

Governing Body Meeting
Summer Term 2019

Report by the Director of Business
Development

DISCIPLINARY PROCEDURE

1. INTRODUCTION

- 1.1 The Disciplinary procedure was last recommended to governing bodies in Spring 2017 but the document is periodically reviewed to ensure it remains fit for purpose and in line with the latest legislation and statutory guidance.

2. BACKGROUND

- 2.1 The Disciplinary procedure is a robust and detailed document that provides a framework to ensure the maintenance of acceptable standards of conduct and behaviour by employees within the school/academy.
- 2.2 Some minor amendments to the procedure have been made to update some terminology/language throughout.

3. INFORMATION

- 3.1 Reference to the 'Teaching Agency' at paragraph 78 has been replaced with a generic statement relating to referrals to 'any relevant statutory body'. This is to ensure that future changes are minimised when government departments/statutory bodies are renamed.
- 3.2 Following a recent collaboration with Stonewall on their 'Workplace Equality Index', all language throughout the procedure has been made neutral in terms of gender. (Stonewall work with employers to ensure they offer inclusive, equal and inspiring environments for LGBT people.)
- 3.3 Further updates have been made to job titles and section names relating to the council.

4. ISSUES FOR CONSIDERATION

- 4.1 The governing body is asked to consider the adoption of the model Disciplinary procedure. Voluntary aided schools and academies which are part of the HR service level agreement, are asked to receive the procedure for information and consideration.

- 4.2 Should the governing body decide not to adopt the model procedure it should produce an appropriate alternative in consultation with the recognised teacher associations and trade unions. Community schools will be required to provide an alternative to the council, which the council as employer is satisfied, meets the necessary standard.
- 4.3 All governing bodies who adopt an alternative document or modify the model provided are requested to submit final documents to schoolsHRpolicy@northlincs.gov.uk

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NORTH LINCOLNSHIRE COUNCIL

DISCIPLINARY PROCEDURE FOR [REDACTED] SCHOOL/ACADEMY

INTRODUCTION

1. This document sets out the disciplinary procedure to be followed by the governing body and the **head teacher/principal** in the maintenance of acceptable standards of conduct and behaviour of employees in the **school/academy**.
2. Articles of Government and the conditions of service for teachers and support staff should be considered in conjunction with this document.
3. This procedure will remain in force until amended or withdrawn by the governing body after reasonable notice and consultation with the relevant trade unions.
4. The governing body is responsible for the conduct and discipline of all staff in the **school/academy** although most disciplinary matters will, in the first instance, be dealt with by the **head teacher/principal**.
5. This procedure applies to all employees of the **school/academy**, whether teaching or support staff and whatever their level of responsibility. The procedure will be applied in a consistent and non-discriminatory manner at all times.

INITIAL CONSIDERATIONS

Allegations involving child protection issues

6. Where an allegation is made against a member of staff that by its nature suggests there may be child protection concerns, contact should be made with the Local Authority Designated Officer (LADO) for child protection issues, in accordance with Appendix 4. If the Police undertake a Child Protection Investigation it may be necessary to suspend any internal procedure until such a time as that investigation is concluded.

Informal process

7. Before taking action under the formal disciplinary procedure, the **head teacher/principal** or delegated senior member of staff, should wherever possible make every effort to resolve the matter by informal process. Minor cases of misconduct should be dealt with by informal advice, coaching and counselling except where there is evidence that such an approach has proved ineffective already, or there are child protection concerns.

Evidence

8. CCTV and other data (i.e. Internet, email, telephone and building access records) are not used for routine monitoring of employees. However, should employees who

commit acts of suspected criminal activity or alleged gross misconduct be captured in any of these electronic media this evidence may be used in disciplinary matters.

9. Access to, and use of CCTV images will be in line with the council's CCTV policy (part of the Information Governance Framework), which can be accessed via the council's website. Access to other electronic media should be requested via the appropriate team in conjunction with Human Resources (HR).
10. Such evidence may also be used by an employee responding to a disciplinary investigation and will be provided where possible.

Customer complaints

11. Where an employee's attitude or competence causes concern this may be raised through the school/academy's Complaints policy. If a disciplinary investigation originates from a customer complaint it will be investigated in accordance with this procedure. Where there are aspects of the complaint not covered by the disciplinary investigation, they may continue to be dealt with under the school/academy's Complaints policy.
12. If a complainant asks to be informed of the outcome of the disciplinary investigation, they will generally be given the same information as if the matter had been dealt with solely under the school/academy's Complaints policy:
 - What happened;
 - why it happened and
 - what action has been taken to prevent it happening again.

