



DISCIPLINE & CAPABILITY POLICY

A. Disciplinary Rules for all Employees

1. Gross Misconduct

Gross misconduct is the committing of an act which renders it inadvisable for the employee to be allowed to remain at work. Any employee suspected of committing an act of gross misconduct, as indicated in the list below, will be suspended with full pay pending investigation. If after proper investigation it is decided that the employee has committed an act of gross misconduct or if the act is admitted by the employee, s/he will be dismissed without further warning, unless there are mitigating circumstances. The disciplinary procedure must be followed in all cases. The list of examples below is not intended to be exclusive or exhaustive and offences of a similar gravity will receive the same treatment.

- 1.1 Dishonesty associated with place of work or job being undertaken.
 - (a) Theft of property belonging to the School, Local Authority, contractor, an employee or pupil, or member of the public.
 - (b) Deliberate falsification of timesheets or expenses claims for pecuniary advantage.
 - (c) Demanding or accepting monies or other considerations as a bribe for the use of School or LA property, provision of School or LA service or the showing of favour on behalf of the School or LA.
 - (d) Falsification of any information given on an application form for a post to gain advantage whether pecuniary or otherwise.
 - (e) Failure to disclose criminal convictions not exempt under the terms of the Rehabilitation of Offenders Act, 1975.
 - (f) Falsification of registration of pupils or students for pecuniary gain.
- 1.2 Deliberate refusal to carry out a reasonable, lawful and safe instruction or the normal agreed defined duties of the post.
- 1.3 Gross negligence in failing to attend to or carry out the agreed duties of the post.
- 1.4 Wilfully ignoring responsibilities/instructions thus placing other employees/pupils in danger, e.g. ignoring handling instructions/safety regulations in respect of radioactive materials.
- 1.5 Being unfit to perform duties associated with the post as a result of taking drugs, other than in accordance with medical advice, or taking alcohol.
- 1.6 Wilful unauthorised disclosure of information (classified as confidential), by employees who, in the course of their duties, have access to such information which, by its release, could be harmful to the School, Authority, other employees or pupils.
- 1.7 Acts of violence or vandalism in the course of employment.
 - (a) Malicious damage to School/LA/Contractor/other employees/pupils' property.
 - (b) Actual physical violence towards members/officers of the LA, members of the school staff/Governors/parents/pupils/other members of the public.
- 1.8 Sexual misconduct at work.
 - (a) Sexual misconduct whether criminal or not.
 - (b) Sexual relations with students.
- 1.9 Off-duty misconduct.

- (a) An act of criminal sexual misconduct by an employee who, in the course of duty, has contact with young people.
 - (b) Drug offences committed by employees whose job bring them into contact with young people.
 - (c) Sexual relations with students, or young persons.
- 1.10 Misuse of the internet or email facilities of the school.
- (a) Using the internet to access unseemly or sexually explicit material.
 - (b) Using email for communicating unseemly or sexually explicit material

2. Misconduct

Misconduct is of a degree less serious than that which would warrant immediate suspension from duty for a first offence but which could nevertheless lead to dismissal if persistent. The disciplinary procedure must be followed when dealing with misconduct. Some more serious acts of misconduct might justify omitting the first stage of disciplinary procedures by issuing a final warning in the first instance, if there is no satisfactory explanation. Only when it can be shown that the warnings have not been heeded will misconduct lead to action being taken which will lead to an employee's dismissal. The list of examples below is not intended to be exclusive or exhaustive and offences of a similar gravity will receive the same treatment.

- 2.1 Absenteeism and lateness, for example:
- (a) failure to remain at the place of work during normal working hours without permission or sufficient cause for absence;
 - (b) frequent failure to attend work punctually;
 - (c) failure to notify the school immediately or as soon as reasonably practicable when absence is due to sickness;
 - (d) failure to provide medical certificates in accordance with the Conditions of Service.
- 2.2 Dishonesty - petty wrongs, for example:
- (a) making unauthorised private telephone calls and/or sending personal mail at the establishment's expense;
 - (b) failure to report any loss and/or damage to any property issued to or by the employee in connection with his/her employment.
 - (c) using the school's telephone, fax, email or internet for unauthorised personnel purposes.
- 2.3 Neglect of duty, for example:
- (a) failure to adopt safe working practices/use protective equipment where required by law or management;
 - (b) negligent use of LA property in such a way as is likely to cause serious damage or loss;
 - (c) failure to discharge without sufficient cause the obligations which statute or the contract of employment places on the employee, e.g. failure to act in accordance with the requirements placed on the school by the Special Education Needs Discrimination Act.
 - (d) insubordination;
 - (e) failure to exercise proper control or supervision of pupils or students.
- 2.4 Abusive behaviour/offensive language which arises directly out of or in connection with work and which is directed at members, officers of the LA, colleagues, Governors, pupils or members of the public.
- 2.5 Victimisation of other employees in the course of duty.
- 2.6 Unlawful discrimination against other employees, pupils or members of the public in the course of duty.

- 2.7 Discrimination, whether unlawful or not, in the course of duty against other employees, pupils or members of the public on the grounds of sex, marital status, ethnic origin, disability or sexual orientation.
- 2.8 Undertaking additional employment outside normal working hours which would be detrimental to the work to be performed as a full time employee of the LA.

B DISCIPLINARY PROCEDURES RELATING TO MISCONDUCT ALL EMPLOYEES OTHER THAN THE HEAD TEACHER

[To be read in conjunction with the School Staffing (England) Regulations 2003 and the Secretary of State's Guidance]

Definitions

- 1.1 The term "Head teacher" also refers to any other title used to identify the Head teacher where appropriate.
- 1.2 The term "employee" refers to any member of the staff, whether teaching or not (with the exception of the Head teacher), employed to work solely at the school.
- 1.3 The term "senior manager" refers to any member of the Leadership Group, as defined by the School Teachers' Pay and Conditions Document, or a senior support member of staff in cases involving support staff, delegated by the Head teacher to deal with a disciplinary matter under these procedures. A senior manager may only make a decision to issue up to and including a final written warning.
- 1.4 If the Head teacher, following consultation with the Chair of Governors, considers that there is no senior manager to whom s/he can reasonably delegate a specific disciplinary matter then the Head teacher will take the role of the senior manager for that specific case and the role of the "Head teacher" under this procedure will be performed by a "Staff Dismissal Committee" of the Governing Body consisting of not less than 3 governors, (except in circumstances provided for in the Secretary of State's guidance on the Staffing Regulations), none of whom will have had previous involvement in the case.
- 1.5 "Misconduct" is defined in the Disciplinary Rules which accompany the Misconduct Procedure.

2. Oral Warning

- 2.1 The following procedure does not relate to informal oral warnings, which might be given to the employee by a member of the senior manager team. However, repeated misconduct after an oral warning would normally lead to more serious disciplinary action in accordance with the procedure.
- 2.2 There is no appeal against an oral warning, which will not be recorded on the employee's personal record but should be confirmed in a written memorandum. The employee may make written comment on the memorandum if s/he has any objection to the issuing of an oral warning.

3. First Written Warning

- 3.1 If the senior manager, having carried out appropriate investigation, considers on the facts that formal disciplinary action for misconduct is necessary, s/he will write to the employee to inform him/her, at least ten working days in advance, setting out:
 - a) the date, time and place of the disciplinary hearing.
 - b) the nature of the complaint.
 - c) the employee's right to be accompanied by his/her representative of an independent trade union or a workplace colleague.
 - d) the titles of enclosed copies of any documents to be used as evidence.
 - e) the names of any witnesses to be called by the senior manager.
 - f) his/her right to call witnesses on his/her behalf.
 - g) The name and office of any adviser who will accompany the senior manager at the hearing.(At the employee's request, an extra copy of this notice, together with any enclosures, should be provided for his/her representative).

