



## Castleton C of E Primary School

### Disciplinary Policy & Procedure for School Staff Implementation and Guidance (Part 2 - Including details of the Improvement Process, normally applied for cases of minor misconduct)



Reviewed	Review date
Reviewed and agreed 22/06/2026	June 2027

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# Disciplinary Policy and Procedure - Implementation and Guidance

## 1. Purpose

The first part of this document sets out a model Disciplinary Policy and Procedure which is recommended for adoption by Governing Boards in line with their powers. For Maintained Schools it forms the basis upon which the Authority will best be able to offer support. **Part 1, The Disciplinary Policy and Procedure Summary, does not stand alone, it is essential to adopt the policy in its entirety and follow the requirements set out in this document, Part 2 Implementation and Guidance, which provides more detail of the process as well as** guidance to Governing Boards in respect of disciplinary matters.

A disciplinary case results from an employee's conduct at work. Separate procedures are recommended to address issues of competence or absence from work. However, some incidents may be considered to be so serious as to merit direct application of the disciplinary procedure.

## 2. Introduction

### 2.1 General

Governing Boards of schools with delegated powers have the responsibility for determining arrangements to deal with disciplinary matters. The Governing Board is required to establish a disciplinary procedure and make it known to employees at the school.

A disciplinary procedure helps to ensure that necessary standards are maintained. It provides a fair, systematic, timely and consistent means of taking corrective action in a situation where an employee's standard of job performance, conduct, or cooperation fails to meet or falls below expectations.

Disciplinary matters can be a source of potential employee relations difficulties within a school and need to be handled fairly, consistently and with sensitivity.

A Governing Board wishing to introduce a modified or different policy and/or procedure would need to consult, with a view to agreeing, any variation from the model proposed with the relevant Trade Unions/Professional Associations. The Local Authority's Children's Services HR Department will offer advice to the Governing Board in respect of such changes. Where Governing Boards take advice from the Local Authority and follow the appropriate policy and procedure the school will be supported in responding to any claim at an employment tribunal. Where Governing Boards of Maintained Schools have not followed advice from the Local Authority, the costs of any financial award against the school are unlikely to be met by the Local Authority.

The Disciplinary Policy and Procedure must be issued as part of the Section 1 Statement on taking up an appointment.

## 2.2 Acting Reasonably

The law on unfair dismissal requires employers to act reasonably when dealing with disciplinary issues. What is reasonable will depend on the circumstances of each case, however, the core principles that Headteachers/Governors should work to are below:

- Use procedures to help and encourage employees to improve rather than as a way of imposing punishment.
- Deal with issues as thoroughly and promptly as possible.
- Ensure that the provisions of the Equality Act are adhered to. (See Equality & Diversity Policy).
- Act consistently.
- Keep information confidential.
- Inform the employee of the complaint against them and provide them with an opportunity to state their case before decisions are made.
- Allow employees the opportunity to be accompanied at disciplinary meetings, by a colleague, Trade Union Representative or an official employed by the Trade Union.
- Make sure that disciplinary action is not taken until the facts of the case have been established, and the action is reasonable in the circumstances.
- Give the employee a written explanation for any disciplinary action taken and make sure they know what improvement is expected.
- Give the employee an opportunity to appeal.

New employees may be inexperienced in working life and unsure of what is expected from them. Make sure that your induction procedures are thorough and that all employees receive detailed training in what they have to do and how to do it. If conduct or behaviour is an issue for concern, be more explicit as to the standards which are required, and if the problem persists, consider the use of the disciplinary or competence procedures as appropriate.

It follows that Headteachers/Governors must always apply the School/Academy's disciplinary procedure and comply with the principles contained in these guidance notes in dealing with matters of discipline.

Where any aspect of the disciplinary process might place an employee at a disadvantage, then you should consider, in conjunction with the school's HR provider, whether any adjustments are required to the process to accommodate the employee, to ensure a fair process is followed.

## 2.3 Disciplinary Rules

Under the terms of the Employment Protection (Consolidation) Act 1978, as Amended by the Trade Union Reform & Employment Rights Act 1993, employers are required to provide employees with a written statement of the main terms and conditions of their employment. Such statements must contain details of disciplinary rules and procedures applicable to them. Disciplinary rules should

define standards, examples of **Misconduct** and indicate what the level of transgression would constitute **Gross Misconduct**. Rules should be non-discriminatory, objective, easy to understand, and be seen to be reasonable and just.

Disciplinary rules should be reviewed from time to time to ensure that they are still valid.

Job and Person Profiles constitute rules that set a framework of tasks and duties against which standards of work performance can be assessed. It is therefore essential that Job and Person Profiles are well defined, structured, and drawn up for every post within the School. These should, therefore, be signed by the post holder, indicating acceptance of the requirements of the job. Whether signed by the staff member or not, they remain the descriptors through which expectations are clarified and defined.

An example of a list of Disciplinary Rules is attached at Appendix 1 in the Model Disciplinary Policy and Procedure.

## **2.4 Developing Disciplinary Procedures**

The importance of complying with the correct procedure cannot be over-emphasised, particularly if the consequences of decisions result in application to an Employment Tribunal.

Governors are also reminded that failure to comply with the provisions of the ACAS Code of Practice might lead to a successful claim of unfair dismissal, and the Governing Board will be the respondent at Employment Tribunals in such cases.

ACAS has produced a Code of Practice for the preparation and operation of disciplinary procedures. The Code provides that a disciplinary procedure should:-

- a) be in writing;
- b) specify to whom it applies;
- c) provide for matters to be dealt with quickly;
- d) indicate disciplinary actions which may be taken;
- e) specify the levels of management which have the authority to take the various forms of disciplinary action;
- f) provide for individuals to be informed of the complaints against them and to be given an opportunity to state their case before decisions are reached;
- g) give individuals the right to be accompanied by a Trade Union/Professional Association representative or friend of their choice;
- h) ensure that, except for gross misconduct, no employees are dismissed for a first breach of discipline;

- i) ensure that disciplinary action is not taken until the case has been carefully investigated;
- j) ensure that individuals are given an explanation for any penalty imposed;
- k) provide a right of appeal and specify the procedure to be followed.

Set out in the first part of this document is a model disciplinary policy and procedure for consideration by Governors based on existing good practice. It contains the main principles embodied in current national and local conditions of service and the ACAS (Advisory, Conciliation and Arbitration Service) Code of Practice.

The Governing Board and Headteacher will wish to ensure that all staff fully understands the Disciplinary Policy and Procedure and the particular role and responsibilities which they and the Professional Associations and Trade Unions have in its application.

The school's Disciplinary Policy and Procedure should apply to all employees. Where there is any indication that the employee may not fully understand the paperwork, for example if an employee has dyslexia or learning disabilities, you should ensure that reasonable adjustments are considered. For example, could the language be simplified, or additional time offered for employees to consider the paperwork, or should a face to face meeting be held to explain the issues to them. Recording of meetings may also be considered, if necessary.

Appendices 2a and 2b set out a recommended procedure for the Disciplinary and Appeal Committees.

Governors' attention is drawn to the information on dismissal on page 11 and on alternatives to dismissal detailed on page 8 in the Model Disciplinary Policy and Procedure. For Maintained Schools guidance and advice will be provided by the Schools HR Advisory Service.

### **3. Improvement Process**

In every case where a suspicion or allegation of misconduct by an employee comes to the Headteacher's attention, consideration should be given to whether action under the school's Disciplinary Procedure might be appropriate and whether a management investigation should be initiated. It may be appropriate to consider action within Appraisal, Competence, or Child Protection Procedures.

#### **Informal Management Intervention and Guidance**

In line with Principle 3.6 of the Disciplinary Policy and Procedure it is anticipated that informal action will be the first step through which concerns (relating to the conduct of an employee) are addressed. A two way discussion between the Headteacher and staff member should be held to point out any shortcomings in

conduct and to encourage improvement. Constructive criticism should place an emphasis on finding ways in which the employee can remedy any shortcomings. The Headteacher should listen to any explanation put forward by the employee.

It is the Headteacher's responsibility to clarify the areas of concern and the required standards. Appropriate action to meet the required standard should be agreed and a review date set at which to assess progress. Where appropriate, the Headteacher should offer training and any other relevant support in order to assist the employee to improve. This is a normal part of the managerial role.

A brief note of the Informal Intervention and Guidance discussion, along with the details of action taken, should be kept and placed on the employee's personal file. While not an agreed document, a copy of the file note should be sent to the individual for information. There is no set time for the note to remain on file but it should cease to be taken into account after 12 months has passed, if further Informal Management Intervention is required. *(It is good practice to adopt a schedule for the review of personal files with staff in order to identify any outdated and irrelevant items.)*

### **Formal Management Intervention and Guidance**

Where the above has failed to achieve a desired improvement in an employee's job performance or conduct, or the matter requires a formal response, Formal Management Intervention and Guidance should be undertaken. In cases where the employee's conduct is giving serious concern, the Headteacher may arrange for the conduct of a management investigation to determine whether a disciplinary procedure needs to be invoked or that Formal Management Intervention & Guidance is appropriate.

The objective of this process is to identify any underlying causes for below standard conduct and to agree with the employee what action is necessary for the employee to meet the required standards.

