

UNLOCKING YOUR  
CHILD'S POTENTIAL

## **Disciplinary Policy**

Agreed by Governing Body: 27.01.15.

# Guidance for Schools

## Guidelines on the use of Disciplinary Procedure

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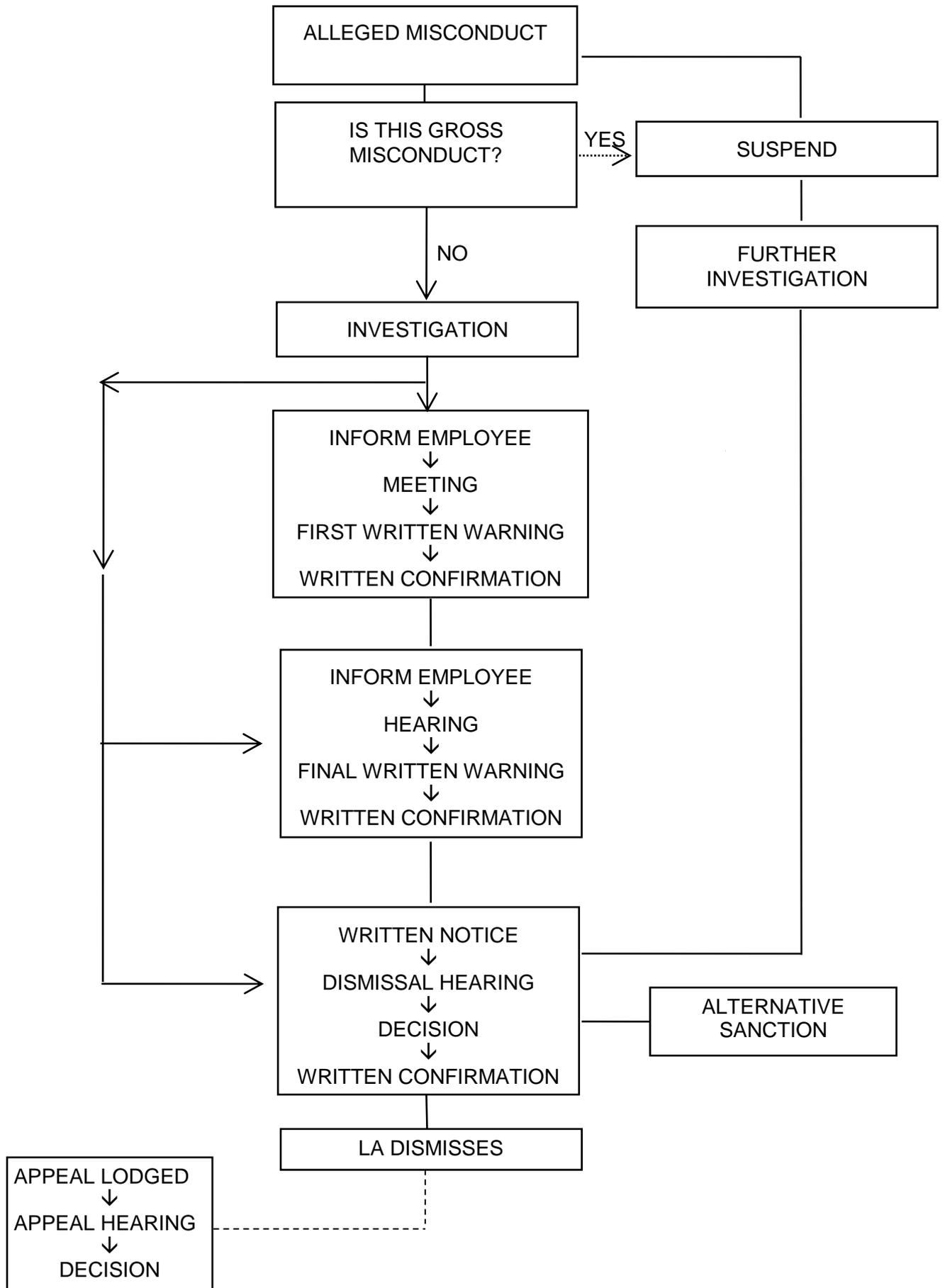
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# DISCIPLINARY FLOWCHART



## NOTES AND COMMENTS ON THE DISCIPLINARY PROCEDURE

These guidelines are intended to assist you in the operation of the Disciplinary Procedure which is applicable to all staff in your school. On the left hand side is the text of the Disciplinary Procedure. On the right hand side are notes and comments on its operation, you may find it useful to add your own notes.

### INTRODUCTION

The Disciplinary Procedure is used only rarely in schools. However, employees must work within rules and expectations in their workplace and there are occasions when staff behave inappropriately, contravene rules or perhaps allegations of misconduct are made against them. As the manager, you have a duty to ensure that appropriate standards are maintained in your school. When you believe that some aspect of misconduct may have occurred, it is important that you deal with it promptly and act in a fair and consistent manner within the parameters of this procedure.

It is essential that staff are aware of the expectations placed upon them in their role in school. In particular, it is worth ensuring that all staff are familiar with the 'Guidelines for Avoiding Allegations of Child Abuse Against Staff in Schools' as well as any other specific school policies (for example the school's use of the internet policy).

If it becomes clear that a member of staff is not complying with school expectations, it may be appropriate to speak to them informally before it becomes a formal disciplinary matter. However, where the allegations are of a more serious nature or are recurrent, referral to the disciplinary procedure may be needed. Approach the situation with an open mind and gather evidence before reaching a decision to proceed with disciplinary action.

Consider your actions carefully and do take advice from Children's Services Human Resources. In cases involving child protection concerns, you must also seek advice from the LA's Child Protection Officer (Senior Adviser for Safeguarding Children in Education) before proceeding.

When you have a meeting with a member of staff under this procedure, prepare carefully and consider what you want to say. Be clear and check their understanding. Allow the member of staff a full opportunity to make their points. It is important that the process is both fair and seen to be fair. There is a statutory right to representation at any meeting under this procedure.

The purpose of the disciplinary procedure is to achieve improvement in the conduct of employees in school. However, it is possible that the end result could be dismissal, either because conduct has not improved after warnings or when it is found to be gross misconduct. You need to ensure that arrangements for dismissal are in place, just in case by regularly reviewing the membership of appropriate Governors' committees.



## MODEL DISCIPLINARY PROCEDURES FOR STAFF IN SCHOOLS WITH FULL DELEGATED STATUS

### 1. Introduction

- 1.1 This procedure is designed to help and encourage all staff to achieve and maintain high standards of conduct at work and to provide a mechanism for dealing with problems as and when they arise. Its aim is to provide a model procedure for adoption by the Governing Body of a school which ensures consistent and fair treatment for all employees and to assist the Governing Body to comply with its duty to set up disciplinary procedures under regulation 6(l)(a) of the School Staffing (England) Regulations 2009.
- 1.2 This procedure covers matters relating to disciplinary issues right from the initial stages through to dismissal processes. The Disciplinary Procedure deals with issues of misconduct only. Concerns regarding capability/poor performance are dealt with separately under different procedures.
- 1.3 This procedure has been formulated in order to ensure compliance with relevant education and employment legislation, the Articles of Government of Schools and appropriate Conditions of Service. It also reflects advice contained in the relevant ACAS Code of Practice. Whilst the code does not amount to legislation, it is statutory guidance which is enforceable to the extent that failure to comply by either party may increase the likelihood of an Employment Tribunal making a finding of unfair dismissal and an automatic increase or decrease in any compensation awarded.
- 1.4 Officers of Children's Services Human Resources and the LA are available to assist Headteachers and Governing Bodies who are considering or implementing disciplinary action. Headteachers and Governors are advised to seek their advice at an early stage. This may include full involvement at any stage of the procedure.
- 1.5 Employees facing action under these procedures should seek advice from their professional association or trade union where appropriate.
- 1.6 Only in exceptional circumstances should any Governor who has taken part in detailed discussions concerning any particular issue or case be involved in any subsequent hearing or Appeal. Governors must consider this requirement before initiating any action under these procedures and particular care in this respect must be exercised regarding the position of the Chair of Governors.
- 1.1 and 1.2 Are you certain that you are using the correct procedure? This document deals only with cases of misconduct for both teaching and support staff. For performance cases use the alternative procedures. Sometimes it is difficult to decide if you are dealing with performance or conduct, if in doubt please consult Children's Services Human Resources.
- 1.4 **Contact Children's Services Human Resources at the earliest possible stage.**
- 1.5 Union involvement at an early stage can be very helpful. Not only will it avoid a claim that the employee was disadvantaged by not having access to advice, the Union will often help the employee make a realistic appraisal of his/her position.
- 1.6 A perfectly reasonable action could be lost by over involvement of just one member of the Governing Body, so take particular care.

