

St. Peter's CE Primary School, Heswall

Staff Disciplinary Policy and Procedure



OUR VISION

Like St Peter, we build upon the rock of Jesus to enable us to shine: achieving our God given potential and loving ourselves, others, the world and God.



2022 – 2023

DISCIPLINARY POLICY AND PROCEDURE

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DISCIPLINARY POLICY

Policy Statement

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

The School's Disciplinary Policy and Procedure has 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 enables 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: the ACAS guide
- 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 or
 - Sickness Absence 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.

Disciplinary Procedure

1. 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 should 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** to establish the detailed facts of the case, and other relevant evidence e.g. witnesses, policies, and procedures, recorded evidence are carried out
 - 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/appeal.

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 at 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 e.g. investigation and on completion of the investigation whether there is a need to hold a formal disciplinary hearing
NB Further guidance is attached at appendix 13

2.3 **Headteacher**

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 Officer

The role of the investigating officer is to gather information and/or take statements to establish the facts surrounding any allegations, 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/ gross misconduct, and will usually be a member of the senior leadership team e.g. DHT. However, on occasions the school may choose:

- An appropriate governor
- An Independent Investigating Officer (external consultant)
- To approach the Schools HR Consultancy Team, who may be able to undertake the investigation on behalf of the school *NB 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 /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/committee. *Where there is a support officer appointed, the support officer is updated on the progress of the investigation.*

2.5 Support Officer

The role of the Support Officer is to maintain contact with any employee who has been suspended from work (see para 8.1) to provide information on additional support E.g. 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 at appendix 11

2.6 Professional Association/Trade Union/work colleague

Professional Association/ Trade Union representative/ 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/ 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/ appeal. The employee is responsible for contacting and liaising with trade union / 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/ work colleague at the earliest opportunity

2.8 Human Resources

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 (Birchell Principles)

- Has a reasonable investigation been undertaken, under all the circumstances?
- Is there reasonable belief that the employee has committed an act of misconduct or Gross Misconduct?
- 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/gross misconduct at Disciplinary Hearings and Appeals convened by the School.

N.B. HR Consultancy Team will limit their advice to questions of:

1.Law 2.Procedure 3.Process

It is for the Headteacher/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/presentation of cases at Employment Tribunal and Employment Appeal Tribunal Hearings (Where appropriate).

N.B. 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 for the HR Consultancy Team / 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/Volunteers in Education Setting Procedure
Embed document

Embed initial response checklist for safeguarding allegations (to be developed)

In some cases, a preliminary fact-finding exercise may establish that there is **insufficient** or **no evidence** to progress the matter into an informal / 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 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:

- Informally meet with the employee.
- ***NB this is an informal meeting between the employee and Headteacher / line manager only.***
- Outline the concerns
- Seek feedback
- 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 this **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 / line manager that they wish the matter to be considered in a formal meeting (*See Section 4*).

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/ gross misconduct and its possible consequences to enable the employee to prepare to respond to the allegations at an investigatory meeting/ disciplinary hearing.

3.3.1 Right to be accompanied

Any employee subject to formal disciplinary proceedings (investigation/ 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

- **Recorded Oral Warning**

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

- **Written Warning.**

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

- **Final Written Warning**

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.

- **Final Written Warning, as an Alternative to Dismissal**

where allegation of Gross Misconduct has been substantiated, but where the Staff Dismissal Committee considers that the mitigation provided is 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 i.e. from the date of issuing the previous warning. In cases relating to safeguarding issues, lapsed warnings may be taken into account.

- **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.

- **Gross Misconduct Dismissal**

In the case of gross misconduct, the employee may be summarily dismissed i.e. 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 Offences

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/ 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/standards, which have a serious impact on the school.

The above examples are not exhaustive.

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

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.

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
- Neglect of duty
- Breaches of the school's Equal Opportunities Policy including racial and sexual discrimination/harassment
- Inappropriate use of social networking sites, as defined in the Social Networking Policy
- Bullying / harassment
- Failure to uphold public trust and maintain high standards of ethics and behaviour within and outside school.
- 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 document. In the case of safeguarding / 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 / 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
- Reputation of the School

And/or

- 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:

- 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 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 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 is properly constituted and has 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.

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 IDD's
- 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)

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 recommend 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.

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

NB 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, i.e. 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)

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.

	Person responsible for investigating/presenting the allegation(s)	Person responsible for Hearing the Disciplinary case
Pre-Disciplinary Management Instruction		Headteacher (or Chair of Governors, where the issue relates to the Headteacher)
Minor Offences	Nominated Investigating Officer or headteacher - investigating and presenting the case.	Headteacher (or relevant Governing Body Committee where the issue relates to the Headteacher)
More Serious Offences	Nominated Investigating Officer - investigating and presenting the case.	Headteacher (or relevant Governing Body Committee where the issue relates to the Headteacher)
Gross Misconduct or Totting up Dismissal	Nominated Investigating Officer and/ or headteacher investigating and presenting the case.	Governing Body Staff Dismissal Committee
Disciplinary Appeal	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 LADO, on appropriate course of action.

