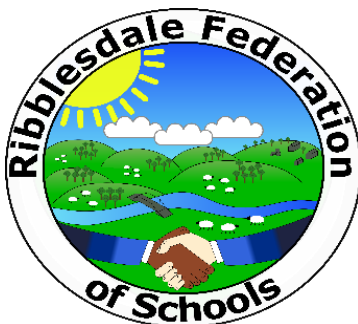


# The Ribblesdale Federation of Schools

Do Everything in Love (1 Corinthians 16:14)



## RFS Disciplinary Guidance

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## Disciplinary Guidance

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## **1.1 Introduction**

- 1.2 This guidance accompanies and should be read in conjunction with the Disciplinary Policy and Procedure.
- 1.3 School leaders are strongly advised to take advice from NYES HR with regards the application of the Disciplinary Policy and Procedure and Guidance at all stages.

## **2.1 Right to be accompanied**

- 2.2 Employees have the legal right to be accompanied by a trade union representative or work colleague at Disciplinary Hearings and Appeal Hearings. The school extends this right to other formal meetings of the Disciplinary Procedure e.g. investigatory interviews as part of a disciplinary investigation.
- 2.3 An Investigator should establish the status of the person accompanying the employee before the start of any meeting. A representative is allowed to accompany the employee unless there is a conflict of interest for example if they are implicated in the allegations or are a potential witness.
- 2.4 If this is the case the employee should be informed and given the opportunity to find a suitable alternative representative to accompany them. This may require reconsideration of any planned meeting dates although alternative dates should not cause a delay.
- 2.5 A representative has a statutory right to address the meeting or hearing but no statutory right to answer questions on the employee's behalf.
- 2.6 Any representative who is employed by the school, and who supports the employee during any meetings held under the disciplinary procedure will be given paid time off to undertake this role.
- 2.7 Representatives are required to treat any information shared as part of the disciplinary process as strictly confidential, and those responsible for taking actions in line with the policy should remind representatives accordingly throughout the process.
- 2.8 Employees or their representatives must not make any electronic recordings of any meetings or hearings conducted under the disciplinary procedure.

## **3.1 Disciplinary matters involving trade union officials**

- 3.2 No disciplinary action should be considered against an employee who is also a recognised Trade Union Official until the circumstances of the case have been discussed with a Senior or Full-time Trade Union Official (after seeking agreement to do so from the employee). Although an investigatory interview or precautionary action is not disciplinary action, management should still consult with the Senior or Full-time Trade Union Official as soon as possible and it is advised prior to any process commencing.

## **4.1 Informal action**

- 4.2 The day-to-day supervision and monitoring of an employee's conduct is part of the management process and is not part of formal disciplinary procedures. Line managers, through their usual regular supervision meetings with employees, should draw any deficiencies in standards of conduct

to the attention of the employee with the aim of resolving issues early and reducing the need for recourse to the formal disciplinary policy and procedure.

- 4.3 Where there are issues of minor misconduct, managers are able to bring to an employee's attention any concerns regarding their standards of conduct, known as informal action. Informal action should usually encompass advising the employee of the specific concern and any shortfall in their conduct, discussing this with the employee and giving them an opportunity to respond, clearly explaining or re-iterating the standards of conduct expected from the employee, identifying what remedies are necessary to ensure their conduct meets with the required standard, and confirming that formal disciplinary action will be considered if standards of conduct do not improve. Such action does not constitute a disciplinary sanction.
- 4.4 The employee has no statutory right to representation at any meeting where informal management action is taken, nor any right of appeal. However, where representation is requested by the employee, this should be considered and supported where reasonable. Informal action would not be disclosed as a disciplinary sanction on a reference.
- 4.5 Managers should either make a file note and provide a copy to the employee, or write to the employee, confirming the details of the discussion, clarifying that this constitutes informal action and not a formal warning under the Disciplinary Policy and Procedure.
- 4.6 Disciplinary action should only be considered where normal line management or informal action has either not resulted in the employee achieving the required standard of conduct, where informal action would be inappropriate in the circumstances, for example if the conduct alleged is too serious to warrant dealing with through supervision or informal action, or where there is a dispute over the alleged conduct which requires investigation.
- 4.7 For issues relating to poor performance and capability the developing performance and capability policies should be considered.

## **5.1 Formal disciplinary procedure**

- 5.2 If there is an allegation or suspicion of misconduct sufficiently serious that informal action is not appropriate, or where an employee's conduct has failed to improve following informal management action, a disciplinary investigation may be appropriate to establish facts prior to any consideration of whether a formal disciplinary sanction may be appropriate.
- 5.3 Prior to any decision to instigate a disciplinary investigation there should be preliminary enquiries to consider initial facts that may be available to establish whether allegations have any real basis. The employee can therefore be saved the distress of knowing serious allegations have been made when they have no foundation. Any consequent damage to trust and confidence in the employment relationship can therefore be avoided.

## **6.1 Appointed School Leader**

- 6.2 At the outset, an appropriate school leader / governor should be appointed to make key decisions in respect of the formal disciplinary procedure. A decision as to who will undertake this role will depend on the specific circumstances of the case and the size and resources of the school. It is important that all parties are clear from the outset as to their role and responsibilities within the process.
- 6.3 The appointed school leader to make key decisions in the process will be responsible for;
  - Deciding that a formal disciplinary investigation should commence

- Having oversight of the case
- Determining the allegations and confirming these in writing to the employee
- The appointment of an Investigator (in some settings this may be the same school leader)
- Implementing any precautionary action necessary as determined through risk assessment
- Engaging with the employee and their representative in respect of key milestones in the process, and whilst in a period of precautionary action, any absences during the process
- Reviewing evidence gathered upon conclusion of the investigation
- Making a decision regarding the next steps
- In some cases, presenting the management case (where a disciplinary hearing is arranged).

6.4 It is strongly recommended that this school leader / governor seeks HR support from the outset.

6.5 The appointed school leader has no role in the determination of any disciplinary sanction as part of a disciplinary hearing. In the event that the employee requests consideration of a disciplinary sanction in absence of a disciplinary hearing, the appointed school leader may instigate this process and propose a disciplinary sanction.

## **7.1 Investigator**

7.2 Where a disciplinary investigation is deemed necessary, a suitable school leader should be appointed to undertake the role of Investigator. The Investigator may be the manager or, if this is inappropriate (e.g. if the manager may need to be called as a witness during the process), an alternative nominated school leader or governor. The Investigator may also be the appointed school leader with oversight of the process, as detailed above.

7.3 Alternatively, an external Investigator may be commissioned to undertake the investigation on behalf of the school.

7.4 When appointing an Investigator, due consideration should be given to the legal requirement to conclude matters without delay. Therefore, selection of an Investigator must be on the basis that they have sufficient capacity to undertake any associated tasks as priority. It is recommended that appointed Investigators have accessed suitable training in respect of the role.

7.5 The Investigator will be responsible for (as applicable);

- Establishing facts in relation to the allegations
- Interviewing the employee and any relevant witnesses
- Taking statements
- Gathering documentary evidence
- Writing a report summarising the findings in respect of the allegations
- Reporting back to the school leader responsible for determining the next steps / Commissioning Manager (in the cases of the Investigator being externally Commissioned).