3. First Written Warning (Cont/d)

- 3.1 If, following the investigations and professional advice, the senior manager considers that the facts of the case amount to a prima facie case of gross misconduct the matter will be referred to the Head teacher.
- 3.3 At the disciplinary hearing before the senior manager and his/her adviser, the employee (and his/her representative) will be given a reasonable opportunity to state his/her case and to question the senior manager and any witnesses. At the conclusion, following an adjournment for consideration of the facts, the senior manager will state his/her decision and his/her reasons and will soon afterwards confirm them in writing to the employee and his/her representative.
- 3.4 If the senior manager decides the complaint was justified, s/he may give the employee a first written warning which will include a statement that any further complaint of misconduct occurring within the next twelve months and found justified after a disciplinary hearing, will lead to a final warning, unless there are mitigating circumstances.
- 3.5 If the employee is given no further written warning of misconduct within twelve months of the date of the first written warning, then this warning is disregarded and the warning letter will make this clear.

4. Final Written Warning

- 4.1 If a further complaint is made about the employee's conduct within twelve months of the date of the first written warning, the same procedure (as in 3 above) will be followed.
- 4.2 If the senior manager decides at the conclusion of the disciplinary hearing that this further complaint is justified, s/he may give the employee a final written warning, which will include a statement that any further complaint of misconduct occurring within the next twelve months and found justified after a disciplinary hearing, will lead to dismissal, unless there are mitigating circumstances.
- 4.3 Again this final warning, together with any previous warning, will be disregarded if there is no further complaint about misconduct within twelve months of the date of the final warning, and the warning letter will make this clear.

5. Dismissal

- 5.1 If a further complaint is received within twelve months from the date of the final warning, the complaint will be referred to a hearing before the Head teacher, following a similar procedure to that in paragraphs 3 above. The Head teacher, who shall be accompanied by an adviser, who will normally be a representative of the Director of Education, has a duty to consider any advice given by the LA.
- 5.2 If the Head teacher decides the complaint is justified, s/he may decide to dismiss the employee. The Head teacher will state his/her decision and his/her reasons and inform the employee of his/her right to appeal to the Appeals Committee of the Governing Body. S/he will soon afterwards confirm the decision and right of appeal in writing to the employee (and his/her representative). The Head teacher will record the outcome of his/her considerations and the names of persons present at the hearing.
- 5.3 The Head teacher will notify the LA in writing that the employee is to be dismissed, whether the decision was with or without notice, or with pay in lieu of notice. The LA must give written notice of dismissal to the employee, together with the right of appeal, within 14 days of notification by the Head teacher.

6. Gross Misconduct

- 6.1 If the complaint is considered so serious that it may amount to gross misconduct, justifying dismissal without previous warning and without notice (see the Disciplinary Rules), the employee will be informed by the Head teacher that s/he is suspended on full pay pending further investigation of the complaint before the Head teacher, who, if s/he considers the complaint constitutes gross misconduct, may decide to dismiss the employee. The procedure to be followed will be as in paragraph 5 above.

6. Gross Misconduct (Cont/d)

- 6.2 Where a suspension has taken place that suspension may only be lifted by the Chair of Governors acting on behalf of the Governing Body, or by the Appeals Committee referred to in 7.3, or the Staff Dismissal Committee in the circumstances identified in 1.4 of these procedures.

7. Right of Appeal

- 7.1 The employee has a right of appeal against a written warning issued by a senior manager (see paragraphs 3 and 4). The appeal will be heard by the Disciplinary Panel of Governors. The number of governors on the Disciplinary Panel of Governors will not be less than two. The panel shall be advised by a person engaged for the purpose by the Governing Body. The panel can either confirm the warning, reduce a final warning to a warning or cancel the warning.
- 7.2 Appeals against formal warnings by the senior manager should be made in writing to the Clerk to the Governors within 10 working days of the receipt of the written decision.
- 7.3 The employee has a right of appeal against a decision to issue a warning or to dismiss by Head teacher (see paragraph 5). An appeal against a warning by the Head teacher will be to the Disciplinary Panel of Governors referred to in paragraph 7.1 above.
- 7.4 An appeal against dismissal will be to the Appeal Committee of the Governors, which shall have a membership of not less than 3 governors, none of whom shall have any previous involvement in the case. The Appeal Committee shall be advised in its deliberations, normally by a representative of the Director of Education. The Appeals Committee has a duty to consider any advice given by the LA.
- 7.5 Appeals against decisions by the Head teacher should be made in writing to the Clerk to the Governors within 10 working days of the receipt of the written decision.
- 7.6 All appeal hearings will be held as soon as possible after receipt of the appeal.

8. Variation in Penalties

- 8.1 The senior manager or the Disciplinary Panel of Governors may decide to give an oral warning instead of a written warning, or a written warning instead of a final written warning.
- 8.2 The senior manager may decide that the misconduct is so serious that it justifies a first and final written warning.
- 8.3 The senior manager may decide to issue a further final warning rather than refer the complaint to the Head teacher.
- 8.4 The Head teacher may decide to issue a warning or final warning rather than dismiss.
- 8.5 The Appeal Committee may decide to issue a warning or a final warning rather than dismiss, and that any warning may last for a specified period longer than the original twelve months of any previous final warning, if appropriate. There is no right of appeal against such a decision of the Appeal Committee of the Governors.
- 8.6 In the event that the Appeal Committee decides not to uphold the Head teacher's decision to dismiss, the LA shall be informed immediately and the notice of dismissal shall be immediately withdrawn.

9. Trade Union Officials

- 9.1 Although normal disciplinary standards must apply to the conduct of a trade union official as an employee, no disciplinary action beyond an oral warning should be taken until the circumstances of the case have been discussed with the relevant professional trade union officer.

10. Confidentiality

- 10.1 The proceedings of this disciplinary procedure shall remain confidential to the parties concerned. Only the decision of a disciplinary hearing may be reported.

C DISCIPLINARY PROCEDURES RELATING TO MISCONDUCT HEAD TEACHER ONLY

1. Definitions

- 1.1 The term “Head teacher” also refers to any other title used to identify the Head teacher where appropriate.
- 1.2 The term “Line Manager” refers to the Chair of Governors, or another senior governor or other senior governors delegated by the Governing Body.
- 1.3 The “Staff Dismissal Committee” of the Governing Body shall consist of 3 governors, (except in circumstances provided for in the Secretary of State’s guidance on the Staffing Regulations), none of whom will have had previous involvement in the case.
- 1.4 “Misconduct” is defined in the Disciplinary Rules which accompany the Misconduct Procedure.

2. Oral Warning

- 2.1 Misconduct is defined in the Disciplinary Rules, to which reference should be made. The following procedure does not relate to informal oral warnings, which might be given to the Head teacher by the Line Manager. However, repeated misconduct after an oral warning would normally lead to more serious disciplinary action in accordance with the procedure.
- 2.2 There is no appeal against an oral warning, which will not be recorded on the Head teacher’s personal record but should be confirmed in a written memorandum. The Head teacher may make written comment on the memorandum if s/he has any objection to the issuing of an oral warning.

3. First Written Warning

- 3.1 If the Line Manager, having carried out appropriate investigation, considers on the facts that formal disciplinary action for misconduct is necessary, s/he will write to the Head teacher to inform him/her, at least ten working days in advance, setting out:
 - a) the date, time and place of the disciplinary hearing.
 - b) the nature of the complaint.
 - c) the Head teacher’s right to be accompanied by his/her representative of his/her trade union or a workplace colleague.
 - d) the titles of enclosed copies of any documents to be used as evidence.
 - e) the names of any witnesses to be called by the Line Manager.
 - f) his/her right to call witnesses on his/her behalf.
 - g) The name and office of any adviser who will accompany the Line Manager at the hearing.

