

The City of Cardiff Council
School Staff Discipline Procedure
May 2017

A Manager's Guide



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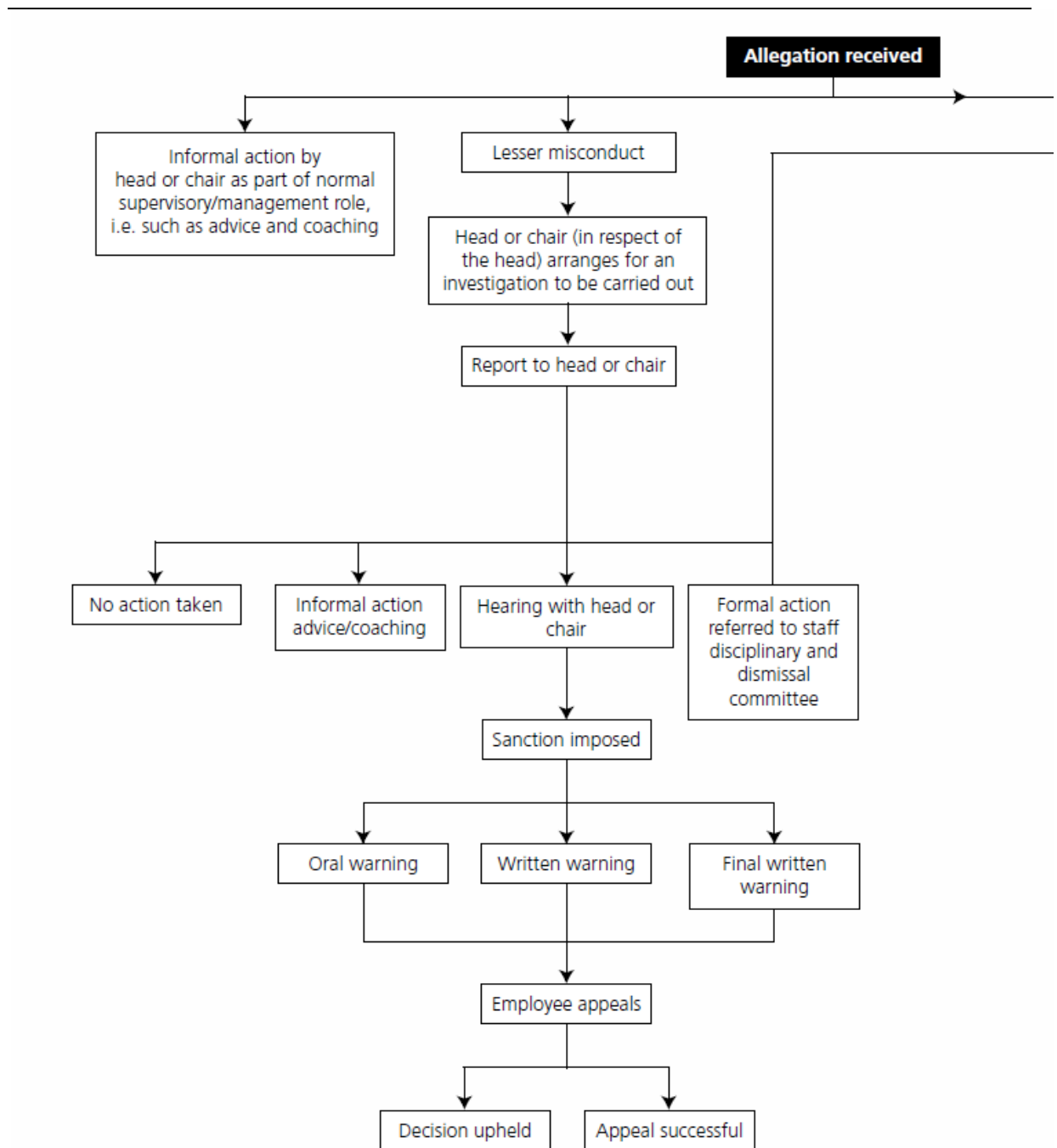
Under the Welsh Language Standards, employees have the right to make complaints, and respond to complaints or allegations made against them via the disciplinary process in Welsh. The School will ensure that correspondence, documents and any associated proceedings, meetings and outcomes will be made available in Welsh. We will provide a simultaneous translation service from Welsh to English for associated meetings unless they are conducted in Welsh without translation services.

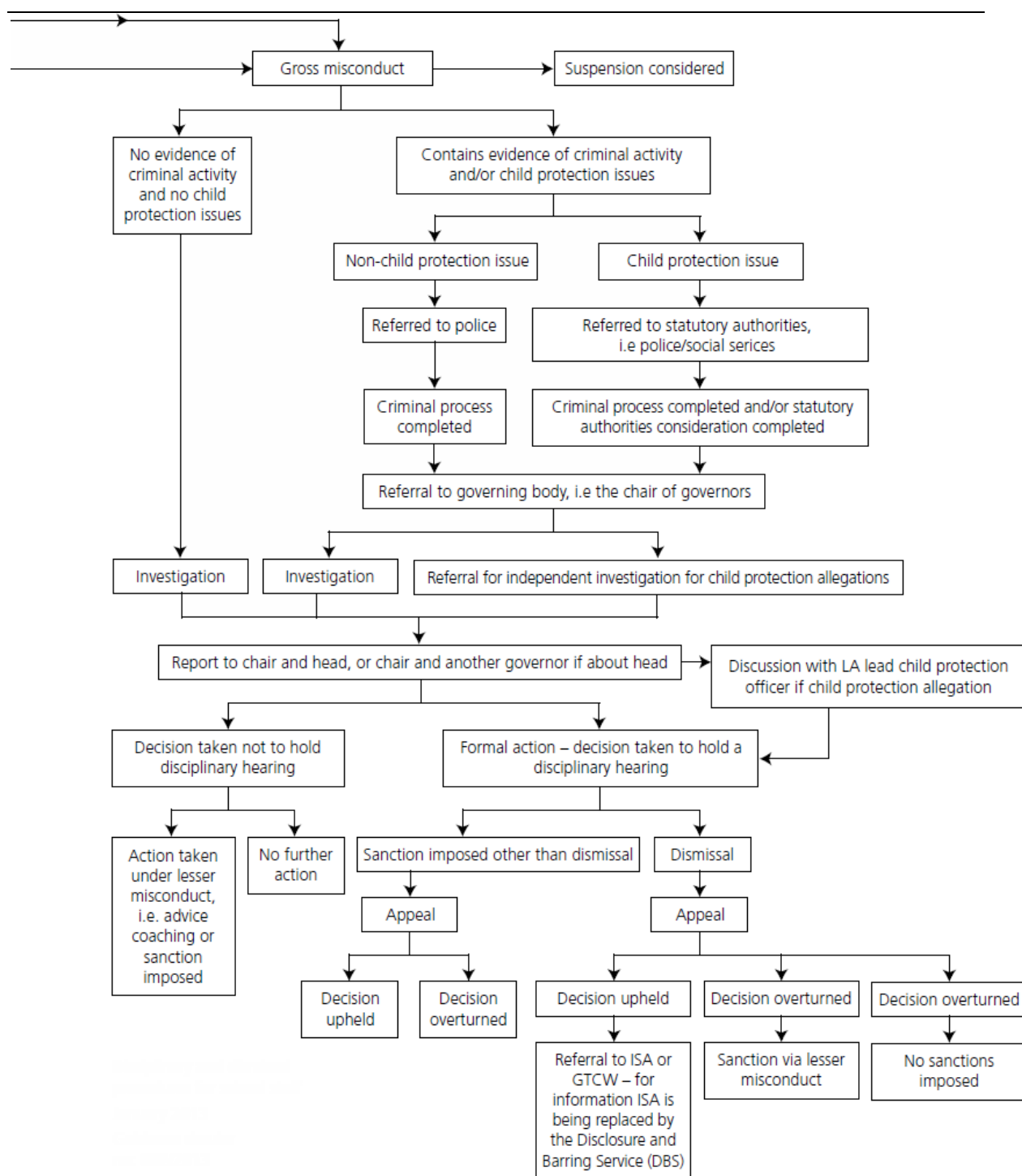
Dan Safonau'r Gymraeg, mae gan gyflogaion hawl i wneud cwynion, ac ymateb i gwynion neu gyhuddiadau a wnaed yn eu herbyn drwy'r broses ddisgyblu yn Gymraeg. Bydd yr Ysgol yn sicrhau bod gohebiaeth, dogfennau ac unrhyw gamau cysylltiedig, cyfarfodydd a chanlyniadau ar gael yn Gymraeg. Byddwn yn cynnig gwasanaeth cyfieithu ar y pryd o'r Gymraeg i'r Saesneg ar gyfer cyfarfodydd perthnasol oni chânt eu cynnal yn Gymraeg heb fod angen gwasanaeth cyfieithu.

