



Extend Learning
Academies Network

Disciplinary Policy and Procedure

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ELAN Disciplinary Policy and Procedure

1 Introduction

ELAN expects all its employees to recognise their obligations to their school, the public, pupils and other employees and to conduct themselves properly at all times and in accordance with its Staff Code of Conduct.

Appendix 1 gives examples of misconduct and gross misconduct but these lists are not to be treated as exhaustive.

2 Purpose

To achieve high quality and efficient education and good employee relations this procedure aims to:

- Improve conduct primarily by advice and correction rather than by disciplinary measures
- Provide a fair method of dealing with alleged breaches in standards of conduct

3 Principles

ELAN operates a value and principle-driven approach to managing performance and the disciplinary process. At all times there will be a fair, reasonable, objective and inclusive approach to the decision making process, based on a thorough investigation of the evidence in line with ELAN values.

4 Scope

This procedure applies to all employees (teaching and support staff) employed by ELAN who either (a) have a permanent contract of employment, or (b) are fixed-term employees with more than six months' continuous service. It does not apply to employees subject to probation, who are subject to separate procedures.

5 Equal Opportunities

The disciplinary procedure must always be applied fairly and in accordance with employment law and ELAN's Equality and Equal Opportunities Policy.

6 Responsibilities

ELAN is responsible for maintaining fair, reasonable, consistent and objective procedures for matters relating to staff discipline.

The headteacher has overall responsibility for the internal organisation, control and management of each school in accordance with the Trust scheme of delegation and headteacher accountabilities.

The members of the SLT (central and school senior leadership team or designated senior manager) have responsibility for the internal organisation, control and management of their area of responsibility. ELAN Human Resources has responsibility to advise, empower and audit evidence of compliance to this policy and process.

All employees have a responsibility to ensure they perform to the standards associated with their role and cooperate with this policy when required.

7 Timing

Disciplinary matters should normally be conducted within the timescales laid down in the procedure. However, if there is a valid reason to do so, timescales can be varied by either party. If this is initiated by management, the employee should be given an explanation and informed when a response or meeting can be expected. All efforts should be made by employees to attend meetings that constitute part of this procedure. When there are valid reasons to reschedule meetings then these should be rearranged without undue delay.

8 Informal Action

Less serious breaches of conduct (i.e. first occurrences of some types of misconduct) can be dealt with informally by counselling the employee (see Appendix 2 for flow chart of the disciplinary procedure process).

This involves drawing to the employee's attention the unsatisfactory conduct, explaining what conduct is required, and setting a clear and reasonable timescale for the employee's conduct/behaviour to improve. Where a specific informal management guidance or instruction is issued, this should be confirmed to the employee in writing.

Consideration should be given to any difficulties which an employee may be facing and a genuine attempt should be made to help the employee to overcome them. Where considered appropriate, managers should speak to HR to organise any occupational health support when managing employees who may have reduced capacity for whatever reason such as suffering from mental illness, alcohol or substance abuse.

In some cases, it may be beneficial to use ELAN HR or external mediators to resolve conflict in the workplace.

HR must be consulted prior to the initiation of any formal disciplinary action.

9 Disciplinary Sanctions

The following formal stages of disciplinary action can be taken for breaches of conduct (see Appendix 1).

Warnings are typically progressive from First to Final except for:

- Cases of gross misconduct (which if substantiated through the disciplinary process may result in summary dismissal with no entitlement to statutory notice).
- Cases which are less serious than gross misconduct but warrant a Final Warning being issued regardless of prior formal warnings.

Disciplinary Action	Authority to Issue	Typical Duration of Live Warning
Verbal Warning	Member of SLT/Chair of Disciplinary Panel	6 months
First written warning	Member of SLT/Chair of Disciplinary Panel	9 months
Final written warning	Member of SLT/Chair of Disciplinary Panel	12 months
Dismissal	Chair of Disciplinary Panel	N.A.

Further misconduct may occur during the term of a first written warning. Where this results in a formal hearing and a final written warning is issued, the duration of the final written warning will supersede that of the first written warning.

Upon expiry, all disciplinary warnings will be removed from an employee's personnel file except for warnings relating to the safety and welfare of children or young people.

An employee with a final written warning on file who is alleged to have committed a further occurrence of misconduct must be treated as if the allegation was of gross misconduct. This is because if the allegation is substantiated, the employee will be dismissed. Therefore letters to the employee should include the warning of dismissal (as for allegations of gross misconduct).

Where a member of teaching staff is dismissed, misconduct cases that relate to the safety of children and young people will be referred to the government Disclosure and Barring Service (DBS). All other cases of teacher misconduct resulting in dismissal will be referred to the General Teaching Council for England (GTC).

10 Disciplinary Investigations

The Investigating Officer

The headteacher or member of the SLT is responsible for appointing an independent and objective Investigating Officer who must be competent to undertake the role (see Appendix 2 for flow chart of the disciplinary procedure process and Appendix 4 and 5 for further guidance).

Investigations should normally be carried out by the immediate line manager. If this is impractical or inappropriate, another Investigating Officer should be chosen. Alternatives to the line manager could include an employee of equal or more senior status within the school, or as nominated by ELAN.

The case must be thoroughly investigated, clearly written and supported by evidence.

Pre-Investigation Stage or Management Investigations

In certain cases, it may be necessary to gather information regarding complaints, incidents and allegations before the start of a disciplinary investigation.

This type of information gathering is only appropriate for prima-facie serious allegations that are particularly sensitive or complex to determine whether:

- There is any substance to the complaint and a full disciplinary investigation is appropriate
- The allegations warrant suspension of the employee

This is not a formal stage of the procedure and would not be considered within the stipulated timescales of the procedure, but must be carried out as speedily as possible.