1.7 All schools must formally adopt a procedure and ensure that this is formally recorded in Governing Body minutes. It is recognised that Voluntary Aided Church Schools may choose to adopt different procedures as drawn up by the relevant Diocesan authority.

## 1.8 Trade Union Officials

Prior to taking any disciplinary action against employees who are accredited trade union representatives a discussion concerning the case should take place with a full-time Senior Trade Union Representative. Similarly, the opportunity to be represented will be given before any formal warnings are issued or further disciplinary action taken.

Children's Services Human Resources will be available to provide advice in such circumstances.

## 2. Interpretation

2.1 A school with full delegated status means any school with full delegated status as laid down in the County Council Scheme of Local Management of Schools.

2.2 References to the Director of Children's Services shall include any officer acting on his/her behalf.

2.3 References to the Chair of Governors shall include any Governor acting on his/her behalf and with his/her authority.

2.4 References to the Headteacher shall include any nominated Deputy Headteacher/Line Manager acting on his/her behalf. In the case of teachers, only the Headteacher, or in his/her absence, the Deputy Headteacher may act on his or her behalf.

2.5 Periods of time and deadlines in this document may be varied by the mutual agreement of the parties concerned. (Governing Bodies and Headteachers are asked to give particular consideration when employees are unable to obtain representation for a particular date.)

2.6 For the purposes of this procedure 'working days' shall mean a designated term-time or Teacher Education Training Day or any other contractual working day.

1.7 If you are uncertain which document to use, contact your Diocesan Education Office or Children's Services Human Resources.

1.8 This does not give trade union representatives any kind of immunity but please seek help from Children's Services Human Resources before taking any action.

2.2 It would be very unusual for the Director of Children's Services him/herself to be directly involved, representation will normally be by an officer of Children's Services Human Resources.

2.4 **Note** - This does not apply to dismissal proceedings.

2.5 It is important that you make every attempt to be reasonable. In serious cases it is reasonable for a full-time officer of a Union to be involved. The best way to avoid problems is to find out who is acting on behalf of the employee and make arrangements directly. If undue delay seems to be arising contact Children's Services Human Resources for further assistance.

### 3. Principles

- 3.1 The day to day supervision of staff is part of the normal managerial process and should be outside the scope of a formal procedure.
- 3.2 Problems should be raised and discussed as early as possible and resolved whenever possible without recourse to the formal procedure. Sometimes these discussions will need to be fairly formal in manner but nevertheless fall outside the disciplinary arrangements.
- 3.3 The procedure is intended to provide a full and fair opportunity for a member of staff to present their case before any disciplinary action is taken.
- 3.4 Dismissal for a first offence is not normally permissible unless gross misconduct is involved.

### 4. Disciplinary Purpose

- 4.1 Headteachers should first consider a "counselling approach" to improving conduct at work.
- 4.2 Disciplinary procedures should not be viewed purely as a means of imposing sanctions. They are designed to emphasise and encourage improvements in individual conduct. Minor faults can be dealt with informally but where the matter is more serious or persistent then the formal procedure should be used.

### 5. Scope

- 5.1 The procedure covers all staff employed at a school with full delegated status other than those who are direct employees of the Local Authority (such as peripatetic teachers) and for whom the Governing Body have no direct responsibility. Alternative arrangements apply to such employees.
- 5.2 This procedure has been drawn up so that it can be used by all types of maintained schools, whether the Governing Body is the employer of the staff in question or whether the LA is the employer. Voluntary Aided Church Schools may choose to adopt a different procedure drawn up by the relevant Diocesan authority. Whichever policy is adopted by such schools they should always keep the relevant Diocesan authority informed if they are taking disciplinary action against staff.

- 3.2 Informal sessions are normally referred to as Management Meetings. They are not disciplinary interviews but you can use such a meeting to issue a direct instruction to an employee in writing, the breach which could then lead to disciplinary action.

**See Model Letter C.**

- 4.1 Counselling refers to a supportive style which has very clear goals.
- 4.2 Don't rush into the Procedure if you can resolve a problem at management level, but don't let months go by allowing misconduct to continue. This may make action more difficult. As soon as formal proceedings or disciplinary investigations commence, the member of staff should be advised to contact their Trade Union or Professional Association.
- 5.1 There are sometimes difficulties identifying such employees – if you have any doubts please contact Children's Services Human Resources before taking any action.

### 5.3 Probation – Support Staff only

The purpose of the 6 month probationary period is to ensure that new employees understand and are encouraged to achieve and maintain the standards of conduct, performance and attendance required, within a reasonable time. If, after receiving sufficient guidance, support and training, an employee is unable to achieve and maintain acceptable standards his/her contract may be terminated without recourse to the full disciplinary procedures. The detailed Probation Policy & Procedures and further advice are available from Children's Services Human Resources.

## 6. Suspension

6.1 Within the context of this procedure, suspension from duty may be considered. It is not intended as a disciplinary measure in itself and should not be seen as punitive or pre-judging the outcome of any investigation.

6.2 Suspension is usually only appropriate:

- in cases which appear to involve gross misconduct; or
- in order to allow a thorough and unhindered investigation to take place; or
- for reasons of safety.

In such cases the member of staff should be instructed by the Headteacher to leave the workplace immediately and should be informed that their suspension will be with full pay. Any verbal instruction should be confirmed in writing within 1 working day. The member of staff is expected to be available for interview during working hours throughout the period of suspension.

6.3 Immediately following suspension, the position should be investigated and clarified as soon as possible. The outcome of the investigation may lead to one of the following actions:

- the decision that there is no case to answer and that the employee should return to work;
- that the employee should return to work pending a disciplinary hearing;
- that the employee should remain suspended pending a disciplinary hearing.

In all cases the employee should be informed in writing of the decision and the reasons for it.

6.4 Only the Governing Body has the authority to end the suspension of a member of staff.

6.1 Suspension is a neutral act. You should consider alternatives to suspension, for example separating the member of staff and the person making the allegation or alternative duties, etc.

6.2 **See Model Letter A.**

The member of staff should also be advised to contact their Trade Union or Professional Association.

6.4 Remember to confirm the revocation of suspension in writing.

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|-----|--|-----|---|
| 6.5 | <p>During suspension a member of staff may be permitted by prior arrangement with the Headteacher to return to the place of work to collect personal belongings or any "material" that they may need in the preparation of their case.</p> <p>If the suspended member of staff wishes to contact staff at school to gather witness statements this will normally be arranged but may be delayed if there is any police investigation underway. Arrangements to interview witnesses during working time should be agreed with the Headteacher.</p>  | 6.5 | <p>Make a note of any materials taken and do not allow the employee to take school property.</p>  |
| 6.6 | <p>In all cases the suspension should be reviewed by the Headteacher every 15 working days. The employee must be informed in writing of the outcome of each review. If the employee and/or their representative notifies the Headteacher that they wish the review to take the form of a meeting at which they attend and make representations, this should be arranged. Timescales for these reviews may be varied by mutual agreement.</p> <p>The suspended member of staff should be given the name of an LA Officer as an information contact. The main role of the contact person is to provide information as to the progress of the investigation. Social contact with the staff member's school colleagues and friends is not precluded except where likely to be prejudicial to the gathering and presentation of evidence.</p> | 6.6 | <p>Where there is an ongoing investigation this review may be quite informal but it is important to confirm it in writing.</p> <p><b>See Model Letter A (i).</b></p>            |
| 6.7 | <p>The Headteacher, Governing Body and Director of Children's Services must be informed immediately of any suspension or the ending of the suspension.</p>   | 6.7 | <p>The cost of replacing a suspended member of staff may be met centrally only if the Director of Children's Services is informed in writing at the earliest possible time.</p> |

**7. Investigations and Preliminary Considerations**

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|-----|---|-----|--|
| 7.1 | <p>Disciplinary action should not be taken until the alleged misconduct has been properly and fairly investigated in such a manner which does not prejudge the outcome.</p>   | 7.1 | <p>This is essential!</p>  |
| 7.2 | <p>Such investigations may be undertaken by the Headteacher or senior staff from the school. In cases involving the Headteacher this will normally be the Chair of Governors/nominated Governor(s).</p> <p><b>Note</b> – Careful consideration should be given at this stage to who conducts the investigation as, where practicable, the investigating officer should not be the person who hears the case at any future hearings.</p> | 7.2 | <p>Good quality investigation is essential in the interests of natural justice. Time and effort spent getting the facts straight at an early stage will save a great deal more time later on. Always determine who is the 'Investigating Officer' - this may be the Headteacher although it may be preferable to ask a senior member of staff from the school or an independent person, e.g. LA Officer, brought in for this purpose. This would allow the Headteacher to conduct future hearings if appropriate. That person should begin by making an initial assessment to see if there is a case to answer and will then conduct a detailed investigation interviewing all relevant witnesses, collecting documentary evidence and other information and making a detailed written record which can be used in evidence.</p> |

7.3 An investigation must whenever possible involve an interview with the employee concerned who may be accompanied by a colleague or trade union representative.