7.6 The Investigator has no role in the consideration of any disciplinary sanction as part of the policy or procedure.

## **8.1 Externally commissioned investigations and the role of Commissioning Manager**

8.2 In the event that the school commissions an external Investigator to undertake an investigation, the school should allocate a Commissioning Manager, who will be responsible for:

- Having oversight of the case
- Determining the allegations and confirming these in writing to the employee
- The appointment of an Investigator and the agreement of the commissioned terms

- Co-ordinating any discussions / risk assessment regarding precautionary action and for implementing as necessary, including liaising with the employee and their representative
- Engaging with the employee and their representative in respect of key milestones in the process, and whilst in a period of precautionary action, any absences during the process
- Reviewing evidence gathered upon conclusion of the investigation
- Making a decision regarding the next steps
- Presenting the management case (where a disciplinary hearing is arranged).

8.3 The Commissioning Manager may be a member of the Governing Body, a Headteacher or manager of the employee, or another school leader independent from the case.

8.4 The Commissioning Manager has no role in the determination of any disciplinary sanction as part of a disciplinary hearing. In the event that the employee requests consideration of a disciplinary sanction in absence of a disciplinary hearing, the Commissioning Manager may instigate this process and propose a disciplinary sanction.

## **9.1 Disciplinary Allegations**

9.2 Employees subject to a disciplinary investigation should receive written confirmation of the allegation/s subject to investigation, and should be advised to seek advice from their trade union where applicable. It is important to ensure that allegation/s contain sufficient detail regarding the alleged misconduct for the employee to be able to understand what they are responding to. Failure to do so goes against the rules of natural justice and may create doubt as to the fairness of the investigation process if challenged.

9.3 The suggested approach to compiling allegations is to include the following information as applicable;

- The date, time and location (where applicable) of the alleged misconduct/incident/event
- Key details of the alleged incident/s and the actions of the employee, including any other parties directly involved if the misconduct was against another individual or during an interaction
- Mention of which policies/procedures rules and regulations the actions were in breach of and whether these potentially are deemed to be misconduct or gross misconduct.
- Whether the allegation/s are also deemed to be safeguarding allegations, i.e. the LADO has confirmed that they meet the threshold of harm or potential harm in line with the statutory procedures.
- Any reference to professional standards.

9.4 Employees should raise at the earliest opportunity if they are not clear on the allegations posed. Allegations may change up to the point of an investigation concluding, this is to acknowledge a fair investigation process. In the event that allegations change, the employee will be given reasonable time to consider any amendment and respond.

## **10.1 Timescales**

10.2 The policy and procedure aligns to the ACAS Code of Practice which states that investigations should be undertaken within a reasonable timescale and that this timescale should be shared with the employee, with any amendment or update as necessary.

10.3 The employee (and their representative) should be kept regularly updated as to the progress of any investigation. At the initial meeting to discuss the fact that an investigation will take place, the

relevant school leader must confirm with the employee their preferred method of communication, and for this to be agreed as the mechanism until any change is agreed. Investigators may wish to prepare an investigation action plan at the outset and keep this under regular review, and advising the employee at the commencement of the investigation of their anticipated timescale and the date they will update the employee with progress and any further anticipated timescales for next steps or conclusion. Taking planned and pro-active action in this respect would be considered good practice. This will likely be a difficult time for the employee and to ensure their wellbeing is considered appropriately, clear and open communication is important.

- 10.4 The Investigator has responsibility to treat their investigation as priority and to make the time to undertake all investigation tasks without delay.
- 10.5 Each case is individual and some have additional complexities, such as further allegations coming to light, or the crossover with a criminal investigation. It is therefore not possible to determine a one size fits all approach to setting a timescale and will depend on each case. To appropriately manage this, the Investigator should carefully and clearly plan their investigation and this should be communicated to the employee.
- 10.6 Any delays in the process should be clearly communicated to the employee and explained in the investigation report – and it is recommended that this is covered in a chronological timescale.
- 10.7 Unless there are exceptional circumstances, any disciplinary sanction imposed will take effect from the date the sanction is determined. Backdating of sanctions would not normally be appropriate. Therefore, this emphasises the importance of concluding an investigation without delay, given the potential impact of a timed sanction for the individual.

#### **11.1 Precautionary action**

- 11.2 In some cases it may be necessary to take precautionary action; temporary redeployment or suspension, whilst an investigation takes place. Precautionary action is a neutral act and is not prejudicial in any way to the outcome of the investigation. However, precautionary action can have a significant impact on an employee and should be only be instigated when absolutely necessary.

- 11.3 Precautionary action may be appropriate where:

- the allegation(s) constitute potential gross misconduct
- the employee continuing their work may hamper the investigation
- the employee may commit further misconduct, or
- the employee, or other people, may be put at risk by them remaining at work.

- 11.4 Any proposal to instigate precautionary action should be considered carefully and the school should undertake a robust risk assessment in relation to the specific allegations against the employee and their role, to inform their decision making.

- 11.5 The risk assessment should consider;

- Whether or not the employee's presence at work may prevent others from coming forward and giving evidence, or may influence the evidence they give.
- Whether or not the employee's presence at work may give them access to documents and records which have a bearing on the case and which could be amended, destroyed or tampered with.

- Whether there is a real risk that they may commit further misconduct, or where they, or other people, may be put at risk by their remaining at work.
- Whether or not the investigation could be so uncomfortable for the employee that their continuous presence at work would be detrimental to their well-being. A decision on these grounds would normally be agreed with the employee.
- Whether or not in cases of alleged gross misconduct it is considered wise to trust the employee until the investigation and any further disciplinary process is completed.
- Whether or not it would be difficult to justify dismissing an employee if they have been allowed to continue at work during the period between knowledge of the allegation and the dismissal taking place. Employment Tribunals are likely to conclude that dismissal for gross misconduct is not justified if the employee has been allowed to continue at work. This indicates that knowledge of the allegation without suspension suggests that a breakdown of trust and confidence between employer and employee has not taken place rendering gross misconduct dismissal unfair.

**11.6 Temporary adjustment:** a temporary adjustment to duties, role, supervision, work base or working arrangements should be considered prior to any consideration regarding suspension.

**11.7 Suspension:** suspension from duty means that the employee is not required or permitted to attend work during the period of suspension. Usually, it would be appropriate to remove the following at the point of suspension or as soon as possible thereafter;

- Access to information systems usually accessed during the course of the employee's duties
- Keys to the building / access pass / school ID
- Work IT equipment – laptop / mobile phone
- Paper records relating to the employees role (work books, reports, financial records)

**11.8** It is important that, as a neutral act, and to enable a fair investigation, the employee should have access to any records or information that they feel are relevant to be able to respond to the allegations. It may be appropriate to facilitate such access during the investigation period, whilst maintaining security of the information as appropriate.

**11.9** During any period of neutral action the employee must remain on normal full pay and benefits.

**11.10 Authority to take precautionary action**

**11.11** The decision to invoke precautionary action should only be made following full consultation by the Headteacher with the Chair of Governors, in line with the scheme of delegation, and after seeking HR and LADO advice as appropriate.