How to use this guidance

1. This summary guidance **must** be read in conjunction with the comprehensive School Staff Discipline procedure and **Welsh Government (WG) Circular no 002/2013 Disciplinary and Dismissal procedures for School Staff**.
2. Where there are allegations involving Child Protection issues made against school staff, **Regulation 7(3) of the School Staffing Regulations** places a requirement on governing bodies to appoint an independent investigator
(See **WG Circular 002/2013 section 10 for Handling Child Protection Allegations**)
3. Where an allegation is made against a Headteacher, the Chair of Governors will fulfil the Manager role as set out in this guidance document.
4. Where a Manager is subsequently appointed as an Investigating Officer, then reference should be made to the "*School Staff Discipline Procedure: An Investigating Officer's Guide*".
5. References to other policies or documents which will provide additional help and guidance can be found on page 29.
6. It is recommended that this guidance is read in conjunction with undertaking other forms of learning e.g. E-Learning, Governor training provided by the Local Authority (LA).
7. Details of training courses: refer to Cardiff Council Academy¹ & Union Learning
<http://studentsv3.coursesforyou.com/unionlearningpartnership>
8. The Flow chart illustrated overleaf gives an overview of the processes for dealing with lesser misconduct and gross misconduct (**Extracted from WG circular 002/2013 -Disciplinary and Dismissal procedures for School Staff**).

¹ Check your School's Service Level Agreement for applicability of access to the Academy courses





1.0 Disciplinary Procedure

1.1 Your Responsibilities are to:

1. Familiarise yourself with the School Staff Discipline Procedure and the **Welsh Government Circular no: 002/2013 Disciplinary and Dismissal Procedures for School Staff** and any related procedural guidance.
2. Attend any relevant skills course (s) relating to managing Discipline & Resolution, ensuring your knowledge and skills are regularly updated.
N.B. Check your School's Service Level Agreement for applicability of access to the Academy courses
3. Ensure the employees for whom you are responsible are aware of all relevant policies, procedures, guidance notes and codes of conduct. In meetings, regularly reinforce messages relating to codes of conduct, regulations and work instructions to encourage compliance.
4. Deal with misconduct either with an individual, or within a group of staff, and ensure an objective, sensitive, consistent and fair approach to disciplinary matters. Take prompt action as soon as an issue of misconduct is identified. If you do not deal with misconduct issues with staff, then this could be considered a performance issue for you.
5. Determine how serious the issue is, and the most appropriate course of action, by undertaking a preliminary assessment.
6. Maintain confidentiality at all stages of the disciplinary process by ensuring that only those people who need to know, have access to details of the case.
7. Seek further advice and guidance from your named HR People Services caseworker on the application of the School Staff Discipline Procedure, where appropriate.
8. Act fairly and impartially, if you are subsequently appointed as the Investigating Officer in a Disciplinary Investigation. **(Refer to the School Staff Discipline Procedure: An Investigating Officer's Guide for additional information)**
9. Ensure that if the allegation is in relation to Fraud/Financial impropriety, the LA's Internal Audit department is informed.
10. Ensure that where an issue is identified that relates to potential Child Protection that referrals are made to the statutory services (Social services and/or police).

2.0 Undertaking a Preliminary Assessment

1. Following an incident or where misconduct has allegedly occurred, you must undertake a Preliminary Assessment to establish the facts. The purpose of this is to determine the likely level of seriousness, and the next appropriate course of action.
2. It is essential that the assessment does not turn into a mini formal disciplinary investigation. Otherwise there is a risk that, unintentionally, an informal discussion can turn into a disciplinary step.
3. Document your assessment using the **“Preliminary Assessment to consider appropriateness of any Disciplinary Action” (Appendix 1)**. Issues relating to performance should be dealt with under the Capability policy.
4. The following details are required:

- a) The date that the assessment was commenced and concluded.
- b) Where circumstances have determined, whether you have made a referral to the statutory services (Social services and/or police).
- c) In the case of potential fraud/financial impropriety whether the LA's Internal Audit department has been informed.

(Further information and advice on making these referrals can be obtained from the School Staff Discipline procedure pp 13/14)

- d) An assessment of the information received and initial findings which could include the following, depending on the circumstances:-
 - Referring to information relevant to the incident/alleged misconduct – such as records, timesheets etc.
 - Referring to and reading any documentation that relates to the matter- this could include guidance, codes of conduct, work instructions etc.
 - Before deciding whether to speak to the employee, you will need to assess the nature of the allegation(s), as in certain circumstances it will not be advisable to approach the employee e.g. alleged criminal matter. Please seek advice from your named HR People Services caseworker if you are unsure.

- A brief discussion with the employee(s) subject to the allegations (where appropriate).
- e) This assessment should establish:
- That an allegation has been made
 - What is alleged to have occurred
 - When and where the episode(s) is /are alleged to have occurred
 - Who is involved
 - Any other persons present
- f) Take notes of the discussion, but not statements from people.
- g) Make a recommendation (seeking advice from your named HR People Services officer as required), which will be: **EITHER**
- There is no case to answer/ no evidence to support the allegation; **OR**
- The misconduct is of a minor issue and the matter can be dealt with through informal discussion; **OR**
- A Disciplinary Investigation should be considered.
5. The preliminary assessment should be brought to the attention of the Headteacher (or the Chair of Governors in the case of a Headteacher).