If it is anticipated that witness evidence will be used at a disciplinary hearing signed and dated witness statements or a report should be produced wherever possible as part of the investigation.

7.4 The investigating officer may decide on one or more of the following:

- That no action is required, in which case the employee concerned must be informed as soon as possible.
- In certain circumstances it may be appropriate for the employee to be warned about his/her conduct in an informal manner in order to register concern but without recourse to the formal procedures.
- Alternatively he/she may conclude that it would be appropriate to offer assistance to resolve the problems or otherwise to bring about an improvement, e.g. by guidance or other appropriate procedures.

7.5 If none of these courses of action is appropriate and formal action is to be considered the appropriate sections of the procedure must be followed.

7.3 **See Model Letter B and Guidelines for the Investigating Officer** – pages 39 and 28-30.

7.4 See 3.2 regarding Management Meetings.

**See Model Letter C.**

7.5 An informal solution is always best - if it will deliver the result!

## **DISCIPLINARY PROCEDURES UP TO AND INCLUDING ALL SANCTIONS SHORT OF DISMISSAL**

### **8. Delegation of Authority**

#### **8.1 Staff other than the Headteacher**

By adopting these procedures the Governing Body delegates responsibility for matters of discipline relating to such staff to the Headteacher. For the avoidance of doubt this includes the imposition of all disciplinary sanctions short of dismissal. Powers of dismissal may also be delegated to the Headteacher, see Section 11.

#### **8.2 The Headteacher**

By adopting these procedures the Governing Body delegates responsibilities for matters of discipline relating to the Headteacher to the Chair or to one or more Governors. For the avoidance of doubt this includes the imposition of all disciplinary sanctions short of dismissal.

### **Formal Procedure 8 - 25**

It is essential to follow the Procedure exactly as written - failure to do so could make your action subject to challenge at Employment Tribunal.

## 9. Warnings

### 9.1 Written warnings

If it has been established that the misconduct is sufficiently serious to warrant action under the disciplinary procedure and there is found to be substance to the allegations, a written warning may be issued.

A **first written warning** will remain in force normally for 6 months but can be valid for up to 12 months in more serious cases. Failure to improve, a repeat of the misconduct or acts of further misconduct may lead to a final written warning.

A **final written warning** may be issued depending on the circumstances. Employees will be advised when such a warning is issued that any further act of misconduct, whether similar or not, could lead to dismissal. Final warnings will usually remain in force for 18 months. However they can be made for up to 3 years as an alternative to dismissal in matters verging on gross misconduct.

All formal warnings will be confirmed in writing and employees will be advised that a record of all formal warnings will be kept on file.

When deciding on the appropriateness of any such warning, regard may be given to the employee's previous employment history with the school.

9.2 Prior knowledge of the existence of expired disciplinary warnings shall be discounted in deciding any disciplinary sanction. In exceptional circumstances the nature of the offence and the circumstances surrounding it could give rise to concern where an individual's future deployment or promotion is concerned. In these circumstances an employee should be told what information is being held and why, and should have access to the grievance procedure if there is any dispute about the matter.

9.3 A note of the effective life of warnings should appear at the beginning of any record on an employee's file.

## 10. Hearings up to and including Sanctions Short of Dismissal

10.1 For matters where informal measures would not be appropriate or where an informal approach has not been effective the Headteacher will arrange a disciplinary hearing. This is a hearing to consider whether any of the following actions are appropriate; issue of a:

- (a) First Written warning; or
- (b) Final written warning.

9.1 Placing time limits on warnings is an action in pursuit of natural justice - one mistake should not blight a person's whole career. If an employee has been guilty of an isolated act of misconduct it will genuinely be 'forgotten' over time, but if, as a result of that misconduct a clear management instruction is given (for example - "You should not give lifts to students in your car unless express permission is granted by a member of SMT."), that instruction will not cease to be effective by the passage of time. It is the fact of the warning which is to be discounted not the employee's general behaviour.

The Headteacher will need to give consideration to the length of any warning which is to be issued. The member of staff or their representative may make representations regarding this in the concluding statement.

Written warnings will normally be for periods of 6 to 12 months. When considering the duration of the warning you will wish to bear in mind the circumstances of the case and possibly the stage of the academic year.

9.3 It is useful to include all disciplinary matters in an envelope in the file with a note saying 'The warning referred to in this disciplinary case ceases to be effective for disciplinary purposes on .....!'

10.1 **See Model Letter D – calling a hearing.**

Always hold the hearing during the employee's normal working day so that you can insist on attendance.

Ensure that you have a suitable room free from disturbance and separate waiting rooms for both employee and witnesses.

This hearing will be before the Headteacher normally with an officer of the Authority present in an advisory capacity. If the Headteacher is the subject of the disciplinary action this should be before the Chair of Governors/nominated Governor(s).

The member of staff must be given 10 working days written notice of the hearing setting out:

- (a) the date, time and location of the hearing;
- (b) the right of the member of staff to be accompanied by a colleague or trade union representative and to call witnesses;
- (c) the nature of the allegation giving enough details to enable the member of staff to prepare a response; together with copies of any documentary evidence which it is proposed to present at the hearing.

Any document or statements that either side wishes to use or refer to during any disciplinary hearing and details of any witnesses to be called must be made available to all parties as soon as possible and ideally not later than 5 working days before the hearing.

10.2 A copy of the disciplinary procedure must be sent to the member of staff with the notice of the hearing.

10.3 The Headteacher must ensure that the hearing is conducted in a fair and reasonable manner and in accordance with the principles of natural justice.

10.4 The member of staff should be quite clear as to the nature of the complaint against him/her and have every opportunity to state his/her own version of events.

10.5 Where someone has produced a witness statement or report they may be required to attend to give evidence depending upon the circumstances. The member of staff must notify the Headteacher in advance if he/she intends to call any witnesses as soon as possible before the hearing.

10.6 The procedure to be used at the hearing is shown in Appendix 1.

Make every effort to allow the colleague or trade union representative to attend and get the name, address and telephone number as you will need these later.

As documentation has to be released it must be prepared at this stage. You should not introduce any new documents once they have been given to the employee. If you do you may have to postpone the hearing to allow the employee further preparation time.

If the allegation has been made by a specific person you would normally name them (even if it is a pupil). Ensure that anyone providing a statement is aware that this may be given to the person being subjected to the disciplinary action. If you consider that this may lead to intimidation consult Children's Services Human Resources.

10.3 The hearing must genuinely consist of the case being clearly put and answered with no final conclusion being reached until the member of staff has had every opportunity to explain his/her position.

It is useful to give the hearing a fairly formal setting with all participants sitting around a table but with the Headteacher clearly at the head of the table.

Arrange the room so that you sit behind a desk or table facing the employee concerned who also has a table for his/her documents. A chair and table should also be provided for witnesses. Ensure water is available on the tables for all participants.

10.5 If the member of staff wishes to call witnesses he/she will have to make appropriate arrangements, but if they are also employed at the school you will have to give appropriate time off (with pay) for them to attend the hearing.