**11.12 Informing the employee of precautionary action**

**11.13** The employee should be informed verbally, and without delay, that precautionary action is necessary, the reason/s for this, and whether the action is temporary adjustment or suspension. This should normally be face-to-face unless there are exceptional circumstances preventing this, and should be confirmed in writing at the time or as soon as possible including the reasons for the precautionary action taken.

**11.14** There is no right to be represented or accompanied when an employee is advised of suspension/precautionary action meeting but if a trade union representative or work colleague is available at the time the employee may be accompanied.



- 11.15 The employee should be advised of the general nature of the allegations but told not to respond at this stage, as they will need time to reflect, consider their response and seek advice. The employee should not be questioned at this stage.

**11.16 Support during suspension**

- 11.17 Where schools buy into an employee assistance scheme, the employee should be given the access details as a source of support.
- 11.18 In addition, the employee should be given a named person within work as a contact point. This should be mutually agreed. The role of the contact will be to pass on information relating to work, but not to discuss the case.

**11.19 Contact during suspension**

- 11.20 The employee should be advised that they must make themselves available to be contacted for any interview that the Investigator may require them to attend, which would normally be during the employee's contracted hours unless otherwise by mutual agreement. It should also be made clear that they must not visit their normal place of work unless asked to do so by the Investigator, nor should they contact any parent, pupil or employee of the school in respect of the allegation or arrange for any documents to be forwarded without prior approval from the Investigator (or Commissioning Manager).
- 11.21 Employees subject to precautionary action may feel a sense of isolation and distress. However, normal social contact with colleagues is allowed, providing that the allegations are not discussed and the employee does not attempt to interfere in any way with the investigation. They should be made aware that any breach of confidentiality of information relating to the investigation may become a further disciplinary matter to be investigated.
- 11.22 Any removal of work information or equipment should be arranged discreetly and under the supervision of the Investigator (or Commissioning Manager).

**11.23 Review of precautionary action**

- 11.24 Any precautionary action should be kept under periodic review during the investigation as a consequence of the evidence gathered, and the risk assessment should be revisited.
- 11.25 It is important that the relevant school leader regularly reviews the need for precautionary action and in response to emerging evidence:
- 11.26 If the evidence suggests that an allegation of potential gross misconduct is more likely to be deemed serious misconduct then the continuing need for suspension should be reviewed.
- 11.27 The emerging evidence during the course of the investigation may suggest that the allegation(s) which were originally considered to be potentially less serious than gross misconduct may now be considered as such. In this circumstance it may be appropriate to re-consider the need for precautionary action at that stage, part-way through the investigation.
- 11.28 If an employee, already under investigation but continuing at work, is found to be breaching confidentiality of the investigation which may have an impact on the integrity of the process then this may be due cause to consider precautionary action part-way through an investigation.

- 11.29** During the course of a suspension the employee should be advised that the review has taken place. Periods of suspension should be kept to the minimum necessary to ensure that suspension is appropriate and reasonable to the case. During such reviews temporary transfer to another post/location or restricted duties should also be assessed as potential alternatives to continuing with the suspension.

### **12.1 Arranging an investigation interview**

- 12.2 It is important to consider an appropriate date, time and venue for the meeting. Meetings should usually be held within the employee's usual working hours, unless there are exceptional circumstances and a justified reason to hold a meeting outside of these times. In this case, there should be agreement with the employee.
- 12.3 It shouldn't be assumed that investigations cannot progress in school closure periods, if meeting during these times is agreed by all parties it may be preferable to progress.
- 12.4 It will be important to consider an appropriate venue for the meeting. Meetings may be held virtually, or in person, but crucially the venue must provide appropriate access taking in account any equalities considerations, and be discrete and to ensure confidentiality of discussions and have private break out facilities.

### **13.1 How to conduct an investigatory interview**

- 13.2 An Investigator will need to conduct an investigatory interview both with the employee and any potential witnesses of the alleged misconduct in order to gather facts and evidence impartially in relation to the allegation. It is an opportunity for the employee to put forward their version of events and to seek a response from the employee in respect of the allegations made.
- 13.3** Normal practice would be to gather evidence and interview witnesses first prior to interviewing the employee. This allows a reasonable basis of fact to be established and avoids the employee having to be called to interview more than once.
- 13.4 Employees should be given reasonable notice of the date of an investigatory interview, and the request to attend should be made in writing.
- 13.5 It is advisable to always have a note taker present during an investigatory interview, to prevent any later dispute on the conduct or content of the interview. The Investigator may also wish to seek HR support for the meeting.
- 13.6 Both the employee and witnesses must be made aware that what they say during the investigation will be recorded in writing and may be used as evidence in any subsequent disciplinary proceedings. Witnesses should also be made aware that they may be required to appear in person at any subsequent disciplinary hearing and appeal.
- 13.7 The Investigator should ensure that notes of the interview are taken and a written statement produced. The employee should be sent a copy and asked to agree, sign and return the statement.
- 13.8 Witness statements or notes should not be shared with the employee at this stage. However, the Investigator should share key evidence and relevant information with the employee at appropriate times during the investigation so that the employee is clear around the detail of the allegations they are facing and can respond accordingly.

- 13.9 Any interview that becomes heated or where the employee is showing undue signs of stress should be adjourned. Also, adjournments can be requested to allow the employee to confer with their representative, or for the Investigator to confer with their HR representative (where applicable).
- 13.10 If the investigatory interviews produce information that requires further verification or identifies additional witnesses, there may be a need for a second or, in exceptional circumstances, a number of additional interviews with the employee concerned. This can add to the stress of the situation and should be avoided wherever possible. The recommendation is that the investigation should be as complete as possible before the employee is interviewed.
- 13.11 When interviewing the individual facing the allegation/s, the Investigator should consider specifically asking the employee if they accept the allegation/s made.

#### **14.1 Sickness Absence of the employee during disciplinary process**

- 14.2 Communication regarding sickness absence or other leave during the investigation should usually be between the employee and their manager. Where suspension is in place, this communication should be between the employee and the appointed school leader or Commissioning Manager.
- 14.3 If an employee is absent due to sickness during the disciplinary process (either when required to attend an investigatory interview or a Disciplinary Hearing), and states that they are not well enough to attend a meeting, a first postponement of the meeting should be considered. An explanation and supporting medical evidence may be sought. An alternative date will normally be offered, allowing a reasonable time for the employee to recover.
- 14.4 Where it is apparent that the sickness absence will be for a prolonged period, advice should be sought from the Health and Wellbeing service (normally via an Occupational Health referral) to enquire if the employee is fit or when they are likely to be fit to take part in the disciplinary process, and any adjustments that may be required to support their attendance.
- 14.5 What is reasonable for the individual in terms of recovery time and adjustments should be considered on a case by case basis. Adjustments that are commonly considered are;
- Meeting at an alternative and more neutral venue
  - Meeting virtually rather than in person (or visa versa)
  - Providing regular planned breaks during proceedings
  - Offering an individual the opportunity to submit a written statement rather than attendance at a meeting where attendance has been refused
  - Allowing an individual to be accompanied by an independent family member or other trusted companion where they are not a member of a union nor have an appropriate colleague to support – in this case the accompanying party should be clearly reminded of confidentiality and should not have any input to the meeting other than to support the employee. They should not be allowed to take notes or record the meeting. The companion is there for welfare support purposes only.
  - Access to an interpreter (including sign language interpreter), support worker or similar type of support to assist in their communication during proceedings
  - Physical adjustments to the location of proceedings
- 14.6 If the absence will be prolonged, and the employee continues to be unfit to take part in an investigation/hearing, and with all reasonable adjustments to support their attendance having been exhausted, the Investigator (or appointed school leader / Commissioning Manager) may decide to proceed with the disciplinary process in the employee's absence. The employee's

representative may give evidence and state the case for the employee. The employee should be offered the opportunity to provide a written statement in absence of their attendance.

