

LEWISHAM LA MODEL DISCIPLINARY POLICY FOR SCHOOL BASED EMPLOYEES

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LEWISHAM LA MODEL DISCIPLINARY POLICY FOR SCHOOL BASED EMPLOYEES

1. Introduction

1.1 The Disciplinary Policy is designed to encourage all employees to achieve and maintain standards of conduct. The aim is to ensure fair and consistent treatment of all employees. This policy has been formulated by the Council after consultation with trade union representatives to provide fair, speedy and effective arrangements for dealing with disciplinary matters in schools.

1.2 The Policy is intended to cover all cases of misconduct, including minor, serious, cumulative or gross misconduct, and those instances of poor work performance which do not result from genuine lack of capability on the part of the employee to carry out the duties or responsibilities of his/her job. Where capability is an issue to be addressed this should be dealt with under the school's capability procedures. The Council has produced an LA Model Capability Procedure for Schools. Procedures produced by the relevant Diocesan Boards may operate in voluntary aided schools. In certain circumstances it may not be immediately apparent until an investigation has started if the case should be dealt with as a disciplinary or capability matter. In such circumstances advice should be sought from the school's HR Adviser.

1.3 There are some circumstances where dismissal on grounds of misconduct or capability may not apply, but where the school/Council may be considering convening a hearing to determine whether an employee should be dismissed for some other substantial reason (SOSR). In such circumstances, a similar format will be followed to that detailed in this Policy i.e. the employee will be invited to attend a hearing; will have the right to be represented; will have the right to respond to the case presented and will have a right of appeal against dismissal.

1.4 The Policy has been drafted in accordance with the principles contained in the ACAS Code of Practice on Disciplinary and Grievance Procedures (March 2015) and in accordance with relevant Employment and Education Acts.

2. Employees within the Policy

2.1 This procedure applies to all employees within schools, but does not apply:

- (a) On dismissal for grounds of redundancy; or
- (b) Where the individual has not completed the probation period and dismissal may arise from unsuitability for confirmation of employment.

In these circumstances the Lewisham LA Guidance for schools - Dismissal of Staff (By Reason of Redundancy) and the school's Probation Procedure will apply respectively.

2.2 Although this procedure does not apply in the circumstances detailed in paragraph 2.1, all employees regardless of employment status or length of service, are subject to similar standards of conduct and work performance. Specifically employees should be aware of a number of Council/school policies which set out clear standards expected of them when carrying out their duties, for example:-

- ❖ Employee Code of Conduct including Gifts and Hospitality
- ❖ Equality and Diversity
- ❖ Respect and Dignity
- ❖ Health and Safety
- ❖ Acceptable use of ICT (and associated guidance)
- ❖ Fraud and Corruption
- ❖ Child Protection and Safeguarding including DfE statutory guidance for schools & colleges – 'Keeping children safe in education'
- ❖ Appraisal for Teaching and Support Staff
- ❖ School Handbook if applicable

The Disciplinary Policy will be made readily accessible in the school, to all employees, for reference purposes.

3. Key Principles

3.1 In dealing with minor instances of poor work performance or misconduct, initial action will normally be of an informal nature e.g. counselling, training, setting clear standards for performance/conduct and verbal warnings. In instances of poor work performance, formal action under this procedure will only be taken where the poor performance does not result from a lack of capability to carry out the duties – see para 1.2.

3.2 The object of the formal procedure is to provide a framework to deal with employees whose standard of conduct or work performance continues to fall short of that required by the School/Council after any informal action has been taken. It is also designed to encourage an employee whose standard of work or conduct is unsatisfactory to improve.

3.3 Managers may initiate the procedure at any level, informal or formal, depending on the specific circumstances of the case. Further advice can be sought from Lewisham Schools' HR.

3.4 The types of issues which could result in disciplinary action being taken are outlined in Appendix 2 of this code. Gross misconduct is defined as misconduct of such a serious nature that the school/Council is justified in no longer tolerating the employee's continued presence at work. If the allegation(s) are substantiated then this could result in summary dismissal without notice. Other misconduct of a serious or minor nature may result in the issuing of a written, final or indefinite final written warning. Cumulative or repeated acts of misconduct may lead to dismissal with notice in situations where an act of misconduct is committed while an earlier warning is still in force or where a repeated pattern can be established.

3.5 The procedure is designed to establish the facts of a case quickly and to deal consistently with disciplinary issues. An investigation must be undertaken as soon as possible to establish the facts of the case, in accordance with para 4.13.

3.6 Where the nature of the alleged investigation suggests child or adult protection concerns, an internal management investigation should not commence until it has been established if the police will be taking any action. Child and adult protection concerns may include allegations of physical abuse, sexual abuse, bullying, intimidation and manipulation, threats to withhold services or financial abuse. Managers should refer to the statutory guidance for schools & colleges 'Keeping children safe in education' in such cases and seek advice from Lewisham Schools' HR.

3.7 Employees will have access to any evidence that the presenting officer wishes to rely on at the formal hearing through witnesses or documentary evidence.

3.8 Employees may be represented by a trade union representative or a workplace colleague at every stage of the formal disciplinary procedure, including the investigation stages, although the employee must make her/his own arrangements for this. If the employee requests to be accompanied by a workplace colleague then the colleague should be given reasonable time off for this purpose although they must seek prior approval by their line manager.

3.9 No formal disciplinary action should be taken against a trade union official until the circumstances of the case have been discussed with Lewisham Schools' HR and raised with the district official of the union concerned.

3.10 Employees should receive a minimum of 5 working days notice of a disciplinary hearing, with written details of the grounds for the hearing together with any evidence management intends to rely on and the possible consequences. Longer notice of the hearing should be given where possible.

3.11 At all stages, employees will be entitled to state their case before decisions are reached. Where an employee is unable to attend a hearing he/she is entitled to be represented in their absence. However, the Hearing Officer/Panel, will have the discretion to proceed in the employees' absence. When exercising this discretion the Hearing Officer/Panel should take into account all relevant circumstances, for example medical evidence, the number of postponements previously made, the employee's personal circumstances. Letters requesting the employee to attend the hearing should make it clear that the hearing may proceed in his/her absence.

3.12 Generally, the Governing Body should delegate hearing disciplinary cases, including dismissals, to the Headteacher. In the case of dismissals however, where special circumstances exist, the Governing Body can choose to delegate to a Panel of one or more governors or a Panel of one or more governors and the Headteacher together, but they must not allow any outside body or persons to take decisions for them. No member of the Governing Body who is employed to work in the school shall be eligible for membership of disciplinary panels. Further advice can be sought from Lewisham Schools' HR.

3.13 An employee should not be summarily dismissed (that is without notice) for a first breach of discipline, except in the event of gross misconduct. If an employee is dismissed for some other misconduct, such a dismissal will be with notice or payment in lieu of notice.

3.14 Employees have the right to appeal against any formal disciplinary sanction imposed. There is however no right of appeal against any informal action taken by management.

4. The Disciplinary Procedure

Informal Action

4.1 The following section deals with minor disciplinary issues and should not be used for cases involving serious or gross misconduct where formal action should be instigated immediately.

4.2 In many cases, dealing with matters of discipline early - the right actions at the right time - will often provide a more satisfactory result for both the manager and employee and may well prevent the need for more formal action in the future.

4.3 Minor instances of misconduct and poor practice should initially be dealt with in an informal way e.g. counselling, training, setting clear standards for improvement. This could be in the form of standard setting and/or issuing a verbal warning, depending on the nature of the misconduct or poor practice. Such action is intended to be undertaken on an informal basis between the manager and the employee. There is therefore no right at this informal stage to be accompanied by a trade union representative or another employee.

4.4 Where improvement in performance, attendance or conduct is required, the employee should be told what standards are expected, how this will be reviewed and over what time period. Any informal disciplinary discussions should be noted and confirmed in writing, with a copy given to the employee concerned. Employees should also be made aware of what action will be taken if they fail to improve. An example of an informal standard setting letter is attached at Appendix 5.

4.5 Where a verbal warning is issued this also should be confirmed in writing and a copy placed on the employee's file and given to the employee. The employee may comment on the content if he/she wishes and this should also be placed on the personal file. If there is any further misconduct of any type within a period of 6 months from the date of issue of the verbal warning then the employee may be subject to formal disciplinary action and the verbal warning may be taken into account.

4.6 If the employee subsequently achieves the required improvements then the employee should be informed of the need to maintain that improvement. A copy should be placed on

his/her personal file. The employee may comment on the content of the note if he/she wishes and this should also be placed on the personal file.

