

PARRETT AND AXE CEVA PRIMARY SCHOOL
Disciplinary procedure

This should be read in conjunction with the disciplinary policy and guidance documents and ACAS guidance on conducting investigations in the toolkit.

Advice can be sought from HR at any stage but will usually be sought in relation to suspension, criminal/safeguarding allegations and prior to any formal action being taken.

A flow chart outlining the main steps is at **appendix AA**

Definition

*The ‘**Manager**’ will be the decision-maker pre-hearing and usually will be the Head teacher or in the case of alleged misconduct of the Head teacher, the Chair of Governors.*

*The ‘**Investigating Officer**’ will be responsible for the investigation and report findings*

*The ‘**Presenting Officer**’, usually the ‘manager’, will present the management case at a hearing*

*The ‘**Presiding Officer**’ will hear the case and will be the decision-maker at a hearing. There will be a different Presiding Officer (Appeal) to hear any appeal.*

*The **Scheme of Delegation** at appendix B of the policy confirms the minimum level of authority to take action at each stage of the process and guidance on the roles is at appendix 1 in the toolkit.*

1 PRELIMINARY INVESTIGATION

1.1 When managers become aware of an alleged breach of discipline, they should conduct a brief fact-finding investigation to establish whether the alleged incident could have taken place and whether it is appropriate to treat the matter informally or formally.

1.2 This decision will largely depend on:-

- The nature of the alleged misconduct.
- The seriousness of the alleged misconduct.
- Previous action, including any advice/warnings regarding the employee’s conduct.

2 INFORMAL

2.1 Where appropriate, conduct issues will be addressed by the manager as part of normal day to day management responsibilities. Such actions will fall outside of the formal disciplinary procedure.

2.2 Where minor and/or unrepetitious acts of misconduct occur, informal actions including written advice and guidance regarding standards of conduct may be appropriate. It will be for the manager to decide. This may be determined following or without a full investigation; depending on the circumstances.

2.3 Where advice and guidance is issued, the employee must be warned that failure to observe advice or repetitions of misconduct in the future is likely to be considered under the formal stages of the disciplinary procedure. The advice and guidance will be recorded on the employee's personal file. The employee should be given a copy of the written advice. There is no right of appeal against informal action, however the employee should be provided with an opportunity to record their comments if they disagree with the content or raise a formal grievance under the dispute resolution policy/procedure.

2.4 There is no right for the employee to be accompanied at the informal stages of the procedure although employees are advised to seek advice from their Trade Union or Professional Association at this time. Representatives may be permitted to attend at the manager's discretion.

3 FORMAL

3.1 The formal procedure may be invoked where:

- Previous advice/guidance/warnings have been ineffective.
- A number or a pattern of minor complaints exist.
- There is a more serious disciplinary matter.

3.2 The formal stages of the disciplinary procedure should be carried out as promptly as possible in the interests of all. Timescales can be extended with the agreement of both parties.

3.3 If an employee or their representative is unable to attend any formal meeting for good reason, it will be re-arranged once within 5 working days usually.

3.4 The formal stages of the disciplinary procedure are based upon a graduated system of warnings with more serious sanctions being applied where poor conduct is repeated or where the employee fails to heed previous warnings or where the nature of the misconduct justifies such a warning.

3.5 Nothing stated in this procedure is intended to bar or discourage the resolution of any matter between the parties by agreed alternative means or by agreed variation to the procedure as published.

4 REPRESENTATION

4.1 At all formal meetings/hearings employees have the right to be accompanied by a trade union representative or workplace colleague, but not a practising lawyer.

4.2 Employees are responsible for arranging their representation, notifying their representatives of meeting arrangements and providing them with relevant paperwork.

4.3 Employees should confirm their attendance and notify the Chair of the meeting/nominated contact of the name of the person accompanying them in advance.

5 MANAGEMENT LEAVE/SUSPENSION

5.1 In some cases it may be appropriate for the employee to take a short period of management leave on full pay (i.e. being asked to remain at home with no work having been allocated) pending a decision on next steps, including whether suspension is necessary. This decision is often taken at the outset but can apply at any stage of the process. Any period of management leave will not be recorded on file as part of any disciplinary record.

