

Date ratified by Directors
Meeting
20 March 2018

Review
Resources Committee

St John the Baptist



Catholic Multi Academy Trust

THE MAT MISSION STATEMENT

Our family of schools is united in the belief that God's love, peace, truth, and joy is for all. We are dedicated to the achievement of excellence in all we do. We cherish the uniqueness of each of our school communities and celebrate together as one Trust family. By following Jesus' example we bear witness to the greatness of God.

'To think, to feel, to do' Pope Francis

St John the Baptist Catholic MAT
Company No: 7913261
Registered Office: Surrey Street, Norwich NR1 3PB

EMPLOYEE DISCIPLINE PROCEDURE



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Employee discipline procedure for St John the Baptist Catholic MAT

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1. Purpose and scope

- 1.1 The *Employee discipline procedure* supports the Directors and Local Governing Body's (LGB) standards and rules (including the Code of Conduct) and aims to ensure consistent and fair treatment for all. It is not there to deal with problems associated with unsatisfactory work performance arising from an employee's lack of capability.
- 1.2 The procedure applies to all employees except support staff in their probationary period (for which issues would be addressed within the *Probation: procedure for schools document*).
- 1.3 Any complaints from parents (or others associated with the school) concerning the conduct of a member of staff should be dealt with under this employee discipline procedure and not the school's complaints procedure. Reference may also need to be made to the 'Allegations of Abuse against Staff policy'. The details of the investigation and any sanction given as an outcome will remain confidential.
- 1.4 Disciplinary issues relating to all employees must be handled in a fair and equitable manner. Each case must be looked at on its own merits and any relevant circumstances taken into account.
- 1.5 The Headteacher (and/or local governors when appropriate) is responsible for operating this procedure and is able to issue disciplinary *warnings*. Legislation allows for *dismissal* decisions to be made by:-
 - one or more governors
 - the Headteacher
 - one or more governors with the Headteacher

The Directors, in agreement with each Local Governing Body should, on at least an annual basis, discuss and agree where responsibility for dismissal of staff (other than the Headteacher) will fall and their decision must be formally recorded in the minutes of the full Directors meeting. Current practice is that each Headteacher is delegated authority to dismiss on an annual basis, and that each LGB is delegated

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the authority from the Directors to oversee and operate this procedure at a local level regarding all staff apart from the Headteacher.

- 1.6 Where the conduct of the Headteacher is the focus of this procedure, all references to “Headteacher” in the text should be read “Chair of Directors or other nominated Director with advice and support from the LGB, the Diocese or her representatives”. At all stages in the process, the Chair of Directors should work with, and take advice from, the LGB and the appointed representative(s) of the Diocese. Where there is a case to answer a panel of Directors and the Chair of the LGB shall be convened to consider the allegations and take disciplinary action, including dismissal, where appropriate.
- 1.7 The Headteacher, Directors and Governors are advised to consult the *Code of Conduct* for more detailed support in how to consider alleged disciplinary offences. Where alleged misconduct appears to warrant action under the procedure, advice should be sought from the school’s preferred HR provider.
- 1.8 The Directors and each Local Governing Body have overall responsibility for specifying the standards of behaviour required, enforcing the rules and ensuring that any breaches are tackled promptly.
- 1.9 Employees who abuse this (or any other) procedure by making malicious or frivolous allegations may face disciplinary action.
- 1.10 All parties involved in a disciplinary matter should treat the information which is the subject of the disciplinary investigation in strict confidence.
- 1.11 Information should not be shared with anyone who is not directly involved in these procedures. However those involved can discuss these matters with their representatives or advisers and, in some cases, there will be a requirement for information to be shared with other bodies (for example, where allegations of abuse are made or suitability to work with children in the future may be a concern).

2. Procedure

- 2.1 An employee who is subject to this procedure has the right to be:
 - accompanied by a trade union representative or work colleague at the investigation stage; and
 - represented by a trade union representative or work colleague at a disciplinary/appeal hearing.
- 2.2 The employee is responsible for arranging to be accompanied or represented.
- 2.3 An employee can be offered transfer to alternative employment in the school or another school in the MAT (including demotion to a post with less responsibility on a lower grade) as an alternative to dismissal, either as a result of a disciplinary hearing or on appeal, if this is considered appropriate. This would not be an option in cases of summary dismissal for gross misconduct and is unlikely to be deemed appropriate where the employee’s misconduct was linked to working with children.

