

Consultation on Disciplinary Procedures for School Staff in Wales

Please note that this is a joint response from NAHT Cymru and ASCL Cymru

The NAHT and ASCL are pleased to comment on the draft guidance on Disciplinary Procedures for Staff in Schools in Wales.

Our overall general comment is that the draft guidance does mark a significant and positive achievement in the process of securing effective, fair and consistent procedures for all schools in local authorities across Wales.

There is some work to do, however, as there are some issues in the draft which do need attention, clarification and amendment before the guidance is useable.

Specific Comments:

- In particular, Sections 7 and 9 are problematic. They do need some detailed re-working. We set out some specific comments on Sections 7 and 9, below. ***We suggest that a single day could be allocated very usefully, to bring back together the participants in the working party and advisory personnel who worked on the draft, with a view to sorting out section 7 and any other key issues identified as a result of the consultation process, in one sitting.***
- It would be good if the guidance could avoid using the term 'the member of staff's conduct/representative etc' and use the more appropriate construction 'the conduct of the member of staff' throughout the guidance.
- We focus especially on investigations, investigation procedure, investigation reporting, and on the role of governors and the head teacher as they are all critically important to fair disciplinary procedure. Investigations and criteria which make a good investigation need to be much more detailed throughout and should apply to WAGIIS investigations and to more general disciplinary investigations especially, but not exclusively, to those for alleged gross misconduct. The relevant sections from the ACAS guidance is an important reference point. The ACAS guidance could be a very useful annex. The criteria recommended could usefully be even more detailed than in the ACAS guidance and some suggestions are included below.
- The guidance should include a right to challenge investigators who are tainted or otherwise compromised. There has to be a right to a fair and impartial investigation based on the facts and not on personal opinion or preference;
- All complaints about the process should, wherever possible, be rectified as part of the investigative process and they should not be ignored. The person or committee determining such complaints should not have had any involvement or 'interest' in the choice of investigator. It would be important to include this provision in the guidance;
- The 'brief' given to an investigator should be clear and should reflect the allegations, directly and it should be confined to those allegations. It is prejudicial to begin an investigation with one set of criteria and then end up with an investigation which reports on other matters and which bears little relationship to the original brief. If other matters arise during an investigation there needs to be guidance on how that situation might be managed to best effect. If the investigation needs to change, it should conclude on the remit given and if other matters arise, there needs to be a fair process which identifies whether those matters need to be addressed and if so, how and by what process. It is vitally important that everyone involved understands the 'brief', the allegations and the process by which the investigation will be conducted. Clarity, transparency, fairness and timeliness are essential characteristics of any investigation and any investigation report. We recommend that the guidance reflects these matters;
- Section 7 of the document needs to be completely rewritten. The use of terms such as informal and formal is unclear and confusing, and who does what is not sufficiently

clear. The duties of a head teacher in terms of statutory responsibilities are insufficiently represented. For example, the head teacher can take disciplinary action up to and including final written warning. We need the guidance to reflect the relative powers and responsibilities of head teachers and governing bodies accurately and to best effect so that the practice which follows from the guidance reflects the statutory responsibilities of both heads and governors as well as what is desirable and practical;

