

CONDUCT PROCEDURE FOR SCHOOLS

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1. INTRODUCTION AND PURPOSE

1.1. Responsibility for dealing with conduct

The Governing Body of the school, with the Principal, is legally required to establish disciplinary procedures and is required to take appropriate steps to deal with employees who fail to achieve expected standards.

1.2. Principles of this procedure

This procedure is for addressing conduct issues in a way that is fair, effective, consistent, and in accordance with good employment practice. It takes account of the General Teaching Council's Professional Code for Teachers and the ACAS Code of Practice and the views of recognised Professional Associations / Trade Unions.

1.3. Defining the conduct process

The conduct process is a means by which employees are helped and encouraged to achieve and maintain the required standards of conduct, behaviour and performance. Misconduct is defined as a situation where the employee undertakes intentional acts or omissions or wilful actions or inappropriate behaviour.

1.4. Contractual provisions

General standards of conduct are implied within the employment contract and expressed in this document.

1.5. Coverage of this procedure

This procedure applies to both teaching and support staff for the purpose of consistency and ease of application and Clyst Vale Community College (CVCC) must make it available to every member of staff through the school's own internal systems.

1.6. Exceptions

- An employee may be dismissed in the following circumstances without recourse to the Disciplinary Procedure: redundancy, provided the appropriate procedure has been followed;
- expiry of the agreed probationary period if applicable;
- failure to satisfactorily complete NQT Induction;
- on the expiry of a fixed term contract of employment;
- lack of professional competence; (where the appropriate Capability Procedure has been followed);
- dismissal due to long-term ill health, provided the appropriate procedure has been followed;
- unsatisfactory attendance due to ill-health; (Absence Management Policy);
- dismissal for some other substantial reason.

2. EQUAL OPPORTUNITIES

This procedure is based on best practice and is designed to promote a consistent and effective approach to conduct issues in the College. The Governing Body will ensure that the application of the procedure will not disproportionately or unfairly affect any staff in the College recognising the diversity of the community. Both managers and governors have a particular responsibility to ensure that they manage the processes set out below fairly, equitably, and objectively.

3. GENERAL PRINCIPLES

3.1 The Right to be Accompanied

At any stage in this procedure the member of staff may seek support and advice from a representative of his/her trade union or professional association and must be encouraged to do so.

The member of staff has the right to be accompanied at any meetings by a single companion who is either a work colleague or trade union/professional association representative.

3.2 Disciplinary Action Against Trade Union Representatives

No action under this procedure will be brought against an officially designated representative of a trade union or staff association, including school representatives, until the circumstances of the case have been discussed with a designated senior representative or full time official of the Trade Union or Association concerned. In this context, a trade union representative shall mean any officer of the local branch, member of its Committee, or workplace representative. Further guidance is available from the Human Resources Service.

3.3 Standard of Proof (the 'balance of probability' test)

- The employer must establish a reasonable belief on the 'balance of probabilities' (i.e. that it was more likely than not that the employee is guilty of misconduct or negligence)
- There must be reasonable grounds to sustain this belief
- There must have been as much investigation as was reasonable in the circumstances

3.4 Principles of Natural Justice

Essential to the fair and reasonable application of these procedures, is the underlying commitment to the principles of natural justice, namely:

- The employee must know, in full, the allegations made against him/her at the earliest opportunity;
- The employee must have an opportunity to state his/her case before any decision is made;
- The determinations must be unbiased, fair and made in good faith;
- The employee must have the right to appeal;
- The employee has the right to be accompanied (See 3.1).

3.5 Human Resources Advice

The Human Resources Service Provider may be consulted and can provide advice to any party at any stage of this procedure and will seek legal advice when/if appropriate.

3.6 Timing of Meetings

Whilst recognising that unnecessary delay is not in the interest of any party, management (including Governors' Hearing Panels) will ensure that proper arrangements are made to allow effective representation and consideration of issues as well as taking account of the balance between the employee's working life and other external factors. Management will hold meetings outside of term-time only in exceptional circumstances.

3.7 Time limits

The time limits mentioned in this procedure may be varied by mutual agreement in individual cases.

3.8 Place and Time of Formal Hearings

Any hearing should be held in a confidential environment, free from interruptions. If the employee's chosen representative is not available on the date set by the College for the hearing, the *Employment Relations Act 1999* permits the employee to select another reasonable date within five working days of the original date. These arrangements may be varied by mutual agreement. Reasonable steps will be taken to agree start times of hearings.

3.9 Child Protection issues: Incidents and/or allegations involving a child or young person under the age of 19 years

Children are protected from physical, sexual, verbal and emotional abuse under several statutes including The Children Act 1989. This Act expressly lays down specific procedures to be followed in circumstances where an incident has occurred and/or allegations have been made that an employee has abused a child.

In these circumstances, it is recommended that the Principal immediately seek advice from the Human Resources Service Provider and refers to section 14 of this document.

3.10 Criminal Acts

If, at any time, it appears that a crime may have been committed, the Human Resources Service must be contacted immediately and/or the police, as appropriate.

3.11 Financial irregularity

If financial irregularity is suspected, the matter must be reported to the Chair of Governors. Advice should be sought from the Human Resources Service Provider concerning what action should be taken in relation to the employee suspected of the irregularity.

4. RECORD KEEPING STANDARDS

- 4.1. A written record must be made of all interviews with the member of staff and any other person identified as connected with circumstances that may have triggered action under this procedure. An employee will be provided with a copy of any records made as part of this process.
- 4.2. Information relating to serious allegations will be kept in a confidential manner by the College indefinitely. Information concerning less serious issues will be destroyed after 3 years, provided that no further action with regard to a similar issue under the procedure has proved necessary.
- 4.3. Formal warnings will remain on the employee's personal file for a minimum period of twelve months. A longer period may be determined at a Disciplinary Hearing.
- 4.4. All records will be kept confidentially and securely.

5. DEFINING INAPPROPRIATE CONDUCT

5.1. Misconduct/Negligence

The following list provides examples of what might constitute misconduct or negligence. This list is not exhaustive. However, it should be noted that depending on the seriousness of the circumstances, any of these actions may be treated as gross misconduct:

- Refusal to comply with reasonable lawful instructions
- Timekeeping including failure to remain at work during contracted hours and without permission.
- Smoking in breach of College's policy
- Bullying and/or Harassment
- Negligent actions
- Inappropriate relationships between colleagues
- Inappropriate use of school equipment/property
- Breaches of confidentiality
- Failure to comply with Health and Safety requirements
- Actions that may bring the College into disrepute.
- Discrimination and harassment

6.2. Gross misconduct/gross negligence

There are circumstances when the actions of the employee are serious enough to constitute a breach of trust and confidence and thus destroy the employment contract between the employee and the employer, making any further working relationship impossible. When it is found that an employee has committed an act of gross misconduct, summary dismissal (dismissal without notice) is a probable outcome.