Any information uncovered at this stage would be provided to the Investigating Officer as appropriate.

Timescales for Investigations

All allegations and complaints against employees must be investigated without delay (particularly in cases of potential gross misconduct). The headteacher/member of the SLT should ensure the Investigating Officer has reasonable time off from normal duties to complete the investigation thoroughly and promptly.

As a guide, from the time the Investigating Officer begins their investigation, the investigation report should be completed within 15 working days (actual school days for term time only).

staff) for allegations of misconduct and other cases where the fact-finding is relatively straightforward.

For allegations of gross misconduct and more complex cases, the investigation process should take no longer than 20 working days (unless agreed by mutual consent in advance). In very complex cases or exceptional circumstances, a reasonable timescale will be agreed by ELAN.

In all cases, these should be viewed as maximum periods and investigations should be completed as soon as is reasonably practicable. In exceptional circumstances e.g. very complex cases or where the Investigating Officer or an important witness falls sick, the headteacher/member of the SLT can agree to extend the investigation following consultation with the individual. However a reasonable date for completion should be set.

On completing the investigation, the Investigating Officer will provide a summary of their findings and a recommendation to the headteacher/member of the SLT whether a formal disciplinary hearing is necessary and, if so, on what basis.

Allegations against the Chief Executive Officer (CEO), headteacher and members of the SLT

Where allegations of misconduct involve the Chief Executive Officer (CEO), the Chair of Trustees would lead the process.

Where allegations of misconduct involve the headteacher, the Chief Executive Officer (CEO), or other designated senior leader, replaces the headteacher or member of the SLT in initiating any action that may be taken. The power to suspend the headteacher will rest with the CEO. Any investigation of a headteacher will be carried out by a representative of ELAN.

Where allegations of misconduct involve a member of the SLT, the headteacher will initiate any necessary action and have responsibility for suspension if appropriate.

11 Disciplinary Hearings

Where the results of the investigation recommends that there are reasonable grounds to suggest misconduct or gross misconduct, a Disciplinary Hearing should be arranged as soon as possible but within four working weeks of completion of the investigation. Reasons for any delay in convening a hearing must be communicated by the member of the SLT to all interested parties.

The Investigating Officer's report and all relevant documentation including witness statements (anonymised if requested) should be sent to the employee and their representative with a letter specifying the date, time and place for the hearing giving a minimum of five working days' notice (notice periods cover working days either side of holidays). The letter must contain precise information about the allegation and its possible consequences. The letter should inform the employee of their right to be accompanied by a trade union representative or work colleague and the arrangements for the notification of any witnesses to be called by the employee. If an employee's companion cannot attend on a proposed date, the employee can suggest another date which should usually be within five working days.

12 Composition of the Panel

Members of the SLT can personally hear allegations of misconduct, providing they have not been involved in the incident or the investigation process. If this is impractical or inappropriate, or where the allegations are of gross misconduct, or other misconduct which

could result in the dismissal of the employee i.e. they already have a final warning on file, a disciplinary panel will hear the case.

The disciplinary panel will usually comprise of a member of the SLT and a school governor.

For all meetings a note taker will attend to take minutes of proceedings. It is their role to minute the significant points of the hearing and the decision of the panel but not to produce a verbatim record.

Advisers, for example an HR representative or appropriate professional advisor, may be invited to attend disciplinary hearings as appropriate but HR attendance is mandatory for allegations of gross misconduct.

13 Conducting the Hearing

At the Hearing, all parties present will be given an opportunity to ask questions or challenge the reports/evidence submitted by all witnesses (see Appendix 2 for the Disciplinary Hearing Format).

The employee and their representative should be informed of the decision of the Disciplinary Hearing immediately (unless there is an adjournment to clarify any facts) and the Chairperson hearing the allegation will confirm this in writing within five working days.

The letter detailing the decision will be given to the employee and a copy placed on their personnel file, if a warning is issued. Following the outcome of the hearing, the decision letter will state:

- The reason for the decision.
- The course of action to be followed by the employee.
- The timescale in which improvement is required, if applicable.
- Where assistance is required, the assistance which will be made available to the employee (e.g. training and guidance).
- The date on which the warning will elapse.
- That further disciplinary action will be considered if there is further misconduct or insufficient improvement within the timescale of the warning.
- The right of appeal against the decision and how to exercise that right.
- If the warning is a final, it will also state that if the employee's conduct continues to be unsatisfactory or if there is further misconduct, it may lead to dismissal.

14 Appeals Procedure

Employees have the right of Appeal against all formal disciplinary action.

Appeals must be registered in writing with the HR within ten working days of the date of the letter confirming the disciplinary decision. Appeals received after this period will not be heard.

Appeals against decisions made by the disciplinary panel must be considered by an appeals panel, which will consist of the headteacher and a representative from ELAN who have had no prior involvement in the case. An HR representative or appropriate professional advisor should also be present.

In submitting an appeal, employees are asking the appeal panel to consider the fairness and reasonableness of any disciplinary measures taken at the original hearing
Employees/appellants must present any new evidence which was unavailable at the time of submission of the appeal documentation at least five working days prior to the appeal hearing so that management has an opportunity to respond.

Appeals against disciplinary action will usually be considered by the panel in relation to one or more of the following grounds:

- The **PROCEDURE**, – the grounds of appeal should detail how procedural irregularities prejudiced the disciplinary decision.
- The **FACTS**, – the grounds of appeal should detail how the facts do not support the decision or were misinterpreted or disregarded. They should also detail any new evidence to be considered.
- The **DECISION**, – the grounds of the appeal should state how the act(s) of misconduct did not justify the level of disciplinary action taken or the act was one of misconduct rather than gross misconduct.