4.7 Where the required improvement is not reached or maintained then the informal action, including standard setting letters and verbal warnings, may be taken into account in any formal action subsequently taken under either the disciplinary or capability procedures.

4.8 If during an informal meeting it becomes clear that the matter is more serious than first thought, the meeting should be adjourned and a decision made as to whether formal action should be taken immediately. Managers should contact their School's HR adviser for further advice at this stage. The employee should be kept informed in writing of any decisions and associated timescales.

4.9 Details of sanctions appropriate under Informal Disciplinary Action are outlined in Appendix 1

Formal Action

4.10 Managers should seek the advice of HR before taking any formal disciplinary action..

4.11 No formal disciplinary action should be taken against a trade union official until the circumstances of the case have been discussed with Lewisham Schools' HR and raised with the district official of the union concerned.

4.12 The object of the formal procedure is to provide a framework to deal with employees whose standard of conduct or practice continues to fall short of that required by the school after any informal action has been taken, as well as deal with issues of serious and gross misconduct.

Management Investigation

4.13 All cases being dealt with under the formal procedure should be investigated. A fact-finding exercise will be undertaken by the investigating officer, who will generally also be the presenting officer should the case be referred to a formal hearing, in order to accumulate sufficient information to determine whether or not the matter needs to be pursued formally. This could be undertaken by the Headteacher but in most cases it is expected that the Headteacher will identify a senior member of the school leadership team to carry out the investigation. In all cases, the manager conducting the investigation should be as objective as possible. Support for the investigating officer can be provided by the school's HR adviser.

4.14 The investigation will involve interviewing the parties, taking statements and any other steps which may be appropriate. Employees are required to co-operate with any investigation and to attend a fact-finding meeting at which they may be accompanied by a trade union representative or a workplace colleague. It will not be appropriate for anyone who is due to be interviewed as part of the investigation to accompany another work colleague to their fact finding interview.

4.15 The investigation should involve interviewing all the parties involved separately. Statements should be obtained from any witnesses at the earliest opportunity and records kept of what was said. It is important that the investigation is concluded as quickly as possible. Where possible statements should be signed and dated by the witness concerned. Meetings should not be recorded via electronic devices by any of the parties involved and the investigating officer should confirm this at the beginning of the meeting.

4.16 CCTV footage may be used in evidence where this was recorded in a public area. Such footage should be shown to the employee to allow them the opportunity to comment and respond.

4.17 Where evidence of fraud or corruption is identified Headteachers should immediately report this to the Council's Anti Fraud and Corruption Team (AFACT) or the Directorate for Children and Young People's Services' Head of Resources or his/her nominated officer.

4.18 Where the Council's Special Investigations (SI) team have undertaken an investigation, the investigation report may be produced and the SI officer involved may be called as a witness at any subsequent hearing. In addition the investigating officer may also meet with the employee as part of their fact finding where there are additional questions they may wish to ask or where new information comes to light.

4.19 If following the investigation, the investigating officer considers that the matter should be pursued formally, the Headteacher (if not the investigating officer) should be informed. Specific details of the case should not be provided in case the Headteacher is required to fulfil the role of Hearing Officer.

4.20 If as a result of the investigation it is found that formal disciplinary action is not appropriate, the Headteacher should decide whether any other action is necessary in accordance with school's procedures or other guidelines (e.g. informal action such as standard setting or a verbal warning, capability). The employee should be notified of any decision in writing.

4.21 If no further action is taken all records of the investigation will be removed from the employee's file, except where there are allegations involving vulnerable service users/children in which case the paperwork will be retained indefinitely.

4.22 If a decision is made to pursue formal disciplinary action a disciplinary hearing should be convened as soon as possible. Advice should be sought from the school's HR Adviser before taking formal disciplinary action.

4.23 All relevant evidence gathered as part of the management investigation should be disclosed to the employee and his/her representative at the same time as the disciplinary pack containing the documents which the presenting officer proposes to rely on at the Hearing.

5. Suspension

5.1 Suspension with pay should be considered only in cases where there is a possibility of dismissal for grounds of gross misconduct, where relationships have broken down, where the employee's presence could hinder the investigation, or where there is concern about the possibility of further misconduct. Consideration should be given to the potential detrimental effect of suspension on both the employee and the service. Employees should not be suspended without good justifiable reason. Transferring the employee elsewhere in the school may be considered as an alternative to suspension in appropriate cases.

5.2 Both the Governing Body and the Headteacher have the power to suspend (and subsequently lift a suspension), although this would normally be carried out by the Headteacher, and confirmed in writing within 3 working days. Other than in exceptional circumstances (for example where police or special investigations may be involved) investigations should be started and undertaken as quickly as possible, ideally within 4 months if possible.

5.3 Where reasonably possible, the employee may be accompanied by a trade union representative or another work colleague to the suspension meeting.

5.4 The employee should be told the reason for the suspension. Where this is not possible, for example it may prejudice an investigation, then he/she should be given broad reasons. The employee should be advised that during the period of suspension he/she must not enter the workplace without prior permission from the Headteacher. A request to meet with the trade union representative on school premises will not be unreasonably denied.

5.5 Suspension will usually be on full pay (including any contractual payments received on a regular basis), save for where the employee is already on reduced pay, or during the period of suspension would be subject to a reduction in pay had it not been for the suspension (e.g. sick pay, maternity/adoption/additional paternity leave). However, there may be exceptional circumstances where an employee may be suspended without pay, for example where the employee is on unauthorised absence e.g. being held on remand for a lengthy period. Advice should always be sought from Schools' HR in such circumstances.

5.6 The suspension will be reviewed every 10 working days and the employee should be written to. The letter should provide the employee with information on how the investigation is progressing.

6. Arranging the disciplinary hearing

6.1 If following consultation with the school's HR Adviser a decision is made to pursue formal disciplinary action a disciplinary hearing should be convened as soon as possible. The presenting officer or school's HR Adviser will inform the employee of the date, time and place of the hearing in writing, with a statement giving an outline of the allegations against the employee. Any evidence gathered as part of the management investigation which is going to be presented should be disclosed to the employee and his/her representative in the form of a disciplinary pack including the names of any witnesses to be called. Where appropriate confidential or sensitive information, such as names of pupils, may be redacted. The covering letter and disciplinary pack should be sent to the employee no later than 5 working days before the hearing. Longer notice should be given where possible; this is particularly important if the documentation to be submitted is lengthy or complex.

6.2 The employee must provide details of any witnesses together with any documents they intend to rely on as early as possible, but no later than 2 full working days before the hearing. As above in 6.1, this is particularly important if the documentation to be submitted is lengthy or complex.

6.3 Where an employee is unable or fails to attend, the hearing may proceed in their absence as per Para 3.11. above.

6.4 Where an employee has reasonably requested to be accompanied at a hearing and his/her representative is unable to attend on the notified date, he/she has the right to request a postponement of the hearing for a period of up to 5 working days following the day after the date which had previously been set. The Hearing Officer/Panel has the discretion to postpone or adjourn a hearing. Should they do so a new date will be arranged as quickly as possible. A request for a postponement should be made as soon as possible after notification of the hearing date.

6.5 The Hearing Officer/Panel will hold the disciplinary hearing following the procedure set out in Appendix 3 of this policy. A Schools' HR Adviser will attend hearings to advise and to represent the Executive Director for Children and Young People.

6.6 A notetaker may attend on behalf of the hearing officer/panel conducting the hearing to provide them with confidential notes; the notetaker's role is confined to taking notes of the proceedings. Notes may be in the form of a summary and are not necessarily verbatim. These are management notes and are not therefore subject to prior agreement with the employee. The employee may also have a notetaker in attendance if he/she wishes.

6.7 The hearing should not be recorded via electronic devices by any of the parties involved and the Hearing Officer/Panel should confirm this at the beginning of the meeting.

6.8 The Hearing Officer/Panel may decide that further information/witnesses are required.

6.9 The Hearing Officer/Panel will make the final decision on any matters raised at the hearing.

7. Possible Outcomes of the Hearing

7.1 Possible outcomes are listed below together with the periods that the sanction remains in force:

- (a) No disciplinary action to be taken
- (b) Informal action such as standard setting or verbal warning
- (c) Written warning (12 months from date of the hearing)
- (d) Final written warning (18 months from date of the hearing)
- (e) Indefinite final written warning (indefinitely or subject to review) - see para 7.4 below
- (f) Cessation of employment at the school and a recommendation to the Director of Children and Young People's Services for dismissal with notice (following a written warning) or summary dismissal without notice (in cases of gross misconduct).
- (g) Relegation with a final written warning

No disciplinary action to be taken: in which case all correspondence relating to the hearing should be removed from the employee's personal file. The only exception being cases where there are allegations involving children and other vulnerable clients where the papers will be retained indefinitely. The employee concerned and the presenting officer should still receive confirmation of the outcome in writing, but should be advised that no record (other than the above) has been kept on the personal file.