- a) The employee should be informed in writing of the requirement to attend a Formal Interview at a specific time and place and that s/he may, if so desired, be accompanied by a Trade Union/Professional Association Representative, friend or colleague, to give advice and make representation where necessary.
- The letter should inform them of the nature of the concerns including the date and time of any specific incident, in order that they may prepare a response, and make it clear to the employee the Formal Management Intervention & Guidance Process does not constitute part of the Formal Disciplinary Procedure but it is a reasonable and lawful instruction for an employee to attend an interview and it is not optional.

- The process should be a two way discussion. The Headteacher should state the nature of the individual's conduct they consider to be below standard and aim to identify the cause of the problem by questioning and discussion.
- At the conclusion of the discussion if the Headteacher is still of the view that the employee's conduct is below the required standard, it is the Headteacher's responsibility to clarify the areas of concern, establish with the employee any action necessary to assist them in meeting the required standard and set a review date at which to assess progress.
- After the interview, the Headteacher will confirm in writing to the employee, with a copy to the personal file, the outcome of the meeting and the mutually agreed action plan (if appropriate) and progress review date. If relevant, this should include any details of training and specialist help/counselling sessions also agreed.
- Throughout the review period the Headteacher will monitor the progress of the employee towards achieving the expected standards. Formal Management Intervention & Guidance may often be more satisfactory for resolving problems than a disciplinary interview, especially for staff that have recently joined the school, or have otherwise a record of long and satisfactory service at the school.
- If however during the discussion, it becomes obvious that the matter is more serious, the discussion should be adjourned and the Headteacher should make it clear that the matter will be pursued through the formal disciplinary procedure.
- At the end of the review period a further interview should be arranged to discuss progress. If the employee has reached a satisfactory standard no further action is necessary. If the employee has made insufficient progress towards achieving the required standards then the review date may be extended.
- If the employee has made no progress towards achieving the required standard without a relevant and acceptable reason the Headteacher should then advise the employee that their failure to improve the specific standard may lead to the implementation of the formal disciplinary procedure.
- In all cases the employee should be informed in writing of the outcome of the Formal Management Intervention, with a copy of the same document retained in their personal file. The employee may wish to submit a statement with their own perspective on the process/outcome and express any challenge. *(As stated above it is good practice to adopt a schedule for the review of personal files with staff in order to identify any outdated and irrelevant items.) The record of this intervention should cease to be taken into account after a period of 12 months has passed since the conclusion of*

*the associated action and review, should further Formal Management Intervention be considered in future.*

#### **4. Suspension**

**An employee should not be suspended automatically and the Headteacher or Chair of Governors should always seek appropriate advice before doing so. Where the Local Authority is the employer, the Schools HR Advisory Service must be informed immediately if suspension occurs.**

##### **4.1 Introduction**

Suspension is traumatic for the member of staff, their family, and their colleagues as well as pupils and their parents. It is, therefore, important to have, and follow, an appropriate procedure to ensure that suspension does not occur unnecessarily and to avoid potential challenges when it is believed to be appropriate and takes place.

**In all cases where a member of staff is to be suspended the following considerations and process must, therefore, be followed:**

##### **4.2 Reasons for Suspension**

There must be a good reason for the suspension of a member of staff, it should only be considered where:

- a) There are Safeguarding issues, such that a child or children are at risk.
- b) The allegation is likely to be of gross misconduct and dismissal is possible.
- c) An allegation of misconduct has been made against the member of staff and it is judged that their continued presence in the workplace may impede or prejudice the investigation (e.g. potential removal/destruction/contamination of evidence; influencing witnesses).
- d) An allegation of misconduct has been made against a member of staff the nature of which could involve potential risks to pupils or other employees.
- e) Other relevant circumstances arise, such as Formal Competence Procedures and evidence is available that no teaching or learning is taking place, and which will lead to a recommendation to the Governing Board for the member of staff to be dismissed.

No extra travel costs should be incurred by the employee as a result of suspension.

In relation to circumstances a) and c) above suspension should only be considered in a case where there is cause to suspect a child or other children at the school is/are at risk of harm or the case is so serious that it might be grounds for dismissal.

The employee should be given the reason(s), which will normally be one or more of those listed above, which have determined that they should be suspended. The

reason(s) should be included in the written confirmation of suspension.

The Headteacher/Chair should also consider whether the result that would be achieved by immediate suspension could be obtained by alternative arrangements. In cases where there is an allegation of harm to children, it may be assessed that the investigation can be clarified or resolved quickly, without the need for suspension. If the LADO, police and children's social care services have no objections to the member of staff continuing to work during the investigation, the Headteacher/Chair should be as inventive as possible to avoid suspension. Based on an assessment of risk, the following alternatives should be considered before suspending the individual.

- Redeployment within the school, so that the individual does not have direct contact with the child or children concerned;
- Providing a colleague to be present when the individual has contact with children;
- Redeploying to alternative work in the school so the individual does not have unsupervised access to children;
- Moving the child or children where they will not come into contact with the staff member. (The principle is that the child should not be negatively affected because an allegation has been made but, where moving a child is considered, it must be made clear that this is not a punishment and agreement reached with the child's parents. Advice should also be taken from the School's HR provider).
- Temporarily redeploying the member of staff to another role in a different location, maybe an alternative school in the Local Authority or Academy Trust.

It is recognised that the feasibility of some of these options may be restricted by the school's context and size. These alternatives may provide time for a more informed decision to be taken regarding the suspension, depending on the nature of the allegation. To suspend a member of staff following an allegation that is clearly malicious or vexatious is unnecessary and may be damaging. The Headteacher/Chair of Governors should consider the potential permanent professional reputational damage to employees that can result from suspension. The Headteacher should seek advice from the Local Authority and consider the weight and balance of the circumstances and evidence available before making any decision.

Headteachers should be aware of Derbyshire's Child Protection and other Local Authority Procedures when dealing with allegations against members of staff and considering whether suspension is an appropriate and proportionate response to the allegation.

Whether the decision is to suspend or not to suspend the following should be clearly recorded and confirmed in writing to the employee, Chair of Governors, and where it is the employer, the Local Authority, as soon as practicable after the decision:

- The decision
- The reason(s) for the decision
- If the decision was to suspend, what alternatives to suspension were considered and why they were not appropriate

A draft Specimen Letter is available to Schools HR Advisory Service subscribers on S4S.

### 4.3 Procedure for Suspension

Any decision to suspend a member of staff can only be made by the Headteacher or Chair of Governors and where the Local Authority is the employer following consultation with the Local Authority's Human Resources Advisory Service for Schools.

**Suspension should only occur when all other alternatives have been considered.** The Chair of the Governors should be informed of any actions taken by the Headteacher.

The absence of advice from the Local Authority's Schools HR Advisory Service does not absolve the Headteacher from the responsibility to make a decision, nor does the absence of the Headteacher prevent others from doing so.

- The suspension must be carried out face to face with the member of staff concerned at a specifically convened meeting. The member of staff should be offered the opportunity to be accompanied, usually by their Trade Union Representative, at the meeting and the Headteacher or Chair of Governors may be accompanied by a representative from the Local Authority. In rare circumstances, for instance where a member of staff is absent, it may be necessary to write and notify the employee of a suspension, to ensure they are aware of the situation. However, it would normally be preferable to wait until the member of staff returns.
- The meeting must be handled sensitively. The member of staff should be informed that an allegation has been made against them and that they are being suspended as a precautionary measure pending a full investigation of the allegation. Also that the suspension is intended as a neutral act (**in law it cannot be assumed that suspension will be viewed as a neutral act**), implies no guilt, and will be on normal contractual pay.
- The member of staff should be given as much information, including reasons for their suspension, as is consistent with not interfering with or prejudicing the investigation of the allegation. The Local Authority will advise on this, in liaison with other Child Protection agencies. If the employee is not provided with the exact allegation they should be given the reason, e.g. at another agency's request.

- The member of staff should be assured that they will remain an employee of the School (and County Council, where applicable). The member of staff should also be informed that they will be required to attend an investigation interview and will be given the opportunity to state their version of events and any other information they think relevant. In cases of allegations which relate to child protection, this interview/investigation will normally be conducted by the Police beforehand.
- The member of staff should be advised to seek advice and assistance from their Professional Association or Trade Union. A member of staff who is not a member of a Professional Association or Trade Union may seek advice from and be assisted by a companion or fellow worker.
- The member of staff should be offered a Contact Officer, who is a senior staff member but outside of the case, preferably one who is acceptable and agreed between the Headteacher and employee. The member of staff can raise any questions through this Officer and receive information on school developments during their absence. In circumstances where there is no senior staff member who can take on the role, for Maintained Schools, a Local Authority Officer may be nominated. The member of staff should also be given information on the employee counselling service and asked if they need any other support.

Guidance on the role of the Contact Officer is included as Appendix 4. Regular contact should be maintained with the suspended employee. Consideration should be given to whether the health of the individual needs to be taken into account in determining the type and frequency of contact.

Where there is a need to suspend a member of staff on a Friday or immediately before a holiday period, special consideration should be given to the support arrangements.

