

Procedure for Dealing with Allegations Against a Member of Staff

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1. Introduction

- 1.1 This document provides the framework of the steps to take where there is an allegation of physical or sexual abuse against a member of staff in relation to an Academy student. The process described in this document is intended for use with teaching and support staff. In this procedure, the term 'parents' means all those having parental responsibility for a child.
- 1.2 The Elliot Foundation Academies Trust recognises that any allegation is serious and needs to be dealt with in a sensitive, efficient manner. It is also important that those with responsibilities described in this procedure act without delay. All parties involved are likely to be distressed. Any disruption to the normal running of the Academy should be minimised.
- 1.3 Because of their daily contact with children, including the wider caring role, all staff may be vulnerable to accusation of abuse, by pupils or parents. Such allegations may be true, false, malicious or misplaced. Any ill-treatment (physical, emotional or sexual) of a pupil by a member of Academy staff is unacceptable. Depending on its severity it may be considered malpractice, assault or abuse. Clearly any such behaviour or conduct by a teacher or other member of staff is particularly serious given their position of trust. However, for an innocent person to be subject to investigation, possible arrest and suspension is a serious and damaging ordeal. TEFAT will support any staff members that are subject to false or malicious accusations and take appropriate actions in regards to the accuser.
- 1.4 This procedure applies to the management of cases of allegations that might indicate that a person is unsuitable to continue to work with children in their present position, or in any capacity. It should be used in respect of all cases in which it is alleged that a teacher or member of staff in a school has;
 - behaved in a way that has harmed a child, or may have harmed a child;
 - possibly committed a criminal offence against or related to a child; or,
 - behaved towards a child or children in a way that indicates he or she would pose a risk of harm if they work regularly or closely with children.

1.5 These procedures follow national and local requirements, reflecting the following principles:

- The safety and protection of children is paramount.
- To be consistent with natural justice.
- To allow for decisive protective action regarding pupils.
- Minimise distress and anxiety, and provide appropriate support for pupil, family and all staff.
- Balance the interests of pupils and all staff.
- Ensure a fair, thorough and quick assessment of all allegations.
- Judge if a criminal offence may have been committed.
- Recognise the potential for false allegations.
- Allow a distinction between abuse (where criterion of committing a criminal offence or significant harm is met) and malpractice.
- Ensure an outside agency independent of Academy and family, usually the Local Authority, considers the allegations.
- Ensure appropriate confidentiality.

2. Recognition of Concerns

2.1 Children who report to Academy staff that they have been abused or in any way badly treated must be listened to and heard, whatever form their attempts to communicate their worries take. 'Listened to' means just that, on no account should suggestions be made to children about alternative explanations for their worries. A report of the incident must be completed as soon as possible, signed and dated, with the time of the communication disclosed by the child and the time the report was written.

Teachers and Academy staff cannot promise total confidentiality to a pupil making allegations. They must explain to the pupil, having regard to their age and level of understanding, the need to investigate, saying they have a duty to report the matter as it relates to the child's welfare and safety, and to that of other pupils.

3. Designated Child Protection Officer

3.1 Each Principal must designate a member of staff to act as the Child Protection Officer (CPO) for their Academy. The Principal's PA/Office Manager may not act as the CPO. The Principal shall advise the LGB,

all members of staff and the TEFAT HR Business Partner of the name of the Academy's CPO and informs them of any changes.

4. Receiving an Allegation

4.1 All allegations of physical or sexual abuse made against a member of staff in relation to a student must be reported immediately to the Principal, the CPO, and to the Local Authority Designated Child Protection Officer (LADO) and the EPM¹ HR officer for advice. Unless the allegation is about the Principal in which case it should be reported to chair of LGB, the EPM HR officer, the CPO and to the LADO. Allegations against TEFAT centrally employed staff who provide services to the Academy and who have contact with pupils, must be reported immediately to the Principal, to the staff member's Line Manager, the CPO and to the LADO; and will be managed in line with these procedures, with the Line Manager taking the role of the Principal.

4.2 Allegations against members of staff are always a source of distress to all involved. However, staff have a duty of care to protect children and failure to report allegations could itself lead to criminal prosecution.