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- 2.4 If the employee concerned is a trade union steward or officer, the Headteacher should, with the agreement of the employee, inform the full-time trade union officer prior to commencement of this procedure. Advice on this should be taken from the school's preferred HR provider.
- 2.5 No employee will be dismissed for their first breach of discipline, unless it is a case of gross misconduct.
- 3. Cases involving child protection issues, vulnerable adults or financial irregularities**
- 3.1 Any complaint involving allegations relating to child protection issues must be referred to the Local Authority Designated Officer (LADO) and then his/her advice must be considered before any investigation takes place under this procedure. The 'Allegations of abuse against Staff Policy' must also be followed in these cases.
- 3.2 The Education Funding Agency, the Regional Schools Commissioner and the DfE must be notified of any allegations or indications of any financial irregularities immediately. The results of the Audit investigations will form part of the conclusion and recommendation of the Investigatory report.
- 4. Suspension**
- 4.1 The law delegates suspension to the Headteacher or nominated local governors. In the case of employees other than the Head teacher, the Head teacher will normally take the decision to suspend. In the case of the suspension of the Head teacher, the Chair of Governors will take this decision. In the case of the suspension of a member of the Executive Team, the Chair of Directors will take this decision. The SJB CMAT will not suspend a member of staff without serious consideration, and will not do it automatically once an allegation has been made. Depending on the nature of the case, it may be possible that alternative arrangements are made so that the individual can continue working, for example, redeployment. The SJB CMAT should consider the potential permanent, professional and reputational damage to teachers that can result from suspension where an allegation is later found to be unsubstantiated, unfounded or maliciously intended.
- 4.2 If there are clear indications that an employee has acted in a manner which may constitute gross misconduct, or if the employee's presence at work could hinder the investigation, suspension would be appropriate. The Headteacher or nominated local governor should, where possible, consult the employee before the decision to suspend is taken. In the case of suspension, the employee will receive written confirmation within one working day and will be informed of the reason for the suspension. The person should be informed at that point who their named contact is within the organisation and provided with their contact details. This contact person will not be involved in the investigation in any way.
- 4.3 When a decision to suspend is taken, it must be made clear that the suspension is neither a disciplinary penalty nor an assumption of guilt. The employee must be

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given the details of people or organisations they can contact for support whilst suspended.

- 4.4 Gross misconduct is generally defined as misconduct serious enough to fundamentally undermine (ie damage beyond repair) the employment contract between the employer and the employee and to make any future working relationship and trust impossible. Examples of gross misconduct are given in the the *Code of Conduct*.
- 4.5 If a suspended employee is certificated by his/her GP as being unfit for work, s/he will be paid in accordance with their sick pay entitlement for that period of certification. This means that if a period of certificated sick leave continues beyond the employee's entitlement to full pay, s/he will receive pay in line with their sick pay entitlement which may be at half pay or no pay rate.
- 4.6 At frequent intervals, the CEO, Headteacher and/or nominated governor or Director should review whether an employee should remain suspended. Any suspension which extends beyond four working weeks will be reported to the Chair of Governors or Directors as appropriate with details of how the investigation is progressing and when it is likely to end. Where any suspension continues for three months, the employee will be informed of the reasons for the suspension continuing and when it is likely to come to an end.
- 4.7 The responsibility for lifting suspension lies with the Directors and is delegated by the Directors to the Local Governing Body and this can be further delegated to the Chair of the LGB or the Headteacher.
- 4.8 In cases involving allegations of abuse against staff the Local Authority children's social care services or the police cannot require the SJB CMAT to suspend a member of staff or a volunteer, although the SJB CMAT should give appropriate weight to their advice. The power to suspend is vested in the CEO, Headteacher or the Chair of Governors or Directors who are the employers of staff at the School. However, where a strategy discussion or initial evaluation concludes that there should be enquiries by the local authority social care services and/or an investigation by the police, the LADO should canvass police and the local authority children's social care services for views about whether the accused member of staff needs to be suspended from contact with children and to inform the School & MAT about the consideration of suspension.
- 4.9 A risk assessment should be carried out for each individual case to determine whether the member of staff should be suspended. The assessment should take into account the context of the allegation, background information in relation to the member of staff, and other relevant information. It should also take into account whether a temporary transfer or period of paid leave is appropriate as an alternative to suspension. The assessment must be recorded and a copy kept on file.