- It should be explained to the member of staff that their suspension will be on normal pay. This means that, where relevant, a suspended employee should still submit sickness returns and would, when suffering sickness absence, receive the appropriate sick pay. If an employee is subsequently dismissed they shall not be entitled to salary other than the sum (if any) due up to the date of termination of contract, but they shall be allowed to retain any sum already paid during the period of suspension. If they are reinstated there shall be full restitution of earnings.
- Previously agreed annual leave which falls within the period of suspension will be honoured. Where permitted in their contract, other leave may be taken during the period of suspension subject to agreement and should be notified to the named contact.
- The member of staff must not undertake additional employment for the time they are employed at the school, during the period of the suspension.

- The member of staff will be required to be available to respond to contact during working hours on the days they are employed at the school during their suspension although the employer may attempt to make reasonable contact outside of these hours. However, there is no particular requirement/obligation on the employee to respond outside of working hours.
- The member of staff will also be informed that, in order not to prejudice the objectivity of the investigation, they will not be permitted to attend the workplace without prior invitation. The employee should not use school equipment, including IT equipment, provided in connection with their employment without permission.

The employee must give careful consideration in relation to communication of any kind, including email and social networks, with work colleagues during the period of suspension, without prior discussion with the Investigating Officer. It is important to avoid any potential challenge of interfering with the investigation or influencing possible witnesses. Requests for colleagues to act as witnesses should be made via the employee's Representative and the Contact Officer's advice can also be sought on queries concerning social communication with colleagues or for information about work.

It is recognised that there may be particular reasons why the employee needs to contact certain other staff and it is acceptable to maintain existing patterns of social interaction but it is important to ensure that no discussion in relation to the reason for the suspension takes place. While consideration should be given to the relationships staff may have with their colleagues it must be emphasised that the investigation may be compromised if the employee discusses the circumstances with colleagues.

They should be advised to maintain discretion and if in any doubt to seek advice.

- The member of staff should be informed that their suspension will be confirmed in writing, that the period of suspension will be kept under review and that they will be kept informed of the progress of the investigation.

Following suspension, an initial review of the case should take place as soon as possible, normally within 5 school working days or longer by mutual consent, with the aim of minimising the length of the suspension.

Following the initial review, ongoing reviews should take place at least monthly - unless it is mutually agreed not to (e.g. ongoing investigation by an outside agency) in which case an appropriate review date should be agreed.

Wherever possible, written confirmation should be prepared and handed to the individual at, or provided as soon as possible after, the meeting. It should include the allegation, unless it has been decided, in conjunction with outside

agencies, that this may prejudice the investigation.

- The Headteacher (Chair of Governors and Local Authority Officer, for instances where the Headteacher is the subject of the allegation) should agree with the member of staff what their colleagues and the wider school community will be told about their absence. This is particularly important in sensitive situations and will allay continued suspicions or doubts about the absence if the member of staff returns to work, when the investigation or associated action has been concluded.
- Where the employee is also a parent of a child at the school it should be clarified that attendance and other contact in the role of parent may be able to continue as usual. However, this should be discussed in conjunction with considerations outlined above concerning what is being communicated to stakeholders in the school community and the potential for concerns to be raised about potential influence on the investigation/witnesses.
- Once the investigation is concluded and where the employee is informed that the case will be referred to a hearing, they may approach relevant members of the school community who they wish to call as witnesses. This is best undertaken by their Representative. No pupils should be approached without prior discussion with the Headteacher and agreement as to necessity. Parents would also first need to be approached for their agreement.
- Arrangements should be made for the member of staff to return any school or pupils' books, property, or keys, and by agreed arrangement and supervision, collect any personal belongings which they might need during their suspension.

#### **4.4 Reviews of Suspension**

The following principles will apply to all reviews of Suspension:

- Management should undertake an initial review of the suspension and if the suspension continues there should be further regular, usually monthly, reviews.
- Whilst suspension reviews may well take place as a meeting with the employee and or their Representative this may not always be appropriate, for example where circumstances have not changed.
- Management will always confirm, the outcome and reasons for this, in writing.
- The employee and their representative will have the option to request a Review of Suspension meeting and or provide written representation in advance of and to inform the review, or in response to a review outcome.

An **Initial Review of Suspension meeting** should take place as soon as possible, normally within five school working days or longer by mutual consent, with the aim of minimising the length of the suspension.

This meeting will provide the employee and or their Representative to ask any questions they have about and or raise any concerns or challenges they may have to the process.

Subsequent ongoing **Reviews of Suspension** should take place at least monthly, unless it is mutually agreed not to, for example there is an ongoing investigation by an outside agency, or no change in circumstances, in which case an appropriate review date should be agreed.

Regardless of the circumstances the employee and or their Representative can request a Review of Suspension meeting and or provide written representation in advance of and to inform the next review, or in response to the review outcome which will be confirmed to the employee in writing.

The continuation of suspension should be considered by the Headteacher or Chair of Governors, who will normally be advised by the schools HR Service provider and the employee informed of the outcome accordingly.

The purpose of a review is to ensure that the suspension is as short as possible, once the school has sole responsibility to deal with the case. It is unfair to a member of staff to delay the investigation and resolution of any issues, particularly disciplinary, arising from it. It is expected that the situation will be addressed as a matter of urgency and priority, owing to the impact of suspension on the individual concerned and the school.

Where there is a delay in the investigation of the allegation and resolution of the case, this must be justified with the reasons (e.g. where an outside agency takes precedence and the school is not cleared to proceed). This should be clarified to the employee.

Except in very complex circumstances where it is, or may be, unavoidable, a protracted suspension may be open to subsequent challenge.

Specimen letters for the initial and subsequent suspension reviews are available to Schools HR Advisory Service subscribers on S4S.

#### **4.5 Suspension of Headteachers**

If an allegation is made against a Headteacher and they are to be suspended this should be carried out by the Chair of Governors, following the same procedure as for other members of staff. If a Headteacher is suspended, the same principles will apply except that the Chair of the Governors will be responsible for the suspension as well as associated and subsequent actions. For Maintained schools, advice and support will be provided to the Chair of Governors by the Local Authority in these circumstances.

#### **4.6 Lifting Suspensions**

Suspension of any member of staff can only be lifted by the Governing Board.

The Governing Board may decide, in certain circumstances, that it is content for the Chair of Governors to undertake this function on behalf of the Governing Board (see appendix 3).

**It is recommended that, at the first meeting of the academic year, the Governing Board formally empower the Chair to fulfil this function.**

It is not a hearing of the case. Only sufficient information will be given to understand why the Headteacher is making the recommendation and to reach a reasonable and appropriate decision, on an informed basis. The Governing Board will also need to be reassured that the health, safety and welfare of pupils can be maintained and that appropriate support is available for all concerned.

It will be important to maintain confidentiality and this should be emphasised to all of the Governors. The Governing Board will also need to agree what information can be made available to staff, parents, and the wider school community without breaching the confidentiality of the situation.

## **5. Management Investigation**

In dealing with an allegation, it is important that the process from investigation to disciplinary hearing should be undertaken as quickly as possible, without prejudicing a full and thorough investigation.

Please refer to Appendix 3 to clarify the roles of Investigating Officer, Headteacher and Governors, depending on the school's adoption of the 2009 Staffing Regulations.

If, following management intervention and guidance, consideration of further action is warranted, or in the event of an allegation being made against an employee, then a proper investigation should take place. An essential stage in the consideration of an allegation of misconduct against an employee is the Formal Management Investigation. This process should have the following primary objectives:

- a) To be conducted promptly with minimal delay.
- b) To investigate the facts and circumstances relating to the alleged misconduct.
- c) To enable the employee to respond to the allegation.
- d) To be thorough enough to provide a clear balanced view, upon which a fair and objective decision can be made as to the requirement for further action, based upon the balance of probabilities.

Investigating Officers should be aware that Employment Tribunals may uphold complaints of unfair dismissal due to insufficient or inadequate management investigation.

The investigation is a neutral act and does not imply the guilt of an employee nor is it part of the Formal Disciplinary Procedure. In order to protect the interests of the employee and to ensure co-operation with any investigation, colleagues should be reminded of this.

## **5.1 The Investigating Officer**

The Investigating Officer will have sufficient authority to undertake the investigation, to recommend suspension of the employee, and to be provided with sufficient information and co-operation to enable the matter to be adequately investigated. Under normal circumstances the Investigating Officer will be the Headteacher, or a Senior Member of Staff nominated by the Headteacher.

Where it is likely the Headteacher will hear any case that is presented, it is necessary that an alternative, appropriate senior staff member acts as Investigating Officer. This will provide a clear separation of roles. It is recognised that in small schools this may not be possible. Headteachers may seek the services of a Local Authority Human Resources Consultant to act as Investigating Officer, as this may be provided as a traded service.

In particular, where an allegation is made against the Headteacher, the Governing Board may seek assistance from the Local Authority's Schools HR Advisory Service, or other nominated officer, to undertake a Management Investigation on behalf of the Governing Board (see Local Authority Model School Complaints Procedure).

## **5.2 Procedure**

- a) The Investigating Officer will formally write to all those individuals who are required to attend an investigation interview, informing them of the nature of the events being investigated, including the date and time of any specific incident, in order that they may prepare a response, along with the date, time and venue for the interview, and giving them the opportunity to be accompanied by a Trade Union/Professional Association Representative, friend or colleague, to give advice and make representation where necessary.