4.3 At this stage, the CPO must make a written record (timed and dated) of what has been reported and allegations **MUST** not be passed to the 'alleged perpetrator'. This is normal in child protection matters as it could lead to intimidation or influence being used against the child or young person. It may also cause unnecessary stress to the member of staff if the allegations are proved untrue at an early stage.

4.4 When a Principal/CPO receives an allegation, they must consult without delay, the LADO. They may also seek advice and guidance from a Senior Officer's in the Local Authority Children's Services. They should also seek advice from their EPM HR officer. The Principal and LADO for Child Protection must consider all allegations to assess whether there is sufficient substance to warrant an investigation. The Principal's right to make decisions on these matters is supported by their duty to carry out independent consultation with the Local Authority.

4.5 In the event of the allegation being made against the Principal, the CPO is responsible for reporting the allegation to the chair of LGB, who will decide who will undertake the role assigned to the Principal throughout this procedure in liaison with the Director of HR.

¹ Education Personnel Management (the TEFAT procured HR service)

5. Investigation Following Initial Consideration

5.1 All allegations will be reported via the Principal or CPO, and also those made directly to the police or children's social care, to the LADO for Child Protection. This ensures objective examination by a person independent of the Academy, and enables inter-agency consultation as appropriate.

5.2 The LADO will discuss the allegation with the Principal (or CPO) to confirm details. The purpose of an initial discussion is to consider the nature, content and context of the allegation and agree a course of action. It may be necessary to involve the police, if the person is deemed to be an immediate risk to children or there is evidence of a criminal offence. Where there is no such evidence, the Principal or CPO should consider whether police involvement is necessary.

5.3 The LADO will discuss how and by whom the parents should be informed, if they are not already aware; in cases where the police and/or social care need to be involved, these agencies should be consulted. In some instances, e.g. if the child is injured and/or needs medical treatment, the Academy may need to contact the parents first.

5.4 Where other children need to be interviewed at any stage of the investigation, parental consent should be obtained in advance.

5.5 The Principal must inform the accused of the allegation as soon as possible after consulting the LADO, though if the police and/or social care are to be consulted then this should be done first, to clarify what information can be disclosed. If the person is a member of a trade union or professional association, s/he must be advised to contact them at the outset.

5.6 If there is cause to suspect the child is suffering or likely to suffer 'significant harm', a strategy discussion must be convened in accord with pp36-38 of 'Working Together to Safeguard Children' (DfE March 2015). This should include a representative of the Academy and take into account information the Academy has about the circumstances or context of the allegation, and the pupil, family and member of staff concerned. It may consider whether any other children are likely to be or have been at risk, whether any previous allegations should be reviewed, or whether to interview any other children including ex-pupils. S.27 of the Children Act 1989 provides the legal basis and requirement for schools' co-operation with S.47 Child Protection Investigations.

5.7 Where a formal strategy discussion is not considered appropriate because the threshold of “significant harm” is not reached, but a police investigation might be needed, the LADO should nevertheless conduct a similar discussion with the Police, the Academy, and any other agencies involved with the child to evaluate the allegation and decide how it should be dealt with. Like a strategy discussion that initial evaluation may not need to be a face to face meeting. It should share available information about the allegation, the child, and the person against whom the allegation has been made, consider whether a police investigation is needed and if so, agree the timing and conduct of that. In cases where a police investigation is necessary the joint evaluation should also consider whether there are matters which can be taken forward in a disciplinary process in parallel with the criminal process, or whether any disciplinary action should await completion of the police enquiries and/or prosecution.

5.8 If the allegation is about physical contact, the strategy discussion or initial evaluation with the police should take account of the fact that teachers and other Academy staff are entitled to use reasonable force to control or restrain pupils in certain circumstances, including dealing with disruptive behaviour, under s550A of the Education Act 1996. The TEFAT ‘Safe working practises for staff’ should be referred to for guidance.

5.9 If the complaint or allegation is such that it is clear that an investigation by police and/or enquiries by social care are not necessary, or the strategy discussion or initial evaluation decides that is the case, the LADO should discuss next steps with the Principal and CPO. Options open to the Academy depend on the nature and circumstances of the allegation and the evidence and information available, and will range from taking no further action, to disciplinary action, suspension, to summary dismissal or a decision not to use the person’s services in future. However, suspension should not be the default position – an individual should only be suspended if there is no reasonable alternative.

