



Disciplinary Procedure For Academy Based Staff

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DISCIPLINARY PROCEDURE FOR THE ACADEMY BASED STAFF

1 INTRODUCTION

- 1.1 This disciplinary procedure applies to all staff appointed by The Rodillian Multi Academy Trust.

2 GENERAL PRINCIPLES

- 2.1 This procedure was originally drawn up by Leeds City Council HR in Collective Agreement with recognised trade unions to comply with the ACAS Code of Practice "Disciplinary Practice and Procedures in Employment", and the ACAS advisory handbook "Discipline at Work" 1987 which complements the existing ACAS Code of Practice. It is intended to provide a system which can deal speedily with disciplinary matters whilst ensuring that the principles of natural justice are preserved. The policy and procedure has since been amended to omit the reference to LCC HR to that of the Trust HR where appropriate.
- 2.2 The procedure also complies with DfE Keeping Children Safe in Education Part Four on how to manage child protection allegations against staff.

2.3 TRADE UNION OFFICIALS

Note should be made of the position of trade union officers since the ACAS Code of Practice requires that no formal action should be taken in respect of the conduct of such an officer until the circumstances of the case have been discussed with a senior trade union representative or full time official.

3 MANAGEMENT OF STAFF

- 3.1 All staff (except the Executive Headteacher/Head of School)

- 3.1.1 The day to day supervision of staff is part of the normal managerial process. In most cases the supervisor is the Head of School. It is important therefore that the immediate supervisor clarifies with employees the duties to be performed and the standards expected. On receipt of a complaint, the Executive Headteacher/Head of School should first assess if the possible disciplinary matter can be dealt with informally. If this is done there is likely to be less recourse to the formal procedures.

- 3.2 Executive Headteacher/Head of School

- 3.2.1 Where a matter of concern involves the Executive Headteacher/Head of School it is for the governing body to determine who would be the most appropriate person to deal with the matter, e.g.:

- a member of the governing body such as the Chair or Vice Chair. However it should be noted that this may prevent that governor from taking part in any subsequent disciplinary procedure if the matter resulted in a disciplinary hearing;

- the Director of HR for the academy;
- some other qualified person such as another Executive Headteacher/ Head of School could act as a counsellor. Once it has been decided who should carry out the counselling a meeting should be called in line with Paragraph 4.

3.2.2 That person would be deemed to be the nominated person. (See **Appendix 1**)

4 COUNSELLING

- 4.1 If an immediate superior has a concern about an employee's standards of conduct, it should be brought to the attention of the employee at the earliest possible opportunity. Where such a meeting takes place, the supervisor /nominated person should explain at the meeting to the employee the area(s) of concern and give the employee the opportunity to respond.
- 4.2 It is important that the supervisor/nominated person tries to establish if there are any mitigating circumstances that may have contributed to the employee's conduct. The supervisor/nominated person should deal sympathetically with the employee but at the same time ensure that the employee is in no doubt as to the conduct required.
- 4.3 This form of counselling is considered as being outside the formal disciplinary procedures but clearly a supervisor would wish to consider the extent of such counselling before invoking formal procedures.
- 4.4. All Staff (except the Executive Headteacher/Head of School)
Where the Executive Headteacher/Head of School has assessed that the matter cannot be dealt with informally he/she will initiate and administer the disciplinary procedure.
- 4.5. Executive Headteacher/Head of School
Where the nominated person has assessed that the matter cannot be dealt with informally he/she will inform the governing body who will initiate and administer the disciplinary procedure.

5 ALLEGATIONS OF PHYSICAL/SEXUAL ABUSE

- 5.1 In some cases it may be appropriate to involve the police, particularly in cases involving alleged child abuse. It may also be appropriate where an alleged criminal act has taken place. Advice on these matters should be sought from the Director of HR and the LADO as appropriate.
- 5.2 Where an allegation of this nature has been received against a member of staff, refer to the guidelines and procedure outlined in **Appendix 6 Staff Facing an Allegation of Physical/Sexual Abuse.**

6 STAGES OF THE FORMAL PROCEDURE

- 6.1 The circumstances of the possible disciplinary matter should be examined by an Investigating Officer, (**See Appendix 1**) who should be a person with no involvement whatsoever in the matter under investigation.
- 6.2 This person, to be nominated by the Executive Headteacher/Head of School, should, wherever possible, be a senior member of the academy's staff. The Executive Headteacher/Head of School should not be the Investigating Officer, unless there are exceptional circumstances as explained in Appendix 1 paragraph 3.
- 6.3 His/her brief will be to establish the facts of the case. All investigations will be undertaken in the strictest confidence.
- 6.4 As part of the investigation a meeting should be arranged with the employee as soon as possible who will have been advised beforehand that he/she may be accompanied by a trade union representative or any other person of his/her choice.
- 6.5 At the meeting, the Investigating Officer should present the allegation(s) to the employee who should be invited to respond in full and to any other information submitted by the Investigating Officer.
- 6.6 In some cases, particularly those of a complex nature, the employee may require an adjournment to consult his/her representative. This may be of a short nature or it may be necessary for the meeting to be re-arranged to allow the employee time to consider his/her response.
- 6.7 In some circumstances it may be necessary to re-interview the employee or witness in seeking to establish the facts.
- 6.8 The investigation should be conducted as soon as possible. If it is not completed within ten working days, the employee will be informed why the investigation is not complete and given regular information as to how the investigation is progressing.
- 6.9 When the investigation is complete the Investigating Officer will determine the appropriate action and a written report should be prepared on the facts of the case which will include a list of every individual who has been interviewed, together with records of interviews, and any other evidence. These will be made available to all parties should a disciplinary hearing ensue.
- 6.10 The Investigating Officer in consultation with a member of the Trust Human Resources Team should decide and advise the employee accordingly that he/she intends to:
 - a) take no further action under the disciplinary procedure;
 - b) convene a disciplinary hearing before the Executive Headteacher in cases of alleged misconduct;

- c) refer to the Governors Disciplinary Sub-Committee in the following cases:
- i. Cases of alleged gross misconduct
 - ii. Cases of cumulative misconduct
 - iii. Where the Executive Headteacher cannot hear the case because he has prior knowledge of the case or has acted as investigating officer or is required as a witness (**see Appendix 1 - Nomination of Investigating Officer**).
 - iv. Where the subject of the investigation is the Executive Headteacher whether the case is misconduct, cumulative misconduct or gross misconduct.
- 6.11 In some cases it may be appropriate to meet the employee to discuss the outcome. The employee may be accompanied or represented by a trade union representative or any other person of his/her choice.
- 6.12 In all cases, after the investigative process has been completed and the Investigating Officer has consulted with the appropriate Human Resources Officer from the Trust, the member of staff must be informed immediately in writing of the decision taken by the Investigating Officer.
- 6.13 If the employee has been suspended and it is not intended to proceed with any form of disciplinary action, the suspension should be lifted immediately by the Executive Headteacher/Head of School/Governing Body. The Executive Headteacher/Head of School/Chair of Governors should meet the member of staff to discuss the member of staff's return to work.
- 6.14 In the event of no further action being taken, no record of the interview will be kept on the member of staff's file.
- 6.15 Other than in the event of dismissal, the Executive Headteacher/Head of School/nominated person should ensure the opportunity for informal counselling. This could be used to give appropriate guidance, support and reassurance and to help rebuild, where necessary a member of staff's confidence. There may also be a need for specific guidance and sympathetic consideration may need to be given to other employment options, in consultation with the Trust HR team.
- 6.16 If disciplinary action is to be taken, the Investigating Officer's report will be made available to all parties

APPENDIX 1

THE INVESTIGATING OFFICER

1 Nominating the Investigating Officer

1.1 All staff (except the Executive Headteacher/Head of School)

1.1.1 When the Executive Headteacher/Head of School becomes aware of a potential disciplinary matter he/she should nominate an investigating officer bearing in mind the following points:

- 1 He/she should be a person with no involvement whatsoever in the matter under investigation
- 2 The person nominated should wherever possible be a senior member of the academy staff. This should normally not be the Executive Headteacher/Head of School. The Deputy Executive Headteacher/Head of School would normally carry out this role or possibly the next most senior member of staff.
- 3 In certain exceptional cases the Executive Headteacher/Head of School/Director of HR may choose to act as Investigating Officer. It is recommended that the Executive Headteacher/Head of School fulfils the role only in those cases where:
 - a) a senior member of staff is the subject of the investigation.
 - b) the head of school/deputy head and/or other senior member of staff may be called as a witness.
 - c) where there is no senior member of staff available who does not have detailed prior knowledge of the case.
- 4 Where in exceptional cases the Executive Headteacher/Head of School and the other senior staff can not act as Investigating Officer. The academy's HR team may provide an Investigating Officer if requested by the academy to do so.
- 5 Where the subject of the investigation involves a member of staff written instruction to undertake the investigation should be issued by the Executive Headteacher/Head of School to the Investigating Officer.

1.1.2 In arriving at the decision as to who to nominate as Investigating Officer, the Executive Headteacher/Head of School is reminded that it is a fundamental principle that disciplinary matters are dealt with at the lowest level possible, appropriate to the disciplinary matter under investigation.