The Investigating Officer will need to balance the necessity to carry out a prompt investigation with reasonableness in allowing time for individuals to make arrangements to be accompanied at the interview. In this respect five school working days notice is reasonable or less by mutual agreement. The employee should be informed in writing that an allegation of misconduct which requires investigation has been received and that an Investigatory Officer has been designated.

- b) If there is a specific allegation being made against an employee, then that individual should be made fully aware of the allegation in writing prior to the investigation interview in order that s/he may prepare a response to the allegation. The employee must also be informed of the requirement to co-

operate with the investigation, such as attending the investigatory interview.

- c) The Investigating Officer should ensure that the venue for the interviews will be free from interruption or distraction and there should be a room available for the employee and their Representative to confer in private. Another appropriate member of staff should also be present to assist in taking detailed notes, and to provide corroboration of the discussions should it become necessary at a later stage.
- d) When interviewing the employee concerned, the Investigating Officer should make it clear that it is an investigatory interview to ascertain the facts surrounding an act of suspected or alleged misconduct, not a disciplinary hearing. To enable the Investigating Officer to focus on listening rather than note-taking, to ensure no points are missed and to provide an additional management witness in the event of disagreement, an HR Consultant from the school's HR Service can be invited to assist and support. The employee should be offered the facility of having a Representative or companion present.
- e) Other people believed to have information relating to the alleged misconduct should be interviewed and written statements obtained from them, if possible.

If the employee wishes to approach colleagues or other parties as potential witnesses this should be conducted through the employee's Representative.

The investigation must be adapted to the circumstances of the alleged misconduct. If, for example, allegations have been received from colleagues in respect of an employee's conduct, it will be necessary to not only interview the complainants and obtain written statements from them, but also to interview some at least of those who have not complained but who can reasonably be expected to have knowledge as to whether the allegations are justified or provide evidence.

If an allegation is received from a member of the public or other person who is not an employee, that person should be seen and invited to make a written statement setting out the details of the allegation. If any employee is thought to have witnessed the incident, or to have information about it which might be relevant to the investigation, he or she should be seen and a written statement obtained. Where there are no witnesses to an alleged incident, it may be necessary to interview those who last spoke to the staff member before the incident took place and those to whom he or she spoke immediately after it.

During the course of the investigation, notes should be taken of any interviews held. These notes are not intended to be a verbatim record, but a representation of the conversation that took place. The purpose of these notes is to aid the Investigating Officer in making an informed decision in respect of the allegation.

Neither party is allowed to make a covert audio or video recording of meetings held as part of this procedure. Recording equipment should only be used with prior mutual agreement. The use of recordings may be considered as part of making reasonable adjustments for relevant parties involved.

At the start of the interview the employee should be informed that:

- They will receive a copy of the notes to confirm they are accurate or to make comment on.
- If they agree the notes are accurate, 2 copies should be provided and they should date and sign each page of one copy and return this signed copy to the Investigating Officer.
- The Investigating Officer will accept any minor amendments provided they do not change the substance of the employee's answers.
- If they have any comments or reasons why they believe the notes are not accurate they should confirm them in writing to the Investigating Officer and they will be included with the Investigating Officer's notes in the record of the investigation.
- The notes of the meeting, including any comments and or reasons provided by the employee, may be used in evidence at any disciplinary hearing arising from this investigation.
- They will have five working days to sign and or comment on and return the notes of the meeting.

Notes made of interviews with potential witnesses do not have to be shared with the employee under investigation at this stage. (See section 5.3 and 5.4 on witness statements).

- f) Having carried out a fair and thorough investigation, the Investigating Officer will make a considered assessment of whether there is a case to answer, based upon the balance of probabilities. What amounts to an adequate investigation will depend on the circumstances of the particular allegation of misconduct. If it is something to which the employee readily admits, the extent of the investigation may well be confined to that, or to obtaining a measure of confirmation of it. In a disputed case, the investigation will need to be as sufficient as is reasonable in the circumstances.
- g) The main requirement is to be able to come to a fair decision on the balance of probabilities, based on 'Is there a reasonable suspicion amounting to a belief that there is a case of alleged misconduct to answer, and are there sufficient grounds for that belief?' (Cases are considered in line with the civil standard for burden of proof, not the criminal standard). It is not appropriate for the Investigating Officer to determine what the outcome of the hearing should be.
- h) Having conferred with the Headteacher/Chair as agreed, the Investigating Officer will write to the employee being investigated to confirm the findings of the Management Investigation. When a number of allegations were made

against the employee and have been investigated, the letter should indicate whether all, or which, of the allegations are to be taken forward for consideration at a hearing. In most cases there will be one of three outcomes:

1. Complete exoneration from the allegations made. In this case a letter should be sent to the employee thanking them for their co-operation throughout the Management Investigation process.
2. Where the Improvement Process has not already been applied within the last 12 months in similar circumstances and the nature of the allegation does not preclude this, an assessment that there is a potential case of misconduct and an informal or formal management intervention/direction and guidance, through the improvement process, should be undertaken.
3. A recommendation that there are sufficient evidenced grounds for a potential case of misconduct or gross misconduct to be made and that a disciplinary hearing should be held.

In most cases where 3 applies, the Investigating Officer will have reported to the Headteacher who will consider whether there are sufficient grounds that may warrant a hearing before a panel to consider disciplinary action, considering whether;

- a) the seriousness of the allegation merits it; or
- b) previous management intervention through the Improvement process has been ineffective;
- c) formal warning(s) have been ineffective; or
- d) there is a further unconnected event of unsatisfactory work or misconduct

Only those allegations where sufficient grounds for a case of misconduct to be considered will be taken forward. The employee will be informed of the findings of the investigation and the decision on outcome in writing.

Where relevant, the employee should be advised that a disciplinary hearing is going to be held, and that s/he will be notified of the date, time and venue of the disciplinary hearing in the near future. A copy of the Disciplinary Procedure should be enclosed.

The letter should indicate whether the hearing will consider a case of misconduct or gross misconduct (or both) and the appropriate adaptations made to the model letter provided with the Policy.

In some cases where it is not considered appropriate to invoke the Disciplinary Procedure, other options should be reviewed. The matter may be dealt with by discussion with the employee or by other actions such as arranging coaching, training or implementing the Improvement Process. If merited, the employee may be advised that if further misconduct occurs, action under the formal Disciplinary Procedure may then be necessary. A brief note of the date, time and subject of the discussion (including a note of any explanation put forward by the employee)

should be made, a copy of which should be sent to the individual and placed on their personal file.

As a result of the investigations undertaken, the Investigating Officer may identify a breakdown in procedures/regulations directly attributable to a lack of instruction. Under these circumstances, the relevant employees should be required to attend a meeting with their line manager, on an individual basis, at which management instructions would be issued and confirmed in writing. This meeting would not constitute a disciplinary meeting, and there would be no requirement for the employee to be accompanied at this meeting.

If the employee is on sick leave at the time of investigation, this does not necessarily preclude an investigation being conducted. Advice should be sought from the Schools HR Advisory Service on how to proceed in these circumstances.

### **5.3 Written Statements**

To assist in this investigation process, it is important that written statements are procured from all those individuals involved, or witness to events resulting in an allegation being made against an employee. In order to ensure that these statements or accounts are as accurate as possible, it is important that they are procured as soon as is practicably possible following the event.

All statements must be dated and signed on each page by the individual making the statement in order that it may be regarded as a validated account of events as perceived by that individual.

The Investigating Officer might wish to confirm and seek further information from those individuals providing statements, as part of the investigation process, and in order to seek a balanced overview of events. This might result in a need for supplementary statements from the individuals concerned. These statements would then form the basis for the Investigation, and may be used as documentary evidence in any disciplinary hearing resulting from the investigation. Signed and dated witness statements may also be used in the absence of the witness at any subsequent disciplinary hearing, although it should be noted that they are not likely to carry the same weight as a witness attending a hearing in person.

It is important to have followed the process in relation to taking statements, for both the employee alleged to have committed misconduct and the witnesses, detailed in paragraph 5.2 (e).

### **5.4 Disclosure of Statements**

When statements are taken to assist the Management Investigation, there is no requirement to disclose all the statements to the member of staff who is being investigated during the investigation.

However, any statements which are to be relied on as evidence to be presented at a disciplinary hearing will need to be disclosed to the employee against whom allegations are made, in advance of that hearing and in accordance with the Disciplinary Procedure detailed in the next few pages.

Any documents which the Investigating Officer intends to present at the disciplinary hearing should be made available to the employee at least 5 days in advance of the hearing.

In conducting the investigation, evidence may be gathered which is not relevant i.e. does not support or add to the management case which the Investigating Officer does not intend to use at a disciplinary hearing.

A list of all such evidence, including a description of the contents, should be made available to the employee who may request copies.

It should be noted that interview notes and witness statements are disclosable at an Employment Tribunal.