10.7 If, having regard to all the circumstances the Headteacher considers it appropriate to issue a:

First Written warning, or  
Final written warning

the decision should normally be given verbally and confirmed in writing within 5 working days of the hearing. The letter should clearly set out:

- (a) The date of the hearing.
- (b) Details of the unsatisfactory conduct, including reference to any previous warnings which have been considered.
- (c) The standards now expected and details of any monitoring or review to be operated during a specified period.
- (d) Any facilities, support or training being made available to the member of staff to secure an improvement.
- (e) A warning that further unsatisfactory conduct could lead to more serious disciplinary action, including dismissal.
- (f) The period of time after which the warning will lapse.
- (g) The right to lodge an Appeal within 10 working days of receipt of the letter confirming the decision and the right to representation including trade union representation. See Appeals procedure at Section 19.

10.8 A copy of the warning will be sent to the employee's colleague or trade union representative.

10.9 Where no Appeal is made the employee may submit a statement of mitigation to be held on file with the warning.

10.10 Any further incidents of misconduct occurring during the period of the initial warning should be investigated, as advised in section 7. This may lead to further action being taken under these procedures and may include:

- an extension of any warning by a period of 3 to 6 months
- a first written warning being increased to a final written warning
- some other sanction such as redeployment or demotion, appropriate to the particular circumstances
- dismissal.

10.7 There are a range of options including a first written warning which can be repeated if felt appropriate. You must also decide, based on the seriousness of the case and the likelihood of 'improvement' whether to move to a final written warning.

**See Model Letter E - issuing a warning.**

10.8 Please remember to send this copy!

10.9 A copy should also be sent to Children's Services Human Resources for inclusion on the central file, as should a copy of any statement of mitigation.

10.10 Advice about what other sanctions may be appropriate can be sought from Children's Services Human Resources.

## DISMISSAL PROCEDURES

### 11. Delegation of Authority

#### 11.1 Dismissal of Staff other than Headteacher

Under the School Staffing (England) Regulations 2009 the Governing Body may delegate its power to determine that any person employed or engaged by the LA to work at the school should cease to work there (Community, Voluntary Controlled, Community Special and Maintained Nursery) or to dismiss its staff (Foundation, Voluntary Aided, Foundation Special) to:

- (a) one or more Governors and the Headteacher (which may be called a Staff Dismissal Committee)
- (b) one or more Governors
- (c) the Headteacher.

For the purposes of Appeal rights, the Governing Body must appoint a Dismissal Appeal Panel. This should be a panel of three Governors, other than in exceptional circumstances. No Governor to whom the power to dismiss was delegated may sit on the Dismissal Appeal Panel. The Headteacher may not sit on the Dismissal Appeal Panel.

#### 11.2 Dismissal of The Headteacher

Under the School Staffing (England) Regulations 2009 the Governing Body may delegate its power to determine that the Headteacher should cease to work at the school or be dismissed to one or more Governors.

For the purposes of Appeal rights, the Governing Body must appoint a Dismissal Appeal Panel. This should be a panel of three Governors, other than in exceptional circumstances. No Governor to whom the power to dismiss was delegated may sit on the Dismissal Appeal Panel.

**For ease of understanding, those who have delegated authority to dismiss will be referred to in these proceedings as 'Decision-Makers'.**

- 11.1(a) These Panels should be established at the same time as the Model Arrangements are adopted by the full Governing Body, well in advance of hearings taking place. Membership will need to be reviewed on a regular basis so as to ensure that it does not become out of date. This is particularly important since hopefully the Panels will not meet very often and will tend to be forgotten in the normal busy schedule, but when they are needed delays could be difficult and expensive.

We would recommend that wherever possible panels consist of an odd number of Governors and that the Governing Body also determines reserves for each panel.

It is also important to get a good balance of membership so that each Panel contains members who feel at ease with Panel procedures and are happy undertaking the analysis of complex situations.

**12. Rights of Attendance/Advisory Rights**

12.1 Where the Governing Body has delegated powers to dismiss staff, other than the Headteacher, to one or more Governors, the Headteacher has a right under the 2009 Regulations to attend at and give advice to all relevant meetings/hearings held by those Governors and they must consider that advice in coming to their decisions. That advice shall be given by the Headteacher in the course of the presentation of the case against the employee.

12.2 For community, voluntary-controlled, community special and maintained nursery schools, the LA has a statutory entitlement to send a representative and offer advice to all proceedings relating to the dismissal. Those to whom the function has been delegated must consider that advice in coming to their decision.

**Note** - The Clerk to the Governors will usually take notes at dismissal hearings . In the event of the Clerk to the Governors being unavailable an LA Officer, Governor or other delegated member of staff may act as Clerk at a particular meeting.

**13. Gross Misconduct – Dismissal Without Notice**

13.1 Gross misconduct is defined as misconduct which is of such a serious nature that, if substantiated, amounts to a fundamental breach of the Contract of Employment by the employee which destroys the relationship of mutual trust and entitles the employer to terminate the contract without notice. A dismissal on the grounds of gross misconduct is a summary dismissal, without payment of notice or pay in lieu of notice. Examples of gross misconduct are:

- Abuse of children
- Physical violence or bullying
- Serious insubordination
- Serious incapability brought on by alcohol/illegal drugs
- Theft, fraud, deliberate falsification of records.

Please note, however, that other actions might constitute gross misconduct depending on the circumstances.

13.2 The member of staff should be suspended with full pay as soon as it appears that the allegations may amount to gross misconduct until the case has been investigated.

13. See Model Letter G.

13.2 See Section 6 regarding suspension.

**14. Hearings**

If a view is taken, following any necessary investigations, that dismissal is a possible/likely or proposed option, the person(s) with the delegated authority to require that someone cease to work at the school or to dismiss must set up a disciplinary hearing.

14. Action at this stage is extremely serious as it may lead to dismissal and could result in a hearing before an employment tribunal where every action will be analysed. It is therefore vital that you follow the procedure with extreme care.

Before determining that a member of staff should cease to work at the school or should be dismissed, the Governing Body (or whoever they have delegated the role to) must enable the employee to make such representations, oral and/or written, as they wish and have regard to them. This must be done by arranging a disciplinary hearing before the person(s) who have the delegated authority to dismiss. The detailed procedures for this are set out below at Appendix 2.

The member of staff must be given at least **10 working** days' written notice of the hearing. This written notice must include the following:

- (a) A written account of the alleged conduct, characteristics or any other circumstance which leads the decision-makers to contemplate dismissal and an explanation of why those factors have been included. In other words, the member of staff must be given a clear account of the case he/she is facing.
- (b) Copies of any documentary evidence the Headteacher intends to rely on at the hearing including any witness statements and details of any witnesses to be heard.
- (c) The right of the member of staff to be accompanied by a colleague or trade union representative at the hearing; to present evidence/make oral submissions to the hearing and to call witnesses.
- (d) The fact that a decision that the member of staff should cease to work at the school or be dismissed is a possible outcome of the meeting and that it is very important for him/her to attend.
- (e) A copy of this procedure.

If the member of staff wishes to present documentary evidence (including witness statements) at the hearing that should be made available to the Headteacher as soon as possible and not later than 5 days before the hearing. Details of any witnesses to be called should likewise be provided.

**Note** – New information/documents/statements produced only at the hearing itself will only be considered at the discretion of those hearing the matter and may lead to adjournments.

**Note** – In exceptionally serious circumstances, or where the member of staff is not a member of a trade union, consideration must be given to allowing representation by an alternative advocate, if requested.

**See Model Letters F or H (gross misconduct).**

- 14 (c) It is essential that the employee is properly represented. It is better to delay a few days to allow this to be organised than have to adjourn the hearing on the day because the case cannot be presented. If undue delay seems to be arising contact Children's Services Human Resources for further assistance.

## 15. Procedure at the Hearing Itself

(This is set out in detail at Appendix 1.)

The essential aim is to ensure that all relevant information is brought out in order to ensure the highest possible quality of decision making. The staff member should know the case being faced and have the opportunity to state their own case fully. Each side should have the opportunity to question the other. Those running the hearing and those giving professional advice to the hearing are responsible for ensuring that it is carried out in a fair and reasonable manner and in accordance with the principles of natural justice.

## 16. The Decision

### Dismissal/Ceasing to Work at the School

Wherever possible this decision will be given orally on the same day and followed up in writing within 5 working days. If the decision is that the staff member should cease to work at the school or should be dismissed, the oral decision should include the **ground(s)** for dismissal, e.g. conduct.

