

# **Disciplinary Policy and Procedure**

Authority Guidelines on Staffing Procedures for Community, Voluntary Controlled, Community Special Schools and Early Years Centres (and those adopted by Governing Bodies of other maintained or non-maintained schools)

**For Safeguarding allegations, the document should be read in conjunction with the Procedure for Managing Safeguarding Allegations Against Staff and Volunteers.**

**Guidance for Governors addressing disciplinary issues relating to the Headteacher is Appendix 13.**

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**Adopted by the Governing Body**

School:

Date:



# Disciplinary Policy and Procedure

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## Disciplinary policy statement

This disciplinary policy and procedure have been developed in consultation and collectively agreed with the recognised Professional Associations and Trade Unions.

The School's Disciplinary Policy and Procedure have been developed to ensure that where there is an alleged breach of the School's policies, procedures, rules, regulations or standards, that employees are informed of the concern(s) and that appropriate action is taken to address the concern(s). The Disciplinary Policy and Procedure enable the employee to be treated in a fair and consistent manner in accordance with the principles of natural justice and in line with the ACAS Code of Practice.

The ACAS statutory Code of Practice on Discipline and Grievance (March 2015) provides basic practical guidance to employers, employees and their representatives. The Code sets out principles for handling disciplinary and grievance situations in the workplace and minimum requirements and principles. In addition, ACAS also provides guidance on:

- discipline and grievances at work
- conducting workplace investigations

Governing Bodies of schools with a delegated budget are responsible for the appointment, dismissal and suspension of school staff and for the regulation of conduct and discipline of school staff.

It is recognised that the disciplinary policy and procedure should not be viewed primarily as a means of imposing sanctions. It is also intended, where appropriate, that improvements in an employee's conduct should be emphasised and encouraged.

The Disciplinary Policy and Procedure does not apply to:

- new support staff being dealt with under the Probationary Policy and Procedure
- teachers being dealt with under the NQT process where the conduct issue can be dealt with as part of the mentoring process
- any employee being dealt with under:
  - the Performance Capability Policy and Procedure
  - the Management of Attendance Capability Policy and Procedure
- the barring of teachers by the Teaching Regulation Agency (formerly NCTL)
- the barring of teachers and support staff by the Disclosure and Barring Service (DBS)

***NB Where there is a statutory requirement to refer disciplinary matters to Teaching Regulation Agency or DBS advice should be sought from the Schools HR Consultancy team and/or the Local Authority Designated Officer (LADO). This includes situations where an employee resigns before the disciplinary process has concluded.***

## 1. Disciplinary procedure introduction

The disciplinary procedure is not intended to inhibit the day to day management of staff where there may be a requirement for informal discussions and advice about conduct without recourse to formal procedures.

It is however important to deal with disciplinary issues fairly and ensure that:

- employers and employees should raise and deal with issues **promptly** and should not unreasonably delay meetings, decisions or confirmation of those decisions
- employers and employees should act **consistently**
- employers should carry out any necessary **preliminary** fact-finding investigation to establish the basic facts of the case
- when required, **formal investigations** are carried out, to establish the detailed facts of the case and other relevant evidence such as witnesses, policies and procedures, and recorded evidence
- employers should **inform** employees of the basis of the problem and give them an opportunity to **put their case** in response before any decisions are made
- employers should allow employees to be **accompanied** at any formal disciplinary meeting
- employers should allow an employee to **appeal** against any formal decisions made

## 2. Roles and responsibilities

All parties should ensure that all reasonable steps are taken in order to avoid any unnecessary delays in concluding the investigation and/or attending any resulting disciplinary hearing or appeal.

***NB Where an employee is a recognised trade union officer, the employer has a responsibility to contact a paid officer of the union or professional association, to inform them of consideration of disciplinary action in respect of the recognised trade union officer.***

### 2.1. Governing Body

The Governing Body is responsible for implementing appropriate disciplinary procedures to ensure the appropriate conduct and wellbeing of all school employees, including constituting relevant committees to hear staff dismissal and staff dismissal appeal hearings. ***NB Further guidance is attached as Appendix 12.***

### 2.2. Chair of Governors

Where there is a disciplinary matter concerning the Headteacher, the Chair of Governors is responsible for ensuring that appropriate action is taken eg investigation and on completion of the investigation whether there is a need to hold a formal disciplinary hearing. ***NB Further guidance is attached as Appendix 13.***

### **2.3. Headteacher responsibilities**

The Headteacher is responsible for the internal organisation, management and discipline of the school employees (excluding the Headteacher), including the exercise of supervision over staff, by taking appropriate disciplinary action within delegated powers.

In cases of gross misconduct, the investigating officer may be the Headteacher or another nominated person. The Headteacher may be responsible for presenting the disciplinary investigation report and findings to Staff Dismissal Committee, when necessary.