8.1.2 Working Off Site / 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/ Chair of Governors)

N.B. 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 e.g. 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:

- | | |
|----|----------------------------------------------------------------------------|
| a) | They could tamper with evidence / influence witnesses or the investigation |
| b) | Working relationships have broken down |
| c) | There are risks to colleagues, pupils or property |

d)	There are criminal proceedings against the employee which affect their job
e)	This is a serious safeguarding allegation where there is a potential risk to pupils
f)	The property or the business of an employee or the organisation may be damaged
g)	There is a risk to an employee's health or safety

NB It is advised that Headteacher/ 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

Appendix 7 Suspension Risk Assessment Checklist

Where suspension is considered to be the appropriate course of action, the employee should be immediately suspended and sent off 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 sent off 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/ statutory sick pay in line with their conditions service and statutory requirements.

N.B. 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/Chair of Governors must ensure that the **Effective Management of Suspension Checklist (Appendix 8)** 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 and 8, and the ACAS Guidance on Conducting workplace investigations (October 2015).

Available at:

http://m.acas.org.uk/media/pdf/q/0/Conducting_Workplace_Investigations_Nov.pdf

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 e.g. 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

Overview of the investigatory process

An ACAS flow chart outlining the steps to follow in disciplinary investigation is attached appendix

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.

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.

Other Evidence

The investigating officer should (where relevant) gather other documentary evidence such as letters, emails, text messages, photos/ 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.

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.

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

Investigation Reports

At the conclusion of an investigation the investigating officer should produce a report/ document which includes (where appropriate) a summary of the case, background/context, key facts, evidence gathered including witness statement/other evidence, mitigation offered and a conclusion/ recommendation of whether there is a case to answer. (Investigatory report format is attached appendix 7)

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 A)

- Enclose a copy of the Disciplinary Procedure

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

- 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) e.g. 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 e.g. illness of 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 at a later date e.g. 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 Panel 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 Panel members
- the action taken (whether or not 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 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/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.

The procedure to be followed in a disciplinary and appeal hearing is set out in *Appendices 2 and 5*.

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:

<http://m.acas.org.uk/media/pdf/f/m/Acas-Code-of-Practice-1-on-disciplinary-and-grievance-procedures.pdf>

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:

<https://ec.acas.org.uk/Submission/EmployerPage>

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 a charge 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 **Birchell 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 has 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.

**DISCIPLINARY HEARINGS –
SAFEGUARDING CASES - CONSIDERATION OF EVIDENCE**

The disciplinary Decision Maker(s) must have regard to all the evidence presented to them and form a view and have reasonable grounds to sustain the belief that:

- (a) Whether the person's behaviour has posed, or could pose, a risk to children to whom the organisation has a duty of care; and/or
- (b) Whether the behaviour has compromised, or could be seen to have compromised, the ability and reputation of the organisation to safeguard children by failure to uphold the standards expected of the employee.

The absence of any criminal investigation, charge or conviction is not an adequate defence for the adult who is subject to a disciplinary hearing. There may be evidence contained within the disciplinary investigation which leads the employer to question the suitability of the person to continue to work in a position of trust within the organisation even when no criminal activity has been identified or a criminal investigation has not led to a charge or a case has been brought before a court but there has been no conviction.

Children **should not** be expected to attend a disciplinary hearing. In some cases a young person may clearly express a wish to contribute by giving evidence in person, and in such cases should be accompanied by a responsible adult whose role will be to ensure that his or her rights are observed.

The burden of proof in disciplinary proceedings requires that the evidence provided demonstrates that, on the **balance of probabilities**, there is a **strong likelihood** that the individual is **unsuitable for his or her current position**. (refer to note 1 below)

The panel's decision should not be influenced by concerns about whether, at a later stage, the individual may or may not be barred from working with children. Neither should concerns about any possible appeal process influence its decision.

The disciplinary decision makers should:

- Always act reasonably and in good faith in the interests of the child and the employee.
- Have no prior involvement that might prejudice their ability to hear the case fairly.
- Adjourn for further information or advice where necessary.
- Reach a decision based on a full consideration of all evidence with sufficient regard having been given to any explanation offered by the employee for his/her behaviour.
- Understand that the organisation must have a priority to safeguard children.

Disciplinary Hearing Procedure
(For minor offences to be investigated and heard by Headteacher)

1. The Headteacher will introduce the Hearing, explain its purpose and how the meeting will be conducted.
2. The Headteacher should put the case to the employee.
3. The employee should be allowed to put his/her case to the Headteacher with the assistance of his/her representative if he/she so wishes.
4. The Headteacher should then sum up.
5. The employee (or his/her representative) to sum up.
6. Following the summing up the Headteacher should ask the employee and his/her representative to withdraw in order for him/her to deliberate on the case.
7. On completion of his/her deliberations the Headteacher should ask the employee and his/her representative to return to hear his/her decision and the disciplinary action, if any, to be taken.
8. The decision of the Headteacher should be one of the following:
 - a) To confirm to the employee the matter is being dismissed or cannot be substantiated and direct that all reference to the matter be removed from his/her disciplinary record.
 - b) To find that the alleged breach of discipline is proved in whole or part but resolve that no action be taken.
 - c) Impose a recorded oral warning.
9. The Headteacher should also give an explanation for that action and should explain the employee's right of appeal under the procedure.
10. The Headteacher should confirm the recorded oral warning in writing within 7 working days to the employee (copy to a teacher professional association/trade union representative and the Director of Children's Services), detailing the complaint(s) and the action taken plus the employee's right of appeal.
11. If a recorded oral warning has been imposed the employee should be asked to acknowledge, in writing, that an oral warning has been given.