**Note** – These hearings may result in any available disciplinary sanction less than dismissal being imposed if dismissal is not thought appropriate.

## 17. The Follow Up Letter

### (a) Community/Voluntary Controlled/Community Special/Maintained Nursery Schools

If the outcome is that the Governing Body determine the person should cease to work at the school, the school will need to write two separate letters.

1. To the staff member confirming the date of the hearing, the fact that the decision is that the person should cease to work at the school, the grounds for that, the fact that the LA will shortly be giving them notice of dismissal and details of the Appeal process plus an Appeal Form.
2. To the LA confirming the date that the hearing took place, the outcome and the grounds for that outcome.

The LA has 14 days from receipt of this notification to issue the member of staff with notice of termination of contract, i.e. dismissal.

**See Appendix 2.**

### 17. (a) 1. **See Model Letter G.**

The Panel does not actually determine dismissal, it can only determine that an employee ceases to be employed at the school. Dismissal is carried out by the Local Authority. Also see **Appeal Form** – page 34.

### 17. (a) 2. **See Model Letter J or I** (Gross Misconduct).

para 2 Unless you are dealing with gross misconduct and will pursue summary dismissal you must give full contractual notice.

**(b) Foundation/Voluntary Aided/Foundation Special Schools**

If the outcome is dismissal the letter should confirm the date of the hearing, the outcome and the grounds of dismissal. It should go on to give the staff member the relevant notice of dismissal (if any) and the date of termination of employment.

It should then inform the staff member that they have 10 working days from receipt of this letter to lodge an Appeal.

Appeal Forms should be included in all letters giving details of where it should be returned.

**18. Outcomes other than Dismissal/Ceasing to Work**

At any hearing to consider a dismissal there is discretion to take an alternative course of action. This action may involve, where appropriate to the terms and conditions of the member of staff concerned:

- (a) Restriction or withdrawal of benefits.
- (b) Delay in progression through the pay scales.
- (c) Transfer to an alternative, possibly differently graded post, together with any appropriate retraining thought necessary.
- (d) Extension of the period of final warning.
- (e) Such other action thought appropriate in all the circumstances.

In all such cases the school should write to the staff member confirming the date the hearing took place the outcome and any Appeal rights against disciplinary sanctions (for which see the section on disciplinary hearings where dismissal is not being considered).

**19. Appeals against Warnings/Dismissal/Ceasing to Work**

19.1 The member of staff has a legal right to appeal against a dismissal decision or other disciplinary sanction. The detailed procedures for this are set out below.

19.2 An Appeal may take the form of a full re-hearing in some circumstances but by mutual consent this need not be the case depending on the grounds of Appeal.

The procedure is intended to provide a member of staff with a full and fair opportunity to present an Appeal against a disciplinary warning or first instance decision to dismiss or require to cease to work at the school.

17. (b) See Model Letter J(i) for Aided Schools.

18. If you are considering pursuing an alternative you will need to take detailed advice based on the particular circumstances and the terms and conditions of the employee in question. Certain alternatives are only available to particular categories of employee.

18. last para There is no model letter since it will depend very much on the action which is to be taken.

19. The job of the Appeal Panel is normally to re-hear the case, considering also whether the procedures were sound and the original decision was reasonable given the circumstances of the case and the evidence provided. It could be that the Appeal Panel members wished a different decision had been reached but if they are clear that the original decision was reasonable and fair they must uphold it.

- 19.3 Any Appeal should be heard by a Committee of three Governors (other than in exceptional circumstances), referred to as the Appeal Panel. No Governors who have been directly involved in any previous stages of the case will sit on this Panel.
- 19.4 The respondent at an appeal hearing will normally be the Headteacher, even in cases where they were not the decision maker at the first hearing, The chair of the decision making panel should be called as a witness.

## 20. Lodging the Appeal

The Appeal must be lodged in writing using the form supplied within 10 working days of the date of receipt of the letter giving the outcome of the previous hearing. It must include the grounds of the Appeal. The Appeal Form should be returned to the Headteacher. If the Headteacher is the subject this should be returned to the Chair of Governors/nominated Governor(s).

The Appeal should be acknowledged by the Headteacher/Chair/nominated Governor.

20. See Appeal Form on page 34.

20. para 2 See Model Letter K.

## 21. Procedure for Hearing Appeals

The actual procedure at the hearing will be as set out in Appendix 3 to this document.

**Note** – LA advisers may attend any such hearing, ask questions at any point and advise the decision-maker as appropriate including after retirement of the Panel.

The employee will be given 10 working days written notice of the date, time and location of the Appeal hearing and must be advised of the right to be accompanied by a colleague or trade union representative.

21. See Model Letter K and Appendix 3.

## 22. The Decision

This will normally be given orally on the day and followed within 5 working days by written confirmation. The range of decisions the Appeal Panel can come to is as follows:

- (a) To dismiss the Appeal entirely – confirmation (orally and in the follow up letter) of the ground(s) for dismissal of the appeal should be given.
- (b) To allow the Appeal.
- (c) To allow the Appeal to the extent of substituting a lesser penalty.

**Note** – The Appeal Panel may invite further submissions from the parties about any course of action they may be considering.

22. Employees who are dismissed may complain to an Employment Tribunal. Try not to be concerned about any suggestion this might happen. If you have acted reasonably, taken advice and have followed the procedure you should have nothing to worry about. If you believe dismissal was the right decision then the Appeal should be dismissed.

22. (c) It is not allowable to substitute a higher penalty.

**23. The Follow Up Letter**

As regards all maintained schools this should go to the staff member giving the date of the original hearing, date of the Appeal hearing, outcome of Appeal and grounds for dismissal/requirement to cease working at the school, if applicable.

The letter should always be copied to the LA.

**Note –** If the original decision leads to notice of dismissal being given to the staff member by the school or the LA, the effect of a successful Appeal will be to effect reinstatement of the staff member as from the date of dismissal with continuity of employment preserved. This should be made clear in writing to the staff member by the school or LA as appropriate.

**24. Informing the Secretary of State for Education and Skills**

Where misconduct is of such a serious nature that the employee is dismissed or resigns rather than being dismissed the LA has a duty to inform the Secretary of State of the details of the misconduct or alleged misconduct.

23. **See Model Letter L.**

24. This is a statutory requirement.

**In cases involving Child Protection, you will need to inform the Independent Safeguarding Authority (ISA).**

## APPENDIX 1

### RECOMMENDED PROCEDURE FOR CONSIDERATION OF SANCTIONS SHORT OF DISMISSAL

Present:

Headteacher/Deputy Headteacher/Line Manager (Management) as appropriate - see section 2.4  
LA adviser(s) (if appropriate)  
Member of staff  
Colleague or trade union representative (if appropriate).

(Any witnesses will be called as required and will be present only during the time in which they give their evidence and answer questions.)

Order of business:

- (a) Management to outline the allegation by going through the evidence that has been gathered including any witnesses' statements and the relevant records.
- (b) Management to call any witnesses to give evidence.
- (c) The member of staff and/or their colleague or trade union representative to raise any questions with the witnesses or Management.
- (d) The member of staff and/or their colleague or trade union representative to state their case including going through evidence and including any witnesses' statements and relevant records.
- (e) The member of staff to call any witnesses to give evidence.
- (f) Management or LA adviser(s) to raise any questions with the witnesses or member of staff.
- (g) The member of staff and/or their colleague or trade union representative to make any concluding statement.
- (h) The member of staff and colleague or trade union representative to withdraw.
- (i) Management to consider the matter taking advice from the adviser(s) present.



## APPENDIX 2

### RECOMMENDED PROCEDURE FOR CONSIDERATION OF DISMISSAL

#### Order of business:

1. Pre-meeting of the decision-maker(s)\*, Clerk and LA Officer adviser(s) to clarify any procedural matters.
  2. Hearing: In addition to those attending the pre-meeting:
    - Member of staff and representative  
Headteacher\*\* and other management ('Management')
    - (Any witnesses will be called as required and will be present only during the time in which they give their evidence and answer questions.)
    - (a) The decision-maker(s)\* will introduce those present, explain the order of business and outline the case for dismissal by going through the evidence.