- 14.7 Where an employee is suspended and subsequently notifies management that they are unwell, normal notification/medical certification requirements will apply. Such absence will supersede the suspension in respect of pay, and will count against the employee's occupational sick pay entitlement and their absence record. Any restrictions in place will continue to apply.

#### **15.1 Leave during disciplinary process**

- 15.2 The employee should be informed that any pre-arranged and approved holiday or other leave can be requested and taken as normal (where approved) and will count against any leave entitlement. During a suspension period an employee may wish to request additional periods of leave (as is applicable), but this must be requested in the usual way according to the leave policy.

#### **16.1 Unavailability of representative**

- 16.2 If the employee notifies that their representative is unavailable on the date given they must offer an alternative date for a re-arranged interview to take place within 5 days of the original date. The same would apply to a Disciplinary Hearing or appeal date.
- 16.3 If the re-arranged date cannot be accommodated the employee must be informed of a further interview/hearing/appeal date to take place at the earliest opportunity.

#### **17.1 Confidentiality**

- 17.2 Throughout the disciplinary process, the need to ensure strict confidentiality of information should be explained to all involved and re-iterated throughout. Where there is a suspicion or evidence that confidentiality has been breached, it may be appropriate to address an allegation in line with the Disciplinary policy. Where the alleged breach involves the individual currently under investigation, this may include adding a further allegation. Any decision to do so must be made and communicated by the Investigator (or appointed school leader / Commissioning Manager). The Investigator should consider carefully the appropriate next steps where evidence is deemed to have been compromised as a result of a breach of confidentiality, and such circumstances should be detailed within the investigation report.

#### **18.1 Grievance raised during disciplinary process**

- 18.2 As outlined in the policy, if a concern, issue or grievance is raised regarding any aspect of the policy and this guidance it should be dealt with as promptly as possible within this process. Matters should only be referred to be dealt with through the Resolving Issues at Work Procedure where they are not related to the application of this policy for that individual case.
- 18.3 Any grievances raised should be considered in line with the adopted policy, and within appropriate timescales. Each case must be considered on its merits as to the appropriate next steps for the investigation, but typically, the processes can run concurrently, and the submission of a grievance would not prevent the disciplinary investigation from concluding.

#### **19.1 Witnesses**

- 19.2 Witnesses should normally be given paid time off when requested by the Investigator to attend an interview or subsequent hearing, to give a witness statement.

19.3 Witnesses should be given a written statement of their interview response and asked to agree and sign the statement as it may be later required as part of a Disciplinary Hearing.

19.4 Witnesses may choose to be supported at an interview or hearing by a representative who does not have a conflict of interest.

### **19.5 Witnesses who are pupils**

19.6 Any evidence relating to pupils, children or young people must only be included where necessary and must be robustly anonymised. Where it is necessary to meet with a child or young person, employers must follow national and local guidance, such as Keeping Children Safe in Education. Any meetings should only be undertaken by someone with appropriate training, such as the Designated Safeguarding Lead, and with the advice of the LADO.

### **19.7 Witness absence during investigation**

19.8 Witness unavailability due to illness will need consideration on a case-by-case basis, and the adjustments outlined may be equally appropriate to consider for witnesses. As outlined in the policy, investigations should be concluded without unreasonable delay, and therefore the Investigator will need to consider carefully the appropriate next steps where a witness is unavailable to participate in the process. Any necessary delay to the individual should be clearly communicated to the employee by the Investigator (or appointed school leader / Commissioning Manager).

### **19.9 Witness anonymity**

19.10 It will be important to explore the reasons for any requests made by witnesses to speak anonymously. An employee has the right to know the case against them and to be able to challenge it, so evidence should only be anonymised or withheld where there is a strong reason for doing so. An anonymous witness statement will carry significantly less weight as the employee could argue there is insufficient information contained to be able to respond. In the vast majority of cases, anonymous witness statements will not be appropriate. Through discussion, support and reassurance around their role in the process, witnesses may agree to participate openly. In some cases, it may be appropriate to request a written statement as opposed to convening an investigation meeting with a reluctant witness.

### **19.11 Witness reluctance to participate**

19.12 Circumstances should be considered on a case-by-case consideration of the circumstances and what actions may be appropriate. Requiring a witness to give evidence may be deemed a reasonable management request in some cases, but in others, doing so may be contrary to the employers duty of care for its employees, where they present demonstrable concerns that this would have an adverse impact for them. It will be important to explore why the witness is concerned about meeting, and considering whether any adjustments may be appropriate to support their attendance.

## **20.1 Conclusion of investigation**

20.2 After concluding their evidence gathering, the Investigator should collate all documentary evidence, including, witness statements and notes of investigation interviews, into a paginated and indexed bundle in chronological order. The bundle may include a report detailing the findings of the investigation, highlighting key evidence, outlining any inconsistencies and drawing conclusions as to whether the evidence supports the

allegation/s or not. Any report should also outline any mitigating circumstances presented by the employee or uncovered by evidence. As the Investigator has no role in determining a sanction, a report should not make any recommendation in this respect.

#### **21.1 Outcome of disciplinary investigation**

- 21.2 Following a disciplinary investigation , the appointed school leader, Investigator (or Commissioning Manager) will consider carefully the facts obtained and make a decision based on the evidence as to whether no further action is required, or where there is a case to answer, whether a Disciplinary Hearing should be convened in order to consider the allegations in the context of the disciplinary sanctions available.
- 21.3 The employee must be informed of the outcome of the investigation and it must be confirmed in writing at the earliest opportunity.
- 21.4 If the decision is taken not to proceed to a disciplinary hearing, the employee must be informed at the earliest opportunity and the decision confirmed in writing.
- 21.5 If it is decided to progress the case to a disciplinary hearing, the letter will notify the employee of intention that a hearing is to be called to determine the outcome of the disciplinary process in respect of the allegations. It would be helpful at this stage to share names of management witnesses who will be called to the hearing, and encourage the employee to begin their preparations including whether they wish to call their own witnesses. It is recommended that the management bundle is issued as soon as possible, and alongside this letter where possible. If it is not possible to issue the bundle at this stage, please note that this must be issued to be received at the latest 5 working days in advance of the hearing. The letter may also confirm details of the hearing where this is known, however if a date for hearing has not yet been identified this could be confirmed at a later date, The notification letter should not be delayed.