3.0 Informal Disciplinary Procedure

(Refer to p 8 School Staff Discipline procedure/p 29 WG Guidance)

1. Your preliminary assessment has indicated that an informal disciplinary procedure is appropriate. This is best done as soon as possible after the incident or occurrence (or when you became aware).
2. Be consistent with staff in the way you use an informal approach to deal with disciplinary matters.
3. You cannot issue any disciplinary sanction (such as an oral warning) during the Informal Disciplinary procedure. A disciplinary sanction can only be given as part of a **formal** disciplinary procedure.

3.1 Meeting with the Employee

1. Arrange to meet with the employee concerned, to receive an explanation, or to clarify the position. It may be all that is needed to improve behaviour or performance.
2. Hold the meeting between yourself and the employee in confidence. The employee may choose to have a companion with them if desired. A companion is defined as an employee of the School, a trade union representative or an official employed by a Trade Union.
3. An employee does not have a statutory “right of representation” at a meeting of this nature, but although not essential, it is permissible as a **companion may help in the early resolution of matters**. Ensure that you advise the employee accordingly, and note if they choose not to have representation.
4. The meeting should take the form of a constructive discussion. You should draw their attention to the issue and/or possible shortcomings in conduct, in a supportive way. The desired outcome is for the employee to understand what is expected of them, and to encourage a sustained improvement.
5. The following list are examples of what may be applicable actions, although it is neither exclusive nor exhaustive:-
 - a) Give them information which could be relevant and assist e.g. a Code of Conduct/ Working Guidance.
 - b) Offer them coaching or refresher training. A programme of learning and development may be appropriate.

- c) Set objectives to improve individual conduct or performance which are specific, measurable, achievable, relevant and time-specific. (*There may already be objectives set as part of the performance management process, which may be relevant to re-visit here*)
 - d) Consider additional workplace support.
 - e) An Occupational Health referral for consultation, counselling or medical assessment may be appropriate.
 - f) Mediation may be an option for resolving matters (refer to HR People Services Mediation service) mediation@cardiff.gov.uk. Refer to Schools Grievance/Resolution Policy for additional help and guidance.
 - g) Give information about the Employee's Counselling Service and the Employee Assistance Programme.
6. This approach should be two-way so that there is constructive in-put both from yourself and the employee.
7. As an outcome of this discussion the employee should clearly understand:-
- a) What is expected of them.
 - b) What is their framework of support.
 - c) How things will be monitored and reviewed.
 - d) Over what timescale this will happen.
 - e) What action happens next if there is no change/ improvement.
8. Write a brief note of the agreed actions. Supply a copy to the employee, and ask them to sign it.
9. You should hold a review meeting at the agreed review period even if the employee has sufficiently improved, so that the process can be concluded. Where there has been improvement this positive outcome should be recorded.
10. If there is no improvement, a formal disciplinary procedural route should be used.

4.0 Manager responsibilities during the Investigation

4.1 Considering the allegations of misconduct

1. The allegations of misconduct against the employee should be categorised as either lesser misconduct or gross misconduct. **(See definition of Gross Misconduct School Staff Discipline procedure p 11 para 44/ p37 WG guidance)**. Examples of issues which are deemed to be lesser misconduct or gross misconduct may be seen in **School Staff Discipline procedure Appendix 2 and Appendix 3 / WG document Annex B1 and Annex B2**. The list given is neither exclusive nor exhaustive.
2. Where the allegation could constitute lesser misconduct, responsibility for disciplinary matters is delegated to the Headteacher by the Governing body.
3. Where the allegation could constitute gross misconduct, the Headteacher should discuss the allegations with the Chair of Governors and LA HR People Services officer (or the Chair of Governors will discuss with the LA HR People Services officer if the allegations are against a Headteacher).
4. At all stages of the Disciplinary Procedures, the employee should be advised details of the allegation(s) in writing and given the opportunity to respond to them.
5. The only exception to this is when the case involves a child/children who have made an allegation. In these cases, a meeting will be convened called a Professional Strategy Meeting and until this happens, the employee will be given very limited information. They may be told an allegation has been made, and the date of the Strategy Meeting, but not given details of the incident. The reason for this is that following the Strategy Meeting, the Police may decide that they need to investigate, and they need to be sure that there has been no “contamination” of the investigation. The identity of the child/children will also be kept anonymous.

4.2 Employee's conduct outside work

1. The School's rules, regulations and standards ensure that there is a code of conduct which governs the employee's behaviour when they are at work, during working hours, and on the particular premises where they undertake their job.
2. There are potential actions in their personal life, that could, however, bring the School/ Education profession “into disrepute”, which could result in disciplinary action, as there is a need for public trust and confidence to be maintained. **(See**

Code of Professional Conduct and Practice for Registrants with the Education Workforce Council – Compliance with the Law)

3. The School may legitimately have regard to aspects of the employee's life away from the workplace, provided it is relevant to their role and injurious to the School/ Education profession's reputation. In other words their actual conduct must be taken into consideration alongside the actual job that they are employed to do, and there must be a genuine connection between the offence and the employment.
4. The Headteacher/Chair of Governors must be informed if they are:-
 - a) Charged with any criminal offence (except for a motoring offence with a private vehicle for which the penalty is less than imprisonment, unless it impacts on their ability to drive a council vehicle); or
 - b) Convicted of such an offence; or
 - c) Disqualified from driving (and who drives vehicles on official duty); or
 - d) Behaving in such a way outside of work which could compromise the image and integrity of the School/Education profession, effectively bringing it into disrepute.
5. You are required to undertake a preliminary assessment of the employee's conduct outside work, and not to instigate disciplinary proceedings based solely on personal disapproval of the conduct.
6. Each situation which arises will be treated on an individual basis, and you should seek written advice from HR People Services, to ensure consistency of approach, particularly as circumstances may alter, e.g. charges initially made may be dropped.

4.3 Formal process for Lesser Misconduct allegations

1. Where lesser misconduct allegations are made, and the informal procedure is considered to be either not appropriate or has not been effective, it is usual for these matters to be delegated by the Governing body to the Headteacher (or the Chair of Governors in respect of a Headteacher) for more formal action.
2. The delegation of authority should be recorded in the minute, and includes imposing of sanctions short of dismissal (including a final written warning).
3. An Investigation must take place, and should be undertaken by a person other than the person required to take formal action (e.g. member of senior management team/ other independent person from the Local Authority/ Diocesan authority).
(Refer to School Staff Discipline procedure: An Investigating Officer's guide, for further information on investigations).

4. Once the investigation is concluded the Investigating Officer will present the findings in a written report to the Headteacher (or Chair of Governors in respect of allegations against the Headteacher).
5. The Headteacher/Chair of Governors may conclude that:
 - a) No further action is taken
 - b) Matters should be dealt with by an informal procedure
 - c) There appears to be sufficient evidence for a hearing to be conducted with the Headteacher (or Chair of Governors in respect of allegations against the Headteacher) (**refer to section 6.1 of this guidance**).
 - d) There appears to be sufficient evidence that the allegation constitutes gross misconduct to a formal disciplinary hearing with the Staff Disciplinary and Dismissal committee.