All parties will be reminded of the confidential nature of the proceedings and that the decision-makers do not intend to make available notes of this meeting. No unreasonable restriction will be placed on the employee or representative if they wish to make notes for their own use.
    - (b) Management will put forward the case and call their witnesses, who will either read their witness statement or it may be taken as read.
    - (c) The member of staff and/or their representative and the decision-makers may raise questions of management/management's witnesses.
    - (d) The member of staff/their representative will state their case.
1. It is worth spending time at the beginning of this meeting making absolutely certain that all those involved know what to expect. If a Committee is hearing the case, the members will need to choose a Chair. Children's Services Human Resources will advise. A Clerk would be present to take notes.
  2. para 1 It is important that the decision-makers hearing the case are seen to be fair and treat all parties in exactly the same way.
  2. para 2 A comfortable waiting area should be provided for witnesses.
  2. (a) para 2 You should not attempt a full verbatim record but simply note the key points and who made them. It is important to make a full record of the reasons for your final decision.

You should note that an employment tribunal may wish to see your notes even if they are not a full record of the meeting.

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\* Depending upon who has the delegated power to dismiss the decision-maker(s) may be:  
(a) a nominated Governor (or Governors); and/or  
(b) the Headteacher.

\*\* Where the Headteacher does **not** have the delegated power to dismiss.

- (e) The member of staff/their representative will call any witnesses, who will either read their witness statement or it may be taken as read.
  - (f) Management and the decision-makers may raise with the member of staff and their witnesses any questions - these should be answered by the staff member or witness not the representative.
  - (g) Management may sum up but will introduce no new factors.
  - (h) The staff member/their representative may sum up but will introduce no new factors.
  - (i) The staff member/their representative, management and all witnesses withdraw and the decision-makers retire to consider their decision.
  - (j) The staff member/their representative and management will be recalled and informed of the decision which will be confirmed in writing within 5 working days of the meeting.
- (g) Any attempt to introduce new factors should be prevented.
  - (h) Any attempt to introduce new factors should be prevented.
  - (i) Have two separate waiting areas available and organise refreshments for all participants.

**Note** – LA advisers may attend any such hearing, ask questions at any point and advise the decision-maker as appropriate, including after retirement of those with the delegated power to dismiss.

## APPENDIX 3

### RECOMMENDED PROCEDURE FOR MEETING OF APPEAL PANEL

1. Pre-meeting of Governing Body representatives, Clerk and Director of Children's Services adviser(s) to clarify any procedural matters.
2. Hearing: In addition to those attending the pre-meeting:

Member of staff and representative as Appellant  
Headteacher and other management as Respondent  
LA Officer adviser(s).

(Any witnesses will be called as required and will be present only during the time in which they give their evidence and answer questions.)

#### Order of Business:

- (a) Chair to introduce the members of the Panel and others present and to outline the order of business.
- (b) Chair to remind those present of the confidential nature of the proceedings.
- (c) Chair to clarify that it is not intended to make available notes of the meeting. The Clerk will record as necessary for the purposes of the Governors, and no unreasonable restriction will be placed on the employee or representative if they wish to make notes for their own use.
- (d) The Chair will either read or circulate to all those present a copy of the decision against which the Appeal is being made.
- (e) The Appellant will state his/her case and may call witnesses.
- (f) The Respondent may ask questions of the appellant and witnesses.
- (g) The Panel and the LA adviser may ask questions of the Appellant and witnesses as appropriate.
- (h) The Respondent will state his/her case and may call witnesses.
- (i) The Appellant may ask questions of the Respondent and witnesses.
- (j) The Panel and the LA adviser(s) may ask questions of the respondent and witnesses as appropriate.

See Appendix 2 for comments.

- (k) The Respondent may re-examine the witnesses.
- (l) The Appellant or representative will conclude with a summary of the case but will introduce no new factors.
- (m) The Respondent will conclude with a summary of the case but will introduce no new factors.
- (n) The Appellant and Respondent will withdraw while the Panel consider the case taking advice as appropriate from the LA adviser(s).
- (o) The Panel will consider the case and the action open to them and reach a decision.
- (p) Appellant and Respondent will be recalled and informed of the decision by the Chair. Notification of the decision will be confirmed in writing within 5 working days of the meeting.
- (q) A formal minute will be made of the outcome of the hearing.
- (r) The decision must be confirmed in writing within 5 working days.

## **SPECIAL NOTES FOR CHAIR OF GOVERNORS IN THE EVENT OF DISCIPLINARY ACTION AGAINST THE HEADTEACHER**

Your Headteacher is an employee and is subject to the same rights and obligations as any other employee. However his/her special position as adviser to the Governors and manager of the school means that you, as Chair, have to take on a particular role if he/she is to be disciplined - in effect, for the purposes of the Disciplinary Procedure you become the Headteacher.

If you find yourself in this position, or are considering taking action to begin the process please contact Children's Services Human Resources as soon as possible.

Your first task will be to familiarise yourself with the Procedures, particularly the flowchart on page 3 and read Chair of Governors where it says Headteacher. In turn, the Chair's role will have to be taken by the Vice-Chair. Officers of Children's Services Human Resources will be able to give detailed help, but you will need to establish clearly in your mind the basic principles and the sequence of events. These can be summarised as follows:

- take things slowly and steadily and know exactly what you are going to do before you do it
- make every attempt to be reasonable
- do not be afraid to get advice on the smallest of matters for it is upon these that the whole case can fall
- always confirm things in writing
- always allow the Headteacher to have representation
- investigate thoroughly and be prepared to revise your original judgements
- always be fair
- remember that union representatives may try to throw your case off balance and do not be flustered by any suggestions that you may be accountable in an employment tribunal.
- act as soon as possible to begin the process
- be clear in explaining what is happening and what is going to happen to the Headteacher and all others involved
- if you have a case which you believe amounts to gross misconduct you must seek advice on suspension from Children's Service Human Resources as soon as possible.
- get help from Children's Services Human Resources.

## GUIDELINES FOR THE INVESTIGATING OFFICER

Careful consideration should be given as to who conducts the investigation as, where practicable, the investigating officer should not be the person who hears the case at any future hearings.

As Investigating Officer your role in the case is crucial. This is just as important in a relatively minor matter which will be resolved by a warning as in a very serious case of gross misconduct which may lead to dismissal.

There are 4 main sources of information which may be relevant to the case:

- evidence from individuals
- documentary evidence
- background information
- your analysis.

### Evidence from individuals

This should be gathered from all those involved in the matter and should limit itself to what they did, saw or heard directly, it should not move into conjecture or assumption.

It is particularly important that this should be gathered as soon as possible after the start of the investigation before recollections begin to fade. **If the allegation is of a Child Protection nature, you must seek advice before commencing any investigation.**

Evidence should be gathered from all those directly involved in the matter including the employee subject to action.

Any of the people you seek to interview may request that they have another person present. If the investigation is likely to lead to disciplinary action, the employee has a right to be accompanied by a colleague or trade union representative. Such a request should normally be accepted unless there are extraordinary and exceptional reasons why this would inhibit the investigation. **(Before refusing seek advice!)**

Take particular care when interviewing pupils, particularly where they have been the "victims". Apart from initial brief questions their parents should be invited to be present at the interview or give permission for it to take place. **(See page 32 for advice on gathering evidence from pupils.)**

When you interview an individual do so in as relaxed and informal manner as possible without interruption, putting them at their ease and allowing them to tell their own story. Do not ask leading questions but keep them to the point and pursue any areas which you feel require more detail. Do not be afraid to ask them to repeat or clarify any comments you do not **fully** understand.

Evidence from individuals can be in the form of a written statement prepared by the individual themselves.

Evidence from individuals can if necessary be gathered on a non-attributable basis. Whilst this may be helpful to you in reaching your overall conclusion, its credibility at a hearing will be limited.

Your notes of interviews should be as full as possible. In less formal interviews you will obviously want to keep the note yourself, however in more formal sessions you could have an assistant who will keep a verbatim record.

It is important that individuals are asked to check these notes/statements and then sign and date them to confirm accuracy. Where there is disagreement individuals should be asked to provide amendments or a further statement and both copies should be included in the report.

### **Documentary Evidence**

You will need to collect copies of all documents which have a direct bearing on the case. If you have the originals keep them safe and if you cannot keep the original take a good quality photocopy.