- The terms 'investigation and informal' do not sit easily together. An informal process is not a disciplinary process; it is surely a professional management issue?
- Any warnings issued under the disciplinary procedures of the school will be issued as part of a **formal process** for which there will be an appeal. The issuing of disciplinary warnings outside of the disciplinary procedure will be likely to attract challenge and would also be likely to be overturned as a disciplinary sanction on appeal.
- Any warnings issued about expectations in relation to e.g. conduct, in order to **avoid** disciplinary procedures having to be invoked are 'informal warnings' and they are usually issued by way of a letter, a memo or a signed and dated record of a meeting which is retained on file. Therefore, such 'warnings' are not given under any part of the disciplinary procedure and the distinction needs to be clear in the guidance, especially as there is an important place for both in any comprehensive guidance;
- Sanctions can include loss of pay for e.g. a day or a period of time and sanctions can also include demotion and both should be acknowledged in the guidance as both relevant and appropriate to include, where circumstances and particulars of a case may make such sanctions relevant and appropriate to consider. For example, a member of staff who calls in sick and costs the school cover whilst actually going on holiday for that period of time, and who is not dismissed, could face both a final written warning and some loss of pay especially if the school has accrued costs related to that event and absence;
- The content of an investigation report should be clear and a common standard should be applied ie common headings to include one which identifies in the findings whether or not the investigator recommends that there is or is not a case to be heard at a formal hearing. Other headings which are suitable include, the brief, the process, the witnesses, the documents scrutinised, the evidence, analysis of the evidence and findings. There needs to be a principle which states that anyone who is the subject of an investigation has the right to be interviewed; has the right to have her or his witnesses interviewed where those witnesses have evidence relevant to the case and the allegations and has the right to submit documentation and to have that information considered properly. It should be clearly stated that opinion and personal preference are not acceptable in an approach to investigation or in a report and that all reports should be based only the evidence and the facts. Analysis should also be based on the evidence submitted to the investigation. It is reasonable to expect that a report should recommend that there is or is not a case to be heard on the balance of the evidence presented in the report. This should be the case in both WAGIIS and general investigations. Currently, there are instances where, in part because that statement is not present, chairs of governors, chairs of disciplinary committees and disciplinary committees are able to choose whether to hear a case even where the evidence to support hearing a case is clear in the report, and where the advice of the independent governor, the HR adviser and the head teacher is that it is necessary to hear the case. That is not a satisfactory situation for either WAGIIS or general cases and there is insufficient accountability for governing bodies on such matters. There is a need for the guidance to address this situation which has become much more clearly evident and problematic in recent months;
- In disciplinary cases and specifically in hearings, we need the roles of investigator, independent investigator, case presenter, adviser and witness to be defined more clearly in terms of both role and practice. For example, the roles are not interchangeable and individuals can only perform one of the functions in any one case. For example, head teachers who have given witness statements often come under

pressure to present cases and that is neither possible nor desirable. Equally problematic is the debate and confusion about whether the investigator can or should also present the case at hearing. We are clear that the investigator presents her or his report identifying any witness evidence as part of that process. The case presenter manages the presentation of the case overall, introduces the case, calls the investigator and any witnesses, asks questions of various parties especially the investigator, any witnesses and the member of staff answering the allegations against her/him; calls any witnesses to the investigation report and its contents and summarises and closes the case against the member of staff;

- There is insufficient information in the guidance on what can/should happen if a governing body is obviously tainted but refuses to accept that is the case, in relation to e.g. a disciplinary or child protection matter. The powers of intervention under the provisions of Chapter 31 of the School Standards and Framework Act 1998 i.e. telling the governing body of concerns and, where not remedied then issuing a Warning Notice and Directions, can be used in such circumstances and the relevant provisions should be identified in the text of the guidance and then set out in detail as an annex to the guidance. Given that there is confusion in LA's about the application of the above provisions to broader circumstances such as a governing body refusing to act reasonably or without prejudice to a disciplinary or child protection case, the guidance should address that matter directly, particularly as there is increasing evidence that some governing bodies appear unable and/or unwilling to perform duties impartially/independently and fairly. The issuing of the guidance on disciplinary procedures is an excellent opportunity to include this increasingly important and problematic issue. It might be addressed most effectively by providing a range of examples whereby schools and LA's can see how broadly the apparently restricted criteria for Warning Notices and Directions can and should be used, in practice;
- From experience we also need more clarity on situations where the CoG is tainted and/or is the subject of grievance /complaint but continues to carry out functions with prejudice to disciplinary processes, to investigation or to the integrity of the role of the CoG. It does need to be emphasised that the powers of a CoG to act are not limitless and are, other than in genuine emergency, not a substitute for the corporate discharge of the role and function of the governing body;
- In WAGIIS (SERVOCA) investigations, the current ability of a governing body to fetter the independence, framework and brief of an independent investigation needs to be addressed in the guidance so that the independence of WAGIIS is preserved and so that we do not have different governing bodies able to restrict or otherwise compromise the independence of the WAGIIS function and reporting. This guidance is the place to do that and it is the only option to do so swiftly and effectively, apart from primary legislation which will not happen for some time. Again, this might be best addressed by setting out common criteria which form the basis of any investigation carried out under the disciplinary procedures of the school or which reports to the school pursuant to those procedures e.g. WAGIIS;
- The draft guidance is silent on the key issue of IT and social networking (including text messages, emails, facebook and twitter, contact on the internet with children, parents, other employees to discuss workplace issues, disclosure/circulation of confidential information) and on the problems which those issues cause in terms of conduct, on an increasingly regular basis. We recommend that there should be a section on IT and social networking and the dangers associated with those processes in a school context and then related specifically to disciplinary procedures and the disciplinary context. The section could/should be linked to the issue of safeguarding and also to the annex/list of examples of various levels of misconduct and gross misconduct. It should also be set out as an essential criterion to include in relevant school policies;
- There is an anomaly about Agency Staff and WAGIIS investigations, in particular. In the interests of safeguarding this is an opportunity to correct that anomaly. Agency staff must be included in the requirements to undergo a WAGIIS investigation in relevant