#### **22.1 Notification arrangements for the Disciplinary Hearing**

- 22.2 A minimum of 10 working days' written notice of the hearing will be provided unless there is mutual agreement to give less notice, wherever possible further notice should be given.
- 22.3 The letter must include details of the allegations against the employee which are subject to consideration at the hearing, the date, time and venue of the Hearing, the names and roles of the Disciplinary Panel members together with the names of any witnesses to be called. The employee will be reminded of their right to be accompanied. The letter must also detail the range of possible sanctions available to the Disciplinary Panel should the allegations be founded. It is especially important to place emphasis on allegations that may be viewed as gross misconduct or cumulative misconduct and therefore have dismissal as a potential outcome.
- 22.4 If the employee notifies that their representative is unavailable on the original planned hearing date given, the employee must offer an alternative date for a re-arranged hearing to take place within 5 days of the original date. Depending on the availability of those involved, this alternative date may be confirmed, or a further date may be arranged within a reasonable time period.

#### **23.1 Exchange of evidence**

- 23.2 Where the bundle has not already been provided to the employee, this should be issued to be received by the employee a minimum of 5 working days in advance of the date of the hearing. The

employee must submit any documentary evidence they wish to present at the hearing, and any names of witnesses they intend to call, no later than 5 working days prior to the date of hearing.

#### **24.1 Disciplinary Hearing arrangements**

- 24.2 It is the responsibility of the school to arrange a suitable date, Disciplinary Panel and venue for a Disciplinary Hearing. This would normally be the responsibility of the Investigator (or Commissioning Manager).
- 24.3 Disciplinary Hearing venues must ensure privacy, confidentiality and freedom from interruption. Separate rooms should also be provided for the employee and their representative and any witnesses. Sufficient time must be allowed for the Hearing to take place and to give consideration of the facts, documentary evidence to be examined, questions to be asked, summing up and deliberation and delivery of the outcome. Notices on doors must not state 'Disciplinary Hearing'.

#### **25.1 Composition of Disciplinary Panel**

- 25.2 The Disciplinary Hearing will be heard by either the Headteacher or a Disciplinary Panel, as is applicable within the school's scheme of delegation as follows:
- 25.3 The Governing Board of the Ribblesdale Federation of Schools has adopted the model terms of reference for the Disciplinary Panel structure. The Disciplinary Panel will be constituted as required from 3 eligible governors as and when required.
- 25.4 In line with Sections 35 and 36 of the Education Act 2002 and the School Staffing (England) Regulations 2009, Governing Bodies have the right to delegate initial staff dismissal decisions to the Headteacher or to a group of governors, either with or without the Headteacher. Decisions relating to the conduct of a Headteacher should be delegated to a group of governors.
- 25.5 Where disciplinary decisions are delegated to a group of governors, governing bodies must appoint 2 separate panels of not less than 3 governors each, to sit on a Disciplinary and an Appeals Committee. Where the minimum requirement of 3 governors cannot be met a panel may comprise of 2 governors, however the number of members on the Appeals Committee must be not less than the number on the Disciplinary Panel, and no governor may sit on both committees. In cases which may result in dismissal, a representative of The Director of Children and Young People's Service within NYC is entitled to attend.
- 25.6 Both the School Staffing Regulations (2009) and the DfE's non-statutory 'Staffing and Employment Advice for Schools' state that where functions (other than those directly concerning the headteacher) are delegated to one or more governors (without the headteacher), the headteacher has the right to attend and offer advice at all relevant proceedings. Any advice given should be considered by the governor or governors to whom the delegation of authority has been made. Whilst this could apply to disciplinary hearings (where heard by a governor panel), from an employment law perspective, the panel with delegated authority to make the decision should reach their own conclusions and it is advised that a Headteacher's attendance during a hearing should only occur when they are either part of the hearing panel, acting as Investigator (or appointed school leader / Commissioning Manager) in presenting the management case, or as a witness called by management or the employee.
- 25.7 A governor must not sit on a Disciplinary Panel where there may be any form of conflict of interest or personal connection with the employee or have had any prior involvement in the case. Staff governors should also not take any part in formal committees considering misconduct allegations.

- 25.8 In exceptional circumstances, a governor or governors from different schools may form part of the composition of a Disciplinary Panel.
- 25.9 In cases where the Headteacher, acting as Investigator (or appointed school leader / Commissioning Manager) requires support from the Chair of Governors during the investigation and disciplinary process, the Chair of Governors should not sit on the Disciplinary Panel in order that they can provide this support.
- 25.10 It is advised that a representative of NYES HR will attend Disciplinary and Appeals Hearings to offer advice to the panel.
- 25.11 Where there is a Disciplinary Panel, a Chair will be elected. It is recommended that a Governor should not accept a position of Chair of a Disciplinary Panel unless they have undertaken appropriate training or has the appropriate experience.

## **26.1 Management preparation for Disciplinary Hearing**

- 26.2 The Investigator, appointed school leader or Commissioning Manager will act as the Presenting Manager at the disciplinary hearing. The Presenting Manager should determine the documentary evidence to be presented in support of the management case – which in most cases is the bundle prepared by the Investigator including the investigation report. Where allegation/s were subject to investigation, but will not be subject to scrutiny at disciplinary hearing, information relating solely to these allegation/s will be excluded from the bundle of documents presented to the hearing.
- 26.3 The Presenting Manager should also normally prepare a statement of Management Case (a script to work from) for presentation at the Disciplinary Hearing, to enable cross reference to supporting information in the Management bundle. Where an investigation report exists, the statement of case will be based on this document which should form part of the bundle.
- 26.4 In presenting the case, the Presenting Manager should outline and explain any mitigating circumstances that are relevant to the case.

## **27.1 Process and conduct of disciplinary hearings**

- 27.2 Disciplinary Hearings must be conducted in accordance with the Hearings and Appeals Policy and Procedure adopted by the school.
- 27.3 The Chair of the Panel should ensure that the hearing is conducted appropriately, and that no one present makes personal or judgemental remarks during the course of the Hearing.
- 27.4 The formality of the Disciplinary Hearing should reflect the seriousness of the allegations to encourage the employee and witnesses to talk freely. Any party can be allowed to call for an adjournment if they so wish.
- 27.5 Notes of the Disciplinary Hearing should be taken by an appointed note-taker.

## **28.1 Calling witnesses to a Disciplinary Hearing**

- 28.2 Both the Presenting Manager and the employee have the right to call witnesses to support their case at a Disciplinary Hearing. Where the employee wishes to call a witness the responsibility lies with the employee to ensure that their witnesses are able to attend and are briefed on the process.



The employee must advise the Presenting Manager at least 5 working days before the Hearing date of the intention to call witnesses and the names and status of the individuals.