1.1.3 The Executive Headteacher/Head of School should consider the appropriateness of presenting a case to the governing body which is, in disciplinary terms, of relatively minor importance. In such cases therefore the Executive Headteacher/Head of School may wish to consider using another individual to carry out the investigation, for example an officer from the academy's HR team.

1.2 Executive Headteacher/Head of School

1.2.1 The governing body/staffing sub committee should determine who should act as Investigating Officer e.g. a member of the governing body or a member of the academy's HR team.

1.2.2 A written instruction to undertake the investigation should be issued by the governing body/staffing sub committee to the investigating officer.

1.3 Role of the Investigating Officer

1.3.1 The Investigating Officer's brief is to establish the facts of the case by gathering information. Before commencing an investigation, advice and guidance should be sought from a member of the academy's HR team on how to conduct an investigation.

1.3.2 The Investigating Officer will inform the employee in writing that they are under investigation indicating that a meeting will be arranged after information has been gathered at which the employee will be given the opportunity to respond.

1.3.3 If the matter under investigation involves an allegation(s) of physical/sexual abuse and the Police or child protection agencies are involved then the academy's investigation may have to be held in abeyance until the external investigation has been completed. Advice on whether to proceed should be sought from a member of the academy's HR team.

1.3.4 The evidence to be collected may be in the form of:

- receiving written accounts from witnesses which are signed and dated or by conducting interviews with anyone who may have knowledge of the case which is recorded in the form of Question and Answer but is not necessarily verbatim and should, wherever possible, be verified by the person who has been interviewed;
- obtaining any other relevant documents e.g. guidelines and procedures, conditions of service.

1.3.5 The whole process of the investigation should be undertaken in the strictest confidence.

APPENDIX 2

1 SUSPENSION

- 1.1 It may be appropriate, in some cases for the Executive Headteacher, to suspend the employee to enable investigations to take place. Where the subject of the investigation is the head teacher the Governing Body/Staffing Sub Committee will decide whether it is appropriate to suspend to enable investigations to take place.
- 1.2 In all cases where suspension is being considered, the Head of School/nominated person must contact the Executive Headteacher who will make this decision in consultation with the Director of HR. The member of staff should be advised to seek assistance from his/her Trade Union.
- 1.3 Suspension is a very serious matter and the decision to suspend should not be taken lightly. In some cases it may be appropriate to grant paid leave of absence to a member of staff in order that preliminary investigations can take place to establish whether formal suspension is appropriate. Permission for leave of absence must be sought from the academy's HR team. Leave of absence should not normally exceed three working days.
- 1.4 Where the suspension of a member of staff is being considered an interview should take place as soon as possible.
- 1.5 The Executive Headteacher/Head of School/nominated governor should ensure that an interview takes place. In cases of alleged child abuse, the Executive Headteacher/Head of School must take advice from the academy's HR team must consult with the Local Authority Designated Officer (LADO) as described in **Appendix 6 2.3** (Where the member of staff, including the Executive Headteacher/Head of School, is a trade union or safety representative, refer to **Appendix 7** Guidance Notes 3.2. From the outset it should be established that the action being taken is not an attack on the functions of a trade union.)
- 1.6 Suspension should not be undertaken without good reason, circumstances in which suspension properly occurs include:
 - a) where there are sound reasons to believe that students and/or staff and/or property are at risk;
 - b) where it is believed that the continued presence of the employee might prejudice enquiries or influence witnesses.
 - c) where the allegations are so serious that dismissal for gross misconduct is possible.
- 1.7 The Director of HR must be consulted in all cases before a decision to suspend is taken.

- 1.8 Where the Police are involved in a criminal investigation, any interview arranged, where suspension of a member of staff is considered, should not be conducted without prior consultation with the police officer in charge of the case. Where there is no police involvement an interview should be arranged in accordance with the following procedures.
- 1.9 A member of staff called to an interview where a recommendation to suspend is a possible outcome should be advised by the Executive Headteacher/Head of School/nominated governor to seek the advice and assistance of his or her trade union/professional organisation. Another person of his/her choice may assist a member of staff who is not a member of a trade union/professional organisation.
- 1.10 The member of staff should be informed at the outset of the interview that an allegation has been made and that, at the conclusion of the interview, suspension might occur. The member of staff where accompanied, should be offered the opportunity of a brief meeting with their representative before the interview. It should be made clear, however, that the interview is not a formal disciplinary hearing but is for the purpose of putting forward a serious matter which may lead to a recommendation to suspend and further investigation.
- 1.11 The member of staff should be given as much information, including reasons for any proposed suspension, as is consistent with not interfering with an investigation about the allegation. The member of staff should be given an opportunity to make representations concerning the suspension. A brief adjournment should be offered to the member of staff prior to response.
- 1.12 Where a decision to suspend has been taken, the employee will be advised of this verbally by the Executive Headteacher/Head of School and will receive written confirmation and reasons for the suspension by first class post, which will be despatched within one working day. The Executive Headteacher/Head of School will also notify the Governing Body and appropriate HR Officer of the academy's HR team. Where a decision to suspend the Executive Headteacher/Head of School has been taken, he/she will be advised of this verbally by the Chair of Governors and will receive written confirmation by first class post which will be despatched within one working day. The Chair will also notify the academy's HR team.
- 1.13 Suspension will be on full pay without prejudice to the outcome of the investigation
- 1.14 The Executive Headteacher/Head of School should be conscious of the need to expedite matters as quickly as possible with a view to calling a hearing within one month of the date of suspension. If a hearing is not called in that time, the Executive Headteacher/Head of School will write to all parties concerned to inform them of the current position and set a date by which a further communication will be sent, or the hearing held. i.e. the complainant, the employee and their trade union or other representative. Where the Executive

Headteacher/Head of School has been suspended this should be carried out by the nominated person.

- 1.15 Where there has been a decision to suspend, the Executive Headteacher/Head of School should inform the member of staff formally in writing within one working day giving reasons for the suspension. The Executive Headteacher/Head of School should report to the governing body and to the Director of HR of the MAT that the member of staff has been suspended pending investigation.
- 1.16 Where the Chair of Governors decides to suspend the Executive Headteacher/Head of School the matter should be reported to the Governing body and the Director of HR of the MAT that the Executive Headteacher/Head of School has been suspended pending investigation. The implications for the continued management of the academy need to be considered at this stage by the governing body including the arrangements for an Acting Executive Headteacher/Head of School. Until the Governing Body have met it is expected the Deputy Executive Headteacher/Head of School would act up unless the governing body wish to make alternative arrangements. It is inadvisable to provide more than the minimum information necessary to the Governing Body, as more than this would prejudice governors' impartiality in any subsequent hearing or appeal in disciplinary proceedings.
- 1.17 In the case of an allegation of physical/sexual abuse the student or parent making the allegation should be confidentially informed of the suspension. Where the student making the allegation is under 18, his or her parents should normally be informed in confidence in so far as to do so is consistent with wider child protection considerations.
- 1.18 All senior teachers in the academy who need to know of the reason for the suspension should be informed so far as is necessary in the particular circumstances. All other staff should then be informed of the suspension. The Executive Headteacher should consider the extent to which it is necessary to make a statement to parents of children in the academy, having considered the need to avoid unwelcome publicity. In the case of the suspension of the Executive Headteacher/Head of School, the acting Executive Headteacher/Head of School and Governing Body should consider the extent to which it is necessary to make a statement to parents of children in the academy, having considered the need to avoid unwelcome publicity.
- 1.19 In certain circumstances, it may be necessary for the Executive Headteacher/Head of School or in the case of the suspension of the Executive Headteacher/Head of School, the Executive Headteacher/Acting Executive Headteacher/Head of School (in consultation with the nominated governor) to provide immediate reassurance to parents and children in the academy and there may be a need for information to continue to be provided during the course of an investigation to parents, children and other colleagues.

- 1.20 It is recommended that guidance should be sought from the Director of HR of the MAT in the first instance before any information is released into the public domain.
- 1.21 The Executive Head teacher /Head of School/nominated governor should consider carefully, and keep under review, decisions as to who is informed of the suspension and investigation and to what extent confidentiality can or should be maintained according to the circumstances of a particular case. In a situation where a matter becomes common knowledge or the subject of general gossip, it may be desirable to provide an accurate statement for public information. The Executive Headteacher/Head of School/nominated governor should take advice from the Director of HR of the MAT on this matter as necessary.

2 Support for the Member of Staff during the Period of Suspension

- 2.1 The suspended member of staff should be given the contact details of the academy's HR Team as an information contact. HR can provide factual/procedural information as to the progress of the investigation. Social contact with the member of staff's colleagues and friends at the academy should not be precluded except where it is likely to be prejudicial to the gathering and presentation of evidence.
- 2.2 Although it is the aim that all investigations should be conducted as speedily as possible consistent with establishing the full facts, arrangements should be made for the member of staff, or his or her representative, to be contacted regularly with information on progress and developments on the case. These arrangements should not preclude the member of staff or his or her representative, contacting those conducting the investigation at any time.
- 2.3 A member of staff should be designated to ensure contact is maintained with the member of staff to receive information about developments at the academy in general, according to the needs and wishes of the member of staff to be kept informed. In the case of a member of staff being suspended this could be another member of staff or in the case of Executive Headteacher/Head of School, a member of Leadership within another academy within the MAT.
- 2.4 In some cases, it may be appropriate to ask the member of staff whether welfare counselling or the support of the Occupational Health Service would be helpful, or to respond to a request of the member of staff for such further support.