circumstances. This means that there will have to be contractual obligations set out and included when agencies provide staff to schools;

- Governors who wish to sit on Disciplinary and Disciplinary Appeals committees must undertake relevant training. However idealistic this request may sound, a major problem besetting governing bodies and disciplinary issues is the lack of training and preparedness for the role;
- The role of the adviser to committees is to give advice on procedures and only on procedures.
- Overview page; we suggest adding that GB's **are entitled to seek independent legal advice** under heading of further information. It is stated elsewhere, but it seems to be an important statement for the introductory page as well;
- 1.7 At the end of the paragraph, it is suggested that the governing body *should be able to demonstrate* might be better stated as **must be able to demonstrate**;
- 2.2 The function must also be to conduct disciplinary proceedings short of Dismissal and not only be for the purposes of determining the ultimate!
- 2.2 where it states the governing body wish, we suggest that the wording should read the governing body **may**;
- 2.5 We suggest adding: **Governors who are a situation of conflict of interest or who are tainted may not sit**;
- 2.6 A head teacher can, of course attend for the purposes of giving evidence as a witness or as a respondent to allegations against her/him.
- We suggest adding at 2.6 or in an additional point to follow 2.6 that there is an unsustainable anomaly where a staff governor who is suspended may, under present circumstances continue to attend governing body meetings and by that attendance and participation exert significant and improper influence on the governing body, its committees and its members. We have, for example, information where a member of a Disciplinary Committee which was due to hear a case of gross misconduct against a member of staff was so intimidated by that same member of staff at a meeting of the governing body, that she resigned. It is important to note that this transpired even though nothing specific to the case was discussed in the meeting of the governing body. We suggest that amendment is needed to clarify and regularise the situation which governing bodies do not address in some instances, at present. It is especially important where a staff governor is suspended and or under investigation, for there to be clear guidance. The same principle would apply to other categories of governor, as well in many instances;
- 2.8 We need to be clear when a governing body would use independent governors for matters other than those arising from a WAGIIS case. More explanation would be helpful here, especially who decides and in what circumstances?
- 2.9 The wording should be that the governing body **'may'** be the respondent or a co-respondent, as it is not an absolute situation;
- The term 'agency staff' is ambiguous we need to be clear who the employer is... we suggest that the duty should be to consult, *per se*, and not only as the LA thinks fit;
- 2.14 The requirement should be to have to consult the school/governing body;
- 2.15 Add a point Child Protection must be reported by designated LA officer or the head teacher of the school as appropriate/relevant;
- 2.16 Add requirement to be subject to WAGIIS;
- 3.1 What does 'vulnerable' mean in this context and why is it here? What is the point being made?
- 3.3 and 3.4 Training for governors should take place and be mandatory before they can sit on Disciplinary or Disciplinary Appeals Committees;
- 4.6 The term needed is **must be seen to be fair**, not seem;
- 4.8 Page 17; Do we consider that these examples of mitigation should be here, in guidance or should they be in an annex or should they appear in this document at all? If they are to be included, then they would be more properly set out in an annex which

is headed Mitigation and Considerations. It is, of course, for the member of staff or her/his representative to present mitigation and mitigating circumstances;