They can also be told, in general terms, that disciplinary action may be taken as a result of the complaint.

THE PROCEDURE

Representation

13. An employee whose conduct is in question will be informed of the right to be accompanied by a trade union representative, employee representative or workplace colleague and be offered confidential support and counselling. The trade union representative, employee representative or workplace colleague must not be otherwise involved in the particular case. If the employee is a trade union representative see paragraph 22.
14. At all stages of the formal procedure the employee will be asked whether or not they will be represented by a trade union and be asked to confirm the name of the trade union representative as soon as possible. Thereafter, unless the employee objects, all correspondence and other papers will be copied to the named trade union representative. If the named trade union representative changes, the onus will be on the employee whose conduct is in question to notify the investigating officer.

Precautionary suspension

15. Where appropriate, the head teacher/principal or, as a matter of urgency the chair of governors, may suspend any employee from work in circumstances of:
- Alleged potential gross misconduct;
 - safeguarding issues with pupils
 - where relationships have broken down or;
 - where it is considered there are risks to the employee, the school, other parties or property,

the employee should be suspended from work on normal pay pending investigation.

16. The chair of governors or head teacher/principal should immediately inform the council of the suspension. The governing body should be informed of the suspension **but not the details of the incident or allegation** at the earliest opportunity.
17. Employees will be suspended on normal pay (i.e. without loss of earnings). **Such precautionary suspension is not disciplinary action.** The investigation will be undertaken as soon as possible.
18. Precautionary suspensions will be kept under active review at all times and will not continue for any longer than is necessary. Advice and guidance will be available from a representative of the council at all times, but only the governing body of the school/academy may elect to terminate a period of suspension.
19. The suspended employee will be offered confidential support and counselling and in most circumstances a designated HR contact during the period of suspension. Every effort will be made to keep the suspended employee informed of the progress of the investigation, subject to the limitations imposed by any children's social care and/or police investigation.
20. An employee found to have committed gross misconduct will normally be dismissed from all contracts of employment with the school/academy and the wider council. This possibility should be made clear to the employee at the start of the investigation. Therefore, any precautionary suspension will normally apply to all contracts.

Disciplinary action against the head teacher/principal

21. Disciplinary action against the head teacher/principal will not be initiated without the involvement of the chair of the governing body. The council will undertake the role which would normally be ascribed to the head teacher/principal with regard to the investigation and any subsequent disciplinary proceedings.

Disciplinary action against trade union representatives

22. Although normal disciplinary action (including precautionary suspension) must be taken when appropriate against trade union representatives, consideration should be

given to making contact with the appropriate senior trade union/professional association representative prior to proceeding. This should only occur however **with the agreement** of the trade union/professional association representative whose conduct is in question.

Welfare support

23. At all stages of the procedure the employee whose conduct is in question and witnesses who are also employees of the school/academy should be reminded of the availability of the council's confidential staff welfare and counselling service.

Investigation

24. When a disciplinary matter arises, the head teacher/principal or delegated senior member of staff (from here on in referred to as the **investigating officer**) should first talk to those directly involved to establish the main facts of the case promptly, before recollections fade or distort.
25. If on the basis of the allegation it is possible that the head teacher/principal will hear the disciplinary case (see paragraph 31.3) should one prove necessary, they should not undertake the investigation and a senior member of staff should be appointed to act as the investigating officer.
26. In some circumstances, it may be appropriate for the disciplinary investigation to be conducted by a person who is independent of the school/academy, to ensure objectivity. Where appropriate the chair of governors can delegate an HR representative to lead as investigating officer or request them to offer support and guidance to a senior member of staff from the school/academy.
27. Once initial enquiries have confirmed that there is likely to be some validity to the allegation, the employee will be informed that their conduct or behaviour is in question and the detail of the allegations surrounding any incident, as is known at this stage. The confidentiality of the matter must be stressed. The employee should be given a copy of the school/academy's agreed disciplinary procedure and made aware of the availability of support and assistance from the council's confidential staff welfare and counselling service and/or a nominated HR officer.
28. The investigating officer should identify and interview all witnesses required to establish the facts. A written statement should be taken from all persons interviewed. All such statements should be typed and then agreed by the person interviewed who will be required to sign and date each page. Each witness interviewed must be advised that they may be required to attend a subsequent disciplinary hearing at the request of either party and in the event of a disciplinary hearing statements will be made available to the employee whose conduct is in question. Witnesses should be advised that the matter is confidential and must not be discussed with anyone. Documentary and other evidence should also be gathered at this stage.
29. If the employee whose conduct is in question is to be interviewed during the investigation, it should be made absolutely clear that the interview is for investigation purposes and is **not** the disciplinary hearing.

