



# **Disciplinary Policy and Procedures**

## **Alwyn Infant School and Courthouse Junior School**

**Approved by:** The Governing Body

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## 1. Scope

The procedure applies to all staff directly employed by Alwyn Infant School and Courthouse Junior School Federation. The procedure is not to be used to deal with matters of unsatisfactory performance due to lack of capability and absence due to ill health. Separate procedures exist to deal with matters of this nature.

Where the Executive Headteacher is the subject of disciplinary proceedings, all reference to Executive Headteacher should be replaced with Chair of Governors.

The recognised trade unions have been consulted.

## 2. Policy

This policy is to help and encourage all employees to achieve and maintain the required standards of conduct and provides a fair and consistent method of dealing with alleged failure to observe those standards as well as helping employees recognise and resolve any shortfall. If you experience difficulties at any stage of the procedure because of a disability you should discuss the situation with your line manager or SBM as soon as possible.

This procedure applies to all employees regardless of length of service. It does not apply to agency Workers or self employed contractors.

This procedure is for guidance only and does not form part of your Contract.

It encompasses the following principles:

- No formal disciplinary action will be taken against an employee until the case has been fully investigated and a disciplinary hearing has taken place.
- The employee will be advised of the nature of the allegation and given the opportunity to prepare and present their case before any decision is made.
- The employee will have the right to be accompanied by a trade union representative, or a work colleague, at any stage of the disciplinary process. (See Annex A for details about the role of the companion).
- No employee will be dismissed for a first breach of discipline except in cases of gross misconduct when the sanction may be dismissal without paid notice.
- Any level of sanction can be applied which is deemed appropriate for the nature of the misconduct.
- An employee will have the right to appeal against any disciplinary action taken or sanction applied.
- Where disciplinary action is being considered against an employee who is a trade union representative, this procedure should be followed. Depending on the circumstances, however, it is advisable to discuss the matter at an early stage with an official employed by the union, after obtaining the employee's agreement.
- Wherever possible, meetings should be held during the employee's normal working time unless otherwise agreed with the employee.

- The timeframes specified within the Procedure are the minimum. It is recognised that at times it may be necessary to extend the specified timeframes, where this is the case the extension must be reasonable and the employee must be notified.

### **3. Local Authority's entitlement to give advice (for Community, Voluntary Controlled, Community Special and Maintained Nursery Schools)**

The Local Authority has a statutory entitlement to send a representative to attend all proceedings relating to the dismissal of any teacher (including the Executive Headteacher and Head of School ) and offer advice.

Any advice offered by the Local Authority representative at these proceedings must be considered when reaching a decision. All advice offered by the Local Authority representative, and decisions reached in the light of that advice should be fully documented.

### **4. Authority to take Disciplinary Action**

Governing Bodies are responsible for establishing procedures for the regulation of conduct and discipline of staff.

Regulation 4 of the School Staffing (England) (Amendment) Regulations 2013 allows the Governing Body to delegate all its functions relating to staff employment in schools, including dealing with disciplinary matters and taking initial dismissal decisions, to the Executive Headteacher. Therefore, where the Executive Headteacher has delegated responsibility, it is expected that the Executive Headteacher will conduct disciplinary hearings with support from an HR Adviser. In cases where the potential outcome of a disciplinary hearing is likely to be dismissal, it is recommended that the Executive Headteacher has two other governors, to form a Disciplinary Hearing Panel to hear the case. An example of where this could be the case is where the allegation constitutes gross misconduct or where the employee has an unspent final written warning on their record.

Where the Executive Headteacher is not considered to be suitable to hear the case, either because they have previously been involved in the case e.g., as part of the investigation, or they are the investigating officer, or could not be seen as being impartial, or for any other valid reason, the case should be considered by a Disciplinary Hearing Panel consisting of 3 other governors.

Where the Executive Headteacher is the subject of disciplinary action, the matter will be considered by a Disciplinary Hearing Panel of 3 governors at any formal disciplinary hearing, with a representative of the Local Authority's representative present to give advice if relevant (see Section 3).

Where the Governing Body has not delegated responsibility for staffing matters to the Executive Headteacher, any formal disciplinary hearings will be conducted by a Disciplinary Hearing Panel of 3 governors.

All appeals against disciplinary sanctions will be heard by an Appeal Hearing Panel consisting of 3 governors.

The Disciplinary and Appeal Hearing Panels should consist of governors who have not previously been involved in the case, and who are not staff governors and, ideally, not parent governors.

It is strongly recommended that a representative from the HR department at RBWM (The Royal Borough of Windsor and Maidenhead) is present in an advisory capacity to the Executive Headteacher/Disciplinary Hearing Panel/Appeal Hearing Panel at any Disciplinary and Appeal Hearings.

## **5. Investigation/Suspension**

When a disciplinary matter arises it is important to carry out an investigation to establish the facts as soon as possible (See Annex A for guidance on conducting an investigation). During the investigation it may be deemed necessary to suspend the employee (See Annex A for guidance on suspension).

## **6. Stage 1: Informal Stage - Informal Management Meeting**

Issues related to standards of conduct should be dealt with at the earliest opportunity.

Some issues can be dealt with informally and appropriate support should be given to achieve the required result. The employee should be advised that informal efforts to resolve the issue are not part of the formal disciplinary process. The employee will be given a reasonable opportunity to achieve the required standard and informed that in the event of insufficient improvement formal disciplinary action will be taken.

A record of the informal meeting will not be held on the employee's personal file, but will be retained by the manager for a period of 6 months and can be referred to should similar allegation of misconduct arises within this period of time. The employee should be given the opportunity to make comments on any letter/record and this will be kept with the manager's records.

If a pattern emerges that the conduct remains satisfactory during the period of 6 months but declines soon after, then the line manager can proceed to deal with the matter under the Formal Stage.

## **7. Stage 2: Formal Stage - Disciplinary Hearing**

If the investigation report recommends that the employee has a case to answer and for the matter to be considered formally at a Disciplinary Hearing, the Executive Headteacher should convene a formal Disciplinary Hearing as soon as possible.

Within Stage 2 – where the case is being heard by a Disciplinary Hearing Panel, all reference to Executive Headteacher should be replaced with Disciplinary Hearing Panel. The Disciplinary Hearing Panel should select a Chairperson to Chair the Hearing.