- 5.1 After 'tainted' suggest we add '**or otherwise compromised e.g. has demonstrated partiality or has an interest in case...**';
- 5.3 After 'fellow governors' add or anyone else other than as part of the hearing process;
- 5.5 Add in a priority order as established by the governing body;
- Section 7 requires a complete rewrite (Pages 21 – 24 inclusive);
- 7.1 The word identify should be replaced by delegate;
- 7.4 and throughout the phrase 'the member of staff's conduct is not an appropriate construction!
- First Stage – Investigation (not Informal Procedure)
- 7.6 Why would an investigator look for evidence for and against, why not just look for all the evidence and identify the facts?
- Refusal to interview key witnesses identified by the member of staff as having relevant evidence is not reasonable. All witnesses with relevant evidence should be interviewed;
- 7.7 'Investigate' not 'discuss';
- 7.7 The rules of natural justice apply;
- 7.7 and 7.11 What does '...in a difficult situation' mean? What are we meant to think and do about this 'difficult situation' because, surely, all disciplinary cases and hearings are difficult for all involved, *per se*?
- Signed and dated statements should be made and can be written contemporaneously;
- Page 23 the heading at the top of the page should be something like **Second Stage: A Case to Answer...** and then setting out the level at which the case needs to be answered and who hears it i.e. head teacher, senior manager, committee of the governing body;
- The section on informal action or notice to improve is not appropriately titled. If there is case to answer then it is formal and it needs to be clear at what level the case is to be heard i.e. is it gross misconduct or lesser misconduct (including anything from the minor up to serious misconduct, and identified as such) and who is to hear the case?
- Is a reprimand best set out as given in the form of an oral warning which is then recorded as having been issued and retained on file for the relevant period?
- If there is no case to answer but a notice to improve is to be given then that is outside of the disciplinary process and is a management and performance strategy;
- If there is no case to answer then that is that.
- Any sanction, including a reprimand by way of verbal warning must be recorded otherwise it is not part of a formal disciplinary process and procedure. An oral warning given as part of the disciplinary procedure is a formal process and must be distinguished from the informal management warning to improve by way of meetings and note outside of the disciplinary procedure and clearly identified as being outside of the process therefore not being a sanction but a management strategy to secure improvement and avoid disciplinary action, hopefully;
- Are the 3 stages not most easily described as Investigation, Hearing and Appeal? Then, can the various parts of each stage then not be just set out under the respective headings?
- 7.26 and et al where does the allegation go? Where does the report go? To the head to a committee, to the CoG, to another governor? What about taint being mentioned here and the need to avoid it and deal with it if there is any question?
- Can we ensure that head teachers (unless, of course they are the person against whom the allegations are made) can both refer and receive investigation reports of any kind given that they are a key adviser to the governing body and all its committees unless where there is a conflict of interest. We know of current circumstances where the head teacher, having reported child protection allegations has, months after the case, no idea about the outcome, the disciplinary sanction imposed and for how long and yet she is supposed to manage the member of staff concerned. There should be

clarity in the guidance that the head teacher, as the manager of the school must know the outcome of all proceedings and hearings of a member of her or his staff not least of all because it is pretty impossible to manage a member of staff effectively if it is otherwise;