Informal action such as standard setting or verbal warning: in circumstances where the Hearing Officer/Panel considers that a formal warning would be too severe but where the employee needs to be reminded of the standards required.

Written, final or indefinite final written warning: in these circumstances the employee should be advised that any further disciplinary lapse may result in further disciplinary action including dismissal. In reaching a decision about which sanction to apply, the hearing officer/panel should take into account all the circumstances of the case, including any disciplinary sanctions in place. Where the decision is to impose an indefinite final warning, the hearing officer/panel should, except where there are exceptional circumstances, consider including a review period. This should be included in the sanction letter. This should not be less than 3 years, after which a further review period may be appropriate, or the warning may be considered as spent. It will be the employee's responsibility to request a review at the relevant point. This should be submitted to the headteacher who will liaise with the school's HR Adviser to consider the request. There will be no right of appeal against the outcome of the review. In some circumstances, for example those involving children, the hearing officer/panel may impose an indefinite warning which will not be subject to review.

Dismissal: in circumstances other than gross misconduct this would be after previous written warning(s) or cumulative misconduct and would be dismissal with notice. Except in the event of gross misconduct, an employee may not be summarily dismissed for a first breach of discipline nor, save in exceptional circumstances, dismissed for a first breach of discipline. In cases of gross misconduct, summary dismissal without notice will normally be appropriate. Gross misconduct is misconduct of such a serious nature that the school is justified in no longer tolerating the employee's continued presence at the place of work. Examples of gross misconduct are given in Appendix 2.

Relegation: where the employee is considered to be blameworthy of a serious offence (s) but there are deemed to be mitigating circumstances to justify disciplinary action short of dismissal, the sanction may be relegation (downgrading). Payment will be commensurate to the grade of the new post. Relegation could also, where possible, be accompanied by a transfer to a different work area within the school, together with a final or indefinite final written warning. If the employee does not accept the relegation, then the dismissal will stand.

7.2 If an employee is guilty of further misconduct during the period that a warning is in force, this may result in a more severe sanction being applied. A spent warning will normally be disregarded only for the purpose of future disciplinary proceedings (excluding warnings relating to vulnerable adults or children). For other managerial purposes (e.g. appointments,

references), the warning would remain on the record and may be taken into account as appropriate. Managers should not therefore remove the spent warning from the personal file.

7.3 If further misconduct occurs during the period that a warning is in force, then further disciplinary action must be considered. In addition, there may be occasions where an employee's conduct is satisfactory throughout the period the warning is in force, only for it to lapse thereafter. Where a pattern emerges and/or there is evidence of abuse, disciplinary action must be considered and the employee's disciplinary record may be borne in mind in deciding what sanction to apply. For example a 'spent' warning may indicate that an employee was aware of the school's required standards of conduct, or may be relevant to any arguments of mitigation.

7.4 There may also be circumstances where the misconduct is so serious - for example either verging on gross misconduct or relating to issues including the care of children or vulnerable clients - that a disciplinary record cannot be disregarded for future disciplinary purposes. In such circumstances the written warning can never be removed and any other misconduct may lead to dismissal.

7.5 If the Hearing Officer/Panel contemplate relegation, dismissal or summary dismissal, the Executive Director for Children and Young People Services or his/her representative must be consulted.

8. Notifying employees of the outcome

8.1 The Hearing Officer/Panel may inform the employee of the decision verbally at the end of the hearing following deliberation of the evidence, but in all cases should confirm an outline of the decision verbally within 5 working days and follow this up in more detail in writing within 10 working days. Where the case is complex and the Hearing Officer/Panel is unable to meet this timescale then the employee should be informed of the reason for the delay. The decision letter must include the employee's right of appeal.

8.2 The letter should outline the reason or reasons why the decision was taken, the account taken of any mitigating factors, and the rights of appeal. Where the sanction is a warning then the employee should also be advised of the period the warning will remain in force and the possible consequence of further offences. The Hearing Officer/Panel should consult with the school's HR Adviser to ensure that the contents of the letter meet these requirements. The letter should be sent first class or by hand as appropriate with separate copies sent to the presenting manager and the trade union representative. A copy should also be placed on the employee's personal file.

9. Appeals

9.1 An employee wishing to appeal against formal disciplinary action must do so in writing to the Chair of Governors within 10 working days of receiving written notification of the disciplinary action. The appeal letter must clearly state the grounds for the appeal which must fall within one or more of the following:-

- (i) a procedural flaw, stating precisely where the disciplinary policy/procedure has been breached
- (ii) the severity of the sanction, stating precisely why it was thought that the sanction was too severe
- (iii) any other perceived unfairness of the decision, stating precisely what this was

9.2 Whilst there is an entitlement to an appeal, there will not be an appeal hearing unless the grounds fall within one or more of the above three categories. If sufficient details are not provided, the school's HR adviser will ask the employee for clarification. The information should be provided by no later than 20 working days from the date of the registration of the appeal. If the information is not provided then the appeal will not normally be heard.

9.3 All appeals will be heard by a Disciplinary Appeals Sub-Group appointed by the main Governing Body and will normally consist of not less than three governors, save in exceptional circumstances. A Schools' HR Adviser will attend appeal hearings to advise the Appeals Sub-Group and to represent the Executive Director for Children and Young People Services. A notetaker may also attend on behalf of the governors to provide them with confidential notes. the notetaker's role is confined to taking notes of the proceedings. Notes may be in the form of a summary and are not necessarily verbatim. These are management notes and are not therefore subject to prior agreement with the employee. The employee may also have a notetaker in attendance if he/she wishes.

9.4 The Appeals Sub-Group will hear the appeal as soon as practically possible. Generally this will be within 30 working days of registration of the appeal with the Chair of Governors or as soon as possible thereafter. Where the appeal cannot be arranged within the specified timescale, the employee should be kept updated.

9.5 It is important that the Appeals Sub-Group is impartial and has not been involved in the case previously. If the employee or trade union representative has any concerns about the impartiality of the proposed members of the Appeals Sub-Group this should be referred to the Chair of Governors for consideration. If unresolved then the matter should be raised with the Executive Director of Children and Young People Services for advice.

9.6 The employee will be given not less than 5 working days notice of the appeal hearing and will be provided with a copy of all the documentary evidence produced for the original hearing plus the outcome letter and the letter/grounds of appeal. New evidence or additional witnesses will not be allowed save in exceptional circumstances, at the discretion of the Appeals Sub-Group

9.7 The employee will have the right to representation by a trade union representative or a workplace colleague at the Appeal Hearing. The employee may also have a notetaker in attendance if he/she wishes

9.8 Where an employee has reasonably requested to be accompanied at an appeal hearing and his/her representative is unable to attend on the notified date, he/she has the right to request a postponement of the appeal hearing for a period of up to 5 working days following the day after the date which had previously been set. The Appeals Sub-Group has the discretion to postpone or adjourn an appeal hearing. Should they do so a new date will be arranged as quickly as possible. A request for a postponement should be made as soon as possible after notification of the appeal hearing date.

9.9 Where an employee is unable to attend the appeal hearing he/she is entitled to be represented in their absence. However, the Appeals Sub-Group, following consultation with the union representative, will have the discretion to proceed in the employee's absence. In these circumstances it is recommended that advice be sought from School's HR.

9.10 Procedures to be followed at an Appeal Hearing are outlined in Appendix 4.

9.11 The presenting manager at the original disciplinary hearing will normally present management's case to the Appeals Sub Group and will call the Hearing Officer/Chair of the original panel as a witness to present evidence as to the basis of their decision on the points which are the subject of the appeal. Depending on the nature of the case and the grounds for the appeal, the School may decide to reverse these roles but the final decision on that remains with the School. The management case at the appeal could include calling appropriate witnesses and providing copies of management notes of the original hearing.