3 Where No Action Is Taken To Suspend

- 3.1 The Executive Headteacher/Head of School/nominated governor should explain to the member of staff the circumstances that led to consideration of suspension and further explain any follow-up action that it is proposed to take. A trade union/professional organisation or person of their choice may accompany a member of staff. According to the circumstance of the case,

appropriate assistance or advice may be offered to the member of staff. According to circumstances appropriate counselling services should be considered.

- 3.2 If a member of staff has not been suspended but the Executive Headteacher/Head of School/nominated governor, in consultation with the Director of HR of the MAT, and the chair of governors, if not the nominated governor, nonetheless has concerns about aspects of a member of staff's conduct, a full investigation should be undertaken before making a decision about further action under the academy's disciplinary procedures.

UNDER REVIEW

APPENDIX 3

DISCIPLINARY HEARING

1 Notification of a disciplinary hearing

- 1.1 The Investigating Officer with support from the MAT HR team, will be responsible for the administrative arrangements for the hearing he/she will advise the employee verbally of the decision to conduct a disciplinary hearing, and confirm this in writing within three working days. The employee will be given at least seven clear working days notice, in writing, of the arrangements for the hearing, but not more than 20 working days under normal circumstances.
- 1.2 In arranging such a hearing, the investigating officer should be conscious of the need of the employee and of his/her representative to be given adequate time to prepare the case, and of the representative's commitments he/she will arrange a date for the hearing, and agree with the Executive Headteacher/Head of School/Governing Body who is to present the case, whether it be the investigating officer or in exceptional circumstances another senior member of the academy's staff or a member of the academy's HR team.
- 1.3 The letter inviting the employee to the hearing must state the nature of the allegations and if they involve documents that will be used in evidence; these should be dispatched to the employee with the letter. A copy of the investigating officer's report must also be made available to all parties. The employee must be advised that if she/he wishes to produce any document in evidence or references/ testimonials, then these should be forwarded to the investigating officer at least three working days in advance of the hearing. The employee must also be advised that she/he has the right to be represented by a trade union official or other person. If witnesses are to be called by either party, their names and status must be made available at the same time as any documentary evidence.

2 Disciplinary hearing before the Executive Headteacher

- 2.1 **The Hearing.** The disciplinary hearing should be conducted by the Executive Headteacher in the manner described in **Appendix 5**.
- 2.2 **Disciplinary action available to the Executive Headteacher/ Executive Headteacher/Head of School.**
(See Appendix 7 Guidance Notes, Paragraph 2, which indicates the factors that should be taken into account when deciding what action is appropriate)

Following a disciplinary hearing the Executive Headteacher may:

- take no action;
- issue a verbal warning;
- issue a formal written warning to the employee;
- issue a final written warning to the employee.

2.3 Implementing the action

The Executive Headteacher wherever possible should advise the employee verbally and confirm his/her decision in writing not later than three working days after the hearing. The written notification should:

- state the precise nature of the misconduct;
- specify the disciplinary action being taken;
- state, if appropriate, the period of time given for improvement which is expected;
- indicate the likely consequences of further misconduct;
- inform the employee of his/her right to appeal within ten working days of receiving the written decision of the Executive Headteacher and state to whom the appeal should be made.

2.3 If a verbal warning has been issued this should be made clear to the employee. The Executive Headteacher will make a note that the warning was issued and this will be initialled by the employee to acknowledge recognition of the fact. At the same time, the employee will be informed of his/her right to appeal within ten days of receiving the verbal warning.

2.4 In the event of no further actions being taken then all record of the disciplinary hearing shall be removed from the member of staff's file.

3 Disciplinary hearing before a governing body

3.1 The Clerk to the Governors will arrange a hearing by the Governors' Disciplinary Sub-Committee and will be responsible for all the necessary administration. The Clerk to the Governing Body will follow the procedures described in Paragraph 1 above. The hearing will be conducted in accordance with the procedures outlined in Appendix 5, Paragraph 2.0. Advice from the academy's HR Team, will be available to the Governing Body at all stages.

3.2 The member of staff and/ or his/her representative must be informed of the date of the hearing and has the right to be present.

3.3 Disciplinary action available to the governing body

(See Appendix 7 Guidance Notes, Paragraph 2 which indicates the factors that should be taken into account when deciding what action is appropriate.)

Following the disciplinary hearing, the Governors' Disciplinary Sub-Committee may:

- take no action;
- issue a verbal warning (The procedures outlined in paragraph 3.4 should be followed);
- issue a formal written warning to the employee;
- issue a final written warning to the employee;

- notify the academy's payroll provider of their determination that an employee should cease to work at the academy. N.B. Where an employee appeals in accordance with Paragraph 7, the Governor's Disciplinary Sub-Committee will await the practical outcome of the appeal before notifying the academy's payroll provider of their determination;
- if the person is employed to work solely at the academy, the payroll provider shall, before the end of the period of 14 days beginning with the date on which notification is given, either:
 - give the employee such notice terminating his contract of employment with the authority as is required under that contract, or
 - in cases of gross misconduct terminate that contract without notice.

4 Implementing the action

4.1 Wherever possible the Governing body will convey their decision verbally and the Clerk to the Governors will advise the employee in writing of the Governing Body's decision, not later than three working days after the hearing. The written notification should:

- state the precise nature of the misconduct;
- specify the disciplinary action being taken;
- state, if appropriate, the period of time given for improvement which is expected;
- indicate the likely consequences of further misconduct;
- inform the employee of his/her right to appeal within ten working days of receiving the written decision of the Governing Body;
- state to whom the appeal should be made.

4.2 Where a decision has been taken to recommend dismissal of an employee, and the Governing Body is satisfied that dismissal is justified, the Governing Body may consider, in consultation with the employee, whether a transfer to an alternative post or job, at the same or lower grade within the academy, could properly be offered as an alternative to dismissal.

4.3 In the event of no further actions being taken then all record of the disciplinary hearing will be removed from the member of staff's file.

APPENDIX 4

APPEALS AGAINST DISCIPLINARY ACTION

- 1 Employees have the right of appeal against disciplinary action. The appeal hearing should constitute a complete rehearing of the case (see Appendix C Guidance Notes, 14). In cases where there were multiple allegations at the Disciplinary Hearing, and some were dismissed and some found proven, the Appeals Panel will rehear only those allegations that were found proven.
- 2 A panel composed of three members of the Governing Body will hear an appeal against a Executive Headteacher's action.
- 3 The appeal should be made in writing to the Clerk to the Governors, within ten working days of receipt of the written decision of the Executive Headteacher.
- 4 A different panel of the same Governing Body will hear an appeal against action taken by a disciplinary panel of the Governing Body. The number of Governors shall be the same for both panels. The appeal should be made, in writing, to the Clerk to the Governors within ten working days of receipt of the written decision of the Governing Body
- 5 The Executive Head teacher or Chair of the original Panel, as appropriate may be invited by either side to attend the appeal hearing as a witness.

6 Action available to an appeals body

The Appeals Body may decide to:

- confirm the original decision, or;
- uphold the appeal, or;
- substitute a lesser penalty.

7 Notification of decisions made by appeals body

Wherever possible the Appeals Body will convey their decision verbally and the Clerk to the Governors will be responsible for conveying their decision in writing to the employee. These decisions will be conveyed in writing within three working days.