30. The employee must be given reasonable time to prepare and the opportunity to seek union advice before making a statement and/or be accompanied by a trade union representative, employee representative or workplace colleague. The investigating officer will chair the meeting and will normally be accompanied by a member of HR or a colleague acting in the capacity of note taker.
31. The matter having been thoroughly investigated, the investigating officer will recommend on the basis of the evidence obtained what course of action should be followed. This may be that:
- 31.1 There is no case to answer.
- 31.2 The employee should be formally counselled as to their future conduct. This should normally happen within ten working days.
- 31.3 A formal disciplinary hearing should be convened in accordance with the school/academy's delegated powers, to be heard by:
- i) the head teacher/principal for less serious offences where the potential outcome is an oral or first written warning;
 - ii) the designated committee of the governing body, for more serious offences where the potential outcome is a final written warning or dismissal or when the head teacher/principal has investigated the matter.

The outcome should be notified to the employee in writing.

Timescales

32. It is recognised that the time taken to investigate and resolve individual cases depends on a variety of factors including the nature, seriousness and complexity of the allegation. Furthermore, progress will inevitably be affected by police investigations and other external factors beyond the control of the investigating officer. If the police undertake a child protection investigation it may be necessary to suspend any disciplinary action until such a time as that investigation is concluded.
33. In such circumstances the employee whose conduct is in question and their representative should be kept informed of progress on a regular basis.
34. Whilst every effort will be made to conduct cases without unnecessary delay this will not be at the expense of a fair, consistent and thorough investigation, in line with the procedure.
35. If at any stage in the formal procedure an employee is absent through sickness and advises that they are unable to attend a fact-finding interview/disciplinary hearing the investigating officer should seek to agree an alternative date so long as it is within a reasonable timescale. Failing this, advice should be sought from the council's occupational health provider on the employee's fitness to attend and/or any disability implications.

36. If the employee fails to attend a disciplinary hearing having been deemed fit to do so, after seeking advice from HR the hearing may be conducted in their absence.

Resignations

37. The fact that an employee tenders their resignation must not prevent an allegation being followed up in accordance with this procedure. This must occur in cases of allegations bearing on the safety or welfare of children. Wherever possible, the individual should be provided with an opportunity to answer the allegation and give an account of it.
38. The process of documenting the allegation and any corroborating evidence, and reaching a decision about whether it can be regarded as substantiated on the information available should continue and be recorded even if the person does not cooperate.
39. It may be difficult to reach a decision in those circumstances, and it may not be possible to apply any disciplinary sanctions if an employee's period of notice expires before the process is complete, but it is important to reach and record a conclusion wherever possible.

Decision to proceed

40. Having completed the investigation, the investigating officer should assess the situation on the basis of the evidence obtained and decide how to proceed. The employee, the employee's head teacher/principal and HR as appropriate will be informed, including in resignation scenarios. There are normally three options available to the investigating officer:
- No further action;
 - management counselling;
 - a disciplinary hearing.

No further action

41. This should be communicated to the employee in writing with a copy provided for their representative.

Management counselling

42. Where conduct or behaviour is lower than the standard normally accepted but is of a relatively minor nature or is considered out of character, management counselling rather than a formal disciplinary hearing may be recommended.
43. Management counselling will normally take the form of a meeting at which the employee will be informed of what improvement in conduct or behaviour is expected and for how long this will be kept under review. This will not normally exceed a period of one year.
44. At the interview the head teacher/principal will:

- Clearly explain the shortfall between the employee's conduct and the required standard;
- establish the possible causes of the unacceptable conduct;
- identify the required remedial action;
- identify any necessary training, development, support or other interventions;
- obtain the employee's commitment to reaching the required standard;
- explain that failure to meet the required standard of conduct may result in formal disciplinary action.