9.12 The Appeal Hearing should not be recorded via electronic devices by any of the parties involved and the Chair of the Appeals Sub-Group should confirm this at the beginning of the meeting

9.13 Appeals are normally by way of review rather than rehearing i.e. the Appeals Sub-Group should consider the grounds of the appeal and come to a decision as to whether or not the Hearing Officer/Panel made a reasonable decision on the basis of the evidence put before

them at the time. Specifically the Appeal Sub-Group should consider whether the original Hearing Officer/Panel;

- had sufficient evidence available in order to come to a reasoned judgement
- can demonstrate that the arguments and reasoning, of both sides, were fully considered when reaching a decision

9.14 In exceptional circumstances the Appeals Sub-Group may request to hear from a particular witness or re-consider a piece of evidence. For example it may be necessary to hear evidence about whether:

- There was an adequate or appropriate investigation; or
- There was a procedural flaw which could be rectified by the appeal.

9.15 The final decision on any matter will rest with the Appeals Sub-Group following consultation with both parties.

Outcome of the Appeal Hearing

9.16 If the appeal is upheld and the Appeals Sub-Group decide that no sanction is applicable, the employee will be advised of that decision in writing within 5 working days. In this case all correspondence relating to the original hearing and the appeal hearing should be removed from the employee's personal file. The only exception being cases where there are allegations involving children and other vulnerable clients where the papers will be retained indefinitely. The employee concerned and the presenting officer should still receive confirmation of the outcome in writing, but should be advised that no record (other than the above) has been kept on the personal file.

9.17 If the appeal is not upheld, either in part or completely, the Appeals Sub-Group may apply the following sanctions:

- * Confirm the original decision.
- Amend the original decision of the Hearing Officer/Panel by substituting the sanction applied by the original Hearing Officer/Panel for a lesser sanction, see paragraph 7 above

The Appeals Sub-Group may inform the employee of the decision verbally at the end of the appeal hearing following deliberation of the evidence, but in all cases should confirm an outline of the decision verbally within 5 working days and follow this up in more detail in writing within 10 working days. Where the case is complex and the Appeals Sub-Group is unable to meet this timescale then the employee should be informed of the reason for the delay. The HR adviser to the Appeals Sub-Group will advise on the content of the outcome letter to ensure that it meets these requirements.

9.18 Where the Appeals Sub-Group decides that the employee should be relegated as an alternative to dismissal, then the employee will be re-instated to their original post with effect from the date of dismissal until the date of the decision of the Appeals Sub-Group. The terms and conditions applicable to the post arising from the relegation will apply from the date of the decision of the Appeals Sub-Group.

9.19 Where the Appeals Sub-Group decides that no sanction is applicable or that the employee should be issued with a written, final or indefinite written warning only, then the employee will be re-instated with effect from the date of dismissal.

Effect of Re-instatement

9.20 Where an employee is re-instated it means that they were never in fact dismissed and their contract of employment continued to exist from the date of the first decision to dismiss and the decision of the Appeals Sub-Group which resulted in re-instatement. This means that:

- Continuity of service shall be preserved

- He/she will be entitled to full back pay including pension
- He/she shall be entitled to accrue annual leave entitlement (where appropriate) for the period for which they were 'dismissed'.

9.21 If the employee was in receipt of state benefits then he/she will be expected to notify the appropriate Agency of their reinstatement and to repay any benefits received.

9.22 The decision of the Disciplinary Appeals Sub-Group is final.

10 Complaint against a Headteacher

- 10.1 If a complaint is made against a Headteacher it will be referred to the Chair of Governors.
- 10.2 The Chair of Governors will initiate an investigation into the complaint, at the same time notifying the Headteacher and the Executive Director for Children and Young People Services. Advice and support may be provided by the school's HR adviser.
- 10.3 If, as a result of the investigation, the Chair of Governors is of the view that the Headteacher has a case to answer, he/she should arrange for a Disciplinary Panel of 3 governors to hear the case. The case will normally be presented by the Chair of Governors. Alternatively the Chair of Governors may request the Executive Director for Children and Young People Services to nominate a senior LA officer, or recommend an appropriately qualified external person, to undertake the investigation and present the case at any subsequent disciplinary hearing.
- 10.4 Where there is a possibility of disciplinary action, the Chair of Governors must ensure that there are sufficient Governors available to carry out impartially the functions of any disciplinary and appeals hearings. Members of the disciplinary and appeals hearings need not be left in complete ignorance; knowing about a situation does not constitute prejudice. However, members of hearings should be careful not to become directly involved, either through expressing opinions or taking action which might be seen to have prejudiced their ability to hear a case fairly.
- 10.5 The Executive Director for Children and Young People Services may attend or be represented at any disciplinary or appeal hearing.

Appendix 1

Informal Disciplinary Action

It is important that minor incidents of misconduct or poor working practice are dealt with quickly as soon as they arise. The reasons for this are firstly, the employee is made aware of the problem and given the opportunity to correct it, thus removing the need for further formal disciplinary action. Secondly should there be further incidents it can be demonstrated that the employee's attention has been drawn to the problems and the expected standards have been explained to them. Informal disciplinary action may also result from a fact finding/management investigation and, in some cases, following a formal hearing where the Hearing Officer/Panel decides that a standard setting/verbal warning would be a more appropriate level of sanction.

Informal action can be in the form of a verbal warning that sets out what standards are required of the employee, depending on the nature and extent of the problem.

Standard Setting/Verbal Warning

Standard setting and/or a verbal warning is a quick and efficient means of stopping an isolated minor incident. Having taken action to stop the incident the manager should then arrange to meet with the employee informally to try to establish why the breach occurred. It may emerge that some form of counselling, training or other support is required.

The manager should remind the employee of the standards expected of him/her for improvement in working practices, attendance or conduct e.g., lateness, failure to follow procedures etc. and where appropriate issue a verbal warning, advising him/her that any further incidents could lead to formal disciplinary action being taken. The manager should explore any underlying reasons for the misconduct/poor working practices with the employee and provide support as appropriate e.g. training.

A record should be kept of the verbal warning and any actions recommended should be confirmed to the employee in writing and a copy placed on the employee's personal file. The employee may comment on the content of the note if he or she wishes and this should also be placed on the personal file

If the required standards have been obtained then this should be confirmed in writing to the employee and a copy placed on the personal file. If the required standards are not reached/maintained then the manager may issue a further verbal warning or proceed to formal disciplinary action as appropriate. Where informal steps have failed to bring about the desired improvement then the formal procedure will be implemented.

The above action is intended to be undertaken on an informal basis between the manager and the employee. There is therefore no right at this informal stage to be accompanied by a trade union representative or a workplace colleague.

Standard setting letters and verbal warnings may be used as evidence in formal action taken under either the disciplinary or capability procedures.

Appendix 2

Types of Misconduct

1. Gross misconduct

If, after investigation, it is deemed that an employee has committed an offence of the following nature (the list is not exhaustive), the normal consequence will be dismissal without notice:

- Serious failure to comply with or operate the School's or Council's Equality & Diversity policies . Examples include; serious acts of discrimination, harassment, or verbal abuse against employees, clients or members of the public on grounds of race, sex, disability, age, sexual orientation, gender reassignment, marital status, civil partnership, pregnancy or maternity or religious/faith beliefs; the display or circulation within the workplace of any literature or material via any medium that could reasonably be expected to offend other persons
- Serious bullying or harassment
- Abuse of vulnerable adults or children contrary to Adult and Child Protection Procedures
- Serious infringement of health and safety policy, procedures or guidance
- Serious failure to comply with or operate the School's or Council's Code of Conduct (including gifts and hospitality) e.g. holding unauthorised paid employment during paid school time; conducting inappropriate relationships with vulnerable clients/pupils; not declaring a personal interest which may infringe the employee's impartiality, accepting hospitality or gifts from existing or potential suppliers
- Serious negligence that causes or might cause unacceptable loss, damage or injury
- An action which has or could bring the School or Council into serious disrepute
- Serious incapability whilst on duty brought on by alcohol, illegal drugs or abuse of prescribed medication
- Serious failure to comply with or operate the School's or Council's Information Systems and Security Standards e.g. gaining unauthorised access to passwords and breaches of the Acceptable Use of ICT policy, including emails with pornographic or inappropriate attachments, posting derogatory or offensive comments on the internet about the School, the Council, their policies, a governor or an elected member of the Council, or a Council employee
- Serious breach of financial regulations or procedures
- Unauthorised removal, possession, use or theft of property belonging to the School , the Council, an employee, pupil or member of the public
- Acts of violence including the assault of an employee, pupil, or member of the public during working hours or in connection with their employment or work
- Falsification of qualifications or information to obtain employment/promotion with the School or Council or which are a statutory or essential requirement of employment or which result in additional remuneration
- Deliberate falsification of records i.e. attendance sheets, subsistence and expense claims etc
- Acceptance of bribes, gifts or hospitality, or other corrupt or fraudulent practices
- Defrauding the School, Council or any other organisation/person of monies e.g. Housing Benefit, Job Seekers Allowance,
- Disclosure of highly confidential matters to public sources or the deliberate unauthorised use or disclosure of any information or computer generated information from which a living individual can be identified (Subject to the Public Interest Disclosure Act 1998)
- Serious breach of the Data Protection Act
- Committing a criminal offence at or away from work that renders the employee unsuitable to remain in the Council's employment or which may damage the School's or Council's reputation. Or where there are reasonable grounds to believe that a serious criminal offence has been committed which may be connected or unconnected with their employment.