### **7.1 Prior to the Disciplinary Hearing**

The employee must be informed in writing of the disciplinary hearing. This notification will include:

- The date, time and place of the hearing;
- The names of those to be present at the hearing;
- The allegation(s) and whether, if proven, they constitute misconduct or gross misconduct and possible sanctions;
- The employee's right to produce information and the date by which this must be received;
- The employee's right to call witnesses and the date by which they must notify the school of the names of the witnesses;
- The employee's right to be accompanied by a trade union representative, or a work colleague;
- Copies of the evidence produced to support the case against the employee and this will include the investigation report and witness statements;
- Copy of the Schools Federation Disciplinary Procedure;
- The employee's responsibility for communicating the details of the disciplinary hearing to their representative and providing them with a copy of the paperwork.

The letter confirming the above and the accompanying documentation must be sent to the employee no less than **10 working days** before the date of the hearing; with a copy to the designated HR Adviser at the same time.

The employee must submit any information they want to be considered at the hearing, including the names of witnesses they wish to call and their witness statements, no later than **3 working days** before the date of the hearing. The Executive Headteacher will forward any documents that have been submitted to the designated HR Adviser. If new evidence is presented after the given timeframe, the Executive Headteacher will determine whether or not the new evidence will be considered as part of the hearing.

If the employee's companion cannot reasonably attend the meeting, there is an obligation on the schools to rearrange the meeting on one occasion. In such circumstances, another date can be put forward so long as it is reasonable and should not be more than **5 working days** after the original date. Any extension of this timeframe will be at the discretion of the Executive Headteacher.

## **7.2 At the Disciplinary Hearing**

At the Disciplinary Hearing, the employee and their representative are entitled to be present at all times except when any matter falls solely for the Executive Headteacher to consider with advice from the HR Adviser.

Witnesses should attend in person. Witnesses should appear one at a time and should only be present whilst they are giving evidence or are being questioned. Where a witness is unable to attend, the Executive Headteacher will take into consideration their statement and may reduce the weighting given to the statement.

The Executive Headteacher explains the procedure to be followed, states the allegation(s) against the employee and asks whether the employee admits or denies the allegation(s).

**If the employee admits to the allegations:**

- The Executive Headteacher asks the employee if they wish to offer an explanation for the allegation(s) against them and to present any mitigating circumstances.
- The Executive Headteacher asks the Investigating Officer if they have any comments to make on the explanation or mitigating circumstances offered by the employee.
- The Executive Headteacher can ask questions of the employee concerning the employee's explanation/mitigation.
- The Executive Headteacher asks both parties to withdraw whilst the Executive Headteacher, advised by an HR Adviser, reaches a decision on the evidence presented.

**If the employee denies some or all of the allegations:**

The Hearing should proceed in the following manner:

**Management's Case**

- The Executive Headteacher asks the Investigating Officer to present the management case against the employee and call any witnesses.
- The Executive Headteacher invites the employee and employee's representative to ask any questions of the Investigating Officer and any witnesses called.
- The Executive Headteacher may ask any questions of the Investigating Officer and any witnesses called.

**Employee's Case**

- The Executive Headteacher asks the employee and/or the employee's representative to present the employee's case and call any witnesses.
- The Executive Headteacher invites the Investigating Officer to ask any questions of the employee and/or the employee's representatives and any witnesses called.
- The Executive Headteacher may ask any questions of the employee and/or the employee's representative and any witnesses called.

**Summing Up**

- The Executive Headteacher invites both parties to sum up their case in the order in which they were presented. The Executive Headteacher may wish to adjourn the Hearing briefly, if necessary, to allow both parties to prepare their summations.
- During the summing up no new evidence should be introduced by either party.
- Following the summations, the Executive Headteacher invites both parties to withdraw whilst the Executive Headteacher, advised by an HR Adviser, reaches a decision.

**The Decision**

The Executive Headteacher considers the evidence presented seeking advice from the HR Adviser and, if present, the representative of the Local Authority.

If there is any uncertainty about the information presented, or the discussion raises the need for further questioning of either party's evidence, the Executive Headteacher should invite both parties to return so that further clarification can be sought from either or both parties.

If the Executive Headteacher wishes to question either party on matters which have not already been raised, or new evidence emerges at this stage, either party may request an adjournment to carry out further investigation before responding. The Executive Headteacher will make a decision on any such requests including the length of any adjournment.

Once the Executive Headteacher has reached a decision, both parties should be recalled and informed of the decision.

Where the allegation is proven, before deciding the level of sanction, the Executive Headteacher will consider the nature and level of the current offence in relation to the employee's job, any mitigating circumstances evident from the case presentations, and the employee's current disciplinary record.

The Executive Headteacher will inform the employee of:

- The precise nature of the misconduct; and whether it is considered to be misconduct or gross misconduct;
- Whether any mitigating circumstances have been taken into account;
- What disciplinary action (See Section 8), is being taken and the length of the time for which the disciplinary action is valid, or in the event of dismissal whether it will be with or without contractual notice (the latter will only be in cases of gross misconduct);
- The consequences of further misconduct within the set period of the disciplinary sanction issued (for instance that it may result in dismissal or some other contractual penalty such as demotion or loss of seniority); and
- their right of appeal and the appropriate timescale within which the employee needs to submit their appeal.

Where the allegation(s) is judged not proven all reference to the matter will be removed from the employee's file.

The outcome of the Hearing should be confirmed in writing within **5 working days** of the date of the Disciplinary Hearing.

At times, due to the complex nature of the case and the extent of the evidence presented, it may not always be possible for the Executive Headteacher to reach a decision within the timeframes set for the day. At times the Hearing itself may continue late into the day and it may be considered reasonable to allow the employee and their representative to go home. In these circumstances, the employee will be notified of the decision and the corresponding reasons in writing within 5 working days of the date of the hearing.

## **8. Stage 3: Appeal Hearing**

An employee has the right to appeal against any formal disciplinary action. The appeal is against the decision reached at the Disciplinary Hearing and should not be a re-hearing of the case.



If the employee wishes to appeal against the disciplinary action imposed, they must confirm this in writing to the Chair of Governors, within **10 working days** of the written notification of the disciplinary action, stating their grounds and reasons for appeal which can be based on any of the following:

- The severity of the disciplinary action is considered too harsh in relation to the misconduct.
- The findings of the disciplinary hearing are disputed on a point of fact that may have influenced the outcome.
- There was a failure to adhere to agreed procedure that may have affected the outcome.
- New evidence.

Where no appeal is lodged within the given timescales, the matter will be closed.

The Chair of Governors/Clerk to the Governing Body will arrange for an Appeal Hearing to be convened within be held within 10 working days of receipt of notification and the employee will be given at least 5 working days' notice of the time and place of the appeal hearing. Where these timelines are not possible the appellant will be notified at the earliest opportunity and the soonest most suitable date will be proposed.

