



# Disciplinary Procedure for school based staff



## ORGANISATIONAL DEVELOPMENT DIVISION

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This model policy has undergone consultation with the following recognised trade unions:  
ASCL, GMB, NASUWT, NEU, NAHT, UCAC, UNISON, UNITE and Voice the Union

Where a Governing Body wishes to make amendments to this model policy or adopt an alternative disciplinary policy, they will need to undertake a further consultation on this with the recognised trade unions.

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This model procedure presupposes that a delegation is in place allowing the headteacher to deal with accusations constituting lesser misconduct. Where this is not the case, suitable adjustments will need to be made.

This staff disciplinary procedure applies to school staff employed under a contract of employment with the school. Members of staff have been made aware of this procedure and copies will be given to any member of staff who is the subject of any allegation.

This policy is available in English and Welsh. Should you wish for any process under this policy to be conducted in Welsh or any other language please advise the relevant manager and this can be arranged.

All timescales included in this staff disciplinary procedure have been agreed by the governing body and consulted upon with the recognised trade unions. Depending on the circumstances of the case, there may need to be flexibility with these timescales, e.g. where there is a large amount of paperwork or unavailability of individuals involved in the process. Any proposed amendments to timescales will be discussed and agreed with all parties.

Where required throughout this procedure the chair of governors ('the chair') will take appropriate action on behalf of the governing body as delegated by the governing body unless they are compromised, in which case the vice chair of governors will take over the role and actions normally carried out by the chair. If the vice chair is also compromised the governing body will have to select another governor who is not compromised and minute this decision.

This procedure should be read in conjunction with:

- [Welsh Government's Guidance on Disciplinary and Dismissal Procedures for School Staff](#)
- [ACAS code of practice on disciplinary and grievance procedures](#)
- [ACAS guide to conducting workplace investigations](#)
- [EWC Code of Professional Conduct and Practice](#)
- Wales Safeguarding Procedures <https://safeguarding.wales/>
- [Safeguarding children in education: handling allegations of abuse against teachers and other staff Welsh Government circular 009/2014](#)

This policy does not apply to:

- Staff employed directly by the Local Authority
- Staff employed by an employment agency
- Staff whose contract of employment is held by another body, i.e. is shared with another school
- Staff engaged under a contract to provide services

This policy will be reviewed regionally on an annual basis.

The governing body is responsible for the conduct and discipline of school staff and is required to have a procedure in place for dealing with staff disciplinary matters.

Disciplinary procedures are necessary for promoting orderly employment relations, achieving fairness and consistency in the treatment of individuals and minimising disagreement about disciplinary matters. This disciplinary procedure is intended to help and encourage all employees to achieve and maintain acceptable standards of conduct and to make clear to all concerned the procedure to be followed by this school and governing body to address concerns about an individual's behaviour or conduct and any subsequent disciplinary action that may be taken.

The aim of the procedure is to ensure consistent and fair treatment for all members of staff within the school.

## **2.1 Matters outside the scope of the procedure**

Matters outside the scope of this disciplinary procedure include:

- a) where employment is terminated:
  - i. by reason of redundancy
  - ii. by an employee reaching the end of a temporary or fixed-term contract
- b) where any deficiencies in performance on the part of the staff member arise from a lack of aptitude or skill (in such cases the capability procedure would be applicable)
- c) staff grievances and grievances lodged as a result of disciplinary action. If, however, action under the staff grievance procedure results in the need for disciplinary action then this disciplinary and dismissal procedure will apply
- d) termination during or at the end of a probationary/induction period, whether or not extended beyond its originally specified duration
- e) matters that should be dealt with through the governing body's general complaints procedure and which do not raise staff disciplinary issues for individual members of school staff
- f) **for Foundation and voluntary aided schools only** – the function of the staff disciplinary and dismissal committee of a foundation school, foundation special school or voluntary-aided school to decide that a person employed at the school should not have their contract of employment renewed

## **3. Principles**

In all cases, the school and governing body will ensure that disciplinary cases are dealt with in an unbiased, open and fair way.

This policy will be applied in accordance with the employer's duty to promote equality, eliminate discrimination and to promote good relations between staff with protected characteristics as required under the Equality Act 2010.

- Where appropriate, every effort will be made to address concerns about

behaviour or conduct without recourse to formal procedures.

- No disciplinary action will be taken against a member of staff until the case has been fully investigated (for allegations of harm (abuse) caused to a child the investigation will be independent).
- An investigator will be objective, impartial and will have received appropriate training. A member of staff may raise reasonable objections to an investigator relating to their inability to act impartially. The chair of governors will determine whether the circumstances of the objection are valid and accepted and whether the investigator should be changed.
- All investigations, documentation and any information regarding/obtained as a result of any subsequent disciplinary and appeal hearings and outcomes will be dealt with in the strictest of confidence by all parties.
- Where it is considered that the allegation(s) would amount to lesser misconduct the matter will be dealt with through lesser misconduct procedures. The member of staff will be informed of the allegation(s) against them and will be given the opportunity to defend the allegation(s) at a disciplinary hearing held before the headteacher, or the chair of governors for allegations against the headteacher, OR, where possible and agreed by relevant parties, the alleged lesser misconduct can be dealt with via the Early Resolution process.
- A member of staff will not be dismissed for a first breach of discipline in cases of lesser misconduct but may receive a sanction in the form of a warning. Should the lesser misconduct be repeated it may result in a more severe sanction under the lesser misconduct process or a referral to the staff disciplinary and dismissal committee where it may constitute gross misconduct.
- The member of staff will be informed of any warnings at the end of the hearing, including the length of time they are to remain 'live'. The warnings will be confirmed in writing. At the member of staff's request, a copy of the warning will be sent to their union representative.
- Where it is considered that the allegation(s) amount to gross misconduct, the member of staff will be informed of the allegation(s) and will be given the opportunity to defend the allegation(s) at a hearing held before the governing body staff disciplinary and dismissal committee.
- The member of staff will be provided with details of the membership of the staff disciplinary and dismissal committee prior to a hearing and advised of their right of objection to any committee member. It will be for the chair to determine whether the circumstances of the objection are valid and accepted and whether a member of the committee is removed. This decision will usually be based on the provision of evidence that calls into question the committee member's ability to act impartially in the circumstances of the case. The member of staff will be provided with all relevant information prior to any hearing.
- The member of staff has the right to be accompanied by a representative of their trade union or work colleague during the investigation, the disciplinary hearing and the appeal hearing. Where the member of staff's representative is unavailable to attend the hearing an alternative date should be arranged within five school days of the original date wherever possible.