8 Record of warnings

- 8.1 A copy of the warning will be held on the personal file of the employee concerned for:

- Verbal warning - 3 months
- Written warning - 6 months
- Final written warning - 12 months

- 8.2 Warnings will cease to be 'live' following the specified period of satisfactory conduct and will not be referred to for future disciplinary purposes.
- 8.3 In cases of gross misconduct where a final warning has been issued, and in the opinion of the Executive Headteacher or Governors Disciplinary Panel, the misconduct is so serious that it cannot be disregarded for future disciplinary or managerial purposes, then the final warning shall remain live, and the employee shall be so advised. This facility shall only apply where the welfare, safety of a client, member of the public or fellow member of staff might be placed at risk. In such cases the employee may appeal to the Appeals Panel against the warning and/or against the decision for the warning to remain live.
- 8.4 If an employee is dismissed or resigns before the disciplinary process is completed in circumstances where they would have been considered for dismissal, the Executive Headteacher/Head of School/nominated person must inform the member of staff about the employers' statutory duty to report the case to the Department for Education and the Disclosure and Barring Service. **The Director of HR for the MAT will make this referral.**

UNDER REVIEW

APPENDIX 5

CONDUCT OF DISCIPLINARY HEARINGS

1 DISCIPLINARY HEARING BEFORE THE EXECUTIVE HEADTEACHER

- 1.1 The investigating officer will invite the employee to a hearing at which the Executive Headteacher will examine the facts of the alleged misconduct. The employee will be given at least **7 clear working days notice in writing** of the arrangements, **but not more than 20 working days**. The letter inviting the employee to the hearing will contain a statement of the alleged misconduct, will give the names and status of any witnesses to be called and will be accompanied by copies of any document(s) which will be produced at the hearing.
- 1.2 The employee will be informed of his/her rights to be accompanied by trade union or other representatives, to produce documents in his/her own support and/or call witnesses. He/she should provide copies of any documents he/she intends to produce at least **3 days in advance** of the hearing. Should this prove impossible, full consideration will be given to documents produced at the hearing.
- 1.3 At the outset, the Executive Headteacher should satisfy himself that the disciplinary procedures have been correctly followed in the stages leading up to the hearing. The Executive Headteacher should have regard for the nature of the case and, with the agreement of all parties, should decide the degree of formality that is required for the hearing.
- 1.4 Where the evidence is accepted the parties can propose to the Executive Headteacher that the case be heard in a less formal way. This should be agreed between both parties once the letter inviting the employee to the hearing has been sent out. In some cases the hearing should take the form of an interview by the Executive Headteacher during which both the Executive Headteacher and the employee concerned will be able to examine and question all the information submitted.
- 1.5 In some cases, which involve the examination of detailed evidence, or at the employee's request, the academy's case will be presented by an officer nominated by the Executive Headteacher/ Head of School and in that event the same order for conducting the hearing as set out at para 2.4 below will be followed. The Executive Headteacher should have regard for the nature of the case and, with the agreement of all parties, should decide the degree of formality that is required for the hearing.
- 1.6 Following the hearing the Executive Headteacher wherever possible will convey his/her decision verbally and confirm the decision in writing to the employee not later than three working days after the hearing. This letter should advise the employee of his/her right to appeal against the decision to the Governors' Disciplinary Sub-Committee and indicate the procedure to be followed.

2 DISCIPLINARY HEARING BEFORE A GOVERNORS DISCIPLINARY SUB-COMMITTEE

- 2.1 Three members of the Governing Body will form the Governors Disciplinary Sub-Committee.
- 2.2 The Clerk to the Governors will arrange the hearing, notifying the employee in writing at least 7 clear working days in advance of the hearing, but not more than 20 working days. The employee will be provided with a written statement of the alleged misconduct, together with the names and status of any witnesses to be called and copies of any document(s) to be produced at the hearing.
- 2.3 The employee will be informed of his/her right to be accompanied by trade union or other representatives, to produce documents in his/her own support and/or call witnesses. He/she should provide copies of any documents he/she intends to produce at least three days in advance of the hearing. Should this prove impossible, full consideration will be given to documents produced at the hearing.
- 2.4 At the outset, only the Governors' Disciplinary Sub Committee and the Chief Executive or his/her representative advising the Governing Body will be in the room. The Governing Body may also arrange for someone to take notes at the hearing, or alternatively, the hearing will be digitally recorded by a member of the academy's HR team.
- 2.5 At the outset, the Chair should satisfy himself/herself that the disciplinary procedures have been correctly followed in the stages leading up to the hearing. The Chair will invite the parties representing the employee and the academy to enter the room where the hearing is being conducted and all witnesses will remain outside the room until they are called. Each person will be introduced by name and the employee informed of the purpose of the hearing. The procedure intended to be followed will be outlined. The Chair will also ask whether there is any additional written evidence or documentation to be submitted to the hearing or any new witnesses to be called and where this is so, will, at the request of either party, adjourn the hearing for this to be considered. When the hearing is resumed, either party may request a longer adjournment or a rearranged date for the hearing. In cases where an employee is facing an allegation of racial or sexual harassment or discrimination, the order of proceedings will be augmented at appropriate stages by the provisions set out at paragraph 5.
- 2.6 Where there is more than one representative attending for the employee and/or the academy only one can take part in the hearing, as the principal representative.
- 2.7 At this stage any witnesses who are present to give evidence should wait outside until called. The Chair should ensure that everyone is introduced by name and should explain the procedure that is to be followed.

- 2.8 The Chair will invite the academy's representative to present the academy's case, during which the academy's representative may produce documents, and put questions to the academy's witnesses. At the conclusion of each witness statement, the employee or his/her representative may question the witness, but not by both. The academy's representative may then re-examine the witness but only on matters arising out of the questions put. If the Investigating Officer presents the academy's case, he/she may be questioned, but only on points of procedure.
- 2.9 The Governing Body may then put questions to the witness and the Clerk to the Governors may, through the Chair, seek to clarify points made in evidence.
- 2.10 At the conclusion of the academy's case, the Chair will invite the employee or his/her representative to present his/her case. The same procedure will be followed as for the academy's case.
- 2.11 At the conclusion of the employee's case the Chair will offer both sides a short adjournment before the concluding statements.
- 2.12 The Chair will invite the academy's representative to make a concluding statement and will invite the employee or his/her representative to make a concluding statement. No new evidence should be introduced at this stage.
- 2.13 After hearing the case for both sides, the Governing Body will ask the parties to leave, the only person remaining being the Governing Body's adviser, and note taker, if such a person has been present.
- 2.14 The Governing Body should seek the guidance of officers attending to advise on matters of law and procedure but not on matters of fact. The Governing Body may recall the parties on points of clarification. However, on these occasions, care should be taken to ensure that both parties are recalled even though the Governing Body may only wish to raise points with one side.
- 2.15 Wherever possible the decision of the Governing Body will be conveyed verbally and confirmed in writing to the employee not later than three working days after the hearing, and will advise the employee of his/her right of appeal to the Appeals Panel of the Governing Body.

3 APPEAL HEARING BEFORE GOVERNORS' DISCIPLINARY SUB-COMMITTEE

- 3.1 The employee will need to advise the Governing Body in writing of his/her intention to appeal within ten working days of receiving the written decision of the Executive Headteacher.
- 3.2 The appellant and his/her representative shall, in conjunction with the person presenting the academy's case, seek to agree any documentation to be submitted at the appeal hearing, taking particular care to ensure that the notes

of the previous hearing are an accurate record. The notes of the hearing should be agreed and signed by both parties prior to the Appeal Hearing and any areas of disagreement should be noted. Where agreement cannot be reached, both versions should be provided. A schedule, together with copies of all relevant documents, should be provided at least five working days in advance of the appeal hearing. Both parties should provide names and status of any witnesses to be called at the same time. In circumstances where the original allegations are not to be heard in their entirety, the Appeals Panel shall have before them the complete written findings of the Disciplinary Hearing and those documents presented to the original hearing that both the appellant and the academy agree are relevant to the matters under appeal. In the event that there is failure to agree, relevance shall be determined by the Panel at the start of the Appeal Hearing.

- 3.3 The Governing Body will invite the appellant to an appeal hearing to be held not later than twenty working days from the receipt of the notice of appeal, but giving at least 7 working days notice.
- 3.4 The Appeals Panel of the Governing Body will consist of three Governors none of whom shall have taken part in the initial disciplinary hearing, or have had any previous involvement in the case.
- 3.5 The hearing will be conducted in accordance with the procedures set out in paragraphs 2.3-2.5 above.

4 APPEAL HEARING BEFORE THE APPEALS PANEL

- 4.1 The appellant employee must advise the Clerk to the Governors in writing of his/her intention to appeal within ten working days of receiving the written decision of the Governing Body.
- 4.2 The Clerk to the Governors will invite the appellant to an appeal hearing to be held within twenty working days from the receipt of the notice to appeal but giving at least seven working days notice
- 4.3 The person presenting the academy's case in conjunction with the appellant and his/her representative will be responsible for submitting a schedule with a copy of all the relevant documents upon which they intend to rely at the hearing to the Clerk to the Governors at least five working days in advance of the hearing. The notes of the hearing should be agreed and signed by both parties prior to the Appeal Hearing and any areas of disagreement should be noted. Where agreement cannot be reached, both versions should be provided. The academy and the appellant should each retain a complete set of documents for their use at the hearing. In circumstances where the original allegations are not to be heard in their entirety, the Appeals Panel shall have before them the complete written findings of the Disciplinary Hearing and those documents presented to the original hearing that both the appellant and the academy agree are relevant to the matters under appeal. In the event that there is failure