Other types of misconduct

Misconduct short of gross misconduct may result in a written warning, final written warning or an indefinite final written warning being issued. Cumulative or repeated acts of misconduct may lead to dismissal with notice in situations where an act is committed while an earlier warning is still 'live' i.e. in force. Examples of misconduct where a form of warning may be issued, or where cumulative or repeated acts could lead to dismissal, are set out below. This list is not exhaustive:-

- Attendance and Time-keeping
Failure to comply with attendance and time-keeping requirements.
Failure to follow procedures for booking and returning from leave.
Persistent absence and/or excessive absence without medical reason
- Telecommunications related issues
Overuse of telephone, fax, e-mail or Internet for personal reasons
Inappropriate use of e-mail or Internet (gross misconduct in serious cases)
Recording conversations or meetings without having been given permission by the employee/manager concerned.
- Performance (which is not deemed to arise from capability)
Error resulting from poor working practices
Failure to maintain proper records
Failure to follow council procedures e.g. financial regulations, safety standards
Negligent performance (gross misconduct in serious cases)
Failure to meet targets, deadlines and/or objectives
Poor customer service
- Behaviour
Insubordination
Failure to follow a legitimate management instruction
Prolonged time-wasting
Inappropriate behaviour towards a manager, colleague or person in the care or charge of the School/Council or member of the public (gross misconduct in serious cases).
- False or vexatious complaints/grievances made against another employee or manager

Serious cases of the above examples are potentially 'gross misconduct'.

Appendix 3Step by Step Guide to the Disciplinary Hearing procedure

STEP 1

The Hearing Officer/Chair of Panel should ensure that there is a management notetaker.

The Hearing Officer/Chair of Panel:

- Introduces all parties (**except witnesses who will be called later in the proceedings**)
- Explains **the purpose of the hearing** and the procedure to be followed
- Clarifies position with regard to witnesses on both sides
- **Confirms that the proceedings should not be recorded by any of the parties present and all mobile phones should be switched off**
- Reads out the allegations and asks the employee whether he/she admits or denies the allegations

STEP 2

Employee admits or denies the allegations.

The next part of the hearing will vary depending on the employee's answer.

If the employee admits the allegations go to Steps 3 to 10.

If the employee denies the allegations go to Steps 11-32

Employee admits allegations

STEP 3

Having admitted the allegations the employee presents any mitigating circumstances to the Hearing Officer/Panel

STEP 4

The presenting officer may ask questions of the employee. The questions may relate to the mitigation or if appropriate the circumstances which led to **the misconduct**. The presenting officer may present evidence to support any argument against the mitigation.

STEP 5

The Hearing Officer/Panel may ask questions of the employee and presenting officer as appropriate, to ensure that they have a full understanding of all the facts of the case including the mitigation. **In exceptional circumstances the Hearing Officer/Panel may call witnesses or seek further evidence to ensure that they are aware of all the facts of the case before making a decision. The Hearing Officer/Panel may decide to adjourn the hearing to allow for this to happen.**

STEP 6

The HR Adviser may ask questions of the employee and presenting officer as appropriate.

STEP 7

SUMMING UP STAGE

Presenting officer sums up first
Employee or representative sums up next
No new evidence can be presented at this stage

STEP 8

All parties withdraw apart from the Hearing Officer/Panel members, HR adviser and notetaker. The Hearing Officer/Chair of Panel will advise the parties whether they need to wait to be recalled for the decision.

STEP 9

DELIBERATION

Hearing Officer/Panel reach a decision on the basis of the evidence presented. HR Adviser will provide advice as necessary. The Hearing Officer/Panel members should make a note of the reasoning behind their decision and keep this carefully filed for future reference if need be.

STEP 10

DECISION

The Hearing Officer/Chair of Panel may give the decision verbally either at the end of the Hearing or **within 5 working days**. In any event the decision must be confirmed in writing together with the appeal rights, within **10 working days** of the Hearing.

Employee denies allegations – Management presents facts of the case

STEP 11

The presenting officer presents the facts of the case on behalf of management.

STEP 12

Employee/representative asks questions of the presenting officer

STEP 13

The Hearing Officer/Panel ask questions of the presenting officer

STEP 14

The HR Adviser may ask questions of the presenting officer

Management witnesses called one at a time.

Hearing Officer/Chair of Panel introduces all parties to each witness and explains procedure. It is open to the Hearing Officer/Chair of Panel to disallow irrelevant or repetitive questioning.

Step 15 – Step 19 followed for each witness in turn.

STEP 15

Presenting officer presents witness evidence by asking questions of the witness

| | |
|---------|--|
| STEP 16 | Employee/representative asks questions of the witness |
| STEP 17 | Hearing Officer/Panel ask questions of the witness |
| STEP 18 | HR Adviser may ask questions of the witness |
| STEP 19 | Witnesses may be re-examined in the above order to clarify any further points raised during presentation of evidence |

Employee's presentation

| | |
|---------|--|
| STEP 20 | Employee/representative presents employee's side of the case |
| STEP 21 | Presenting officer asks questions on the presentation |
| STEP 22 | Hearing Officer/Panel ask questions on the presentation |
| STEP 23 | HR Adviser may ask questions on the presentation |

Employee's witnesses called one at a time.
Hearing Officer/Chair of Panel introduces all parties to each witness and explains procedure. . It is open to the Hearing Officer/Chair of Panel to disallow irrelevant or repetitive questioning.

Step 24 – Step 28 followed for each witness in turn.

| | |
|---------|--|
| STEP 24 | Employee/representative presents witness evidence by asking questions of the witness |
| STEP 25 | Presenting officer asks questions of the witness |
| STEP 26 | Hearing Officer/Panel ask questions of the witness |
| STEP 27 | HR Adviser may ask questions of the witness |
| STEP 28 | <p>Witnesses may be re-examined in the above order to clarify any further points raised during presentation of evidence.</p> <p>Once each party has completed their questioning, witnesses should not normally be recalled. However, the Hearing Officer/Panel has the right to recall witnesses or seek further information if this is required. If this does happen, both sides should be recalled into the hearing. In addition the Hearing Officer/Panel may require that other witnesses/evidence should be called/produced in order to ensure that all the necessary facts can be considered before making a decision on the case. The Hearing Officer/Panel may decide to adjourn the hearing to allow for this to happen.</p> |

STEP 29

SUMMING UP STAGE

Presenting officer sums up first
Employee or representative sums up next.
No new evidence can be presented at this stage

STEP 30

All parties withdraw apart from the Hearing Officer/Panel members, HR adviser and notetaker. The Hearing Officer/Chair of Panel will advise the parties whether they need to wait to be recalled for the decision.

STEP 31

DELIBERATION

Hearing Officer/Panel reach a decision on the basis of the evidence presented. HR adviser will provide advice as necessary. The Hearing Officer/Panel should make a note of the reasoning behind his/her decision and keep this carefully filed for future reference if need be.

STEP 32

DECISION

The Hearing Officer/Chair of Panel may give the decision verbally either at the end of the **Hearing** or **within 5 working days**. In any event the decision must be confirmed in writing together with the appeal rights, within **10 working days** of the Hearing.

Appendix 4Step by Step Guide to the Disciplinary Appeal Hearing procedure

STEP 1

The Chair of the Appeals Sub Group should ensure that there is a management notetaker.

The Chair of the Appeals Sub Group:

- Introduces all parties (**except witnesses who will be called later in the proceedings**)
- Explains **the purpose of the hearing** and the procedure to be followed
- Clarifies position with regard to witnesses on both sides
- **Confirms that the proceedings should not be recorded by any of the parties present and all mobile phones should be switched off**

Presentation by the Appellant

STEP 2

The appellant or representative presents the grounds of the appeal

STEP 3

The presenting officer may ask questions of the appellant/representative on the grounds of the appeal.

STEP 4

The Appeals Sub Group may ask questions of the appellant/representative on the grounds of the appeal

STEP 5

The HR Adviser may ask questions of the appellant/representative on the grounds of the appeal.

The appellant's witnesses called one at a time.