(At the Head teacher’s request, an extra copy of this notice, together with any enclosures, should be provided for his/her representative).
- 3.2 If, following the investigations and professional advice, the Line Manager considers that the facts of the case amount to a prima facie case of gross misconduct the matter will be referred to the Staff Dismissal Committee.
- 3.3 At the disciplinary hearing before the Line Manager and his/her adviser, the Head teacher (and his/her representative) will be given a reasonable opportunity to state his/her case and to question the Line Manager and any witnesses. At the conclusion, following an adjournment for consideration of the facts, the Line Manager will state his/her decision and his/her reasons and will soon afterwards confirm them in writing to the Head teacher and his/her representative.
- 3.4 If the Line Manager decides the complaint was justified, s/he may give the Head teacher a first written warning which will include a statement that any further complaint of misconduct occurring within the next twelve months and found justified after a disciplinary hearing, will lead to a final warning, unless there are mitigating circumstances.
- 3.5 If the Head teacher is given no further written warning of misconduct within twelve months of the date of the first written warning, then this warning is disregarded and the warning letter will make this clear.

4. Final Written Warning

- 4.1 If a further complaint is made about the Head teacher's conduct within twelve months of the date of the first written warning, the same procedure (as in 3 above) will be followed.
- 4.2 If the Line Manager decides at the conclusion of the disciplinary hearing that this further complaint is justified, s/he may give the Head teacher a final written warning, which will include a statement that any further complaint of misconduct occurring within the next twelve months and found justified after a disciplinary hearing, will lead to dismissal, unless there are mitigating circumstances.
- 4.3 Again this final warning, together with any previous warning, will be disregarded if there is no further complaint about misconduct within twelve months of the date of the final warning, and the warning letter will make this clear.

5. Dismissal

- 5.1 If a further complaint is received within twelve months from the date of the final warning, the complaint will be referred to a hearing before the Staff Dismissal Committee, following a similar procedure to that in paragraphs 3 above. The Staff Dismissal Committee shall be advised by a representative of the Director of Education and has a duty to consider any advice given by the LA.
- 5.2 If the Staff Dismissal Committee decides the complaint is justified, it may decide to dismiss the Head teacher. The Staff Dismissal Committee will state its decision and its reasons and inform the Head teacher of his/her right to appeal to the Appeals Committee of the Governing Body. The Staff Dismissal Committee will soon afterwards confirm the decision and right of appeal in writing to the Head teacher (and his/her representative). The Staff Dismissal Committee will record the outcome of its considerations and the names of persons present at the hearing.
- 5.3 The Governing Body will notify the LA in writing that the Head teacher is to be dismissed, whether the decision was with notice, or with pay in lieu of notice. The LA must give written notice of dismissal to the Head teacher, together with the right of appeal, within 14 days of notification by the Governing Body.

6. Gross Misconduct

- 6.1 If the complaint is considered so serious that it may amount to gross misconduct, justifying dismissal without previous warning and without notice (see the Disciplinary Rules), the Head teacher will be informed by the Line Manager that s/he is suspended on full pay pending further investigation of the complaint before the Staff Dismissal Committee which, if it considers the complaint constitutes gross misconduct, may decide to dismiss the employee. The procedure to be followed will be as in paragraph 5 above.
- 6.2 Where a suspension has taken place that suspension may only be lifted by the Chair of Governors acting on behalf of the Governing Body, or by the Staff Dismissal Committee or the Appeals Committee referred to in 7 3.

7. Right of Appeal

- 7.1 The Head teacher has a right of appeal against a written warning issued by a Line Manager (see paragraphs 3 and 4). The appeal will be heard by the Disciplinary Panel of Governors. The number of governors on the Disciplinary Panel of Governors will not be less than two. The panel shall be advised by a person engaged for the purpose by the Governing Body. The panel can either confirm the warning, reduce a final warning to a warning or cancel the warning.
- 7.2 Appeals against formal warnings by the Line Manager should be made in writing to the Clerk to the Governors within 10 working days of the receipt of the written decision.
- 7.3 The Head teacher has a right of appeal against a decision to issue a warning or to dismiss by Staff Dismissal Committee (see paragraph 5). An appeal against a warning by the Staff

Dismissal Committee will be to the Disciplinary Panel of Governors referred to in paragraph 7.1 above.

7. Right of Appeal (cont/d)

- 7.4 An appeal against dismissal will be to the Appeal Committee of the Governors, which shall have a membership of not less than 3 governors, none of whom shall have any previous involvement in the case. The Appeal Committee shall be advised in its deliberations, normally by a representative of the Director of Education. The Appeals Committee has a duty to consider any advice given by the LA.
- 7.5 Appeals against decisions by the Staff Dismissal Committee should be made in writing to the Clerk to the Governors within 10 working days of the receipt of the written decision.
- 7.6 All appeal hearings will be held as soon as possible after receipt of the appeal.

8. Variation in Penalties

- 8.1 The Line Manager or the Disciplinary Panel of Governors may decide to give an oral warning instead of a written warning, or a written warning instead of a final written warning.
- 8.2 The Line Manager may decide that the misconduct is so serious that it justifies a first and final written warning.
- 8.3 The Line Manager may decide to issue a further final warning rather than refer the complaint to the Staff Dismissal Committee.
- 8.4 The Staff Dismissal Committee may decide to issue a warning or final warning rather than dismiss.
- 8.5 The Appeal Committee may decide to issue a warning or a final warning rather than dismiss, and that any warning may last for a specified period longer than the original twelve months of any previous final warning, if appropriate. *There is no right of appeal against such a decision of the Appeal Committee of the Governors.*
- 8.6 In the event that the Appeal Committee of the Governors decides not to uphold the Staff Dismissal Committee's decision to dismiss, the LA shall be informed immediately and the notice of dismissal shall be immediately withdrawn.

9. Trade Union Officials

- 9.1 Although normal disciplinary standards must apply to the conduct of a trade union official as an employee, no disciplinary action beyond an oral warning should be taken until the circumstances of the case have been discussed with the relevant professional trade union officer.

10. Confidentiality

- 10.1 The proceedings of this disciplinary procedure shall remain confidential to the parties concerned. Only the decision of a disciplinary hearing may be reported.

D PROCEDURE RELATING TO LACK OF CAPABILITY ALL EMPLOYEES OTHER THAN HEAD TEACHER

[To be read in conjunction with the School Staffing (England) Regulations 2003 and the Secretary of State's Guidance]

1. Definitions

- 1.1 The term "Head teacher" also refers, where appropriate, to any other title used to identify the Head teacher.
- 1.2 The term "employee" refers to any member of the staff, whether teaching or not (with the exception of the Head teacher), employed to work solely at the school.
- 1.3 The term "senior manager" refers to any member of the Leadership Group, as defined by the School Teachers' Pay and Conditions Document, or a senior support member of staff in cases involving support staff, delegated by the Head teacher to deal with a capability matter under these procedures. A senior manager may only make a decision to issue up to and including a final written warning.
- 1.4 If the Head teacher, following consultation with the Chair of Governors, considers that there is no senior manager to whom s/he can reasonably delegate a specific capability matter then the Head teacher will take the role of the senior manager for that specific case and the role of the "Head teacher" under this procedure will be performed by a "Staff Dismissal Committee" of the Governing Body consisting of not less than 3 governors, (except in circumstances provided for in the Secretary of State's guidance on the Staffing Regulations), none of whom will have had previous involvement in the case.
- 1.5 "Lack of capability" is defined as a situation in which an employee fails consistently to perform his/her duties to a wholly satisfactory standard of performance over a period of time.