Disciplinary Hearing Procedure
(For disciplinary matters delegated to Headteacher)

NB. Normally for more serious offences or repeated minor offences

1. The Headteacher will introduce the Hearing, explain its purpose and how the meeting will be conducted.
2. The investigating officer to put the case and to call witnesses if appropriate.
3. The employee (or his/her representative) to ask questions of the investigating officer and witnesses.
4. The Headteacher to ask questions of the investigating officer and witnesses.
5. The employee (or his/her representative) to put his/her case and to call witnesses if appropriate.
6. The investigating officer to ask questions of employee (and/or his/her representative) and witnesses.
7. The Headteacher to ask questions of the employee (and/or his/her representative) and witnesses.
8. The investigating officer to sum up.
9. The employee (or his/her representative) to sum up.
10. The Headteacher may adjourn the proceedings at any stage if it appears necessary or desirable. If adjourning for the purpose of enabling further information to be obtained he/she should specify the nature of that information. Any adjournment should normally be for a stated period.
11. Following the summing up, both parties, together with their representatives and any witnesses called, will withdraw. **Note: Witnesses should only be present when giving evidence and should withdraw immediately afterwards.** If it is necessary to recall one of the parties for further information before a decision is taken both parties should be recalled.
12. On completion of his/her deliberations the Headteacher should ask the employee and his/her representative to return and should announce his/her decision and the disciplinary action, if any, to be taken. The decision of the Headteacher should be one of the following:
 - a) To confirm with the employee the matter is being dismissed or cannot be substantiated and direct that all reference to the matter be removed from his/her disciplinary record.
 - b) To find the alleged breach of discipline is proved in whole or part but resolve that no action be taken.

c) Impose a recorded oral warning or a written warning or in the case of serious misconduct or misconduct after a warning a final written warning. Where a final written warning is issued and still 'live' then the employee may ultimately be dismissed. In such cases the employee would be entitled to notice pay. **NB if the governing body have given delegated powers the Headteacher may also dismiss and employee with or without notice.**

13. The Headteacher should confirm the decision in writing within 7 working days to the employee (copy to professional/trade union representative and the Director of Children's Services) detailing the complaint(s) and the action taken plus the employee's right of appeal. If a warning has been imposed the employee should be asked to acknowledge, in writing, that a warning has been given.

Disciplinary Hearing Procedure
(Staff Dismissal Committee)

NB normally only for Gross Misconduct or Dismissal for further and/ or different offences (after a Final Warning) or disciplinary matters relating to the Headteacher

Introduction

The Staff Dismissal Committee may consist of up to 3 but not less than 2 members of the Governing Body (excluding the Headteacher) who have not previously been involved in the case, or have any other involvement, e.g. relationship to the employee subject to disciplinary action.

Documentation from both parties should be given to the Staff Dismissal Committee 3 working days prior to the disciplinary Hearing in order for the Committee to be better informed about the issues of the case.

Disciplinary Hearing Procedure

1. The Chairperson of the Staff Dismissals Committee and the Director of Children's Services (or his nominated officer(s)) will introduce the Hearing, explain its purpose and how the meeting will be conducted.
2. The Headteacher/investigating officer to put the case and call witnesses if appropriate.
3. The employee (or his/her representative) to ask questions of the Headteacher /investigating officer and witnesses.
4. The members of the Staff Dismissal Committee to ask questions of the Headteacher/investigating officer and witnesses.
5. The employee (or his/her representative) to put his/her case and to call witnesses if appropriate.
6. The Headteacher/investigating officer to ask questions of the employee and/or his/her representative and witnesses.
7. The members of the Staff Dismissal Committee and the Director of Children's Services (or his/her nominated officer(s)) to ask questions of the employee and/or his/her representative and witnesses.
8. The Headteacher/investigating officer to sum up.
9. The employee (or his/her representative) to sum up.
10. The Chairperson of the Staff Dismissal Committee may adjourn the proceedings at any stage if it appears necessary or desirable. If adjourning for the purpose of enabling further information to be obtained he/she should specify the nature of that information. Any adjournment should normally be for a stated period.
11. Following the summing up, both parties, together with their representatives and any witnesses called, will withdraw. **Note - Witnesses should only be present when giving evidence and should withdraw immediately afterwards.** If it is necessary to recall one

of the parties for further information before a decision is taken both parties should be recalled. The Director of Children's Services or his nominated officer, should remain during the Staff Dismissal Committee's deliberations.