The following list is not exhaustive but gives examples of offences that could be regarded as gross misconduct:

- Theft, fraud, deliberate falsification of records
- Providing false information in relation to an application for employment, qualifications, etc
- Fighting, assault
- Deliberate damage to property or equipment
- Drunkenness
- Criminal conviction and/or failure to disclose a criminal conviction
- Illegal substances or drugs
- Serious negligence which causes unacceptable loss, damage or injury
- Serious act of insubordination
- Physical, sexual, emotional or verbal abuse of pupils, colleagues, parents and/or governors (regardless of whether the pupil is over the legal age of consent)
- A sexual offence
- Inappropriate contact (either physical or non physical) with a child
- Possession of, or taking or distributing indecent photographs or publications
- Serious breach of confidentiality
- Dishonesty
- Inappropriate use of computer and/or communications systems
- Making of vexatious allegations
- Discrimination, including harassment and victimisation on the grounds of race, sex, sexuality, disability, pregnancy or religious belief
- Engaging in unauthorised employment during hours contracted to work for the College or during periods of specially designated leave e.g. sick leave, special leave etc.

The above lists are not all-inclusive and there may be several other breaches of conduct that may be deemed to be misconduct or gross misconduct.

7. CONDUCT OUTSIDE WORK

7.1. Misconduct or criminal offences that have occurred outside of the workplace may be dealt with under these procedures if the employee's conduct or activities:

- makes him/her unsuitable for the job s/he is employed to do.
- If it is of such a nature as to have the potential to cause serious damage to the College's reputation.

In these circumstances, it is important to seek advice from the Human Resources Service Provider.

8. REPORTING OBLIGATIONS

8.1 Referral to the Teaching Agency – Statutory Obligations

Any cases of unacceptable professional conduct by a teacher should be reported to the Teaching Agency. 'Unacceptable or professional conduct' is defined as 'conduct which fall short of the standard expected of a registered teacher... and is behaviour which involves a breach of the standards of propriety expected of the profession.'

8.2. Referral to the Disclosure Barring Service (DBS) – Statutory Obligations

There is a legal requirement for employers to make a referral to the DBS where they think that an individual has engaged in conduct (including inappropriate sexual conduct) that harmed (or is likely to harm) a child or if a person otherwise poses a risk of harm to a child.

The referral is usually made when:

- a) an individual is dismissed on the grounds of misconduct (whether or not in the course of his/her employment) which harmed, or placed a child at risk or harm, or
- b) an individual has resigned or retired in circumstances such that the organisation would have dismissed him/her, or would have considered dismissing him/her, if s/he had not resigned or retired, or
- c) an individual is transferred to a position within the organisation which is not a direct care position in circumstances such that the organisation would have dismissed him/her, or would have considered dismissing him/her, if s/he had not transferred to the different position.

9. IMPACT ON THE APPLICATION OF OTHER PERSONNEL PROCEDURES

The conduct procedure may have an impact on the application of a number of other personnel procedures. In some cases, this procedure will need to be used in conjunction with these procedures. Care should be taken to ensure the correct procedure is used.

9.1. Capability procedure

Lack of capability is defined as a situation in which an employee fails consistently to perform her/his duties to professionally acceptable standards. Examples of under-performing might be:

- consistently failing to meet reasonable deadlines for tasks, projects, reports, etc;
- regularly producing work which is sub-standard, e.g. inaccurate, badly presented, or poorly organised;
- failing to carry out effectively and consistently key areas of job responsibility;
- being unable to maintain institutional standards of discipline and contribute to the maintenance of good order throughout the College and specifically in the classroom (applicable to teachers only).

9.2. Grievance procedure

In exceptional circumstances, an employee may raise a grievance about the member of staff managing the conduct process. Although this is a rare occurrence depending on the circumstances it may be appropriate to suspend the procedure for a short period until the grievance can be considered. In such a scenario, consideration should be given to bringing in another manager or Governor in the College and seeking advice from HR. Any records should be passed to the new manager.

Any disagreements or grievances about the interpretation of the procedure, or the application of related matters not covered in the procedure must not delay the various elements of the conduct procedure.

9.3. Managing Sickness Absence procedure

Urgent action is required if sickness absence intervenes during an investigation into an incident or allegation or by notice being given of a hearing. If sickness absence appears to have been triggered by the application of the conduct procedure, the case should be referred immediately to Wellbeing@Work to assess the employee's health and fitness for continuing the investigation or attending a hearing. It should also be established whether

the sickness absence is short or long term. A considerate and sympathetic approach must be taken, but in general, the length of time the College may wait for the employee's health to improve before considering whether to terminate employment on health grounds should be subject to sickness management procedures.

Similarly, absence which appears to be triggered by action under the conduct procedures, and which the Principal believes is likely to be long term (having taken advice from HR), should be referred immediately to Wellbeing@Work. Short absences should not delay any part of the procedure. (Refer Section 20)

9.4. Appraisal Policy

This procedure should be regarded as a separate procedure from the Appraisal Policy or any other performance-related initiative or procedure, such as teacher induction or INSET initiatives.

The review meeting and review statement of the Appraisal Policy do not form part of formal conduct procedures.

10. EMPLOYEE RESPONSIBILITIES

10.1. Contractual Responsibilities of Employees

Employees have substantial rights under this procedure, which will be safeguarded. However, members of staff are required to conduct themselves appropriately and reference to this procedure is included in the contract of employment.

10.2. Conduct standards expected from Employees

Additionally, the public is entitled to demand conduct of the highest standard from staff in College. The expectations of employees include:

- (a) Maintaining conduct in keeping with the interests and standing of the College
- (b) Devoting full attention while at work to the duties of his/her positions and in doing so acting with responsibility, judgement and good faith
- (c) Carrying out any reasonable lawful instructions given by those with responsibility to do so;
- (d) Never, under any circumstances, divulging to any unauthorised person, or making personal use of confidential information connected with the College;
- (e) Observing the rules, regulations and instructions adopted by the College.
- (f) Participating fully in any investigation into alleged incidents and/or allegations including attending meetings as directed.
- (g) Recognising that the instigation of this procedure is being undertaken in the interests of the College and that all information should be treated with discretion.
- (h) Whistle-blowing

11. MANAGEMENT RESPONSIBILITIES

11.1. Role of Principal and Governing Body

Whilst employees have a duty to conduct themselves appropriately, the Governing Body and Principal also have obligations, both under this procedure and in terms of supporting staff generally. The College must ensure that each employee is aware what is required of them and that s/he have been provided with reasonable opportunity to fulfil those requirements and understand the consequences of not meeting them.