- to agree, relevance shall be determined by the Panel at the start of the Appeal Hearing.
- 4.4 The notes of the hearing should be agreed and signed by both parties prior to the appeal hearing and any areas of disagreement should be noted. Where agreement cannot be reached both versions should be provided.
 - 4.5 The appellant will be informed of his/her rights to be accompanied by a trade union or other representative, to produce documents in his/her own support and/or to call witnesses.
 - 4.6 At the outset only the Panel and the representative from the academy's HR Team attending in an advisory capacity (see **Appendix 7** Guidance Notes 15) will be in the room. The Panel should satisfy themselves that the disciplinary procedures have been followed in the stages leading up to the appeal. If there have been any procedural defects the guidelines outlined at **Appendix 7** Guidance notes 14 should be borne in mind.
 - 4.7 The parties will be invited to enter; witnesses will remain outside the room until they are called. Each person will be introduced by name and the appellant informed of the purpose of the hearing. The procedure intended to be followed will be outlined. In cases where an appellant is alleged to have been guilty of racial or sexual harassment or discrimination, the order of proceedings may be augmented at appropriate stages by the provisions set out at paragraph 5.
 - 4.8 The case will be presented by the academy's representative who may address the Panel, give evidence, call witnesses and produce documents. The appellant or his/her principal representative (but not both) may put questions to each of the witnesses at the end of their statement. The academy's representative may then re-examine the witnesses but only on matters arising out of the questions put. The appellant's representative may also question the academy's representative but only on points of procedure.
 - 4.9 Members of the Panel (and Officers advising the Panel) may put questions via the Chair at any stage to clarify points given in evidence.
 - 4.10 The appellant or his/her representative will then be asked to present the case for the appellant, the procedure to be followed is the same as that for the academy as regards witnesses, documents and questions.
 - 4.11 If his/her case is presented solely by the employee's principal representative, the Chair may nevertheless invite the appellant to answer questions put to him/her by the person presenting the case for the academy in which case the representative may ask him/her further questions arising out of his/her replies. The Chair should then ask the appellant if there is anything further he/she wishes to say.
 - 4.12 The academy's representative first and then the appellant or his/her representative should then be given the opportunity of making concluding statements but no new or additional evidence may be introduced at this stage.

- 4.13 After hearing the case for each side, the Chair will ask the two sides to withdraw so that the Panel may consider its decision.
- 4.14 The Panel should seek the guidance of officers attending to advise on matters of law and procedure but not on matters of fact. The Panel may recall the parties on points of clarification. However, on these occasions, care should be taken to ensure that both parties are recalled even though the Panel may only wish to raise points with one side.
- 4.15 Wherever possible the Panel will recall the two sides to announce their decision or, alternatively, the appellant will be notified of their decision in writing within three working days.
- 4.16 In either case the Clerk to the Governors will convey the Panel's decision in writing to the appellant not later than three working days after the date of the hearing. The letter will, where appropriate, inform the appellant that a further right to appeal exists to an Employment Tribunal which must be exercised within three months of the date of the dismissal (see appropriate legislation for qualifying period). No further right of appeal exists against the decision of the Appeals Panel.

5 CASES INVOLVING HARASSMENT OR DISCRIMINATION

- 5.1 **Definition** Harassment is any unwanted or unwelcome term, comment or behaviour such as looks, actions, suggestions or physical contact that is abusive, offensive, insulting or undermining to the recipient or as a result of which an intimidating environment is created.
- 5.2 Discrimination is any act that has the effect of treating a person less favourably on the grounds of race, creed, sex, marital status, sexual orientation, disability or age.
- 5.3 **Support for witnesses** - It is recommended that support for witnesses be provided as detailed below:
- **Representation** - Witnesses shall be briefed by the Clerk to the Governors on their right to be accompanied by a Trade Union Official or by an outside representative and/or be provided with a support person (see below)
 - **Support Person** - A support person shall be provided unless the offer is declined, in which case, the witness may select a support person of his/her own choice. The role of this support person shall be to provide for the witnesses:
 - an explanation of the procedure of the hearing beforehand;
 - encouragement and reassurance to help them provide evidence during the hearing;

- request(s) during the hearing for a break or adjournment if necessary to relieve their distress;
- counselling on a regular basis before/during/after the case as necessary

This role shall be explained to all present at the hearing by the Director of HR if such an officer is present, or if not, by the Clerk to the Governors.

6 PRACTICAL PROTECTION AT THE HEARING FOR ALL WITNESSES

- 6.1 In all cases the seating of the room shall be arranged to allow witnesses to give evidence as fully as possible and in a manner which minimises the risk of intimidation, e.g. witnesses and defendant not facing each other.
- 6.2 All reasonable requests for breaks or adjournment should be allowed, e.g. toilet, severe distress.

UNDER REVIEW

APPENDIX 6

STAFF FACING AN ALLEGATION OF PHYSICAL/SEXUAL ABUSE GUIDELINES ON PRACTICE AND PROCEDURE

1 THE GUIDELINES

- 1.1 These guidelines are based on ones agreed nationally by representatives of the local education authorities and the six teacher organisations in England and Wales. They have been amended locally by agreement between Leeds City Council and the trade unions recognised by Leeds City Council who represent the entire academy based staff. In order to comply with the national guidelines these have been agreed in accordance with the local Area Child Protection Committee (Area Child Protection Committee)
- 1.2 These procedures are strongly recommended for use in controlled maintained, aided and academies and this advice accords with the advice at national level.

2 DEFINITIONS

- 2.1 Designated CP Officer - a senior member of the teaching staff of the academy with specific responsibility for co-ordinating action with the academy and for liaising with Social Services department and other agencies over suspected child abuse. It may be appropriate for another senior teacher to be named as the alternative to the Executive Headteacher/Head of School if he/she is the designated CP officer.
- 2.2 Nominated governor - this should be the chair of governors or, in the absence of the chair, the vice/deputy chair. This person will be responsible for liaising with the Executive Headteacher/Head of School/senior designated CP officer at the academy over matters regarding child protection issues which are consistent with local Area Child Protection Committee procedures. Ideally this role would involve:-
- a) ensuring, in liaison with the Executive Head Teacher/Head of School/senior designated CP officer, that the academy has a child protection policy and procedures in place; which are consistent with local Area Child Protection Committee procedures;
 - b) ensuring that an annual item is placed on the governors' agenda to report on changes to child protection policy/procedures, training undertaken by the senior designated CP officer, other staff and governors, the number of incidents/cases (without details or names) and the place of child protection issues in the academy curriculum;
 - c) liaison (with due regard to issues of confidentiality) with the Executive Headteacher/Head of School/senior designated CP officer re allegations of child abuse;

- d) responsibility for the implementation of procedures relating to liaison with the Director of HR, social services departments and the police in relation to any allegations of child abuse against a Head Teacher including possible attendance at strategy group meetings; (NB: The nominated governor will have no part in the actual investigation of a complaint against the Executive Head Teacher, nor will they be involved in any allegations of child abuse against any other member of staff other than the Executive Head teacher. He/she will be a liaison person ensuring good communication between all parties);
- e) attendance at training for nominated governors

2.3 Designated Local Authority has a senior nominated Senior Officer who is recognised by the Area Child (Social Inclusion)Protection Committee and is the Local Council's designated officer with Local Council's responsibility for co-ordinating Education Service policy and action on child protection. This officer is involved in establishing local procedures, including arrangements for designated CP officers and will be Local Council's point of contact with Social Services and other agencies and is normally Local Council's representative on the Area Child Protection Committee. This officer is also responsible for liaising with the academy on child protection matters.

NB: The Designated Local Council's Senior Officer (Children's Services Division) is responsible for all matters relating to child protection issues but not disciplinary matters involving members of staff. Advice regarding potential disciplinary issues should be sought the Director of HR of the MAT and the Local Authority Designated Officer (LADO).

3 INTRODUCTION

- 3.1 Members of staff within the academy are well placed, as responsible adults outside students' family homes, to be able to detect signs of child abuse. Members of staff within the academy have a positive role in child protection, being able to observe outward signs of abuse, changes of behaviour or failure to develop. Members of staff within the academy have a particular responsibility to further the personal and social development of children. Where professionals have such interaction, the opportunity to abuse children exists and it is regrettably the case that, in rare instances, some members of the academy staff have been found to have committed child abuse. To that extent and because of their daily contact with children in a variety of situations, including the wider caring role, the academy based staff are vulnerable to accusations of abuse. Their relationships with the students may lead to allegations against them being made by students or parent (i.e. the person who has parental responsibility).
- 3.2 Those allegations may be false, malicious or misplaced, and may be either deliberate or innocent of such intent. The allegation may also be true. The academy needs policies and procedures on the management of situations where there are allegations of abuse. **The Rodillian Multi Academy Trust will**

follow the statutory DfE Keeping Children Safe in Education, Section Four which deals with managing allegations against staff/Volunteers.

- 3.3 "Working Together", the inter-agency guide to arrangements for protecting children from abuse advises investigating agencies that the difficulties of assessing the risk of harm to a child should not be underestimated. Further, it is imperative that everyone who deals with allegations of abuse maintains an open and enquiring mind. Agencies are also warned that, although there is obvious need to act with speed and decisiveness in cases where there is reasonable cause for suspicion that a child may be in acute physical danger, the potential for damage to the long-term future of the child by precipitate action must always be considered. There must be confidence that all the agencies concerned will act in a careful, measured way when suspicions are brought to their attention.
- 3.4 In the same way, an over-hasty or ill-judged decision immediately to suspend a member of staff (there may be other options) when an allegation is made, can have a substantial detrimental effect upon that member of staff's career. It can, at the very least, prove to be a traumatic experience for the member of staff concerned, for children at the academy, their parents, and for other staff. A member of staff facing an allegation of abuse needs to have confidence that agencies will act in a careful measured way when allegations are brought to their attention.