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5. Investigation

- 5.1 Disciplinary action must not be taken before there has been an investigation into the circumstances.
- 5.2 Good practice suggests that the investigation should be undertaken by an appropriate individual other than the individual who will consider whether a sanction should be applied. In larger schools there is likely to be scope for the investigation to be conducted by a Deputy or Assistant Headteacher, leaving the Headteacher free to hear the case. Consideration as to who will carry out the investigation will be particularly important in those schools where the authority to dismiss has been delegated to the Headteacher. Where allegations have been made against the Headteacher, the Chair of Directors (or nominated Director) must seek support for the investigation through the Diocese.
- 5.3 The employee may be required (and this would normally be the case) to attend a formal investigatory interview. The employee must receive at least five working days notice in writing, of the requirement for him/her to attend. The letter should give him/her information about the allegations and his/her opportunity to be accompanied by a trade union representative or work colleague.
- 5.4 The investigation should be completed within four working weeks unless there are exceptional circumstances.
- 5.5 On completion of the investigation, the Headteacher (or nominated Director where allegations are against the Headteacher) should review all the information available and decide which of the following is appropriate:
- no action;
 - informal advice and discussion;
 - consideration under the formal disciplinary procedure (see 6 below).

6. Disciplinary hearing

- 6.1 If the Headteacher (or nominated Director) concludes, following investigation, that there is a case to answer at a disciplinary hearing, the employee will be notified in writing that a hearing will take place. The employee should be given at least five working days notice of the hearing. The following information should also be included in the letter:
- who will make the decision regarding disciplinary action;
 - a copy of this disciplinary procedure;
 - the date and time of the hearing;
 - details of the allegations;
 - reference to any documents that may form part of the evidence supporting the complaint or allegation and, where possible, a copy of these;
 - the names of any witnesses to be called;
 - the fact that the employee will have the opportunity to state his/her case and question any witnesses;
 - the right to invite a trade union representative or work colleague to represent them;

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- any previous warnings that could be taken into account when deciding the level of any disciplinary action;
- the fact that, depending on its findings, the hearing could result in disciplinary action and (adding where appropriate) that this could include dismissal;
- a statement that the employee must take all reasonable steps to attend the meeting.

A second copy of the documentation above should be provided to the employee for them to pass to their trade union representative or work colleague. If requested by the employee, this second set of papers can be issued direct to the trade union representative or work colleague.

- 6.2 Where the alleged misconduct is not likely to require a sanction beyond a Final Written Warning, the case will be heard by the Headteacher (or a panel of Directors and the Chair of the LGB where the Headteacher's conduct is in question).
- 6.3 Where the alleged misconduct has the potential to result in dismissal, the case will be heard by a panel of local governors unless the authority to dismiss has been delegated to the Headteacher, in which case the Headteacher will hear the case. The exception to this is where the Headteacher's conduct is in question.
- 6.4 At a disciplinary hearing which may result in dismissal, a senior member of the school's preferred HR provider team must be present to advise the Headteacher or Local Governors' Disciplinary Panel. Depending on the severity of the possible outcome it may be appropriate to have two members of the HR provider team advise the Headteacher and Panel separately. A full set of the papers detailed in 6.1 must be issued to the school's preferred HR provider adviser at least five working days in advance of the hearing.
- 6.5 The hearing should follow the sequence of steps detailed at '*Procedure at Disciplinary and Appeal Committee hearings*'.
- 6.6 Disciplinary action can be taken at any level from a recorded oral warning to dismissal, depending on the nature of the misconduct.