11.2. Obligations of Principal and Governing Body:

- (a) To ensure that each employ understands what is required of him/her with regards to methods, objectives and standards;
- (b) To give training and guidance to employees to enable each employee to carry out his/her duties;
- (c) To ensure each employee is aware of any rules and procedures applying to his/her employment;

- (d) To take consistent action to identify concerns and reinforce standards before it becomes necessary to resort to more formal procedures;
- (e) To discuss any perceived areas of concern at the earliest opportunity;
- (f) To manage the conduct process effectively, fairly and reasonably;
- (g) To consider external factors that may be affecting the employee, e.g. health issues, domestic difficulties, etc.
- (h) To ensure each employee is aware of these procedures.
- (i) To ensure that due regard is given to the desirability of staff at the College being able to achieve a satisfactory balance between the time required to discharge their professional duties and the time required to pursue their personal interests outside work. i.e. work/life balance

12. RESPONSIBILITY FOR APPLICATION OF THIS PROCEDURE

When an incident occurs or an allegation is made against an employee, prompt and effective action must be taken. It is the responsibility of the Principal (or Chair of Governors, supported by the School Improvement Officer and/or HR officer, in the case of incident/allegations concerning the Principal) to decide on the appropriate person(s) to conduct the investigation.

12.1. Deciding who should act as Investigating Officer(s)

The Principal (or Chair of Governors in the case of allegations against the Principal) should decide who would be appropriate to act as the Investigating Officer(s) given the circumstances of the incident/allegation. It is preferable that two people carry out an investigation but if this is not possible the Investigating Officer must be accompanied at any investigation meeting by someone who is deemed appropriate to take notes. It is essential that the investigating officer has had no involvement or prior knowledge of the incident.

12.2. Who can act as Investigating Officer(s)

Any of the following may act as an Investigating Officer:

- Principal
- Vice Principal
- Deputy Headteacher
- Member of the Senior Management Team / Appropriate senior member of staff
- HR Officer
- A Governor of the School

12.3. Responsibilities of Investigating Officer (s)

Investigating Officers are charged with the responsibility of undertaking an investigation in an open and honest manner. Information must be factual and reasonable efforts must be taken to establish the truth.

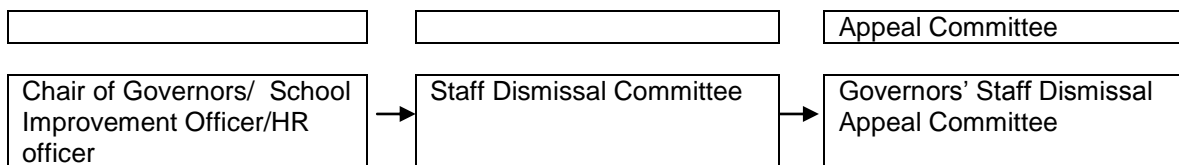
12.4. HR Advice

At the request of the Principal /Manager/Governor, a Human Resources Adviser will be present in an advisory capacity at any stage of the process.

Disciplinary Hearing

Responsibility for undertaking the respective stages of the procedure will be delegated by the governing body as follows:





13. INCIDENT OCCURS AND/OR ALLEGATIONS ARE MADE

13.1. Clarifying the situation

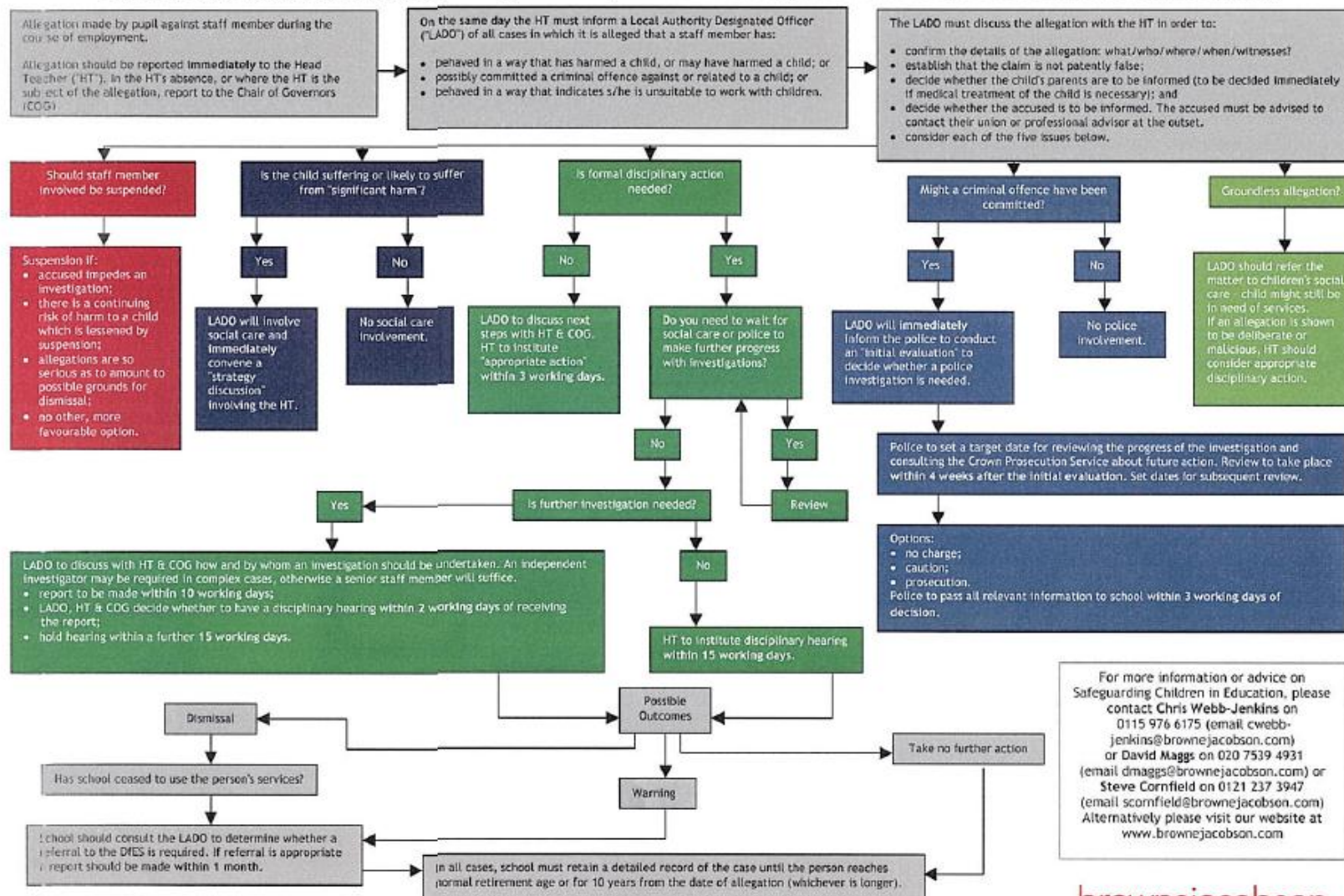
- 13.1.1. The Principal, should see the employee, in private, at the first opportunity, and:
- Bring to the employee's attention, the incident and/or allegation made against him/her; and that the employee might wish to contact his/her professional association.
 - Explain the process and advise who will be Investigating Officer(s);
 - Advise him/her that the circumstances may potentially be disciplinary;
 - Tell the employee that s/he does not have to respond as there will be a full investigation but notes will be taken of any response made;
 - Ask the employee to make notes of his/her actions for their own use, whilst it is fresh in his/her mind;
 - Explain what further steps it is intended to take.
- 13.1.2. Consider support mechanisms for the employee, bearing in mind the need for confidentiality. (see 15.1.5)
- 13.1.3. Consider whether it is appropriate for the employee to remain at work – refer Section 15 – Suspension