Appeal hearings will be convened as soon as is reasonably practicable and the employee/appellant will be given 10 working days' notice of the time and place of the appeal hearing.

The appeal will concentrate on the area(s) of dispute only and will not be a rerun of the whole disciplinary hearing. Accordingly, it is important that the employee is explicit about the grounds for appeal and must provide clear and specific reasons in writing.

The appeal officer may adjourn the appeal hearing if he/she/they needs to carry out any further investigations in the light of any new points the employee has raised at the hearing. The employee will be given a reasonable opportunity to consider any new information obtained before a decision is given.

The result of the appeal and the reasons for the decision will be conveyed to the appellant immediately after the Hearing and will be confirmed in writing to the appellant and his/her representative within 5 working days by the Chair of the appeal panel.

The appeal panel may do any of the following:

- Confirm the original decision
- Revoke the original decision
- Substitute a different penalty

There will be no further right of appeal.

15 Employee Representation

Where allegations are made against an employee, he/she should be informed from the outset of their rights to be represented at all meetings and related hearings by a recognised Trade Union representative or school employee.

16 Suspension

The suspension of an employee is a neutral act and should only be used to enable a matter to be investigated, or in the interests of protecting children and/or staff while a matter is investigated pending any further action that may be necessary. Suspensions are a infrequent, precautionary measure and should not be regarded as prejudging the matter. If at any stage during or at the end of the investigation, or at any stage of the disciplinary procedure, it is considered that this suspension should be lifted, the employee will be informed immediately.

In all cases the CEO and/or HR at ELAN need to be informed and approve the suspension. Where suspension is considered, this should be confirmed in writing giving broad details of the allegation.

An employee may be suspended on full pay when an act of gross misconduct and/or a criminal offence is either suspected or alleged to have been committed or for "other good and urgent cause", which is normally taken as when the employee is suspected of, or has been arrested for, doing something which would render him or her unsuitable to remain in school. The period of suspension should be as brief as possible and should be kept under review.

If necessary, a senior manager can send an employee home pending ratification by the headteacher/a member of the SLT the following day.

Suspension from duty is a 'working arrangement' whereby the employee must not enter any ELAN building or contact any school employee without the express permission of a member of the SLT or the Investigating Officer. Nor must a suspended employee contact pupils or their parents or anyone else with whom they would come into contact during the course of their duties. Failure to observe this requirement may render them liable to disciplinary action. Confidentiality should be maintained throughout.

Where an employee is suspended and needs to contact witnesses to provide evidence at a hearing, then this may be achieved via their union representative or HR.

17 Child Protection

If allegations are made against employees which involve child protection issues, the child protection procedure must be followed irrespective of how the allegation arises. Employees may be suspended on full pay pending the outcome of the child protection procedure. If the relevant child protection agencies decide not to pursue action against the employee, the matter will be referred back to the school for consideration under the appropriate procedure.

If the child protection procedure is involved, other disciplinary procedures will begin only if and when the matter has been referred back to the school. The fact that external agencies have not taken action should not be taken as an indication of the employee's innocence or guilt.

If allegations are made against any employees and agency and contractor workers that they may have behaved in such way that whilst not directly related to children, indicates they may not be suitable to work with children (i.e. there is a potentially transferrable risk in their behaviour), as well as being a potential breach of the Staff code of conduct, this could result in a safeguarding investigation under part 4 of Keeping Children Safe in Education 2023.

18 Record keeping

Managers and panels must keep written records of meetings and discussions relating to the disciplinary process. These must be written during or as soon after the event as possible to ensure the accuracy of the record. Written records must, where possible, be signed and dated by all parties or the accuracy of minutes by all parties confirmed electronically. Copies of all final meeting records must be given to employees and their representatives. Written confirmation of the outcome of any meetings will be sent to the employee and their representative for their information and a copy kept on the employee's personnel file in accordance with the Data Protection Act 2018 and the UK GDPR. Records should include:

- the nature of the alleged misconduct;
- what was decided and actions taken;

- the reason for the actions;
- whether an appeal was lodged;
- the outcome of the appeal; and
- any subsequent developments

Employees may also wish to keep records of events to support their case.

19 Special Situations

Grievances raised during the course of the disciplinary procedure

Sometimes an employee may raise a grievance during the course of a disciplinary case. Where this happens and depending on the circumstances, it may be appropriate, to suspend the disciplinary procedure for a short period until the grievance can be considered. The employee, will however, have to raise the grievance in accordance with the ELAN grievance procedure. It may be that the grievance has nothing to do with the disciplinary and can run concurrently or may be used as mitigating circumstances in some cases. Please consult with HR to confirm the best way to proceed on a case-by-case basis

Depending on the nature of the grievance, the school may need to consider bringing in another manager to continue to hear the disciplinary case.

Discipline of Employee Representatives

Any Disciplinary action being contemplated in respect of staff representatives of recognised trade unions within this procedure should not be instigated without notification in advance to the full-time official or nominee of the appropriate Trade Union via HR.

20 Links to other policies

- Grievance policy
- Staff Code of conduct
- Equal Opportunities policy

21 Review

This policy will be reviewed annually in consultation with the recognised trade unions.