12. On completion of the Staff Dismissal Committee's deliberations the Chairperson should ask the employee and his/her representative to return and should either announce the decision of the Staff Dismissal Committee and the disciplinary action, if any, to be taken or inform the employee that the decision will be conveyed in writing to him/her. The decision of the Staff Dismissal Committee should be one of the following:

- a) To confirm with the employee the matter is being dismissed or cannot be substantiated and direct that all reference to the matter be removed from his/her disciplinary record.
- b) To find that the alleged breach of discipline is proved in whole or part but resolve that no action be taken.
- c) To impose a recorded oral warning; a written warning; a final (or combined first and final) written warning or a final written warning as an alternative to dismissal.
- d) To determine that the employee shall cease to work at the school on the grounds of Gross Misconduct or Dismissal for further and/ or different offences (after a Final Warning)
- e) The Chairperson should also give reasons (either orally or in writing) for that action and should explain the employee's right of appeal under the procedure
- f) The Staff Dismissal Committee should confirm the decision in writing as soon as is reasonably practical to the employee, detailing the findings and the action taken plus the employee's right of appeal to the Staff Dismissal Appeal Committee of the Governing Body.

Where the decision of the Staff Dismissal Committee is that an employee should cease to work at the school, a copy of the written notification to the employee setting out the reasons for the decision must be sent to the Director of Children's Services.

The employee such be given notice terminating his contract with the Authority as is required under that contract; or, terminate that contract without notice if the circumstances are such that it is entitled to do so by reason of his/her gross misconduct

Disciplinary Appeals Procedure

Introduction

The employee has the right of appeal to the Staff Dismissal Appeals Committee of the Governing Body against any decision to take disciplinary action.

The employee should send a written appeal (pro forma Appendix 8), giving grounds for the appeal, for the attention of the Clerk to the Governors within 10 days of receiving confirmation of the sanction with a copy to the Director of Children's Services

The size of the appeal committee can be no less than the original relevant committee (where relevant). The staff dismissal appeals committee can decide an appeal against any decision taken by the Headteacher or the Staff Dismissal Committee, and can decide to confirm that decision, to impose a lesser penalty or to dismiss the case.

NB in the case of **Community, Voluntary Controlled, Community Special, and Maintained Nursery Schools** the Director of Children's Services or nominated representative should be invited to give advice and/or attend the Hearing and should be sent copies of all documents to be considered during the Hearing.

Appeal Hearing Procedure

- a. The Headteacher/ Investigating Officer or Chair of the Staff Dismissal Committee to put the case and call witnesses if appropriate.
- b. The employee (or his/her representative) to ask questions of the Headteacher /investigating officer or Chair of the Staff Dismissal Committee and witnesses.
- c. The members of the Staff Dismissal Appeal Committee and the Director of Children's Services (or his nominated officer) to ask questions of the Headteacher/Investigating Officer or Chair of the Staff Dismissal Committee and witnesses.
- d. The employee (or his/her representative) to put his/her case and to call witnesses if appropriate.
- e. The Headteacher/investigating officer or Chair of the Staff Dismissal Committee to ask questions of the employee and/or his/her representative and witnesses.
- f. The members of the Staff Dismissal Appeal Committee and the Director of Children's Services (or his nominated officer(s)) to ask questions of the employees and/or his/her representative and witnesses.
- g. The Headteacher / investigating officer or Chair of the Staff Dismissal Committee to sum up.
- h. The employee (or his/her representative) to sum up.
- i. The Chairperson of the Staff Dismissal Appeal Committee may adjourn the proceedings at any stage if it appears necessary or desirable. If adjourning for the purpose of enabling further information to be obtained he/she should specify the nature of that information. Any adjournment should normally be for a stated period.

j. Following the summing up, both parties, together with their representatives and any witnesses called, will withdraw. **Note: Witnesses should only be present when giving evidence and should withdraw immediately afterwards.** If it is necessary to recall one of the parties for further information before a decision is taken both parties should be recalled. The Director of Children's Services (or his nominated officer(s)) and the Head of Legal Services (or his nominee) should remain during the Staff Dismissal Appeal Committee's deliberations.

k. The Staff Dismissal Appeal Committee may announce its decision to the Headteacher and/or the employee and his/her representative personally or subsequently in writing. Whichever method is chosen both parties should be informed in a like manner. A decision notified orally should be confirmed in writing by the Clerk to the Governors.

l. The outcome of any appeal should be confirmed in writing with the employee within 10 working days of the appeal

m. If the Appeal is upheld, the Appeals Committee may order the Authority to reinstate the employee with pay (if he/she has been dismissed) with or without a final or written or oral warning or if the sanction has been a warning (of any kind) the Appeals Committee may order that the warning be annulled or be replaced by a warning which carries with it a lesser sanction.