- Dismissal for gross misconduct, following the decision of the staff disciplinary and dismissal committee or following the outcome of any appeal, is likely to be without notice or payment in lieu of notice.

- A member of staff has the right to appeal against any disciplinary sanction imposed.
- The process will be supportive towards the needs of the member of staff. • Investigations and hearings will be conducted in English or Welsh, or with access to translation services, at the request of the member of staff.
- Where an allegation is judged to be potentially malicious the Governing Body must consider the circumstances and what action should be taken against the person making the allegation which may include a separate investigation and possible disciplinary action in circumstances where the allegation was raised by another member of staff.

## 4. Informal discussion with the Headteacher and/or Line Manager – outside of the Disciplinary Process

There will be occasions when it is appropriate for a member of staff's actions to be discussed with them as part of normal supervisory arrangements without recourse to the formal procedures. In such circumstances the member of staff will be given guidance and support from their line manager. This could take the form of advice, counselling, training instruction, coaching or other managerial strategies as is appropriate. In respect of the headteacher, this would be carried out by the chair of governors with advice and support from the LA HR advisor.

The aim of this action is to ensure that problems are discussed so as to encourage and help the member of staff to improve. It will be made clear to the member of staff:

- what they need to do in relation to their conduct
- how conduct will be monitored and reviewed, and over what period of time • that formal action could be taken if there is a recurrence of the conduct in question or if the member of staff fails to produce the necessary improvements • that the informal discussion does not constitute a formal warning

Where discussions and support do not lead to the necessary improvements or relevant changes in conduct, within the agreed timescale, the member of staff will be advised in writing of further action to be taken, which may be formal. A record of these discussions will be retained and agreed, where possible, by both parties.

## 5. Formal Procedure for Lesser Misconduct

Responsibility for disciplinary matters considered to be lesser misconduct has been delegated by the governing body to the headteacher.

Any lesser misconduct allegations made against the headteacher will be dealt with by the chair.

There may be rare occasions where, at the end of an investigation into lesser misconduct matters, the evidence in the investigation report indicates that the behaviour constitutes gross misconduct. If the headteacher or chair concludes that

this is the case, a referral for formal disciplinary action where dismissal may be an option may be justified. The member of staff will be informed immediately of this decision in writing.

## 5.1 The investigation

As soon as an allegation has been brought to the attention of the headteacher or the chair (in the case of the headteacher) a full investigation will be carried out. Other than in the case of the Headteacher, the investigation will be undertaken by a member of the school's senior leadership team, who has no involvement in the case. Where the allegation is about the headteacher the chair of governors will, where possible, arrange for the investigation to be carried out externally e.g. by the LA, diocesan authority (where appropriate) or other independent person.

The member of staff will be advised of their right to object to any investigator. It will be for the chair to determine whether the circumstances of the objection are valid and accepted. Where an objection is upheld, an alternative person will be identified to undertake the investigation.

All parties should ensure that the investigation is conducted in a timely manner and concluded as soon as possible.

The member of staff who is the subject of the alleged breach of discipline, and all witnesses, will be interviewed, having been given information and advance notice. Notes will be taken at all investigation meetings and a copy given to the party involved as soon as practicable possible. On receipt of the copy of the notes of their meeting, all individuals will be asked to confirm their accuracy either by signing the notes or confirming this in writing. No undertaking of confidentiality will be given to witnesses; however, the overall confidentiality of the disciplinary process will be respected.

The member of staff will be given the opportunity to respond to the allegation and will be advised of their right to be accompanied by a representative of their trade union or work colleague at an investigation interview meeting. Witnesses may also be accompanied when giving evidence if they so wish.

Once the investigation has concluded, the investigating officer will present the findings to the headteacher or the chair (where the allegation/s is against the headteacher) in a written report. This will be done as soon as practicable after the conclusion of the investigation. The report will not contain any personal views or comments, conclusions or recommendations.

Based on the evidence and findings in the investigation report the headteacher or chair may conclude that:

- the allegation is false or unfounded and no further action will be taken • matters can be dealt with through informal procedures
- the early resolution process may be appropriate because the employee has admitted misconduct. Early resolution can only occur where allegations are

- before the headteacher or chair
- there appears to be sufficient evidence of lesser misconduct for a hearing to take place but, because the member of staff currently has a final written warning, the case should be referred to the staff disciplinary and dismissal committee
- there appears to be sufficient evidence that the allegation constitutes potential gross misconduct and should be considered at a disciplinary hearing before the staff disciplinary and dismissal committee

Where there is conflicting evidence, the matter will be referred to a hearing before the headteacher or chair or a hearing before the staff disciplinary and dismissal committee if the findings in the report show that the allegation is considered to constitute gross misconduct.

## 5.2 The hearing before the headteacher or chair of governors

Conduct that is considered to fall within the scope of lesser misconduct has been delegated to the headteacher to deal with. The chair of governors will deal with lesser misconduct allegations against the headteacher. Where it has been determined that a lesser misconduct hearing is required, the hearing will take place before the headteacher or the chair, supported by advice from the LA or diocesan authority (where appropriate). In circumstances where the Headteacher/Chair of Governors is unable to undertake the hearing due to a conflict of interest e.g. they are a witness in the case, the hearing will take place before the Chair of Governors in the case of all staff other than the Headteacher, or before another appropriate governors in the case of the Headteacher.

The member of staff will be sent a copy of this policy along with a copy of the investigation report and supporting documentation, and will be informed in writing of:

- the nature of the alleged misconduct
- the relevant procedure being followed and why
- the date, time and place for the hearing (giving a minimum of 10 school days' notice)
- the possible outcome/sanctions from the hearing if the allegation(s) are upheld

They will also be advised of their right to:

- produce written statements which will be circulated to all parties in advance of the hearing
- ask questions relating to any written statements
- state their case in person and/or through a representative
- produce witnesses
- be accompanied by a representative of their trade union or a work colleague

The six possible outcomes following on from such a hearing are:

- the allegation is not upheld and no further action is required
- informal action
- a recorded oral warning
- a first written warning

- a final written warning
- a referral to a disciplinary hearing before the governing body's staff disciplinary and dismissal committee

### **5.3 Informal action**

As a result of the hearing, the headteacher or the chair (in respect of the headteacher) may deal with matters by giving advice, counselling, training instruction, coaching or other managerial strategies as appropriate. Such activity may be delegated to a member of the senior management team. In respect of the headteacher, however, this will be carried out by the chair with advice and support from the LA HR advisor.