The Chair of the Appeals Sub Group introduces all parties to each witness and explains procedure. It is open to the Chair of the Appeals Sub Group to disallow irrelevant or repetitive questioning

Step 6 – Step 10 followed for each witness in turn.

STEP 6

The appellant/representative presents witness evidence by asking questions of the witness

STEP 7

The presenting officer asks questions of the witness

STEP 8

The Appeals Sub Group ask questions of the witness

STEP 9

The HR Adviser may ask questions of the witness

STEP 10

Witnesses may be re-examined in the above order to clarify any further points raised during presentation of evidence

| | |
|---------|--|
| STEP 11 | The presenting officer presents management's case in response to the appeal |
| STEP 12 | The appellant or representative may ask questions of the presenting officer. |
| STEP 13 | The Appeals Sub Group may ask questions of the presenting officer. |
| STEP 14 | The HR Adviser may ask questions of the presenting officer |
| | <p>Management's witnesses called one at a time – this should normally include the Hearing Officer/Chair of the previous Panel . The Chair of the Appeals Sub Group introduces all parties to each witness and explains procedure. It is open to the Chair of the Appeals Sub Group to disallow irrelevant or repetitive questioning. Step 15 – Step 19 followed for each witness in turn.</p> |
| STEP 15 | The presenting officer presents witness evidence by asking questions of the witness |
| STEP 16 | The appellant/representative asks questions of the witness |
| STEP 17 | The Appeals Sub Group ask questions of the witness |
| STEP 18 | The HR adviser may ask questions of the witness |
| STEP 19 | <p>Witnesses may be re-examined in the above order to clarify any further points raised during presentation of evidence.</p> <p>Once each party has completed their questioning, witnesses should not normally be recalled. However, the Appeals Sub Group has the right to recall witnesses or seek further information if this is required. If this does happen, both sides should be recalled into the hearing. In addition the Appeals Sub Group may require that other witnesses/evidence should be called/produced in order to ensure that all the necessary facts can be considered before making a decision on the case. The Appeals Sub Group may decide to adjourn the hearing to allow for this to happen.</p> |
| STEP 20 | <p>SUMMING UP STAGE</p> <p>Presenting officer sums up first</p> <p>Employee or representative sums up next.</p> <p>No new evidence can be presented at this stage</p> |

STEP 21

All parties withdraw apart from the Appeals Sub Group, HR Adviser and notetaker. The Chair of the Appeals Sub Group will advise the parties whether they need to wait to be recalled for the decision.

STEP 22

DELIBERATION

The Appeals Sub Group reaches a decision on the basis of the evidence presented. HR adviser will provide advice as necessary. The Appeals Sub Group should make a note of the reasoning behind their decision and keep this carefully filed for future reference if need be.

STEP 23

DECISION

The Chair of the Appeals Sub Group may give the decision verbally either at the end of the **Hearing** or **within 5 working days**. In any event the decision must be confirmed in writing within **10 working days** of the Appeal Hearing.

APPENDIX 5

EXAMPLES OF LETTERS

1. STANDARD SETTING LETTER

Dear (employee's name)

Standard Setting re:

I am writing to confirm our discussion on (date) concerning your failure to follow the School's/Council's sickness reporting procedures during your absence from duty from (dates).

I explained that if you are sick in future you must notify your supervisor on the first day of absence as soon as possible and by no later than (time agreed locally) to enable alternative arrangements for your duties to be covered for the day.

You are expected to keep your line manager/supervisor informed of the nature of your illness and when you are likely to return to work.

If your absence continues for between 4 working days and 7 calendar days then you must complete the Council's own self-certification form. Medical certificates from your doctor must be provided to support any absence, which continues beyond 7 calendar days.

I must advise you that failure to comply with this procedure in future may lead to your pay being stopped for the period of the unauthorised absence and to disciplinary action being taken against you.

Signed by Manager/Headteacher

2. SUSPENSION LETTER

Dear (employee's name)

Suspension

I am writing to confirm my decision, given orally to you on (ADD DATE), (in the presence of your trade union representative), to suspend you from duty with immediate effect.

The reason for the suspension is to allow an investigation to take place regarding (give brief description).

You will be invited to attend a fact finding meeting as part of the investigation. You will be notified about the arrangements for this meeting and are entitled to be accompanied by a trade union representative or work colleague if you wish. If the fact finding concludes that there is a case to answer, you will be invited to attend a disciplinary hearing under the School's Disciplinary Policy, a copy of which is attached to this letter for your information. If the fact finding concludes that there is no case to answer, your suspension will be lifted and you will return to work.

Your suspension will be reviewed every 10 working days and you will be kept informed on progress with the investigation. In the meantime you should remain at home and ensure that you are available if required to attend a meeting. You should not enter your place of work unless invited by management to do so, or to meet with your trade union representative.

During the period of your suspension you will remain on normal pay and must adhere to all standard procedures in relation to the reporting of sickness and booking of annual leave. During the periods of sickness, maternity/adoption/additional paternity leave you will receive the relevant rate of pay.

If you require support/information you may wish to contact XXXXXX in the school. Alternatively you can contact XXXX the school's HR Adviser.

(If school is required to advise a professional body) I must also inform you that the XXXXX (Professional Body) will be notified about this investigation.

Signed by Headteacher or Chair of Governors

Encl: School's Disciplinary Policy

3. SUSPENSION REVIEW LETTER

Dear

Suspension Review

Further to my letter of (ADD DATE), I am writing to confirm that your suspension has been reviewed in accordance with the School's Disciplinary Policy and will continue. The terms of your suspension remain unchanged.

(GIVE UPDATE ON PROGRESS) e.g. I have interviewed a number of people as part of my investigation, but still need to see some more people. I expect to be able to do this within

If you have any questions or concerns at any time, please do not hesitate to contact me.

Signed by Manager/Headteacher

4. FACT FINDING MEETING LETTER (Potential witness)

Dear

Fact Finding Meeting

I am undertaking an investigation into concerns that have been raised regarding XXXXXXXXX and would like to meet with you as part of the investigation as a potential witness.

The details of the meeting are as follows:

Date:

Time:

Location:

I will be conducting the meeting and will also have the school's HR Adviser in attendance to advise on the procedure and to take notes; a typed copy of which will be sent to you following the meeting.

You have the right to be accompanied at the meeting by a trade union representative or a work colleague. It is your responsibility to arrange this. I must inform you that you are required to co-operate with management investigations as detailed in your contract of employment. However please be assured that your involvement at this stage is solely as a potential witness. I would also like to advise you that you may be asked to attend a disciplinary hearing as a management witness if so required.

Please ensure that you do not discuss this matter with any staff, pupil, parent or governor at the school or anyone else connected to the school who may need to be interviewed as part of this investigation. If you are in any doubt about this, please ask me or XXXX, School HR Adviser for guidance.

I would be grateful if you could confirm your attendance at the above meeting by XXXX.

Should you have any queries about these arrangements, please don't hesitate to contact me.

Signed by Manager/Headteacher

5. FACT FINDING MEETING LETTER (Employee under investigation)

Dear

Fact Finding Meeting

As previously advised, I am undertaking an investigation into concerns regarding XXXXXXXX. As part of this process you are required to attend a fact finding meeting, arrangements for which are as follows:

Date:

Time:

Location:

I will be conducting the meeting and will also have the school's HR Adviser in attendance to advise on the procedure and to take notes; a typed copy of which will be sent to you following the meeting.

You have the right to be accompanied at the meeting by a trade union representative or a work colleague. It is your responsibility to arrange this. I must inform you that you are required to co-operate with management investigations as detailed in your contract of employment.

Please ensure that you do not discuss this matter with any staff, pupil, parent or governor at the school or anyone else connected to the school who may need to be interviewed as part of this investigation. If you are in any doubt about this, please ask me or XXXX, School HR Adviser for guidance.

You are advised that if you do not attend the fact finding meeting, management will continue to gather information in your absence in order to determine whether or not there will be a need to proceed to a formal disciplinary hearing.

Signed by Manager/Headteacher

6. OUTCOME OF FACT FINDING INVESTIGATION LETTER (no further action)

Dear

Outcome of fact finding investigation

I am writing to inform you that I have now concluded my fact finding investigation and have decided that there is no case to answer. No further action will be taken.

(Add if appropriate) Your suspension is therefore lifted and you should return to work on (ADD DATE) (also include information regarding who the employee should report to and the arrangements for their return)

Signed by Manager/Headteacher

7. OUTCOME OF FACT FINDING INVESTIGATION LETTER (disciplinary action recommended)

Dear

Outcome of fact finding investigation

I am writing to inform you that I have now concluded my fact finding investigation and have decided that there is a disciplinary case to answer.