5.10 In some cases, further enquiries will be needed to enable a decision about how to proceed. If so, the LADO should discuss with the Principal and CPO how and by whom the investigation will be undertaken. In straightforward cases that should normally be undertaken by a member of the Academy’s Senior Leadership Team. However, in other circumstances lack of appropriate resource within an Academy, or the nature or complexity of the allegation will require an Independent Investigator (see Appendix 1).

5.11 Where needed, this may be done using an investigator recommended by the TEFAT Director of HR.

5.12 Where it is considered that the allegation represents poor or inappropriate behaviour by the staff member, the matter will be considered further by an investigation under disciplinary procedures (for any of the above see appendix 1 for relevant time scales).

6. False, Malicious or Unfounded Allegations

6.1 The initial sharing of information and evaluation may lead to a decision that no further action or investigation is required. If the allegation is considered to be demonstrably false or unfounded, the Principal will:

- Consider with the LADO whether the child may have been abused by someone else, and if so, make appropriate referral
- Inform the teacher/staff member verbally and in writing of the allegation and the decision that no further action is to be taken under disciplinary or child protection procedures (the member of staff may be accompanied by a trade union or professional association representative)
- Consider offering and making available to the staff member counselling and/or informal professional advice as appropriate
- Inform the parents of the child(ren) of the allegation and outcome
- Consider appropriate counselling and support for the child(ren) who made the allegation and where appropriate, their parents, in particular taking into account a child's special needs where a false or malicious allegation is considered to have been made.
- Make a written report covering above and the reasons for the decision that the allegation is considered to be false or unfounded.

7. Internal Disciplinary Procedure and Suspension

7.1 The possible risk of harm to children posed by an accused person needs to be carefully and effectively evaluated and managed – in respect of the child or children involved in the allegations, and any other children in the individual's home, work or community life. In some cases, that will require the Academy to consider suspending the person on full pay until the case is resolved. Again suspension should not be the default position – an individual should only be suspended if there is no reasonable alternative.

7.2 Suspension should be considered, but is not automatic, in any case where there is cause to suspect a child is at risk of significant harm, or the allegation warrants investigation by the police, or where it is necessary to allow the conduct of the investigation to proceed unimpeded, or is so serious that it might be grounds for dismissal. Academies should consult their EPM

HR officer and also consider whether the result achievable by suspension could be obtained by alternative arrangements (e.g. leave of absence, transfer duties or additional supervision).

7.3 Neither the local authority, the police, nor children's social care, can require an Academy to suspend a member of staff or a volunteer. The power to suspend is vested in the Principal and chair of LGB (for Principal). However, where a strategy discussion or initial evaluation concludes that there should be enquiries by social care and/or an investigation by the police, the LADO should canvas police/social care views about whether the accused member of staff needs to be suspended from contact with children, to inform the Academy for consideration of internal disciplinary procedures and suspension.

Prior to taking the decision to suspend a risk assessment and consideration of alternatives to suspension must be undertaken.

7.4 Where it has been deemed appropriate to suspend the person, written confirmation should be dispatched within one working day, giving the reasons 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. Staff must be advised of their rights, and to contact their Union or professional association representative, and given the opportunity for appropriate support and/or counselling through Work Life Support and/or Occupational Health.

8. Outcomes to the Consideration of an Allegation

8.1 That the allegation is without foundation and needs no further investigation;

8.2 Police investigation of a possible criminal offence;

8.3 Enquiries and assessment by children's social care about whether a child is in need of protection or in need of services;

8.4 Consideration by the Academy of disciplinary action in respect of the individual.

On conclusion of the due process, some cases will need to be referred to the Disclosure & Barring Service (DBS) for consideration of inclusion to the Barred Lists, or consideration by the National College for Teaching and Leadership about a possible prohibition order against an individual. There is

a legal requirement for employers to make a referral to the DBS where they think that an individual has engaged in conduct (including inappropriate sexual conduct) that harmed (or is likely to harm) a child or if a person otherwise poses a risk of harm to a child. In such circumstances, the duty to refer an individual to the DBS arises where an employer has removed the individual from relevant work with children or the person has chosen to cease relevant work in circumstances where they would have been removed had they not done so. Professional misconduct cases should be referred to the relevant regulatory body.