- A heading 'Possible Outcomes' is needed
- 7.26 and 8.6 and et al: Independent needs to be independent and where there is any doubt, an independent investigator should be changed. It is critical that objections to the choice of investigator are taken seriously and a different choice made whenever there is a any doubt about impartiality;
- 8.6 Where does the allegation go? To the head? To a committee? It should be clear;
- Governors who are the subjects of complaints or grievances or who have prior involvement in evidence, or events or should go as it is unnecessary.
- 9.1 We suggest that the wording should be as soon as an allegation is received in the school a decision has to be made on whether it is or could be a matter of gross misconduct .There would then just be a full stop and no i.e. part to follow. The final sentence in the paragraph is unamended;
- 9.2 The head, if the matter is a disciplinary issue falling within her/his remit would consult the LA or HR adviser and so would the COG if the matter related to the head teacher. They would inform each other but there would not be any need for consultation with the CoG;
- Under the section Conduct of the Investigation, 9.6 and thereafter, and as previously stated, the requirements of an investigation need to be better and more specific e.g. an investigative strategy should be drawn up. The process should be the same whether for potential gross misconduct in relation to CP or more generally; signed statements and records are essential. The list should also include parameters of the investigation and an investigation 'plan' or 'strategy' which is clear and understood by all involved. The framework for the investigation report is also necessary and even the headings might be defined in order that investigations are reported in a consistent and comprehensive manner. The key issues would be to require that the facts are set out and although there would be analysis, it would have to be based firmly on the evidence and facts and not on opinion or the preference of the investigator, who should not express opinions on people or their evidence unless it is supported by clear facts e.g. X was uncooperative because s/he refused to meet despite 6 different times and dates being offered;
- 9.6 The interview sequence of the investigation should be different i.e. the complainant first, the documents and all other witnesses available and known at that time, followed thereafter by the person against whom the allegation is made and any further witnesses identified by her/him;
- 9.7 Contemporaneous notes are clearly required but any use of tape recording would have to be with the agreement of the witness concerned and would have to be the subject of a clear protocol if used e.g. who has copies as the person interviewed would have a right to a copy plus the transcription; who owns the tapes, who stores them and where and who has access to them?
- 9.10 Add where practicable;
- 9.11 This is not an interview process; it is a provision of information so, either change title or make it a schedule/protocol for interview;
- 9.13 This is absolutely unacceptable as the detail of the allegations would not be given to witnesses as it would be highly prejudicial to do so. Witnesses would be asked if they had any information about an incident alleged to have happened on DATE at PLACE for example?
- 9.15 and 9.20 This is ridiculous! if an investigation which meets the standards and criteria for a sound investigation and as per the brief, determines that there is no case to answer in that there is no evidence to support the allegations, then that is that and neither a head teacher nor a CoG can say otherwise unless they are declaring the

investigation to be null and void. If there is contradictory evidence in the report and it is not conclusive, the case should be heard;