4.4. Reviewing the progress of the Investigation

1. Where the Headteacher is not the Investigating Officer, it is the responsibility of the **Investigating Officer** to monitor/ review the progress of the Investigation and report this to the Headteacher/Chair of Governors on a 4 weekly (20 days) basis.
2. The Headteacher should inform the employee of the review in writing (Letter xvii School Staff Discipline procedure).
3. The investigation must be proportionate to the concerns or allegations being considered, and carried out as quickly as possible. The length of the investigation should be within **40 school days**, with the first review after **20 school days** (**Appendix 3: Timescales related to the Disciplinary procedure**).
4. The letter should also indicate if there are any delays to the progress of the investigation anticipated, and the reasons for the delay (e.g. police involvement).

4.5 Dealing with sickness absence during the Investigation

1. If the employee reports sick during a Disciplinary Investigation, as the Manager you have the responsibility for managing the employee's sickness absence, including contact visits.
2. The aim is to proceed with all disciplinary matters with the minimum of delay. The disciplinary process may therefore continue during an employee's sickness absence, which will not preclude the Investigating Officer from starting or completing the process, including the collection of statements, conducting interviews or hearings.

3. If the reason for the sickness absence is “stress” associated with the investigation, then in the majority of situations, individuals are likely to be fit to attend an interview. This is because ‘fitness for work’ and ‘fitness to meet’ are different levels of fitness. In the majority of situations, individuals are likely to be fit to meet with management, and that doing so, is in their best interests to facilitate a resolution. Where the employee indicates that they are unable to attend owing to ill health, the view of the Occupational Health Service on ‘fitness to meet’ will be sought.
4. As it is in the employee’s best interests to facilitate a resolution, matters should not be delayed, as this is known to be counterproductive. The Investigating Officer will establish whether the employee is willing to attend for an Investigation interview.
5. If the cause of the stress is unknown, the Investigating Officer will contact you to request a referral to the Occupational Health Service.
(Refer to HR People Services A-Z: HR manual for Schools for further guidance).

4.6 Dealing with Resignation

1. Disciplinary procedures or investigations can be very stressful for employees, and as a result, an employee may make a decision to resign in the heat of the moment, and before the process is concluded.
2. Initially, suggest to the employee that they have time to fully consider their intention to resign, by giving them a period of reflection - “a cooling off period” and an opportunity to seek advice (from a Trade Union if they are a member). A period of at least 24 hours is recommended.
3. Following the “cooling off” period, should the employee advise that they still wish to resign, then request that they provide their confirmed resignation in writing.
4. Seek advice from HR People Services regarding the next course of action.
5. If the employee has allegations of potential gross misconduct against them and are facing likely dismissal, then the resignation may be an attempt to avoid having a dismissal on their employment record. In this circumstance there are usually two options:-
 - a) Accept the resignation with notice, and the disciplinary procedure will be progressed to its conclusion during the employee's notice period. If the disciplinary procedure concludes during the notice period with a

- recommendation for the employee's summary dismissal on the grounds of gross misconduct, then it supersedes the resignation, and the employee is deemed to have been dismissed for conduct reasons.
- b) Accept the resignation, on the condition that it has immediate effect. The Disciplinary procedure may not proceed if it is for lesser misconduct, **but will proceed to completion for gross misconduct**. If the disciplinary procedure proceeds, the former employee should still be invited, but not compelled, to participate (or to be represented) in an investigatory interview or a Disciplinary and Dismissal committee Hearing. However, as the employee's contract is terminated, no sanction can be applied.
6. If the employee is registered with either the Disclosure and Barring Service (DBS) or the Education Workforce Council (EWC), HR People Services (on behalf of the Governing body) will advise that body that the employee resigned during a disciplinary investigation. If the disciplinary procedure continues beyond the termination date of the employee, and the outcome would have been dismissal, then this will be communicated to the DBS/EWC by HR People Services.