DISCIPLINARY HEARING

45. The **head teacher/principal** or designated committee of the governing body should, as soon as practicable, hold a disciplinary hearing. The employee will be requested in writing (with at least 10 working days notice) to attend the hearing.
46. They will be informed of the allegation(s) to be considered and be provided with copies of the disciplinary procedure and all the written evidence to be presented and be advised of the names of witnesses to be called. If there are witness statements available, which the investigating officer is not relying upon as evidence, these will be provided to the employee or their representative. The employee will also be reminded of the right to be represented.
47. Should the employee wish to submit written evidence and/or witness statements then these should be sent to the investigating officer no later than five working days in advance of the hearing. In addition names of any witnesses should be notified within the same timescale. Thereafter all the documentation will be circulated to the disciplinary panel. The investigating officer or clerk to the committee should notify the governors and any witnesses of the date of the hearing at the earliest opportunity.
48. Evidence which was not circulated in advance of the hearing will only be allowed at the discretion of the chair of the hearing and normally, only if both parties agree to it. The reason for the decision will be given and noted.
49. In exceptional circumstances it may be possible to request a postponement of the hearing by negotiation with the chair of the hearing.
50. The agenda for the hearing is given in Appendix 1. At the hearing the investigating officer will present the findings of the investigation to the panel. This may include witness statements which may be supported by the presentation of oral evidence by the witnesses themselves and other written evidence. The employee and/or their representative will have the opportunity to state their case, ask questions, present evidence and call witnesses.
51. At the hearing, having heard all the evidence, the panel will adjourn to decide what action to take and will then inform the employee and their representative accordingly. The decision will be confirmed in writing as soon as possible.
52. If the allegation(s) are considered to be unfounded, the employee will be so informed. Confirmation will be given in writing and no further action will be taken.

53. Whilst the Director: Learning, Skills and Culture or their representative is entitled to attend all proceedings where dismissal is a potential outcome, it is recommended that an officer of the council be invited to attend all disciplinary hearings in an advisory capacity.
54. No disciplinary action should be taken without a formal hearing. It is recommended that the person or persons hearing the case should take into account any advice offered to them. In cases of alleged abuse of children this procedure should be read in conjunction with the school/academy's established Child Protection procedure.
55. It is recommended as good practice for the designated officer of the council together with the person/(s) hearing the allegations to hold a pre-meeting. The purpose of such a meeting will be to discuss the procedures to be followed. This is especially important for complex cases or where dismissal may be the outcome. **No discussion concerning the evidence submitted will be permitted.**
56. The following definitions should be used when determining the outcome of allegations of abuse against employees:
- **Substantiated:** There is sufficient identifiable evidence to prove the allegation;
 - **false:** There is sufficient evidence to disprove the allegation;
 - **malicious:** There is clear evidence to prove there has been a deliberate act to deceive and the allegation is entirely false;
 - **unfounded:** There is no evidence or proper basis which supports the allegation being made. It might also indicate that the person making the allegation misinterpreted the incident or was mistaken about what they saw. Alternatively they may not have been aware of all the circumstances;
 - **unsubstantiated:** This is not the same as a false allegation. It means that there is insufficient evidence to prove or disprove the allegation. The term, therefore, does not imply guilt or innocence.

LEVELS OF DISCIPLINARY SANCTION

Oral warning

57. Where conduct does not meet acceptable standards, the employee will normally be given a formal **ORAL WARNING**. They will be advised orally and in writing of the reason for the warning, and of their right of appeal. A brief note of the oral warning will be kept on the employee's personal file, but it will be disregarded for disciplinary purposes after 26 weeks, subject to satisfactory conduct and performance.

Written warning

58. Where the offence is a serious one or if a further offence occurs within 26 weeks of the issue of an oral warning, a **WRITTEN WARNING** will be given to the employee. This will be in writing and give details of the complaint, the improvement required and the timescale. It will warn that further action will be taken if there is no satisfactory improvement and will advise of the right of appeal. A copy of the written warning will be placed on the employee's file, but it will be disregarded for disciplinary purposes after 26 weeks, subject to satisfactory conduct.

Final written warning

59. Where the offence is a substantial breach of conduct which warrants only one warning but is insufficient to justify dismissal or where further misconduct occurs within 26 weeks of the issue of a written warning, a **FINAL WRITTEN WARNING** will be issued to the employee. This final written warning is the last stage of the procedure before dismissal and that a failure to improve or any further misconduct may result in dismissal. It will also advise the employee of their right to appeal. A copy of the final written warning will be held on the employee's personal file but will be disregarded for disciplinary purposes after 52 weeks, subject to satisfactory conduct and performance.

Dismissal

60. Where the offence constitutes gross misconduct or conduct is still unsatisfactory and the employee still fails to meet the prescribed standards following a final written warning, **DISMISSAL** will normally result. Except where gross misconduct is found, this will normally be dismissal with notice or pay in lieu of notice. The employee will be provided, as soon as reasonably practicable, with written reasons for dismissal, the date of which employment will terminate and the right of appeal by including Appendix 3.