Where discussions and support structures do not lead to improvement or the relevant changes in conduct in the agreed timescale, the member of staff will be advised orally and in writing of further action to be taken.

### **5.4 Formal action - warnings**

Standard warning periods are as follows:

- recorded oral warning – three months
- first written warning – six months
- final written warning – twelve months

There may be circumstances where it would be suitable to vary the duration of the warning due to nature the of the offence and the detail of the required improvement. Where this is to be considered the Headteacher/Chair of Governors should seek advice from Human Resources.

When a warning is issued, a record of the warning will be placed on the member of staff's file. Where the member of staff's conduct is satisfactory for the specified period of a warning, such warnings will be expunged from the staff member's file after the specified period ends and will not be referred to again once spent.

All formal warnings issued will be confirmed in writing and will include:

- the specified period of the warning
- detail of the expected action/improvement/outcome for the future and the action needed to avoid any further disciplinary action
- the consequences of any failure to take the necessary action
- the right to appeal, the time limit within which the appeal should be made and how the appeal should be made

### **5.5 Final written warning**

A final written warning may be issued where lesser misconduct recurs despite attempts by senior managers to support the member of staff to improve their

When issuing a final written warning the member of staff will be informed that failure to address the conduct or behaviours which are the subject of a final written warning could lead to further disciplinary proceedings, including the matter being referred to a formal hearing with the staff disciplinary and dismissal committee which could result in dismissal.

### **5.6 Records of warnings**

All warnings will be issued to the member of staff at the conclusion of the hearing, and in front of the member of staff's trade union representative or work colleague as appropriate. The warning will be confirmed in writing within 5 school days of the hearing, with a copy going to the member of staff's trade union representative/work colleague, if requested by the member of staff. The member of staff will be required to acknowledge receipt of any warning given. A record of the warning will be placed on the member of staff's file.

Copies of all warnings issued will also be sent to the LA chief education officer in respect of staff in community, community special or voluntary-controlled schools.

### **5.7 Appeals against formal warnings**

There is a right of appeal against any disciplinary action. The notice of the intention to appeal must be lodged in writing with the clerk to the staff disciplinary and dismissal appeals committee within 5 school days of receipt of the disciplinary hearing outcome letter. The member of staff must then submit their grounds for appeal in writing and provide any supporting documentation within a further 5 school days (10 school days in total following receipt of the disciplinary outcome letter).

The appeal will be heard by the staff disciplinary and dismissal appeals committee of the governing body. The member of staff will be given 10 school days' notice in writing of the date and time of the appeal hearing. The appeals committee cannot impose a more severe penalty than that imposed at the first hearing.

## **6. Suspension and other Risk Management Strategies**

Suspension pending disciplinary proceedings (or other action such as redeployment to another post outside of school) will normally only be considered for gross misconduct allegations where:

- it appears to be necessary to exclude the member of staff from the school, for the protection of pupils, other staff or property, or for the orderly conduct of the school
- the continued presence at work of the member of staff would be an obstacle to proper investigation of the allegations made against that member of staff

chair of governors should undertake a risk assessment and consider if other realistic and reasonable options are available, such as undertaking work that does not involve contact with pupil or working from home or another venue. They should also give consideration to the wellbeing impact of suspension on the member of staff. Having considered all options the headteacher and/or chair should be satisfied that there is a reasonable and proper cause to suspend.

Suspension will not be used in a punitive way and will be on full pay and without loss of emoluments or any other benefits. The member of staff will be called to an interview with the headteacher or chair before a suspension is implemented. During the suspension interview the member of staff will be informed that an allegation has been made and that, on conclusion of the interview, suspension may occur. The headteacher or chair should give the member of staff as much information as possible and appropriate, including the reasons for any proposed suspension and the alternatives considered as part of the risk assessment. The member of staff should be given an opportunity to make representations concerning the proposed suspension. The member of staff can be accompanied at the meeting by a trade union representative, however the suspension interview will not be delayed where a trade union representative is unavailable.

Where it is determined at the end of the interview to proceed with suspension the headteacher or chair should agree with the member of staff the communication approach in relation to the reason for their absence from work and confirm who their named contact will be during the suspension period. The member of staff will receive written confirmation of the decision to suspend within 5 school days of the interview. The letter will detail the reasons for the suspension and who their named contact is within the school for the period of the suspension.

Before taking a decision to suspend or take other action, the headteacher or chair will seek advice from the LA HR adviser and/or diocesan authority if appropriate. For safeguarding allegations, the advice of the local authority designated lead officer for safeguarding in education and any statutory authorities that are involved, i.e. police or LA social services, will also be considered. The continued effect of the suspension will be kept under regular review by the headteacher or chair and the outcome of the review reported to the member of staff and the governing body.

Should a member of staff refuse to attend, or unreasonably delay the suspension interview, the headteacher or chair of governors reserves the right to confirm a decision to suspend in writing.

The decision to suspend can be taken by the headteacher or the chair but only the governing body can end a suspension. Through the adoption of this policy, the governing body has delegated this responsibility to the chair, the chair of the staff disciplinary and dismissal committee and the chair of the staff disciplinary and dismissal appeals committee. When a suspension is ended, the headteacher or the chair will arrange a meeting with the member of staff to discuss their return to school and consider any support that they may need to facilitate this.

## 7. Gross Misconduct (where the allegation does not relate to safeguarding allegations)

The term gross misconduct means an act, or omission, or a series of actions or omissions by a member of staff that fundamentally repudiates the contract of employment. All gross misconduct allegations will be subject to a formal disciplinary hearing before the governing body's staff disciplinary and dismissal committee.

Gross misconduct allegations are usually referred to the headteacher or chair (if the allegation relates to the headteacher) who will make an initial assessment of the situation (but not investigate) to determine the nature and circumstances of the allegation and establish some basic facts i.e. witnesses, when it occurred etc. This decision is not a predetermination of the case. The headteacher or the chair will seek advice from the local authority HR adviser on the most appropriate procedure to follow.