- 9.23 There is no point in having an investigation unless the report is accepted in all circumstances other than those in which it has been established that the report is unfit for purpose on specific and objective criteria. However, any such problems should have been identified and rectified before the investigation concluded and reported.
- We do not like casting votes to decide whether or not a matter goes to a hearing as the issue should not arise if the investigation report does as it should i.e. finding that there is a case to answer on the evidence or that there is not;
- Where whistle-blowing is involved, confidentiality is important and the legal requirements related to whistle-blowing should be in an annex;
- The risk of intimidation is important but there should be some basis for that otherwise experience indicates that this reason can be cited, with prejudice just so an accused person cannot see evidence or really understand who is making allegations. Clearly, unless for good reason, denying someone information which would help to defend her/him, is not reasonable;
- The CoG cannot act where s/he is tainted or otherwise compromised;
- There needs to be a principle for action where the Investigation Report as submitted is not fit for purpose i.e. does not meet the investigation criteria in that it does not use the headings and does not deal with or only with the allegations as set out in the brief or other substantial reason, and where it is clear that it is not based on the facts or is otherwise prejudicial. Some guidance is needed for the above scenario;
- Informing a complainant of the outcome cannot include disclosure of confidential or prejudicial information or that which is subject to data protection;
- We are not of the view that on every occasion there must be a requirement to have to consult the LA. Head teachers or the chair of governors (where the head teacher is the subject of the allegations), should be able to act on their own cognisance in terms of referral;
- Please add a point that it is not the role of statutory authorities to recommend suspension and a further point that it is not their role to decide that a disciplinary case should be heard;
- It should not be necessary to have to discuss with the LA whether the matter should be referred to WAGIIS; it should be that the head teacher or the chair of governors (where the allegations are against the head teacher), has the right of referral;
- 10.14 last point, suggest delete the words 'is of a magnitude that';
- 10.15 This is significantly inadequate. It must be made clear that a WAGIIS investigation cannot be legitimately restricted or otherwise fettered by either a GB or the LA. The matter of parameters and the framework for each investigation should be consistent in process and content and consistently applied ;
- 10.20 The person against whom the allegations are made must always be interviewed;
- 10.20 Second point: add 'should not comment on the person accused or make any additional allegations or comment unless those points are matters of fact and supported by evidence. For example, just because an allegation is made does not give it credibility or substance;
- The investigator should also not represent the views of the GB or LA or his or her own personal views;
- 10.33/34 These provisions are suitable for inclusion in the general procedures as well as those related specifically to CP;
- 10.38 Is it practical to demand such circumstances for withdrawal of an allegation?
- 10.41 We need to consider what happens when it is parents or others (non-employees) who make false or malicious allegations. The guidance should not be silent on what is an important matter;
- Section on Disciplinary Hearing, page 46: As stated above but as should also be reflected here, there needs to be a mechanism whereby a governing body which is

- entirely tainted cannot hear a case and can be removed. The Warning Notice process should be specifically linked to these circumstances, in the final guidance document;
- 11.6 It is an excellent development whereby all advice to disciplinary committees is to be given in front of the parties and recorded. The adviser should not remain after advice has been given and the guidance needs to say so. It should also be stated that advisers to committees are there to provide procedural advice only and will not express opinions on the merits of the case, the people or the evidence;
 - 11.7 The presenting officer cannot also be the Investigating Officer or a witness;
 - 11.8 A point should be added which makes clear that the hearing only deals with the allegations investigated and only evidence related to those allegations can be included and considered. In addition the role should include checking that everyone has papers and that they are the same papers;
 - 11.10 Add another point which states that the companion or representative cannot answer questions for the person against whom the allegations have been made unless the person concerned is not present at the hearing and the representative is there to represent the interests of the member of staff. Even where the member of staff is not present, the representative cannot be required to answer on matters of evidence;
 - Please add that a governing body or committee may not disadvantage, discriminate against or victimise and blame a member of staff on the basis of advice given or representations made on her/his behalf;
 - On page 49 we need a point which sets out the time frame for exchange of documents between the parties, allowing for the respondent to have sufficient time to consider the documents/evidence before having to present a response;
 - It is also essential that we have a procedural point which provides for any questions over the documents/evidence to be heard and determined before the presentation of the case begins. It might be useful to have a procedural meeting with the chair of the committee, the adviser to the committee and the parties to avoid any conflict on this point and having to deal with it at the start of the hearing process;
 - Where there is a complaint or grievance which is directly related to the evidence and the procedure of the case, it may be heard by the same committee as a preliminary matter before the commencement of the hearing of the case. Any complaint about the investigation and the investigator should, wherever possible, be dealt with before the investigation is completed and before the report is submitted;
 - It should also be stated that at the conclusion of the hearing parties should be asked to confirm whether or not they feel that they have been treated fairly and impartially during the hearing;
 - There is a contradiction in the sense that the dismissal can only be carried out after the deadline for lodging the appeal has expired and no appeal has been lodged or, after the appeal process is complete;
 - 11.25 What does the last sentence mean? What is the guidance being offered re sickness and uncertainty for the school?
 - The member of staff must be given the opportunity to attend the hearing even if s/he has resigned;
 - Suspension is not a neutral act; the Court of Appeal tells us so. We need it to be clear that LA's, unless for specific staff who are employed centrally and not under the delegated powers of governing bodies, do not have the power or remit to suspend and that a meeting should be held so that a member of staff or her/his representative may make representations to either the head teacher, where the member of staff affected is not the head teacher, and the CoG where the member of staff is the head teacher, before the decision is taken to suspend and so that alternative strategies can be fully explored;
 - There can be no requirement to consult the CoG about suspension. The CoG should be informed. Head teachers usually do consult the CoG but there may be circumstances where that is neither practicable nor advisable. If there is no qualification