Gross misconduct

61. The following list provides examples of offences which the **school/academy** will normally regard as gross misconduct:

- Inappropriate behaviour towards children
- Theft of the **school/academy's** property or assets
- Fighting, assault on another person
- Wilful damage to **school/academy** property
- Fraud or deliberate falsification of records
- Serious negligence which causes unacceptable loss, damage or injury
- Serious incapability and/or unacceptable conduct due to alcohol or other substances
- Serious acts of insubordination
- Serious acts of discrimination or harassment.

62. The list of disciplinary offences is not to be regarded as exhaustive. Acts of misconduct not falling within one or more of the above offences may also give rise to dismissal.

63. If, after completion of the investigation, and following a hearing, the **head teacher/principal** or designated committee of the governing body are satisfied that gross misconduct has occurred, the result will normally be **SUMMARY DISMISSAL**. Summary dismissal means dismissal without notice and without payment in lieu of notice.

64. The **head teacher/principal** or designated committee of the governing body should consider the possibility of a lesser sanction as an alternative to dismissal and any

mitigating factors (in accordance with paragraph 12 – Appendix 1), before deciding to dismiss.

AUTHORITY TO DISMISS

65. The head teacher/principal and the governing body have the authority to dismiss an employee. However in this school/academy, the head teacher/principal has opted that in cases where dismissal may be the appropriate course of action, the case is heard by the designated committee of the governing body.
66. Where the head teacher/principal, in the course of hearing a disciplinary case, considers that dismissal may be the appropriate course of action, the hearing should be adjourned and the employee informed that the case will be referred to a hearing of the designated committee of the governing body. The employee will be requested in writing to attend the meeting of committee and will be reminded of their right to be accompanied as described in paragraph 13 above.
67. The Director: Learning, Skills and Culture or their representative, as joint employer, is entitled to attend all proceedings relating to a potential dismissal from employment.
68. The governing body committee meeting will constitute a full hearing of the case.
 - 68.1 The investigating officer will normally present the case to the designated committee and the employee and/or their representative will be able to respond.
 - 68.2 The designated committee of the governing body will decide whether or not to dismiss the employee, impose a lesser penalty or reject the allegations entirely or in part.
 - 68.3 The designated committee of the governing body is obliged to consider any advice given by or on behalf of the Director: Learning, Skills and Culture. The council is obliged to accept and carry out any recommendation to dismiss made by the governing body.

Right of appeal

69. Employees have the right of appeal to the Appeals Committee of the governing body against decisions of the designated committee or the head teacher/principal. The appeal as outlined in Appendix 3 may be against the decision taken, the sanction imposed or the procedure adopted.
70. Unless otherwise directed by the delegated committee, appeals must be notified in writing to the clerk to the governing body within ten working days from the date of written notification of the decision. A copy should be sent to the head teacher/principal.
71. Employees have no right of appeal beyond the Appeals Committee but may have recourse to an employment tribunal.

Holding an appeal

72. Having established a committee to deal with disciplinary issues, a separate committee will be set up to hear appeals. The Appeals Committee will have the authority to uphold the original decision or to substitute a lesser penalty or to reject the original decision. The minutes of the Appeals Committee will be circulated to the governing body.

No member of the Appeals Committee (including nominated substitutes) will be involved in any preceding disciplinary action.

73. The appeal hearing should be convened as quickly as possible, normally within four working weeks of receipt of the appeal but allowing sufficient time for the employee to prepare for the hearing.

74. The Director: Learning, Skills and Culture or a nominee is entitled to attend meetings of the Appeals Committee and the committee is obliged to consider any advice given by or on behalf of the Director: Learning, Skills and Culture.

75. For an appeal against the facts of the case, if procedural anomalies are alleged or for general non specific appeals the procedure will be conducted in accordance with the agenda shown in Appendix 1 (with the exception of paragraph 13.(b)). As it is a re-hearing, both parties may introduce new evidence. Such evidence must be submitted at least five working days in advance of the appeal hearing date.

76. If, however, the notification of appeal is simply concerned with the severity of the sanction imposed, and it is clear that the appeal will not involve the re-examination of witnesses or their evidence, or the submission of any new evidence, the agenda shown at Appendix 2 (Review) should be followed. **All appeals against dismissal must be considered as a full re-hearing in accordance with Appendix 1.**

77. It is essential that the appropriate agenda is selected by the chair, advised by an officer of the council and circulated before the hearing so that all concerned fully understand the procedure to be followed.

Referral to regulatory bodies

78. Where dismissal occurs on the grounds of misconduct or where an employee in the school/academy resigns in circumstances where dismissal was a possibility, the school/academy with support from HR will usually refer the matter to any relevant statutory body as appropriate. Supply and temporary teachers must also be referred when their employment ceases in similar circumstances.