### **2.4. Investigating officers**

The role of the investigating officer is to gather information and/or take statements, to establish the facts surrounding any allegations, to produce a fair, balanced and objective report, with support of the HR Consultancy Team; recommendations will be made as to suitable actions.

An investigating officer must not have previous detailed knowledge of the alleged misconduct or gross misconduct and will usually be a member of the senior leadership team eg DHT. However, on occasions the school may choose:

- an appropriate governor
- an independent investigating officer (external consultant)
- a member of the Schools HR Consultancy Team, who may be able to undertake the investigation on behalf of the school (*there is a charge for this additional service*)

The investigating officer should undertake the investigation without any unreasonable delays.

However, in normal circumstances, the Headteacher or Chair of Governors, where appropriate, will decide on what course of action to take. If required, they will present or support the presentation of any disciplinary case to an appropriate person or committee.

***NB Where there is a support officer appointed, the support officer is updated on the progress of the investigation.***

### **2.5. Support officers**

The role of the support officer is to maintain contact with any employee who has been suspended from work (see Paragraph 8.1.3.) to provide information on additional support, eg counselling, any other relevant school information, and keep the employee up to date on the progress of the investigation.

***NB A support officer is not normally the person's immediate line manager and will be independent of the investigation process. This must be a suitable employee of the school or if requested support may be offered by the Local Authority.***

***NB Further detailed guidance on the Role of the Support Officer is attached as Appendix 11.***

## 2.6. Professional Association, Trade Union or work colleague

A Professional Association, Trade Union representative or work colleague is responsible for supporting employees through the disciplinary process, including representing employees at relevant formal investigatory meetings or disciplinary hearing.

***NB It is the responsibility of the employee to make contact with the relevant Professional Association, Trade Union representative or work colleague at the earliest opportunity.***

## 2.7. Employee

The employee should co-operate fully in the disciplinary process, including attendance at any investigatory meetings and disciplinary hearings or appeal hearings. The employee is responsible for contacting and liaising with trade union or professional association representatives, or work colleague. Where an employee does not co-operate, a decision may be made in their absence.

***NB It is the responsibility of the employee to make contact with the relevant Professional Association, Trade Union representative or work colleague at the earliest opportunity.***

## 2.8. Human Resources (HR)

The role of HR Consultancy Team is to provide HR advice and guidance to the Headteacher and Governing Body and, where relevant, the Chair of Governors, if the matter concerns the Headteacher. The HR advice and guidance will be based on key employment principles (Burchell Principles):

1. Has a reasonable investigation been undertaken, under all the circumstances?
2. Is there reasonable belief that the employee has committed an act of misconduct or gross misconduct?
3. On the balance of probabilities is it reasonable to conclude that the employee has committed an act of misconduct or gross misconduct?

In addition, the HR Consultancy team will provide specific advice and guidance to:

- **Headteacher or Chair of Governors** on the potential range of courses of action to address concerns about the conduct of an employee and providing HR advice at disciplinary hearings convened by the Headteacher
- **investigating officer** on conducting and/or supporting them to undertake an investigation and produce a report, with appendices, and where appropriate support in the presentation of the case
- **governors** on the possible range of courses of action to take in respect of alleged misconduct or gross misconduct at disciplinary hearings and appeals convened by the School

***NB The HR Consultancy Team will limit their advice to questions of:***

1. ***Law.***
2. ***Procedure.***
3. ***Process.***

***NB It is for the Headteacher or Governing Body to make the final decision on which course of action to take.***

## **2.9. Wirral Council Legal Services (where appropriate)**

The role of legal services is to provide:

- advice and guidance on legal matters pertaining to the case
- specific advice on complex employment law matters
- advice to governors and disciplinary hearing and/or appeal
- preparation for, and attendance or presentation of cases at employment tribunal and Employment Appeal Tribunal hearings (where appropriate)

***NB Legal advice on employment matters is facilitated through the HR Consultancy.***

## **3. Framework for disciplinary process**

### **3.1. Preliminary fact-finding exercise**

Where there is a concern about the conduct of an employee the school should seek advice from the HR Consultancy Team (and the LADO in safeguarding cases) on conducting a preliminary fact-finding exercise to establish if there is any basis for further action. This **may not be required** in every circumstance.

In the case of a Headteacher, the Chair of Governors **should seek advice** from the Director of Children's Services (or a nominated officer).

***NB In the case of a safeguarding allegation, please refer to the Management of Safeguarding Allegations against Staff or Volunteers in Education Setting Procedure.***

In some cases, a preliminary fact-finding exercise may establish that there is **insufficient or no evidence** to progress the matter into an informal or formal disciplinary process. In such cases the employee should be formally notified without delay.

### **3.2. Informal action (pre-disciplinary management instruction)**

This may be used where there is a concern about conduct which needs to be addressed but does not meet the threshold for formal action.