A disciplinary hearing will be arranged as soon as possible. You will be written to regarding the arrangements for the hearing. The letter will include the specific allegations to be considered. All documentary evidence and the list of any witnesses attending will be sent to you at least 5 working days prior to the hearing.

You are entitled to be accompanied at the hearing by a trade union representative or a work colleague. It is your responsibility to arrange your own representation. If you have a trade union representative, please let me have the name and where they are based and I will ensure that a set of the hearing papers are sent directly to their office.

Should you have any queries regarding this letter, please contact me.

Signed by Manager/Headteacher

8. DISCIPLINARY HEARING INVITE LETTER

Dear

Disciplinary Hearing – ADD DATE

Further to my letter of XXX I am writing to confirm that you are required to attend a disciplinary hearing. The arrangements for the hearing are as follows:

Date:

Time:

Location:

The specific allegation (s) to be considered by the Hearing Officer are as follows:

Allegation 1

Allegation 2

This/these allegations, either individually or collectively, constitute gross misconduct/misconduct (*delete as appropriate*) and if proven could result in your dismissal (*for cases of gross misconduct*)

The disciplinary case will be considered by the Headteacher/Governor Panel and presented by (name of presenting manager), who will be calling the following as witnesses:-

Name and designation
Name and designation
Etc

and will be presenting the following documentary evidence:-

(List and attach all documents to be presented)

An HR adviser will be present to provide procedural advice and a management notetaker will also be present to take confidential notes for the hearing officer/panel.

Please let me have names of any witness(es) who you intend to call and copies of any correspondence you intend to present at the hearing. These should be submitted to XXXX by no later than XXXX (2 full working days before the date of the hearing).

You are entitled to be accompanied by a trade union or a work colleague.. A copy of this letter and document pack has been sent to (*name of TU rep if known*) for information. It is your responsibility to arrange your own representation and ensuring that they attend the hearing. You may also bring a notetaker if you so wish.

(If suspended) You should remain on suspension until the date for the hearing and the terms of my suspension letter sent to you on (date) still apply.

If you do not attend the hearing at the time specified in this letter and fail to give an explanation, which the Hearing Officer/panel considers to be reasonable and acceptable, the hearing may proceed in your absence. If you are not able to attend the hearing you must notify me in writing, stating your reasons and giving as much notice as possible.

Signed by Manager/Headteacher

9. OUTCOME LETTER - no disciplinary penalty

Dear

Disciplinary hearing: [Date]

I am writing to confirm my/our decision following the disciplinary hearing on [Date].

Having considered the evidence submitted, I/we found the allegation (list allegations) not proven.

Therefore, there is no disciplinary penalty arising from the hearing and all information relating to the hearing has been removed from your personal file and destroyed/will be retained on record (depending on the nature of the allegations).

A copy of this letter has been sent to your trade union representative.

Signed by Hearing Officer/Chair of Panel

10. OUTCOME DISCIPLINARY HEARING LETTER - Dismissal

Dear

Re: Disciplinary Hearing held on (date)

I am writing to confirm the outcome of the disciplinary hearing held on (dates)
At the hearing you were represented by (name) who called (names) as witnesses.
Management's case was presented by (name, job title) who called (names, job titles) as witnesses.

The purpose of the hearing was to consider the following allegations
(List allegations as detailed in the invite to hearing letter)

Having considered all the written and oral evidence my findings/the findings of the panel are as follows: *(take each allegation in turn and refer to the evidence heard and the conclusion reached i.e. proven or not proven. Also give findings in relation to any mitigation pleaded and sanction. The HR Adviser can assist with the wording ensuring that all relevant information is included)*

EITHER:

As the allegations against you constitute gross misconduct, I/the Panel am/are recommending to the Executive Director for Children and Young People Services that you should be summarily dismissed from the School/Council's service with immediate effect.

OR: As the allegations against you do not constitute gross misconduct, I/the Panel am/are recommending to the Executive Director for Children and Young People Services that you should be dismissed with notice from the School/Council's service. You are entitled to XX weeks notice based on your service with the school/London Borough of Lewisham. You will not be required to work your notice period and will be paid in lieu of notice. Your last day of service with the school/Council will therefore be XX

(where relevant) I am required to notify (PROFESSIONAL BODY) that you have been dismissed, and will be advising them accordingly.

You have a right of appeal against this decision. If you wish to exercise this right you should write to XXXXX within 10 working days of receipt of this letter clearly setting out the grounds of appeal. In order for the appeal to be considered the grounds of appeal must be related to one or more of the following:

- A procedural flaw (e.g. where you feel the School/Council policy has not been followed)
- The severity of the sanction
- Any other perceived unfairness

You should ensure that all School/Council property in your possession is returned to XXX with whom you can make arrangements to collect any personal possessions you may have at work.

Signed by Hearing Officer/Chair of Panel

Copied to Presenting Manager and TU representative (where relevant)

11. OUTCOME DISCIPLINARY HEARING LETTER – Sanction other than dismissal

Dear

Disciplinary Hearing Outcome

I am writing to confirm my/the Panel's decision following the disciplinary hearing on XX at which you were represented by XXX. The allegations against you were that:

(list allegations as detailed in the invite to hearing letter)

(give decision and reason – if the case is proven confirm the sanction and how long this will be considered to be 'live'. The HR adviser can assist with the wording).

You have a right of appeal against this decision. If you wish to exercise this right you should write to XXXXX within 10 working days of receipt of this letter clearly setting out the grounds of appeal. In order for the appeal to be considered the grounds of appeal must be related to one or more of the following:

- A procedural flaw (e.g. where you feel the School/Council policy has not been followed)
- The severity of the sanction
- Any other perceived unfairness

Signed by Hearing Officer/Chair of Panel

Disciplinary Hearing letters can be adapted for Appeal Hearings

APPENDIX 6

Helpful hints for managers

- Undertaking an investigation
- Drafting allegations
- Preparing for a hearing
- Presenting a case at a hearing
- Chairing a hearing
- Role of HR

Undertaking an investigation

The investigation should involve interviewing all the parties involved. Where necessary, statements should be obtained from witnesses at the earliest opportunity and records kept of what was said. Sometimes it may be necessary to interview members of the public or the police. Exceptions may be made in cases involving minors or vulnerable clients where it may be more appropriate to use a third party such as a teacher or trusted social worker to conduct the interview. For the purposes of the Policy, any child under the age of 16 would be considered a minor and parental consent would be required before a minor could be called to a disciplinary hearing to give evidence. Where consent is not given, a written statement may be submitted instead and any other supporting evidence available.

When undertaking an investigation ensure that any enquiries are not open to subsequent charges of collusion. For example, it is inappropriate to talk to individuals informally about an alleged incident and then send them away to think about it before taking a formal statement. It is also important that witnesses are interviewed separately.

Relevant personal details of the employee(s) under investigation should be gathered, such as their length of service, work experience, any current warnings or any other relevant information.

The purpose of the fact finding meeting is to establish facts. Do not assume anything, or form a judgement until you have interviewed all relevant parties. Do not question to establish guilt; question to establish facts and gather relevant information. Carry out the investigation in a manner that will avoid subsequent charges of collusion.

If an employee is to be interviewed, confirm the meeting arrangements in writing and advise on the right to be accompanied by a trade union representative or a workplace colleague. The representative/workplace colleague may not however answer questions for the employee.

Meeting room arrangements - ensure rooms are accessible for all parties; divert phones and ensure you won't be interrupted; offer regular breaks if the interview is lengthy; have a note taker.

All relevant witnesses or those with relevant information should be interviewed. Do not be selective. Where a witness is not available for an exceptional reason, consideration should be given as to how relevant evidence they could have given could be provided eg from another witness, other documents etc.

Questioning -

- ▶ Ask questions to establish what the interviewee knows. Do not ask leading questions. Let them tell you.
- ▶ Probe and clarify, so that you are clear exactly what they saw, heard, read etc. e.g.
 - "where were you?"
 - "how far away is that?"
 - "what made you think he/she was angry"
 - "is it possible anyone else could have had access to the safe?"

Notes

Note the names and designations of everyone present.

The notes of the meeting should record the questions posed and the responses given. It is best to do this in a question and answer format rather than summarising.

Ask the interviewee at the end of the meeting if there is anything they want to add or tell you.

If any statements taken during a disciplinary investigation are going to be used at a formal hearing, then they should be typed (if possible), signed and dated by the person concerned.