- 5.2 An employee may be suspended from duty on full pay in cases of gross misconduct or where there is a risk to the safety of colleagues, pupils or to the employee themselves or a risk to the contamination of evidence. The manager will give consideration to whether suspension is necessary and to any alternatives to remove an individual from the workplace – see *guidance at appendix 2 of toolkit*.
- 5.3 The decision to suspend will often be made at the outset but may be at any time during the process.
- 5.4 In cases where it is known that the employee holds similar or equivalent employment(s) in other schools, consideration should be given as to whether the suspension from duty should be extended, for example, when dealing with matters which are raised under the Allegations policy.
- 5.5 Staff will be notified in writing of any decision to suspend and should be advised to contact their Trade Union representative and be provided with the contact details for the Staff Counsellor. The formal letter of suspension should be handed to the employee or sent recorded delivery, to ensure proof of receipt.
- 5.6 Schools will nominate a link person to act as a nominated contact for the employee following management leave or suspension. The role of the link person is to advise the employee of developments at their school.
- 5.7 Where suspension relates to a safeguarding allegation, the guidance in the allegations policy must take precedence over this policy and procedure.
- 5.8 The scheme of delegation at **appendix B** of the policy will define who has the authority to invoke and end a period of suspension.

FORMAL STAGES

6 APPOINTMENT OF INVESTIGATING OFFICER

- 6.1 As soon as the formal procedure is invoked the manager should appoint an Investigating Officer (IO) in accordance with the school's scheme of delegation (see **appendix B of the policy**). The IO will:
- Plan the investigation – see *ACAS template investigation plan at appendix 5*.
 - Contact the employee (see *model letter appendix 12*) and ascertain the facts and circumstances surrounding the allegation(s) of misconduct including identifying witnesses and taking statements from them.
 - Ascertain the employee's response to the allegation(s).
 - Keep a record of findings and produce a report and may.
 - Recommend whether or not there is a case to answer at a formal hearing or any alternative resolutions/actions.

See guidance on role at appendix 1 and ACAS guidance on 'conducting workplace investigations' at appendix 4 in the toolkit.

7 INITIAL MEETING

- 7.1 Where the manager decides that formal action is required they should arrange an initial meeting with the employee and advise the employee to contact their representative.
- 7.2 Employees may be accompanied to the meeting by a willing work colleague or trade union representative if available, but this will not delay the meeting.

- 7.3 The meeting should take place as soon as possible and normally within 48 hours of the alleged incident. Where possible, the meeting will take place face-to-face.
- 7.4 The purpose of the meeting is information giving only; there is no right or expectation of response and no **right** of representation at this meeting. In particular the manager should:
- Notify the employee of the alleged misconduct (unless there are exceptional reasons to do otherwise).
 - Tell the employee whether the matter will be subject to an investigation, the name of the Investigating Officer and of their right to be given 5 working days' notice of any investigation meeting(s) in addition to their right to be accompanied.
 - Provide the employee with a copy of the disciplinary policy and procedure (if this has not already been provided).
 - Inform the employee of whether suspension or management leave will apply.
- 7.5 Following the meeting, the employee will be sent a letter confirming the allegations, information provided at the initial meeting and the details of the investigation (*see model letter at **appendix 10** and **appendix 11**, if suspended*).