8.4.1 In some circumstances the Academy at which the person works will need to consider a case in which normal disciplinary procedures do not apply, and may need to act jointly with another organisation. That will be necessary when, for example, an allegation is made against a supply teacher provided by an employment agency or business, or against a person employed by a contractor, or a volunteer provided by a voluntary organisation. In some cases, normal disciplinary procedures may not be appropriate because the person is a volunteer or self-employed. Although in those cases the Academy will not have a direct employment relationship with the individual, it and the other organisation concerned, if any, will need to be involved and cooperate in an investigation, and in reaching a decision about whether to continue to use the person's services, or to provide the person for work with children in future, and whether to report the person to the DBS.

9. Supporting Those Involved

9.1 Parents or carers of a child or children involved should be told about the allegation as soon as possible if they do not already know of it. However, where a strategy discussion is required, or police or local authority children's social care services need to be involved, the Principal should not do so until those agencies have been consulted and have agreed what information can be disclosed to the parents. They should also be kept informed about the progress of the case, and told the outcome where there is not a criminal prosecution, including the outcome of any disciplinary process. The deliberations of a disciplinary hearing, and the information taken into account in reaching a decision, cannot normally be disclosed, but the parents or carers of the child should be told the outcome in confidence.

9.1.1 In deciding what information to disclose, careful consideration should be given to the provisions of the Data Protection Act 1998, the law of confidence and, where relevant, the Human Rights Act 1998.

9.2 In cases, where a child may have suffered significant harm, or there may be a criminal prosecution, local authority social care services, or the police as appropriate, should consider what support the child or children involved may need.

9.3 The Academy has a duty of care to their employees. Academies must act to manage and minimise the stress inherent in the allegations and disciplinary process. Individuals should be informed of concerns or allegations as soon as possible and given an explanation of the likely course of action, unless there is an objection by the local authority social care services or the police. Support for the individual is key. This may include support via the Occupational Health Provider; details can be obtained from EPM. If suspended the Academy should also keep the individual informed of developments at the Academy. Where the person is a member of a union or professional association s/he should be advised to contact that body at the outset.

9.4 The Academy should appoint a named representative to keep the person who is the subject of the allegation informed of the progress of the case and consider what other support is appropriate for the individual. Particular care needs to be taken when employees are suspended to ensure that they are kept informed of both the progress of their case and current work related issues. Social contact with colleagues and friends must not be prevented unless there is evidence to suggest that such contact is likely to be prejudicial to the gathering and presentation of evidence.

10. Confidentiality

10.1 Every effort should be made to maintain confidentiality and guard against unwanted publicity while an allegation is being investigated / considered. In accordance with the Association of Chief Police Officers (ACPO) guidance the police will not normally provide any information to the press or media that might identify an individual who is under investigation, unless and until the person is charged with a criminal offence. In exceptional cases where the police might depart from that rule, e.g. an appeal to trace a suspect, the reasons should be documented and partner agencies consulted beforehand. The system of self-regulation, overseen by the Press Complaints Commission, also provides safeguards against the publication of inaccurate or misleading information.

10.2 Academies should take advice from the LADO, police and social services to agree the following:

- Who needs to know and, importantly, exactly what information can be shared
- How to manage speculation, leaks and gossip – it is essential to reduce this risk by acting promptly.
- What, if any, information can be reasonably given to the wider community to reduce speculation
- How to manage press interest and how it should arise

10.3 The Principal may be required to prepare a standard response to queries by Academy parents and the media. The response should indicate that:

- The matter is governed by procedures which the Principal is obliged to follow
- The matter is in the hands of appropriate agencies and no further comment can be made
- No names can be given for public use

11. Resignations and Settlement Agreements

11.1 The fact that a person tenders his or her resignation, or ceases to provide their services, must not prevent an allegation being followed up in accordance with these procedures. It is important that every effort is made to reach a conclusion in all cases of allegations bearing on the safety or welfare of children, including any in which the person concerned refuses to cooperate with the process.

11.2 Wherever possible the person should be given a full opportunity to answer the allegation and make representations about it, but the process of recording the allegation and any supporting evidence, and reaching a judgement about whether it can be regarded as substantiated on the basis of all the information available, should continue even if that cannot be done or the person does not cooperate. It may be difficult to reach a conclusion in those circumstances, and it may not be possible to apply any disciplinary sanctions if a person's period of notice expires before the process is complete, but it is important to reach and record a conclusion wherever possible.