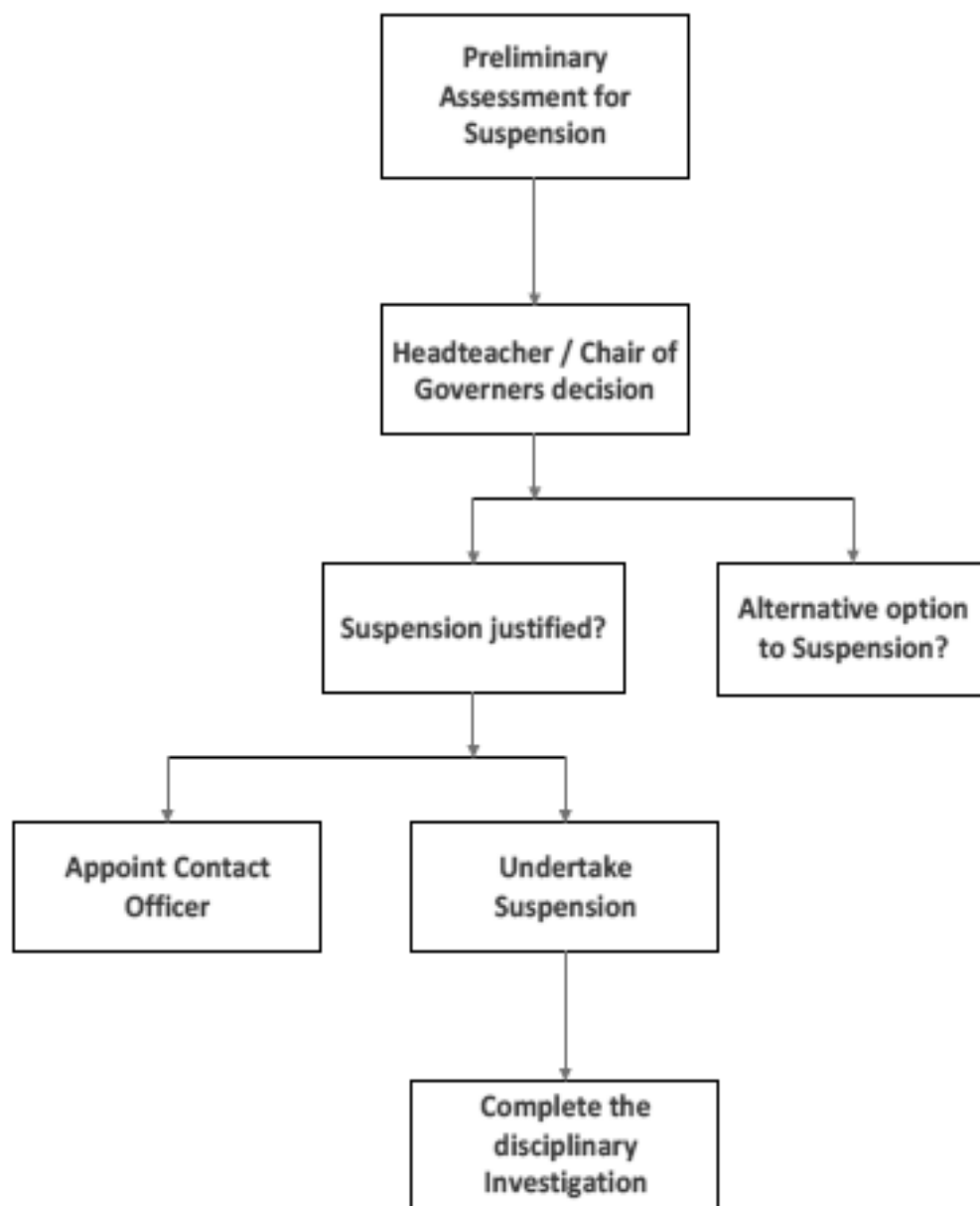
4.7 Dealing with imprisonment

1. Where an employee has been sent to prison, no automatic decision to dismiss should be taken.
2. Liaise with, and seek advice from HR People services who will liaise with Legal services.
3. As the employee's manager, you should then undertake an assessment using the Preliminary assessment proforma in **Appendix 1**, which contains sufficient documentation and information, to enable a decision at a Staff Disciplinary and Dismissal committee hearing. The presenting information should also contain a submission by the employee and/or their companion.
4. A Disciplinary and Dismissal committee Hearing should be arranged (in the employee's absence) and represented by a companion (where applicable), where the facts can be fully considered and appropriate action taken which may result in dismissal.
5. You will take the role of a Presenting Officer at the Hearing. This would include presenting the findings of your assessment at this hearing.
(Refer to School Staff Discipline procedure: An Investigating Officer's Guidance re Hearings).
6. When considering whether dismissal is appropriate, the Chair and committee members will consider the effects of the employee's enforced absence on the school business, and the nature of the offence committed.

7. **Child Protection concerns:** Where a child protection case has gone to court and may result in a caution or a custodial sentence being imposed, the independent investigator is still required to consider the evidence and make a report to the Governing body. This is because the Governing body is required to complete the disciplinary process. The Staff Disciplinary and Dismissal Committee will need to formally determine whether or not the member of staff's contract should be terminated in accordance with the law in the 2006 Staffing Regulations.

Managers guide to undertaking a Suspension

IMPORTANT - Regularly review the appropriateness of any decision to suspend an employee - every 20 days or sooner and in conjunction with the Investigating Officer. (Ref 6.9 of the Manager's guide)



IMPORTANT – Relationships within the team may have been affected by the Investigation, consider the use of mediation for resolving matters and to aid returning the employee to the team

5.0 Suspension Procedure

(Refer to School Staff Discipline procedure paras 86-90 or section 12 WG guidance)

1. Suspension from duty is a neutral act and should be regarded initially as a precautionary measure. It is not a disciplinary sanction, does not imply that the employee has committed an act of misconduct, nor does it prejudice the outcome of any disciplinary investigation or proceedings that may arise.
2. Unjustified (or excessively lengthy) suspensions can lead to unfair dismissal proceedings and constructive dismissal claims. Even where there is evidence supporting the decision to undertake a full disciplinary investigation, this does not mean that suspension from duty is automatically justified.
3. You will therefore need to determine, as expeditiously as possible, whether it may be appropriate that the employee is removed from their job or place of work. It will depend upon the seriousness of the allegation(s), as any decision to suspend must not be taken lightly **and should only be used as a last resort**.

5.1 Authorisation to take Suspension decisions and suspensions

1. The decision to suspend the employee from duty and remove them from their job or place of work, can be taken by the Headteacher or Chair of Governors. In Law however, each must immediately inform each other of their decision to suspend, and the also the maintaining Local Authority, or where applicable the diocesan authority.
2. If the employee who is the subject of an allegation is a Headteacher, the Chair of Governors has the delegated authority to suspend them, acting on behalf of the Governing body.
3. A suspension may only be ended/lifted by the Governing body (unless it delegates this decision to the Chair of Governors or the Chair of the Staff Disciplinary and Dismissal/Appeals Committee). Any such delegation must be minuted.

5.2 Potential Reasons for Suspension

1. The Welsh Government (WG) Circular no 002/2013 Disciplinary and Dismissal procedures for School Staff states that suspension will only be considered where:

- It appears to be necessary to exclude the member of staff from the school for the protections of pupils, other staff or property, or for the orderly conduct of the school
 - The continued presence at work of the member of staff would be an obstacle to proper investigation of the allegations made against that member of staff
2. As a guide, whilst the list outlined below is not exhaustive, but provides some examples of circumstances where it may be appropriate consider suspension:
-
- a) The matter to be investigated is considered to involve, or potentially involves, an act (or acts) of gross misconduct and/ or serious dereliction of duty that would (if substantiated) irreparably damage the essential relationship of trust that has to exist between you and the School, and/ or which would undermine public confidence in the integrity of the School.
 - b) Pupils, other school employees and/ or the employee, are considered to be at risk of physical, verbal, sexual, psychological and/ or racial abuse/ assault/ intimidation/ bullying or harassment.
 - c) There is a risk that the employee will (or will attempt to) damage goods, property or data (hard copy and/ or electronic data) belonging to the School which would damage the School's business.
 - d) There is a risk that the employee is considered to be at risk of physical, verbal, sexual and/ or racial abuse/ assault/ intimidation/ bullying or harassment from colleagues.
 - e) The employee's continued presence at work could create a health and safety risk to themselves or others, e.g. under the influence of alcohol or non-prescription drugs.
 - f) There is a substantial risk that the employee will repeat the alleged misconduct.
 - g) The employee does not have the required work permit/visa
 - h) The employee does not have a current Registration to Practice from the required Regulatory or Professional Registration body
 - i) The employee has been remanded in Police custody

5.3 Preliminary Assessment for Suspension from duty

1. It is a requirement that when suspending an employee, you **must** show evidence that :
 - a) You have acted reasonably **AND**
 - b) You have reasonable grounds for the action.
2. Whether or not a suspension is considered or judged to be reasonable, will depend on the “*events as they occurred*”, so it is important that you document the information available at the time of the decision. The test of “*reasonableness*” is not judged with hindsight.
3. The Headteacher (or Chair of Governors where the subject of the allegations is the Headteacher) must therefore undertake a Preliminary Assessment to establish the facts and document decision making, before a suspension is actioned. **The Preliminary Assessment to consider appropriateness of Suspension from Duty (Appendix 2)** should be used to document the Preliminary Assessment.
4. The following details are required:
 - a) The date & time that the assessment commenced and concluded.
 - b) Any referrals that have been made to the statutory services (Social Services and/or Police).
 - c) The Employee's disciplinary record and whether there are any current warnings. Spent warnings should not be referred to.
 - d) All the circumstances and events that have occurred, and are relevant to this decision, based on information available to you at this time.
 - e) A **Preliminary Assessment to consider appropriateness of any Disciplinary Action (Appendix 2)** proforma should already have been completed, in which case cross reference, or draw attention to the information contained within it.
 - f) The grounds for consideration of a suspension from duty, based on the details of the circumstances and events that have occurred.
 - g) The Headteacher must look at other options for alternative actions to suspension as it would make it easier for the employee to return to work if their position is vindicated, while maintaining confidentiality more effectively.
 - h) The following are examples of potential alternatives to suspension, which may include:
 - Keeping the employee in the same role but with closer supervision or monitoring.

- Moving the employee to different duties within the same school. e.g. work that does not involve contact with pupils.
 - Keeping the employee within the same duties but move to an alternative workplace². This would require the agreement of additional parties.
 - Transferring the employee to Home Working.
5. The reasons why an option has been considered, and is not appropriate.
 6. Your recommendation (and pay arrangements).