SAMPLE LETTER - OFF SITE/ OTHER OPTIONS
PENDING PRELIMINARY FACT FINDING EXERCISE

Dear

I refer to our meeting (or telephone conversation) on concerning allegations relating to

I confirm that whilst initial preliminary fact-finding exercise continues you have been asked to remain off site with effect from on full pay (give reasons based on any risk assessment conducted) / or other option

During the preliminary fact finding exercise you should not discuss the allegation(s) with anyone, apart from your trade union representative/ professional association rep or designated work colleague (subject to approval from myself). However, you are free to discuss other matters relating to the school with relevant staff.

A) Off site

You are therefore asked not to attend school without permission. If you have personal effects at school you wish to collect, please inform me and I will make the necessary arrangements for you to attend for this purpose.

b) Other Options

You are therefore required to work

The preliminary fact-finding exercise will be concluded as swiftly as possible, at which time I will inform you whether any further investigations or actions will be taken.

If you have any queries regarding this letter, please contact me on the above telephone number.

Yours sincerely,

**SAMPLE LETTER - ALLEGATIONS OF MINOR OFFENCES /
MORE SERIOUS OFFENCES**

Dear

Allegations of Misconduct

In light of the outcome of the preliminary fact-finding exercise (where appropriate), I write to confirm the disciplinary allegation(s) that

I will be investigating

or

I will be appointing xx to investigate

The allegation(s) are

- 1)
- 2)
- 3)

You will be given the opportunity to respond to the allegation(s) and will be invited to an investigatory meeting. You will be sent a letter providing details of the date, time and venue of the meeting.

At the investigatory meeting you will have the right to be accompanied by trade union/ professional association representative or 'designated' work colleague.

Please find attached a copy of the Schools Disciplinary Procedure

Yours sincerely

ALLEGATION OF GROSS MISCONDUCT – SAMPLE LETTER

Dear

DISCIPLINARY PROCEDURE – ALLEGATION OF GROSS MISCONDUCT

I refer to your meeting with me on (....date....) regarding an allegation of gross misconduct in that you

- 1).....
- 2).....

NB You should state reason from list of gross misconduct 6.9(d)) and provide detail of specific examples of the alleged gross misconduct
e.g. serious neglect of duty in that you

The list of reasons is not exhaustive, and other allegations may also be considered as Gross Misconduct

I confirm that I have appointed XX to undertake the role of investigating Officer. (and where appropriate xx in the role of Support Officer. Information on the role of the support officer can be found at appendix xx of the disciplinary procedure attached)

a) Where employee is suspended

In view of the nature of the allegation you have been suspended on normal pay pending a formal investigation. You should, therefore, not return to school or contact your colleagues. Your support officer will keep you up to date on relevant school matters. Please be aware that this includes discussion of the allegation(s) in any capacity including phone, e-mail and social networking sites.

b) Where the employee is not suspended from work

You are therefore required to work

During the investigation you should not discuss the allegation(s) with anyone, apart from your trade union representative/ professional association rep or designated work colleague (subject to approval from myself). Please be aware that this includes discussion of the allegation(s) in any capacity including phone, e-mail and social networking sites.

However, you are free to discuss other matters relating to the school with relevant staff

If you do not understand anything or if you have any queries or wish to gain access to school to retrieve items you should contact me.

Please find enclosed a copy of the School's Disciplinary Procedure. You are entitled to be represented by a recognised trade union representative or work colleague if you so choose.

Yours sincerely

SAMPLE LETTER - INVITATION TO INVESTIGATORY MEETING

Dear xxx

I have been appointed to investigate the following allegation(s) under the School's Disciplinary Procedure (as per the allegation(s) letter sent to the employee)

- 1)
- 2)
- 3)

I therefore require you to attend an investigatory meeting with me on:

Date:

Time:

Venue

You are entitled to be represented by a recognised trade union representative or designated work colleague if you so choose.

In the meeting I will be seeking your responses to questions relating to the allegation(s), please note that your representative may not answer questions on your behalf.

It is important for you prepare your response to the allegations outlined above, so that I can consider all relevant information.

If there is anything which you do not understand or if you have any questions regarding this matter please contact me.

Investigating Officer

SAMPLE LETTER – REQUIREMENT TO ATTEND A DISCIPLINARY HEARING

Dear

**DISCIPLINARY PROCEDURE – ALLEGATION OF MISCONDUCT/
SERIOUS MISCONDUCT**

I require you to attend in a disciplinary hearing on
Date

Time

Location

At the Disciplinary Hearing I will be considering the following allegation(s)

- 1.
- 2.
- 3.

Paragraph Options

a. Misconduct

This is being considered as an act of misconduct under the school’s disciplinary procedure a copy of which is enclosed. At the hearing I will be considering the allegation including the statements attached to this letter.

b. Serious Misconduct

This is being considered as an act of serious misconduct under the school’s disciplinary procedure a copy of which is enclosed. At the hearing I will be considering the allegation(s) including the Investigating Officer Report and other relevant evidence attached to this letter

If you are found responsible for the alleged misconduct/ serious misconduct this may lead to the issue of a formal warning as set out in the procedure.

You are entitled to be represented by a recognised trade union representative or work colleague if you so choose. You are also able to call witnesses should you so wish. Please advise names of any witnesses you will be calling. *(The Committee will be calling as witnesses). (If appropriate)*

It is important for you and your representative to prepare your response to the allegation carefully so that I can consider all relevant information. If there is anything which you do not understand or if you have any questions regarding this matter please contact me.