7. Result of hearing - disciplinary action

If, following an investigation and disciplinary hearing, the Headteacher (or nominated Director) concludes that disciplinary action is required, the following options are available:

7.1 Recorded oral warning

If the conduct concerned is unacceptable but not serious in nature, a recorded warning will normally be appropriate. (See paragraph 7.5 about written confirmation.)

7.2 Written warning

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If the offence is too serious for a recorded oral warning, or if there is further misconduct while a recorded oral warning remains in force, the Headteacher/ Local Governors / Directors may determine to give the employee a written warning. (See paragraph 7.5 about written confirmation).

7.3 Final written warning

If the misconduct is too serious for a written warning but not serious enough to warrant dismissal, or if there is further misconduct while a previous written warning remains in force, the Headteacher/governors/ Directors may determine to give the employee a final written warning. (See paragraph 7.5 about written confirmation).

7.4 Written confirmation of warnings

The Headteacher/governors/ Directors must give the employee written confirmation of any warning, within five working days together with an explanation of:

- the reason for the warning;
- whether it is a recorded, written or final warning;
- the employee's right of appeal (see paragraph 9);
- the fact that a note will be kept on their personal file indicating that a warning has been given, the reasons for it and any required improvements in conduct which have been specified;
- the fact that further misconduct may lead to further disciplinary action which could, where appropriate, include dismissal;
- the fact that the warning will be disregarded for further disciplinary purposes after the expiry of the time period.

7.5 Dismissal with notice (including dismissal with offer of re-engagement)

If, while a final written warning is still in force, the employee's conduct is still unsatisfactory, as determined by a subsequent investigation and disciplinary hearing, the Headteacher/disciplinary panel will determine to dismiss with contractual notice. The Headteacher/Chair of the Disciplinary Panel will confirm the dismissal recommendation in writing within five working days, explaining the reasons for the dismissal and the employee's right of appeal. (See paragraph 9). The employee will receive full pay during the notice period. St John the Baptist Catholic MAT will issue the formal confirmation of dismissal to bring employment to an end.

If appropriate and an opportunity exists, the Headteacher or panel of governors / Directors *may* dismiss an employee on the above grounds and offer to re-employ them in a different job in the school or the MAT. The alternative post should be identified when the employee is told the outcome of the disciplinary hearing and this may require the proceedings to be adjourned. The alternative post may mean demotion to a lower grade. No pay protection will apply. A final written warning will form part of such a disciplinary decision. If the employee refuses the offer of transfer/demotion, his/her dismissal will take place.

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7.6 Summary dismissal

If, following an investigation and disciplinary hearing, the Headteacher or panel of governors / Directors is satisfied that an employee is guilty of gross misconduct, the determination can be made to dismiss the employee. The Headteacher or Chair of the Disciplinary Panel will confirm the determination to dismiss in writing, within five working days explaining the reasons for the dismissal and the employee's right of appeal. St John the Baptist Catholic MAT will issue the formal confirmation of dismissal to bring employment to an end.

8. Time limits for warnings

- 8.1 Unless there are exceptional circumstances, disciplinary warnings will be disregarded for disciplinary purposes once the following periods of time have elapsed since the warning was given:
- recorded warnings - 6 months
 - written warnings - 1 year
 - final written warnings - normally 2 years, such other time as is considered appropriate - see paragraph 8.2 below
- 8.2 Depending upon the nature of the misconduct, the Headteacher or Governors' / Directors Disciplinary Panel may impose a final written warning that will remain in force for a period of greater than 2 years. In this event the employee must be told at the outset and in writing how long the warning will remain in force and the reason for the longer time period.
- 8.3 In St John the Baptist Catholic MAT the Directors are the employer and therefore the decision to dismiss should be acted on by the MAT and all schools within the MAT.
- 8.4 In exceptional circumstances (eg abuse against children), the written warning may be extended for as long as the employee concerned is employed in his/her current job or a similar job. If an employee considers that the extended time period is unreasonable, he or she may appeal to the Clerk to the Local Governors (or Company Secretary in the case of a Directors Panel) who will convene an Appeal Hearing.
- 8.5 Where disciplinary action relates to abuse against children, breaches of financial regulations or issues which relate to racial, sexual or disability discrimination, the relevant documentation should be retained on the employee's personal file until the employee reaches retirement or 10 years whichever is the longer, but will not form part of any subsequent disciplinary action if it is time-expired.
- 8.6 In all other disciplinary actions the relevant documentation will be removed from the file and will be destroyed, with the exception of the letter to the employee which confirms the outcome of the disciplinary hearing. This letter will not, however, form part of any subsequent disciplinary action if it is time-expired.