The member of staff should be informed of the allegation as soon as possible and given as much information as possible and appropriate at this stage provided it does not compromise witnesses (staff or pupils) or hinder a police investigation. The member of staff should be given the opportunity to respond to the allegation however they should be informed that any response provided at this stage is not being provided as part of the formal investigation.

If the allegation involves potential criminal activity a referral will be made to the police. If this happens the headteacher, chair of governors or staff disciplinary and dismissal committee will normally take no further action until the matter is referred back to them to complete the disciplinary process. The police will also be asked to agree what information can be released to the member of staff.

If after making the initial assessment of the allegation the conclusion of the headteacher or chair is that beyond reasonable doubt it is not possible for the allegation to be true, the headteacher or chair may take no further action. The member of staff will be informed immediately of this decision and a record of this decision will be made. The decision will also be confirmed in writing to the member of staff.

### 7.1 The investigation

**Please note: refer to safeguarding allegations section.** As soon as an allegation has been brought to the attention of the headteacher or the chair (if it relates to the headteacher) they will arrange for the allegation(s) to be thoroughly and fairly investigated. This investigation will be undertaken by someone other than the person who may be required to take informal action/formal action. Wherever possible the investigation will be carried out externally by someone not associated with the case or the school. However, if it is not possible to appoint an external independent person, the person identified to investigate should be a member of the senior leadership team in the school who will be appropriately trained. Where the allegation is about the headteacher, the chair of governors will, where possible, arrange for the investigation to be carried out externally, by the LA, diocesan authority (if appropriate) or other independent person. Consideration will be given as to any connection or prior involvement the appointed investigator may have with the member of staff and any

other relevant person connected to the investigation, as well as ensuring they have the relevant skills to undertake the investigation. A member of the senior leadership team will never be engaged to investigate allegations against the headteacher.

The member of staff will be advised of their right to object to any investigator. It will be for the chair to determine whether the circumstances of the objection are valid and accepted.

All parties should ensure that the investigation is conducted in a timely manner and concluded as soon as possible.

The member of staff who is the subject of the alleged gross misconduct, and all witnesses, will be interviewed, having been given information and advance notice. The member of staff will be provided with 5 school days' notice of the interview and advised of their right to be accompanied by a trade union representative or work colleague. Notes will be taken during interviews and a copy given to the party involved as soon as practicably possible. On receipt of the copy of the notes of their meeting, all individuals will be asked to confirm their accuracy either by signing the notes or confirming this in writing. No undertaking of confidentiality will be given to witnesses; however, the overall confidentiality of the disciplinary process will be respected.

Prior to the investigation meeting, the member of staff will be informed in writing of the allegation(s) made against them and their rights under the school's disciplinary procedure. The member of staff will be given the opportunity to respond to the allegation and will be advised of their right to be accompanied by a representative of their trade union or a work colleague at an investigation interview meeting. Witnesses may also be accompanied when giving evidence if they so wish.

Once the investigation has concluded, the investigating officer will present the findings to headteacher and chair of governors (or chair and another governor in respect of the headteacher) in a written report. This will be done as soon as practicable after the conclusion of the investigation. The report will not contain any personal views or comments, conclusions or recommendations.

Based on the evidence and findings in the investigation report the headteacher and chair (or chair and another governor in respect of the headteacher) may conclude that:

- the allegation is false or unfounded and no further action will be taken •  
matters can be dealt with through informal procedures
- there appears to be sufficient evidence of lesser misconduct for a hearing before the headteacher or chair (where it relates to the headteacher)
- there appears to be sufficient evidence of lesser misconduct for a hearing to take place but, because the member of staff currently has a final written warning, the case should be referred to the staff disciplinary and dismissal committee
- there appears to be sufficient evidence that the allegation constitutes potential gross misconduct to be considered at a disciplinary hearing before the staff disciplinary and dismissal committee

## 8. Safeguarding Allegations

### 8.1 Receipt of an allegation

Allegations relating to safeguarding concerns will be brought immediately to the attention of the headteacher who must inform the chair. The chair will receive allegations against the headteacher. Where an allegation relating to safeguarding concerns is received, the headteacher/chair will follow the requirements of the [Wales Safeguarding Procedures](#).

The headteacher or chair will immediately discuss the allegation and possible action with the local authority designated lead officer for safeguarding in education who has responsibility for discharging the local authority's safeguarding duties in terms of education where there is cause to believe that a member of staff has:

- behaved in a way that has harmed or may have harmed a child;
- may have committed a criminal offence against a child or that has a direct impact on a child; and/or
- Behaved towards a child or children in a way that indicates they are unsuitable to work with children.

On receipt of the information around the allegation, and in line with the Wales Safeguarding Procedures, the local authority designated lead officer will hold a professional strategy discussion with the appropriate agencies. If, following the discussion, the conclusion of all parties is that, beyond reasonable doubt, the allegation is not true, this decision and the justification for it will be recorded by the headteacher/chair and the local authority designated lead officer for safeguarding in education, and agreement reached on what information should be put in writing to the member of staff. No further disciplinary action will be taken. The chair will be informed of this decision.

If the initial discussion and assessment indicates that an allegation might be true, and there are concerns about the welfare of a child/children, the local authority designated lead officer for safeguarding in education will arrange for a professional strategy meeting to take place involving the statutory authorities (i.e. social services and/or the police) in accordance with local child protection procedures.

The headteacher or chair will inform the member of staff about the allegation as soon as possible after consulting the local authority designated lead officer for safeguarding in education. However, if a strategy discussion is needed, or police or children's social services need to be involved, no information will be given until those agencies have agreed what information can be disclosed to the member of staff.

At any point the headteacher or chair (in respect of the headteacher) may suspend the member of staff, on full pay, in line with the governing body's agreed procedures. Suspension will not be an automatic action but will be informed by a thorough risk assessment, which will be documented by the headteacher or chair (in respect of the headteacher). Other alternatives such as reassignment of duties will be

considered and discussed with the local authority designated lead officer for safeguarding in education and the local authority HR adviser. Suspensions will be reviewed by the chair (if they are not tainted) at regular intervals for the wellbeing of the member of

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staff or where there has been in change or development in the process and the outcome will be reported to the member of staff and the governing body.