2. Guidance prior to using the Capability Procedure

- 2.1 If an employee's performance is less than wholly satisfactory, as a first step the senior manager, or other person with line management responsibility for the employee, will discuss with the employee the shortcomings as specifically as possible. In the case of a teacher this could include the team leader responsible for the teacher's performance review under the school's performance management policy. Structured information and systematic recording will inform the discussion. The employee will be given a reasonable opportunity to comment and explain. In the course of these discussions, appropriate targets will be set and any appropriate remedies, e.g. in-service training, visits to other schools, discussion with appropriate colleagues or professionals, will be considered and planned. The employee will also be informed that his/her performance will be monitored over an identified and specified period. This will not normally exceed six weeks. However, if the concerns relate to a lack of capability that poses a real risk to the health, safety or well-being of children, or is likely to result in serious damage to pupils' education, a shorter timescale may be appropriate. In extreme cases, the senior manager may decide to initiate formal procedures immediately if to do otherwise would expose students to serious risk in terms of their health, safety, well-being or educational prospects.
- 2.2 At this stage an oral warning may be given that if wholly satisfactory performance is not achieved within a defined period this could cause the matter to be dealt with under the formal procedures set out below. An oral warning is not part of the formal procedure that follows.
- 2.3 There is no appeal against an oral warning, which will not be recorded on the employee's personal record but should be confirmed in a written memorandum. The employee may make written comment on the memorandum if s/he has any objection to the issuing of an oral warning.
- 2.4 Continuing failure to achieve a wholly satisfactory level of performance following an oral warning would normally lead to formal action being taken in accordance with the procedures below.
- 2.5 Where a teacher is failing to perform to a wholly satisfactory level and guidance as indicated above has not brought about the desired improvement then the matter will be dealt with under the procedures below and will be separate from the school's performance management policy.

3. Time Scale (must be observed when the employee is a teacher)

- 3.1 The time scale adopted will reflect the seriousness of the lack of capability. However, the overall period for improvement will not exceed the equivalent of two school terms from the date of entry into the formal procedures. Formal procedures commence on the date of the meeting at which a written warning is first issued.
- 3.2 In exceptional cases, it will not be appropriate or necessary to proceed through the first written warning stage of the procedure before a final warning can be issued. The decision to dispense with a first warning, however, would need to reflect the seriousness of the lack of capability of the employee concerned.
- 3.3 When there are genuinely extreme circumstances in which a period for improvement of two terms would seriously jeopardise the health, safety, welfare or education of pupils, the period for improvement may be reduced to a period of not less than four weeks.
- 3.4 In extreme cases, where it is clear that the health, safety or well-being of pupils would be compromised if even a shortened capability procedure were followed, an employee may be suspended on full pay. In such cases, the formal procedures would be suspended and a recommendation for dismissal made to the Head teacher or Staff Dismissal Committee.

4. Sickness absence and the use of this procedure

- 4.1 It is important that sickness absence should not be used to delay or avoid the use of formal capability procedures. If there are concerns that an employee may be using sickness absence in this way then arrangements should be made to seek medical advice from an occupational health adviser to assess the employee's health and fitness for continued employment at the school.
- 4.2 Following receipt of medical advice consideration may be given to moving from this procedure to procedures used by the school to terminate the employment of the employee on the grounds of ill health.
- 4.3 If an employee's medical condition is not serious enough to warrant a consideration of termination of employment on the grounds of ill health, the occupational health adviser could also be asked to assess whether an employee absent through sickness is fit enough to attend a meeting under this procedure.

5. First Written Warning

- 5.1 If, after a reasonable period from the action taken in paragraph 2 above, it is considered that the employee's performance has not reached a wholly satisfactory level, the employee will be required to attend a meeting with the senior manager.
- 5.2 The senior manager will write to the employee at least ten working days in advance to inform him/her about:
 - a) the date, time and place of the meeting.
 - b) the basic details of the concerns about the employee's performance.
 - c) the employee's right to be accompanied by a representative of his/her trade union or a workplace colleague.
 - d) the titles of enclosed copies of any documents to be used at the meeting.
 - e) names of any witnesses to be called.
 - f) his/her right to call witnesses on his/her behalf.
 - g) The name and office of any adviser who will accompany the senior manager at the hearing.An extra copy, together with any enclosures, should be provided for his/her representative.

5. First Written Warning (cont/d)

- 5.3 At the meeting, the employee (or his/her representative) will be given a reasonable opportunity to comment on the concerns and to ask questions. At the conclusion, the senior manager will state his/her decision and will afterwards confirm this in writing to the employee (with a copy for his/her representative).
- 5.4 If the senior manager considers that the concern about the employee's performance was justified, s/he will give the employee a first written warning. The warning letter will make clear:
- a) the nature of the shortcomings in the employee's performance
 - b) the period during which and the way in which the employee's performance will be assessed
 - c) that failure to perform to a wholly satisfactory level may lead to a final written warning.
 - d) that if the employee's performance becomes wholly satisfactory before or by the end of the assessment period, the written warning will be disregarded.
- 5.5 The warning letter or documentation following the letter will also make clear
- a) the support to be provided to the employee
 - b) the improvements in performance that the employee must demonstrate during the monitoring period and the kinds of evidence that will be sought to ascertain whether these improvements have been achieved
 - c) those aspects of the employee's performance that will be assessed and by whom
- 5.6 If the senior manager considers that the employee's performance is still not wholly satisfactory by the end of the assessment period but that a final warning is not justified, s/he will call another meeting as outlined in the above paragraphs. The senior manager may decide to give the employee a further written warning in accordance with the above paragraphs, rather than a final written warning, if s/he thinks this is fair and will be effective.

6. Final Written Warning

- 6.1 If the senior manager considers that the employee's performance is still not wholly satisfactory, even if there has been some improvement, by the end of the assessment period, s/he will call another meeting as outlined above.
- 6.2 If at the conclusion of the meeting the senior manager still considers that the employee's performance is not wholly satisfactory, the senior manager may decide to issue a final written warning which will make clear over what period and in what respect the employee's performance will be assessed and that failure to perform to a wholly satisfactory level will lead to a hearing before the Head teacher, who has the power to dismiss.
- 6.3 At this stage, rather than refer the matter to the Head teacher, consideration could be given to the employee being given a different range of duties or an alternative post. By agreement, this may include transfer to a post suited to the employee's capabilities. If this post is at a lower salary level, the substantive lower salary would apply.

7. Right of Appeal against a formal written warning

- 7.1 The employee has a right of appeal against a written warning issued by a senior manager (see paragraphs **5** and **6**). The appeal will be heard by the Disciplinary Panel of Governors. The number of governors on the Disciplinary Panel of Governors will not be less than two. The panel shall be advised by a person engaged for the purpose by the Governing Body. The panel can either confirm the warning, reduce a final warning to a warning or cancel the warning.
- 7.2 Appeals against a written warning shall be restricted to considering the reasonableness of the decision made by the senior manager, any relevant new evidence not previously available to the senior manager or any procedural irregularities. A statement giving the reasons for the appeal should be submitted to the Clerk to the Governors within ten working days of the formal written warning having been received.
- 7.3 All appeal hearings will be held as soon as possible after receipt of the appeal.

7. Right of Appeal against a formal written warning (cont/d)

- 7.4 Pending any appeal the employee will be expected to continue to work in accordance with targets set for the next stage of the procedure and his/her progress towards the achievement of these targets may be monitored during this period.

8. Dismissal

- 8.1 If the senior manager considers that the employee has failed to meet the required standards by the end of the specified assessment period, the employee will be informed, in writing, of the requirement to attend a hearing before the Head teacher in accordance with the procedure for calling a meeting as set out in 5.2 of these procedures. Where such a meeting with the Head teacher is called the employee shall be suspended on full pay pending the outcome of the hearing.
- 8.2 If the Head teacher decides that the complaint is justified, s/he may decide to dismiss the employee and will confirm his/her decision and reasons in writing to the employee (copy to his/her representative) as soon as possible after the hearing.
- 8.3 The Head teacher may decide not to dismiss but to issue a further written warning for a specified assessment period.