### 13.3 An appeal hearing will

The Executive Headteacher, and who for the purposes of this procedure will be known as 'The Presenting Officer', will be required to present the management's case at the appeal hearing. They will also provide a written management case statement which should include the rationale for the decision reached at the Disciplinary Hearing and address any other points raised by the employee in their letter of appeal.

### 8.1 Prior to the Appeal Hearing

The employee must be given no less than **10 working days'** notice of the Appeal Hearing in writing.

The written notification will include:

- The date, time and place of the hearing;
- The names of those to be present at the hearing;
- The employee's right to call witnesses;
- The employee's right to be accompanied by a trade union representative or a work colleague, and their responsibility to notify their chosen representative of the details of the appeal hearing;
- Documentation to be considered at the hearing, including that from the Disciplinary Hearing and including the management case statement, and the employee's responsibility to provide a copy to their chosen representative;
- Possible outcomes of the appeal hearing; and
- Copy of the Federation Schools Disciplinary Procedure.

A copy of the same must also be sent out to the Appeal Hearing Panel, the Presenting Officer and the designated HR Adviser.

If the employee's representative cannot reasonably attend the meeting, the school is obliged to rearrange the meeting on one occasion with the understanding that a further postponement will not be possible. In such circumstances, another date can be put forward so long as it is reasonable and should not be more than **5 working days** after the original date. Any extension of this timeframe will be at the discretion of the Appeal Hearing Panel.

If the employee considers there is new information that has come to light which they have not included in their written appeal statement, they should submit this information no later than 3 working days before the hearing.

## **8.2 At the Appeal Hearing**

At the Appeal Hearing the same format will be followed as for the Disciplinary Hearing but with the order of the presentations being reversed i.e. the employee or their representative will present their case first giving their reasons for appealing.

Where the appeal is on the grounds of new evidence the Appeal Hearing Panel may consider adjourning the Hearing if it is determined that further investigation is required in relation to the new evidence. Where this is the case the most appropriate person to carry out this additional investigation would be the Executive Headteacher in their role as Presenting Officer. The Appeal Hearing will be reconvened where the findings of the investigation will be presented and considered. The employee will be given **10 working days'** notice of the reconvened Appeal Hearing.

### **The Decision**

The same principles in terms of the process apply as for the Disciplinary Hearing.

Once the Appeal Hearing Panel has reached a decision, both parties should be recalled and informed of the decision by the Chairperson.

The Appeal Hearing Panel may take one of the following decisions at the conclusion of the appeal hearing:

- Uphold the appeal and dismiss any disciplinary action
- Substitute a lesser level of disciplinary action
- Dismiss the appeal and uphold the disciplinary action

If the appeal is upheld, then all records relating to the disciplinary action must be removed from the employee's file.

The decision of the Appeal Hearing Panel is final and should be confirmed in writing to the employee within **5 working days** of the Appeal Hearing.

## **9. Disciplinary Sanctions**

There are three levels of sanctions which can be applied depending on the nature and severity of the misconduct.

- **Written Warning**
- **Final Written Warning**
- **Dismissal\***

**\*NB:** Dismissal will generally be with notice and will be applied from the date of the written notification of the outcome of the Disciplinary Hearing. Dismissal without notice should only occur where gross misconduct constituting a breach of contract has been established, and the presence of the employee can no longer be tolerated. In this case, the dismissal is with immediate effect i.e., from the date the decision is reached.

If the employee appeals successfully against a dismissal decision then the notice of dismissal shall be withdrawn or, if the notice period has already been exhausted or the employee had been dismissed without notice, the employee will be re-instated with effect from the date that their employment had ended.

## **9.1 Definition and duration of Warnings**

- **Written Warning**

- If conduct does not meet acceptable standards the employee will normally be given a written warning by the Hearing Officer (Executive Headteacher or Governors Panel Chair). They will be advised of the reason for the warning, that it is the first stage of the disciplinary procedure and of their right of appeal. A copy of this written warning detailing the misconduct, the change in behaviour required, and the dates for review will be kept on the employee's personal file but will be disregarded for disciplinary purposes after 12 months.

- **Final Written Warning**

- If performance remains unsatisfactory or if a further act of misconduct occurs, or if the misconduct is sufficiently serious to warrant only one written warning but insufficiently serious to justify dismissal (in effect both first and final written warnings), the employee will be given a final written warning.

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- This will give details of the misconduct; the improvement required; the set timescale for improvement; and dates for review. It will warn that dismissal may result if improvement is not satisfactory and will advise of the right of appeal. A copy of this final written warning will be kept on file but will be disregarded for disciplinary purposes after 12 months (in exceptional cases duration may be longer) subject to achieving and sustaining satisfactory conduct or performance.

Provided the employee's conduct has remained satisfactory throughout the duration of the warning period, all reference to it should be removed from the employee's file.

The ACAS Guidelines state that where a pattern emerges of lapses in conduct soon after the expiry of warnings and there is evidence of abuse, the employee's disciplinary record should be borne in mind in deciding how long any current warning should last.

Exceptionally, there may be circumstances where the misconduct is so serious, verging on gross misconduct, that it cannot be disregarded for future disciplinary purposes. In such cases, the final written warning may never be removed and any recurrence will lead to dismissal.

Sanctions relating to allegations of child protection should remain on the employee's file until the person has reached normal retirement age or for a period of 10 years from the date of the allegation if that is longer.

## **9.2 Other Sanctions**

Other action may also be used in conjunction with formal warnings. However, in all cases advice must be taken from the HR representative at RBWM. The following may be considered:

- Transfer to another post
- Demotion with or without protection of salary

### ADDITIONAL GUIDANCE

#### 1. INVESTIGATION

When a matter of concern regarding conduct arises, it is important that a thorough investigation takes place to establish the facts as soon as possible. It is important to be able to demonstrate that any subsequent disciplinary action is based on reasonable attempts to investigate all the circumstances surrounding the alleged incident.

The Executive Headteacher must consider the appropriate person to conduct the investigation having regard to the seniority status of the accused employee and the nature of the allegation. The Investigating Officer should be neutral and independent and not otherwise involved in deciding the outcome of the case. It is strongly recommended that the Executive Headteacher should not, unless absolutely unavoidable, carry out investigations as this will automatically exclude them, on grounds of impartiality and objectivity, from taking part in any subsequent disciplinary hearing.

Once an Investigating Officer has been appointed, they must be clear from the outset about:

- The reason for the investigation;
- The precise issues to be investigated;
- How the investigation will be conducted;
- The proposed time frame; and
- All key and relevant evidence to be gathered.