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9. Appeals

- 9.1 An employee who wants to appeal against a disciplinary decision should inform the Clerk to the Local Governors (or Company Secretary in the case of a Directors Panel) within five working days of receiving the decision in writing. The employee must explain the grounds for the appeal, specifying whether it relates to:
- the facts of the matter,
 - the level of sanction imposed or
 - the way the procedure was followed.
- 9.2 The purpose of an appeal is:
- to review the decision taken by the Headteacher or panel of governors / Directors;
 - to consider whether the procedure has been followed correctly.
- 9.3 An appeal is a review of the decision of the Headteacher/disciplinary panel. It could be held as a re-hearing of the case or as a more focused reviewed of particular elements of the process, depending on the nature of the appeal. The outcomes open to the Appeal Panel are to:
- uphold the appeal,
 - reject the appeal in full,
 - reject the appeal in part and impose a lower level of warning,
 - (exceptionally) reject the appeal and impose a higher level of warning up to and including a final written warning.
- 9.4 The employee will be given at least five working days notice of the appeal hearing and will be given the following information in a letter:
- who will hear the appeal,
 - date, time and place of the appeal hearing,
 - a reference to any key documents that may form part of the hearing and, if appropriate, copies of these,
 - the right of the employee to be accompanied by a companion,
 - a statement that the employee must take all reasonable steps to attend the meeting,
 - the names of any witnesses to be called by those putting the case against the employee; similarly a statement that the employee may call witnesses,
 - a statement of the range of possible outcomes of the hearing.
- 9.5 An appeal against any warning or dismissal will be heard by a panel of three governors or Directors who have not previously been involved in the case. The appeal will normally take place within six working weeks of the appeal request being received by the Clerk to the Governors (or Company Secretary in the case of a Directors Panel).
- 9.6 At an appeal hearing against dismissal, a senior member of the school's preferred HR provider team must be present to advise the Disciplinary Panel.
- 9.7 The procedure outlined at '*Procedure at Disciplinary and Appeal Committee hearings*' will be followed for those appeals that are considered appropriate for a re-

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hearing of the case. Where an appeal is entered focusing on specific elements of the process, an alternative procedure may be determined by the Appeals Panel.

- 9.8 The Headteacher/Chair of the Disciplinary Panel will present the case at any appeal against a disciplinary decision.
- 9.9 The Chair of the Appeals Panel must confirm the decision of the Panel in writing to the employee within five working days.

10 Further statutory requirements

- 10.1 Any employee being dismissed for misconduct linked to children and which potentially could impact on their suitability to work with children must be referred to the Independent Safeguarding Authority (ISA). Any teachers dismissed for misconduct who are not referred to the ISA must be referred to the National College for Teaching and Leadership (NCTL) and the DfE.
- 10.2 Statutory guidance exists which requires employers to see through to a conclusion disciplinary cases linked to child safeguarding. Even in situations where an employee resigns from the school when they could have been dismissed, the case should be heard in accordance with this procedure so that a decision is reached and either the ISA or NCTL can be informed as appropriate.

11 Informal Action

- 11.1 A line manager may give informal warnings at any time to those line managed about any conduct or performance falling short of the standard expected.
- 11.2 Informal warnings may be recorded in writing and referred to at a later stage to evidence that an informal approach was attempted and the success or failure of such an approach. Informal warnings will not normally be kept on record for longer than 12 months.
- 11.3 Failure to comply with informal action should not, on its own, be used as justification for issuing a higher form of sanction than would otherwise have been imposed under the formal process.