79. Specific guidance should be obtained on a case by case basis from the appropriate regulatory body and the council's legal department as appropriate, before a referral is made.

80. In cases which relate to the safety and welfare of children, the police may inform the Disclosure and Barring Service (DBS) prior to any dismissal action by the governing body, particularly in circumstances where a relevant criminal conviction has occurred

or is likely. Where referral has not occurred already and the dismissal relates to the safety and welfare of children the council/academy will notify the DBS directly.

81. All employees who are subject to referral in accordance with the above paragraphs should be given confirmation of this action in writing.

Retention of records and references

82. Relevant documentation relating to allegations of a child protection nature will be permanently retained on employees' personal files, for reference purposes. Any reference to allegations that are found to have been malicious should be removed from employees' personal files and computer records, in their entirety.
83. All other disciplinary records will be removed from employees' personal files and be disregarded for further disciplinary action immediately after the currency of the penalty expires, with the exception of the letter to employees that confirms the outcome of the disciplinary hearing.
84. Allegations which are proven to be false, unsubstantiated, unfounded or malicious must not be included in employer references. Nor must a history of repeated concerns or allegations which have all been found to be false, unsubstantiated, unfounded or malicious be included in any reference.
85. Copies of all documents notifying disciplinary decisions must be sent to the Director: Learning, Skills and Culture or their nominee.
86. All papers, once removed from personal files, including hand written notes and documentary evidence together with a record of any appeal or other developments must be retained. These records will be kept confidentially for a period of 6 years, before being destroyed.
87. Computer records retained will only contain information necessary to fulfil obligations to provide factual information for employment references, particularly in cases where employees have left employment and personal files are not immediately accessible.

REVIEW

88. This procedure will be reviewed in three years or sooner if changes in legislation or feedback necessitates.

PROCEDURE FOR HEARING CASES BY THE COMMITTEE OF THE GOVERNING BODY DESIGNATED TO CONSIDER DISCIPLINARY MATTERS

1. Introduction by the chair of the committee and a reminder to all present of:
 - (a) the Disciplinary procedure under which the meeting has been called;
 - (b) the manner in which the meeting will be conducted as set out below in paragraphs 2-11;
 - (c) the degree of confidentiality;
 - (d) those present and the purpose of the hearing;
 - (e) the nature of the complaint;
 - (f) the supporting evidence.
2. Presentation of the case by the investigating officer to the committee, including evidence from witnesses (where appropriate). When witnesses have given evidence and answered all questions put to them, they should leave the room.
3. Questions by the governors and the member of staff and/or their representative on the evidence.
4. Statement(s) by the member of staff and/or their representative, including evidence from witnesses (where appropriate). Witnesses should leave the room once they have given evidence and answered all questions put to them.
5. Questions by the governors and/or the investigating officer on the evidence.
6. Opportunity for the investigating officer to make a final statement.
7. Opportunity for the member of staff and /or their representative to make a final statement.
8. Withdrawal by the member of staff and representative(s) and the investigating officer whilst the committee considers the matter.
9. Consideration of the matter by the committee of governors. The **Director: Learning, Skills and Culture** or their nominee, together with the clerk to the meeting, will be present during the deliberations. In the event that further information or clarification is needed from any of the persons who have left the meeting, then all such persons should return to the meeting when such information is obtained. An opportunity should be given to each party to question or comment upon this additional information.
10. If there is no clear view about the facts presented by both parties, i.e. they are disputed, the governors should decide on the **balance of probability** what version of the facts they accept. **As outlined in paragraph 53 of the school's Disciplinary procedure, the governing body is obliged to consider any advice given by or on behalf of the Director: Learning, Skills and Culture.**

11. If any new facts emerge during the presentation of either statements at stages (2) or (4) of the procedure, the governing body should:
 - (a) decide whether further investigation is required;
 - (b) if so, adjourn the hearing and reconvene when the investigation is completed.

12. Before deciding upon any penalty, the governors should consider:
 - (a) the gravity of the offence and whether further guidance is needed;
 - (b) the penalty applied in similar cases in the past;
 - (c) the member of staff's disciplinary record and general service;
 - (d) any mitigating circumstances;
 - (e) whether the penalty to be imposed is reasonable in all the circumstances.

13. Recall of parties concerned to hear the decision of the committee orally. The chair of the committee should:
 - (a) clearly inform the employee of the decision and the penalty, if any;
 - (b) explain the right of appeal and how the appeal mechanism operates;
 - (c) in the case of a warning, explain what improvement is expected, how long the warning will last and what the consequences of a failure to attain the required improvement may be.