13.2 Determining the appropriate course of action

- 13.2.1. The Investigating Officer(s) should establish the fundamental circumstances of the situation by speaking to those primarily involved in order to determine an appropriate course of action. Information uncovered at this stage may be used during any subsequent formal investigation. A decision should be made which of the following categories the situation falls under:
- An incident (e.g. a fight between two employees)
 - Allegations made against an employee (not involving a child)
 - A Child Protection matter (an incident and/or allegations involving a child or a young person under 19)
⇒ Refer to Section 14
 - A matter relating to financial irregularities
⇒ Refer to Section 3.12
 - A criminal act
⇒ Refer to Section 3.11

14. CHILD PROTECTION INCIDENTS AND/ OR ALLEGATIONS

Safeguarding Children in Education: Dealing With Allegations of Abuse Against Teachers and Other Staff: Flowchart Summary



For more information or advice on Safeguarding Children in Education, please contact Chris Webb-Jenkins on 0115 976 6175 (email cwebb-jenkins@brownejacobson.com) or David Maggs on 020 7539 4931 (email dmaggs@brownejacobson.com) or Steve Cornfield on 0121 237 3947 (email scornfield@brownejacobson.com) Alternatively please visit our website at www.brownejacobson.com

SUSPENSION

15.1. Formal Suspension

Suspension is not a disciplinary act; it is a precautionary measure, pending further investigation and possible formal proceedings. However, it is a sensitive area and suspension should not occur unless there is reasonable and proper cause to take such steps and other options should be properly considered first (see below).

It is imperative that the advice of the Human Resources Service Provider should be sought in these cases.

It may be necessary to suspend the employee:

- (a) If it is considered that her/his continued presence in the College would have a seriously detrimental effect and/or
- (b) Where this would allow a more objective examination of the circumstances and/or
- (c) When the alleged misconduct is sufficiently serious that the outcome may be dismissal and/or
- (d) Where a member of staff is the subject of a police investigation and the alleged offence is considered relevant to his/her duties and/or
- (e) Where it is necessary to await the outcome of some other hearing e.g. criminal charge and/or
- (f) Where there is a reasonable ground to believe that it would seriously affect the interests of the College and/or the individual if s/he were to remain at work and/or
- (g) Pending an appeal against a decision to dismiss.
- (h) Any combination of the above.

None of these reasons would lead to automatic suspension and each case should be decided on the facts.

15.1.1. Suspension will be on pay without loss of emolument.

15.1.2. Suspension could occur at any stage within this procedure. The Principal, a designated Governor or a Committee of the Governing Body may suspend a member of staff however, it is recommended that the HR Service provider be consulted before any decision is made

15.1.3. Where the employee concerned is the Principal, the Chair of Governors will consult with the HR Service provider before deciding whether to suspend.

15.1.4. The employee must be advised of any decision to suspend and any conditions attached to the suspension, ideally in person. The employee may give their views in person or in writing as appropriate. This should be confirmed in writing to the employee with a copy to the appropriate trade union or association if the employee wishes.

15.1.5. An agreed senior member of staff, not involved in the circumstances of the allegations/incident, should be nominated to maintain contact with the employee on College matters, i.e. notes of College meetings, etc but must not discuss the circumstances of the suspension. Details of this contact will be agreed between the employee, his/her representative and the nominated contact officer. The name of a member of the Human Resources Service not associated with the College will also be provided to the employee if s/he wishes to seek advice on

procedural matters. A suspended employee should also be encouraged to get in touch with his/her professional association

15.2. Lifting of Suspension

A suspension can only be lifted by the Governing Body. Governors may formally delegate this responsibility to a Committee. The Committee with delegated responsibility shall only be provided with sufficient information to enable them to reach a decision and due regard should be given to the need for confidentiality of individuals involved in the circumstances of the suspension.

15.3. Special Leave - Employee asked not to attend work

In some circumstances, formal suspension may not be appropriate and it will be preferential to ask an employee not to attend work while an investigation takes place and/or pending the decision to suspend or not being looked into and made.

15.3.1. In these circumstances, the employee should be asked to take Special Leave (on full pay) and it should be confirmed in writing with a copy to his/her representative.

15.3.2. While the employee is on Special Leave, an agreed senior member of staff, not involved in the circumstances of the suspension, should be nominated to remain in contact with the employee on College matters but must not discuss the circumstances of any investigation. Details of this contact will be agreed between the employee, his/her representative and the nominated contact officer. The name of a member of the Human Resources Service, not associated with the College, will also be provided to the employee if s/he wishes to seek advice on procedural matters. The employee should also be encouraged to get in touch with his/her professional association.

15.4. Temporary transfer to suitable alternative duties

15.4.1. The Principal should consider whether a temporary transfer to alternative duties might be an alternative to suspension or special leave. The viability of this option would depend on:

- Whether any alternative duties existed
- The impact on other employees' work
- The bearing it may have on any investigation
- The appropriateness of the duties in relation to the usual work undertaken by the employee