Yours sincerely

..... (Name)
Headteacher

SAMPLE LETTER – OUTCOME OF DISCIPLINARY HEARING

Dear

DISCIPLINARY PROCEDURE – ALLEGATION OF MISCONDUCT/SERIOUS MISCONDUCT

I refer to your Disciplinary Hearing with _____ on _____
when your representative _____ was present (when you chose not
to have a representative present) about an allegation of _____ (add
details)

In response you stated that _____ Having
considered all the details and circumstances of the event I am now satisfied that you

a) did not commit an act of *misconduct/serious misconduct in that you _____ and the
allegation is therefore unsubstantiated and no further action will be taken.

b) did not commit an act of misconduct/serious misconduct and I have decided that *there
is no case to answer/ to deal with this matter through a pre disciplinary management
instruction i.e. xxxxxxxxx

c) did commit an act of *misconduct/serious misconduct in that you _____ and I am
now issuing you with a recorded *Oral Warning/Written Warning/Final Written Warning
under the school's disciplinary procedure.

If you again commit a similar act or commit a further act of indiscipline you may ultimately
be dismissed. It is hoped however that there will be no further action on the school's part.
This warning will last for a period of _____ months.

Your conditions of service give you a right of appeal against this decision to the Staff
Dismissal Appeal Committee of the Governing Body. If you wish to exercise this right you
may do so either individually or through your trade union by notifying the Clerk to the
Governors in writing, giving grounds for the appeal, within 10 days from the date you
receive this letter. You have a right to appear before the Appeals Committee with or
without a representative of a recognised trade union or work colleague.

Yours sincerely,

.....(Name)

Headteacher

* or: **Written Warning**
* or: **Final Warning**

Oral Warning – 6 months
Written Warning – 12 months
Final Warning – 2 years

**SAMPLE LETTER – ALLEGATION OF GROSS MISCONDUCT
REQUIREMENT TO ATTEND A DISCIPLINARY INTERVIEW**

Dear

**DISCIPLINARY PROCEDURE – ALLEGATION OF GROSS MISCONDUCT OR
MISCONDUCT AFTER A FINAL WRITTEN WARNING**

Further to my letter of I require you to attend in my office at
..... on regarding the following
allegation.....

This is being considered as an act of gross misconduct/misconduct after a final written warning under the school's Disciplinary Procedure a copy of which is enclosed. At the interview I (or the Staff Dismissal Committee) will be considering the allegation including the investigatory report by the Deputy, (or other nominated person) a copy of which is attached.

If you are found responsible for the alleged incident this may lead to your dismissal as set out in the procedure. You are entitled to be represented by a recognised trade union representative or work colleague if you so choose. You are also able to call witnesses should you so wish. Please advise names of any witnesses you will be calling. *(The Committee will be calling as witnesses). (If appropriate)*

It is important for you and your representative to prepare your response to the allegation carefully so that I (or the Staff Dismissal committee) can consider all relevant information. If there is anything which you do not understand or if you have any questions regarding this matter please contact me.

Yours sincerely

..... (Name)
Headteacher

SAMPLE LETTER – LIFTING SUSPENSION

Dear

GROSS MISCONDUCT ALLEGATION – LIFTING SUSPENSION

I have now received the Investing Officers report in relation to the allegation(s) of Gross Misconduct in that:

-

OR

I have now considered the conclusions of the preliminary fact finding exercise in relation to the allegation(s) of Gross Misconduct in that:

-

I can confirm that having taken in to account all the relevant information available to me and I have found the allegation to be unsubstantiated and no further action will be taken on this matter.

Your suspension from work has now been lifted and I require you to return to work on (Name) will be in contact with you to discuss arrangements for your return.

Yours sincerely,

Suspension Risk Assessment Checklist

If you answer 'yes' to all the questions below it would be a reasonable decision to suspend during a misconduct investigation			
	Questions to consider	Yes or No	
1	Is there an allegation of gross or serious misconduct? <i>Schools Disciplinary Procedure Para 3.5</i>	Y	N
2.	Is so, does at least one of the following apply <i>School's Disciplinary Procedure Para 8.1.3</i>	Y	N
	Tick any that apply		
	a. They could tamper with evidence / influence witnesses or the investigation		
	b. Working relationships have broken down		
	c. There are risks to colleagues, pupils or property		
	d. There are criminal proceedings against the employee which affect their job		
	e. This is a serious safeguarding allegation where there is a potential risk to pupils		
	f. The property or the business of an employee or the organisation may be damaged		
	g. There is a risk to an employee's health or safety		
3.	Have you considered all practical alternatives to suspension? <i>School's Disciplinary Procedure Para 8.1.2</i>	Y	N
4.	Have you considered ways to minimise damage to the employee's reputation or assumption of guilt? e.g. <i>communication to staff / pupils / parents /governors about the reason that the employee is not in work</i>	Y	N