If you extract only part of a longer document make certain that it is properly referenced.

Your documentary evidence may also include objects or artefacts which should be clearly labelled and referenced.

### **Background Information**

This includes information or evidence which may not have a direct bearing upon the case but sets it in context.

In all cases this should include a simple career history of the employee concerned and a copy of their job description.

It is important to note that "spent" warnings should not be used although formal management instructions may be relevant if they might reasonably be known by the member of staff concerned.

General testimony about the employee's conduct, capability or behaviour will also be valuable.

### **Expert Analysis**

Where the allegation relates to financial mismanagement or misappropriation, you should seek the advice of the County Council Audit Section. Similarly, you may find it helpful to refer concerns over the misuse of computer equipment to Information Business Systems (IBS) for expert support.

### **Your Analysis**

Once you have gathered a reasonable amount of information you will begin to formulate your opinion of the case, indeed you will need to determine very early on whether there is a case to answer.

As your thinking develops be prepared to go back to witnesses or documents to seek further clarification about any issues.

Always be critical of your assumptions and try to view evidence through the eyes of the other side. A good test is to ask how you would challenge it at a hearing.

As Investigating Officer you will have a clearer view of the whole situation than anyone else but there will always be areas of uncertainty and conclusions which are open to challenge.

When you are coming to your overall conclusion gather together all the relevant papers, witness statements, documents, descriptions etc. and place them in order (normally chronological) with an index listing them by title and date.

Your analysis should be in the form of a Management Statement which outlines the case with reference to the documentation, describes your analysis and makes a recommendation about the action which should be taken. You may be required to present your report to the Decision Maker(s).

Remember this document will be open to scrutiny and will be seen and picked over in detail by the employee concerned.

In a simple case the final documents may be just a couple of sides of A4, but in a complex or contentious dismissal could be a hundred or more pages long.

In reaching your conclusion you will need to bear in mind the overall balance of the evidence you have gathered set in the context of your own school and the post of the employee concerned. You should test the evidence for factual accuracy and reach a conclusion whenever possible. You must remember however that cases, particularly serious ones, are hardly ever straightforward. Actions or statements may be open to differing interpretations, allegations may be denied, there may be no way of verifying claims etc. The overall test you must make of what you hear is not as required in criminal law: "beyond reasonable doubt" nor even the civil law test of the balance of probabilities. If you have reasonable cause in all the circumstances to believe the allegations then you may recommend disciplinary action.

Officers of Children's Services Human Resources will always be willing to assist you with your investigation.

## GUIDANCE FOR GATHERING EVIDENCE FROM PUPILS

Based upon experience in various cases we offer the following advice on how to obtain evidence from pupils which will stand up to the test of being examined in a disciplinary or similar formal process.

This guidance will need your interpretation to suit the circumstances:

- If the allegation indicates that a child has been harmed by an adult or a criminal offence has been committed, then **no statements should be obtained before discussing with the Senior Adviser for Safeguarding Children in Education.**
- Whatever the incident, act quickly - memories fade fast!
- Isolate the pupils concerned from each other and, if they are of appropriate age and literacy, obtain a written statement.
- If there is a literacy difficulty, interview with another adult present to record the statement: then reproduce it, read the statement back to the pupil and request them to sign and date it as a true record.
- Avoid as much as possible **any** opportunity for pupils to discuss the incident that might result in common statements. A common line of defence is to discredit these statements.
- Ensure that pupils are always accompanied when interviewed about an incident, i.e. if you are interviewing, have another member of staff with you. This could be a clerical employee or support assistant. This second adult should understand and expressly agree to the necessary confidentiality of the investigation.
- Depending on the circumstances being investigated, it may be necessary to take pupil witnesses to the scene of the incident and ask them to place themselves where they were at the time of the incident. This is to confirm that they could have experienced what it is alleged to have happened by sight, hearing or being involved.
- If a whole class is involved and you need statements from them all, obtain the statements as soon as possible, act quickly, giving no forewarning of what you are going to do. Obtain statements under examination conditions.
- If, as a result of your investigations in other areas, there is a need to speak again to the pupils, follow the same processes.
- However tempting it may appear to be, do **not** tape record interviews with pupils. To do so would be an infringement of their rights.
- Take written statements from any adults present at the time: ask them to date and sign statement.
- At an initial interview with a pupil, do not ask leading questions: ask only open questions, e.g. *"Did anything that worried you happen during Mrs. Blogg's lesson?"*
- The only time when a more specific question might be asked is when you are seeking confirmation, e.g. *"What did Mr. Brown do with the stapler?"* - when you think the stapler was thrown at a child.
- It may be necessary for you to carry out a second interview on the basis of what earlier investigations have revealed.

## **GUIDANCE NOTES ON THE CONDUCT OF DISCIPLINARY HEARINGS AND APPEALS**

Being responsible for making a disciplinary decision either solely, with another Governor or as part of a Panel is a complex job, as it is your task to weigh up the representations and evidence and reach a clear judgement. If you are 'Chair' you have the additional duty of leading the Panel and being in charge of any hearing or appeal.

Before the hearing or appeal you should familiarise yourself with the Disciplinary Procedure, not so you know every word of it, but so that you are comfortable with the principles and the main stages of the procedure. For the hearing or appeal, it is also useful to familiarise yourself with the jargon which may be used.

In particular, prepare yourself for each stage of the process for the hearing or appeal. It would be useful to think through the sort of thing which you will need to say at each stage.

In all your preparation you will be able to call on the services of Children's Services Human Resources in order to clarify points and run through procedures. You can, of course, seek help from your Headteacher but as he/she may be presenting or hearing the case you must avoid any discussion of the case before the hearing as this could be held to influence your position.

Before the day of the hearing or appeal ensure that a suitable room has been booked. It will need to be free from disturbance or interruptions, be adequately lit and have a reasonable temperature and ventilation. It will need to have appropriate furniture: a table for those hearing the case, any management presenting the case and the employee and representative, and chairs which are comfortable enough to sit on for a long time! Water and glasses should also be available for all participants and it would be useful to have refreshments available to be provided when you require them (at natural breaks in the process). Ensure there are separate rooms to which the interested parties can withdraw.

You may wish to arrange a brief training session for those hearing the case, but in any event you will receive a briefing session before the hearing or appeal by an officer of Children's Services Human Resources who has not been involved in the case.

During the hearing or appeal you must ensure that the order of business is strictly adhered to. All those involved have an opportunity to state their case or ask questions - do not let anyone do so out of turn. Remember, you are in charge. Make that clear to anyone who appears to challenge your position.

If at any time something is unclear or muddled ask for clarification and do not allow matters to progress until you are happy. If you have any technical or procedural questions ask the officer advising. It is useful to agree with him/her before the meeting whether you want to be interrupted if the officer believes that there are problems emerging.

Treat all those before you in the same polite but firm manner. Ensure that the employee concerned has every opportunity to state his/her case.

If any of the participants require a break, then it is quite appropriate to take a short adjournment. In complex cases where there is a lot of evidence be prepared to adjourn and meet at a later date, but if you do this make certain that you break at an appropriate point and that all have agreed the date.

In the concluding statements ensure that no new evidence is introduced.

Throughout the hearing or appeal keep your own notes of key points, do not try to keep a detailed record of everything said.

Both sides presenting their cases will normally provide a batch of papers and will then use these as they make their case. If there are more than two or three they should be indexed to ensure that everyone is looking at the same one. If they are not indexed do this at the meeting.

When both sides have made their presentations and withdrawn it will be for the Panel to reach their conclusion. Remember this is not a court of law the test is not "beyond reasonable doubt" nor is it on the "balance of probability" - you are acting as the employer and the test is what is reasonable in all the circumstances for you to do. For example if you have very strong suspicion but no absolute proof you can still act. Your priority is to be fair in hearing the case but in reaching a decision you must put the school first.

Once you have reached a decision write it down together with the main reasons for reaching it. Then prepare a statement which you will read to the interested parties when they are recalled. The text of this statement should be sent to the employee with the letter as required under the Procedure.

At the end of the hearing or appeal collect all the papers and have them stored in a safe place for the duration of the Warning or, if the case is a dismissal for at least twelve months after the effective date of dismissal.