## **5.5 Audit Services' Investigations**

**The over-riding consideration of all investigations should be to investigate thoroughly and to address the issues as speedily as possible.**

Recognising the need for Audit investigation and consideration of potential disciplinary action to be separate in order to maintain the independence of both actions and taking into account the provisions of the Local Authority's Scheme for the Local Management of Schools as well as its and the School's Financial Regulations, the following process has been agreed:

- All employees are required to report matters relating to fraud, misappropriation or loss promptly to the Assistant Director of Finance (Audit) & RIPA Monitoring Officer. In practice, for schools this may mean the matter is reported to the Headteacher and or Chair of Governors in the first instance in which case they are required to report it to the Assistant Director of Finance (Audit) & RIPA Monitoring Officer.
- On receipt of such notifications, and prior to the start of the investigative process, the Assistant Director of Finance (Audit) & RIPA Monitoring Officer will discuss with the relevant Executive Director, and where appropriate the Headteacher and or Chair of Governors, whether any joint investigation is required, and, if so, how it should progress.
- Where there is any disagreement between Audit Services and the Strategic Director, and or the Headteacher and or the Chair of Governors, and in circumstances where the Local Authority is the employer, the Chief Executive or Deputy Chief Executive will be asked to determine the appropriate investigative process to follow.

The investigation will be one of the following:

- An Audit investigation as detailed above with any subsequent disciplinary action being taken on the conclusion of the audit investigation with minimal or no further duplication during the management investigation which would focus on the content and findings of the Audit Investigation and Report.
- Joint investigations by Audit/School management where the matter relates to both financial and other misconduct and where a two-strand approach may be beneficial. In these cases, in order to ensure effective liaison with the employee or employees affected, a Lead Officer will be agreed between the two Investigating Officers and arrangements will be made for the joint investigation to reflect the individual requirements of the case. Normally, but not always, it will be appropriate for the Lead Officer to be the School's nominated manager.
- An investigation under the School's Disciplinary Procedure. This will normally only be after it has been agreed by the Assistant Director of Finance (Audit) & RIPA Monitoring Officer, Executive Director, and where appropriate the Headteacher and or Chair of Governors, that any potential fraud or financial loss to the School and or Council, e.g. through time recording or misuse of the internet and e-mail policy, is not considered material/significant.
- An investigation by the School. The School's designated Investigating Officer **must** inform Audit Services immediately about any new information which comes to light during the course of the investigation which changes or potentially changes the nature and or extent of the financial irregularity and or financial loss, and therefore the potential for fraud. Audit Services will assist to establish the extent of any loss and provide specialist advice or assistance in such cases where necessary.

In respect of the above, the following will apply:

- Audit investigations will be conducted in accordance with professional best practice and the guidance in the school's Disciplinary Procedure where this is likely to lead to a disciplinary hearing.
- Recognising the need for confidentiality and the possible implications of any of the School's management involvement in the alleged act under investigation there will be a need for regular communication about the progress of the investigation between the Assistant Director of Finance (Audit) & RIPA Monitoring Officer and the Headteacher, and or Chair of Governors, and or the schools nominated Investigating Officer.
- All relevant documentation, interview notes or witness statements, and evidence, obtained during the course of an Audit investigation will be made

available, if required, to the school's nominated Investigating Officer for the purposes of any subsequent disciplinary investigation and hearing.

## **6. The Formal Disciplinary Hearing**

The purpose of the disciplinary procedure is primarily to help and encourage employees address any shortfalls in conduct rather than just as a way of imposing punishment. The procedure provides a fair and consistent mechanism through which employees' conduct may be corrected to achieve the standards required and, when appropriate, sanctions applied, up to and including dismissal.

For cases of **misconduct**;

- If the Headteacher has not been involved in the investigation of the case, they may hear the case alone or invite other governors to join them on a panel depending on the Governing Board decision on levels of delegation (see Appendix 3).
- Where the Headteacher has been involved in the investigation or has received a report and reviewed the findings, a disciplinary panel should be convened to hear the case. The Headteacher should not be a member of the panel but may present the case, with or instead of, the Investigating Officer.

For cases of **gross misconduct**;

- The Investigating Officer will report to the Headteacher (where the Headteacher is not already the Investigating Officer) who will determine whether a case of gross misconduct will be referred to a hearing.
- Although, within regulations, the Headteacher could still hear the case, when joined by other governors, it is very strongly recommended that a disciplinary panel of governors is convened (unless it is agreed by all parties that the Headteacher hears the case). No one with prior knowledge or involvement with the case should hear the case.
- Where the allegation is against the Headteacher and an independent Investigating Officer has been commissioned, he/she will report to the Chair of Governors to determine if a case will be taken to a hearing.

### **6.1 Action In Advance Of the Disciplinary Hearing**

Once it has been ascertained that there is a case to be answered, a hearing should occur as soon as possible. The employee should be given 10 working days formal notification in writing of the date, time and venue for the hearing. Consideration may be given to organising hearings during school holidays where the employee is not restricted to term time working (see guidance on arranging formal meetings). This notification should be either given by hand or sent by special delivery post.

The employee will be informed of:

- the specific allegations of conduct which appears to justify disciplinary action (omitting any allegations that will not form part of the case),
- who will conduct the hearing, the other panel members and if appropriate advisers,
- the right to be accompanied by a Representative of a recognised Trade Union or Professional Association or friend, to give advice and make representations where necessary,
- the right to call witnesses and present documents relevant to their defence,
- the right of appeal against any action taken,
- the requirement to confirm his/her intention to attend the hearing and a warning that non-attendance may constitute a disciplinary offence,
- a warning that their actions may place their employment at risk (dependent upon the gravity of the alleged offence).

Copies of all documentation that is going to be presented at the hearing should be sent to all parties, including the employee, at least five working days prior to the date of the hearing by hand or special delivery post.

Similarly, the employee and or their named representative should supply copies of all documents to be relied upon at the hearing, to the Committee and the Investigating Officer, at least 5 working days prior to the date of the Hearing.

If the Headteacher is not going to be hearing the case, the disciplinary committee (that would normally have been formed at the first meeting of the Governing Board each academic year) consisting of three Governors who can objectively hear the case should be convened. Arrangements should be made for the hearing to be minuted appropriately. With objectivity in mind, it would be appropriate for Staff Governors to be excluded from the panel. No Governor who has been party to the details of the allegations may be included in the Committee. The Committee should elect one of its members to chair the proceedings.

The venue for the hearing should have sufficient rooms available for the respective parties to be able to confer in private and be free from interruption or distraction. Therefore, the provision of separate 'breakout' rooms, for the employee with his/her representative and the Presenting Officer with his/her HR adviser, are recommended. Sufficient time for the case to be fully considered should be allowed, anything from a few hours, to a few days depending upon the complexity of the case.

## **6.2 General Points**

It is important that strict confidentiality is maintained in order to ensure a fair hearing. Governors should be informed of the action being taken without reference to details relating to the case. Staffroom discussion, and parental/community speculation should be actively discouraged as much as is possible.

### **a) Deferment**

At the Headteacher/Disciplinary Committee's discretion, it is good management practice to allow deferment of the hearing (usually up to 5 days), due to circumstances such as illness or another substantial reason for not being able to attend. In reaching a decision on deferment management should give consideration to what is fair and reasonable. It may be necessary at a later stage to be able to evidence the consideration that was given to such a request and therefore the request and reasons given for a deferment as well as the Headteacher's or Disciplinary Committee's response and reasons should not only be recorded but acknowledged and the response communicated to the employee and their nominated Representative.

If the request for deferment arises from the unavailability of the employee's representative it is necessary to agree the deferment, in order that the right of representation is fulfilled.

It should be noted however that whilst a request for deferment should not unreasonably be refused repeated requests are not justification for the progress and completion of disciplinary process to be postponed indefinitely. The Headteacher or Disciplinary Committee will need to consider the extent to which the disciplinary process is being (unreasonably) frustrated and the extent of the impact further delay will have on the effective and efficient running of the school, the employee who is the subject of the allegation(s), and on other employees affected.

In circumstances where an employee, is not able to attend in person their right to representation remains unchanged. The employee should be offered the opportunity to be represented at and or submit a written statement to any interview or hearing they are not able to attend but which it has been decided will go ahead in their, and or their representative's, absence.

It may be necessary at a later stage to be able to evidence that consideration was given to deferring or proceeding with a hearing in the absence of the employee and or their representative. If the Headteacher or Disciplinary Committee decides to proceed with a hearing in the absence of the employee and or their representative the case for and reasons for the decision to do so should be recorded and communicated to the employee and their representative along with the outcome of the hearing.

(Please see the separate advice on the arrangement of meetings).

**b) Pre-hearing**

In certain circumstances, for example particularly complex cases, it may be necessary to arrange a meeting prior to the hearing (a pre-hearing), to discuss procedural matters in advance of the hearing itself.

**c) Right to be Accompanied**

Employees have a statutory right to be accompanied by a companion where the disciplinary meeting could result in:

- A formal warning being issued; or
- some other disciplinary action being taken; or
- Confirmation of a warning or some other disciplinary action (appeal hearings).

The statutory right is to be accompanied by a fellow worker, a Trade Union Representative, or an official employed by a trade union. A Trade Union Representative who is not an employed official must have been certified by their union as being competent to accompany a worker. Employers must agree to a worker's request to be accompanied by any companion from one of these categories. Workers may also alter their choice of companion if they wish. As a matter of good practice, in making their choice workers should bear in mind the practicalities of the arrangements. For instance, a worker may choose to be accompanied by a companion who is suitable, willing and available on site rather than someone from a geographically remote location.