Appendix 1 - Examples of Misconduct and Gross Misconduct

Gross Misconduct

The following are examples of gross misconduct but are not intended to be exhaustive:

- 1 Prolonged unauthorised absence from work/Absence without Leave (AWOL for at least 10 working days without contact).
- 2 While purporting to be absent sick, working or engaging in activities, which are likely to be inconsistent with the reason for absence and/or which are unlikely to be conducive to recovery.
- 3 Inappropriate conduct towards or contact with pupils.
- 4 Breaches of the Safeguarding Policy and procedures, including behaving in such a way as to present a transferrable risk to our pupils.
- 5 Serious acts of insubordination
- 6 Serious breaches of the school's Financial Regulations or Code of Conduct.
- 7 Theft or misappropriation of, or failure to account for, or falsely claiming entitlement to, the property, assets or funds of the school or its employees
- 8 Fighting or acts of violence at the work place, serious threatening or abusive behaviour toward; pupils, parents or fellow employees.
- 9 Criminal offences outside work (including fraudulent activities) which may affect the individual's employment suitability.
- 10 Unauthorised removal and use of school property.
- 11 Failure to report or record any serious matter which it is the employee's contractual duty (either expressed or implied) to report.
- 12 Falsification of documents likely to be of financial benefit to the employee or other persons e.g. time sheets, bonus/expense claims, qualifications, etc.
- 13 Obtaining a job by lies or deception in the course of selection procedures.
- 14 Making false claims under any of the school's policies and/or procedures.
- 15 Discrimination/harassment against a pupil, employee or parent, on the grounds of sex, trans-gender status, sexual orientation, religion or belief, marital status, civil partnership status, age, race, colour, nationality, national origins, ethnic origin or disability.

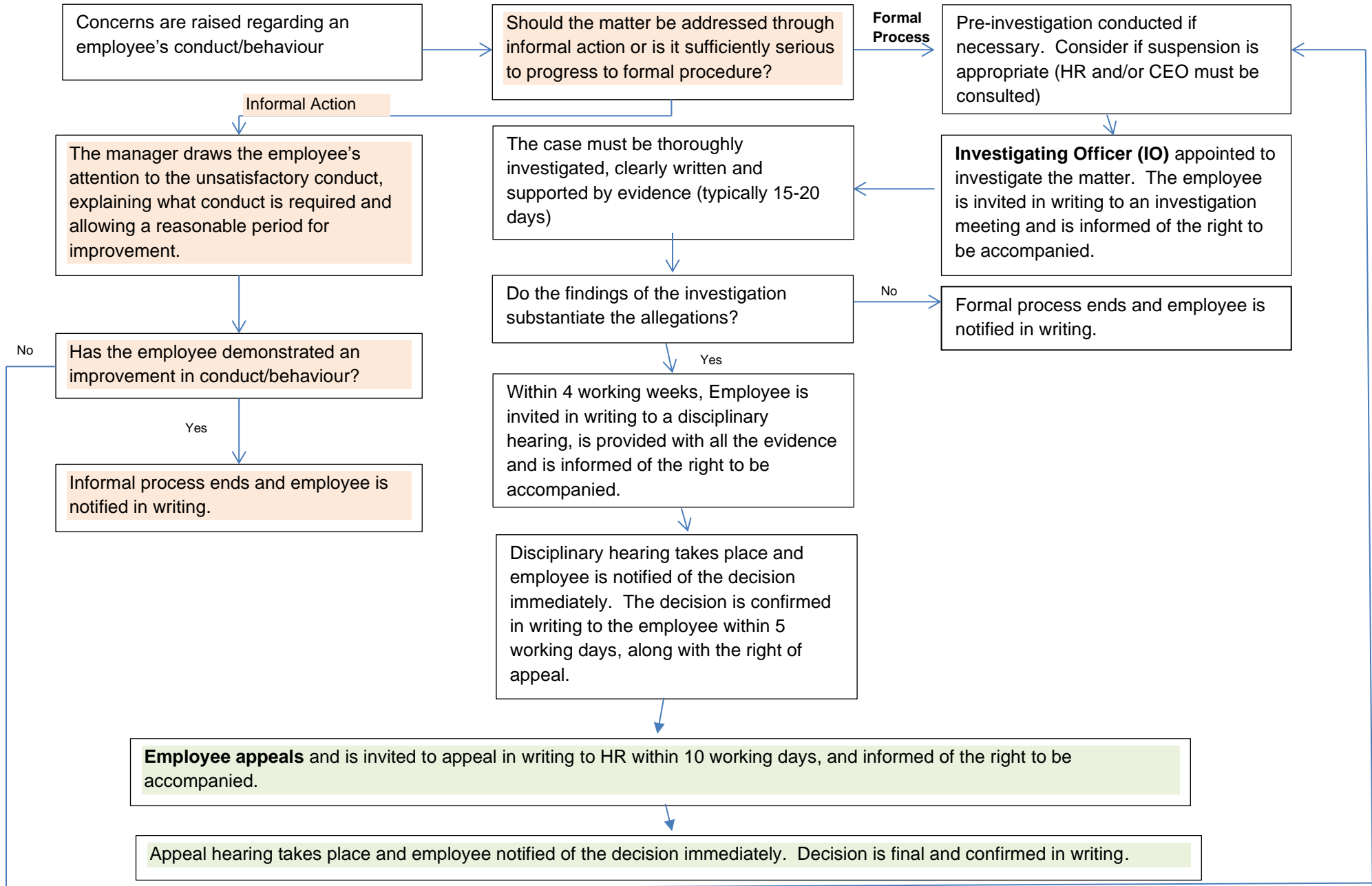
- 16 Bullying.
- 17 Being incapable of adequately performing duties as a result of the intake of alcohol or drugs
- 19 Serious breaches of the school's Health and Safety policies or practices
- 20 Serious contravention of the school's Policy on Internet Access
- 21 serious lack of care to their duties or other people ('gross negligence')
- 22 Acts or omissions that would expose the School or ELAN to serious criticism or cause serious reputational damage