Interviewing Vulnerable Clients

It may be appropriate for pupils/vulnerable clients to be interviewed by a third party such as a teacher, social worker or police officer or possibly together, depending on the nature of the allegation(s).

In these circumstances, liaise where possible with the third party about the questions you would like answered.

You may need to interview the third party instead of the vulnerable client. Check if they have notes, or video transcripts etc which you could have access to.

If you interview pupils/vulnerable clients yourself, think carefully about the arrangements and format of the meeting taking into account the needs of the individual. Be particularly careful not to ask leading questions or make suggestions which may result in responses based on what someone thinks you want to hear, or where they may just agree with what you say.

Remember that some pupils/vulnerable clients may not be able to remember exactly when or where something happened. You may need to form a reasonable judgement based on their recollections but supported by other information e.g. parent/carers, key workers, professionals, client history etc. Do not assume that because a client gets confused or has special needs that something didn't happen - be as thorough as possible in reaching a reasonable decision as to what you think happened.

Conclusion

When you conclude your investigation, ask yourself if you believe something did happen and if you think it did, how serious it is. (seek advice from your school's HR adviser).

What makes you think this? Consider the factors which support your thinking – how could you prove that? e.g. what evidence you have, such as a witness(es) ; documents; photographs etc. Put together your documentation and review how this evidences the decision you have reached. This information will form the basis of the disciplinary pack, if you decide that the case should be dealt with under the formal disciplinary procedure. Alternatively you may decide that the most appropriate way to deal with the case is through informal action. Either way, you need to be sure that you can support your conclusion.

Drafting Allegations

This part of the process is particularly important because, at the hearing, the presenting officer will be limited to presenting evidence relevant to the misconduct alleged in the charges notified to the employee.

Well drafted allegations are vital to ensure that the employee is fully aware of the nature of the charges which he/she will be required to answer at the hearing so that he/she has the opportunity to obtain and present all evidence relevant to his/her defence.

The allegations should set out in detail each and every aspect of misconduct which is alleged against the employee and, where appropriate, refer to the standard which the employee is alleged to have breached, (for example, by referring to the relevant sections of the staff handbook; or to paragraphs in the contract of employment).

The allegations should wherever possible give the dates, times and locations of the alleged misconduct.

Your schools' HR adviser can advise on drafting allegations

Preparing for a Disciplinary Hearing

A disciplinary hearing is not a criminal court of law where you need to prove a case "beyond all reasonable doubt". However, there needs to be sufficient evidence to demonstrate that it is reasonable to believe that the allegations are proven.

Prepare for the hearing carefully and ensure all the facts are available, such as written statements from witnesses and any other evidence necessary for the case.

Write down the case you will be presenting at the hearing. The hearing pack will include all documentation which will have been numbered. Make sure you note the page number of relevant evidence in your case presentation statement so that you can quickly take the Hearing Officer/Governor Panel to any written evidence which supports the case you are making.

Think carefully what questions you need to ask your witnesses so that through their evidence you can highlight the key issues/priorities. You should inform your witnesses that you and other parties at the hearing will ask them questions about the evidence that they gave as part of your investigation. If the employee provides documents for the Hearing that give rise to further questions for your witnesses, you should ask them about the documents and prepare questions to ask the witnesses at the hearing. A hearing is a stressful situation and employees or their representatives may act in a very defensive or confrontational way. Prepare yourself and your witnesses for this.

If this is a complex case or you have not presented a case before, you could ask your manager/your school's HR adviser to run through the case with you. Ask them to act as a critical friend and get them to ask you questions as if they were defending the employee - can you answer them all? Could your witnesses? Is your case as strong as you think?

Consider what your defence would be if you were representing the employee. Are you able to respond to the management case? Your investigation should have considered all eventualities.

If your investigation was thorough and you have all the relevant documentation/witnesses etc you should be able to respond to any questions asked of you at the hearing.

You should receive any evidence that the employee will be relying on at the hearing as early as possible but no later than 2 days before the hearing date. You will need to consider this carefully and be in a position to respond to any of the issues raised by the employee at the hearing.

Prepare questions you would like to ask of the employee and their witnesses. You may not need to ask them in the hearing, but be prepared and add to the list as necessary during the hearing

Presenting a case at the Disciplinary Hearing

Have your case presentation in front of you. Highlight the documents you want to take the Hearing Officer/Governor Panel to (either in highlighter pen, or by using a right hand margin).

Have your witness questions on a separate sheet with any documents you want to take them to highlighted as above. Add to the list as necessary if anything occurs to you while they are giving evidence. Don't ask leading questions.

Remain as calm and reasonable as possible. Try not to respond or let yourself get drawn into reacting. Focus on your case and the facts. Be prepared to adjust your presentation as necessary during the hearing.

In your summary identify the key points against each allegation that you feel make the charges proven. As you go through explain why the employee's response to the allegations is not valid. In the case of any mitigation presented explain why it is or is not relevant in this case.

If the case may result in dismissal, make sure your presentation has highlighted why you consider that the person's conduct should result in dismissal, e.g. the trust and confidence the school/Council/public need to have; impact on colleagues; service; pupils/parents; image; reputation, etc. You need to make it really clear in your summary why this conduct is so unacceptable.

The employee may admit the allegations at the hearing. You will not therefore need to present the case in the same way, or need to call witnesses. However you will still need to present the key facts of the case, why you feel the actions are serious, and if it is a gross misconduct case, why you think the sanction should be dismissal. You therefore need to be prepared for this possibility.

Some presentation " tips "

- ▶ Know the facts
- ▶ Be prepared
- ▶ Avoid confrontation
- ▶ Summarise
- ▶ Be concise
- ▶ Only answer the question that is asked
- ▶ Request an adjournment if necessary
- ▶ Speak clearly and use notes if necessary

The Role of the Hearing Officer/Governor Panel at the Disciplinary Hearing

The Hearing Officer/Governor Panel will conduct the disciplinary hearing supported by a HR Adviser. A note taker should also attend on behalf of the Hearing Officer/Governor Panel in order to provide them with notes of the hearing.

The role of the Hearing Officer/Governor Panel in a disciplinary hearing includes:

- ▶ Defining the purpose of the hearing
- ▶ Ensuring the efficient conduct of the hearing
- ▶ Controlling the discussion / presentation
- ▶ Responding to problems - either with individuals or technical issues (with HR)

advice and support)

- ▶ Ensuring the proper outcome of the hearing
- ▶ Ensuring appropriate follow up action is taken - e.g. notification of the outcome
- ▶ Ensuring a fair hearing for all parties to the case

It is crucial that the Hearing Officer/Governor Panel:

- ▶ is familiar with the formal rules and procedures concerning conduct and disciplinary action and is familiar with all the documentary evidence provided in advance of the hearing
- ▶ makes sure that all the procedures are correctly applied

Before arriving at a decision, consider the following key issues:-

- ▶ Has there been as much investigation as is reasonable in the circumstances?
- ▶ Have I/we paid sufficient regard to any explanation put forward on behalf of the employee?
- ▶ Do I/we genuinely believe that the employee has committed the misconduct as alleged?
- ▶ Have I/we reasonable grounds to support this belief on the balance of probabilities i.e. is it more or less likely that the employee did what is alleged?

If the answer to each of these is YES, the next two questions are relevant

- ▶ Is the misconduct sufficiently serious to justify the disciplinary action I/we am/are contemplating?
- ▶ Have I/we had regard to any mitigating circumstances put forward by the employee or on the employee's behalf.

Role of Schools' Human Resources

HR will ensure that the disciplinary policies and procedures are implemented fairly and consistently across schools within the Council, through monitoring, and providing advice and support to managers/Headteachers and governors including:

- ▶ Attendance at management investigations including taking notes on behalf of the investigating officer
- ▶ Advising on a decision to suspend an employee
- ▶ Advising on taking formal disciplinary action, including advice on complex cases, formulating allegations, disciplinary hearing case documentation and arranging appointment of hearing officers
- ▶ Ensuring that the investigating/hearing officers/appeal hearing officers/governor panels are fully aware of the legal and any other sensitive aspects of a case
- ▶ Advising at disciplinary hearings and/or disciplinary appeal hearings
- ▶ Advising on outcome letters
- ▶ Advice on interpretation of school/council policy
- ▶ Monitoring suspensions and progress on disciplinary investigations/hearings to ensure that the process is completed as quickly as possible.

The role of the HR Adviser at investigations and disciplinary/appeals hearings is primarily to advise on procedural matters. The HR Adviser may also ask questions in order to seek clarification of points for the Hearing Officer/Governor Panel.