To exercise the statutory right to be accompanied, workers must make a reasonable request. What is reasonable will depend on the circumstances of each individual case. A request to be accompanied does not have to be in writing or within a certain timeframe. However, a worker should provide enough time for the employer to deal with the companion's attendance at the meeting. Workers should also consider how they make their request so that it is clearly understood, for instance by letting the employer know in advance the name of the companion where possible and whether they are a fellow worker or Trade Union Official or Representative.

If a worker's chosen companion will not be available at the time proposed for the hearing by the employer, the employer must postpone the hearing to a time proposed by the worker provided that the alternative time is both reasonable and not more than 5 working days after the date originally proposed.

The companion should be allowed to address the hearing to put and sum up the worker's case, respond on behalf of the worker to any views expressed at the meeting and confer with the worker during the hearing. The companion does not, however, have the right to answer questions on the worker's behalf, address the hearing if the worker does not wish it or prevent the employer from explaining their case.

### **6.3 Hearing Procedure**

The procedure for the Disciplinary Hearing is given in Appendix 2a of the Model Disciplinary Policy and Procedure. The Headteacher/Disciplinary Committee shall only consider the facts presented in the presence of the

employee and make a decision on the balance of probabilities, the civil rather than criminal standard for reaching a judgement on the evidence. The Hearing has the power to deal with the case in one of the following ways:

- I. Complete exoneration and, where the employee has been suspended, reinstatement. Should it be found that the allegation may have been malicious, a recommendation that this is investigated may be included.
- II. Management intervention and guidance, through the Improvement process (and lifting of suspension, where relevant)
- III. In exceptional circumstances, following a request from the employee, they may be granted an opportunity to resign, as an alternative to dismissal. (Employees should be strongly advised to consult with their Trade Union or Professional Association if considering such a request) Where an employee is to be dismissed as a result of misconduct relating to child welfare and safeguarding, they must be reported to the DBS and NCTL (where relevant), whether or not they resign before dismissal.
- IV. Issue of a sanction.
- V. Granting an opportunity to accept a reduction in position or status as an alternative to dismissal.
- VI. Granting, in appropriate cases, an opportunity to obtain medical advice or treatment before any further decision is made.
- VII. Dismissal.

## 6.4 Sanctions

The general expectation is that, unless it is inappropriate to do so, serious consideration will be given to utilising the informal or formal Improvement process where the staff member has no record of previous conduct issues on their personal file, or more than 12 months has passed since the conclusion of a previous Improvement process. However, it is recognised that for serious misconduct or repeated misconduct, that is proven (on the balance of probabilities), the sanctions below may be given.

### Written Warning

For **serious** misconduct, or where a further misconduct has occurred (either of a similar or of a different nature), following formal management intervention and guidance through the improvement process, a written warning may be issued. It should detail the offence and the improvement required and timescale allowed. It should warn of further disciplinary action if there is no improvement and provide a right of appeal. A copy should be held on the personal file and school disciplinary register until expunged (usually 12 months).

### **Final Written Warning**

For a **very** serious act of professional misconduct/gross misconduct, or where there has been a failure to improve conduct despite previous written warnings, it should detail the offence and warn that dismissal will result if there are any further offences, or if there is no improvement within a set timescale. It should provide a right of appeal. A copy should be held on the personal file and school disciplinary register until expunged (usually 12 months).

### **Dismissal**

For serious acts of gross misconduct, dismissal will be regarded as summary dismissal and there will therefore be no entitlement to payment in lieu of notice.

The Headteacher/Governing Board has an obligation to consider the appropriateness of alternatives to dismissal as detailed in Section 9 of the Model Disciplinary Procedure.

### **Notice of Sanction**

A formal warning or resolution to request the issue of a notice of dismissal will:-

- a) be in writing or confirmed in writing by the Headteacher or Clerk to the Governors on behalf of the Governing Board as appropriate, as soon as possible and within 5 working days;
- b) be delivered by hand or special delivery;
- c) state whether the employee exercised the right of representation at the disciplinary hearing;
- d) Include a warning of the consequences if there is not satisfactory improvement or if further misconduct occurs;
- e) in the case of formal warnings explain that they will be recorded in the employee's personal file;
- f) explain the reasons for the disciplinary action;
- g) explain the right of appeal;
- h) be copied to the employee's Trade Union or Professional Association representative;
- i) give the termination date in cases of dismissal.

The Headteacher will maintain a Register of Disciplinary Action which will contain a copy of any written warning issued to employees. Where a sanction is issued to the Headteacher, the Chair of Governors is responsible for ensuring that the matter is entered on the register appropriately and removed in line with the Disciplinary Committee's decision. During the absence of the Headteacher, the Deputy/Acting Headteacher is responsible for the maintenance of the register.

For dismissal as a result of continued misconduct, payment in lieu of notice would normally be given.

## **6.5 Expiry of Disciplinary Action**

All formal warnings shall normally expire after a period of satisfactory conduct and performance of 12 months. In exceptional circumstances and particularly when the misconduct relates to the safety and welfare of pupils, the Headteacher/Disciplinary Committee may consider that the disciplinary warning period should exceed this. This must be determined when the sanction is issued and include a statement of how long it will be retained on file, when it will be reviewed (usually annually) and make reference to the employee's right to make representations for the warning to be expunged from the disciplinary record as part of the review.

For warnings that are not due to expire after 12 months, clarification should also be provided of who will review the warning, on what grounds, and when. A warning issued by the Headteacher should be reviewed by the Headteacher. A warning issued by the Disciplinary Committee should also initially be reviewed by the Headteacher, with the employee, and if s/he determines that the warning will remain 'live' the employee may challenge this ruling through a meeting of the Disciplinary Committee.

The basis for the review will be the conduct of the employee during the period since the issue of the sanction, in relation to the nature of the misconduct.

Details of spent warnings will be kept on personal files. They will not normally be taken into account if there is a further instance of misconduct, in determining the sanction, but an expired warning for a similar type of misconduct, or pattern of misconduct, should be considered when deciding how long any subsequent warning is 'live'. Where an employee's conduct is satisfactory throughout the period the disciplinary warning is in force but lapses very soon after, or a particular pattern of behaviour emerges over time, the employee's disciplinary record should be borne in mind in deciding subsequent disciplinary action.

There may be exceptional circumstances where the misconduct is so serious that it cannot realistically be disregarded for future disciplinary purposes. In such circumstances it should be made very clear that the final written warning will remain on file and that any reoccurrence may lead to dismissal.

A decision to dismiss should not be made on the basis of an expired warning

but the fact that there is an expired warning may explain why the employer does not substitute a lesser sanction. A spent warning will not increase the severity of a sanction but may provide a reason not to reduce a sanction in response to mitigation.

**The Managing Allegations Procedure of the Derbyshire Children's Safeguarding Board requires that allegations of harm to the safety and wellbeing of children are kept on the individual's confidential personal file, excepting those that are found to be malicious. It is important that a copy is provided to the individual.** The record should be retained until the individual has reached retirement age or for a period 10 years from the date of the allegation, if that is longer. The record will comprise a comprehensive summary of the allegation, details of how the allegation was followed up and resolved, including a note of any action taken and decisions reached. 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 checks reveal information about an allegation that did not result in criminal conviction and will help to prevent unnecessary re-investigation, if an allegation re-surfaces.

A copy of the warning will be supplied to the employee.

The "exceptional" circumstances referred to above will be justified by the Headteacher/Disciplinary Committee at the time of decision and the employee may appeal.

## **7. Appeals Procedure**

In the event of an appeal against the decision of the Headteacher or Disciplinary Committee of the Governing Board, confirmed in writing, the appellant must submit the grounds for the appeal, in writing, to the Headteacher within 10 working days. If the Headteacher has made the initial decision the matter will be referred to the Disciplinary Committee.

Where the Disciplinary Committee has issued the sanction, the full Governing Board, or an Appeals Committee of the Governing Board, excluding members who participated on the disciplinary panel, should convene within 15 working days to hear the appeal, (or by mutual agreement as soon as practicable thereafter). It is good practice to establish an Appeals Committee at the beginning of the academic year when all other Governing Board Committees are formed. There needs to be a minimum of three members present and so more should be nominated to allow for those who may be unavailable.

When lodging their appeal, the employee is asked to state the grounds. Depending on the nature of the grounds, the appeal may require the main substance of the case to be heard or a particular focus to be considered. (A suggested appeal form is attached as Appendix 6).

For example:

- For an appeal on procedural grounds the case presented by the employee would focus on the evidence related to their challenge concerning the implementation of the Disciplinary Policy and Procedure.
- For an appeal related to the level of sanction issued, rather than a challenge to the substance of the allegation, the case would focus on any mitigation and reasons why the employee considers the sanction not to be appropriate.
- For an appeal that challenged the judgement reached at the original hearing, a re-hearing of all the relevant evidence in the case would be needed for the Appeal Committee members to formulate their own assessment of the case.

The employee will be informed of the place, date time and purpose of the Appeal hearing. The Presenting Officer may call witnesses and will arrange for these to attend. If the employee wishes to call witnesses they will arrange for their attendance. All the original case papers should be distributed to the appeal committee, plus the record of the disciplinary hearing, no unrelated matters will be considered.