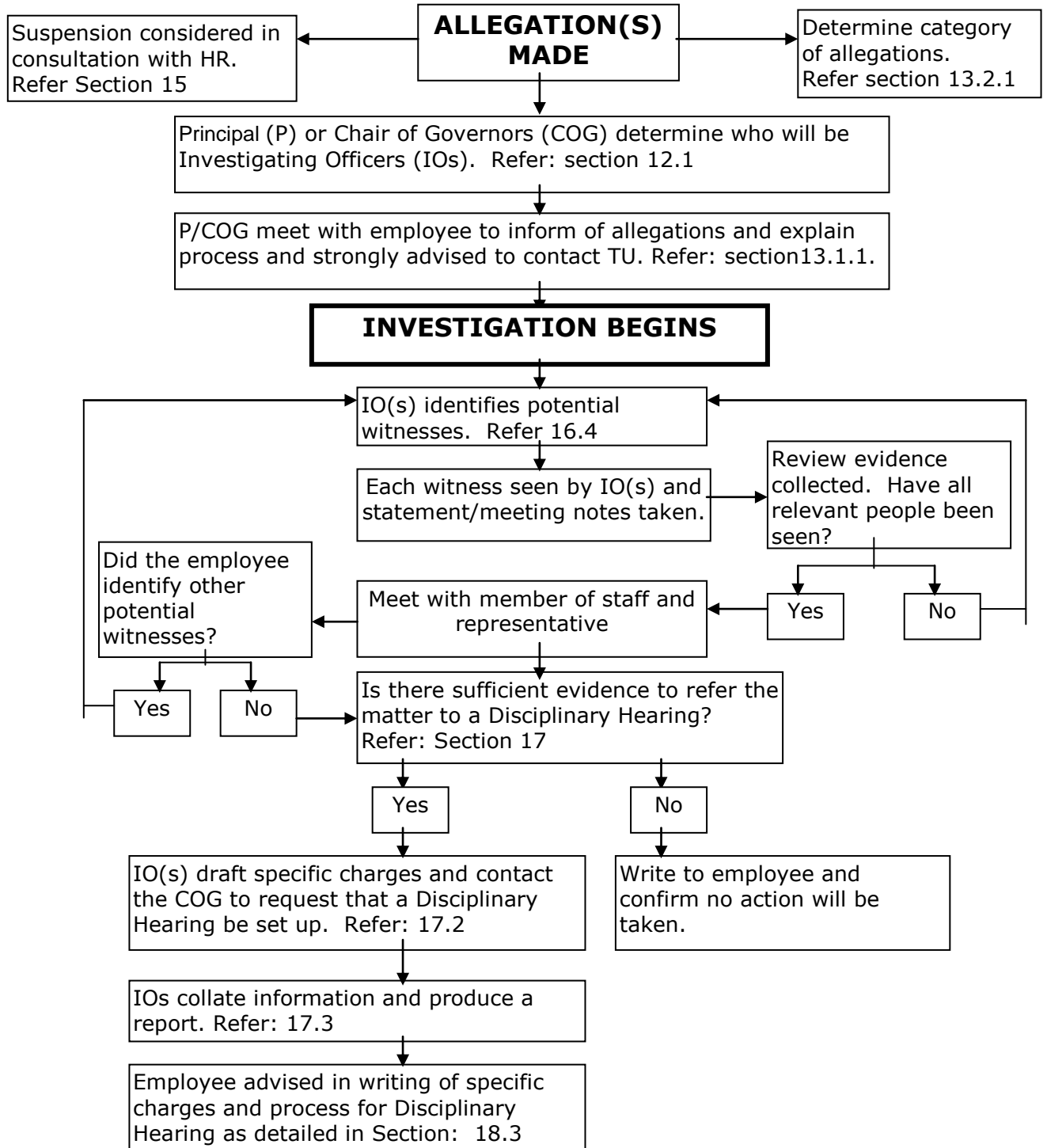
15.4.2. An employee subject to these procedures cannot unreasonably refuse to undertake such duties, if the work is considered to be a reasonable alternative.

15.5. Sending Home

Depending on the circumstances, it may be appropriate for an employee to be sent home pending the decision to suspend or not being looked into and made. However, care should be taken to make certain that the employee is physically able to get home in a safe manner. If there is any doubt, e.g. an employee is in a state of shock, then arrangements should be made to ensure the individual does not drive and is taken home in a way that does not put other people or employees at risk e.g. taxi.

16. THE INVESTIGATION

16.1. INVESTIGATION PROCESS FLOWCHART



16.2. Timing of investigation

The investigation should start as soon as possible after the alleged incident took place or allegations were made and should be treated as priority and progressed quickly.

16.3. Confidentiality

The Investigating Officer(s) must not discuss any matters related to the investigation with any other party with the exception of seeking advice or clarification from others, suitably qualified to provide that advice or clarification, in the view of the Investigating Officer(s).

16.4. Witnesses

16.4.1. If it is necessary to interview pupils formally, their parents/guardians must be advised and consent must be obtained.

16.4.2. A parent/guardian may accompany a child during the interview but must not significantly contribute to the interview.

16.4.3. The employee's representative will have the opportunity to be present at an interview with a pupil to avoid the necessity of interviewing the pupil more than once as long as this is not prejudicial to the disclosures likely to be made by the pupil. If it is thought the presence of another adult may be intimidatory the employee's representative will be provided with a tape and a transcript of the interview.

16.4.4. Wherever possible, a factual record of the discussion will be agreed to avoid the child being called as a witness at any subsequent disciplinary hearing.

16.4.5. Witnesses must be told the following:

- (a) Nature and purpose of the investigation;
- (b) That a factual statement will be taken and may be used at any subsequent disciplinary hearing;
- (c) That the witness may be called to give evidence at any subsequent disciplinary hearing;
- (d) That the employee accused of the allegation/incident, may be given a copy of the statement at some point in the future and will be present at any hearing.

16.5. Statements/Investigation meeting notes

16.5.1. The Investigating Officer(s) will ensure that statements/investigation meeting notes are factual and not expressing opinion.

16.5.2. Statements/Investigation meeting notes must contain:

- (a) Where possible, the date, time, location of each observation or incident; (Diagrams would be useful)
- (b) The relationship of the witness to that of the person that the incident/allegation concerns
- (c) Whether the witness had an opportunity to observe clearly and accurately;
- (d) Circumstantial evidence such as knowledge of a system or practice;
- (e) The reason for the witness's presence during the incident/allegation;
- (f) Any memorable small details;
- (g) Date, time and place that the interview with the witness took place;
- (h) Signature of the witness, confirming an accurate and truthful statement/Record of meeting.

16.5.3. A witness can be accompanied by a work colleague or representative not associated with the circumstances of the incident/allegation and/or people involved in it. The friend or representative must not speak on behalf of the witness. Both parties may request a brief adjournment if necessary.

16.6. Police Statements

If the investigation is taking place following the completion of a Police investigation, it may be possible to obtain copies of Police witness statements with the approval of the individual(s) concerned.

17. CONCLUSION OF INVESTIGATION

17.1. Decision of Investigating Officer(s)

At the conclusion of the investigation, the Investigating Officer(s) will make a decision whether:

- (a) There is no evidence to substantiate the allegations/incident and therefore no case to answer;
- (b) There is sufficient evidence to determine that the matter should be referred to a formal hearing.

17.2. Referral to Principal /Staff Dismissal Committee

If the Investigating Officer(s) determine that there is sufficient evidence to refer the matter to a formal hearing, they will draft specific charges. Arrangements will be made for a hearing to be convened for the charges to be considered.

17.3. Who will hear the matter?

A formal hearing can be before either the Principal or a committee of governors acting as the Staff Dismissal Committee, depending on the circumstances:

- If the Principal has not undertaken the role of Investigating Officer, s/he may hear the matter unless the charge(s) may lead to dismissal.
- The Staff Dismissal Committee must hear charges of gross misconduct and/or where the outcome could be dismissal
- The matter can be heard by the Staff Dismissal Committee where either the Principal or the Employee believe it will provide a more impartial and/or objective forum.
- The Staff Dismissal Committee will hear the matter if the Investigating Officer(s) are of the view that the circumstances warrant it.

17.4. Information to Principal/Staff Dismissal Committee

The Investigating Officer(s) will prepare a report giving details of the allegations and investigation and the charges for consideration. Attached to the report will be notes/statements from the appropriate investigation meetings and any other relevant documentation.