4 USING THESE GUIDELINES

- 4.1 Area Child Protection Committees and Social Services departments have wide responsibilities in disseminating information on local child protection procedures.
- 4.2 Local procedures should be informed by these guidelines, which are intended to be complementary and supplementary to the guidance contained in "Working Together" and to local Area Child Protection Committee procedures. Without in any way compromising the need for essential child protection, these guidelines are designed to be consistent with principles of natural justice.
- 4.3 Local Council's will ensure effective means of disseminating information about child protection procedures to the Executive Headteacher/Head of School, to the designated CP officer within the academy's with responsibility for child abuse matters and to governing bodies. Executive Headteacher/Head of School, designated CP officers and chairs of governors are advised to be familiar with the provisions of "Working Together" and the "Keeping Children Safe in Education (DfE)", the Area Child Protection Committee child protection procedures and local education procedures which are the subject of these guidelines. The Head of School will ensure that these policies are distributed to staff who work at the academy.
- 4.4 In addition, in the case of the academies local councils will still ensure effective means of disseminating information on relevant provisions of local education

procedures to ensure that all staff and governing bodies are familiar with those provisions. Area Child Protection Committee and social services departments have wider responsibilities in disseminating information on local child protection procedures in respect of all the academies and other educational establishments.

5 LISTENING TO CHILDREN

- 5.1 Children who report to a teacher (or other member of staff) that a member of staff has abused them must be listened to and heard, whatever form their attempts to communicate their worries take. Listened to means just that; on no account must suggestions be made to children as to alternative explanations for their worries. A written dated record must be made of the allegations as soon as practicable (and certainly within 24 hours).
- 5.2 Members of staff cannot promise confidentiality to students who make allegations. However, a member of staff hearing an allegation against another member of staff should aim to involve the child in any decision to take the allegation further, which could result in following formal procedures based on these guidelines. Where a child says he or she does not wish to take the matter further, consideration should be given to the age and understanding of the child and whether the child or others may be at risk of significant harm. The principles and issues implicit in the foregoing sentence should be discussed at the local level with Local Council (LADO). While acknowledging the need to create an environment conducive to speaking freely staff should make it clear to students who approach them asking for complete confidentiality that in some circumstances staff would be bound to pass on what they were told. Staff should take any further steps as may be necessary to ensure child protection under the local procedures agreed by the Area Child Protection Committee. When a decision is made to take no further action, a written record should be made including the reason for the decision (see also section 15).

6 ACTION BY A MEMBER OF STAFF WHO HEARS AN ALLEGATION FROM A CHILD

6.1 All Staff (except the Executive Headteacher/Head of School)

6.1.1 A member of staff receiving an allegation of abuse against another member of staff should, following the consideration of 5.2 above report this immediately to the Executive Headteacher/Head of School, unless the Executive head teacher/Head of School is the person against whom the allegation is made (see below).

6.2 Executive Headteacher/Head of School

6.2.1 A member of staff receiving an allegation of abuse against a Executive Headteacher/Head of School should, following the consideration of 5.2 above, report this immediately to the designated CP officer who should inform the Chair of Governors and the Senior Designated Officer within the academy. The

Chair of Governors will then liaise directly with the Director of HR . However, if the allegation is against the Executive Headteacher/Head of School and the designated CP officer is also the Executive Head Teacher/Head of School, the allegation must be passed to the next alternative designated CP officer (see section 2) and to the chair of governors.

6.2.2 Immediately an allegation is made, whoever actually receives it, as well as consulting the Senior Designated Officer, the academy's HR Team referred to in paragraph 2.3 above, the Executive Headteacher/Head of School or nominated governor should:

- a) Obtain details of the allegation in writing, signed and dated by the person who receives the allegation (not from the child who is the subject of allegation) and countersigned and dated by the designated CP officer or the nominated governor;
- b) Record any information about times, dates, locations and names of potential witnesses.

7 URGENT INITIAL CONSIDERATION OF WHETHER THERE IS SUBSTANCE IN AN ALLEGATION

7.1 Where an allegation is made against a member of staff other than the Executive Headteacher/Head of School there should be an urgent initial consideration by the Executive Headteacher/Head of School and the academy's HR Team and the LADO of whether or not there is sufficient substance in an allegation to warrant an investigation. Where an allegation is made against a Executive Headteacher/Head of School consideration should be given by the nominated governor, the Director of HR and the LADO.

7.2 The Executive Headteacher/Head of School/nominated governor/Director of HR must have previously established contact with the appropriate officer(s) in the Local Council and the Social Services department (the identity of the LADO which is determined locally) and must consult that officer(s) as part of the initial consideration.

NB: In both cases the substantive decision on whether to investigate under local child protection procedures rests with the child protection agencies. There will be one of four possible outcome of that consideration:

- a) an immediate referral under the local child protection procedure (see paragraphs 8.1 and 8.2)
- b) there is reason to suppose abuse could have occurred and that referral under the local child protection procedure or under internal disciplinary procedures may be necessary (see paragraphs 9.1 and 9.2)
- c) that the allegation is apparently without foundation (see section 12)

- d) that the allegation was prompted by inappropriate behaviour which needs to be considered under the academy's agreed disciplinary procedures (see paragraph 8.1 b) and there is no evidence of child abuse.

8 ALLEGATIONS WHICH CALL FOR IMMEDIATE REFERRAL TO CHILD PROTECTION AGENCIES

- 8.1 The immediate priority must be to determine whether a child or children are at risk of significant harm and in need of protection. If this appears to be the case there should be an urgent referral to local child protection agencies in accordance with the agreed procedures established by the Area Child Protection Committee. In the case of all staff other than Executive Headteacher/Head of School the responsibility lies with the Executive Headteacher/Head of School or senior designated CP officer. In the case of an allegation against the Executive Headteacher/Head of School then the responsibility lies with senior designated CP officer in consultation with the nominated governor, the Director of HR and the LADO. Where the Senior designated CP officer is the Executive Headteacher/Head of School then the Chair of governors / Director of HR must report the matter to the appropriate agencies. The designated CP officer may have already made a referral to the appropriate agency under the Area Child Protection Committee procedures in consultation with the nominated governor and the LADO.
- 8.2 Where allegations of abuse are referred to the Social Service department, or the police, subsequent action will be in accordance with the local child protection procedures. Early action to establish the nature of the allegation and consideration of whether it should be investigated should be undertaken in such a way that it does not prejudice any such subsequent action. There must be no interference with evidence.

9 ALLEGATIONS WHICH MAY OR MAY NOT CALL FOR URGENT REFERRAL TO CHILD PROTECTION AGENCIES

- 9.1 It is important for the Executive Headteacher/Head of School or where appropriate the nominated governor/ Director of HR to act quickly. It is also important to recognise that establishing whether an allegation warrants further investigation is not to form a view on whether the allegation itself is to be believed. The Executive Headteacher/Head of School/Chair of governors/ Director of HR should not investigate the allegation itself, or interview students, or discuss the allegation with the member of staff, but should consider, in consultation with the persons referred to in paragraph 7.1 above, whether the allegation requires further investigation and if so, by whom. Only if the allegation was trivial or demonstrably false, would a further investigation not be warranted.
- 9.2 Where the Executive Headteacher/Head of School/Chair of governors/Director of HR, in consultation with the appropriate LADO referred to in paragraph 7.1 above, believes that the allegation warrants investigation, he or she should either:

- i) Ensure that the appropriate LADO or senior designated CP officer makes a referral to one or more of the agencies with statutory duties and/or powers to investigate and intervene; such referral to the social services department, the police OR THE NSPCC should be according to local child protection procedures; or
- ii) where wholly satisfied that the child or children is/are not at risk of SIGNIFICANT harm, consider the need for disciplinary action. If that is the case, it would be necessary at the academy level to establish the appropriateness of disciplinary action.

10 INVESTIGATIONS

- 10.1 There will be two possible types of investigation:
 - under local area protection procedures (by the police, social services)
 - under the academy's agreed disciplinary procedures.
- 10.2 Any disciplinary process should be clearly separate from child protection investigations. Whilst the disciplinary process may be informed by child protection investigations and in some circumstances the child protection agencies might decide to make a recommendation about suspension or other protective action as a result of the strategy discussion (see section 11 below), the child protection process has different objectives from the disciplinary procedure and the two should not be confused. Decisions as to suspensions and/or disciplinary action are for the Executive Headteacher/Head of School/governing body in consultation with the Director of HR.
- 10.3 Any investigation by the police or child protection agencies will take priority over an internal investigation by the academy. An internal investigation running alongside a police or child protection agency enquiry is not likely to be good practice and should be held in abeyance pending the completion of the external investigation.
- 10.4 Guidance on investigative procedures are contained in Appendix 1. If further evidence comes to light during the course of these investigations, then a referral to the child protection agencies must be considered.