Misconduct

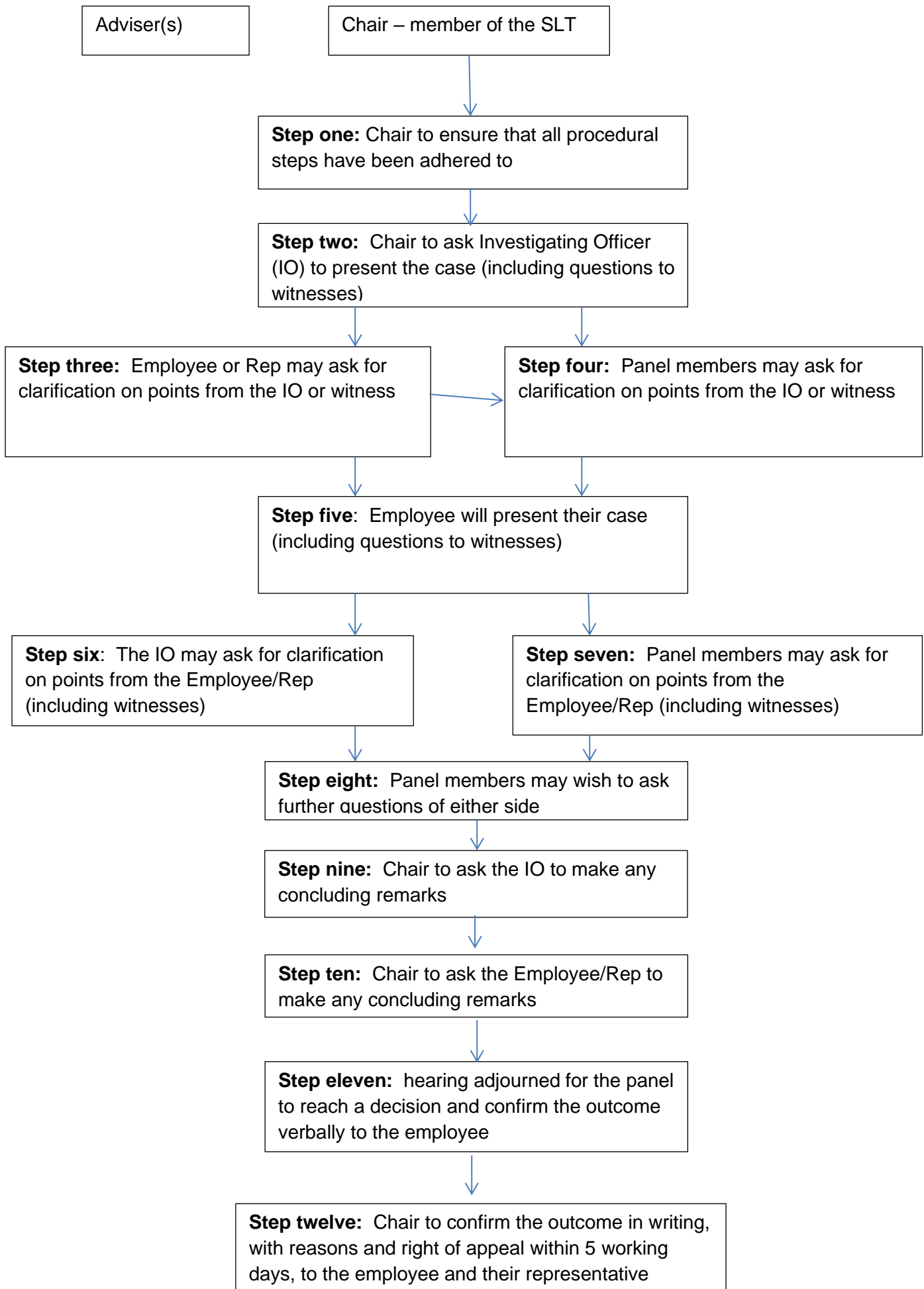
The following are examples of misconduct but are not intended to be exhaustive:

- 1 Regular lateness for work
- 2 Regular failure to follow employment rules e.g. reporting absence
- 3 Refusal to carry out a reasonable instruction of a manager
- 4 Negligence at work leading to loss, damage or wastage of school or other property
- 5 Improper, disorderly or unacceptable conduct at, in or near the school.
- 6 Wilfully inadequate work performance (note - poor performance or lack of capability will normally be the subject of Capability procedure)
- 7 Private trading
- 8 Betting or gaming
- 9 Consistently poor standards of dress or hygiene

Appendix 2 – Disciplinary Process



Appendix 3 – Disciplinary Hearing Format



Appendix 4 – Workplace Investigation Framework

ELAN expects all investigations to be conducted to the highest standards and this framework sets out the best practice that all investigators must follow in the process of gathering facts, within the agreed terms of reference, for the case in hand.

1. What is an Investigation?

The purpose of an investigation is to determine all the facts associated with the allegation(s) and establish whether there is a case to answer.

As an investigator, you should adopt a holistic approach, examining the case from all angles, collecting evidence from management, employee and organisational perspectives. You will need to interview all relevant people and analyse any related documentation or forms of evidence.

The role of an investigator is to keep an open mind, to consider all of the possible circumstances and to remain completely neutral.

2. When should workplace investigations be used?

Internal investigations must always be carried out in accordance with the relevant policy / procedure as determined by the issue in question. Some of the main reasons for a workplace investigation are:

- Allegation(s) of misconduct
- Allegation(s) of bullying or harassment
- Allegations relating to safeguarding
- An employee raising a grievance
- Concerns around an employee's capability
- A complaint against a member of staff

Any investigation must ensure that decisions and actions taken are:

- **Proportionate**
- **Relevant**
- **Accountable**
- **Legally and procedurally compliant**

The nature and extent of an investigation will depend on the seriousness of the matter and your judgement, as the investigator, as to when you have gathered the facts and exhausted all reasonable lines of enquiry.