The employee is entitled to attend before the Appeal Board with their Trade Union/Professional Association Representative or friend to present their appeal.

If the appeal relates to a dismissal where the Local Authority is the employer the Strategic Director for Children's Services or his/her representative is entitled to attend the meeting for the purpose of offering advice to the Governing Board.

**The procedure to be followed in a Disciplinary Appeal Hearing is set out in Appendix 2b, attached to the main Disciplinary Procedure.**

The venue for the Appeal Hearing should have sufficient rooms available for the respective parties to be able to confer in private and be free from interruption or distraction. Therefore, the provision of separate 'breakout' rooms, for the employee with his/her representative and the Presenting Officer with his/her HR adviser, are recommended. Sufficient time for the appeal to be fully considered should be allowed, anything from a few hours, to a few days depending upon the complexity of the appeal.

At an Appeal Hearing the Chair of the Disciplinary Committee (or the Headteacher if s/he made the initial decision) should be present to articulate why they reached their judgement so the appeal committee can assess how reasonable was their determination. The Chair (or Headteacher) should also highlight any items of evidence, or submissions, they discounted in reaching their judgement and give reasons.

The Governing Board, or Appeals Committee, in considering an appeal has the discretion to uphold the Appeal, confirm or impose a lesser sanction than that applied by the Headteacher, or Disciplinary Committee, but cannot impose a greater sanction.

The Appeal decision by the Governing Board, or Appeals Committee is final, and should be confirmed in writing to the employee as soon as possible after the appeal hearing, and at least within 5 working days.

## **8. Employee Absence during the Hearing**

There may be exceptional circumstances in which there may be no option but to conduct the hearing in the employee's absence. In these circumstances the employee must be so advised in advance, and invited to make a written submission to the hearing and be offered the opportunity for their Representative to attend the hearing in the absence of the employee.

Where the employee fails to attend a hearing without any notification, consideration should be given to conducting the hearing in their absence.

Further advice should be sought from the Local Authority's Schools HR Advisory Service or the School/Academy's HR provider, as appropriate.

## **9. Grievance**

Should a grievance be raised by the employee during the course of the disciplinary process, normally, where the issues relate to the substance/context of the disciplinary matter, these may be appropriately dealt with as part of the disciplinary process.

Where an employee raises a grievance relating to the procedure during or before a meeting it may be appropriate to consider stopping the hearing and suspending the disciplinary procedure in order to deal with the grievance.

Examples of when the procedure is likely to be suspended include:

- an alleged conflict of interest that the person(s) hearing the case or otherwise involved in the case may have,
- Alleged bias in the conduct of the disciplinary hearing,
- There is possible discrimination,
- It is alleged that information has been withheld in the material presented to support the case, or that wholly irrelevant material has been included,
- Other challenge to the way the procedure has been conducted.

Advice should always be sought from the Local Authority's Schools HR Advisory Service or the School/Academy's HR provider. Where a grievance is raised during the disciplinary meeting, which is separate and unrelated to the matter in hand, this will be considered separately at the conclusion of the disciplinary process.

If the grievance is raised before the disciplinary hearing takes place, a separate investigation of the issues can be instigated, without waiting for the disciplinary case to be completed.

In certain circumstances, a grievance may be considered after an employee has been dismissed.

For these purposes, grievance will be taken to include any employee led complaint including complaints of harassment.

## **10. Criminal Offences**

Criminal offences committed outside the workplace will be dealt with on the facts of each case but always in accordance with advice contained in the appropriate ACAS Guidance. The main consideration should be whether the offence/alleged offence is one that makes an employee unsuitable for their type of work. Similarly, an employee should not be automatically dismissed solely because they are absent from work as a result of being remanded in custody.

A criminal offence involving dishonesty (e.g. theft or fraud as specified in the Financial Regulations), whether or not arising in the course of employment, is likely to be regarded as gross misconduct. In the case of an individual employed in a position of trust concerning property, this should be reported to Internal Audit.

The need for investigation and a disciplinary hearing still applies in circumstances relating to criminal offences irrespective of the outcome of any criminal process.

Unless expressly instructed by the Police to the contrary, it is possible to conduct an investigation and disciplinary process whilst police procedures are underway. Schools are advised to contact their HR service for advice.

## Appendix 3

### **DELEGATION OF SCHOOL STAFFING REGULATIONS – Applicable to Maintained Schools**

#### **Disciplinary Hearings**

Following the implementation of The School Staffing Regulations 2003, it is expected that Governing Boards will delegate the management of staff conduct and all initial staff dismissal decisions to the Headteacher.

There are circumstances where the Governing Board may consider alternative arrangements. These are detailed at 1.3 of Annex A at the end of Appendix 3.

The Headteacher may involve other Governors, for instance, in hearing representations at a dismissal hearing, but the final decision is expected to be that of the Headteacher. No Governor involved in a dismissal process should be used to hear the appeal against that dismissal.

However, where the Headteacher is involved in the case, as Investigating Officer or witness then it is very strongly advised that the Headteacher does not make an initial dismissal decision but refers the matter to the Disciplinary Committee of the Governing Board. In instances where the Headteacher acts as Investigating Officer, hears the case and makes an initial decision that the employee should be dismissed, Governing Boards are advised that there is a much greater likelihood that the case will be challenged and more difficulty for the Local Authority if this leads to an Employment Tribunal. If the Disciplinary Committee makes an initial decision to dismiss, any appeal would be addressed to an Appeal Committee drawn from the remainder of the Governing Board, not including any Governor previously involved in the case. Once the Governing Board has taken a decision to delegate responsibility for initial decisions on dismissal to the Headteacher, having taken account of the areas outlined in Annex A, it is advised that:

Any allegation that might constitute either misconduct or gross misconduct should initially be assessed by the Headteacher to determine an appropriate Investigating Officer.

- In small schools it may only be appropriate for the Headteacher to fill this role.
- In larger schools a member of the leadership team may be selected.
- If the allegation concerns the Headteacher it should be referred to the Chair of Governors who will decide whether it can be investigated by a Governor or whether to ask for an appropriate Local Authority Officer to conduct the investigation. (Chairs of Governors are strongly advised to contact the Local Authority's Schools HR Advisory Service for advice before proceeding).
- Consideration may need to be given as to whether the Child Protection Procedures should take precedence, depending on the nature of the

allegation.

If a senior staff member (other than Headteacher) is the Investigating Officer then s/he should present the case for the Headteacher to hear.

- If the Headteacher has acted as Investigating Officer, but the allegation is of misconduct, not gross misconduct, then the Headteacher may hold a disciplinary hearing to determine whether the allegation is upheld and, if so, which sanction to apply. In these circumstances the Headteacher may decide to involve other Governors in listening to representations of the staff member but will make the final decision.
- The Governing Board, at its annual meeting should select a Disciplinary Committee of three Governors plus reserves and delegate responsibility for hearing disciplinary cases in situations where it is not appropriate for the Headteacher to exercise this responsibility.
- If the Headteacher is the Investigating Officer of an allegation of gross misconduct, or a witness in the case, then the case will be referred to the Disciplinary Committee of the Governing Board to be heard. The Disciplinary Committee will be made up of three Governors. Any appeal will be made to an Appeals Committee constituted from the remaining members of the Governing Board, not involved in the case so far, and of at least three in number.

**The Governing Board is advised to attach a statement detailing their decision concerning the delegation of disciplinary powers to their Disciplinary Policy**

## Disciplinary Procedure - Roles and Responsibilities (overview)

### Allegation against employee

#### **Investigating Officer**

The Investigating Officer will be responsible for establishing the facts and circumstances relating to alleged misconduct, promptly and with minimal delay. Having carried out a fair and thorough investigation, the Investigating Officer will generally make a considered decision based upon the balance of probabilities.

Further guidance is in the Disciplinary procedure on pages 31-38

Senior Staff Member - nominated by Headteacher	Headteacher	LA HR Consultant ^ or other independently commissioned Officer
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#### **Disciplinary Officer/Committee**

The Disciplinary Officer/Committee will consider the facts presented by the Investigating Officer, the employee's response, and the testimony of any witnesses at a hearing. Having heard the case a decision, on the balance of probability, will be made and communicated to the employee.

Further guidance is in the Disciplinary procedure on pages 38-42

i) Headteacher* or ii) Governing Board Disciplinary Committee	Governing Board Disciplinary Committee	Headteacher* or Governing Board Disciplinary Committee
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#### **Appeals Committee**

The Appeals Committee (which does not include the Disciplinary Officer/Committee or any other Governors previously involved) will hear any appeal presented by the employee, along with responses from the Disciplinary Officer/Chair of the Disciplinary Committee, the Investigating Officer and the testimony of any witnesses. The Appeals Committee may uphold the appeal, confirm the original decision, or impose a lesser penalty (but not a more severe one). The decision of the Appeals Committee will be final.

Further guidance is in the Disciplinary procedure on pages 42-43

Governing Board: i) Disciplinary Committee or ii) Appeals Committee	Governing Board Appeals Committee	Governing Board: i) Disciplinary Committee or ii) Appeals Committee
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### Allegation against Headteacher

Governor - nominated by Chair	LA HR Consultant ^ or other independently commissioned Officer
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Governing Board Disciplinary Committee	Governing Board Disciplinary Committee
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Governing Board Appeals Committee	Governing Board Appeals Committee
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\* Depending on the level of delegation of disciplinary decisions determined by the Governing Board.