Effective Management of Suspension Checklist

Name _____

School _____

_____ Review Date _____

No	Questions to consider	Tick when action complete	Date(s)
At start of the suspension			
1.	Are you continuing to give the employee the usual pay and benefits?		
2.	Has the employee been formally notified of the allegations and the requirements attached to the suspension?		
3.	Has a support officer been appointed, to liaise with the employee whilst off site?		
4.	Has the employee been informed of the name and contact details of the support officer?		
5.	Has an Investigating Officer been appointed?		
6.	Has the employee been informed of the name of the Investigating officer and likely time frame to be contacted?		
7.	Has an investigation plan been drawn up and shared with the Investigating Officer?		
During the suspension			
8.	Are you reviewing the suspension regularly to ensure it is as short as possible/ still necessary? i.e Review the timescales specified in the Investigation Plan <i>Appendix 9</i>		
9.	Have you ensured that the employee has been notified where the initial timescales have been changed?		
Lifting Suspension			
10.	Have you agreed with Governors to lift a suspension, where it is appropriate? e.g. allegation is no longer considered to be gross misconduct		
11.	If the employee returns to school, following a period of suspension. Have you conducted a welfare meeting to discuss with the employee/TU rep how the return to work will be managed?		

Investigation Plan

Name of employee:	
Date of Plan :	
Investigating Officer	
Terms of reference	
Provisional time-frame	
Policies and procedures to review and follow	
Issues that need to be explored/clarified	
Sources of evidence to be collected	
Persons to be interviewed (including planned order of interviews)	
Investigation meetings further arrangements (When/where/notes to be taken by)	
Persons to supply own statement	
Investigation meetings to be completed by	
Collection of evidence to have been completed by	
Further considerations	

Investigatory Report Format**Name of employee****Job Title****Allegations****Name of investigating Officer****Date****Contents Page****Summary of the case – Chronology of events****Background/context of the case****Detailed Findings****Conclusions****Summary Recommendations****e.g. case to answer or no case to answer and considered level of misconduct****Appendices including**

- Witness statements
- Statement from employee
- Other evidence gathered
- relevant policies and procedures
- Copies of relevant correspondence

Format for Investigatory Interview/Witness Interviews

Name	
Job Title/ role	
Date	
Present	
Introduction	Purpose of the meeting Asked to sign statement as true and accurate account
Q1	What did you
Q1	Response from employee/ witness
Q2	What did you
Q2	Response from employee/ witness
Q3	What did you
Q3	Response from employee/ witness
Q4	What did you
Q4	Response from employee/ witness ETC
Follow-up questions/Areas probed further	
Signed	
Date	

Disciplinary Appeal Form

<u>Name</u>			
<u>Job Title</u>			
<u>School</u>			
<u>Will you be represented at the appeal?</u>	<u>Y/N</u>	<u>By Whom</u>	
<u>State reason(s) for appeal</u>			
<u>Sign</u>			
<u>Date</u>			

cc Trade Union or other representative

ACAS Advice on conducting workplace investigations

STEP 1: Organisational preparation

- Decide if an investigation is necessary
- Establish terms of reference – the rules that the investigation will follow, including precisely what needs to be investigated
- Choose an appropriate investigator

STEP 2: An investigator's preparation

- Draft an investigation plan
- Identify who might need to be called to an investigation meeting
- Identify what evidence might need to be gathered – and how to get it
- Contact parties involved in the matter



STEP 3: Handling an investigation meeting

- Establish who can accompany employees at the meeting
- Plan what questions need to be asked
- Interview the parties involved and any relevant witnesses
- Handle reluctant witnesses or refusals to meet appropriately



STEP 4: Gathering evidence

- Arrange and agree witness statements
- Collect any relevant written records and documents e.g. timesheets
- Collect any relevant and appropriate physical evidence e.g. CCTV



STEP 5: Writing an investigation report

- Plan the structure of the report – remember there is a free ACAS template available to use or adapt
- Report what is likely to have happened – the balance of probabilities
- Make a recommendation where requested

STEP 6: After an investigation is completed

- Submit the report and conclude the investigator role
- Retain the report for an appropriate period of time
- Ensure any recommendations unrelated to the matter are considered

ROLE OF SUPPORT OFFICER

It is normal practice for an employee to be told that they must not make contact with colleagues at work whilst suspended, during the course of an investigation

A Support Officer will be made available to an employee who has been suspended for an allegation of Gross Misconduct.

Support officer should **not** be an Investigating Officer or anyone involved in formally considering the disciplinary case

Support Officer provides a link between the employee and the school during a period of suspension to ensure that any practical issues are dealt with and to minimise the isolation that they may feel.

The Support Officer **will**:

- normally contact the employee within the first 3 days of the decision to suspend.
- provide a link between the employee and the School.
- visit the employee at home if the employee so wishes but regular contact (a telephone call at least once a week) should be maintained by the Support Officer in any case. However, the employee may prefer another form of contact e.g. email /text
- Keep a record of dates and time of contact with the employee and brief overview of the discussion
- Maintain confidentiality
- be able to help where an enquiry is about the progress of the investigation, pay related issues and other conditions issues.