8 INVESTIGATION

- 8.1 In all cases in the formal procedure, an appropriate internal investigation will be required to establish essential facts, fully consider the matter and make an informed decision about whether or not there is a case for the employee to answer at a formal disciplinary hearing.
- 8.2 The school will adhere to the principles outlined in the ACAS guidance 'conducting workplace investigations' at **appendix 4** of the toolkit and that document should be read in conjunction with this procedure.
- 8.3 The school will aim to conduct an investigation without undue delay while memories of events remain intact. However, an investigation will need to be thorough and balanced, including evidence that supports and contradicts the allegation/s. The employee should be asked to identify any individuals that they believe should be interviewed or documentation to be considered. The nature, scale and duration of any disciplinary investigation will be proportionate and will depend on the seriousness and complexity of the misconduct being investigated.
- 8.4 Interviews with pupils will only be conducted where absolutely necessary and, such interviews will take place as soon as practicable. The employee against whom the allegations are being made should be advised of the right to have their representative attend all such interviews in the capacity of a silent witness to ensure accuracy of any evidence given and the fairness of the process.
- 8.5 To avoid the necessity of pupils attending disciplinary hearings to give evidence, the employee's representative may request specific questions to be put to the pupil from the Investigating officer. Such requests for questions will not be unreasonably refused. A note of any question refused should be retained. The employee's representative is able to raise issues of procedure only which should be done without pupils being present.
- 8.6 Investigations relating to safeguarding allegations must be made with reference to the **allegations policy**. In such situations, any police investigation may override, delay or restrict the conduct of a separate internal disciplinary investigation as it will take priority. Advice will be sought from the local authority designated officer, based in the Safeguarding Unit, prior to conducting any form of investigation, in these circumstances.

- 8.7 Statements or video evidence taken in the course of a social care or external investigation may be used as part of the internal investigation process and may be submitted as evidence to a formal disciplinary hearing.
- 8.8 Any written statements should be **signed and dated** and ideally all evidence should be attached as pdf documents to the investigation report.
- 8.9 An employee will be given 5 working days' notice of any investigation meeting(s) and will have the right to be accompanied by a work colleague or Trade Union/professional Association representative but not a practising lawyer.
- 8.10 Allegations may be reviewed and amended in light of the investigation at any stage up to and including the hearing notification and the employee will be made aware of any changes in writing.
- 8.11 The IO will check with the employee/representative that if there is deemed to be a case to answer, whether they would be interested in pursuing an alternative resolution to a hearing, if an option. The IO will include any response in the Investigation report and consider when making any recommendations.

8.12 **Outcome**

The IO will produce a report (*see ACAS template report at **appendix 6***) with all evidence attached, ideally as pdf documents and present their findings to the manager/Presenting Officer, who will then determine the outcome; whether there is a case to answer or not at a disciplinary hearing or any alternative resolution/actions.

- 8.13 The employee will be sent a letter at the end of the investigation by the manager/Presenting Officer notifying them of the outcome and what the next steps will be.
- 8.14 If there is no case to answer there may be informal advice/guidance issued if appropriate (*see model letter at **appendix 13***). If there is a case to answer the employee will be required to attend a disciplinary hearing (*see model letters at **appendices 14a) and b)***).

9 DISCIPLINARY HEARING

- 9.1 The purpose of the hearing is to consider the evidence presented by both parties, to enable the Presiding Officer (*see scheme of delegation at **appendix B in the policy***) to decide what action, if any, to take. Guidance on preparing for a hearing is at **appendix 7** of the toolkit.
- 9.2 Where a formal disciplinary hearing is to take place, the employee will receive written notification from the manager/Presenting Officer at least 10 working days in advance including details of the allegation/s and an indication of whether the allegations are considered potentially gross misconduct or if the employee already has a live final written warning and therefore whether a sanction up to dismissal may be considered (*see model letters at **appendix 14a) and b)***).
- 9.3 The suitability of the venue and arrangements for the hearing should ensure confidentiality and equality of access making any reasonable adjustments for an employee or their representative with a disability to fully participate in the hearing.

9.4 The employee will be given copies of documents that will be relied upon at the hearing (known as the 'bundle' – see *guidance on preparation of bundle at appendix 8*) where possible with the meeting notification letter but at least 5 working days prior. For example:

- Investigation report.
- Copies of (or a summary of) any statements obtained as part of the investigation.
- Notes of any investigatory interview(s) they attended.
- Names of any witnesses who will be attending the hearing.

9.5 The employee must submit any papers for consideration by the panel at least 7 working days prior to the hearing allowing for an exchange of any final papers for the hearing at least 5 working days in advance of the hearing.

10 ATTENDANCE AT THE HEARING

10.1 The employee is required to take all reasonable steps to attend hearings. If they are unable to attend for good reason they should notify the nominated contact as soon as possible and a further hearing date will be arranged, usually rearranged only once within 5 working days. If following a reasonable attempt to re-arrange the hearing the employee is still unable to attend, the hearing may be held in their absence, based on written submissions or their representative may attend in their absence if required. If they fail to attend without explanation or good reason the hearing may go ahead in their absence.