9. Right of Appeal against a decision to dismiss

- 9.1 The employee has a right of appeal to the Appeals Committee of the Governing Body against a decision of the Head teacher or the Staff Dismissal Committee.
- 9.2 The Appeals Committee shall consist of at least 3 governors, none of whom will have had any involvement in the case.
- 9.3 The employee's notice of appeal should be sent to the Clerk to the Governors within ten working days of receipt of the written decision to dismiss.
- 9.4 Appeal hearings should be held as soon as possible after receipt of the appeal.

10. Notice of Dismissal

- 10.1 Following a decision to dismiss the Governing Body will notify the LA in writing that the employee is to be dismissed, whether with notice or with pay in lieu of notice in accordance with the decision of the Head teacher. The LA must give written notice to the employee within 14 days of notification by the Governing Body.
- 10.2 In the event that the Appeal Committee of the Governors decides not to uphold the decision to dismiss, the LA shall be informed immediately and the notice of dismissal shall be immediately withdrawn.

11. Grievances arising during the procedure

- 11.1 Where an employee has a grievance against the way the senior manager has conducted the procedure this will normally be dealt with under the appeals process set out above. However, in very exceptional circumstances, where the behaviour of the senior manager is the cause of the grievance, it may be appropriate to suspend this procedure for a short period until the grievance has been considered.

12. Trade Union Officials

- 12.1 Although normal performance standards must apply to an employee who is a lay trade union official, no disciplinary action, beyond an informal oral warning will be taken until the circumstances of the case have been discussed with the relevant professional trade union officer.

13. Confidentiality

- 13.1 The proceedings of this disciplinary procedure shall remain confidential to the parties concerned. Only the decision of a disciplinary hearing may be reported.

E MODEL PROCEDURE RELATING TO LACK OF CAPABILITY HEAD TEACHER ONLY

1. Definitions

- 1.1 The term “Head teacher” also refers to any other title used to identify the Head teacher where appropriate.
- 1.2 The term “Line Manager” refers to the Chair of Governors or another senior governor or other senior governors delegated by the Governing Body.
- 1.3 The “Staff Dismissal Committee” of the Governing Body shall consist of 3 governors, (except in circumstances provided for in the Secretary of State’s guidance on the Staffing Regulations), none of whom will have had previous involvement in the case.
- 1.4 “Lack of capability” is defined as a situation in which an employee fails consistently to perform his/her duties to a wholly satisfactory standard of performance over a period of time.

2. Guidance prior to using the Capability Procedure

- 2.1 If the Head teacher’s performance is less than wholly satisfactory, as a first step the Line Manager, will discuss with the employee the shortcomings as specifically as possible. Structured information and systematic recording will inform the discussion. The Head teacher will be given a reasonable opportunity to comment and explain. In the course of these discussions, appropriate targets will be set and any appropriate remedies, e.g. in-service training, visits to other schools, discussion with appropriate colleagues or professionals, will be considered and planned. The Head teacher will also be informed that his/her performance will be monitored over an identified and specified period. This will not normally exceed six weeks. However, if the concerns relate to a lack of capability that poses a real risk to the health, safety or well-being of children, or is likely to result in serious damage to pupils’ education, a shorter timescale may be appropriate. In extreme cases, the Line Manager may decide to initiate formal procedures immediately if to do otherwise would expose students to serious risk in terms of their health, safety, well-being or educational prospects.
- 2.2 At this stage an oral warning may be given that if wholly satisfactory performance is not achieved within a defined a period this could cause the matter to be dealt with under the formal procedures set out below. An oral warning is not part of the formal procedure that follows.
- 2.3 There is no appeal against an oral warning, which will not be recorded on the Head teacher’s personal record but should be confirmed in a written memorandum. The employee may make written comment on the memorandum if s/he has any objection to the issuing of an oral warning.
- 2.4 Where a Head teacher is failing to perform to a wholly satisfactory level and guidance as indicated above has not brought about the desired improvement then the matter will be dealt with under the procedures below and will be separate from the school’s performance management policy.

3. Time Scale (must be observed when the lack of capability relates to the role as a classroom teacher)

- 3.1 The time scale adopted will reflect the seriousness of the lack of capability. However, the overall period for improvement will not exceed the equivalent of two school terms from the date of entry into the formal procedures. Formal procedures commence on the date of the meeting at which a written warning is first issued.
- 3.2 In exceptional cases, it will not be appropriate or necessary to proceed through the first written warning stage of the procedure before a final warning can be issued. The decision to dispense with a first warning, however, would need to reflect the seriousness of the lack of capability of the employee concerned.
- 3.3 When there are genuinely extreme circumstances in which a period for improvement of two terms would seriously jeopardise the health, safety, welfare or education of students, the period for improvement may be reduced to a period of not less than four weeks.

3. Time Scale (must be observed when the lack of capability relates to the role as a classroom teacher)

- 3.4 In extreme cases, where it is clear that the health, safety or well-being of students would be compromised if even a shortened capability procedure were followed, an employee may be suspended on full pay. In such cases, the formal procedures would be suspended and a recommendation for dismissal made to the Staff Dismissal Committee.

4. Sickness absence and the use of this procedure

- 4.1 It is important that sickness absence should not be used to delay or avoid the use of formal capability procedures. If there are concerns that a Head teacher may be using sickness absence in this way then arrangements should be made to seek medical advice from an occupation health adviser to assess the employee's health and fitness for continued employment at the school.
- 4.2 Following receipt of medical advice consideration may be given to moving from this procedure to procedures used by the school to terminate the employment of the Head teacher on the grounds of ill health.
- 4.3 If the Head teacher's medical condition is not serious enough to warrant a consideration of termination of employment on the grounds of ill health, the occupational health adviser could also be asked to assess whether the Head teacher absent through sickness is fit enough to attend a meeting under this procedure.

5. First Written Warning

- 5.1 If, after a reasonable period from the action taken in paragraph 2 above, it is considered that the Head teacher's performance has not reached a wholly satisfactory level, the Head teacher will be required to attend a meeting with the Line Manager.
- 5.2 The Line Manager will write to the Head teacher at least ten working days in advance to inform him/her about:
- a) the date, time and place of the meeting.
 - b) the basic details of the concerns about the Head teacher's performance.
 - c) the Head teacher's right to be accompanied by a representative of his/her trade union or a workplace colleague.
 - d) the titles of enclosed copies of any documents to be used at the meeting.
 - e) names of any witnesses to be called.
 - f) his/her right to call witnesses on his/her behalf.
 - g) the name and office of any adviser who will accompany the Line Manager at the hearing.
- An extra copy, together with any enclosures, should be provided for his/her representative.
- 5.3 At the meeting, the Head teacher (or his/her representative) will be given a reasonable opportunity to comment on the concerns and to ask questions. At the conclusion, the Line Manager will state his/her decision and will afterwards confirm this in writing to the Head teacher (with a copy for his/her representative).
- 5.4 If the Line Manager considers that the concern about the Head teacher's performance was justified, s/he will give the Head teacher a first written warning. The warning letter will make clear:
- a) the nature of the shortcomings in the Head teacher's performance
 - b) the period during which and the way in which the Head teacher's performance will be assessed
 - c) that failure to perform to a wholly satisfactory level may lead to a final written warning.
 - d) that if the Head teacher's performance becomes wholly satisfactory before or by the end of the assessment period, the written warning will be disregarded.