The need to take **informal action** may be necessary where unsatisfactory conduct is identified, but disciplinary action may not be necessary. The purpose of a management instruction is to advise and assist the employee to improve their future conduct. Providing guidance and/or training at an early stage may well prevent the need for future disciplinary action.

In such cases the Headteacher should:

1. Informally meet with the employee.  
***NB This is an informal meeting between the employee and Headteacher or line manager only.***
2. Outline the concerns.
3. Seek feedback.
4. Notify the employee of the required improvement and potential further action, should similar concerns occur.

In all cases, a written record of the advice given, training and support to be offered (if appropriate) and expected improvement in future conduct should be kept and a copy given to the employee concerned. The advice should include a statement that failure to remedy the conduct could lead to formal disciplinary action being taken.

A management instruction would not be disclosed on any references provided for the employee.

A pre-disciplinary management instruction **does not constitute** formal disciplinary action.

***NB If a management instruction is not accepted by an employee, then the matter will be considered under the formal disciplinary procedure. In such circumstances the employee has up to a maximum of 10 days to inform the Headteacher or line manager that they wish the matter to be considered in a formal meeting (see Paragraph 8.5).***

### **3.3. Formal disciplinary investigation**

A formal investigation should be carried out where:

- the preliminary fact-finding exercise establishes that there is a need for further detailed investigation
- evidence is already available to confirm the need for a formal investigation

In such cases the employee should be notified of this in writing. This notification should contain sufficient information about the alleged misconduct or gross misconduct and its possible consequences to enable the employee to prepare to respond to the allegations at an investigatory meeting or disciplinary hearing.

#### **The right to be accompanied**

Any employee subject to formal disciplinary proceedings (investigation or hearing) has the right to be accompanied by a teacher professional association, a trade union representative or a work colleague at all stages of the **formal** procedure and is advised to contact his/her representative at the earliest opportunity.

### **3.4. Formal disciplinary warnings**

#### **3.4.1. Recorded oral warning**

This will be disregarded after a maximum of six months, provided no further misconduct has occurred within that timescale.

#### **3.4.2. Written warning**

This will be disregarded after a maximum of twelve months, provided no further misconduct has occurred within that timescale.

#### **3.4.3. Final written warning**

This will be disregarded after a maximum of two years provided no further misconduct has occurred within that timescale. It may not be appropriate to take such a final written warning into account, after a period of twelve months has elapsed, in

relation to misconduct which is dissimilar to the misconduct which led to the final written warning.

#### **3.4.4. Final written warning, as an alternative to dismissal**

Where an allegation of gross misconduct has been substantiated, but the Staff Dismissal Committee considers that the mitigation provided does not warrant dismissal on this occasion, a final written warning, as an alternative to dismissal, should be disregarded after three years.

***NB Previous warnings will not be expunged if a subsequent warning has been given to the employee concerned within the appropriate time limits specified above, ie from the date of issuing the previous warning. In cases relating to safeguarding issues, lapsed warnings may be taken into account.***

#### **3.4.5. Totting-up dismissal (where a live final written warning is in place)**

A totting-up dismissal may occur, in the absence of gross misconduct, where misconduct or serious misconduct occurs after a current 'live' final written warning has been issued, and such dismissal will be subject to notice pay.

#### **3.4.6. Gross misconduct dismissal**

In the case of gross misconduct, the employee may be summarily dismissed ie dismissed without notice or pay in lieu of notice. To justify summary dismissal, the misconduct must be so grave as to go to the root of the contract and be such that no reasonable employer could tolerate the continued employment of the employee.

### **3.5. Types of disciplinary offence**

Offences are, in general, divided as follows:

- a) **Minor offences** – misconduct for which the normal disciplinary action would be a recorded oral warning or a written warning by the Headteacher.

Examples of minor offences include:

- persistent poor time keeping
- low level disruptive or unacceptable behaviour
- minor contraventions of school policies and procedures
- minor failure to comply with organisation's published rules or standards

The above examples are not exhaustive.

- b) **More serious offences** – for which a final written warning would be appropriate.

Examples of more serious offences include:

- serious disruptive or unacceptable behaviour which has an impact on the school
- serious contraventions of school policies and procedures
- failure to comply with organisation's published rules or standards, which have a serious impact on the school

The above examples are not exhaustive.

c) **Very serious offences** – usually known as gross misconduct.

Other disciplinary action would be determined with regard to the seriousness of the offence and the existence of mitigating circumstances. It could include any sanction, up to and including dismissal.

**Gross misconduct is generally seen as misconduct which, if substantiated, is serious enough to destroy the employment contract between the employer and the employee and make any further working relationship and trust impossible or very difficult.**

The following list of incidents which may, dependent on the degree of the allegation, constitute gross misconduct, is neither exclusive nor exhaustive. In addition, there may be other offences of similar gravity which could constitute gross misconduct.