The extent of the investigation will depend on the nature and seriousness of the alleged misconduct. For example, in the case of poor timekeeping, a meeting with the employee and a record of attendance, and previous informal efforts to deal with the matter may be the only form of investigation required prior to a decision on whether or not to convene a formal disciplinary hearing. In other cases, the alleged misconduct may be of a more serious nature and will require a more detailed investigation.

It is important to identify the types of evidence needed and this will be determined by the nature of the alleged misconduct. The investigation will usually require the person making the allegation and any witnesses to the alleged incident to be interviewed as soon as possible in order to obtain as accurate an account of events as possible. However, there may be other forms of evidence that may be relevant e.g., documentary evidence, CCTV footage, computer records. Care should be taken to ensure such evidence is obtained as a priority as it may be destroyed before being obtained.

Often, further facts will come to light during the investigation. This may present the need for the Investigating Officer to carry out further investigation and may involve interviewing other witnesses or revisiting certain areas of the investigation with the witnesses or the employee for clarification or fresh evidence.

During any fact-finding interviews, care should be taken to adopt a probative approach and to avoid using leading questions. Any questions should encourage people to recall their version of events in their own words. **Witnesses must be advised of the purpose and confidential nature of the interview and that they must not discuss the investigation with people outside of it.** Witnesses must be informed that they may be required to give

evidence at any subsequent disciplinary hearing. Reasonable notice should be given of the interview (1 working day). Interviews should be documented in writing showing the date and time of interview with signature of witness.

At times a witness may be reluctant to present evidence or will only do so if they are given an assurance of anonymity. In such circumstances, the Investigating Officer should try and establish the reasons for such reluctance and ensure the witnesses are aware of their obligation to help assist with establishing the facts. It would also be reasonable to investigate the motivation of any informant and why there is any reason for anonymity.

No guarantee of complete anonymity can be given to witnesses as there is always a risk that if the matter becomes subject to legal proceedings, they may be required to present evidence.

Where a child is a witness to an alleged incident, it is the responsibility of the Executive Headteacher, in conjunction with the parents/carers, to determine whether they may be interviewed or questioned. Any such interview will only be carried out following advice from the Local Authority Designated Officer for Child Protection (LADO). However, this does not preclude the Executive Headteacher asking the child to give a written account of events.

The employee should be notified of the allegation(s) and asked to attend a meeting with the Investigating Officer. They should be informed that the meeting is not a disciplinary hearing but an opportunity for them to respond to the allegation(s) and to assist in establishing the facts. The employee should be given reasonable notice of the meeting and advised that they may be accompanied by a trade union representative or a work colleague. At the meeting, any explanations put forward by the employee, including whether there are any special circumstances to be taken into account must be considered and investigated. If the employee unreasonably refuses to participate in the investigatory meeting, they should be informed that a decision will be based on the remaining evidence gathered.

At the end of the investigation, it is advisable to have a further meeting with the employee to obtain a further statement on presentation of the facts of the investigation. Where discussion with the employee results in further information being obtained which needs investigating, the investigation must continue for the information to be explored. It may be necessary to reconvene the meeting with the employee following the investigation of the information.

Once the investigation has been concluded, the Investigating Officer will submit their findings in the form of an investigation report which should clearly identify options for action by the Executive Headteacher and/or Governing Body. If the recommendation is to proceed to a formal disciplinary hearing, the Investigating Officer will be required to present the case at any such hearing. Where there is no case to answer all reference to the alleged misconduct will be removed from the employee's file.

## **2. CHILD PROTECTION RELATED INVESTIGATION**

Allegations relating to child protection against employees should be dealt with in accordance with the Dealing with Allegations of Abuse against Teacher and other Staff procedure.

### **3. SUSPENSION**

In certain circumstances it may be deemed necessary to suspend the employee from all school duties during an investigation for the following or other reasons:

- The investigation may be prejudiced by the employee remaining at work;
- There are serious concerns raised by the nature of the allegation(s) under investigation; and
- It may be considered unreasonable to expect the employee to be at work whilst an investigation is going on around them.

In certain circumstances the Executive Headteacher may agree to a period of voluntary absence with pay or transfer to alternative work, as opposed to suspension.

Circumstances where this might occur include those where the period of investigation is short and the nature of the alleged offence is of a less serious nature.

Suspension should be for the minimum amount of time possible in all circumstances and will be with full contractual pay. Suspension is a neutral act and has no implication of guilt.

Both the Executive Headteacher and the governing body have authority to suspend an employee but only the governing body has the authority to end a suspension.

The employee will be notified in writing of the suspension giving reasons for the suspension.

Being suspended from work can be very distressing for an employee and they can be left feeling very vulnerable. They must be reassured that suspension is a neutral act and does not imply guilt and is invariably to save them the distress of being present amidst an investigation which involves them. It is recommended that the employee is given details of any employee assistance programme that the schools may have in place so that the employee can access support if needed. It is recommended that the Executive Headteacher appoints a designated person who will maintain regular contact with the employee and they will keep the employee up to date about events in the workplace. The employee must be informed of this designated point of contact in case they wish to communicate with their school.

If a suspended employee is to return to work, consideration must be given to what help and support might be appropriate (e.g. a phased return to work and/or provision of a mentor) to assist the employee in their return to work.

### **4. ROLE OF THE REPRESENTATIVE**

Employees have a statutory right to be accompanied, regardless of length of service, by a trade union representative or a work colleague at a disciplinary hearing and any subsequent appeal hearing. If the representative is a work colleague, they should be afforded reasonable paid time off. This should cover time to attend the hearing and also time to familiarise themselves with the case and confer with the employee before and after the hearing.

A representative has the right to address the hearing in order to:

- Confer with the employee
- Put across the employee's case

- Sum up the employee's case
- Respond on the employee's behalf to any view expressed at the meeting

A representative does not have the right to:

- Answer questions on the employee's behalf;
- Address the hearing if the employee does not wish them to do so; or
- Prevent the Investigating Officer from explaining their case.

Given the importance of the representative's role, it is good practice to allow them to ask questions and participate as fully as possible.

## **5. DISABILITY DISCRIMINATION UNDER THE EQUALITY ACT**

Reasonable adjustments should be made for employees or their companions who have a disability within the meaning of the Equality Act 2010 to ensure they are not disadvantaged and can participate fully in the disciplinary processes. The nature of the reasonable adjustments, which have to be considered, will depend on an assessment of all the facts and circumstances of each case.

## **6. KEEPING RECORDS**

It is important, and in the interests of both the school and the employee, to keep written records during the disciplinary process. Records should include:

- the complaint against the employee;
- the employee's defence or mitigation;
- findings made and the actions taken;
- the reasons for actions taken;
- whether an appeal was lodged;
- the outcome of the appeal;
- any grievance raised during the disciplinary process; and
- any subsequent developments.