- 28.3 As the hearing is an internal matter, it is not permissible to call parents, pupils or members of the public as witnesses to a hearing, although such individuals may have shared information as part of the investigation, and it is permissible for either the employee or the Presenting Manager to submit witness statements as part of their evidence. Investigator
- 28.4 The expectation is that where a witness is an employee of the school, they will be released from duties to attend hearings and appeals in most circumstances. Paid time off to attend will normally be given. Witness attendance is limited to the time when they will be answering questions, and witnesses will usually be released afterwards to return to duties (where applicable).
- 28.5 The Presenting Manager has the discretion to decide if some/all witnesses who have provided a statement or been interviewed should be called to answer questions at hearing. If the Presenting Manager does not want to call a particular witness, then a signed statement can be used in the alternative. The employee, however, may request that Management witnesses are called should they wish to ask questions of them.
- 28.6 Giving evidence and attending a Disciplinary Hearing can be stressful and care must be taken that witnesses are supported throughout the process. To help overcome any anxiety about the process, the Presenting Manager should discuss the format of the Hearing with the witnesses beforehand. Where a witness is likely to be unduly stressed thought must be given to them providing a witness statement as an alternative to attendance. This circumstance may particularly occur in sexual harassment and bullying cases where the witness has to confront the alleged perpetrator. It may also be appropriate, where it is not deemed appropriate that the witness attends the hearing, to allow the employee to submit questions to the witness in advance of the hearing in writing (via the Chair or Presenting Manager), so that the employee can respond in writing in advance of the hearing, to be submitted as further evidence. In this case, the timescales would need to be amended as appropriate. Counselling support may be considered where it is felt important that the witness attends the Hearing to support the case..
- 28.7 In some circumstances it may be expedient to call an 'expert witness' to advise the Panel on technical/operational/legal or regulatory matters.

## **29.1 Deliberations and outcome**

- 29.2 The Panel should ensure sufficient time is allocated for deliberations. This may require adjourning and reconvening at a later date as soon as possible thereafter. To deliberate, the Disciplinary Panel will call a recess, in private, to consider the case; the facts and evidence presented by both parties and come to a reasoned judgement. The Panel must always consider any mitigating circumstances put forward by the employee, for example, previous good conduct, a lack of induction/training and personal circumstances that may affect an employee's judgement. Where the facts are in dispute, the Panel must decide, on the balance of probabilities, what is reasonable to believe in the circumstances. In the absence of any clear evidence a subjective judgement is allowed, provided that Panel members have a reasonable and genuinely held belief that the allegations are likely to be true or not, on the balance of probabilities based upon a full and fair investigation.
- 29.3 In exceptional circumstances, where unexpected responses/arguments occur and the Panel is of the view that re-investigation is needed in full or part to clarify the situation, the Panel may wish to reconvene at a later date after further investigation has taken place.

- 29.4 The final decision may be delivered on the day, where the employee will be advised of the outcome, any disciplinary sanctions issued and any right of appeal. This must be confirmed in writing by the Chair, normally within 5 working days of the date of the hearing. Alternatively, the Chair may wish to write to the employee to deliver the outcome, normally within 5 working days of the date of the hearing. HR Advice should be sought in relation to the content of the outcome letter.

### **30.1 Disciplinary sanctions**

- 30.2 The Disciplinary Policy and Procedure outlines details of the disciplinary sanctions available to Disciplinary Panels: Written warning, Final Written Warning, Action Short of Dismissal and Dismissal.
- 30.3 The outcome of the Hearing or Appeal is the decision of the Panel alone, and they are responsible for determining any sanction they deem appropriate from within the reasonable range of responses, having carefully considered the evidence and any mitigating circumstances.
- 30.4 If a current disciplinary sanction is 'live', a Disciplinary Panel will normally apply the next higher sanction depending on the circumstances of the case. Careful consideration must be given to any additional sanction as a consequence of cumulative misconduct in the event of a final written warning being in place. Whilst dismissal may be the potential next step in the order of sanctions detailed within the policy, it may be unreasonable to reach a decision to dismiss if the subsequent misconduct in question is relatively minor. However, if the Panel find that misconduct has been persistent over a period of time and the employee has failed to take the opportunity to improve, dismissal, where a warning is in force, may be a legitimate action.
- 30.5 A lapsed warning cannot be taken into account for progression on cumulative grounds to the next stage of the procedure. However, the misconduct can still be taken into account if relevant to the current allegation(s) and will form part of an employee's record (advice should be sought from NYES HR).
- 30.6 No employee will be dismissed for a first breach of conduct except in the case of gross misconduct. Proven Gross Misconduct will normally result in dismissal without notice except where a Disciplinary Panel concludes mitigating circumstances allow Action Short of Dismissal.
- 30.7 A Disciplinary Panel should not consider dismissal on the grounds of gross misconduct unless the employee has been advised in writing that the allegation/s have been viewed as potential gross misconduct and that a sanction of dismissal may be considered by the panel as a result, as detailed in the letter inviting the employee to hearing.

### **31.1 Termination of Employment**

- 31.2 Where a decision to terminate employment is taken by a maintained school it is the responsibility of the local authority to effect the dismissal, whether this is a dismissal with notice or without notice. Therefore, the school is required to request the local authority to issue a letter of termination to the employee and the LA then has 14 days in which to do so. The individual remains employed until the letter of dismissal is received by the individual in cases of gross misconduct or until the notice period expires in cases of dismissal with notice.
- 31.3 Normally, the employee will remain suspended during the interim period and the school remains responsible for payment of salary.

31.4 In the case of Voluntary Aided/Foundation schools, the school directly terminates the individual's employment either with or without notice as appropriate.

### **32.1 Referrals to external agencies**

32.2 Where an employee is dismissed consideration must be given as to whether the matter should be reported to any professional bodies which require the reporting of misconduct issues e.g. Disclosure and Barring Service (DBS), Teaching Regulation Agency. Referrals should not be made until all internal procedures have been exhausted.

### **32.3 Disclosure and Barring Service**

32.4 The DBS exists to prevent unsuitable people obtaining work with children or vulnerable adults. Admittance to the barring list will largely depend upon all the circumstances surrounding the case.

32.5 Where a case involves abuse of children (up to age 18) or Vulnerable Adults and the case is proven and the employee is dismissed or has resigned, steps must be taken to refer the employee to the Disclosure & Barring Service and to provide information upon request. The duty to refer applies when two main conditions have been met:

32.6 One: permission is withdrawn for an individual to engage in regulated activity due to:

- Dismissal
- Redeployment
- Retirement/Redundancy
- Resignation

32.7 Two: referring party thinks that the person has either

- Engaged in relevant conduct or
- Satisfied the harm test or
- Received a caution for or been convicted of a relevant offence

32.8 This is likely to apply when an employee has been investigated and dismissed under the Disciplinary Policy and Procedure. For most cases, the DBS only has the power to bar a person who is, has been, or might in future, engage in regulated activity.

32.9 All disciplinary evidence and notes will need to be supplied in the event of a referral. Any referral will be made by the school with support from NYES HR.

32.10 In any of the circumstances described above, the school must refer relevant cases to the DBS, via the DBS website. When in doubt, advice should be taken from the LADO.

32.11 The DBS has no investigatory powers.

### **32.12 Teaching Regulation Agency**

32.13 Where a teacher is dismissed as a result of the disciplinary process on the grounds of serious professional misconduct or resigned in advance of a likely dismissal, steps should be taken to refer the individual to the Teaching Regulation Agency.

32.14 All disciplinary evidence and notes will need to be supplied in the event of a referral. Any referral will be made by the school with support from NYES HR.