3. Knowledge and Skills

Before commencing an investigation, you must:

- Have read fully, and be familiar with, this Workplace Investigation Framework
- Have read fully, and be familiar with, the policy within which your investigation sits
- Be ready to work in full confidentiality and not discuss any details of your investigation with anyone, including senior leaders and anyone who may form a panel hearing, other than:
 - people who you are interviewing as part of the investigation
 - Co-investigator
 - HR

4. Terms of Reference

At the outset of an investigation, the terms of reference must be set by the senior leader who is commissioning the investigation (in line with the relevant policy), with the help and advice of HR, if appropriate.

Terms of reference set out the guidelines for an investigation and give specific direction on the allegation(s) to be investigated and the proposed timescale for the investigation.

Terms of reference are essential in that they will provide you, as the investigating officer, with a clear understanding of what issues are to be investigated.

You will need to keep the investigation within the agreed terms of reference and not be side-tracked into looking at other issues. The term ‘fishing trip’ refers to an investigation which may have strayed beyond the set terms of reference, where the Investigator has not maintained their focus on the original purpose of the investigation.

Terms of reference should be clear, unambiguous, and tightly drawn to provide focus and direction. In any employment investigation, the possibility of lessons to be learned should also be included.

Terms of Reference should include:

- Any relevant background information up to this point
- The specific allegation(s) to be investigated
- The relevant policy in accordance with which the investigation is being carried out
- Confirmation of the names of the people involved – senior leader, investigating officer, notetaker, etc.
- The brief of the investigating officer – i.e. to undertake a detailed and thorough investigation through interview and review of data and to produce a written report on the case to include recommendations or opinion, as per the requirements of the relevant policy
- That all interviewees will be given the right of representation in accordance with the Trust’s procedures
- That documentation is not withheld from the investigating officer
- The proposed timescale for the investigation

5. Investigation Plan

An 'investigation plan' ensures that you do not miss important matters or focus on the wrong issues. Investigation planning brings balance and focus to the process; a clear starting point will help you to know what questions to ask and will provide a reasonable idea of the main issues.

An 'investigation plan' is not an attempt to second guess what the evidence is, or how best to build a case, but it is a considered approach to determining what initial evidence is necessary, and how best to go about obtaining evidence.

While you will have been given a steer by the terms of reference set by the senior leader who appointed you, you must keep in mind that it is your responsibility to conduct a neutral and thorough investigation and you will need to use your own judgement as to how to best achieve this. To do this you will need to identify the following:

Information and identifying gaps	<p>Who is involved?</p> <ul style="list-style-type: none"> • List the potential interviewees and witnesses (remembering that other names may appear during the investigation who may also be useful witnesses) <p>Where did the situation or issue happen?</p> <p>When did it happen? Are there any key times or dates?</p> <p>What happened or is happening?</p> <p>What are the facts (if any) that have been established already?</p> <ul style="list-style-type: none"> • Review of any relevant documents or material gathered at the outset of the investigation, i.e. emails, letters of complaint, allegations, etc. • This is where you can already say 'it is...' or 'I know this because...' <p>What are the gaps?</p> <ul style="list-style-type: none"> • This is where you might say, 'I think it is...' • Risk assess the issues which may jeopardise the investigation or hamper progress e.g. uncooperative staff, malicious or vexatious concerns, absence of potential witnesses, contamination of evidence, etc.
Order of Work	<p>You will need to think through how to approach the investigation in terms of the order in which you interview people. Mostly, but not always, you will need time to gather and consider evidence and to interview all witnesses before you arrange a meeting with the person who is the subject of the allegation(s).</p> <p>This can be a stressful time for the person against whom allegations have been made as they will likely want to know more details as quickly as possible after they have been informed of the allegation(s).</p>

	<p>You need to be clear that you are conducting a neutral and thorough investigation and, that for the person’s benefit, you need to gather all of the facts before interviewing them.</p> <p>You should not feel pressured by any party to hurry your investigation and, if you do, please speak to the HR Manager who will be able to support you with this.</p> <p>For disciplinary issues, it is possible that the person who is subject to the allegation(s) has been suspended from work. The HR Manager can provide guidance on this in terms of your contact with them.</p>
<p>Timeframe</p>	<p>You will need to balance the need for the investigation to be carried out in as concentrated a time scale as possible (to ensure the best recollection of the facts and to minimise uncertainty for all involved) with the need to conduct a thorough and fair investigation. This may require other work to be rescheduled or reallocated.</p> <p>The investigation should be carried out as thoroughly and swiftly as possible. As a guideline, investigations should be completed within two weeks, although this may be extended for complex issues or with the agreement of the senior leader who appointed you to the case.</p>
<p>Resources</p>	<p>You will need a notetaker to be present at all of the investigation meetings that you hold. As a general rule this is an administrator who will be supplied by the academy from where the matter has arisen.</p> <p>You will need to arrange a private room in which to hold the interviews which will be free from interruptions. In certain circumstances it is more appropriate to hold the investigation meeting off site or at another ELAN location.</p>
<p>Communication</p>	<p>You will need to contact employee(s) in writing to inform them that an investigation interview is to take place in relation to the allegation(s) or concerns. The HR can assist with this correspondence which should include:</p> <ul style="list-style-type: none"> • Date and location of the meeting • Advise the employee of their right to bring a union representative or work colleague to the meeting. • Check whether the employee has any particular needs that need to be met to enable them to take part in the meeting e.g. translator, wheelchair access, etc. <p>The other types of people who you may need to invite to an investigation meeting are:</p> <ul style="list-style-type: none"> • Witnesses • Anyone with relevant background or contextual information <p>Witnesses who are employees are obliged to attend witness interviews. Every effort should also be made to interview witnesses who are not employees.</p>