17.5. Confirmation of 'no action'

If there is no evidence to support the allegations, the Investigating Officer(s) will write to the employee and advise accordingly. Copies of confidential documents will be disclosed in line with data protection procedures.

18. DISCIPLINARY HEARING

18.1. Co-ordination of the Disciplinary Hearing

18.1.1. The Clerk to Governors will be responsible for convening the hearings before the Staff Dismissal Committee and will co-ordinate the documents and administration for a disciplinary hearing to take place to the Clerk to Governors. Hearings before the Principal will be co-ordinated by an appropriate person nominated by the Principal.

18.1.2. The Staff Dismissal Committee should consist of governors who have had no direct involvement in the case or have a close relationship or friendship with the staff member concerned or the person making the allegations.

18.1.3. The Clerk to Governors must ensure there are no associations between members of the Staff Dismissal Committee and the member of staff that may have the potential to discredit the decisions of the committee.

18.2. Timing of the Hearing

18.2.1. The Clerk to the Governors/nominated person will be responsible for giving formal notification to the employee concerned on behalf of the Principal / Chair of the Staff Dismissals Committee.

18.2.2. At least 10 clear consecutive days notice of the Hearing should be given. If the employee's chosen representative is not available on the date set by the College for the hearing, the *Employment Relations Act 1999* permits the employee to select another reasonable date within five working days of the original date. Consideration should also be given to 'reasonable adjustments' required under the DDA. These arrangements may be varied by mutual agreement. Reasonable steps should be taken to agree the start times of hearings.

18.3. Formal Notification of Hearing

18.3.1. The formal notification will include:

- (a) the date, time, place of the Hearing;
- (b) the name(s) of the person(s) who will hear the case;
- (c) details of the employee's employment;
- (d) the report giving precise details of the employee's alleged misconduct;
- (e) The investigation report;
- (f) Who will present the management case;
- (g) Who will be the HR Adviser to the panel;
- (h) Copies of statements and any other written material or evidence that is relevant.
- (i) The fact that the Hearing constitutes the opportunity of making representations as provided for under Schedule 16 of the School Standards and Framework Act 1998 for community and VC schools and Schedule 17 for VA and Foundation schools;
- (j) If dismissal is to be considered, the fact that the Hearing may result in the determination that the employee shall cease to work at the College and subsequently have his/her employment terminated;
- (k) names of any witnesses to be called;
- (l) The employee's right to be represented by a recognised trade union or professional association representative or work colleague and to call witnesses;
- (m) The employee's right to submit any documentation within four consecutive days of the hearing, to the Clerk to Governors;
- (n) A copy of the conduct procedures.
- (o) the fact that the hearing may take place in the employee's absence if s/he is unable to attend without a satisfactory explanation. If s/he is unable to attend through ill, s/he should arrange representation at the hearing and provide written submissions to the hearing

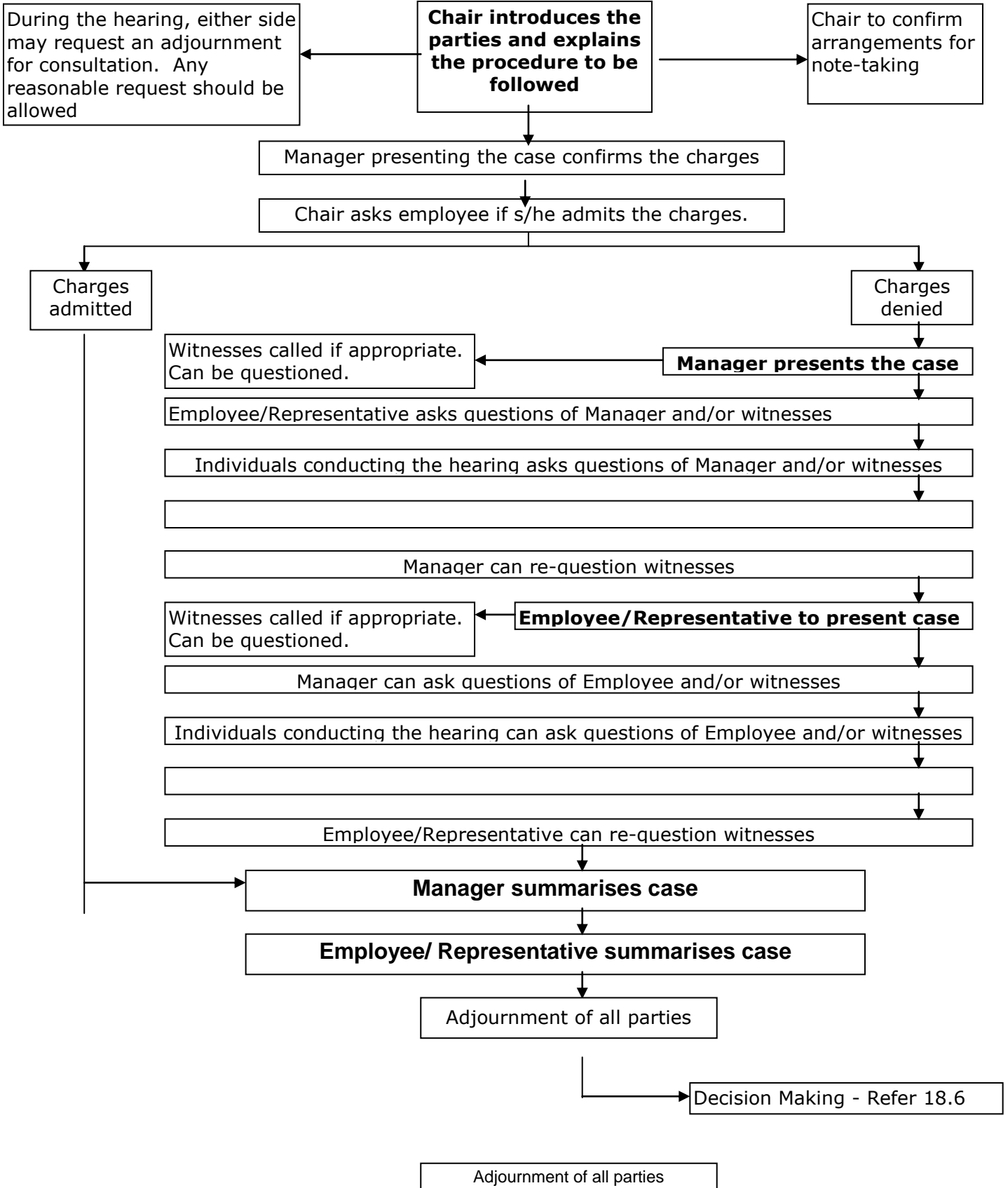
18.3.2. The Clerk to Governors/nominated person must receive from the employee or his/her representative, all the documentation, the names of witnesses that s/he may wish to call and any written representations the employee may wish to make at least four consecutive days before the date set aside for the hearing.