Both the headteacher and the chair of governors can suspend a member of staff but only the governing body or their delegates (chair of governors, chair of the staff disciplinary and dismissal committee or chair of the appeals committee) can end a suspension.

Once the statutory authorities (e.g. the police and social services) have concluded their consideration of the allegation, it will be referred back to the to consider the next steps. The local authority designated officer for safeguarding in education will consult with the Chair and Headteacher (unless the Headteacher is subject of the allegation) and will discuss the next steps. This will happen even if the statutory authorities take the decision not to pursue a criminal investigation.

Welsh Government guidance circular 009/2014 *Safeguarding children in education: handling allegations of abuse against teachers and other staff* sets out a clear process for local authorities, headteachers, school staff and governing bodies to follow when dealing with all such allegations. Regard will be given to this guidance when handling safeguarding allegations against all staff.

## **8.2 Referral for an independent investigation**

In line with the Staffing of Maintained Schools (Wales) Regulations 2006, where a safeguarding allegation is raised against a member of staff, the governing body is required to appoint an independent investigator to investigate the allegation(s), except where it is satisfied:

- beyond reasonable doubt that the allegation is not true
- beyond reasonable doubt that there is no evidence to corroborate the allegation
- that the person about whom the allegation was made has admitted to having done what has been alleged
- that the person about whom the allegation has been made has subsequently been convicted of a criminal offence in relation to the same allegation following criminal proceedings

The governing body must not appoint an independent investigator until:

- the local authority has notified the governing body that it has discussed the allegation with all appropriate parties
- the statutory authorities have notified the governing body that:
  - (i) they have each concluded their investigation (if any)
  - (ii) any criminal proceedings have been discontinued or concluded
- the governing body has consulted with:
  - (i) the local authority designated lead officer for safeguarding in education
  - (ii) the headteacher (unless the allegation is made against them)

If there is any reasonable doubt or agreement cannot be reached the allegation will follow the gross misconduct procedures and will be independently investigated.

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The Chair of Governors will appoint the independent investigator with advice from the local authority. A person is not to be regarded as independent if the person is:

- a member of the governing body making the appointment
- a governor from another school within the federation of schools
- a parent/carer of a current or former pupil of the school in question
- a current or former member of staff of the school
- a member or employee of the local authority that maintains the school
- a trustee of the school
- a member of the appropriate diocesan authority for the school
- the body that appoints the foundation governors to the school governing body

The independent investigator will set the parameters of the investigation and interview all witnesses in order to ensure a completely impartial and unbiased investigation is carried out. as these are matters for the Staff Discipline & Dismissal committee to determine.

Once the investigation has concluded, the investigating officer will present the findings to headteacher and chair of governors (or chair and another governor in respect of the headteacher) in a written report. This will be done as soon as practicable after the conclusion of the investigation. The report will not contain any personal views or comments, conclusions or recommendations.

Based on the evidence and findings in the investigation report the headteacher and chair of governors (or chair and another governor in respect of the headteacher) may conclude that:

- the allegation is false or unfounded and no further action will be taken
- matters can be dealt with through informal procedures
- there is evidence to support a decision that the allegation constitutes lesser misconduct behaviour which can be dealt with by the headteacher or chair of governors (if the allegation is against the headteacher)
- there appears to be sufficient evidence of lesser misconduct for a hearing to take place but, because the member of staff currently has a final written warning, the case should be referred to the staff disciplinary and dismissal committee
- there is sufficient evidence to support a decision the allegation constitutes potential gross misconduct which should be considered at a disciplinary hearing before the staff disciplinary and dismissal committee

If there is any doubt at all, or agreement cannot be reached by the headteacher and the chair of governors, or the chair of governors and another governor in respect of the headteacher, the matter will be referred for a full hearing before the staff disciplinary and dismissal committee.

Where the decision is to proceed to a disciplinary hearing before the staff disciplinary and dismissal committee, the report will be safely stored and the clerk will be informed that a disciplinary hearing in front of the staff disciplinary and

dismissal committee is required. The member of staff will be advised that a copy of the investigation report has been received and arrangements are being made for the staff disciplinary and dismissal committee to meet. The chair of governors will also liaise with the local

authority HR adviser over the date of the hearing, distribution of papers and the members of the staff disciplinary and dismissal committee.

The chair of governors will ensure that all relevant papers, including the full investigation report, are sent to the member of staff, their trade union representative or work colleague (if requested by the member of staff), the person presenting the case against the member of staff, members of the staff disciplinary and dismissal committee and local authority within the timescales set out in this procedure.

### **8.3 Appointment of an independent non-governor member on staff disciplinary and dismissal committees and staff disciplinary and dismissal appeals committees dealing with safeguarding allegations**

As required by law, the staff disciplinary and dismissal committee and the staff disciplinary and dismissal appeals committee will each have a minimum of three governors. For disciplinary hearings for cases relating to safeguarding allegations, the three governors will include at least two governors from the school's governing body plus an independent non-governor member with voting rights. The appeals committee may have more governors. No governor, including the independent non-governor member, will be a member of both committees.

## **9. Disciplinary Hearing Procedure in respect of all Gross Misconduct Cases**

Where, following consideration of the investigation report, it is determined that there is sufficient evidence to warrant a disciplinary hearing before the staff disciplinary and dismissal committee a disciplinary hearing will be arranged by the clerk to the committee.

The member of staff will be provided with a copy of the school's disciplinary procedure and informed in writing with a minimum of 15 school days' notice of:

- the date, time and place for the disciplinary hearing
- details of the allegation(s) together with any supporting documentation, including the investigation report and any appendices
- the purpose of the hearing and the range of possible outcomes
- the names of any witnesses to be called, where applicable
- name of the adviser to the committee
- where applicable, the name of any individual supporting the presenting officer • their right to be accompanied by a representative of their trade union or work colleague
- the membership of the staff disciplinary and dismissal committee and the staff disciplinary and dismissal appeals committee
- the name of the person presenting the case against the member of staff • the

date by which all relevant documentation must be returned to the clerk (no less than 7 school days prior to the hearing)

The clerk will arrange for the documentation from both parties to be distributed to the member of staff and their representative, the presenting officer and the staff discipline

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and dismissal committee including up-to-date procedures, no less than 5 school days in advance of the hearing.