Further Advice	<p>At this early stage, and indeed at any point in the process, we recommend that you contact HR for a confidential discussion about any aspect of the investigation including:</p> <ul style="list-style-type: none"> • the nature of the enquiry • the standards of investigation required • your role and responsibilities • compliance with policies and employment law
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6. Evidence Gathering

The word evidence does not imply guilt of a particular individual. The evidence could prove innocence rather than guilt. This goes to the core of your role: maintaining neutrality and objectivity throughout the process and seeking to gather the facts of the case.

You should be clear about the documents and evidence you require to effectively conduct the investigation and not just rely on witness statements, as this may result in other crucial evidence being overlooked. If any evidence is likely to perish or be removed (i.e. CCTV footage), it should be treated as a priority.

Evidence may include:

- Correspondence such as emails
- Notes of meetings and telephone calls
- Diary entries
- Background documents such as procedures, policies, contracts, job descriptions, etc.
- Electronic records, printouts, etc.
- Photographs, CCTV footage
- Witness statements, interview notes, etc.

7. Investigation Meeting

Opening the meeting

You may find it helpful to have a script for opening the meeting. The following provides a suggested structure for this:

- Open the meeting with introductions (including the note taker)
- Clarify the status and purpose of the meeting and what will be covered
- Remind all people present that the meeting is completely confidential and any details should not be discussed with any other colleagues
- Explain that:
 - The meeting can be paused at any time by either the interviewee or the investigator (sometimes this happens if someone gets upset and needs a

moment or if they wish to speak to their companion in private before responding to a question).

- You, as the investigator, will ask questions around the allegation(s) and that the purpose is for you to gather all of the facts, making no judgements. This may mean that you ask a lot of questions to ensure you gain a full understanding.
- The note taker will be taking full notes (although not necessarily verbatim) of the meeting and does not have a participatory role in the meeting; the meeting notes will be sent to the interviewee afterwards and they will be asked to sign to confirm that they are a true and correct record
- Any employee attending an investigation interview will be allowed to be accompanied by a colleague or a trade union representative who may:
 - confer with the employee, requesting an adjournment if necessary
 - address the interviewer
 - ask any questions for clarification
 - not answer questions on the employee's behalf
- If the employee is not accompanied, check that they are still OK to proceed. If, at any stage during the investigation interview, the employee wishes to adjourn to seek representation, this should be granted.
- Check whether the interviewee has any questions at this point

Witness Interviews

- All witnesses must be informed that the information they provide will form part of the final investigation report and could be used at a formal stage hearing, depending on the policy/procedure you are investigating under. For a disciplinary matter, for example, all the investigation documentation will be shared with all parties ahead of a formal hearing and a witness may be asked to attend the hearing to put forward their evidence (this is rare but it could happen).
- If a witness states a wish to remain anonymous, please seek advice from HR

Interviewing Minors

- If you plan to interview children or juveniles, you must ensure that the correct child protection regulations are followed – speak to the headteacher of the school in the first instance who will advise and who will facilitate contact with parents/carers where necessary.
- Written statements may be obtained from juveniles but in such instances the investigator must consider informing parents/guardians and giving them the opportunity to be present. Juvenile witnesses should be kept separate from each other before the interview and be interviewed independently.

Questions

You should prepare for the meeting by going through the relevant evidence and drafting questions which will help you to ascertain the facts of the situation.

- Give the employee the opportunity to answer the allegation and give an explanation as to why they acted in a particular way.
- Use open questions throughout and probe/follow up any responses.
- Gather facts, for example, time, place, who was present, what happened.
- Reflect back to the employee what they have said to you by way of your notes, in order to check understanding.
- Ask the employee if there are any mitigating circumstances or any health problems, personal issues, etc. that should be considered.

- At the end of the interview, whether they wish to say anything more and whether there are any witnesses they wish to be interviewed by the investigator.

You may need to ask further questions if you think that the person has not answered or fully answered your question(s). You may need to rephrase your question so that it is clear.

Closing the meeting

- Inform the employee that they will be asked to sign and date the meeting notes as a formal record of the meeting (if you can, give a timeframe in which the notes will be sent to the employee for this purpose). Any points of disagreement or corrections which the employee wishes to raise should be provided in a separate document and held with the original notes of the meeting. The employee may also produce a written statement which is signed and dated.
- Interviews may take place over more than a single session but must be carried out within a reasonable timescale.
- Remind the employee that they can contact SAS at any time, in complete confidence, if they feel this would be useful in supporting them.

8. End of the Investigation

At the end of the investigation you will need to record your conclusions of the case and decide and specify if each of the allegations / concerns are;

- Upheld – substantiated
- Not substantiated
- Malicious
- Unfounded

An overview opinion based on the balance of probability on whether there is evidence to support the allegations / concerns.

If you establish that no case exists you must inform immediately the senior manager who appointed you. The employee will need to be provided with a concise and accurate explanation of why the case is not being taken further. This explanation should be neither defensive nor apologetic. An effectively handled withdrawal from the investigation process can be positive by showing that a fair process exists.

9. Investigation Report

You will need to write an Investigation Report; some investigators compile this as they work through the investigation, adding in information as they find it and some wait until the end and write the whole report in one go. You will need to use the ELAN template to ensure that you provide the necessary information.