14. Confirmation of the decision of the committee **in writing** to all parties concerned. If the penalty is an oral warning, this must be confirmed in writing to the employee. A copy of the written decision in all cases must be sent to HR for retention on the employee's file.

Appeals hearing

15. The Appeal will be heard by an Appeals Committee of the governing body which will not include any member of the committee involved in the original hearing. For an appeal against the facts of the case, if procedural anomalies are alleged or for general, non specific appeals the procedure will be as above, with the exception of 13(b) and will constitute a full rehearing of the case. If the appeal is against the severity of the original sanction and it is clear that witnesses need not be recalled and new evidence will not be submitted, the procedure detailed at Appendix 2 should be used.

**PROCEDURE OF HEARING LIMITED APPEALS BY THE APPEALS
COMMITTEE OF THE GOVERNING BODY (Review)**

1. Introduction by the chair of the committee and a reminder to all present of:
 - (a) the Disciplinary procedure under which the meeting has been called and the limited nature of the appeal;
 - (b) the manner in which the meeting will be conducted as set out below in paragraphs 2 - 11
 - (c) the degree of confidentiality;
 - (d) those present and the purpose of the hearing;
 - (e) the nature of the complaint;
 - (f) the supporting evidence.
2. Statement(s) by the member of staff and/or their representative indicating specific issue of appeal.
3. Questions by the governors and/or the investigating officer on the case.
4. Statement by the investigating officer to the committee.
5. Questions by the governors and the member of staff and/or their representative on the evidence.
6. Opportunity for the member of staff and/or representative to make a final statement.
7. Opportunity for the investigating officer to make a final statement.
8. Withdrawal by the member of staff and representative(s) and the investigating officer whilst the committee considers the matter.
9. Consideration of the matter by the committee of governors. The **Director: Learning, Skills and Culture or their nominee, together with the** clerk to the meeting, will be present during the deliberations. In the event that further information or clarification is needed from any of the persons who have left the meeting, then all such persons should return to the meeting when such information is obtained. An opportunity should be given to each party to question or comment upon this additional information.
10. If there is no clear view about the facts presented by both parties, i.e. they are disputed, the governors should decide on the **balance of probability** what version of the facts they accept.
11. If no new facts emerge during the presentation of either statements at stages (2) or (4) of the procedure, the governing body should:
 - (a) decide whether further investigation is required;
 - (b) if so, adjourn the hearing and reconvene when the investigation is completed.

12. Before deciding upon any penalty the governors should consider:
 - (a) the gravity of the offence and whether further guidance is needed;
 - (b) the penalty applied in similar cases in the past;
 - (c) the member of staff's disciplinary record and general service;
 - (d) any mitigating circumstances;
 - (e) whether the penalty to be imposed is reasonable in all the circumstances.

13. Recall of parties concerned to hear the decision of the committee orally. The chair of the Appeals Committee should:
 - (a) clearly inform the employee of the decision and the penalty, if any;
 - (b) in the case of a warning, explain what improvement is expected, how long the warning will last and what the consequences of a failure to attain the required improvement may be.

14. Confirmation of the decision of the committee **in writing** to all parties concerned. If the penalty is an oral warning, this must be confirmed in writing to the employee. A copy of the written decision in all cases must be sent to HR for retention on the employee's personal file.

APPEAL NOTIFICATION FORM

There are two types of appeal within the school/academy's disciplinary procedure. The first is known as a **Review**, the second is known as a **Re-Hearing**. You must select which type of appeal you require by signing and dating the appropriate box below. **The decision following the appeal is final and there will be no further right of internal recourse.**

REVIEW (Appendix 2)

You can make this type of appeal if you admitted to the allegations against you or you are satisfied that all the facts of the case were accurately established at the original hearing but believe that the sanction you received was too harsh.

Selecting this option will mean that you and/or your representative will have the opportunity of making a submission to the Appeals Committee. The person who made the original decision, who can be asked to explain their reasoning, will normally present the case.

Normally neither party will be able to call witnesses, introduce new evidence or raise procedural issues in respect of the original hearing.

Signature:

Date:

RE-HEARING (Appendix 1)

You should select this type of appeal if you did not admit the allegations against you, or if you do not believe that the facts of the case were accurately established at the original hearing, or if you have new evidence, or if you believe that correct procedures were not followed.

Choosing this type of appeal will mean that your case will be re-heard in its entirety. Both parties will be expected to present their respective cases in full having submitted all the documents that will be referred to before the meeting. All original witnesses will be available unless both parties agree otherwise.

New evidence may be allowed and new witnesses may be called.