The staff member will be afforded the right to object to any member of the committee or the independent member on the basis of evidence that calls into question their ability to act impartially in the circumstances of the case. Objections should be sent to the chair of governors and it will be for the chair of governors to decide whether an objection is upheld.

In circumstances where the member of staff is absent due to illness the staff disciplinary and dismissal committee will need to determine whether or not to proceed with the hearing whilst they are absent.

There may be circumstances where a member of staff resigns while disciplinary procedures are pending or incomplete. In cases of gross misconduct allegations the headteacher or chair should advise the member of staff that the disciplinary procedures will continue to completion. The member of staff must still be given the opportunity to attend the hearing but the governing body cannot compel a former staff member to attend a disciplinary hearing. Whether the member of staff attends or not, the governing body must complete the process and arrive at a view, on the basis of the available evidence, as to whether dismissal would have been the appropriate outcome.

## **9.1 The disciplinary hearing**

The hearing will be conducted in a fair manner with all parties having the opportunity to present evidence and call and question witnesses. There will also be an opportunity for the presenting officer and the member of staff and/or their trade union representative/work colleague to summarise their case. No new evidence should be presented by either party when summarising their case. An outline of the hearing procedures can be found in appendix 2. The clerk to the governing body will be present to record the hearing in detail.

There will be an opportunity for the staff disciplinary and dismissal committee to receive advice after which members of the committee will be left alone with the clerk to discuss the evidence and make their decision.

## **9.2 Decision reached after the hearing has taken place**

Having considered all the evidence and taken into account advice provided, the staff disciplinary and dismissal committee will make their decision. Their options include:

- the allegation is unproven and there is no action to be taken
- the alleged conduct constitutes lesser misconduct and a formal oral, written or final written warning should be issued
- the allegation of gross misconduct is proven, and depending on the severity of

the misconduct, an appropriate sanction shall be imposed

Possible sanctions may include:

- specifying required training and development
- relegation to a lower grade (if practical and appropriate)

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- an oral warning
- a written warning
- a final written warning
- dismissal of the member of staff without notice. Where dismissal is determined the governing body are required to also make a referral to the Education Workforce Council and, in the case of safeguarding allegations, the Disclosure and Barring Service

Where possible this decision will be given verbally at the end of the hearing. The committee's decision will also be confirmed in writing to the member of staff as soon as possible and no later than 5 school days after the hearing. The letter must also inform the member of staff of their right to appeal and the timescale within which this must be made.

Details of allegations found not to be upheld will be removed from the personnel records for the member of staff. However, for upheld allegations, a clear and comprehensive summary of the allegation, details of how the allegation was followed up and resolved, and a note of any action taken and decisions reached, will be kept on the confidential personnel file of the member of staff for the relevant period of time, in line with the school's document retention timescales and appropriate legislative requirements. A copy of this documentation will also be provided to the member of staff.

## 10. Appeals

A member of staff is entitled to appeal against a decision of the staff disciplinary and dismissal committee or, in respect of sanctions imposed under the lesser misconduct process, the decision of the headteacher or chair. The notice of the intention to appeal must be lodged with the clerk to the staff disciplinary and dismissal appeals committee within 5 school days of receipt of the disciplinary hearing outcome letter. The member of staff must then submit their grounds for appeal and any supporting documentation within a further 5 school days (10 school days in total following receipt of the disciplinary outcome letter).

The appeal for both lesser and gross misconduct allegations will be heard by the staff disciplinary and dismissal appeals committee as soon as possible. Appeal hearings will focus on the issues set out in the appeal notification and may not always take the form of a complete rehearing. The form of the disciplinary appeal hearing will be a matter for the staff disciplinary and dismissal appeals committee to decide based on the nature of the appeal and any comments made. The member of staff will be given 5 school days' notice of the date and time of the appeal hearing and will be advised of their right to be accompanied by a trade union representative or work colleague. Agreeable times and dates will be arranged for all parties concerned where possible.

The staff disciplinary and dismissal appeals committee will come to one of three conclusions after considering all the facts presented to it, including any new evidence. These are to:

- uphold the decision of the staff disciplinary and dismissal committee or headteacher or chair (in respect of lesser misconduct proceedings)

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- impose a lesser penalty
- conclude that no disciplinary action should be taken against the member of staff

The staff disciplinary and dismissal appeals committee will not impose a more severe penalty than that imposed by the headteacher or chair (in respect of the headteacher in lesser misconduct cases) or the staff disciplinary and dismissal committee (in gross misconduct cases).

The decision of the staff disciplinary and dismissal appeals committee will be final and the staff member will be informed in writing of the committee's conclusions within 5 school days of the hearing. The member of staff will be given a copy of the minutes of the appeal hearing within 10 school days of the hearing.

If, as the result of an appeal, no disciplinary action is taken, all details thereof will be expunged from the member of staff's personnel file and they will be informed accordingly. The member of staff will be given a copy of the minutes of the appeal hearing and a copy of the staff disciplinary and dismissal appeals committee's conclusions.

## **11. Dismissal of an Employee**

Whilst the management of school staff is wholly delegated to the Governing Body of a community school the Council is still the employer. The Governing Body therefore, can only recommend to the Council that an employee be dismissed from the school following completion of the Disciplinary Procedure i.e. after the Staff Discipline and Dismissal Committee hearing or if an appeal is lodged, after the appeal stage. It is for the Council to enact the dismissal in line with the Staffing of Maintained Schools (Wales) Regulations.

Where the school is a voluntary aided school the Governing Body is the employer of the staff who work there. The Governing Body, therefore, can enact the decision to dismiss after the Staff Discipline and Dismissal Committee have so decided, or if an appeal is lodged, after the appeal stage.

## **12. Absence due to Illness**

If the staff member is absent due to sickness, the staff disciplinary and dismissal committee may decide to postpone the hearing. However, where the staff member may be absent for an indeterminate period, the staff disciplinary and dismissal committee can decide to proceed with the hearing. Where consideration is being

given to proceeding with the hearing advice should be sought from occupational health on the member of staff's ability to attend and participate in the hearing and any reasonable adjustments that could be made to facilitate this. Where the decision is made to proceed with the hearing the chair of the staff disciplinary and dismissal committee will inform the member of staff. All reasonable adjustments will be considered to enable the member of staff to attend, such as the potential to use a digital platform or different location and they will also be offered the opportunity for a

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representative to attend in their place i.e. a trade union representative or work colleague, or to submit written evidence to present their case. The representative attending on a member of staff's behalf will have the same opportunity as the staff member to present evidence, call witnesses and sum up the staff member's case.