Examples of conduct that may be considered to constitute gross misconduct include:

- unauthorised removal of the school's property
- stealing from the school, its members, members of staff, or the public and other offences of dishonesty
- sexual offence
- sexual misconduct
- conduct at work likely to offend common decency
- fighting
- physical assault, including the imposition of any form of corporal punishment and the use of unreasonable force to control or restrain pupils
- consuming alcohol during working time
- being on duty under the influence of drink or drugs, other than those which have been medically prescribed
- deliberate falsification of documentation
- falsification of qualifications which are a stated requirement of employment
- malicious damage to the school's property
- serious breaches of safety regulations endangering other people, including deliberate damage to, neglect of, or misappropriation of safety equipment
- criminal conduct
- improper disclosure of information and misconduct in relation to official documents
- failure to act or comply with a reasonable instruction
- serious neglect of duty
- breaches of the school's Equal Opportunities Policy including racial and sexual discrimination or harassment
- inappropriate use of social media, as defined in the Social Media Policy
- bullying or harassment
- serious failure to uphold public trust and maintain high standards of ethics and behaviour within and outside school
- serious failure to maintain proper and professional regard for the ethos, policies and practices of the school

- serious misuse of the school's email, internet and other electronic facilities
- failure to adhere to Safer Working Practices Policy (in the case of safeguarding or professional conduct allegations failure to do so may lead to dismissal)

***NB Examples of offences that may constitute the need to take formal action are included in the procedure but are not exhaustive.***

### **3.6. Criminal charges or convictions outside of work**

All employees are required to declare any criminal convictions. Employees are required to inform their Headteacher if they are charged subject to a police investigation for criminal offence(s) at any time during their employment. The Headteacher should seek advice from School HR Consultancy Team or Local Authority Designated Officer (LADO).

Any employees who work with children and/or vulnerable adults must inform their Headteacher of any police investigations they are subject to. A charge or conviction may result in an investigation or action and could result in disciplinary proceedings being taken against the employee where, in the opinion of the Governing Body, the charge or /conviction is such as to affect, or be likely to affect:

- the suitability of the employee for the position in which he/she is employed
- the reputation of the School
- where the existence of the charge or conviction could, in the opinion of the Governing Body otherwise seriously undermine the trust and confidence that the School has in the employee

### **3.7. Commitment to equality**

This policy addresses the following equality duties:

- to eliminate unlawful discrimination, harassment and victimisation
- to advance equality of opportunity
- to foster good relations between different groups of people

One of the main purposes of the policy and procedure is to ensure that employees who wish to raise a grievance may do so in the knowledge that management decisions follow a standard process which affords a fair, rigorous, consistent, transparent assessment.

## **4. Appointing Governing Body committees to deal with relevant disciplinary matters**

### **4.1. Pecuniary interests**

Any governor involved in investigating or hearing a disciplinary, must declare any pecuniary interest where there is a conflict of interest such as a personal relationship or relative, and take no further part in the disciplinary process.

### **4.2. Staff governors**

Staff Governors cannot sit on either the Staff Dismissal Committee or Staff Dismissal Appeals Committee.

### 4.3. Director of Children's Services

The Director of Children's Services Local Authority or his nominated representative(s) and the Authority's Head of Legal Services or his nominated representative are entitled to attend at all proceedings in community and voluntary controlled schools for the purpose of giving advice.

### 4.4. Appointment of Staff Dismissal and Staff Dismissal Appeals Committee

Governing bodies should ensure that at the first meeting of the academic year the full Governing Body appoints a Staff Dismissal Committee and a Staff Dismissal Appeal Committee which are properly constituted and have appropriate powers delegated to them.

***NB Alternative governors, not involved in the case, may be used where governors assigned to the committee are not available or have a pecuniary interest.***

***NB The School Staffing (England) Regulations permit the Headteacher to have delegated responsibility to make initial dismissal decisions (IDDs) following which there will be an opportunity to appeal to the Staff Dismissal Appeal Committee.***

## 5. Principles of the dismissal process

- a) Dismissal proceedings must give the employee the right to explain matters before a dismissal decision is taken.
- b) Dismissal and notice periods will be effective from the initial dismissal decision (IDD) and the employee must also have the right of appeal against the decision.
- c) Headteachers also have the option of referring the case to the school's Staff Dismissal Committee with an appeal to the Staff Dismissal Appeal committee.
- d) It is good practice for the Headteacher to delegate the investigation to an investigating officer, which ensures that the Headteacher remains 'untainted' and able to make IDDs.
- e) Following the initial dismissal decision (IDD), in **Community, Voluntary Controlled, Community Special, and Maintained Nursery Schools**, the LA must terminate employment within 14 days. If the member of staff is successful at appeal, they are re-instated from the date of the initial dismissal decision. The Local Authority must receive a written notice from the school that the employee must cease to work at the school giving its reasons for the decision, whereupon the Local Authority must terminate the member of staff's employment with or without notice (as appropriate) in accordance with the School Staffing (England) Regulations 2009.