12 Assistance from the Diocese

- 12.1 In any case concerning the religious character of the MAT or a School, the Diocesan Schools Commission must be notified immediately the School or MAT becomes aware of the allegations and it may be represented at any relevant interview or meeting to advise the Headteacher, Directors or Governors.
- 12.2 In all cases involving any disciplinary sanction in relation to the Headteacher or to a person on the Leadership Spine, or to potential or actual dismissal of any other

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member of staff, the Diocesan Schools Commission may send a representative to advise the Headteacher, Directors or Governors.

Appendix 1

Model letter requiring attendance at a disciplinary hearing. HR advice must be taken before adapting this letter and sending to an employee as this letter may not be appropriate in some circumstances.

[ON HEADED NOTE PAPER]
[Strictly Private and Confidential]
[ADDRESSEE]
[ADDRESS LINE 1]

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[ADDRESS LINE 2]

[POSTCODE]

[DATE]

[Consider if this letter should be hand delivered or sent recorded or special delivery to ensure receipt.]

Dear [EMPLOYEE'S NAME],

Disciplinary hearing

I am writing to inform you that you are required to attend a disciplinary hearing in [PLACE] on [DATE] at [TIME]. The purpose of the hearing is to consider the following [complaints] [allegations] of [misconduct **OR** gross misconduct] [lack of capability] against you.

The [complaints] [allegations] are

[SET OUT ALLEGATION – *For Example: "you assaulted another employee" **OR** you have failed to meet the Teaching Standards applicable to your post*

The following documents will be considered or may be referred to at the hearing, copies of which are enclosed. [A copy of the procedure which will be followed at the hearing is also enclosed.]

[eg for misconduct

- A copy of the investigation report which includes:
 - Minutes of the investigatory interviews held with all parties
 - Copies of all letters sent to the employee regarding the allegations
- Copies of any documents obtained during the investigation
- Disciplinary procedure and any relevant code of conduct or other policies
- Your contract of employment]

[eg for capability

- A copy of the targets set and informal support plan
- Copies of lesson observations
- Copies of relevant letters or notes of meetings
- Capability procedure and any other relevant documents such as
- Your contract of employment]

[The following witnesses will be called to the hearing: [GIVE NAMES OF WITNESSES]

OR

[I do not intend to call any witnesses to the hearing.] If you wish to call any relevant witnesses to the hearing please let me have their names as soon as possible and no later than [DATE].

If there are any further documents you wish to be considered at the hearing, please provide copies as soon as possible and in any event at least two working days before the hearing. If you do not have those documents, please provide details so that they can be obtained.

The hearing will be held in accordance with the [Disciplinary] [Capability] Procedure which is enclosed **OR** set out in the Staff Handbook.

[If you are found guilty of misconduct you may be [issued with a written warning or a final written warning **OR** dismissed with notice or pay in lieu of notice]. [If you are found guilty of gross misconduct, you may be dismissed without notice and without pay in lieu of notice.]

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[If lack of capability is substantiated you may be [issued with a written warning or a final written warning **OR** dismissed with notice or pay in lieu of notice]

The hearing will be conducted by [NAME] and the following people will also be present: [GIVE NAMES OR JOB ROLES OF PARTICIPANTS]. You are entitled to bring a workplace colleague of your choice or a representative of your trade union to the meeting in accordance with the Disciplinary Procedure. If you are to be accompanied please let me know the name and position of your companion as soon as possible. I shall be accompanied at the hearing by [insert details] who will act as my adviser.

[Your suspension on full pay will continue pending the outcome of the disciplinary hearing.]

Please note that if you do not attend the hearing without good cause a decision may be taken to proceed in your absence.

An additional copy of this letter is enclosed for your adviser. This matter is strictly confidential and must not be discussed with anyone other than a professional advisor and your partner/immediate family. who must also be asked to keep the matter confidential

Please confirm that you have received this letter and that you will attend at the time stated above. If for any unavoidable reason you or your companion cannot attend at that time please confirm the reasons in writing/by email as soon as possible. If you have any specific needs at the hearing as a result of a disability or if you have any other questions please contact me in writing/by email as soon as possible.

Yours sincerely,

[NAME of delegated senior manager]

[email address] Job Title

APPENDIX 2

Guidance Notre on conducting Investigations – please see the separate advice document