10.2 Should the employee be unable to arrange representation for a hearing, a further date will be arranged, within 5 working days of the original date usually. If the employee is unable to arrange representation for the re-arranged hearing, the hearing will proceed in the absence of the representative.

10.3 If exceptionally the school has to re-arrange the hearing, a new date will be arranged without undue delay and within 5 working days usually.

10.4 The person arranging the hearing will arrange for a note-taker to take summary notes at the hearing.

10.5 Where the Investigating Officer is not acting as Presenting Officer they will normally attend the hearing in the capacity of a witness. This will provide an opportunity for the facts of the case to be clarified and for both parties to question the detail and findings of their report.

10.6 Both parties have the right to call witnesses where relevant; they should only be present to give evidence and be questioned. They should be reminded about confidentiality and not to collude with other witnesses. Details should be communicated to both parties in advance and signed and dated witness statements should be provided by both sides, wherever possible. The employee is responsible for organising their own witnesses – additional guidance is contained within appendix 7.

10.7 An HR Adviser will attend the hearing in most circumstances to support the Presiding Officer. Where the local authority is the employer (i.e. Community and Voluntary Controlled schools) if dismissal is a potential outcome, the HR Advisory team must be informed of the meeting and given an opportunity to attend.

11 PROCEDURE AT THE DISCIPLINARY HEARING

11.1 The hearing will be conducted in accordance with the procedure at appendix BB.

11.2 If a brief adjournment is required it should be possible to reconvene on the same day, however if further information/a longer adjournment is required it may be necessary to arrange another date, if so this will take place within 5 working days usually.

11.3 **Overlap with dispute resolution procedure** – where a grievance/dispute has been raised connected with the disciplinary matter, this will be heard at the disciplinary hearing; further investigation may be necessary beforehand. An employee will be given the opportunity of raising their concerns when they state their case; there will not be a separate hearing. During the hearing, if it is apparent that further investigation is required, it may be necessary to adjourn/arrange another hearing date without undue delay.

12 **DISCIPLINARY OUTCOMES**

12.1 In determining the outcome, consideration will be given to all representations and then the Presiding Officer will decide whether, on the balance of probabilities the allegation/s are proven and if so, what level of sanction is appropriate. Consideration will be given to:

- The gravity of the offence and any explanation given/any mitigation.
- The employee's previous conduct record.
- Actions taken in similar cases.
- The employee's length of service.
- Whether the action considered is proportionate and reasonable in the circumstances.

12.2 The penalties available to the Presiding Officer of any disciplinary hearing are detailed below although this list is not exhaustive. Also, it is good practice to consider any wider actions/implications for the school.

12.3 **No further action**

No further action will be taken where there is no case to answer or the employee is not found to be culpable. However, in some cases it may be appropriate to issue advice and guidance (see 2.2-2.4).

12.4 **Formal action - penalties**

12.4.1 **Written warning**

A written warning will be appropriate where the conduct of the employee has fallen below acceptable standards and informal guidance has not resulted in sufficient improvement or where the offence is sufficiently serious to justify an immediate formal penalty.

12.4.2 **Final written warning**

A final written warning is appropriate where:-

The conduct of the employee continues to fall significantly below acceptable standards and previous warning(s) have not resulted in sufficient improvement.

The misconduct is so serious that a first and final written warning is appropriate.

Dismissal is a clear possibility, but significant mitigating circumstances are accepted.

12.4.3 **Dismissal**

Dismissal will be considered where there has been gross misconduct or where the employee has a current final written warning and further misconduct or unsatisfactory conduct has taken place.

Dismissal with contractual notice

Unless an employee is dismissed for gross misconduct, the appropriate period of notice must be given (i.e. if dismissal is as a result of a series of warnings).

Dismissal without contractual notice (summary dismissal)

Actions of gross misconduct will, except in the most exceptional circumstances, justify dismissal without notice.