Records should be treated as confidential and should be retained in accordance with the data protection principles.

### **6.1 Keeping Records (where the allegation is related to child protection)**

Details of allegations that are found to have been malicious should be removed from personnel records.

For all other allegations, even in cases where the allegation has not been substantiated, it is important that a clear and comprehensive summary of the allegation, details of how the allegation was followed up and resolved, and a note of any action taken and decisions reached, is kept on the person's confidential personnel file, and a copy provided to the person concerned.

The record should be kept at least until the person has reached normal retirement age or for a period of 10 years from the date of the allegation if that is longer.



Working Together to Safeguard Children (2010) explains that the purpose of retaining this record is to:

- Enable accurate information to be given in response to any future employment reference;
- To provide clarification if a future DBS disclosure reveals information that an allegation was made which did not result in prosecution or conviction; or
- To prevent unnecessary investigation if an allegation re-surfaces after a period of time.

## **7. GUIDANCE ON NOTE TAKING**

Formal note taking at hearings is not a requirement of either the disciplinary or appeal procedure but is advisable to do so. If the Chairperson of the Committee makes the decision that notes will be taken, the provision of the note-taker will be the responsibility of the Committee/School.

The panel and HR Adviser may take notes at hearings for their own purposes which are adequate to enable for key decisions to be made. These are informal notes and are not for distribution to attendees.

The outcome of the hearing must be fully documented, including the issues that were considered (including mitigation) in reaching the decision and the detailed rationale behind the decision.

Tape recording of meetings will not be used unless there are exceptional circumstances, i.e., in the case of a person with a disability when a tape recording may be necessary and regarded as a reasonable adjustment.

## **8. COLLABORATION OF GOVERNING BODIES**

The Schools Governance (Collaboration) (England) Regulations 2003, S.I 1962 and as amended by the School Governance (Roles, Procedures and Allowances) (England) Regulations 2013, S.I 1624 Part 1 Regulation 4, enable the governing bodies of two or more maintained schools to work together in relation to staffing functions including dismissals. These provisions allow schools to draw on a wider pool of governors for the purposes of the disciplinary processes.

A school wishing to use collaborated governors should seek advice from HR regarding the engagement of collaborated governors and the procedure to follow.

## Annex B

### Disciplinary Code for Schools

#### Scope

This Code applies to all employees of the School

#### Principles

Offences, which breach the Disciplinary Rules, can be considered as either Gross Misconduct or Misconduct according to the seriousness of the offence and the nature of the employee's job.

The disciplinary rules contained in this document are applicable to all employees. The list and types of misconduct in these rules is neither exclusive nor exhaustive. This document and the rules contained within may be amended or extended following consultation with the trades unions through the appropriate machinery.

#### Definitions

##### Gross misconduct

Misconduct of such a nature that the school cannot allow the continued presence of the employee at work and that, if the offence is established and there are no acceptable mitigating circumstances, will result in dismissal without any previous warnings. A dismissal for gross misconduct is justified at the first offence and may, depending on the circumstances, be without notice. It is strongly recommended that in cases where gross misconduct and summary dismissal is considered then the Executive Headteacher and/or governing body should seek the advice of their HR advisers.

##### Misconduct

Misconduct will not normally warrant dismissal without previous warnings. In the case of misconduct an employee shall be entitled to at least a written warning before a decision to dismiss is made.

#### Disciplinary Rules

##### Gross Misconduct

The following are examples of offences that would normally be considered as gross misconduct. This list is not exhaustive and the panel may consider a derivative of these examples as an offence constituting gross misconduct. However, they may also be considered as misconduct according to the seriousness of the offence and the nature of the employee's job.

##### Acts which take place in the course of employment:

- Any act which could be subject to criminal proceedings. (Certain circumstances may call for the discretion of the Executive Headteacher depending upon the nature and context of the offence).
- Stealing from the School, its staff or the public.
- Deliberate damage to or deliberate neglect of School property (unless for justifiable reasons of protection or safety)
- Gross negligence in failing to attend to or to carry out the duties of the post
- Falsification of any document, for monetary advantage.

- Deliberate falsification of qualification or information which is a stated requirement of employment and/or which could result in financial gain.
- Soliciting or accepting gifts or gratuities.
- Involvement in any acts of bribery.
- Attempted use of official position for private advantage; dishonest or improper use of information obtained in the School's employment.
- Doing unauthorised private work (whether paid or not) during hours when contracted to work for the School or during periods of sick leave.
- Sexual misconduct at any time with any person for whom you have a responsibility and is in your care in your capacity as an employee of the School.
- Child abuse or other conduct giving rise to child protection issues.
- Fighting or physical assault at work either with fellow employees or other persons; including maltreatment of persons in the care of the School. This does not include reasonable self-defence in the case of an assault on employee. (Refer to the schools policy on Violence in the Workplace).
- Serious breaches of safety regulations, endangering yourself or other people, including deliberate damage to, neglect or misappropriation of safety equipment.
- Deliberate disclosure without authorisation, to the media of information about an employee or student who has AIDS/HIV.
- Deliberate acts of harassment, on grounds of age, disability, gender, sexual orientation, race and ethnicity, and religion or belief, that involve physical and/or verbal intimidation and/or assault/unlawful discrimination.
- Conduct resulting in breach of trust and confidence
- Any act that could bring the school into serious disrepute
- Serious insubordination – undermining of the Leadership and Management of the school
- Unauthorised disclosure of information classified as confidential by the school, governors or the Local Authority
- Abuse of the school's internet or email Policy
- Breaches of the school's Social Networking Policy

### **Acts which take place outside the course of employment:**

Dismissal will result where criminal offences have been committed outside the course of employment where:

- Employment by the School in any way enabled or assisted in the commission of the offence.
- School property was used to aid the commission of the offence.
- Continued employment would put at risk those served or employed by the School.

### **Misconduct**

The following are examples of offences that would normally be considered as misconduct. However, they may also be considered as gross misconduct according to the seriousness of the offence and the nature of the employee's job.

### **General**

- Refusal to carry out a reasonable instruction within the remit of the employee's job description.
- Offensive or abusive behaviour (including harassment on grounds of age, disability, gender, sexual orientation, race and ethnicity, and religion or belief) towards other employees or students
- Being under the influence of drink or drugs (other than those that have been medically prescribed) so that performance of duties is detrimentally affected and/or which could endanger anyone's safety.
- Sleeping on duty unless expressly permitted.