***NB Where possible an appeal for a 'totting up' Dismissal, should ideally be concluded within the notice period.***

In **Academies, Free, Voluntary Aided, Foundation and Trust Schools** the employer is the Governing Body and is responsible for enacting the dismissal decision or if the member of staff is successful at appeal to re-instate.

***NB The Local Authority recommends that Governing Bodies should delegate disciplinary responsibilities to the Headteacher for both minor and more serious offences but that allegations of gross misconduct, or where repeated offences may result in dismissal, should continue to be referred to the Staff Dismissal Committee.***

***NB Where schools are using the HR Consultancy Service Level Agreement, schools should discuss cases of potential dismissal before starting formal disciplinary proceedings, as failure to do so may result in the Local Authority not paying any costs associated with any future claims (including constructive dismissal).***

## **6. Cease to work at school decisions**

***This only applies in Community, Voluntary Controlled, Community Special, and Maintained Nursery Schools.***

Termination of the contract of employment will be with notice pay or without notice if the circumstances are such that the Local Authority is entitled to do so by reason of the employee's conduct, ie if gross misconduct has occurred.

In the case where an employee is not employed to work solely at the school, the LA will withdraw the employee from work at the school and consider the need to dismiss from other employment with the Council.

## **7. Responsibility for disciplinary action**

Following the investigation, where a formal Disciplinary Hearing is considered warranted, arrangements shall be made for it to be conducted by the appropriate person, who may be assisted by such other person(s) in the capacity of adviser as he/she may choose. In addition, the Local Authority Schools HR provision can provide advice and guidance throughout the disciplinary process (subject to purchasing the SLA).

***NB The Governing Body must decide on the delegated powers of the Headteacher when it establishes the Staff Dismissal Committee.***

The table below outlines the Local Authority recommended delegation of responsibilities for disciplinary matters.

	<b>Person responsible for investigating or presenting the allegation(s)</b>	<b>Person responsible for Hearing the Disciplinary case</b>
<b>Pre-Disciplinary Management Instruction</b>	(Not applicable.)	Headteacher (or Chair of Governors, where the issue relates to the Headteacher).
<b>Minor Offences</b>	Nominated investigating officer or Headteacher - investigating and presenting the case.	Headteacher (or relevant Governing Body Committee where the issue relates to the Headteacher).

<b>More Serious Offences</b>	Nominated investigating officer - investigating and presenting the case.	Headteacher (or relevant Governing Body Committee where the issue relates to the Headteacher).
<b>Gross Misconduct or Totting up Dismissal</b>	Nominated investigating officer and/or Headteacher investigating and presenting the case.	Governing Body Staff Dismissal Committee.
<b>Disciplinary Appeal</b>	Nominated investigating officer and/or Headteacher with Chair of Staff Dismissal Committee presenting the case.	Governing Body Staff Dismissal Appeal Committee.

Cases of gross misconduct should be referred to the Staff Dismissal Committee. The Governing Body may also decide to refer to the Staff Dismissal Committee cases where an employee already has a live final written warning in relation to previous misconduct. Alternatively, such decisions may be delegated to the Headteacher who in his/her discretion may refer the case to the Staff Dismissal Committee.

## 8. Disciplinary process

### 8.1. Allegation of gross misconduct - consideration of suspension (pending an investigation)

#### 8.1.1. Decision not to suspend an employee

Some investigations may be conducted without removing an employee from their typical working environment. Suspension is not an automatic response to a gross misconduct allegation. Where there are minimal concerns that the investigation may be compromised or if there is no credible evidence following initial fact finding to support the allegation (prior to undertaking a formal investigation) the employee may remain on duty. Where there are safeguarding concerns advice should be sought from the HR Consultancy Team, who will liaise with the Local Authority Designated Officer (LADO), on an appropriate course of action.

#### 8.1.2. Working off site and other options

***NB This is particularly relevant where there is a safeguarding allegation(s).***

On occasions, an employer may need to consider taking a temporary measure when:

- a preliminary fact-finding exercise is conducted
- a gross misconduct allegation(s) does not require the employee to be 'formally' suspended from work

In all cases, the employee must be instructed not to discuss the allegation with anyone excluding their trade union rep or designated work colleague (subject to approval from the Headteacher or Chair of Governors).