11.3 By the same token so called Settlement Agreements, by which a person agrees to resign if the Academy agrees not to pursue disciplinary action, and both parties agree a form of words to be used in any future reference, **MUST NOT** be used in these cases. In any event, such an agreement will not prevent a thorough police investigation where

appropriate nor can it override the statutory duty to make a referral to DBS where circumstances do require so.

12. References

12.1 Cases in which an allegation was proven to be unsubstantiated, unfounded or malicious should not be included in employer references. A history of repeated concerns or allegations which have all been found to be unsubstantiated, malicious etc. should also not be included in any reference.

13. Record Keeping

13.1 Details of allegations that are found to have been malicious should be removed from personnel records. However, for all other allegations, it is important that a clear and comprehensive summary of the allegation, details of how the allegation was followed up and resolved, and a note of any action taken and decisions reached, is kept on a person's confidential personnel file, and a copy provided to the person concerned. The CPO is required to manage the keeping of records in relation to the allegation. Where a person makes an oral, a written record should be produced and, as with other written statements, it should be signed and dated by the author on every page of the document.

13.2 The purpose of the record is to enable accurate information to be given in response to any future request for a reference, where appropriate. It will provide clarification in cases where future DBS Certificates reveal information from the police about an allegation that did not result in a criminal conviction and it will help to prevent unnecessary reinvestigation if, as sometimes happens, an allegation resurfaces after a period of time. These records must be stored securely at the Academy. The record should be retained at least until the person has reached normal retirement age or for a period of ten years from the date of the allegation if that is longer. The Information Commissioner has published guidance on employment records in its Employment Practices Code and supplementary guidance, which provides some practical advice on employment retention.

14. Timescales

14.1 It is in everyone's interest to resolve cases as quickly as possible, consistent with a fair and thorough investigation. All allegations must be investigated as a priority so as to avoid any delay. Target timescales are shown below for different actions in the summary description of the process.

The time taken to investigate and resolve individual cases depends on a variety of factors including the nature, seriousness and complexity of the allegation, but these targets should be achieved in all but truly exceptional cases. Subject to holiday periods it is expected that 80 per cent of cases should be resolved within one month, 90 per cent within three months, and all but the most exceptional cases should be completed within 12 months (see Appendix 1). Timescales will, however, also be dependent on the speed of external agencies such as the LADO.

14.2 For those cases where it is immediately clear that the allegation is unfounded or malicious, then it is expected that they should be resolved within one week. Where the initial consideration decides that the allegation does not involve a possible criminal offence, it will be for the Academy to deal with, although if there are concerns about child protection the Principal/CPO should discuss them with the LADO. In such cases, if the nature of the allegation does not require formal disciplinary action, the Principal should initiate appropriate action within three working days. If a disciplinary hearing is required and can be held without further investigation, the hearing should be held within 15 working days (see Appendix 1).

15. Oversight and Monitoring

15.1 The LADO has overall responsibility for oversight of the procedures for dealing with allegations, for resolving any inter-agency issues, and for liaison with the Local Safeguarding Children Board on the subject. The LADOs will provide advice and guidance to the Academy, in addition to liaising with the police and other agencies, and monitoring the progress of cases to ensure that they are dealt with as quickly as possible consistent with a thorough and fair process. Reviews should be conducted at fortnightly or monthly intervals depending on the complexity of the case.

15.2 Police forces should also identify officers who will be responsible for:

- liaising with the designated local authority officer(s)
- taking part in the strategy discussion or initial evaluation
- subsequently reviewing the progress of those cases in which there is a police investigation
- sharing information on completion of the investigation or any prosecution

15.3 If the strategy discussion or initial assessment decides that a police investigation is required, the police should also set a target date for

reviewing the progress of the investigation and consulting the Crown Prosecution Service (CPS) about whether to:

- charge the individual
- continue to investigate
- close the investigation

Wherever possible that review should take place no later than four weeks after the initial evaluation. Dates for subsequent reviews - ideally at fortnightly intervals - should be set at the meeting, if the investigation continues.

16. Information Sharing

16.1 In a strategy discussion or the initial evaluation of the case, the agencies involved should share all relevant information they have about the person who is the subject of the allegation, and about the alleged victim.