18.4. Hearing Proceedings

18.4.1. The purpose of the Hearing is to consider alleged misconduct by the employee based on circumstances identified by an investigation.

- 18.4.2. The Hearing should be conducted in accordance with good employee relations practice and following advice or guidance from the Human Resources Adviser.
- 18.4.3. No conclusion should be reached until representations from all parties have been taken into account.
- 18.4.4. Committee members must report any attempts to influence them and declare before the Hearing any factor or issue, which could be, perceived as undermining her/his impartiality. If necessary, a governor with a conflict of interest must declare this and withdraw accordingly. This may result in a postponement of the hearing.
- 18.4.5. A Human Resources Adviser may accompany the Investigating Officer(s) presenting the case.
- 18.4.6. It is the responsibility of the Clerk to the Governors to ensure that an accurate account of the hearing is made either by notetaking or transcript of a tape recording.
- 18.4.7. During the hearing, either side will be entitled to request an adjournment for consultation. Any reasonable request should be allowed.
- 18.4.8. Witnesses will attend for only that part of the hearing where they are required to give evidence and answer questions.

18.5 DISCIPLINARY HEARING PROCEDURE



18.6 Decision Making

18.6.1 The hearing is not a court of law and the tests to be applied are different, namely that there are reasonable grounds for believing that a member of staff was, more likely than not, responsible for the act or omission as alleged and satisfaction that as much investigation into the matter was carried out as was reasonable.

18.6.2 At the conclusion of the disciplinary hearing, **the decision will be confirmed in writing to the member of staff** and any of the following may apply as appropriate:-

18.6.2.1 **A decision to take no action;**

18.6.2.2 **Oral warning**

May be issued for minor breaches of discipline. This will be confirmed in writing to the employee and recorded on their personal file. The staff member will be given the opportunity to append his/her own statement that will be retained on file for the duration of the warning.

18.6.2.3 **Formal written warning**

This will state the grounds for the action to be taken and that failure to improve, or a repetition of the misconduct, may result in further disciplinary action.

18.6.2.4 **Final written warning**

This will state the grounds for the action to be taken and that failure to improve, or a repetition of the misconduct, may result in dismissal.

18.6.2.5 **Dismissal with notice;**

18.6.2.6 **Summary dismissal**

This is dismissal without notice. Summary dismissal is a reasonable response where an employee has committed an act of gross misconduct (See section 6.2)

18.7 It would be unusual for a disciplinary warning to remain on file for a period in excess of twelve months. Unless otherwise specified in the letter of confirmation, any warning, whether oral or written, will be expunged from the employee's record after six months from the date of notification and will be disregarded for any disciplinary purposes subsequent to its removal.

18.8 If the employee is currently suspended from work, action must be taken to lift the suspension to enable the employee to return to his/her post at the College, if the determination is anything other than dismissal. (Refer section:15 – Suspension)

18.9 The Decision

18.9.1. At the end of the Hearing, there will be an adjournment to enable the Principal or Committee to consider all the evidence presented. It is normal practice for the HR adviser who has advised the panel to be present during the decision making process. The HR adviser will not have been previously involved in advising on the specific case.

18.9.2. The decision will be announced verbally to the employee or his/her representative at the conclusion of the Hearing or as soon as appropriate.

18.9.3. The Clerk to the Governors will confirm the decision in writing to the employee within seven consecutive days. If that decision is to issue a written warning or notice of dismissal, the employee will be advised of the following:

(a) Grounds for the action taken;

- (b) How long the warning will remain on file (if appropriate);
- (c) The consequences of any recurrence,
- (d) Details of any remedial action required;
- (e) Information relating to Reporting Obligations (See section 8)
- (f) Details of her/his right of appeal, which must be sent to the Clerk to Governors giving clear and specific reasons for the appeal, within 7 consecutive days of the hearing. Such written notice of appeal must include reference to any new facts the appellant intends to raise at the Appeal.

18.9.4. The Chair will notify the College Manager in writing, within 5 days, giving the reason for the determination. The College Manager will issue notice of termination to dismiss on behalf of the College within 14 days. In the case of Summary Dismissal this will be with immediate effect.

19. APPEAL HEARING PROCEEDINGS

19.1. Right of Appeal

An employee can appeal against the decision given at a Disciplinary Hearing, if that decision is issued to the employee with any admonishment other than an oral warning. If an appeal is made, the Clerk to Governors will arrange for an Appeals Hearing to be convened.

19.2. Purpose of Appeal Hearing

The purpose of the Appeal Hearing is to give the employee the opportunity to have the matter considered by a separate committee of governors, if one of the reasons detailed below are applicable.

19.3. Grounds on which an Employee can lodge an Appeal

An employee has seven consecutive days from the date of the Disciplinary Hearing to lodge an appeal, which must be in writing addressed to the Clerk to Governors. The appeal letter must state the grounds on which the appeal is being made.

19.3.1. Appeals will only be considered on the following grounds:

- the procedure, i.e. did procedural irregularities prejudice the outcome?
- the decision, i.e. were the facts considered not relevant? Were the facts not substantiated? Were there new facts to be considered? i.e. the facts did not justify the outcome of the Hearing.

19.4. Timing and co-ordination of Appeal Hearing

19.4.1. The Appeal Hearing will be convened at the earliest convenient date and seven consecutive days notice will be given.

19.4.2. The Clerk to the Governors will co-ordinate the process and send to the employee all documents and the notes of the original hearing. (See section 18.3)

19.5. Staff Dismissals Appeals Committee

19.5.1. The Staff Dismissals Appeals Committee will hear the appeal.

19.5.2. The Chair of Governors must ensure there are no associations between members of the Staff Dismissal Committee and the member of staff or the person making the allegations that may have the potential to discredit the decisions of the committee.

19.6. Appeal Hearing Procedure

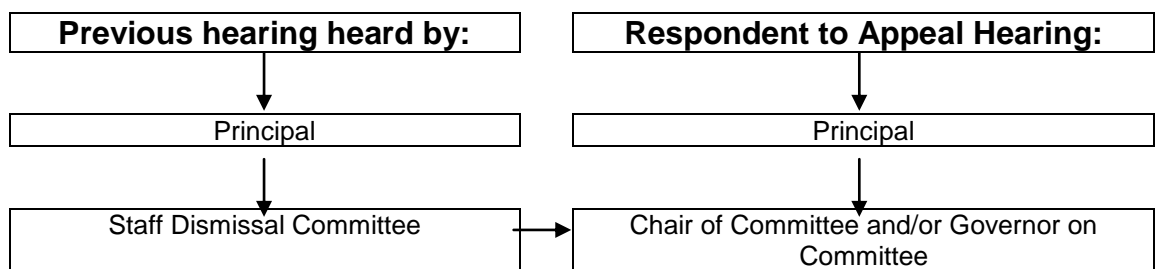
In all other respects, the order of proceedings of the appeal will follow those for the initial Hearing except that the appellant will present his/her case first. The Staff Dismissals Appeals Committee will ensure that the proceedings adhere to good practice and will take appropriate personnel advice from the Human Resources provider.