***NB In safeguarding cases where the employee works in another setting with children or young people, the LADO should be consulted.***

#### a) **Working off Site**

Where it is considered necessary for an employee to remain 'off site' during a preliminary fact-finding exercise, an employee may be requested to work from home. **NB This may not be possible in all cases eg cleaner.**

#### b) **Other options**

In some circumstances it may be possible to put in other alternative working arrangements. Examples could be:

- working in a different part of the school
- working with a different child
- being accompanied by another adult at all times (where this is to be considered, a discussion on the appropriate adult should take place)

### **8.1.3. Decision to suspend an employee**

Suspension may be appropriate in circumstances where a preliminary fact-finding exercise suggests there is some credible evidence to support the allegation(s) such as a safeguarding allegation.

An employer may decide that suspension on 'normal pay' is necessary while the investigation is carried out. This may include where:

- they could tamper with evidence or influence witnesses or the investigation
- working relationships have broken down
- they are a risk to colleagues, pupils or property
- there are criminal proceedings against the employee which affect their job
- this is a serious safeguarding allegation where there is a potential risk to pupils
- the property or the business of an employee or the organisation may be damaged
- there is a risk to an employee's health or safety

***NB It is advised that Headteacher or Chair of Governors, in conjunction with HR and legal advice, undertake a suspension risk assessment to clearly define the risks associated with suspension or other options, before deciding on a course of action. The Suspension Risk Assessment Checklist is attached as Appendix 14.***

Where suspension is considered to be the appropriate course of action, the employee should be immediately suspended and escorted from school premises on 'normal' pay by the Headteacher or the Chair of Governors (or their nominee) whilst the investigation proceeds.

If, during the course of an investigation, it is considered that gross misconduct may have occurred, the employee may be suspended and escorted from the school premises by the Headteacher or the Governing Body, again on **normal pay**.

Where an employee, who is suspended, declares themselves unfit for work due to sickness they will be paid occupational or statutory sick pay in line with their conditions service and statutory requirements.

***NB Following advice from the HR Consultancy Team, where the employee is the Headteacher, the Chair of Governors should make a decision regarding suspension.***

Any decision to suspend will be confirmed in writing as soon as is reasonably practical to the employee. A copy of the letter should be sent to the Director of Children's Services, for information. The suspension should be viewed by all parties as a non-prejudicial act.

The Headteacher or Chair of Governors must ensure that the *Effective Management of Suspension Checklist* (see Appendix 15) is completed and reviewed on a regular basis.

The investigation must be carried out as speedily as possible. The employee should be told clearly that he/she is being suspended for as short a period as possible, the investigation will be kept under review and that he/she will then be called back for interview. **Only by agreement of the Governing Body may a suspension be ended.**

Until the conclusion of any disciplinary hearing proceedings, where the Headteacher has been suspended, or is absent due to sickness, his/her functions in relation to other employees at the school should be performed by the Deputy Headteacher or a senior member of staff approved by the Governors.

## **8.2. Investigating allegations of misconduct (including gross misconduct)**

The person responsible for hearing a complaint will ensure that a preliminary investigation has been conducted to establish the facts of the case. There is a requirement that this should be done without any unreasonable delay. Guidance on the content of an investigatory report and other evidence is attached at Appendices 7, 8, 9 and 10, with the ACAS Guidance on Conducting workplace investigations (October 2015). Available at: [www.acas.org.uk/index.aspx?articleid=5507](http://www.acas.org.uk/index.aspx?articleid=5507)

The same person shall not be responsible for both the investigation and conduct of the Hearing except in the case of minor offences (misconduct) where the Hearing can be both initiated and conducted by the Headteacher. Therefore, a Headteacher should, on having a case of possible serious misconduct, or misconduct after a written warning, reported to him/her, appoint an investigating officer to conduct the investigation eg DHT, School Business Manager.

## **8.3. Investigation into alleged misconduct (including gross misconduct) by Headteacher**

In an investigation into conduct of the headteacher the Chair of Governors may, at the request of the Governing Body, be accompanied by, or appoint, a member of the LA, another Governor without substantial prior knowledge or in certain circumstances appoint an independent investigating officer to carry out the investigation. This officer shall be known as the investigating officer.

The investigating officer cannot sit as a member of either the Staff Dismissal or Staff Dismissal Appeals Committees but may present the disciplinary report and findings to the 'relevant' Governing Body Committees.

If, on completion of the investigation, it is considered by the Chair of Governors (and Director of Children's Services or his nominee in the case of Community, Voluntary Controlled, Community Special, and Maintained Nursery Schools) that, on the balance of probabilities, a complaint of misconduct is justified a Disciplinary Hearing will be held by the Staff Dismissal Committee.

## **8.4. Investigatory process**

### **8.4.1. Overview of the investigatory process**

An ACAS flow chart outlining the steps to follow in disciplinary investigation is attached as Appendix 10.