5.4 Pay arrangements during suspension/ moved to alternate duties

1. State the pay arrangements alongside your recommendation.
2. If your recommendation is suspension from duty, then the pay arrangements will usually be based on full average earnings. Suspension must be on full pay and without loss of emoluments.
3. Where employees are moved to alternative duties, to ensure that employees are not financially disadvantaged, an average of any additional payments that they would normally receive will be payable.

5.5 Undertaking a suspension

1. Once the decision has been taken to suspend the employee, the Headteacher should decide who will be an appropriate Contact Officer for the suspended employee.
2. In consultation with an HR People Services officer, the Head teacher should prepare the standard letter "Suspension from duty without prejudice" (**letter xiii School Staff Discipline procedure/Annex J from WG document**) which confirms:-
 - a) The reason(s) why the employee has been suspended including why the other options were not appropriate. N.B. where there is a Child Abuse issue, the details of the allegations cannot be specified.
 - b) The date the suspension commenced and frequency of the review.
 - c) The suspension is not to be regarded as disciplinary action.

² Seek advice from HR People Services on the procedure for transferring employees to another location.

- d) That an internal disciplinary investigation will be conducted and that the employee will be expected to co-operate fully with that investigation.
- e) The name of the designated Contact Officer (NB The choice of Contact Officer is key, and the employee who is suspended and the Contact officer should be in mutual agreement.)
- f) That the employee must not enter their normal workplace or have any contact with any other employees or pupils who are, or who may be, involved in the investigation or in any subsequent disciplinary hearing(s). Individuals who are unsure about this restriction should seek clarification from the named and designated Contact Officer. This restriction will only apply to the employee concerned. It will not apply to their companion.
- g) The employee will be instructed not to use the School's email system/ Web Services.
- h) That they must return all School equipment and property in their possession which may include IT equipment, vehicles, mobile phones, warrant cards, ID cards, any building access cards, office keys and/ or School vehicle keys in your possession immediately.
- i) That they must make themselves available to attend any investigatory interview and/ or disciplinary hearing and/ or return to work in the event that the suspension is lifted.
- j) The availability of other sources of support and help if required, e.g. Employee Counselling Service, Occupational Health Service.

The Headteacher/Chair of Governors should:-

- 3. Call the employee to a meeting at their workplace and advise them that they may wish to bring a companion with them. The initial meeting may need to be adjourned to allow the employee time to arrange for a companion to support them. In the meantime you would send the employee home.
- 4. The meeting should be held in private so as not to cause unjustified harm to the employee's reputation. Either a HR People Services officer or a witness should be present at the meeting.
- 5. Advise the employee that suspension from duty is a neutral act, and that removal from the workplace should be regarded initially as a precautionary measure. It is **not** a disciplinary sanction, does **not** imply that they have committed an act of misconduct nor does it prejudice the outcome of any disciplinary investigation or proceedings that may arise.

6. Use the suspension letter as a guide to ensure all the points are covered. Invite any questions, and ensure that they fully understand the terms and conditions of the suspension.
7. Ensure that there are two copies of this letter available for the Suspension meeting. Ask the employee to sign one copy of the letter, to confirm they have read and understood the contents. Give the employee one copy, and the other is retained, as it will form part of the documentation required by the appointed Investigating Officer. If the individual agrees, a copy of the suspension letter will be provided to the Trade Union (where relevant).
8. Provide the employee with a copy of the School Staff Discipline procedure Disciplinary Policy and a copy of the Employee's Guidance.
9. This will be a stressful situation, so ensure that you treat them with sensitivity, throughout this process. There may be reactions of shock, stress or distress. Emphasise the sources of support available to them, and consider whether they need support to their home or place of safety.

Undertaking a suspension whilst the Employee is on sickness absence

An employee may be suspended from work whilst on sickness absence, where the primary reason to suspend is a need to instigate restrictions. The following situations are examples only, and are neither exclusive nor exhaustive:

1. There is a risk that the employee will (or will attempt to) interfere with the disciplinary investigation by threatening and/ or intimidating witnesses
2. There is a risk that the employee will (or will attempt to) tamper with, remove, or destroy any incriminating evidence
3. There is a risk that the employee will (or will attempt to) damage goods, property or data (hard copy and/ or electronic data) belonging to the School which would damage the School's business.

5.6 What to tell work colleagues

1. Ask the employee who is suspended from work what they would like their immediate work colleagues to be told, and consider any implications for the school.
2. Advise the employee that it is better not to give information that is untrue e.g. the employee is sick, or on annual leave.
3. Colleagues of the suspended employee should not receive any details of the disciplinary matter, and confidentiality must be maintained.

4. The immediate work colleagues should be advised that any query/ communication in relation to the suspended employee's work can be made to you as the Headteacher.
5. Inform the work colleagues that the matter might attract media interest or result in social media activity. All media contact will be handled through the Headteacher, and remind staff of their responsibilities under the Social Media policy.

5.7 The Role of the Contact Officer

1. The main purpose of appointing a Contact Officer is to ensure that the employee's feelings of isolation during the suspension are reduced as much as possible.
2. The choice of Contact Officer is key, and the employee who is suspended and the Contact officer should be in mutual agreement.
3. Contact with the suspended employee will be maintained by the specified Contact Officer, at least **every 4 weeks** or as mutually agreed.
4. Advise the named contact officer, and the employee under investigation, that their role will include:-
 - a) To identify and collect (where requested) any personal possessions that the employee may have left in the workplace. It must not include any items that could be considered items of evidence in the forthcoming investigation, such as work records or documents.
 - b) Help with accessing information from the School.

5.8 Safeguarding and Securing evidence

1. If there is any delay in the appointment of the Investigating Officer, then it is vital that you secure any records and documents that potentially form part of the evidence, at an early stage.
2. Do not conduct a search of desks /cupboards alone or without inviting the employee and their companion to be present. If that is not practical, then ask the HR People Services named officer to be present to witness the search. You should make an inventory/ list of items that you see during your search, and ensure it is signed as a true record by all individuals present during the search.
3. If the search reveals a possible criminal offence, then the desk/cupboard should be made secure until the police have been informed and given the opportunity to view it.

4. If a school owned IT asset potentially holds some information that may aid an investigation, then you should make contact with the IT department for guidance and help.

5.9 Reviewing the Suspension from duty

1. It is the responsibility of the Headteacher/ Chair of Governors to ensure that the period of suspension from duty/ move to alternative duties is reasonable, and that the decision is regularly reviewed on a 4 weekly (20 days) basis.
2. The review should take the form of a re-examination of **The Preliminary Assessment to consider appropriateness of Suspension from Duty**. All alternative courses of action should be appropriately considered, and the decision evidenced by completing a new proforma heading it (first review/ second review etc.).
3. The employee should be informed in writing (**letter xv School Staff Discipline procedure/Annex J from WG document**).