11 ACTION SUBSEQUENT TO REFERRAL TO CHILD PROTECTION AGENCIES

- 11.1 When an allegation has been referred through the Area Child Protection Committee procedures to the appropriate child protection agency the investigation will be informed by the guidance in "Working Together". Under the local procedures the Department of Social Services are required to consider if a strategy meeting is required and determine who should attend. It is desirable that representatives of the Local Council (which would include the LADO and MAT HR Team) and the academy, (Executive Headteacher/Head of School/Chair of governors, and senior designated CP officer) be involved as appropriate and contribute to such strategy meetings in cases of allegations

against the member of staff. These meetings will be chaired by Social Services.

- 11.2 The strategy meeting should also consider whether any other children are likely to have been at risk in the light of the allegation and whether it may be necessary to review any previous allegations made against the member of staff to consider interviewing any other children including ex-students of the academy or any other the academies.
- 11.3 The Director of HR, Executive Headteacher/Head of School/Chair of Governors should balance the welfare of the accused member of staff, and the interests of the investigation taking account of the need to minimise the stress to anyone who may be wrongly accused.
- 11.4 All members of staff should be advised to contact their professional organisation if allegations are made.
- 11.5 Support will be needed for the child or the children making the allegations and their parents. Consideration should be given to the form such support should take. Consideration should also be given to what support may be needed for others at the academy both staff and students, according to the circumstances of the alleged abuse. In some cases, therapeutic counselling from expert sources may be necessary. Advice on this can be obtained via the Area Child Protection Committee in the Local Authority.

12 POLICE INVOLVEMENT

- 12.1 In some cases the police might wish to interview the member of staff against whom the allegation is made before the Executive Headteacher/Head of School/ the Director of HR, Senior Designated Officer and the Chair of governors make any approach. The police may act independently of the academy particularly where the alleged offence is unconnected with the member of staff's professional life. Police officers should be given every assistance with their enquiries but confidentiality about the enquiries should be maintained in the member of staff's interests.
- 12.2 When the police are involved it would not normally be expected that police interviews would be undertaken on the academy premises and it would be expected that appointments are normally made for interviews to occur at reasonable times.

13. NOTIFICATION OF INTERESTED PERSONS.

- 13.1 The police/strategy meeting may decide that the investigation would be hindered by notification to parties at an early stage. The Executive Headteacher/Head of School/Chair of governors/Director of HR in consultation with the LADO must ensure there is no objection by the police before contacting any parties. Subject to there being no objection the Executive Headteacher/Head of School/Chair of Governors/Director of HR should:

- a) inform the child, children or parent making the allegation and explain the likely course of action;
- b) ensure that the parents of the child or children who are the subject of the allegation are informed of the likely course of action;
- c) inform the member of staff against whom the allegation is made and explain the likely course of action advising them to contact their trade union representative or other person of their choice.

13.2 A written record of those factual matters should be made.

13.3 Where, in especially serious cases, the police or the strategy meeting decides that the investigation would be hindered by an approach to the member of staff before the police have had an opportunity to undertake an initial investigation or to interview the member of staff, then the Head teacher/nominated governor should be informed accordingly and arrangements made to enable him or her to contact the officer in charge of the case to be kept informed of progress.

14 WHERE FOLLOWING THE INITIAL CONSIDERATION THE EXECUTIVE HEADTEACHER/HEAD OF SCHOOL/ CHAIR OF GOVERNORS BELIEVES THAT THE ALLEGATIONS IS WITHOUT FOUNDATION, HE OR SHE SHOULD: in consultation with the LADO and Director of HR, identified in 7.1 and the senior designated CP officer:

- a) consider whether the child might have been abused by someone else and whether a referral should be made to the police, the Social Services Department under child protection procedures;
- b) inform the member of staff of the allegation and the fact that no further action is to be taken under disciplinary or child protection procedures. The member of staff may be accompanied by a trade union/professional organisation or another person of their choice.
- c) consider whether counselling and/or informal professional advice to the member of staff is appropriate and the form either might take;
- d) inform the parents of the child or children of the allegation and the outcome;
- e) consider appropriate counselling and support for the child or children who made the allegation(s) and, where appropriate their parents; in particular, take into account a child's special needs where a false or malicious allegation seems to have been made; and
- f) prepare a report embodying a) to e) above and giving reasons for the conclusion that the allegation is without foundation.

15 CONSIDERING WHETHER SUSPENSION IS APPROPRIATE

15.1 A member of staff against whom an allegation is made should not be automatically suspended. In the case of an immediate referral to the child protection agencies (as under paragraph 7(a) immediate suspension is likely. In the case where immediate referral is not envisaged (as under sub-paragraph 7(b) or paragraph 7(d)) suspension may or may not be appropriate. In the case of unfounded allegations (as under paragraph 7(c) suspension is unlikely. The Executive Head teacher/Head of School/Chair of Governors should consult with the appropriate LADO and in addition should seek advice from the academy's HR team and consider any recommendations which may be made by the child protection agency as a result of the strategy meeting before a decision to suspend is taken. Suspension may be considered at any stage of an investigation.

15.2 For further advice in relation to suspension refer to Appendix 2.

16 OUTCOME OF DISCIPLINARY INVESTIGATION

16.1 If a member of staff has been suspended and it is not intended to proceed with any form of disciplinary action, the suspension should be lifted immediately by the Executive Headteacher/Head of School/Governing Body. The Executive Headteacher/Head of School/Chair of Governors should meet the member of staff to discuss the member of staff's return to work.

16.2 On the conclusion of any investigation and any related disciplinary proceedings, the child or children who made the allegations and their parents should be informed of the outcome of the proceedings. This should be prior to a member of staff's return to the academy if he or she has been suspended. In some circumstances, consideration should be given to the broader disclosure of details of the outcome, together with reasons, for example, where the issues are of general importance and have become common knowledge or have been the subject of general gossip and there is a need to provide accurate details for public information. The academy's HR Team will offer appropriate advice.

16.3 Appropriate counselling and support should be offered to the child or children who made the allegations and, where appropriate, their parents, by the time the member of staff return to the academy. In particular, this should take into account a child's special needs where a false or malicious allegation has been made.

17 RECORDS

17.1 Documents relating to an investigation must be retained together with written record of the outcome of the investigation and where disciplinary action has been taken, retained on a member of staff's personal and confidential file in accordance with the academy's disciplinary procedures.

17.2 Where a student has made an allegation, a copy of the statement or the record made of it must be kept on the section of a student's personal file, which is not open to disclosure together with a written record of the outcome of the investigation. If there are criminal or civil proceedings, records may be subject to disclosure; and therefore, no assurances can be given of confidentiality.

18 POSTSCRIPT

18.1 The Executive Headteacher/Head of School/governing body/Director of HR and/or the Local Council may find it helpful to consider at the conclusion of the investigation whether there are any general matters arising from it which should be brought to the attention of the LADO who will consider whether any matters should also be brought to the attention of the Area Child Protection Committee as perhaps warranting a review of local policy or procedures. Any training needs for staff should also be considered as part of such a review. The publication of any such information to managers or the Area Child Protection Committee should preserve confidentiality about the member of staff and children involved in the investigation.

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APPENDIX 7

GUIDANCE NOTES - GENERAL

1 CONFIDENTIALITY

1.1 All investigations will be strictly confidential and the employee and any other interviewees will be advised to treat the investigation as such.

1.2 All staff (except the Executive Headteacher/Head of School).

1.2.1 The Executive Headteacher/Head of School should not discuss a case with anyone other than the Authority's representative, especially with members of the Governing Body. Executive Headteacher/Head of School are strongly advised not to involve Governors in the early stages of any possible disciplinary action. If Governors have prior knowledge of a case, that could prejudice their judgement and therefore render them ineligible to participate in a disciplinary hearing or appeal.

1.2.2 Chairs of Governors should ensure that no discussion of any case which could result in disciplinary action takes place at meetings of the Governing Body or elsewhere. Any issue of this kind, which causes concern, should be referred to an investigating officer.

1.3 Executive Headteacher/Head of School

1.3.1 The Chair of Governors should not discuss a case with anyone other than the Director of HR and an appropriate officer from Local Council if appropriate, especially at meetings of the governing body or elsewhere. Any issue of this kind, which causes concern, should be referred to an Investigating Officer.

1.3.2 Governors should not be involved in the early stages of any possible disciplinary action unless a governor has been nominated to deal with the matter. If governors have prior knowledge of a case, that could prejudice their judgement and therefore render them ineligible to participate in a disciplinary hearing or appeal.

1.3.3 At the conclusion of a case, the Director of HR will agree a statement, which may be read out to members of the Governing Body informing them briefly of the outcome of the disciplinary hearing. No discussion of the case should be allowed.

2 FACTORS AND DEFINITIONS TO CONSIDER WHEN DECIDING THE ACTION

2.1 The Executive Headteacher/Head of School, Governors' Disciplinary Panel or Appeals Panel should take into consideration the **factors** listed below before deciding what form of disciplinary action is appropriate, in consultation with the

Director of HR. Only factors to which reference has been made during the disciplinary hearing may be taken into account.