### **8.4.2. Interviewing witnesses**

Gathering evidence from witnesses (where relevant) is an important part of an investigation. Care should be taken in selecting and interviewing witnesses, to ensure that a fair and balanced view of the evidence in support of and against the allegation(s) is gathered. Any witness who the employee requests to provide a witness statement should be contacted. However, any potential witness may choose not to provide a statement to the investigating officer.

***NB A witness can choose to be supported by a trade union representative, professional association or a work colleague.***

### **8.4.3. Recording witness statements**

Witness statements should accurately reflect the content of the interview and include:

- name of witness and job role
- date and time of the meeting
- attendees
- questions asked and responses provided
- all witness statements should be signed by the person to confirm that the evidence provided is a true and accurate account

### **8.4.4. Other evidence**

The investigating officer should (where relevant) gather other documentary evidence, such as letters, emails, text messages, photos or video, evidence of internet web sites accessed, financial documents. Information gathered should be relevant to the allegations being investigated and reflect a fair and balanced view of the evidence gathered.

### **8.4.5. Investigatory meeting with employee/Headteacher (subject to the allegation)**

Gathering evidence from the employee is an important part of an investigation. Care should be taken in interviewing, to ensure that a fair and balanced view of the evidence in support of and against the allegation(s) is gathered. If an employee fails to co-operate with an investigation, a decision on whether to proceed to a disciplinary hearing will be made on the evidence available.

***NB Employees have a right to be accompanied by a representative as soon as disciplinary action against them is the potential outcome.***

#### **8.4.6. Investigation reports**

At the conclusion of an investigation the investigating officer should produce a report or document which includes (where appropriate) a summary of the case, background and context, key facts, evidence gathered including witness statement and other evidence, mitigation offered and a conclusion and recommendation of whether there is a case to answer. (Investigatory report format is attached as Appendix 8.)

#### **8.5. Notification of a Disciplinary Hearing**

All employees must be notified in writing giving a minimum of **10 working days' notice** of the Hearing (unless varied by mutual agreement) to be held under the terms of the school's Disciplinary Procedure.

The letter should notify the employee of:

- the detailed allegation(s)
- investigation report and all relevant documentation such as signed witness statements, school policies if appropriate
- date, time and location of the hearing
- their entitlement to be represented by a professional association, trade union representative or a work colleague (see sample letter Appendix 22)
- enclose a copy of the Disciplinary Procedure

Where there is a potential dismissal ie in the case of minor offences or more serious offences after a final written warning or gross misconduct, the employee should also be advised in the above letter of the following:

- that they are able to call witnesses if appropriate
- confirmation of any witnesses to be called by the Headteacher
- they must send copies of any documents that intend to refer to at the Hearing together with a list of witnesses if appropriate not less than 5 days before the Hearing to the Clerk to Governors; copies should also be provided directly to the Headteacher at the same time
- that if the misconduct is substantiated, they may be dismissed

A colleague accompanying an employee is entitled to reasonable time off to prepare for and attend the Hearing.

In the case of a potential disciplinary action being conducted with an employee who is an accredited official of a recognised professional association or trade union, consultation should take place prior to the above letter being sent with a senior official of their teacher professional association or trade union. In such cases schools should seek advice from the LA.

In the cases of potential dismissal, the Director of Children's Service should be invited to send an appropriate Local Authority officer(s) eg HR to attend the Disciplinary Hearing for the purpose of giving advice. The Committee must consider any advice given before reaching a decision.

## **8.6. Non-attendance at meetings arranged under the disciplinary procedure**

There may be occasions when the employee is unable or unwilling to attend a meeting. In such cases the employer may conclude that a decision should be made on the evidence available. In such circumstances the employee should be informed, in writing, that the case may be heard in their absence. If the employee and/or the employee's chosen representative cannot attend they must offer an alternative date within 5 working days of the original date. If the employee fails to attend the postponed hearing, then, depending on the circumstances, a decision may be taken in their absence, if that is a reasonable course of action.

Possible exceptions:

- where failure to attend was outside the employee's control, eg illness of a child, it is reasonable to offer a second opportunity
- medical fitness of employee to attend meeting (in such circumstances it would be prudent to obtain a medical opinion from an Occupational Health physician on fitness to attend any meetings)

### **8.6.1. Recording of disciplinary process**

It is the **responsibility of the school** to ensure that notes of hearings are formally recorded, in the form of minutes, which may be referred to at a later date eg employment tribunal. All official paperwork and records, including electronic records, must be kept in a safe and confidential place detailing:

#### **Investigation**

- letters and correspondence to the employee, including the nature of the disciplinary offence(s)
- investigating officer's report, including witness statements, other documentary evidence
- notes of any meetings

#### **Disciplinary Hearing (in addition to above):**

- notes of the disciplinary hearing, both formal minutes and personal notes of committee members
- the action taken, together with the reasons

#### **Appeal Hearing (in addition to above):**

- whether an appeal was lodged and, if so, its outcome
- notes of the appeal hearing, both formal minutes and personal notes of committee members
- the action taken, whether or not the decision is upheld, together with the reasons
- any subsequent developments

All these records will be required if an employee takes a case of unfair dismissal to an employment tribunal.