13 CURRENCY OF WARNINGS

- 13.1 Any warning applied will remain on the employee's file but will only be regarded as 'live' for further disciplinary purposes for a specified period of time (see table below) after which time it will normally be disregarded for disciplinary purposes. The exception to this will be in circumstances where the same type of misconduct becomes a pattern which is repeated every time a warning expires. In these cases, the circumstances of previous warnings should be taken into account in deciding on what further action is appropriate. The spent warning will be retained on file as part of the employment record, in accordance with the ACAS code of practice, although it will not be taken into account in determining the level of penalty.
- 13.2 Exceptionally, there may be circumstances where the misconduct is so serious that it cannot realistically be disregarded for future disciplinary purposes. For example, where the misconduct falls within the dealing with allegations of abuse against members of staff and volunteers policy.
- 13.3 All safeguarding cases will be recorded on employee's files indefinitely

Warning level	Live period (from date of issue)
Written	12 months
Final written	24 months

14 HEARING OUTCOME

- 14.1 Whether or not the employee has been informed of the outcome of the disciplinary hearing orally at the hearing, the employee will be notified of the outcome of the disciplinary hearing in writing within 5 working days of the hearing.
- 14.2 In the case of recommended dismissal, the outcome letter will be sent by the Chair of the Governing Body as the legal employer.

15 RIGHT OF APPEAL

- 15.1 An employee may appeal against a decision to issue them with any level of formal disciplinary penalty. The reason for appeal can be one of the following:-
- There was a defect in the procedure which had a material effect on the decision.
 - Not all evidence was considered or proper account was not taken of evidence referred to at the hearing.
 - The sanction/decision was too severe.
 - New relevant evidence relating directly to the allegation/s has come to light since the last hearing.
- 15.2 An employee seeking to appeal must do so within 10 working days' of written notification of the decision. The employee should send their letter of appeal together with the grounds of appeal to the person named in the letter confirming the outcome of the hearing.