in primary legislation to the power of the head teacher to suspend; it should not be qualified in advice and guidance;

- However, suspension is sometimes necessary and guidance should say so;
- 13.1 What would happen if governors do enter such discussion? There should be a referral back to the previous paragraphs on taint and removal of governors;
- 13.3 But not hand over any documents which they are not obliged to hand over and certainly not any which are data protected. Head teachers and GB's should always check with the specialist officer in the LA and/or the legal department;
- 13.7 and 13.8 Currently, GB's are sometimes threatened unreasonably to comply with the wishes of the LA even where the wishes of the GB and school are lawful. Where there is no finding against the GB and no costs incurred illegitimately and unlawfully, the GB should not be penalised or denied support. LA's should not be able to foist costs onto schools illegitimately or unreasonably;

Annex A

It should state that A Complaints Procedure cannot substitute for a Disciplinary Investigation and that the GB must identify which procedure needs to be followed. Members of staff should not be subjected to parallel procedures which investigate the same issues. That would be automatically unfair;

- 2.4/2.5 Grievances which are directly related to the substance of the disciplinary hearing are and can be heard legitimately as preliminary matters before the substantive hearing actually begins;
- In 2.5 it is not correct to say that governors cannot do both grievance and disciplinary. It is not practical and it isn't always contra-indicated;
- Under 3.1 it should say that complaints from staff about governors need to be dealt with as grievances and not under the complaints procedure;
- There is insufficient information on Complaints and the relationship and non-relationship to disciplinary matters;
- The diagrams need to be reconstructed in light of amendments to the text;

Annex B1

Most of the examples are capable of being gross misconduct depending on circumstances and we need to avoid minimising matters which are potentially and properly matters of gross misconduct. For example:

- 10th point is unsustainable because, either discrimination or harassment has taken place or it hasn't and it is up to the representative of the person accused to present and argue mitigation or mitigating circumstances eg not flagrant, unintentional ill judged humour;
- Capability point does not belong here at all; Willful neglect would be a conduct issue not a capability issue and would be an example of gross misconduct;
- victimisation is potential gross misconduct
- refusal to carry out a reasonable instruction can be gross misconduct and it has to be seen that it can be; just as undermining the head teacher would be;

On page 67 the last point under Gross Misconduct should be removed because SOSR is not a matter of gross misconduct. It may be a potential reason for dismissal but it is not, per se, a matter of gross misconduct. It is understood that there is some relevant case law on this matter.

Annex G

- Further questions need to be included on page 79, as follows: Was the Investigation impartial, reliable and comprehensive? Was the Investigator impartial? Did the investigator stick to the facts? Did the investigator present evidence clearly and without bias

Annex I

- Add General Complaints Procedure under 8. page 82 Under 11. page 83, add a b.2 point An investigation and investigator will be impartial, suitably qualified and experienced;
- Also add that Reasonable objections to an investigator will mean that an investigator will be changed;
- Under 19, page 85, add: The investigation report will be based on fact and not opinion and will not denigrate individuals. Views on individuals and their personality will not be included and will not be a legitimate focus of any investigation;
- Under 42, page 90 Add the right to object to an investigator on grounds of bias or taint;
- Under 44, page 90 add statements will be taken and signed and similarly so in 47, page 91;
- Under 67, page 94, add the right to object to an investigator.

We hope that the above information will be of assistance and look forward to the final guidance which we believe will be enormously useful to us all.

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