6.0 Manager responsibilities during the Hearing

6.1 Disciplinary Hearing for Lesser Misconduct allegations

1. Where the investigation demonstrates that there appears to be sufficient evidence to warrant a disciplinary hearing with the Headteacher (or Chair of Governors in respect of allegations against the Headteacher), a Hearing must be arranged. The Clerk to Governors will make the practical arrangements for the Hearing. **(Refer to Appendix 3 for timescales).**
2. The employee should be given the following information in advance of the Hearing:
 - a) The nature of the alleged misconduct
 - b) The stage reached in the procedure
 - c) The date, time and place for the Hearing
 - d) The possible outcome of the hearing
 - e) A copy of the School Staff Discipline procedure
 - f) Their right to:-
 - Produce written statements (circulated to all parties in advance of the hearing)
 - Ask questions relating to written statements produced
 - Being accompanied by a companion
 - Stating their case in person/ through their companion
 - Produce witnesses
3. It is advisable to have a HR People Services Officer present at the Hearing to provide support. A contemporaneous record should be made of the Hearing and a copy of the record provided to the employee for amendment and/or agreement.
4. Following the Hearing, the Headteacher (with support from the LA HR People Services Officer) will determine one of the following outcomes
 - a) No further action is taken
 - b) Matters should be dealt with by an informal procedure
 - c) Recorded Oral warning
 - d) First written warning
 - e) Final written warning
 - f) Referral to a Disciplinary hearing before the Staff Disciplinary & Dismissal Committee.

5. Any sanction that an employee could receive should be in line with the nature and severity of the allegation e.g. the lesser misconduct behaviour may be serious enough to warrant an immediate final written warning.
6. The employee should be informed in writing, and any warning is for a fixed period of time. Where the employee's conduct is satisfactory for the specified period of time the warning should be expunged from their file and cannot be referred to again once spent.
(For warning periods refer to School Staff Discipline procedure para 31 & WG Guidance 7.19).
7. The employee has the right to appeal against the formal warning on the grounds
 - a) The sanctions are inappropriate in relation to the findings
 - b) The decision itself i.e. the findings are not consistent with the evidence produced.
8. The Staff Disciplinary and Dismissal Appeal Committee would hear any appeal in the form of a re-Hearing.

6.2 Disciplinary Hearing for Gross Misconduct allegations

1. The Investigating Officer will present the report to the Headteacher and Chair of Governors for their consideration of the evidence and facts gathered.
2. Where the investigation demonstrates that there appears to be sufficient evidence to warrant a Disciplinary Hearing of the Staff Disciplinary & Dismissal Committee, the manager would normally present the case and evidence at the Hearing. However, in most cases the Presenting Officer is usually the Headteacher.
(Please refer to School Staff Discipline Procedure: A Presenting Officer's guide).

6.3 After the Disciplinary Hearing/Appeal is concluded

1. If the employee has been dismissed:-

- a) If there has been a decision to summarily dismiss, you should ensure the employee is able to gather any personal belongings in a manner that causes the least difficulties. This may involve a supportive approach as they return to their workplace, but as this will often be in full view of colleagues, it would often be better to arrange a quieter time to arrange this if practical.
- b) Take care to ensure the employee is only removing their own property, but you should try to act sensitively in observing any packing the employee finds necessary, as you don't want to portray any more level of distrust than is appropriate & necessary in the circumstances.

- c) Where dismissal is preceded by notice, you should ensure the employee is given appropriate support & responsibilities through the remaining term of their employment. Work appropriate to the contract & grade should continue to be assigned, although this may be restricted where necessary & appropriate to the disciplinary action.

2. Dealing with the employee returning to the workplace:-

- a) Where a lesser penalty has been issued, if this involves for example a demotion, you should help the employee settle into the new role, and adapt to the lack of responsibility or increased management attention associated with this position. You should remember that disciplinary action is aimed principally at improving performance, and continue to support & promote the necessary improvement in the future conduct of the employee.
- b) If no disciplinary penalty is issued, you will still need to acknowledge the difficulties & stress a disciplinary procedure will have had on the employee. It is imperative that you provide the necessary support for an employee that has been considered for disciplinary action. To facilitate a return to work it would be appropriate to meet with the employee, and their companion to discuss the return to work arrangements. If there are health concerns it may be helpful to undertake a referral to the Occupational Health Service to assess if there are any health issues that need to be factored in.
- c) Relationships within the school may have been affected by the Investigation, especially when work colleagues were called as witnesses. Consider the use of mediation for resolving matters, and to aid returning the employee to the workplace. **(See Schools Grievance/Resolution Policy- referral to the Mediation service).**

6.4 Referral to Regulatory or Professional Registration Bodies

1. The [Safeguarding Vulnerable Groups Act 2006](#), [Education \(Wales\) Act 2014](#) and the [Education Workforce Council \(Main Functions\) \(Wales\) Regulations 2015](#) place a duty on an employer in Wales to report cases to either the Disclosure and Barring Service (DBS) or the Education Workforce Council (EWC) where they have ceased or may have ceased to use the services of a registered person on the grounds of misconduct and/or incompetence.
2. It is **the responsibility of HR People Services** (on behalf of the Governing body) to undertake this referral in instances such as:
 - a) Dismissal.
 - b) Resignation during a disciplinary investigation.

- c) Where the School is made aware of a criminal conviction.
- d) Any other circumstances where the School thinks they have a bearing on the employee's continued registration.
- e) Potential capability dismissal

7.0 Statutory Guidance and Associated Policies

There are a number of key reference documents relating to the employment of staff in schools:

- [All Wales Child Protection Policy 2008](#)
- [Attendance and Wellbeing Policy](#)
- [Cardiff Council Collective Agreement](#)
- [Code of Practice on LEA – School Relations](#) (published June 1999)
- [Conditions of Service for School Teachers in England and Wales](#) (Burgundy Book)
- [Disclosure and Barring Service Code of Practice](#)
- [Documents issued by the two dioceses of the Church in Wales on human resources issues](#)
- Documents issued by the [Catholic Education Service for the Archdiocese of Cardiff on human resources issues](#)
- [Education Workforce Council Code of Conduct for School Staff](#)
- [Grievance Policy and Procedure](#)
- [National Joint Council for Local Government Services – National Agreement on Pay and Conditions of Service \(Green Book\)](#)
- [School Staff Discipline Procedure](#)
- [School Teachers' Pay and Conditions Document including Revised Guidance](#)
- [School Standards and Framework Act 1998 – Schedule 16 \(staffing of community, voluntary controlled and community special schools\), and Schedule 17 \(staffing of foundation, voluntary aided and foundation special schools\)](#)
- [The Staffing of Maintained Schools \(Wales\) Regulations 2006](#)
- [Welsh Government – School Governors – Guide to the law](#)

Additional Guidance

- [Conducting Workplace Investigations ACAS October 2015](#)
- [Data Protection Employee Code of Practice](#)
- [Discipline & Grievances at Work: The ACAS guide 2015](#)
- [Guidance for Safer working practice with Children, Young People and Vulnerable Adults](#)
- [How to Use Digigov](#)
- [Privacy Impact Assessment Guidance](#)
- [Request for Disclosure Data Protection Act 1998 \(s29/ s3\)](#)