19.7. Record of Hearing

An accurate account of the hearing should be made, either by notetaking or tape recording. This record may be used during any legal process.

19.8. Respondent at Appeal Hearing

The respondent from the first hearing will be as follows. A Human Resources Adviser may accompany the respondent(s).



19.9. Decision Making

19.9.1. An Appeal provides an opportunity for the employee to make representations to another Committee not involved in the original decision.

19.9.2. The Staff Dismissal Appeal Committee should satisfy itself that :

- (a) An adequate investigation took place;
- (b) The member of staff was given a reasonable opportunity to make representation and that his/her response was given fair consideration against the allegations being made;
- (c) Having regard to all the circumstances, the decision of the previous Hearing was reasonable.

19.9.3. At the conclusion of the Appeal hearing, the Committee may decide:

- (a) To adjourn pending reconsideration by the Staff Dismissal Committee, where a significant amount of fresh information or evidence is brought to light.
- (b) To uphold the appeal by determining that the Staff Dismissal Committee erred in judgement and the employee is not guilty of misconduct and/or negligence.
- (c) To conclude that a procedural irregularity occurred and make a recommendation to rectify the situation.
- (d) To reject the appeal and the decision of the Staff Dismissal Committee stands.
- (g) To confirm any Reporting Obligations (Refer section 8)
- (h) If the employee is currently suspended from work, action must be taken to lift the suspension to enable the employee to return to his/her post at the College, if the determination is anything other than dismissal. (Refer section:15 – Suspension)

19.10. Announcement of Decision

- 19.10.1. Following an adjournment to allow the committee to consider the evidence and reach their decision, the Chair of the Committee will notify the appellant of the decision and the reasons for it. It is normal practice for the Human Resources Adviser who has advised the panel to be present during the decision making process.
- 19.10.2. The Clerk to the Governors or representative will confirm the decision in writing within seven consecutive days.
- 19.10.3. Where there is determination to uphold the appeal, the Chair will notify the College Manager in writing within seven consecutive days, giving the reason for the determination. The College Manager will rescind the notice.

20. FACTORS THAT MAY IMPACT ON THE PROCEDURE

The following points of guidance should serve to ensure a fair process is followed, particularly as a key principle of a fair conduct process is that a member of staff facing allegations should have a reasonable opportunity to personally state his/her case.

If an employee is certified by his/her G.P. as 'unfit for work' during the course of disciplinary proceedings, appropriate procedures need to be followed. Whilst the College needs to be able to minimise any disruption to the member of staff concerned and his/her colleagues, it is imperative that there is a fair process.

The process should take account of individual circumstances, sensitivity, good communication and reasonableness.

Employees have a statutory right to be accompanied at disciplinary hearings, subject to defined conditions. Dependent upon the seriousness of the illness, all communications may need to be via the nominated representative. Unless the seriousness of the illness indicates otherwise (to be determined following Wellbeing@Work (W@W) advice), the employee's written consent is to be obtained to the latter.

20.1. Sickness and suspension

- 20.1.1. If an employee is absent from work due to sickness when allegations arise that would normally lead to suspension, there will be no need to suspend as the employee is not in the workplace.
- 20.1.2. It is critical however, that the employee is informed of the allegations, the seriousness and that an investigation will take place. However, consideration will need to be given to the timing of this, taking into account the seriousness of the illness. W@W advice to be sought as appropriate, and where necessary communication via the representative.
- 20.1.3. Once an employee is fit to return to work, the necessity of suspension needs to be considered, a decision made and confirmed with the employee.
- 20.1.4. Certified sickness takes precedence over suspension. Therefore if an employee is certified by his/her G.P. as unfit for work during a period of suspension, the sick pay entitlement comes into force.

20.2. Sickness During Investigations

- 20.2.1. In the event of an employee's certified sickness during a disciplinary investigation, particularly with a short-term illness, the initial response will normally be postponement of the interview with him/her, following clarification (directly or through his/her representative) that s/he is not fit enough to participate. All other aspects of the investigation may continue.

- 20.2.2. All due regard should be made to the practical arrangements to facilitate an employee's participation/attendance e.g. location, start and finish times, transport, appropriate rest and refreshment facilities etc.
- 20.2.3. Where the prognosis is uncertain, or there is a need for specific advice about an employee's diagnosis or fitness, W@W advice must be sought. Specifically, W@W should be asked when the member of staff is likely to be fit enough to assist with an investigation and/or attend a hearing.
- 20.2.4. If there remains uncertainty about the prognosis and likely date of fitness to be interviewed, the investigation questions may be put to the employee in writing, and his/her written responses requested, following confirmation with W@W and his/her representative that s/he are fit enough to receive these.
- 20.2.5. Ultimately, following the completion of other aspects of the investigation, a decision may be made by the manager as to whether to proceed to a hearing, without the statement having been obtained from the individual facing the allegations, when all reasonable steps have been taken to try obtain it.

20.3. Sickness and Hearings

- 20.3.1. In the event of certified sickness at the date of a hearing, particularly with a short term illness, the initial response will normally be postponement of the hearing, following clarification with the employee (directly or through his/her representative), that s/he is not fit enough to attend.
- 20.3.2. If it remains uncertain about the prognosis and likely date of fitness to attend a hearing within a reasonable time scale, the hearing may proceed in the employee's absence subject to the following:
 - a. The employee and/or his/her representative have been advised that the hearing will proceed and are aware of possible disciplinary outcomes.
 - b. The employee is given the opportunity of stating his/her case in writing.
 - c. The employee's representative should be given full opportunity to present the employee's case.
 - d. A reasonable opportunity is given to question witnesses giving evidence or to call evidence. It will therefore be reasonable to allow the employee's representative to question witnesses and call evidence in the employee's absence.
 - e. If the employee's representative refuses to attend, the hearing may still go ahead as the opportunity to make representations has been provided. However it would be prudent to give both parties the opportunity to attend a later hearing, if this is at all practicable.
 - f. If an employee's chosen representative is not available, he/she can suggest an alternative reasonable time within 5 working days of the original date and the employer must postpone the hearing until then. These arrangements may be varied by mutual agreement.
- 20.3.3. The reasonableness of permitting the hearing to go on in the employee's absence. This will need to be judged by the length of his/her absence (as known/expected), at the time of the hearing, against all other considerations e.g. seriousness of the allegations, impact on the College, previous postponements, nature of the absence.

20.4. Pregnancy related absence

A disciplinary hearing will not be held in the absence of an employee who is too unwell to attend for pregnancy related reasons during the protected period.

20.5. Disability related absence

20.5.1. Consideration should be given as to whether it would be reasonable to allow for a longer period of postponement, to enable the employee to attend a hearing.

20.5.2. Reasonableness will depend on the nature and length of the absence, anticipated date of fitness to attend a hearing, seriousness of the allegations, impact on the service etc.