- a) the employee's disciplinary record and whether he/she is aware of the standards required.
- b) the employee's age, nature of employment, length of service and general performance.
- c) any circumstances, for example, domestic problems, which make it more appropriate to lessen the severity of the action. Whether the action taken is similar to cases in the past whether the proposed action is reasonable in all the circumstances any factors in mitigation advanced on the employee's behalf.

2.2 The following **definitions** should be used when determining the outcome of allegation investigations (DfE Keeping Children Safe in Education):

- **Substantiated:** there is sufficient evidence to prove the allegation;
- **Malicious:** there is sufficient evidence to disprove the allegation and there has been a deliberate act to deceive;
- **False:** there is sufficient evidence to disprove the allegation;
- **Unsubstantiated:** there is insufficient evidence to either to prove or disprove the allegation. The term, therefore, does not imply guilt or innocence.

3 ACTION IN PARTICULAR CASES

Special consideration should be given to the way in which disciplinary procedures are to operate in particular cases. For example:

3.1 EMPLOYEES TO WHOM THE FULL PROCEDURE IS NOT IMMEDIATELY AVAILABLE

3.1.1 Special provision may have to be made for the handling of disciplinary matters among nightshift workers, weekend or Sunday workers, workers in isolated locations or depots or others e.g. staff away on residential visits who may pose particular problems for example because no-one is present with the necessary authority to take disciplinary action or no trade union official is immediately available. If the Executive Headteacher/Head of School or deputy Executive Headteacher/Head of School is not present, then advice should be sought from the Director of HR regarding the short-term arrangements.

3.2 TRADE UNION OFFICIALS

3.2.1 Disciplinary action against a trade union official can lead to a serious dispute if it is seen as an attack on the union's function. Normal disciplinary standards

should apply to officials' conduct as employees but no disciplinary action or decision to suspend should be taken until the circumstances of the case have been discussed with a senior trade union representative or full-time official. A trade union official includes any employee elected or selected under trade union rules to represent other members.

3.3 PROBLEM DRINKING AND THE MISUSE OF DRUGS BY EMPLOYEES RELATIONSHIP WITH DISCIPLINARY PROCEDURE

3.3.1 Drivers - Consumption of alcohol during the working day. The Council's policy on this issue is as follows:-

"all persons driving or having control of academy transport and mobile plant, or driving private vehicles on academy business must ensure at all times that they are fit to drive and especially that their ability is not impaired by drink or drugs. Failure to observe this requirement will render the officer liable to disciplinary action."

3.3.2 If it can be clearly demonstrated that an employee is suffering from alcoholism, and the employee acknowledges that fact and seeks medical help, he/she should be treated in a positive and supportive way and given every assistance to overcome the problem and return to his/her employment when declared medically fit.

3.3.3 Care should be taken to distinguish between misconduct and illness when dealing with matters under this heading.

3.4 CRIMINAL OFFENCES

3.4.1 The ACAS advisory handbook, 'Discipline at Work', gives the following advice on how management should deal with employees where criminal offences are involved, i.e. -

Criminal Offences

"An employee should not be dismissed or otherwise disciplined merely because he or she has been charged with or convicted of a criminal offence. The question to be asked in such cases is whether the employee's conduct warrants action because of its employment implications.

Where it is thought that the conduct warrants disciplinary action, the following guidance should be borne in mind.

The employer should investigate the facts as far as possible, come to view about them and consider whether the conduct is sufficiently serious to warrant instituting the disciplinary procedure.

Where the conduct requires prompt attention, the employer need not await the outcome of the prosecution before taking fair and reasonable action. Where

the police are called in they should not be asked to conduct any investigation on behalf of the employer; nor should they be present at any disciplinary hearing or interview.

In some cases the nature of the allegation may not justify disciplinary action, for example, off-duty conduct which has no bearing on employment, but the employee may not be available for work because he or she is in custody or on remand. In these cases employers should decide whether, in the light of the needs of the business, the employee's job can be kept open. Where following a criminal conviction leading, for example, to the loss of a licence so that continued employment in a particular job would be illegal, employers should consider whether suitable alternative work is available.

Where an employee, charged with or convicted of a criminal offence, refuses to co-operate with the employer's disciplinary investigations and proceedings, this should not deter an employer from taking action. The employee should be advised in writing that unless further information is provided a disciplinary decision will be taken on the basis of the information available and could result in dismissal.

Where there is little likelihood of an employee returning to employment, it may be argued that the contract of employment has been terminated through 'frustration'. The doctrine is normally only accepted by the courts where the frustrating event renders all performance of the employment contract clearly impossible.

An employee who has been charged with, or convicted of, a criminal offence may become unacceptable to colleagues, resulting in workforce pressure to dismiss and threats of industrial action. Employers should bear in mind that they may have to justify the reasonableness of any decision to dismiss. They should consider all relevant factors, which may include disruption to production, before reaching a reasonable action."

4 TAKING NOTES AT HEARINGS

- 4.1 It is essential that an accurate record is kept of the evidence given at a hearing and an appeal, and a tape recorder may be used for that purpose. In the cases where a tape recorder has been used a copy of the transcript will be made available to both parties. Where there are differences of opinion the tapes will be made available. In the event of the case going to the Appeals Panel these notes should be made available to the appellant when statements are exchanged by the two parties, before the hearing. In cases where dismissal is being considered the Chair of each panel should also agree and sign the minutes. Both parties should attempt to produce an agreed set of signed minutes prior to them being sent out for a hearing and any areas of disagreement should be noted. Where agreement cannot be reached both versions should be provided.

5 WORKING DAYS

- 5.1 A working day shall exclude Saturday, Sunday, Public and Statutory Holidays and any extra Statutory Holidays or additional days granted by the Academy. The agreed academy calendar shall be the basis for determining working days.

6 REPRESENTATION

- 6.1 An employee may be represented by only one principal representative who will speak on his/her behalf, and may be accompanied by not more than two other people with whom he/she may confer. The person presenting the case on behalf of the academy may be accompanied by up to two other persons to provide support. These officers may only confer and must take no part in the proceedings.

7 CUMULATIVE MISCONDUCT

- 7.1 Where a member of staff has been given a final written warning and subsequently, while the warning is still "live", is guilty of further misconduct, the cumulative nature of the offence(s) will be taken into consideration before a decision is reached on what action should be taken. Depending upon the circumstances of the case it may be appropriate to issue a further written warning rather than to proceed directly to dismissal.

8 WRITTEN WARNINGS

- 8.1 The written warning should specify:
- a) an indication of whether misconduct or gross misconduct has been proved;
 - b) a full and detailed reason for issuing the warning;
 - c) any period of time given for improvement and the improvement expected and give some indication that where appropriate, counselling may be available with a nominated person;
 - d) the disciplinary penalty and how long it will remain on file;
 - e) the likely consequence of further misconduct which must include, in the case of final warning, that this warning is a serious reprimand and indicate that further misconduct could lead to dismissal;
 - f) timescale and procedure for lodging an appeal.

9 FINAL WARNING

- 9.1 A 'final' warning will be interpreted as a very serious reprimand and will indicate that further misconduct could lead to dismissal. Second and subsequent warnings need not be final warnings.

10 DEMOTION OR TRANSFER

10.1 In some cases it may be appropriate to consider demotion or transfer to another post or job, but if this course of action is contemplated, it should only be implemented with the consent of the employee. Demotion or transfer is included in the disciplinary procedure as an alternative to dismissal and if the employee refuses the offer a decision to dismiss has to be reached. The decision-maker must be satisfied that the case for dismissal has been clearly proven.

11 CAPABILITY

11.1 Where an employee or Executive Headteacher/Head of School's lack of capability is in question academy has a separate capability procedure which should be used. For further advice on this issue the academy's HR team should be consulted.

12 WITNESSES

12.1 There will be cases when witnesses from both sides are present to give evidence. In such circumstances it is advisable that witnesses are placed in separate rooms, in order to prevent any comments or intimidation which may take place. The member of staff and his/her representative should also be allowed a room in which he/she can wait and discuss the case in private.

12.2 Occasionally, it may not be possible to confirm in advance the names of witnesses who will appear. To ensure that the full facts of the case are presented, either side may call witnesses up to the start of the hearing, or in exceptional circumstances during the course of the hearing. Should witnesses be called when prior notice has not been given, either side has the right to request and be granted a short adjournment. On the resumption of the hearing, either party may request a longer adjournment or a re-arrangement of the hearing.

13 ROLE OF CHAIR

13.1 The Chair at any disciplinary hearing is responsible for ensuring that the basic principles of the disciplinary procedures are followed.

13.2 Although guidance is available from the academy's HR Team or his/her representative, the Chair will decide whether late witnesses may be heard, the length of any adjournment, or whether a hearing should be rearranged within any specific hearing, the decision of the Chair relating to procedural matters, is final.

14 REMEDY OF EARLIER PROCEDURAL DEFECTS ON APPEAL

14.1 A fair appeal hearing can act as a remedy for earlier procedural defects that might otherwise render a dismissal unfair. The appeal hearing should constitute a complete re-hearing of the case rather than simply a review of an earlier decision as outlined in Appendix 4.

14.2 Any fresh evidence may be considered at an appeal hearing.

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