32.15 For more detailed guidance and the process to refer a teacher see “teacher misconduct: the prohibition of teachers”

32.16 <https://www.gov.uk/government/collections/teacher-misconduct>.

### **33.1 Resignations**

33.2 There may be cases in which an employee offers to resign or resigns prior to a Disciplinary Hearing. In these circumstances it should be made clear to the employee that the Disciplinary Hearing may still go ahead, to ensure that:

- a. The school complies with any statutory requirement to conclude the process as outlined in Keeping Children Safe in Education
- b. the school can report the outcome to any professional bodies which require the reporting of misconduct issues in such circumstances.
- c. The school can refer to any outcome of the process in any references provided as appropriate

### **34.1 Records and Retention of documentation**

34.2 The school should retain all relevant documentation from the Disciplinary Hearing including a copy of the bundles and hearing notes confidentially on file, in line with GDPR, in line with their retention policy. Any other individual involved in the hearing or appeal should return copies of documents to the school for confidential shredding.

### **35.1 Disciplinary action and impact on pay progression**

35.2 **Support Staff:** When any formal disciplinary warning is applied it will have an effect on the individual’s pay progression as follows: the loss of any incremental progression while the warning is live or, for staff already on the top spinal column point of the pay band or qualification bar, their salary will be reduced by one incremental point only with effect from the following April. The loss or withholding of pay progression will not span two financial years.

35.3 **Teaching Staff:** Where any formal disciplinary warning is applied, and the school has adopted discipline as a performance criterion under the school’s pay policy, there will be no entitlement to pay progression at the next review point.

35.4 Schools should refer to their Pay Policy in respect of their treatment of increments in relation to disciplinary matters.

### **36.1 Appeals**

36.2 Employees have the right of appeal against any formal disciplinary sanction. They must give written notice of their decision to appeal within 10 working days of receipt of the letter confirming the sanction and set out the grounds of appeal.

36.3 The basis of an employee’s appeal may include:

- The facts of the case
- The decision taken/sanction imposed
- Procedural fault(s);
- New evidence has emerged

36.4 Appeals should be heard at the earliest opportunity and will be heard by an Appeals Panel. Reasonable notice of the date of the Appeal Hearing must be given. The timescales for exchange of documents/notification regarding witnesses are the same as they were for the original hearing.

### **36.5 Composition of Appeal Panel**

36.6 The Governing Body must appoint an Appeal Panel of ideally three governors, but not less than the number on the Disciplinary Panel, and no governor may sit on both panels. In cases which may result in dismissal with or without notice, a representative of The Director of Children and Young People's Service is entitled to attend.

36.7 Both the School Staffing Regulations (2009) and the DfE's non-statutory 'Staffing and Employment Advice for Schools' state that where functions (other than those directly concerning the headteacher) are delegated to one or more governors (without the headteacher), the headteacher has the right to attend and offer advice at all relevant proceedings. Any advice given should be considered by the governor or governors to whom the delegation of authority has been made. Whilst this could apply to appeal hearings (where heard by a governor panel), from an employment law perspective, the panel with delegated authority to make the decision should reach their own conclusions and it is advised that a Headteacher's attendance during an appeal should only occur when they are either part of the appeal panel, acting as Investigator (or Commissioning Manager) in presenting the management case, or as a witness called by management or the employee.

36.8 A governor must not sit on an Appeals panel where there may be any form of conflict of interest or personal connection with the employee, or have had any prior involvement in the case. Staff governors should also not take any part in panels considering misconduct allegations.

36.9 In exceptional circumstances, a governor or governors from a different school/s may form part of the composition of an Appeal Panel.

36.10 In cases where the Headteacher, acting as Investigator (or appointed school leader / Commissioning Manager) requires support from the Chair of Governors during the investigation and disciplinary process, the Chair of Governors should not sit on the Appeal Panel in order that they can provide this support.

36.11 It is advised that a representative of NYES HR will attend Appeals Hearings to offer advice to the panel.

36.12 A Chair of the Appeal Panel should be elected. It is recommended that a Governor should not accept a position of Chair of an Appeal Panel unless they have undertaken appropriate training or have the appropriate experience.

### **36.13 Notification of arrangements for the Appeal Hearing**

36.14 It is the responsibility of the school to arrange a suitable date, Appeal Panel and venue for an Appeal Hearing. This would normally be the responsibility of the Investigator (or appointed school leader / Commissioning Manager).

36.15 Appeal Hearing venues must ensure privacy, confidentiality and freedom from interruption. Separate rooms should also be provided for the employee and their representative and any witnesses. Sufficient time must be allowed for the hearing to take place and to give consideration of the facts, documentary evidence to be examined, questions to be asked, summing up and deliberation and delivery of the outcome. Notices on doors should not state 'Appeal Hearing'.

36.16 The employee will be given reasonable notice of the appeal hearing in writing.

### **36.17 Process and conduct of appeal hearings**

36.18 The focus of the Appeal Hearing should be the basis of the decision and sanction imposed by the Disciplinary Panel, in addition to the specific grounds of appeal. This will not under normal circumstances require a full re-hearing of the case and consideration of all of the original evidence. The remit of the Appeal Panel is to satisfy itself that the decision taken by the Disciplinary Panel was reasonable in the circumstances and that due process was followed. In doing so, the Appeal Panel must be satisfied that:

- The rules of natural justice have been applied
- There has been a thorough and fair investigation
- The Disciplinary Policy and Procedure has been followed or there are justifiable reasons if this has not happened.
- The sanction imposed was reasonable in the circumstances.

Appeal Hearings should be conducted in accordance with the procedure set out in the school's adopted Hearings and Appeals Policy and Procedure.

36.19 The Appeal Panel will call a recess, in private, to consider the case; the facts and evidence presented by both parties and come to a reasoned judgement. The final decision will normally be delivered on the day, where the employee will be advised of the outcome, any impact on disciplinary sanctions issued by the original panel, and any right of appeal.. This must be confirmed in writing normally within 5 working days of the date of the hearing. Alternatively, the Chair may wish to write to the employee to outline the outcome, normally within 5 working days of the date of the hearing.

36.20 Notes of the Appeal Hearing should be taken by an appointed note-taker.

### **36.21 The role of the Chair from the Disciplinary Panel, and the role of the Presenting Manager, at an Appeal Hearing**

36.22 Given that the appeal is not usually intended to be a rehearing of the case, it may be that the Chair of the Disciplinary Panel, who determined the disciplinary sanction, presents the management case in response to the employee's appeal. Where this is felt to not be appropriate, they would be required to attend the Appeal Hearing as a witness, and the management case would then be presented by the Investigator (or Commissioning Manager) who presented the case at the original disciplinary hearing.

36.23 In this event, the Chair of the Disciplinary Panel will have the same role as other witnesses and will only remain in the Appeal Hearing to give their evidence and answer questions. Where the Chair of the Disciplinary Panel presents the management case in response to the appeal, they may wish to call the Investigator (or appointed school leader / Commissioning Manager) as a witness as may be deemed appropriate determined by the grounds for appeal and specific circumstances of the case.