## 13. Summary

In adopting this procedure the governing body has taken due regard of advice and guidance from the local authority and the Welsh Government in their circulars on *Disciplinary and dismissal procedures for school staff guidance and the Wales Safeguarding Procedures*. It has also consulted with the recognised trade unions.

The governing body will also consult with the recognised trade unions further before any amendments are made to this disciplinary procedure.

Further detailed guidance on the stages of this policy can be found in the revised Disciplinary and dismissal procedures for school staff Welsh Government circular no: 002/2020.[Welsh Government circular 002/2020](#)

## **GROSS MISCONDUCT**

The term gross misconduct refers to an act, or omission, or a series of actions or omissions that fundamentally repudiate the contract of employment so that the governing body may be justified in dismissing or asking the local authority to dismiss the member of staff, following a disciplinary hearing where the evidence supports the allegation(s). In such cases, dismissal is likely to be without notice or payment in lieu of notice.

The list below is offered only by way of example to indicate how behaviour may be regarded. This is not an exhaustive list and is provided for illustrative purposes only. Judging the level of misconduct, and how it must be handled, has to be undertaken on the facts of each case.

Examples of conduct that may be considered gross misconduct might include:

- specified conduct that is incompatible with the ethos and precepts of the school as set out in the school's prospectus, website, school staff terms and conditions of employment, etc. • fraudulent acts or theft of property belonging to the LA, the school, fellow members of staff or pupils
- theft or fraud in and out of the workplace
- deliberate and serious damage to property belonging to the LA, the school, fellow staff or pupils • violent behaviour, including physical assault towards adults
- continuous bullying of adults
- harassment or unlawful discrimination on any grounds
- sexual misconduct at work
- physical violence towards adults
- gross negligence
- causing loss, damage or injury through serious negligence
- serious incapability at work brought on by alcohol or other illegal substances on school premises
- serious insubordination
- deliberately accessing offensive or obscene material via internet sites, social networking sites or by messaging
- inappropriate texting
- dishonesty (e.g. tampering with examination papers, revealing examination papers prior to examinations, or altering examination results and assessments)
- serious violation of the LA or the school's health and safety rules and standards • criminal misconduct outside the workplace which reflects adversely upon the school or the member of staff's suitability to continue to be employed at the school
- knowingly providing false information on any matter relating to the member of staff's employment
- disclosure of confidential personal information
- serious breaches of health and safety
- humiliation of staff, victimisation of colleagues or parents/carers

## **LESSER MISCONDUCT**

Lesser misconduct usually applies where such breaches of discipline do not normally result in dismissal for a first offence but may result in dismissal if repeated. The list below is offered only by way of example to indicate how behaviour may be regarded. This is not an exhaustive list and is provided for illustrative purposes only. Judging the level of misconduct and how it must be handled has to be undertaken on the facts of each case. Lesser misconduct might include:

- specified conduct which is incompatible with the ethos and precepts of the school as set out in the school's prospectus, website, school staff terms and conditions of employment • poor timekeeping and/or unauthorised absence (e.g. absence from the workplace during school sessions without permission or in line with the school's policy)
- refusal to carry out a reasonable instruction
- causing damage to property/equipment through negligence/not having due regard to school property
- causing unintentional superficial injury to a member of staff/pupil through not having due regard • using inappropriate language
- petty theft, e.g. making unauthorised private telephone calls or sending personal mail at the

- school's expense
- breach of dignity at work policies
- use of mobile phones/text messaging/social networking sites which is incompatible with the school's acceptable use policy

## **General principles**

The Chair of the (SD&DC) will ensure that:

- the allegations of misconduct are clearly outlined;
- both parties keep to a sensible time framework;
- both parties have the opportunity to state their case, ask questions, present evidence and call witnesses;
- sufficient time is devoted to questioning and discussion, using an adjournment if necessary, to ensure so far as is practicable, all the facts are established;
- all persons present at the hearing are treated with respect;
- the main points are summarised to ensure that nothing has been missed;
- the decision is based upon an assessment of all matters raised and can be regarded as the action of a "reasonable employer" having regard to all the circumstances; and
- the matters of fact that have been relied on are clearly recorded in order that they can be made available to an appeal hearing.

## **Witnesses**

Where the allegations have been investigated by an independent investigator or the investigating officer is not the presenting officer, the investigating officer will be invited to attend the hearing as a witness by the presenting officer and will attend the hearing only for the period required for them to present their investigation report and findings and answer questions from the presenting officer, member of staff/their representative and the SD&D committee members.

All witnesses will leave the room after they have given evidence and been questioned by all parties but should remain on hand in case of further questioning by the staff disciplinary and dismissal committee.

## **The role of the person(s) advising the SD&D committee**

All parties should agree on whether the person(s) advising the (SD&DC) gives advice in private or in front of all parties and this should be fully recorded in writing by the clerk to the (SD&DC). The role of the person(s) advising the (SD&DC) should be to:

- provide advice on legal or procedural issues but not express opinions on the merits of the case, the people involved or the evidence; and
- seek, through their advice, to ensure that deliberations of the governing body are sound to avoid the case ending in an employment tribunal.

## **Hearing procedure**

- The chair introduces the members of the committee, the clerk and ensures introductions of all parties present. The chair outlines the purpose of the meeting.
- The presenting officer sets out the allegations against the member of staff, presents their case and calls and questions their witnesses, including the investigating officer (where relevant). • The member of staff and/or their representative asks questions of the presenting officer and/or witnesses. Members of the staff disciplinary and dismissal committee question the presenting officer and/or any parties called to give evidence against the member of staff. • The member of staff and/or their representative presents their case and calls and questions their witnesses.
- The presenting officer and/or members of the staff disciplinary and dismissal committee question the member of staff and any witnesses called on behalf of the member of staff. • Members of the committee can ask questions of any witness or presenter. • The presenting officer and the member of staff or their representative each sums up their case. No new evidence should be presented at this stage.
- The person(s) advising the Committee to do so as agreed above either in private or in open forum.
- The presenting officer, the member of staff and their representative and the person(s) advising the Staff disciplinary and dismissal committee to withdraw from the hearing.
- The staff disciplinary and dismissal committee, with the clerk, continues with their deliberations in private, to make its decision.
- Once the staff disciplinary and dismissal committee have reached their decision, both parties and the adviser to be recalled and informed of the decision verbally. Written confirmation of the decision will then be sent following the hearing, within 5 school days.