5. First Written Warning (cont/d)

- 5.5 The warning letter or documentation following the letter will also make clear
- a) the support to be provided to the Head teacher
 - b) the improvements in performance that the Head teacher must demonstrate during the monitoring period and the kinds of evidence that will be sought to ascertain whether these improvements have been achieved
 - c) those aspects of the Head teacher's performance that will be assessed and by whom
- 5.6 If the Line Manager considers that the Head teacher's performance is still not wholly satisfactory by the end of the assessment period but that a final warning is not justified, s/he will call another meeting as outlined in the above paragraphs. The Line Manager may decide to give the Head teacher a further written warning in accordance with the above paragraphs, rather than a final written warning, if s/he thinks this is fair and will be effective.

6. Final Written Warning

- 6.1 If the Line Manager considers that the Head teacher's performance is still not wholly satisfactory, even if there has been some improvement, by the end of the assessment period, s/he will call another meeting as outlined above.
- 6.2 If at the conclusion of the meeting the Line Manager still considers that the Head teacher's performance is not wholly satisfactory, the Line Manager may decide to issue a final written warning which will make clear over what period and in what respect the Head teacher's performance will be assessed and that failure to perform to a wholly satisfactory level will lead to a hearing before the Staff Dismissal Committee, which has the power to dismiss.

7. Right of Appeal against a formal written warning

- 7.1 The Head teacher has a right of appeal against a written warning issued by a Line Manager (see paragraphs 5 and 6). The appeal will be heard by the Disciplinary Panel of Governors. The number of governors on the Disciplinary Panel of Governors will not be less than two. The panel shall be advised by a person engaged for the purpose by the Governing Body. The panel can either confirm the warning, reduce a final warning to a warning or cancel the warning.
- 7.2 Appeals against a written warning shall be restricted to considering the reasonableness of the decision made by the Line Manager, any relevant new evidence not previously available to the Line Manager or any procedural irregularities. A statement giving the reasons for the appeal should be submitted to the Clerk to the Governors within ten working days of the formal written warning having been received.
- 7.3 All appeal hearings will be held as soon as possible after receipt of the appeal.
- 7.4 Pending any appeal the Head teacher will be expected to continue to work in accordance with targets set for the next stage of the procedure and his/her progress towards the achievement of these targets may be monitored during this period.

8. Dismissal

- 8.1 If the Line Manager considers that the Head teacher has failed to meet the required standards by the end of the specified assessment period, the Head teacher will be informed, in writing, of the requirement to attend a hearing before the Staff Dismissal Committee in accordance with the procedure for calling a meeting as set out in 5.2 of these procedures. Where such a meeting with the Staff Dismissal Committee is called the Head teacher shall be suspended on full pay pending the outcome of the hearing.
- 8.2 If the Staff Dismissal Committee decides that the complaint is justified, it may decide to dismiss the Head teacher and will confirm its decision and reasons in writing to the Head teacher (copy to his/her representative) as soon as possible after the hearing.
- 8.3 The Staff Dismissal Committee may decide not to dismiss but to issue a further written warning for a specified assessment period.

9. Right of Appeal against a decision to dismiss

- 9.1 The Head teacher has a right of appeal to the Appeals Committee of the Governing Body against a decision of the Staff Dismissal Committee.
- 9.2 The Appeals Committee shall consist of at least 3 governors, none of whom will have had any involvement in the case.
- 9.3 The Head teacher's notice of appeal should be sent to the Clerk to the Governors within ten working days of receipt of the written decision to dismiss.
- 9.4 Appeal hearings should be held as soon as possible after receipt of the appeal.

10. Notice of Dismissal

- 10.1 Following a decision to dismiss the Governing Body will notify the LA in writing that the Head teacher is to be dismissed, whether with notice or with pay in lieu of notice in accordance with the decision of the Staff Dismissal Committee. The LA must give written notice to the Head teacher within 14 days of notification by the Governing Body.
- 10.2 In the event that the Appeal Committee of the Governors decides not to uphold the decision to dismiss, the LA shall be informed immediately and the notice of dismissal shall be immediately withdrawn.

11. Grievances arising during the procedure

- 11.1 Where a Head teacher has a grievance against the way the Line Manager has conducted the procedure this will normally be dealt with under the appeals process set out above. However, in very exceptional circumstances, where the behaviour of the Line Manager is the cause of the grievance, it may be appropriate to suspend this procedure for a short period until the grievance has been considered.

12. Trade Union Officials

- 12.1 Although normal performance standards must apply to an employee who is a lay trade union official, no disciplinary action, beyond an informal oral warning will be taken until the circumstances of the case have been discussed with the relevant professional trade union officer.

13. Confidentiality

- 13.1 The proceedings of this disciplinary procedure shall remain confidential to the parties concerned. Only the decision of a disciplinary hearing may be reported.

F Model Letter Summoning Employee to a Disciplinary Hearing

Model letter from the delegated senior manager, to request employee's attendance at disciplinary hearing

Confidential

Dear

Disciplinary Hearing

I require your attendance at a disciplinary hearing to be conducted by me on *[date]* at *[place]* at *[time]*

The purpose of the hearing is to consider the following complaints relating to your *misconduct and/or lack of capability*:

-

You have the right to be accompanied/represented at the hearing by a representative of his/her trade union or a workplace colleague.

The following documents will be produced in evidence:

-

In addition, the following witnesses will be called:

-

I shall be accompanied at the hearing by _____ who will act as my adviser.

Would you please let me know as soon as possible whether or not you will be represented and if so, the name and position of your representative.

You or your representative has the right to produce documentary evidence and to call witnesses on your behalf. Please let me have (by at least 4 days before the hearing) the names of any witnesses you propose to call and copies of any documents you intend to produce. A copy of the procedure to be followed at the hearing is enclosed.

If you do not attend the hearing without good cause you should be aware that I may decide to proceed in your absence.

An additional copy of this letter is enclosed for your representative.

Yours sincerely,

Delegated Senior Manager

G Model Procedure for Hearings Conducted by the Delegated Senior Manager

1. Case under consideration by the Senior Manager (as manager representing the Governing Body);

The Senior Manager:

- a) Briefly outlines the evidence of the case being considered by him/her.
- b) Calls witnesses so that, taking each one in turn,
 - i) each witness gives his/her evidence
 - ii) the employee or representative may ask questions of each witness
 - iii) the senior manager may ask further questions for clarification.

2. Case for the Employee

The employee, or his/her representative:

- a) Makes an opening address outlining the response to the matter under consideration
- b) Calls witnesses so that, taking each one in turn
 - i) each witness gives his/her evidence
 - ii) the senior manager asks each witness questions
 - iii) the employee or representative may ask further questions for clarification.

3. Summing up and withdrawal

- a) The employee, or representative, has the opportunity to sum up his/her case if s/he so wishes.
- b) The employee and representative are then required to withdraw.

4. Senior Manager's decision

- a) The senior manager and the person who is advising on law, procedure, and merits of the case are to deliberate in private, only recalling the employee and representative to clear points of uncertainty on evidence already given.
- b) Each witness will only be present at the hearing whilst giving evidence, with the exception of the Employee who may remain present throughout the hearing
- c) The senior manager announces the decision to the employee and confirms it in **writing.**

H Model Letter: Written Warning

Model [First / Final] Written Warning Letter[Conduct and/or Capability]

PERSONAL AND CONFIDENTIAL

Dear

Disciplinary Procedure - [First/Final] Written Warning - [Conduct and/or Capability]

I am writing to record a [first/final] written warning under the School's Disciplinary Procedure in connection with your [conduct or capability] which has been less than wholly satisfactory. It confirms the decision made at the interview held on _____ at which you were represented by _____ [if appropriate] and relates specifically to the following matters:

[Identify the issues with which the hearing dealt. These will either be matters relating to misconduct, or identify the lack of capability that has led to a written warning being issued. If the warning is one for capability and the employee is a teacher who is paid below point M6 on the classroom teachers' main pay scale then the following sentence should also be included:-

"In addition to the written warning referred to above the next pay increment at point will be withheld until such time as your performance is considered to be wholly satisfactory."