### **Absence from Duty and Timekeeping**

- Unauthorised absence from work or being late without sufficient cause.
- Failure to report absence from work and the reason for such absence.
- Failure to provide a medical certificate as required under sickness absence procedures.
- Bad timekeeping including taking excessive refreshment breaks.
- Abuses of the sick pay scheme including failure to provide acceptable reasons for short-term sickness absence.

### **Neglect of Duty**

- Failure to discharge obligations in accordance with a statute or contract of employment without sufficient cause.
- Negligent, careless or wilfully inadequate standards of work.
- Failure to account properly for or to make a prompt and true return of any money or property, which comes into the possession of an employee during the course of duty.

### **Misuse/Falsification of Information**

- Knowingly or through neglect making a false, misleading or inaccurate oral or written statement in respect of official business.
- Failure to disclose a conviction, caution, reprimands or final warnings that are not 'protected' as defined by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 as amended in 2013. Communicating to persons outside of the school of proceedings of any committee meeting or the contents of any document unless required by law or authorised to do so or unless seeking advice of their union on the implications of the meeting.
- Deliberate disclosure without authorisation to colleagues, any members of the public or person known to an employee or client, of information about an employee or student who has AIDS/HIV.

### **Misuse of School Materials/Equipment/Resources**

- Unjustifiable wastage of School materials/equipment/resources.
- Deliberate failure to report any loss or damage to any property of the School, within your area of responsibility.

- Unauthorised use of School vehicles whether during or outside the working day. Unauthorised use of School vehicles for personal journeys including journeys to and from home or during the lunch break.
- Unauthorised use of any School facilities for private purposes unless authorised by a relevant school authority to do so.
- Use of waste School material without express authority.
- Use of School labour, materials, equipment or resources for private purposes

## **Discrimination**

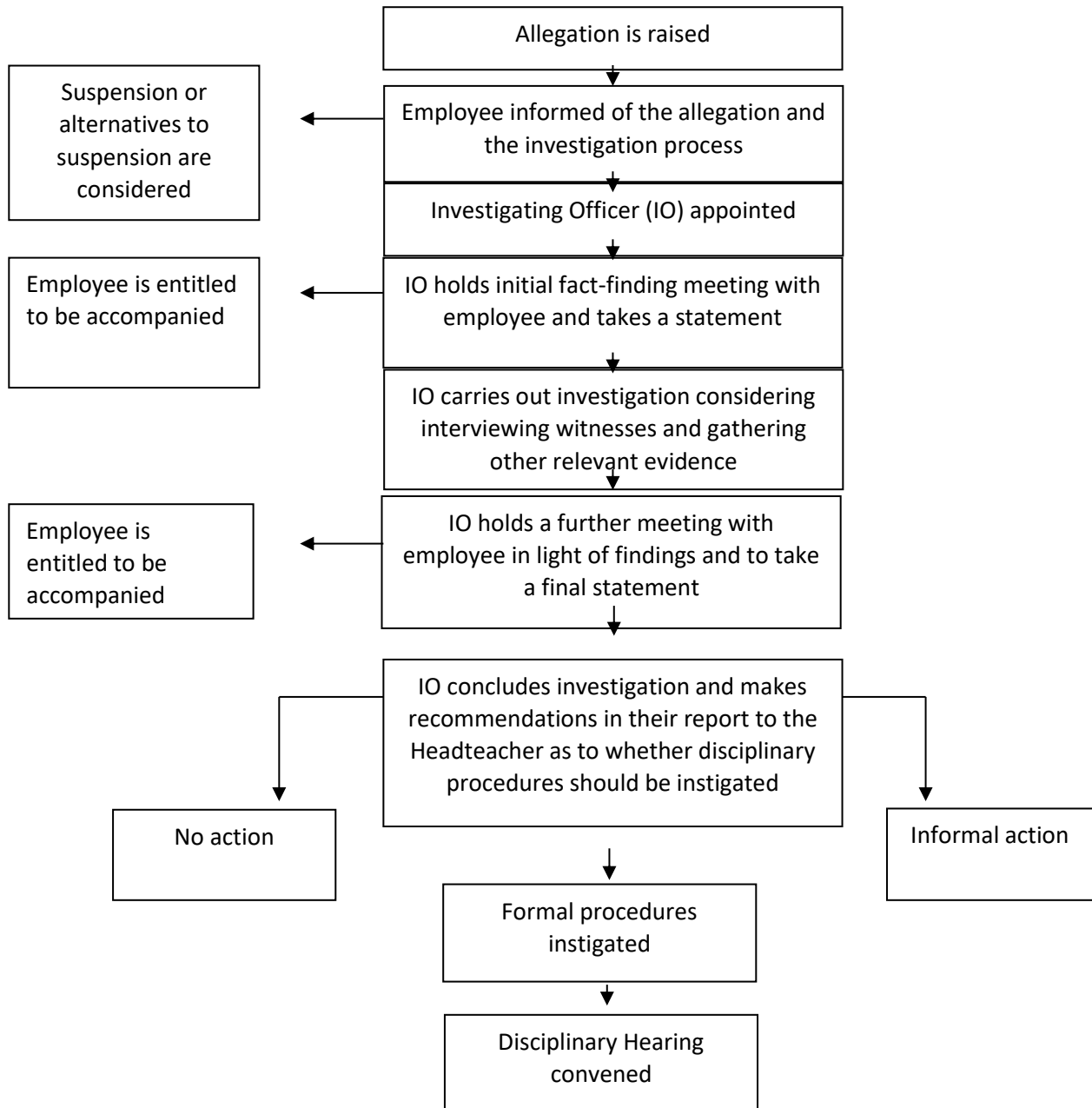
- Discrimination against an employee, student, parent or a member of the public on **any grounds** including age, disability, gender reassignment, marriage & civil partnership, pregnancy & maternity, race, religion and belief, sex, and sexual orientation .

## **Health and Safety**

- Failure to comply with the obligation placed upon you under the terms of the Health and Safety at Work Act 1974.
- Failure to wear appropriate protective clothing or use necessary safety equipment provided by the School for particular duties.
- Failure to comply with accident reporting procedures.
- Failure to comply with department hygiene requirements.
- Dangerous or reckless behaviour involving risk of injury to yourself or to other persons or other conduct at work likely to diminish safety standards.
- Neglecting to carry out any instructions of a medical officer appointed by the School, while absent from duty on account of sickness, committing any act or adopting any conduct to delay return to duty.
- Smoking in areas designated as 'no smoking'.