As part of writing the Investigation Report, you should consider the following areas:

- Have any rules or policies been broken or breached?
- What is the impact?
- Do any gaps still exist? Why is this? ((insufficient or no evidence)
- Are there any mitigating factors or circumstances you need to include in your report?
- What action will you recommend to be taken? Why?
- Do you have any improvements or changes to recommend?

Remember that the standard of proof required to substantiate disciplinary allegations is 'on the balance of probability', not 'beyond all reasonable doubt'.

You will be required to detail your recommendations as below:

- Formal action e.g. Disciplinary Action
- Informal action e.g. training or mediation
- No further action required

HR can advise you on organisation and logging of investigation materials, issues such as whether you need to redact any information and also on writing the report.

10. Honing your skills as an Investigator

Active Listening

Listening *actively* is hard work. Being fully prepared for each investigation meeting will help you to be able to listen effectively and to focus on establishing the facts. It will also allow you to ask supplementary questions and to probe.

It can be helpful to summarise what has just been said; this helps you to check your understanding and gives the other person the opportunity to correct any misunderstanding.

Communication Barriers

Be conscious of any of the following:

Preoccupation	Your mind is preoccupied with something else and you find it difficult to not be distracted by it, or the physical environment may create conditions which make communication difficult
Prejudice	You have already pre-judged the employee/witness. Your mind is closed or only open to arguments which support your prejudice.
Anxiety	You react negatively to the details you are told because of anxiety over what you might be required to do
Indifference	You are not interested in the subject
Emotional words	Some words may cause you to have an emotional reaction instead of listening to the rest of the response from the interviewee.

- Premature decision** You evaluate the message(s) before the interviewee has finished, often modifying the message to fit in with what you expect them to say
- Rehearsal** You are too busy thinking about what you will say next to listen properly
- Delivery** You find it difficult to understand because of the poor delivery by the interviewee

11. Communication & Body Language

You should be aware of your body language while interviewing people. Some suggestions are:

- Posture** You can make someone feel comfortable by your posture. You should avoid crossing your arms, showing emotion or reacting to what is being said, frowning, etc. as these are actions which can convey a closed or uninterested appearance
- Eye Contact** There is a balance between too much eye contact and not enough. Holding contact for too long can sometimes be perceived as aggressive or too little as disinterest.
- Pausing** When an employee has finished what they are saying, it is helpful to pause. This allows them time to realise that the investigator is considering what they have said. Patience is important. You should allow the interviewee to say all they want to say (within reason) without interruption, otherwise they may miss key points. On the flip side, you need to keep control of the conversation and check that the interviewee does not slide off topic.
- Being Responsive** You should be aware of the interviewee's mood and react accordingly. It is not always what is asked or said that counts, but far more about how and when it is asked or said.
- Be Concise** If you are clear and concise (helped by the questions you have pre-prepared), it helps the interviewee to more easily understand and assimilate what you are saying.

Appendix 5 – Workplace Investigation Framework

Where the complaint/incident/allegation meets the threshold for reporting to the Local Authority Designated Officer (LADO), Investigations **should not be carried out** before being instructed to do so by the LADO, as this could impact any subsequent LADO, Ofsted or Police investigation.

If at the point of commencing the investigation the LADO threshold was not met, but at any point during the investigation it becomes apparent that the LADO threshold has been met, the investigation should be **suspended**, and a referral to the LADO should be made. The investigation **should not be restarted** before being instructed to do so by the LADO, as this could impact any subsequent LADO, Ofsted or Police investigation.

This report should be treated as strictly confidential, conducted by an impartial and independent person and is covered by the General Data Protection Regulations/Data Protection Act.

Name of staff member under investigation	
Type of investigation i.e., allegation / grievance etc.	
Investigators	
Date investigation commenced	
Overview of the incident/key allegation(s) being investigated. Information of specific allegations/concerns.	
Background How did the issue come to light? Have any other actions been taken prior to the investigation? When we are thinking about an allegation context is very important. There may be a history of complaints; a staff member you already have concerns about; individuals/groups where complaints may be more likely.	
Remit of the Investigation Bullet point each specific allegation / concern being investigated.	
Complaint / Witnesses / Respondent interviewed	

<p>All above should be interviewed separately with the complaint typically first, followed by the witnesses and finally the respondent.</p>	
<p>Evidence collected</p> <p>I.e. Witness statements, CCTV, screenshots, emails, text/TEAM messages etc.</p>	
<p>Any evidence that could not be obtained and reasons why</p>	
<p>Any mitigating factors</p>	
<p>Findings</p> <p>A summary of findings and observations for each specific allegation / concern investigated, cross referencing any documentation where needed.</p>	
<p>Conclusion</p> <p>An overview opinion based on the balance of probability on whether there is evidence to support the allegations / concerns.</p> <p>Specify if each of the allegations / concerns are;</p> <ul style="list-style-type: none"> • Upheld – substantiated • Not substantiated • Malicious • Unfounded 	
<p>Recommendations</p> <ul style="list-style-type: none"> • Formal action e.g. Disciplinary Action • Informal action e.g. training or mediation • No further action required 	
<p>Appendices</p> <p>These should be attached and may include witness statements, investigatory interview notes/statements, timeline/chronology of events, key policies and procedures reference etc.</p>	
<p>Complete below if applicable:</p>	
<p>Date LADO informed</p>	

Date feedback received from the LADO and copy of feedback	
Close date for the LADO	
Date Ofsted informed	
Date feedback received from Ofsted and copy of feedback	
Close date for Ofsted	
Date Police informed	
Date feedback received from Police and copy of feedback	
Close date for Police	
Investigator's signature	
Date	