## **8.7. Role of Professional Association, Trade Union Representatives or work colleague in a Disciplinary Hearing**

The procedure to be followed in a disciplinary and appeal hearing is set out in Appendices 2, 3, 4 and 6.

The professional association, trade union representative or work colleague can:

- present the case on behalf of the employee
- question, on behalf of the employee, any witnesses called and/or the investigating officer or Headteacher
- respond on behalf of the employee to any views expressed but cannot answer specific questions put to the employee
- confer with the employee during the hearing
- sum up the employee's case

The professional association, trade union representative or work colleague does not have the right to answer questions on the employee's behalf, address the hearing if the employee does not wish it, or prevent the employer from presenting their case.

## **8.8. Grievances during a disciplinary process**

The ACAS Code provides that where an employee, who is subject to a disciplinary investigation, raises a grievance during the disciplinary process, the disciplinary process **may** be temporarily suspended to deal with the grievance when:

- the grievance relates to a conflict of interest that the manager holding the disciplinary meeting is alleged to have
- bias is alleged in the conduct of the disciplinary meeting
- management has been selective in the evidence they have supplied to the manager holding the meeting
- there is possible discrimination

However, where the grievance and disciplinary cases are related, it may be appropriate to deal with both issues concurrently.

Available at: [www.acas.org.uk/index.aspx?articleid=2174](http://www.acas.org.uk/index.aspx?articleid=2174)

## **8.9. Pre-employment tribunal – ACAS early conciliation**

Trying to settle a dispute via early conciliation is quicker, easier, less time consuming and less expensive than dealing with an employment tribunal claim. Conciliation is a much less formal process too. When an individual makes an early conciliation notification the deadline for making their employment tribunal claim is pushed back by up to one month.

For more advice please contact the Schools HR Consultancy team or go to the ACAS website: [www.acas.org.uk/index.aspx?articleid=4028](http://www.acas.org.uk/index.aspx?articleid=4028)

## 8.10. Application to an employment tribunal

Where an employee has been dismissed an application to an employment tribunal **can only be made** after an employee has contacted ACAS and sought early conciliation (as outlined above).

The Governing Body shall be the respondent in any application to an employment tribunal for the dismissal of an employee. This means that the Chairperson and possibly other members of the Staff Dismissal Committee and/or the Staff Dismissal Appeal Committee would be required to give evidence at any employment hearing.

An employment tribunal claim may (subject to certain exemptions) only be made if an employee has been continuously employed for at least two years at the time his or her employment ends. Subject to the satisfaction of certain conditions, employees who feel that they have been unfairly dismissed have a legal right to make a complaint to an employment tribunal. Such complaints would normally be received by the employment tribunal within 4 months of the employee's last day of work (following ACAS early conciliation outlined above).

Where an employee has been dismissed and exercises his/her right to apply to an employment tribunal, the notice of employment tribunal claim will be sent to the Governing Body, as respondent.

The Clerk to the Governors should inform the Director of Children's Services immediately on receipt of the notice so that the LA can assist in the completion of the response and decide whether it wishes to apply to the Employment Appeal Tribunal to be made an additional party and allowed to take part in the proceedings.

The completed notice of response needs to be returned to the employment tribunal within the time stipulated by the tribunal.

Any costs awarded in connection with a decision of unfair dismissal by the employment tribunal will be borne by the LA unless the Authority has good reason for deducting the costs from the school's budget share. Good reason is not defined by law but, as a general rule, costs associated with unfair dismissal contrary to the Director of Children's Services' advice may be charged to the school's budget.

## 9. Advice to governors

In any proceedings the Governing Body would be regarded as the employer and would need to demonstrate, in line with the **Burchell Principles**, that:

1. A fair procedure had been followed in accordance with the ACAS Code of Practice.
2. A robust, balanced and fair investigation had taken place.
3. The employer had formed a view that the employee had committed an act of misconduct and that the employer had reasonable grounds to sustain that belief.

In addition, the governing body must ensure that:

- the employee had been given ample opportunities to explain his/her actions during the investigation and any hearing arranged under this procedure

- there was no pre-judgement as to guilt and that the decision to dismiss was reasonable in the light of the evidence before the bodies making the decision

Any failure to carry out proper procedures would very likely result in a decision of unfair dismissal by the employment tribunal.

From 6 April 2009, employment tribunals will consider whether a failure to follow the principles in the ACAS Code of Practice on disciplinary and grievance procedures (the Code) was unreasonable. The employment tribunal can choose to increase or decrease awards by up to 25 per cent in relation to the level of compliance of either the employee or employer.