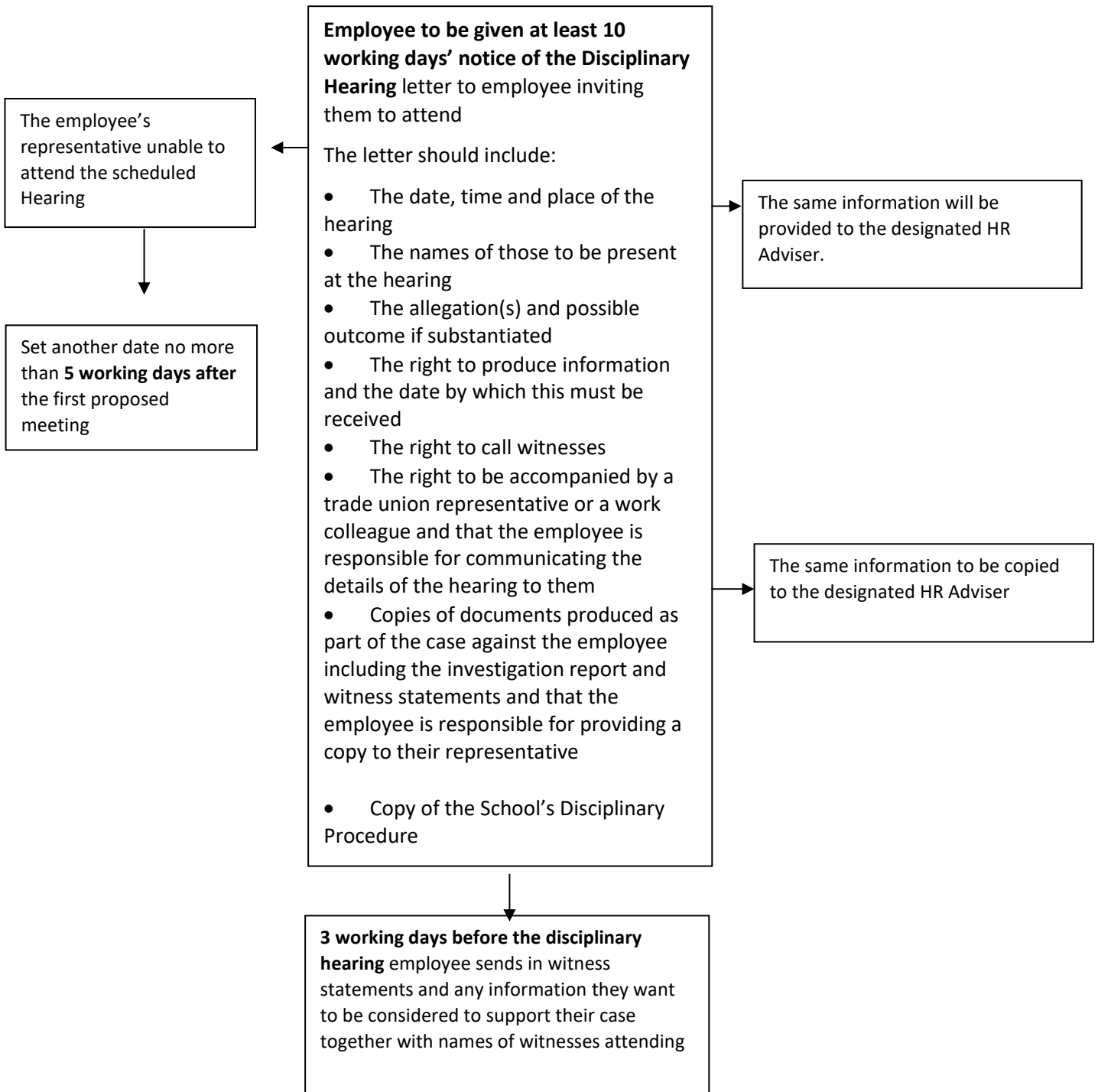
Appendix C

Investigation Flow Chart

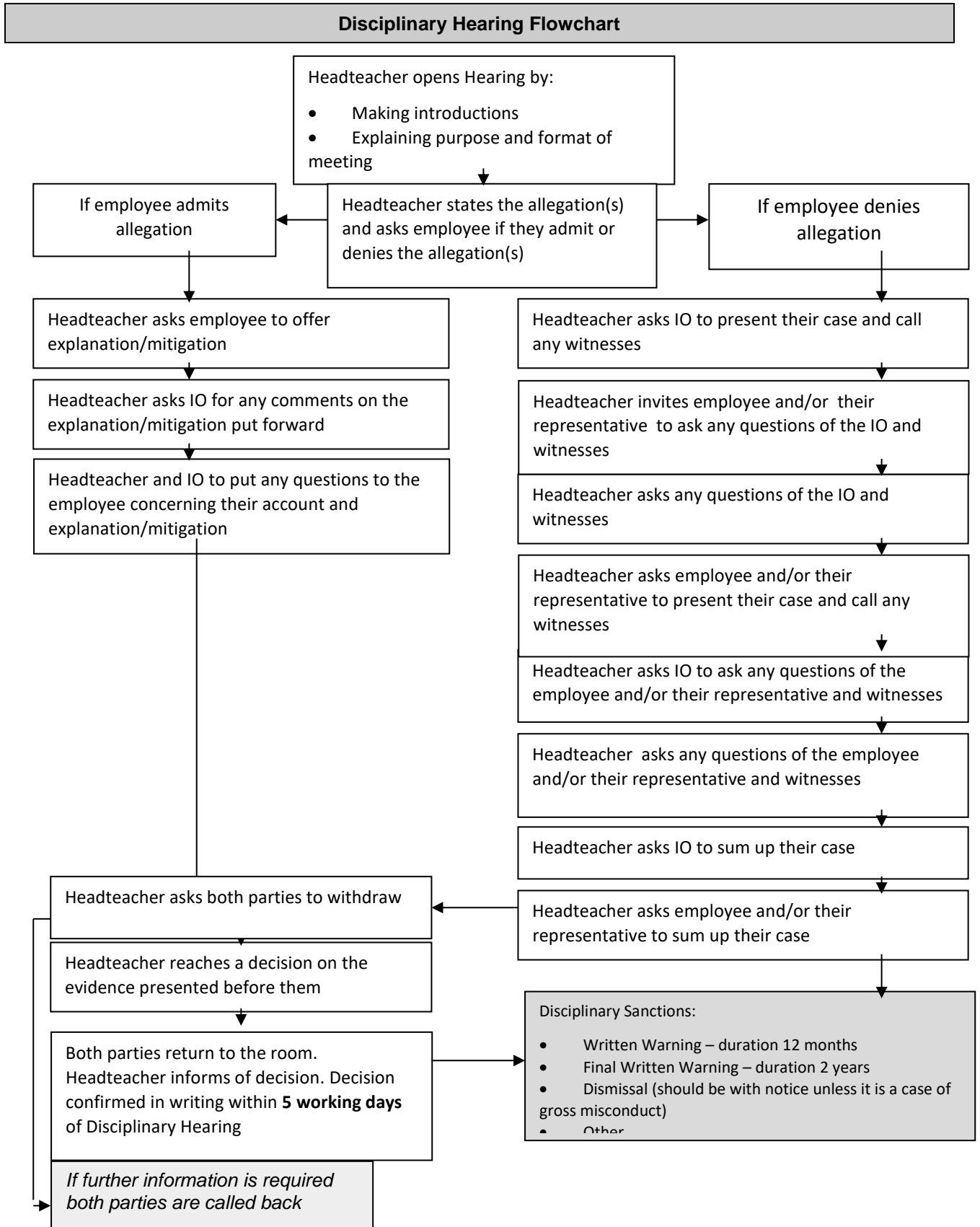


Appendix D

Preparation for Disciplinary Hearing Flowchart



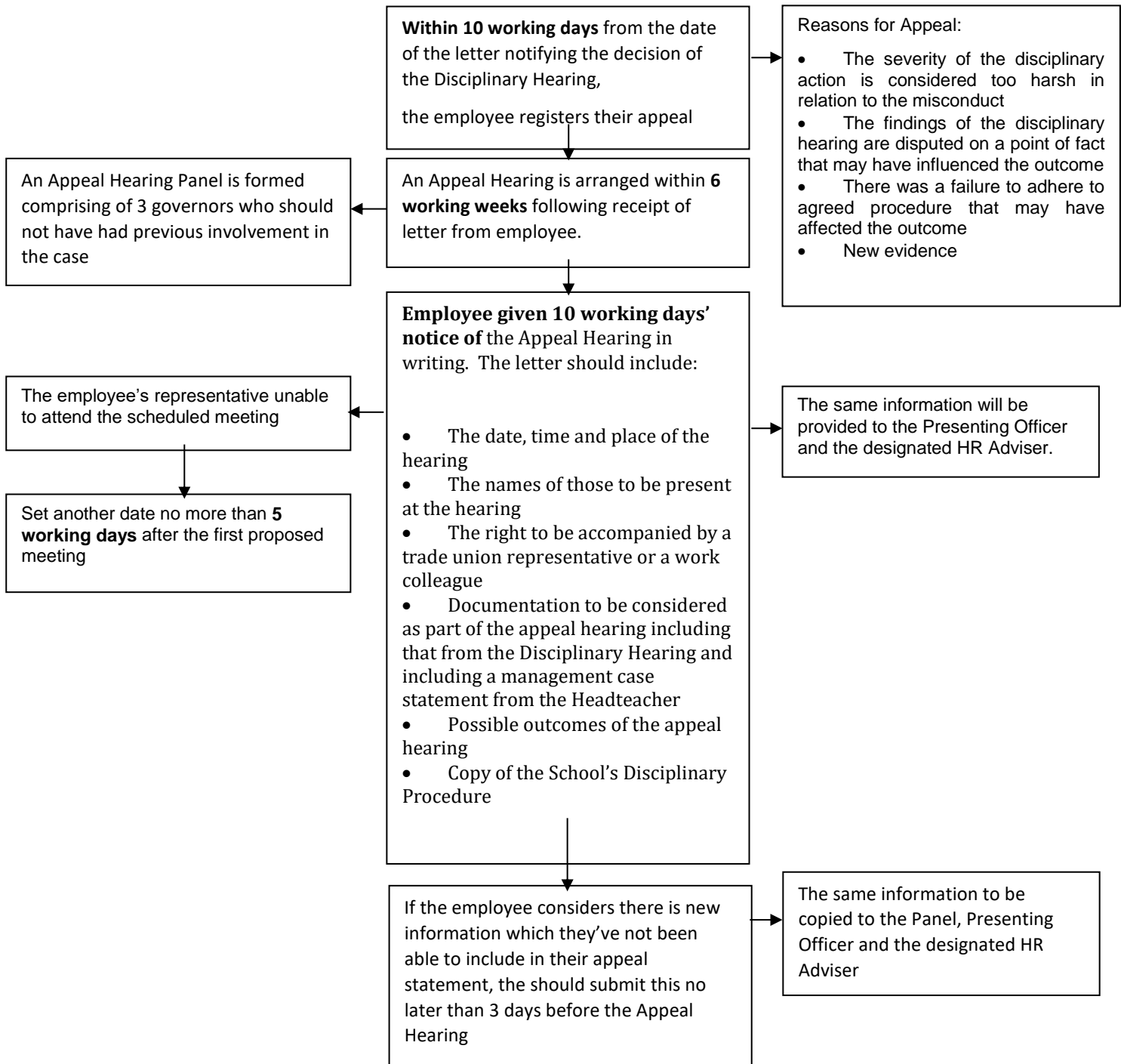
**Appendix E (Headteacher = Executive Headteacher)**





**Appendix F**

**Preparation for Appeal Hearing Flowchart**



## Appendix G

### Appeal Hearing Flowchart

Chairperson opens Hearing by:

- Making introductions
- Explaining purpose and format of meeting

Where the appeal is on the grounds of new evidence, the Appeal Hearing Panel may consider it necessary to adjourn the Hearing if further investigation into the new evidence.

Where this is the case, it is expected that the Presenting Officer is the most appropriate person to conduct this investigation.

The Appeal Hearing will be convened once the investigation has been concluded.

The employee will be given **10 working days'** notice of the reconvened Hearing.

Chairperson asks employee and/or their representative to present their case, give reasons for appeal, and call any witnesses

Chairperson asks the Presenting Officer to ask any questions of the employee and/or their representatives and witnesses

The Panel to ask any questions of the employee and/or their representative and witnesses

Chairperson asks the Presenting Officer to present their case and call any witnesses

Chairperson invites employee and/or their representative to ask any questions of the Presenting Officer and witnesses

The Panel asks any questions of the Presenting Officer and witnesses

Chairperson asks employee and/or their representative to sum up their case

Chairperson asks the Presenting Officer to sum up their case

Chairperson asks both parties to withdraw

Appeal Panel reach a decision on the evidence presented before it

Chairperson calls back both parties and informs employee of decision. Decision confirmed in writing within **5 working days** of Appeal Hearing

*If further information is required both parties are called back*

Outcomes of the Appeal Hearing can be one of the following:

- Uphold the appeal and dismiss any disciplinary action
- Substitute a lesser level of disciplinary action