Appendix 1

PRELIMINARY ASSESSMENT	
Date assessment commenced:	
Date assessment concluded	
Have you met the employee?	Yes/No <i>(If yes, enter date of meeting)</i>
Is the employee aware of the allegations?	Yes/No
Name & Job Title of Manager undertaking Preliminary Assessment	
Name & Job Title of Employee(s) subject to the Assessment	
Names & Job Title of any relevant Witnesses	
Is the situation related to alleged Child protection requiring a referral to social services?	Yes/No <i>(If yes, enter date you made the referral)</i>
Is the situation a matter of alleged criminal behaviour requiring a referral to the Police?	Yes/No <i>(If yes, enter date the referral was made)</i>
Is the situation a potential fraud/financial impropriety warranting notification of the LA Internal Audit department?	Yes/No <i>(If yes, enter date you informed them)</i>
<u>Brief description of the Incident/ Event or Alleged misconduct</u> ♦ <i>What is it?</i> ♦ <i>When/ How/ Where/ did it occur?</i> ♦ <i>Who reported it?</i> ♦ <i>What witnesses to the event are there?</i>	
<u>Detail of Assessment</u> <i>Bullet points include</i> ♦ <i>Any documents read/gathered</i> ♦ <i>Date of any discussions and with whom (If no discussions took place state reason)</i>	

- ◆ *A risk assessment (where relevant) to indicate the seriousness and consequences of the alleged misdemeanour.*

Initial Findings (*Bullet points*)

- ◆ *Summary of what you have found*
- ◆ *Include notes from any discussion with employee(s)*
- ◆ *Summary of the seriousness and consequences of the alleged misdemeanour*

Recommendations (delete as appropriate to leave one recommendation)

- 1. There is no case to answer / no evidence to support the allegation.**
- 2. There is evidence of minor misconduct and can be dealt with through informal discussion.**
- 3. A full Disciplinary Investigation should be considered.**

Signed:

Appendix 2

PRELIMINARY ASSESSMENT/REVIEW TO CONSIDER APPROPRIATENESS OF SUSPENSION FROM DUTY FORM

Date & Time Assessment commenced	
Date & Time Assessment concluded	
Name & Job Title of Manager undertaking Preliminary Assessment	
Name of Employee(s) subject to the Assessment	
Is the situation related to Child Protection or a Safeguarding issue?	Yes/No
Is the situation a potential Fraud/Financial impropriety warranting notification of Internal Audit?	Yes/No (If yes, enter date you made the referral)
Is the situation a matter of alleged criminal behaviour requiring a referral to the Police?	Yes/No (If yes, enter date the referral was made)
Has a Preliminary Assessment to consider appropriateness of any Disciplinary Action been completed?	Yes/No (If yes, enter date of assessment)
Employee's Disciplinary Record <i>Are there current disciplinary warnings?</i>	

SECTION A

DESCRIBE THE EVENT(S) OR CIRCUMSTANCES THAT HAVE OCCURRED

SECTION B

POTENTIAL GROUNDS FOR CONSIDERATION OF SUSPENSION FROM DUTY

(Delete as appropriate)

1. Could potentially be considered as gross misconduct and/ or serious dereliction of duty that would (if substantiated) fundamentally repudiate the contract of employment (Refer to School Staff Discipline Procedure appendices 2 &3 or Annex B1/B2 in WG document)
2. Pupils, other employees and/ or the employee concerned are considered to be at risk of physical, verbal, sexual, psychological and/ or racial abuse/ assault/ intimidation/ bullying or harassment.
3. There is a risk that the employee will (or will attempt to) interfere with the disciplinary investigation by threatening and/ or intimidating witnesses
4. There is a risk that the employee will (or will attempt to) tamper with, remove, or destroy any incriminating evidence
5. There is a risk that the employee will (or will attempt to) damage goods, property or data (hard copy and/ or electronic data) belonging to the School which would damage the School's business
6. There is a risk that the employee under investigation is considered to be at risk of physical, verbal, sexual and/ or racial abuse/ assault/ intimidation/ bullying or harassment from colleagues.
7. The employee's continued presence at work could create a health and safety risk to themselves or others, e.g. under the influence of alcohol or non prescription drugs.
8. There is a substantial risk that the employee will repeat the alleged misconduct.
9. The employee does not have the required work permit/Visa
10. The Employee does not have a current Registration to Practice from the required Regulatory or Professional Registration body, that is mandatory to the post
11. The Employee has been remanded in Police custody
12. OTHER (please state)

Option 1: Moving the employee to different duties within the same school.

Is this Option appropriate? Yes/No

If no, please state reason(s)

Option 2: Keeping the employee within the same duties, but move to another alternative workplace. This would require the agreement of additional parties.

Is this Option appropriate? Yes/No

If no, please state reason(s)

Option 3: Transferring the employee to Home Working

Is this Option appropriate? Yes/No

If no, please state reason(s)

Other Options considered: *(please list)*

I confirm that all potential alternatives to suspension have been considered

Recommendation:

Signed:

Date:

Appendix 3

Timescales related to Disciplinary Procedure (Addressed in Annex F of WG document).

There may need to be flexibility with timescales depending on the circumstances, e.g. where there is a large amount of paperwork or unavailability of staff or governors.

Activity	Timescales (School Days)	Parties Involved
Preliminary Assessment	Immediately upon notification of allegation	Head teacher (or Chair of Governors in respect of the Head teacher)
Suspension Meeting	Following Preliminary assessment – No notice required	Head teacher (or Chair of Governors in respect of the Head teacher), employee, their companion and HR People Services
Suspension Reviews	Every 20 days	Head teacher (or Chair of governors in respect of the Head teacher)
Appointment of investigating officer (non child protection)	Upon receipt of preliminary investigation	Head teacher (or Chair of Governors in respect of the Head teacher)
Appointment of investigating officer (child protection cases)	Upon conclusion of statutory processes	Chair of Governors
Notice of investigatory interviews	5 days	Investigating officer, employee and witnesses and their companion (HR People Services if required)
Length of investigation (as well as Child Protection cases)	40 days (with a review after 20 days), but as cases can be complex more time may be needed	Investigating Officer (independent investigating officer for child protection cases)
Decision to proceed to hearing or not	On receipt of investigation report	Head teacher (or Chair of Governors in respect of the Head teacher) for lesser misconduct. Head teacher and Chair of Governors for gross misconduct and child protection cases

Arrangements for the disciplinary hearing	Immediately upon notification of decision to proceed	Head teacher (or Chair of Governors in respect of the Head teacher), the companion, HR People Services for lesser misconduct. Clerk to governors, the companion, HR People Services and committee members for gross misconduct
Notice of Disciplinary Hearings *	10 days as a minimum	Clerk to Governors
Provision of documents to be relied on by management to the member of staff	With the notice of the disciplinary hearing	Clerk to Governors
Provision of documents to be relied on by the employee	5 days before the hearing	Employee or their companion
Provision of all documents to committee	2 days before hearing	Clerk to Governors
Notification of Disciplinary/appeal decision to member of staff	In writing within 5 days of hearing	Lesser Misconduct - Head teacher (or Chair of Governors in respect of the Head teacher), Gross Misconduct - Chair of Staff Disciplinary Dismissal Committee (via Clerk to Governors)
Notification of appeal from employee	In writing within 5 days of receiving outcome	Employee (or their companion)
Arrangements for the disciplinary appeal hearing *	Immediately upon notification of appeal	Lesser Misconduct - Head teacher (or Chair of Governors in respect of the Head teacher), the companion, HR People Services. Gross Misconduct - Clerk to Governors, the companion, HR People Services and committee members.
Notice of disciplinary appeal hearings	10 days as a minimum	Clerk to Governors

*These will be organised by the Clerk to Governors.