addressed by a court of law, regardless of the outcome.

- DFE advisory timescales for internal investigations:-
    - Report produced within 10 working days.
    - Head teacher consults LADO within 2 working days to decide whether

to hold disciplinary hearing.
- Disciplinary hearing held within 15 working days of that decision.
- LADO required to monitor progress of investigation.

- Two potential outcomes of the internal investigation:-
  - Disciplinary action in line with the school disciplinary procedures
    Or
  - Allegation confirmed as without foundation (in consultation with the LADO and other appropriate agencies).

This procedure may not always be straight forward and head teachers and governing bodies are strongly advised to seek guidance from the HR Service.

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