16.2 Wherever possible the police should obtain consent from the individuals concerned to share the statements and evidence they obtain with the Academy for disciplinary purposes. This should be done as their investigation progresses and will enable the police to share relevant information without delay at the conclusion of their investigation or any court case.

16.3 The local authority's social care should adopt a similar procedure when making enquiries to determine whether the child or children named in the allegation are in need of protection or services, so that any information obtained in the course of those enquiries which is relevant to a disciplinary case can be passed to the Academy without delay.

17. Action Following a Criminal Investigation or Prosecution

17.1 The police or the CPS should inform the Academy and LADO straight away when a criminal investigation and any subsequent trial is complete, or if it is decided to close an investigation without charge, or not to prosecute after the person has been charged. In those circumstances the LADO should discuss with the Principal/CPO or chair of LGB whether any further action, including disciplinary action, is appropriate and if so how to proceed. The information provided by the police and/or the local authority social care should inform that decision. The options will depend on the circumstances of the case and the consideration will need to take account of the result of

the police investigation or the trial, as well as the different standard of proof required in disciplinary and criminal proceedings.

18. Action on Conclusion of a Case

18.1 If the allegation is substantiated and the person is dismissed or the Academy ceases to use the person's services, or the person resigns or otherwise ceases to provide his or her services, the LADO should discuss with the EPM HR officer and TEFAT HR whether a referral to the DBS for consideration of inclusion on the Barred Lists or The National College for Teaching and Leadership.

18.2 There is a legal requirement for employers to make a referral to the DBS where they think that an individual has engaged in conduct (including inappropriate sexual conduct) that harmed (or is likely to harm) a child or if a person otherwise poses a risk of harm to a child. In such circumstances, the duty to refer an individual to the DBS arises where an employer has removed the individual from relevant work with children or the person has chosen to cease relevant work in circumstances where they would have been removed had they not done so. Professional misconduct cases should be referred to the relevant regulatory body. The DBS will consider whether to bar the person from working in regulated activity, which will include work in schools and other educational establishments. Academies and Local Authorities, and other bodies all have a statutory duty to make reports, and to provide relevant information to the DBS. Referrals should be made as soon as possible after the resignation or removal of the member of staff involved and within one month of ceasing to use the person's services.

18.3 In cases where it is decided on the conclusion of the case that a person who has been suspended can return to work, the Academy should consider how best to facilitate that. Most people will benefit from some help and support to return to work after a very stressful experience. An initial meeting to find out how they feel and to debrief. Depending on the individual's circumstances, a phased return and/or the provision of a mentor to provide assistance and support in the short term may be appropriate. The Academy should also consider how the person's contact with the child or children who made the allegation can best be managed if they are still a student at the Academy. If possible the member of staff should not be moved as this could feel like a punishment but this decision will depend upon the individual case.

19. Learning Lessons

19.1 At the conclusion of a case in which an allegation is substantiated the LADO should review the circumstances of the case with the Principal/CPO or TEFAT HR to determine whether there are any improvements to be made to the Academy's procedures or practice to help prevent similar events in the future. This should include issues arising from the decision to suspend the member of staff, the duration of the suspension and whether or not suspension was justified. The review can include a meeting with the accused, so they feel valued, listened to and supported, as well as to improve practice.

20. Action in Respect of Unfounded or Malicious Allegations

20.1 If an allegation is determined to be unfounded or malicious, the LADO should refer the matter to local authority children's social care to determine whether the child concerned is in need of services, or may have been abused by someone else. In the event that an allegation is shown to have been deliberately invented or malicious, the Principal/CPO, or chair LGB should consider what action is appropriate against the student who made it, or the police should be asked to consider whether any action might be appropriate against the person responsible, including if he or she was not a student. In September 2010 the CPS published guidance for the police on harassment under the Protection from Harassment Act 1997. Under the Equality Act 2010, harassment is not permitted. Harassment includes unwanted conduct related to a protected characteristic which has the purpose or effect of violating someone's dignity or which creates a hostile, degrading, humiliating or offensive environment for someone with a protected characteristic

21. Review of policy

The operation of this policy will be kept under review and such changes will be made to the policy as deemed appropriate following necessary consultation with the trade unions.



Appendix 1 Flowchart with timescales