You have the right of appeal against this warning (*and the withholding of the salary increment, if appropriate*) to the Disciplinary Panel of the Governors and this should be made within ten working days of the receipt of this letter.

Either:

You should also note that any further misconduct within twelve months of this warning will lead to a *final warning/dismissal* unless there are mitigating circumstances.

or (if capability is in question):

You should note that during the next _____ weeks your performance will be monitored and you will be expected to show improvement in the areas mentioned above as discussed at your interview with me. Failure to meet the required standard will lead to *[a final warning/dismissal]* unless there are mitigating circumstances.

[Any support and help that is to be provided should also be included, together with the date(s) when the monitoring meeting(s) will take place.]

Yours sincerely,

Delegated Senior Manager

I EPM Guidance Notes for Managers Conducting Disciplinary Investigations

1. Introduction

1.1 The disciplinary investigation is key to the process that must be followed prior to carrying out a disciplinary hearing or fair dismissal.

1.2 The rules of natural justice require that the employee should know the nature of the charge against him or her and should be given the opportunity to state his or her case. The evidence collected during the investigation will be put to the employee in the disciplinary hearing and will enable the employee to state his or her case in response.

1.3 The statutory dismissal and disciplinary procedures, in force since 1 October 2004, do not lay down specific rules as to the conduct of a disciplinary investigation. However, there is a general requirement that each step and action under the statutory procedure must be taken without unreasonable delay. If the investigation becomes unduly protracted, this will affect the timing of the disciplinary hearing and could lead to a breach of the statutory rules with its consequent effect on compensation.

1.4 It is essential that all complaints, incidents and allegations are investigated and resolved without any unnecessary delay. The aim should be to complete a disciplinary investigation within ten working days of the Investigating Manager receiving instructions from the Headteacher or other person who instigated the process. For ease of reference this person is referred to as the Headteacher for the rest of this document.

2. The Purpose of a Disciplinary Investigation

2.1 The disciplinary investigation is the process where all pertinent facts are collected by the Investigating Manager. Facts which relate to a disciplinary issue come in many forms. Some are quite clear e.g. incorrect entries on timesheets/flexisheets, etc. However, in many cases the facts relating to a disciplinary incident are less evident.

2.2 Disciplinary procedures are an internal management process. Therefore, the Investigating Manager must come to a conclusion based on what s/he thinks probably occurred or happened. Their conclusion must be logical and in keeping with the facts discovered during the investigation.

2.3 The facts uncovered may not be overwhelming, nor satisfy the legal test of 'beyond reasonable doubt'. As long as the conclusion is the most likely scenario given the facts gleaned from the information gathered, the Investigating Manager should be recommending that the employee explain their behaviour in a disciplinary hearing.

2.4 In other words, a Hearing should be recommended if the Investigating Manager concludes that there is a case to answer. The role of the Investigating Manager is not to recommend what disciplinary outcome is appropriate e.g. "The employee should be issued with a first written warning" (this is the role of the disciplinary hearing).

2.5 It is important that the Investigating Manager carries out a reasonable and open-minded investigation. The investigating officer should not be connected in any way to the facts giving rise to the disciplinary charge in order to avoid any suggestion of bias in the way that the investigation is conducted. The Investigating Manager's report is an account of all the versions and accounts of what took place, together with their own conclusion and recommendation based on what they believe, on the balance of probability, happened given the information they have uncovered.

2.6 In some cases there may be very few facts to go on, or it may be a question of one person's word against another. In these cases the Investigating Manager should consider whether either party's version of the facts is more plausible. If it is, the recommendation should be that a disciplinary hearing be convened.

2.7 This would apply even if one party's version is no more plausible than the alternative version, since the hearing will allow both versions to be explored, and give the panel a chance to come to a conclusion as to what disciplinary action (if any) be taken against the employee in question.

2.8 It should be noted, depending on the information discovered during the investigation, it is possible to re-interview the person under investigation after other people that have already been interviewed.

2.9 Investigating Managers must not be selective in fact finding to suit a certain outcome. They must ensure that their investigation is as comprehensive as practicably possible by interviewing all key people involved with the case and collating all documentation. The aim is to allow a fair and balanced conclusion to be reached on the balance of probability.

3. Carrying out a Disciplinary Investigation

3.1 A crucial ingredient in the handling of a disciplinary matter in terms of employment legislation is an “adequate investigation”. This does not mean exploring every possible avenue, but it does mean:-

- enquiring into the circumstances surrounding the suspected or alleged misconduct
- giving the employee a chance to offer an explanation
- taking a balanced view of the information that emerges
- reaching a decision whether or not there are sufficient grounds for an allegation of misconduct; if so, deciding whether it should be dealt with by a ticking off or by formal action under the disciplinary Code.

3.2 The Investigation must be adapted to the circumstances of the alleged misconduct. If, for example, complaints have been made from colleagues about an employee’s conduct it will be necessary not only to meet with the complainants and obtain witness statements from them, but also to interview some of those who have not complained but who can be expected to know, or have an opinion about, whether the complaints are justified.

3.3 The investigating officer should arrange to meet individually with the witnesses to the incident or events giving rise to the investigation. He or she should ask the witnesses to give an account in their own words of what took place. This should be in terms of what they personally witnessed or had involvement with.

3.4 There may be occasions when the witnesses are not the employer's employees. If this is the case they should be asked to assist in the disciplinary investigation, for example by providing a written statement. This will help to show that reasonable steps have been taken. However, the investigating officer will be reliant upon their voluntary cooperation if the witnesses are not employees of the organisation.

3.5 Following the meetings with the witnesses, statements should be typed up and the witnesses should be asked to check and sign them. They should be given the opportunity to make any necessary amendments in order to ensure accuracy.

3.6 If the allegation is made by a supervisor about a member of staff under their control, it may be necessary to question other employees within the group see whether they can shed any light on the matter. If this direction is pursued, care must be taken not to give employees the impression that the manager’s word is being doubted, or that their authority is being undermined.

3.7 If there are no witnesses to an incident, it may be worthwhile interviewing those people who last spoke to the employee before the incident took place, and those to whom he or she spoke immediately after it.

3.8 If the employee readily admits to a complaint of misconduct, then the investigation may well be confined to that, or to obtaining a measure of confirmation of it.

3.9 In a disputed case, the investigation will need to be as sufficient as is reasonable in the circumstances. Only this way will the person(s) conducting the disciplinary hearing be able to make a decision on the balance of probabilities and answer the question “Have we a reasonable suspicion amounting to a belief in the guilt of the employee of the alleged misconduct, and have we reasonable grounds for that belief?”.

3.10 There are a number of things to remember when conducting a disciplinary investigation, amongst these considerations the investigating Manager must:-

(i) Handle the matter promptly

It must be remembered that for all employees subject to possible disciplinary action it is a tense and stressful time and it is in the interests of good employment relations to conclude disciplinary matters as quickly as possibly.

(ii) Gather Facts

The Investigating Manager must gather as much pertinent information as possible to the case without going beyond their original remit. Statements must be obtained from witnesses as quickly as possible to avoid memory loss. The investigating officer should also collect any documents that are relevant to the disciplinary charge. For example, if the charge concerns an allegation of fraudulent expense claims, the claim forms should be collected so that they can be put to the employee for his or her explanation. There can be no exhaustive list of the type of documents that may be required, but they might include rota sheets or absence records if it is necessary to establish who was on duty on a particular day, plus any letters, memos or e-mails relevant to a disciplinary incident or chain of events.

(iii) Be Fair

Maintaining standards of acceptable conduct and work performance calls for objectivity and fairness. It is important to keep an open mind and not prejudice the issues.