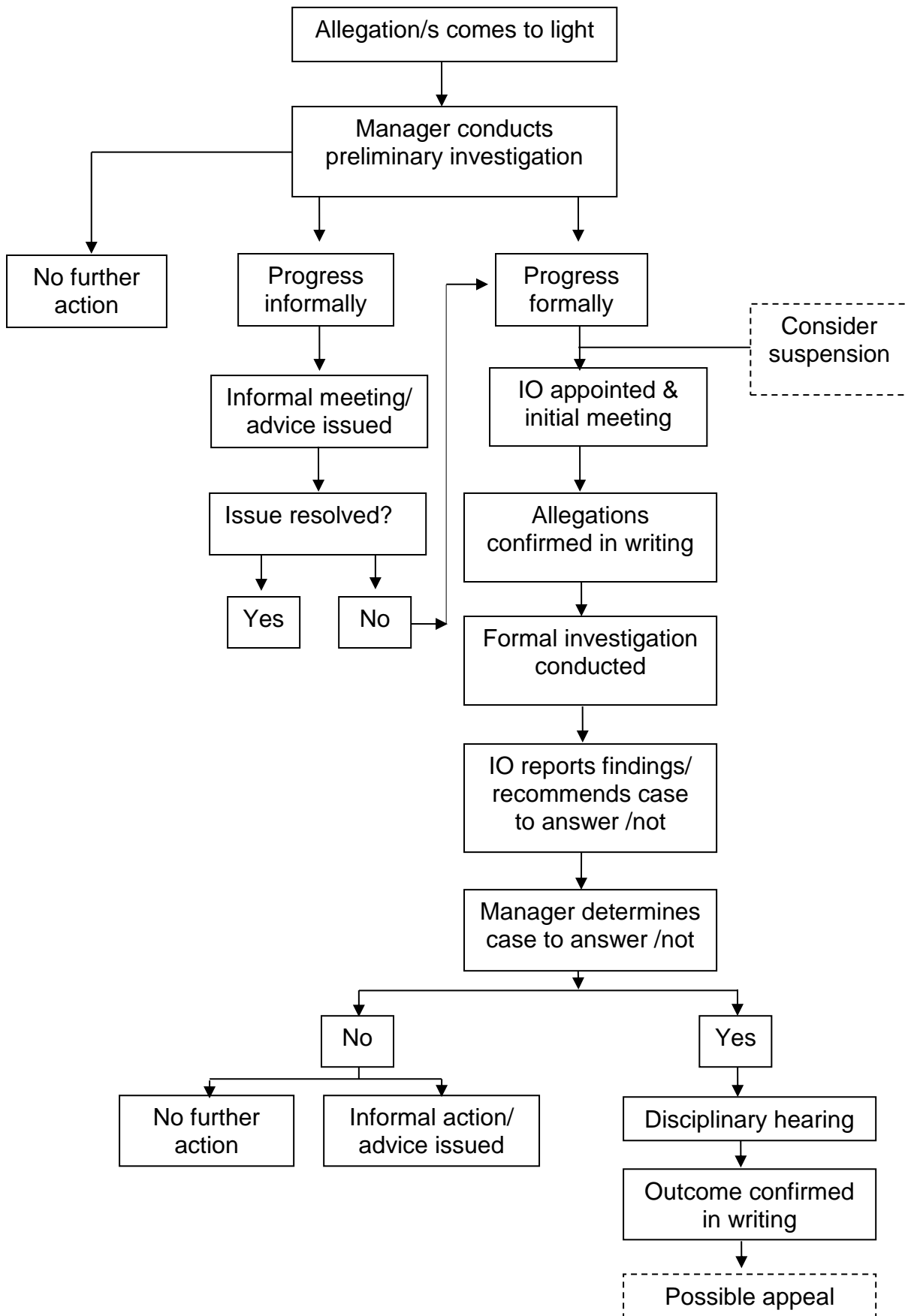
16 APPEAL HEARING

- 16.1 Once a written appeal has been received, an appeal hearing will normally be convened without unreasonable delay allowing at least 10 working days written notice to the employee (or shorter if agreed) noting their right to be accompanied (*see model letter at **appendix 15***).
- 16.2 The hearing will take the form of a review of the decision and not a re-hearing of the case, unless exceptionally determined by the Appeal Hearing Presiding Officer that it will be a re-hearing. For example, in the case of a dismissal, if new information is provided which was not available to the Presiding Officer of the original hearing and which is likely to impact on the decision. Otherwise, the appeal will be concerned with whether the decision taken was reasonable in light of all of the circumstances and evidence provided at the hearing. The employee will be informed of this in the appeal invitation letter also. *See 'conduct of appeal hearing at **appendix CC** of the procedure.*
- 16.3 The Presiding Officer (Appeal) will not be the original Presiding Officer, have not acted as a witness in the case or have been involved in the case in any material sense.
- 16.4 Copies of any documents relevant to the case including documents which were not provided at the original hearing and which are intended for consideration at the appeal hearing will be exchanged at least 5 working days in advance of the hearing.
- 16.5 Both parties have the right to call witnesses where relevant to the grounds of the appeal. This should be confirmed with the Presiding Officer (Appeal) in advance of the Appeal hearing.
- 16.6 If the employee is unable to attend the hearing due to reasonable circumstances out of their control, a further hearing date will be offered. If the employee fails to attend without good reason or is unable to attend a re-arranged hearing, the hearing may be held in their absence based on their written submissions. Their representative may attend on their behalf in their absence.
- 16.7 The employee can opt not to attend the appeal hearing and their representative can attend on their behalf or they can make a submission in writing (to be received 5 days in advance of the hearing).
- 16.8 The Presiding Officer (Appeal) will reach findings based on documentation and the submissions from all parties. They have a broad discretion in terms of their findings. They may uphold all or part of the decision of the hearing, revoke it in its entirety, substitute a lesser penalty or may determine that a re-hearing is necessary.
- 16.9 The decision of the Presiding Officer (Appeal) will be final.
- 16.10 A successful appeal against dismissal will result in the employee being reinstated and their continuity of employment preserved. Back pay will also be applicable in such circumstances.
- 16.11 A letter confirming the outcome of the appeal hearing will be sent to the employee within 5 working days.