The staff disciplinary and dismissal committee can adjourn the hearing at any time for all parties to consider new evidence or for private discussion. Any party should be able to request an adjournment at any point.

## **Role of the investigating officer**

The responsibility of the investigator is to explore the facts, gather evidence from the member of staff and witnesses relating to an allegation and produce a balanced factual report of the evidence.

When undertaking the investigation the investigating officer should:

- Be clear about the nature and content of the allegation.
- Ensure that the investigation is thorough, interviewing all relevant witnesses and the member

- of staff and collating all relevant documentary evidence.
- Ensure notes are taken of all investigation meetings and are shared with the individual as soon as possible following the meeting to be confirmed for accuracy.
- Produce a factual and objective report based on the evidence gathered. The report should not contain expressions of personal opinion or judgement, nor should it contain recommendations or conclusions as to what action should be taken.
- Submit the report and all documents to the headteacher (chair where the allegation is against the headteacher) in lesser misconduct cases or headteacher and chair (or the chair and another governor where the allegation is against the headteacher) in gross misconduct cases.
- Attend any subsequent disciplinary hearing as a witness to present their report and answer any questions from the parties present.

## **Role of the presenting officer**

At the hearing, the case against the member of staff and the evidence should be given by the presenting officer, which is usually the headteacher (unless the allegation is about the headteacher) in which case the chair or a local authority officer may present the case. The presenting officer **cannot** be the investigating officer or a witness, nor should they be a member of the local authority advising and supporting the governing body. Witnesses may be called if appropriate and can be questioned by the other party and/or by the staff disciplinary and dismissal committee. At the end of the hearing the presenting officer and the member of staff or their union representative or work colleague will have the opportunity to make a final submission to the committee.

## **Role of the committee chair**

The committee chair should:

- check everyone present has the correct papers
- explain the remit of the staff disciplinary and dismissal committee at the beginning of the hearing, which is to deal with the allegations investigated and any evidence relating to those allegations
- set out the order of proceedings
- ensure all parties have the opportunity to make their contribution without undue interruption • decide whether questioning by committee members should take place during the presentation of the case or on completion of the presentation, and similarly, how questioning of the member of staff (or their representative) and witnesses should be handled • ensure the key facts are drawn out
- ensure that the disciplinary hearing is conducted in a manner conducive to all parties being treated with respect
- ensure that the member of staff and any witnesses are put at ease
- make appropriate arrangements to hear evidence from any child witnesses, including the need for advocacy support, and ensure that the venue and time are accessible and non intimidating for children
- adjourn the hearing for an appropriate period if it becomes aggressive or confrontational, so as to calm the situation act with impartiality and without bias

## **Role of committee members**

The members of the staff disciplinary and dismissal committee should read all of the papers carefully before the hearing.

The functions of the committee members are to:

- consider the evidence
- establish the facts in light of the evidence presented
- after the hearing, to come to a decision based on the factual evidence
- decide on any sanction to be imposed
- ensure that the clerk accurately records their discussions and decision and the reasons for the decision in writing and ensure that the minutes are accurate

### **Role of the work colleague or union representative**

The accompanying work colleague or union representative, should be allowed to:

- attend the hearing on behalf of the member of staff
- address the hearing
- present the member of staff's case
- represent the interests of the member of staff
- seek clarification on behalf of the member of staff
- confer with the member of staff during the hearing
- where appropriate, answer some limited questions on behalf of the member of staff in their absence
- sum up the member of staff's case.
- in the absence of the member of staff the union representative or work colleague cannot be required to answer questions on matters of evidence.

### **Role of the clerk to the committee**

The clerk must have attended the mandatory clerk training. Before the hearing the clerk's key tasks (with advice from the LA) are to:

- arrange a suitable date, time and place for the disciplinary hearing, seeking agreement from all parties including committee members, the member of staff, witnesses appearing in person and the local authority
- and diocesan authority, as appropriate
- inform the member of staff in writing of the purpose of the hearing and the range of possible outcomes
- confirm the right of the member of staff to be accompanied by a work colleague or a representative of the member of staff's trade union
- inform the member of staff in writing of the committee membership and the names of the advisers to the committee
- inform the member of staff and the person presenting the case against them of the full details of the allegation, the evidence to be presented and the names of any witnesses to be called
- inform the member of staff and any other parties of the date by which all relevant documentation should be received by the clerk prior to the hearing
- arrange for the documentation from both parties, including up-to-date procedures, to be distributed to the member of staff and their representative prior to the hearing and in accordance with the timescales
- in the policy

During the hearing the clerk should record the proceedings, including discussions by the committee in private, decisions and reasons for those decisions and all procedural advice provided.

### **Role of the adviser**

The person(s) advising the staff disciplinary and dismissal committee and appeals committee should provide advice on legal or procedural issues so that decisions are sound and based on evidence and fact, to avoid the case ending in a referral to an employment tribunal. They should not express

opinions on the merits of the case, the people involved or the evidence. The adviser should not remain with the committee during their deliberation on the case, but if possible should remain available in case the committee wishes to clarify matters.

### **Role of the chief education officer and diocesan representative**

In all maintained schools the chief education officer or their representative are entitled to attend for the purpose of giving advice on all proceedings relating to any decision to dismiss or discipline a member of staff.

In voluntary aided schools the diocesan officer or their representative has the same advisory rights as those given to the chief education officer.

In foundation schools the governing body may agree with the diocesan authority to award those same advisory rights to the diocesan officer or their representative.

The chief education officer or their representative and the diocesan director should be notified of meetings at the same time as the member of staff and the person presenting the case against the member of staff.

The headteacher or chair or members of the staff disciplinary and dismissal committee and appeals committee (depending on the purpose of the meeting) **must** take into consideration any advice offered by these persons before making decisions.