Signature:

Date:

If you intend to be represented by a teacher association/trade union and wish all future correspondence and papers to be copied directly to your representative, please provide the name and address of your representative below.

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You must return this form within 10 working days of written notification of the original decision, to the clerk to the governing body.

APPENDIX 4

ALLEGATIONS INVOLVING CHILD PROTECTION ISSUES

1. When an allegation is received within the **school/academy** (anonymous or otherwise), which indicates that an employee may be unsuitable to continue to work with children in their present position or in any capacity, disciplinary action may not be the priority.
2. The following course of action should be used in respect of all cases in which it is alleged that an employee of the **school/academy** 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;
 - Behaved towards a child or children in a way that indicates they would pose a risk of harm if they work regularly or closely with children.
3. Whilst not subject to any formal disciplinary action the principles outlined in this appendix should similarly be applied to volunteers working on behalf of the **school/academy**.
4. On receipt of an allegation it should be reported to the Designated Safeguarding Lead identified in the **school/academy's** child protection procedure immediately, unless that person is the subject of the allegation, in which case it should be reported directly to the Local Authority Designated Officer (LADO) for child protection issues.
5. The Designated Safeguarding Lead in the **school/academy** **should not** investigate the incident by interviewing either those directly involved or any witnesses, but should take steps:
 - To establish when and where the incident is alleged to have occurred and;
 - what led up to it, and who was involved, including whether anyone else was present.

Note 1: In the absence of the Designated Safeguarding Lead, their deputy should be contacted.

6. If initial enquiries confirm the allegation is likely to meet any of the criteria set out in paragraph 2 above, the **school/academy** should report it to the LADO at the earliest opportunity, at the latest within one working day.

Multi-agency involvement

7. The LADO and in most circumstances a HR representative will discuss the matter with the **school/academy** and, where necessary, obtain further details of the allegation and the circumstances in which it was made.
8. Initial discussions with the LADO should take place in advance of an employee being informed of an allegation, in order for agreement to be reached on what information can be disclosed to the individual. The discussion should also consider whether there is evidence/information that establishes that the allegation is false or unfounded.

9. If the allegation appears to be with some foundation, discussions will take place which determine whether there is cause to suspect that a child is suffering, or is likely to suffer, significant harm, and appropriately refer the matter to children's social care and ask for a 'joint evaluation meeting' to be convened straightaway.
10. If there is no cause to suspect that 'significant harm' is an issue, but a criminal offence might have been committed, the LADO will immediately inform the police and convene a similar discussion to decide whether a police investigation is needed.

Joint evaluation meeting

11. The joint evaluation meeting will include as appropriate, children's social care and/or the police. The joint evaluation meeting will also normally involve the LADO, a senior member of HR, a representative of the **school/academy** and any other agencies involved with the child.
12. The purpose of the joint evaluation meeting will be to evaluate the allegation and decide how it should be dealt with. Available information about the allegation, the child and the person against whom the allegation has been made, will be shared to consider whether a children's social care/police investigation is needed and, if so, agree the timing and conduct of that.
13. Joint evaluation meeting discussions will also inform the consideration of any recommendation for a disciplinary suspension, although the decision to suspend can only be made by the **school/academy**.
14. In circumstances where the parents/carers of the child are not aware of the allegation, the joint evaluation meeting will decide how and by whom they should be informed.
15. In cases where a police investigation is necessary, discussions will also consider whether there are matters that can be taken forward in accordance with the disciplinary procedure, in parallel with the criminal process, or whether any disciplinary action needs to wait for completion of the police enquiries and/or prosecution.

Action following initial consideration

16. Where initial evaluation or the joint evaluation meeting indicates an allegation does not appear to warrant police investigation or enquiries by children's social care, but professional misconduct may still have occurred the joint evaluation meeting will also consider whether the allegation is more appropriately dealt with through the formal disciplinary procedure.
17. Where further investigation is required to inform consideration of disciplinary action, this should be conducted in accordance with the formal disciplinary procedure. The LADO in consultation with the HR representative and the **school/academy** should discuss who will conduct the disciplinary investigation and how to proceed.

18. The disciplinary investigation will then proceed in line with paragraphs 24 to 31 of the Disciplinary procedure.
19. The LADO will continue to liaise with the HR representative and the school/academy to provide support and guidance as necessary. Any relevant information obtained in the course of enquiries by children's social care or the police will be made available where possible, to assist disciplinary action.
20. Whilst volunteers will not be subject to any formal disciplinary action it is vital that every effort is made to achieve a conclusion in all cases of allegations bearing on the safety or welfare of children.