The Support Officer **will not**:

- discuss the allegation(s) with the employee at any time
- act as the employees representative/ advocate or advise them about the matters relating to the suspension.

The Support Officer discussions should include the following:

- Provide update on issues within the school e.g. ensure that newsletters / any appropriate team meeting notes are sent the employee
- Offer support to the employee such as
 - Employee Assistance Programme, including Counselling support
 - Occupational Health

Guidance on Role of Governing Bodies

The Governing Body is responsible for:

- Ensuring the adoption and implementation of the disciplinary policy and procedure (which meets ACAS requirements).

- Ensuring properly constituted committees are in place, i.e.
 - staff dismissal committee
 - staff dismissal appeal committee.

N.B This should be confirmed at the first full Governors' meeting of the academic year.

- Ensuring that **no staff governors** are members of either of the committees
- Ensuring that no governors with a pecuniary interest are members of either of the committees.
- Ensuring that relevant committees meet within a reasonable time frame, ideally this should be no more than 2 weeks from confirmation that a disciplinary / appeal hearing will be necessary.
- Ensuring that Governors are prepared for the hearing and have read all Documentation (Investigating Officer's report and any other relevant evidence), prior to the hearing.
- Seeking advice and guidance from HR Consultancy team and Legal team in advance, during and on conclusion of the hearing. Where appropriate, Local Authority Designated Officer (in safeguarding cases) should also be consulted.
- Making informed decisions on appropriate actions.

N.B.

- Chair of staff dismissal committee will normally be required to attend any appeal hearing to explain reasons for decisions, and may be required to attend any employment tribunal or court hearing.
- Chair of staff dismissal appeals committee will normally be required to attend any employment tribunal or court hearing to explain reasons for decisions.

Guidance on the Role of Chair of Governors (In relation to disciplinary matters concerning the Headteacher)

The Chair of Governors is responsible for:

- Seeking advice from HR Consultancy team or other HR provider where a potential disciplinary matter has arisen in respect of the Headteacher.
- Making a decision on whether it is necessary to have a preliminary fact-finding exercise / formal investigation.
- Conduct a risk assessment in consultation with HR provider.
- Considering other alternative arrangements or suspension during the course of any fact-finding exercise / formal investigation regarding the Headteacher.
- Appointing an investigating officer where required, with advice from HR provider.
- Appointing a support officer where required, with advice from HR adviser.
- Drawing up an investigation plan, with terms of reference, where required, with advice from HR provider.
- Monitoring the progress of the investigation and ensuring the support officer provides an update on the progress of the investigation.
- Issuing a management instruction, where this is considered an appropriate course of action.
- Deciding whether the matter needs to be referred to an appropriate committee.
- Potentially presenting the case to the committee with the investigating officer.
- Lifting any off site or suspension arrangements.
- Proactively managing any return to work following a period of time off site, or suspension. Advice should be taken from HR provider.
- Ensuring the well being of the Headteacher during the process.
- Ensuring that management structure is in place to maintain effective running of the school.

N.B. In the case of a safeguarding allegation, the Chair of Governors may be required to attend any multi-agency strategy meetings.

Frequently Asked Questions for Suspended Employees

There are many varied questions which may be asked by employees but some of the more frequent are:

Q: Can I just go to work to pay my lottery money and collect my belongings?

A: Sorry, but you can have no contact with the workplace until the disciplinary investigation has been concluded. Arrangements can be made to collect belongings

Q: I am so shocked by the allegation that I am feeling ill.

A: I will arrange through the school for you to see occupational health or EAP

Q: The process is taking too long and I feel as if I need to talk to someone about how I feel.

A: I will request through the school that they arrange for you to have an appointment with Occupational Health.

Q: What does 'suspended' and 'off site' mean? Are they the same thing?

A: 'Suspended' means you are suspended from your job because the allegation is such that you cannot be at work to do your job.

'Off site' means you must be away from work whilst consideration is given to the allegation and whether you should be suspended or not.

Q: Have I been sacked?

A: No, an investigation will be carried out by a Investigating officer and a report will be sent to the relevant committee (or Headteacher) who will consider the IO Report and if required invite you to a Disciplinary Hearing. However, one outcome of gross misconduct could be your dismissal

Q: Will my pay be affected?

A: During the investigation you will normally remain on full pay

Q: Will my colleagues at work be told about the allegation?

A: No, your colleagues may know you are off site pending investigation but they have no right to know anything about your case. Your manager may be advised about the outcome in particular if they are asked to put some management issues in place or monitor the situation.

Q: If during my time off site, if I see a colleague socially or shopping/in the street can I talk to them?

A: There is nothing to stop you talking to a colleague if you do meet them but neither of you should discuss the allegation/ case.

Q: How long will the investigation take?

A: Each case is different but I will try and keep you updated about the progress and the likely date for the interview with the person(s) responsible for hearing the disciplinary, however the process should be completed as quickly as is reasonably possible.

Annually reviewed

Date Agreed: 14th November 2022

Review date: November 2023

Version 1

Owned by Assets