APPENDIX AA – FLOW-CHART

Disciplinary procedure

** To be read in conjunction with the full procedure*



APPENDIX BB – CONDUCTING THE DISCIPLINARY HEARING

For preparation see separate guidance at appendix 7

Advice can be sought from the HR Adviser supporting the Presiding Officer ahead of the hearing and at any stage.

In general terms, the following format will be adopted:-

- The Presiding Officer (Chair) arranges for the parties to enter and to take their designated seats.
- The Chair conducts introductions, checks that all parties have the same documents, explains the protocol for the hearing and responds to any initial procedural questions.
- The Presiding Officer and the HR Adviser to the Presiding Officer can ask questions at any time.

Management case

- The Presenting Officer presents the case against the employee.
- The employee/representative may question the Presenting Officer.
- The Presiding Officer/HRA in attendance may question the Presenting Officer.
- The Presenting Officer calls in and questions any witnesses or reads from any witness statements.
- The employee/representative may question the management witnesses.
- The Presiding Officer/HR Adviser in attendance may question the management witnesses.
- Each management witness withdraws after their questioning has been completed.

Employee's response

- The employee/representative presents their case in response to the allegations.
- The Presenting Officer may question the employee.
- The Presiding Officer/ HR Adviser in attendance may question the employee.
- The employee/representative calls in and questions any witnesses or reads from any witness statements.
- The Presenting Officer may question the employee's witnesses.
- The Presiding Officer/HR Adviser in attendance may question the employee's witnesses.
- Each employee witness withdraws after their questioning has been completed.

Summing up

- The Presenting Officer summarises the management position.
- The employee/representative summarises their position.
- Both parties withdraw.
- The Presiding Officer will make their decision with procedural advice from the HR Adviser.
- Both parties are recalled.
- The Presiding Officer reads out their decision. This is confirmed in writing to the employee and should be recorded in the transcript of the hearing.
- The Presiding Officer brings the hearing to a prompt close, without further discussion or debate.
- The employee will be advised of their right of appeal against the decision and the timescales for its submission.

APPENDIX CC - GUIDANCE ON CONDUCTING AN APPEAL HEARING

For preparation see separate guidance at appendix 7.

Advice can be sought from the HR Adviser supporting the Presiding Officer ahead of the hearing and at any stage.

In general terms, the following format will be adopted:-

- The Appeal Presiding Officer (Chair) arranges for the parties to enter and to take their designated seats.
- The Chair conducts introductions, checks that all parties have the same documents, explains the protocol for the hearing and checks/responds to any initial procedural questions.
- The Presiding Officer (Appeal) and the HR Advisor to the Presiding Officer (Appeal) can ask questions at any time.

The governors' panel should not meet with either the employee or management side before the appeal hearing, nor discuss the case, to avoid any allegations of collusion.

Summary of procedure

Employee's case

- Presiding Officer Chair will ask the employee/representative to present their case to the panel including calling witnesses. (Note that witnesses must be relevant to the appeal and introduce no new information. They can be asked to wait and may be called back).
- The Presenting Officer (Appeal) will have the opportunity to ask any questions of the employee.
- The Presiding Officer (Appeal)/HRA will have the opportunity to ask questions of the employee/representative.

Management response

The Presenting Officer for the appeal will lead the management response. If this is not the Chair of the original hearing panel, they can be called as a witness.

- Chair will ask Presenting Officer (Appeal) to present management's case including calling witnesses. (Note that witnesses must be relevant to the appeal and introduce no new information. They can be asked to wait and may be called back).
- The employee/representative will have the opportunity to ask any questions of the Presenting Officer (Appeal).
- The Presiding Officer/HRA will have the opportunity to ask any questions of The Presenting Officer (Appeal).

Summing up

- Chair will ask Presenting Officer (Appeal) to sum up management's case.
- Chair will ask employee/representative to sum up the employee's case; the employee/representative should have the last word.

Adjourn for decision

- Chair will then ask all parties except Presiding Officer/ HR Advisor to leave the room in order for the Presiding Officer to deliberate.
- Should the Presiding Officer need to recall any party to clarify any points, both parties will be invited to return.
- Both parties will be asked to return where a decision will be given verbally if this is possible – decision then confirmed in writing within 5 working days.
- The individual should be told that they have no further right of internal appeal.