^ Cost incurred.

## **ANNEX A**

### **Excerpt from staffing guidance under sections 35(8) and 36(8) of the Education Act 2002 - Applicable to Maintained Schools**

#### Delegation to head teacher of staff appointments and dismissals

- 1.1 The governing bod has the overall responsibility for all staff appointments and dismissals in its school. With the exception of the dismissal of heads, where different arrangements apply it may delegate these responsibilities to the head teacher, an individual governor, or a group of governors with or without the head teacher.
- 1.2 Head teachers will normally be expected to lead all initial staff dismissal decisions. Appeals against dismissal should be heard by governors (see section 7). Therefore, other than in exceptional circumstances (outlined below in 1.3), the governing board should delegate the responsibility for these matters to the head teacher. The head teacher may involve other governors in selection or dismissal processes, for example in interviewing candidates and consulting on their suitability or in hearing representations at a dismissal hearing, but the final decision should be the head teacher's. No governors involved in a dismissal process should be used to hear the appeal against that dismissal.
- 1.3 In certain circumstances, outlined below, the governing board may consider applying alternative arrangements, which may include decisions being made by an individual governor or a group of governors with or without the head teacher. If an alternative arrangement is decided, the head teacher has a right to attend to offer advice. The circumstances are as follows:
  - A head teacher who is unwilling to perform these functions and whose previous history of service at the school did not include any such responsibilities. This gives an existing head teacher the option of preserving their current working arrangements, but when the governing board considers a new appointment for the head teacher post the normal expectation for the head teacher to undertake these responsibilities should apply.
  - Where the head teacher has been directly involved in disciplinary procedures leading to dismissal, has instigated a proposal to dismiss, or is a witness of particular conduct giving grounds for the dismissal in question. The arrangements for delegating initial dismissal decisions will therefore need to be considered on a case by case basis in the light of circumstances.
  - Where the governing board of a school with a religious character has agreed staffing policies which provide for governor involvement in the

interests of preserving the school's religious character.

- A head teacher subject to suspension, disciplinary procedures (including capability), or disciplinary sanction.
- Where the Local Authority has made representations to the chair of the governing board on grounds of serious concerns about the performance of the head teacher.
- Where the head teacher has failed to abide by financial limits agreed by the governing board for any school purpose.

1.4 The governing board should review, at least annually or otherwise where necessary, the continuation of any circumstances where the head teacher does not lead on these staffing matters because of concerns about their conduct or performance (i.e. the final three indents above). Where a head teacher is on long-term sick leave, secondment or some other long-term absence, the governing board should consider whether it is appropriate to pass delegated responsibility to the person acting in the head teacher's place. The head should have an opportunity to make representations on any decisions to discontinue or continue delegated responsibility.

1.5 Where the head teacher is exercising delegated responsibility, this cannot be delegated on to another person by the head teacher.

### **Summary of Section of School Staffing Regulations in Relation to Suspension of Staff**

The Governing Board or Headteacher may suspend staff:

- when a member of staff has been suspended by the Governing Board or Headteacher each will inform the other, as the case may be.
- ending a suspension can only be done by the Governing Board. They cannot delegate this function to the Headteacher.
- the Governing Board may decide, in certain circumstances, that it is content for the Chair to undertake these functions on behalf of the Governing Board.
- when ending a suspension a Governing Board must inform the Headteacher and, in Community, Voluntary Controlled, Community Special and Maintained Nursery Schools, must inform the Local Authority.

## Appendix 4

### **ROLE OF THE CONTACT OFFICER**

#### **1. Introduction**

It is recognised that there is a need, both at school and Local Authority level, to provide some means of support to a member of staff who is the subject of an allegation at work, or who has been suspended as a consequence of an allegation. The member of staff involved may experience feelings of stress, worry, and depression and may also feel isolated from their workplace, colleagues, friends and relatives.

It is important that any member of staff in this situation is regularly informed about what is happening in relation to the allegation and investigation, as a lack of information may itself lead to further stress and potential ill health. It should be recognised and appreciated that the allegation may have placed the member of staff in a difficult situation when handling the implications of the allegation for their family.

In order to provide support in these circumstances, and particularly where a member of staff is suspended, an appropriate person should be asked to act as Contact Officer for the member of staff. The Contact Officer should be totally objective and not involved in the investigation or subsequent action in any way. Their role is only to provide support to the member of staff.

Professional support relating to the investigation will also be available to the member of staff from their Professional Association or Trade Union. It is intended that the support from the Contact Officer will be complementary to this support.

#### **2. Allocation of a Contact Officer**

- The Contact Officer will normally be from the senior leaders in the school but outside of investigation of the case. In circumstances where this is not possible a member of staff from the Local Authority's Human Resources Team may be requested. In particular, where a Headteacher is suspended the Contact Officer is likely to be a Local Authority Officer.
- The Contact Officer should be a sensitive and caring person who will be able to provide the necessary level of support to the member of staff and, if appropriate, make any contacts on their behalf.
- The Contact Officer should be acceptable to the member of staff and if not, for whatever reasons, every effort will be made to identify an alternative Contact Officer.

- The name and contact arrangements should be confirmed in writing to the member of staff and reference to the Contact Officer should be made in any letter of suspension.
- The Contact Officer will make initial contact with the member of staff as soon as practicable. Subsequent contact will be according to the wishes of the member of staff and their professional association or trade union representative.

### **3. Role of the Contact Officer**

The role of the Contact Officer is to:

- Reassure and offer confidential help and support to the member of staff. In particular, the Contact Officer should be available to listen to and identify any indications about the state of health and well-being of the member of staff.
- Recognise that the circumstances may be personally very stressful to the member of staff and to help them to cope with this. This may involve supporting the member of staff in seeking additional help or counselling from their GP, Local Authority Occupational Health, or other counselling.
- Feedback any concerns, without breaching any confidentiality about the health and well-being of the member of staff so that appropriate action can be taken by the school or Authority.
- Provide or secure appropriate provision of, and access to, relevant information (including, when requested, material required to support their case) and updates from their workplace.
- Offer any other support which may be necessary.
- Support the member of staff until the investigation and any subsequent action is concluded. Depending on the outcome this may involve continuing the support, until the member of staff has returned to, and settled back into, their workplace.

### **4. Management Support**

The Contact Officer has a key role in supporting a member of staff who has had an allegation made against them. Support from a Contact Officer will be made available to all members of staff who are suspended, but particular attention will be paid to situations which, by their nature, are especially sensitive, such as those relating to matters of a sexual nature or where allegations of abuse of children may be involved. Because of the particular pressures that such allegations create, there may be a need for additional specialist support for the member of staff.

The Contact Officer's own line manager needs to be aware of their involvement in supporting a member of staff and the impact and effect which this may have on the Contact Officer in personal terms and in relation to time commitment.

**Appendix 5**

**Record of Disciplinary Action and Formal Complaints Concerning the Safety and Welfare of Children**

Name of Employee	Position	Date of complaint /allegation	Allegation	Action, including Local Authority	Outcome/sanction	Review date (if relevant) and outcome.

**Appendix 6**

**REGISTER OF AN APPEAL**

Employee Name: \_\_\_\_\_

Date of Disciplinary Hearing: \_\_\_\_\_

Date of Receipt of written confirmation  
of outcome of Hearing: \_\_\_\_\_

Please state which of the following are the grounds for your appeal.

1. Appeal on procedural grounds. Challenge concerning the implementation of the disciplinary policy and procedure. Please provide the nature of your challenge.

\_\_\_\_\_  
\_\_\_\_\_

2. Appeal related to the level of sanction issued, but not the substance of the case. Please provide the nature of your challenge.

\_\_\_\_\_  
\_\_\_\_\_

3. Appeal on the grounds that the findings of the Disciplinary Panel were not sound and reasonable, on the basis of the evidence provided. Please provide any specific challenge to the panel's conclusion, where appropriate.

\_\_\_\_\_  
\_\_\_\_\_

An appeal must be lodged with the Headteacher within 10 working days of receipt of the written confirmation of the Disciplinary Panel's decision.

Signature of Employee: \_\_\_\_\_

Date: \_\_\_\_\_

*For school Use:* .....

*Date Received:* .....

**Monitoring and Review**

The Governing Board will monitor and evaluate the Procedure.

It is rarely necessary to utilise the Disciplinary Procedure in schools so there will be no requirement for an annual report to the Governing Board from the Headteacher. Should the Governing Board identify that the procedure has been used on multiple occasions they may request a report on its operation. The report will not identify any individual by name. The report will include an assessment of any particular potential impact of the procedure on employees with regard to the following protected characteristics:

- Race
- Gender
- Sexual Orientation
- Disability
- Religion & Beliefs
- Age
- Part-time Status
- Maternity and Pregnancy
- Gender re-assignment
- Marriage & Civil Partnership

The Headteacher will report on whether there have been any appeals or representations on an individual or collective basis on the grounds of alleged discrimination. The Governing Board will respond appropriately to any request from the Local Authority for equalities data, so that wider information can be collated concerning the application of the procedure in relation to any protected characteristics represented across the county schools' workforce.