(iv) Be Consistent and Fair

The attitude and conduct of all employees will be seriously undermined if management fail to apply the same rules and considerations to each case. The Investigating Manager must be able to demonstrate that s/he has arrived at the conclusions objectively and rationally. An Employment Tribunal would only concern itself as to whether the reason the employer dismissed the employee was fair or unfair and whether the organisation followed its own disciplinary procedures.

3.11 The Investigating Manager should:

- Be objective.
- Critically examine *all* documents that *might* be relevant.
- Avoid putting answers into an interviewee's mouth.
- Test what an interviewee says, in a non-confrontational way.
- Concentrate on facts, not opinions.
- Collect evidence, and not make judgements.
- Probe the interviewee's memory.
- Make notes and agree them with the interviewee.

4. Conducting an Investigation Interview with the Employee

4.1 The investigating officer should also meet and take a statement from the employee who is the subject of the disciplinary charge, so as to obtain his or her account of the events. It would also be advisable for the investigating officer to ask the employee whether he or she is aware of any other witnesses to the incident or any other documents or issues that he or she believes are relevant so that the investigating officer can follow these up. At the interview it is good practice to try and put the employee at his or her ease. An accusatory tone from the outset is likely to discourage the employee from giving an explanation other than a flat denial.

4.2 The Investigating Manager should begin by outlining the matters to be discussed, even if the employee has been informed of them already. Then the employee should be invited to say anything he or she wants about them.

4.3 If the employee responds to this suggestion, the Investigating Manager should refrain from interrupting, other than with prompts as necessary, such as "and what happened after that?"

4.4 Accusatory statements and questions like, "You're lying," must be avoided. If the employee is lying, this kind of questioning will reinforce the lie. If the employee is telling the truth, then they will rightly conclude that the Investigating Manager is prejudiced and does not want to recognise the truth when they hear it.

4.5 Although questions about motivation and state of mind at the time are important e.g. how and why questions – 'Why did you do that?', greater emphasis should be placed on the 'hard facts' of what was said, heard, seen and done. Questions which seek precise detail about the physical aspects of the events which the interviewee is describing – 'Who sat where? Who said what? What time did it happen? What words were used?' – will usually give a reliable impression of the strength of an interviewee's evidence.

4.6 The objective should be to encourage the employee to speak and then to listen carefully to what they have to say, jotting down salient points as necessary. If the employee chooses to gloss over an important point, rather than jumping in immediately, it may be better to revisit by asking probing questions such as "I am not quite sure what you meant when you said '.....' would you like to explain it?" this may be a useful tactic to highlight

inconsistencies and help clarify misunderstandings.

4.7 Specific probing questions must be put to the employee at the end of the interview, such as “I can’t quite see how you that matches up with what you said about.....what is it you are really saying?” can be very valuable.

4.8 The Investigating Manager should make notes that should be written up as soon as possible and signed as accurate by the interviewee. The interviewee can then correct any misunderstandings.

4.9 If an employee’s explanation, or any of the other information which emerges from the interview, introduces points which have not hitherto been considered, it may be sensible to adjourn so that further enquiries can be made.

4.10 The statutory right to be accompanied at a disciplinary hearing under the Employment Relations Act 1999, section 10 applies to a disciplinary hearing that could result in the administration of a formal warning to a worker by an employer; the taking of some other action in respect of the worker by the employer; or the confirmation of a warning issued or some other action taken. This does not encompass an investigatory meeting. However, the employer should check whether its own disciplinary procedure gives a right to be accompanied at an investigatory meeting. In addition, if employees have been allowed to be accompanied in the past, this past custom and practice should be followed.

5. Receipt of new information/allegations

5.1 Occasionally during the investigation, the Investigating Manager is alerted to new allegations, which appear to warrant further investigation. If these relate to an employee who is not being investigated, the Headteacher should be informed, and may decide to start a second and separate investigation.

5.2 If further allegations are made regarding the employee currently under investigation, the options for the Headteacher to consider are:

- (i) a new investigation may be started, possibly with a different Investigating Manager
- (ii) the new allegations may be added to the current investigation
- (iii) whether the allegations need to be ‘upgraded’ from misconduct to gross misconduct

5.3 In these circumstances, the employee would need to receive written confirmation of the additional charges.

6. Analysing the Information Gathered

6.1 The information produced by the investigation has to be analysed and assessed on the balance of probabilities. Conclusions and recommendations must be put forward based on adequate enquiry and reasonable evidence.

6.2 It would be beneficial for all parties for the Investigating Manager to include a brief summary of their investigation with a chronological list of events.

6.3 After having considered the information in the report, the Headteacher may ask the Investigating Manager to look in more detail at specified areas and/or to investigate areas so far untouched. Any further fact-finding must be undertaken in compliance with the time scales for completing the investigation. In many cases no single piece of evidence will be decisive. What will matter more will be the cumulative effect of all the evidence that points in a particular direction

6.4 The employee should have the opportunity to see these papers a few working days in advance of the hearing. If the papers are presented to the employee on the day of the hearing, he or she may argue that insufficient time to prepare a proper response to the disciplinary charge has been allowed.

7. Is Disciplinary action necessary?

7.1 Having gathered all the facts the Investigating Manager should decide whether to:

(a) **Drop the matter**

There may be no case to answer or the matter may be so trivial as to justify overlooking in this instance.

(b) **Arrange Counselling/Training**

This is an attempt to correct a situation and resume normal working practices without recourse to the Disciplinary Code.

(c) Recommend Disciplinary Action

This will be necessary where the matter is more serious and it appears that there has been a disciplinary offence which requires appropriate disciplinary action. The Investigating Manager will be responsible for recommending which allegations need to be considered and whether they constitute misconduct or gross misconduct.

8. Report of the Investigating Manager

8.1 Following the information gathering the Investigating Manager is required to produce a report to the Headteacher within the timescales identified above.

8.2 The report should have a number of identifiable characteristics:

(a) The report should detail all facts that have been gathered and explain how these have been interpreted and contribute to the allegations. Investigating Managers must remember that it is this part of the report which will be the primary part of their presentation to the Disciplinary hearing. It should, therefore, clearly show how they arrived at their conclusions.

(b) The report should contain within its appendices all factual and relevant documentation which support the allegations made, e.g. agreed witness statements, timesheets, flexisheets, job descriptions, photographs, financial regulations, expense claims, media reports, employment contracts, etc.

(c) It should recommend whether a Disciplinary hearing should be convened, or not. In essence the Investigating Manager has to decide whether there is a case to answer.

(d) It should identify each allegation and recommend whether the case is one of misconduct or gross misconduct (with advice from EPM).

(e) The report should contain NO recommendation regarding the outcome, this is for the Headteacher only to decide.

Preparing for a Investigatory Interview

Checklist

- o Prepare carefully and ensure you have all the facts.
- o Write to the employee informing them of your appointment as Investigating Manager, the complaint and the procedure to be followed and that s/he is required to attend a disciplinary interview.
- o Ensure the employee is informed in writing that they can be accompanied by a trade union representative or work colleague at the interview.
- o Find out if there are any special circumstances to be taken into account. (For example, personal issues or issues around suspension).
- o Are the standards of other employees acceptable or is this employee being unfairly singled out?
- o Try and predict what explanations may be offered by the employee and, if possible, check them out beforehand.
- o Consider how the interview will be structured and prepare a list of all questions and areas you intend to cover in the disciplinary interview.
- o Try to arrange for a P.A. (if available) to take notes of the interview, act as a witness to corroborate anything that was discussed .
- o Ensure that the employee signs and dates the statement of the investigatory interview as soon as possible after the meeting. If the employee refuses to sign the statement s/he can submit their own version of the statement, which will be presented to the headteacher with the Investigating Manager's original statement.
- o If there are likely to be language difficulties consider whether a friend or colleague of the employee can act as an interpreter or other arrangements can be made.