36.24 If the Appeal Hearing is limited to specific grounds only, the Presenting Manager may need to re-focus and limit the documentary evidence, statements and witnesses to be referenced or called as necessary.

36.25 If the grounds for appeal are that new evidence has emerged since the original hearing, it may be appropriate for the Investigator to use the opportunity to conduct further enquiries in advance of the appeal hearing. Any new evidence to be presented at the Appeal hearing should be shared

within a reasonable timescale before the Appeal hearing. A postponement may have to be sought in such circumstances, particularly if witnesses have to be interviewed or re-interviewed.

#### **36.26 Calling witnesses to an Appeal Hearing**

36.27 Please refer to information provided in sub-section 'Calling witnesses to a Disciplinary Hearing' as well as the following.

36.28 At an Appeal Hearing, where the appearance of a witness is fundamental to the management case and is relevant to the grounds of appeal, the witness should be called. If, based on events at the Disciplinary Hearing, the presenting manager wishes to re-focus the presentation of the witnesses' evidence and ask different questions the witness should be informed of what to expect at the Appeal Hearing.

#### **36.29 Deliberations and outcome**

36.30 The Panel should ensure sufficient time is allocated for deliberations. This may require adjourning and reconvening at a later date as soon as possible thereafter. To deliberate, the Appeal Panel will call a recess, in private, to consider the case; the facts and evidence presented by both parties and come to a reasoned judgement. The Panel must always consider any mitigating circumstances put forward.

36.31 In exceptional circumstances, where unexpected responses/arguments occur and the Panel is of the view that re-investigation is needed in full or part to clarify the situation, the Panel may wish to reconvene at a later date after further investigation has taken place.

36.32 The final decision may be delivered on the day, where the employee will be advised of the outcome, any disciplinary sanctions issued and any right of appeal. This must be confirmed in writing by the Chair, normally within 5 working days of the date of the hearing. Alternatively, the Chair may wish to write to the employee to deliver the outcome, normally within 5 working days of the date of the hearing. HR Advice should be sought in relation to the content of the outcome letter.

#### **36.33 Retention of documentation following the Appeal Hearing**

36.34 The school should retain all relevant documentation from the Appeal Hearing including a copy of the bundles and hearing notes confidentially on file, in line with GDPR, in line with their retention policy. Any other individual involved in the hearing or appeal should return copies of documents to the school for confidential shredding.

#### **37.1 Safeguarding/criminal offences/financial irregularity cases**

#### **37.2 Safeguarding**

37.3 Where allegations relate to safeguarding matters, any relevant safeguarding procedure will normally take precedence. In some cases it may be appropriate to delay a disciplinary investigation whilst matters are considered under statutory procedures where this requires investigation or action by other stakeholders. **Advice should always be sought from the LADO and other relevant stakeholders (such as the police or social care) prior to determining a course of action in respect of the disciplinary policy.**

37.4 Schools should refer to relevant safeguarding guidance including Keeping Children Safe in Education, NYES HR Managing Allegations Against Staff guidance and any applicable local safeguarding children partnership guidance.

### **37.5 Criminal offences**

37.6 Where allegations arise which relate to potential criminal offences, the criminal procedures will normally take precedence. In some cases, a disciplinary investigation may be delayed which matters are considered under statutory/criminal procedures. Advice should always be sought from the police prior to determining a course of action in respect of the disciplinary policy.

37.7 If a criminal offence is suspected in the workplace, a decision needs to be taken as to whether the Police should be informed. The matter should be reported immediately to the Headteacher. If a case is the subject of a strategy meeting under safeguarding procedures, that will determine how the case is progressed.

37.8 If an alleged criminal offence in the workplace is of a financial nature, Veritau should be informed at the earliest opportunity (see financial irregularity cases below).

37.9 Precautionary action should always be considered if the evidence suggests that the criminal charges/sanctions and the resulting impact will lead to a breakdown of trust and confidence in the employment relationship.

37.10 If the matter is reported to the Police, who indicate that a criminal investigation will take place, the employer is not obliged to wait for the outcome of that investigation or a Court hearing before commencing a disciplinary investigation. However, extreme care needs to be taken to not allow an internal investigation to interfere with a criminal investigation. In most circumstances internal disciplinary processes will be set aside until the criminal investigation has been concluded. Advice should be taken from HR on the advisability of pursuing a disciplinary investigation concurrent with a Police investigation. Liaison should take place with the Police so that both parties are aware of the approach being taken.

37.11 A disciplinary investigation, concurrent with or subsequent to a Police investigation and/or prosecution, must be carried out independently and in accordance with the Disciplinary Policy & Procedure, and draw its own conclusions with regard to any appropriate disciplinary sanction.

37.12 If a decision is taken in a criminal court not to prosecute or the defendant is acquitted, this does not mean that disciplinary action against the individual is automatically unjustified. The standard of proof required to justify disciplinary action is less than in criminal proceedings and if the employer can establish a reasonable belief, on the balance of probabilities, that the allegations are founded after a thorough and fair investigation, then any subsequent action would be likely to be seen as fair.

37.13 Where a custodial sentence is imposed, special care must be taken not to assume that the contract of employment can safely and immediately be brought to an end due to the employee being unavailable for work. The concept of 'frustration of contract' does not automatically apply in the case of custodial sentences. Each case should be taken on its merits and a reasonable investigation undertaken and a decision taken in accordance with the Disciplinary Policy & Procedure. Advice should be taken from NYES HR, and from the Legal Services provider, where necessary, in such cases.

37.14 Criminal offences, unrelated to safeguarding matters, and committed outside the workplace need to be considered as part of a risk assessed approach in the same manner as positive DBS results as



part of pre-employment checks. The main considerations would be where the offence is one that makes the employee unsuitable for his/her type of work or puts other employees and/or service users at risk, or whether he/she has genuinely brought the school into disrepute or harmed the trust and confidence the school has in the employee.

- 37.15 Criminal charges/sanctions that allegedly bring the school into disrepute must be treated with the utmost care. If a disciplinary case is to be established on these grounds it is insufficient to justify a case solely on the basis of media publicity of the employee/event and the related offences and sanctions. There must be evidence that real and substantial damage has been done to the reputation of the school, the service provided and/or the relationship with partner agencies to justify bringing such a disciplinary allegation.

#### **37.16 Financial irregularity cases**

- 37.17 Where matters of financial irregularity are suspected or other matters within an internal audit remit, Veritau on behalf of North Yorkshire Council must be informed. They may carry out a separate Audit investigation and make recommendations to the Investigator and manager. A formal interview with the employee may be required to establish facts and gather information. Such an interview would normally form part of the Disciplinary Policy and Procedure and the same rights to representation would occur. An audit interview may be undertaken jointly with an Investigator if one has been appointed at that stage. If Veritau conduct an interview under the Police and Criminal Evidence Act an employee is entitled to be accompanied by a solicitor.
- 37.18 An audit investigation will make recommendations as to future action to the Investigator, if one has been appointed, or to the appropriate senior manager if an Investigator has not been appointed at that stage.
- 37.19 The Audit report may necessitate a further disciplinary investigation and interviews. There may be a range of allegations not all consisting of financial irregularities. In that circumstance a disciplinary investigation may take place concurrent with an audit investigation.