## APPEAL FORM

This form is intended to help you make a clear statement of your Appeal.  
**(PLEASE PRINT)**

**Your name:** .....

**Your post:** .....

**School:** .....

**Telephone contact number:** .....

**Name and address plus contact number of your representative:**

.....  
.....

**What are you appealing against?**

[State date and decision of hearing (disciplinary sanction/dismissal) and name of manager taking action]

.....  
.....  
.....

**State clearly the grounds of your Appeal:**

[In particular, are you appealing against the findings of and/or the sanction issued at the hearing? Also, state reasons clearly]

.....  
.....  
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.....

**Describe any additional/new information that you think should be taken into account:**

.....  
.....  
.....  
.....  
.....  
.....

(Please continue on a separate sheet if necessary)

**Signed:** ..... **Date:** .....

Please return this form to the Headteacher. If you or your representative are unclear about this, please contact Children's Services Human Resources.

**MODEL LETTER A**  
**LETTER INFORMING A MEMBER OF STAFF**  
**OF HIS / HER SUSPENSION**  
**UNDER SECTION 6 OF THE DISCIPLINARY PROCEDURE**

Dear

**Suspension from Duty**

In the light of [**very brief statement of allegation**]\* I am writing to advise you that you are suspended from duty as [**post**] at [**name of school**], pending an investigation.

Whilst you are suspended you will continue to receive your full salary.

You must leave the school immediately and may not return until your suspension is ended or with my special prior authority in order to collect personal belongings or to assist you in the presentation of your case.

During your suspension you must be available for interview during your normal working hours. You may be invited to a formal interview, at which you are entitled to be accompanied by a colleague or trade union representative.

I hope to resolve the circumstances surrounding your suspension as soon as possible but in any case it will be reviewed every 15 working days. After 15 days I will write to you asking you for your comments on the continuation of the suspension and inviting you to discuss the matter if you so wish.

Suspension is not intended as a disciplinary measure in itself and should not be seen as punitive or pre-judging the outcome of any investigation.

If you need to discuss school matters during your suspension please contact [**named contact**]. If you wish to discuss any procedural issues surrounding your suspension you may call [**details of nominated LA Officer**] or if you have any other questions relating to the suspension please contact me.

Yours sincerely,

**Headteacher.**

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\* In Child Protection cases, the following wording may be appropriate:  
*'In the light of an allegation which is being investigated under locally agreed child protection procedures.....'*

**MODEL LETTER A(i)**  
**LETTER TO A MEMBER OF STAFF**  
**REVIEWING SUSPENSION**  
**UNDER PARAGRAPH 6.6 OF THE DISCIPLINARY PROCEDURE**

Dear

**Review of Suspension**

I refer to my letter of [**date of suspension letter**] notifying you of your suspension from duty and I am now reviewing that suspension. Your suspension will continue for a further 15 school days until [**date**] as [**reasons for ongoing suspension, i.e. ongoing investigations**].

If you would like to comment upon the continuation of your suspension, in writing or in person, will you please inform me. If you wish to discuss the matter in person I will make appropriate arrangements for a meeting at which you may be accompanied by a colleague or representative.

Suspension is not intended as a disciplinary measure in itself and should not be seen as punitive or pre-judging the outcome of any investigation.

I hope to resolve the issues connected with your suspension as soon as possible, but if you or your representative is unclear about the procedure please contact me.

Yours sincerely,

**Headteacher.**

**MODEL LETTER B**

**LETTER INVITING A MEMBER OF STAFF  
TO AN INVESTIGATION MEETING  
UNDER SECTION 7 OF THE DISCIPLINARY PROCEDURE**

Dear

I am writing to invite you to a meeting to investigate a complaint received relating to an incident at school on **[insert date]**.

It is alleged that you **[brief details of allegation]**.

The meeting will be held at **[name]** School on **[date]** at **[time]**. **[Name]**, Human Resources Adviser (Schools), will also be present. This meeting is to be held under the provisions of the Disciplinary Procedure, a copy of which is enclosed.

The purpose of this meeting is to discuss the allegation with you, to establish your version of events and to ask and answer related questions. You should be aware that the outcome of this meeting may be that we determine:

- (a) There is no case to answer.
- (b) That the incident, though serious, does not merit the use of the formal disciplinary procedure, but it may be appropriate to give management guidance.
- (c) That the issue is sufficiently serious that it must be dealt with as a disciplinary matter and you will be invited to a formal disciplinary meeting at a later date.

You are entitled to be accompanied to the investigative meeting by a colleague or trade union representative.

Please confirm your attendance at this meeting, and whether or not you will be accompanied. If you have any questions in the meantime please contact me or **[the HR Adviser]** on (01905) 766188.

Yours sincerely,

**Headteacher.**

**MODEL LETTER C**  
**LETTER TO A MEMBER OF STAFF**  
**GIVING INFORMAL MANAGEMENT GUIDANCE**

Dear

I am writing to follow up our conversation following concerns raised about **[give details]**.

I have conducted an initial investigation and having now spoken to you about the concerns, I consider that this is unacceptable behaviour.

This is the first time such concerns have been raised/I have previously spoken to you about this **[delete as applicable]** and you are therefore expected to ....**[include any specific management instructions or rules that you want followed]**.

Having considered the matter I have decided not to take any formal action on this occasion in relation to any of the issues above. However, please be advised that although this letter does not form part of the formal disciplinary process at this stage, should any similar or further instances of misconduct occur, then formal action may be pursued through the Disciplinary Procedure.

Yours sincerely,

**Headteacher.**

## MODEL LETTER D

### LETTER INVITING A MEMBER OF STAFF TO A HEARING WITH THE HEADTEACHER UNDER SECTION 10 OF THE DISCIPLINARY PROCEDURE – HEARINGS (UP TO AND INCLUDING SANCTIONS SHORT OF DISMISSAL)

Dear

I write to ask you to attend a hearing to be held under the provisions of Section 10 of the Disciplinary Procedure, a copy of which is enclosed.

This hearing will be held at **[location]** on **[date]** at **[time]** and its purpose is to consider **[details of case/allegation/witnesses intended to be called; give the name of the person making the allegation if it is someone other than the Headteacher]**.

I enclose the following documents\* which will be considered at the hearing;

**[list of documents]**.

You have a right to be accompanied by a colleague or trade union representative. Please advise me whether you will be accompanied at the hearing. You also have a right to call witnesses if you so wish. Please note that details of any witnesses together with copies of any documentation you wish to submit at this hearing, must be provided to the Headteacher not later than 5 working days before the hearing.

I would be grateful if you would let me know of any circumstances which will prevent you from attending this hearing. I must advise you that, if you do not attend, the hearing may take place in your absence.

Yours sincerely,

**Headteacher.**

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\* Any documentation to be used at the hearing must be made available as soon as possible and ideally not later than 5 working days before the hearing.

**MODEL LETTER E**  
**LETTER ISSUED UNDER PARAGRAPH 10.7**  
**OF THE DISCIPLINARY PROCEDURE**

Dear

Following the hearing held at **[location]** on **[date]** at **[time]**, having given the matter very careful consideration and having taken appropriate advice I have decided to issue you with **[type of warning]** under the terms of the Disciplinary Procedure. This is a very serious matter and you should take note of the following points:

This warning is issued in relation to **[details of case/allegation referring to any current warning]**.

I intend to make the following arrangements to monitor your **[details of monitoring – give details of specified period of monitoring]**.

As a consequence of this your **[brief description of conduct or standard to be achieved]**. If you believe that you require any support, assistance or training to achieve this you must discuss this with me.

You must note that further unsatisfactory conduct may lead to further and more serious disciplinary action being taken against you including possible dismissal.

This warning will cease to be effective for disciplinary purposes **[number]** months after the date of this letter, after which time I expect to have no further cause for concern.

You have a right to appeal against the issue of this warning and I draw your attention to Sections 19-23 of the Disciplinary Procedure. You have a right to be accompanied by a colleague or trade union representative at any appeal. If you wish to appeal you must inform me, in writing, on the enclosed Appeal Form within 10 working days of receipt of this letter. If you decide not to lodge an appeal you may submit a statement of mitigation to be held on your file with this warning.

A copy of this letter has been sent to **[name of person]** who represented/accompanied you at the hearing.

The issue of this warning is a serious matter and I require you to take careful note of the points made in this letter.

Yours sincerely,

**Headteacher.**

**MODEL LETTER F**  
**LETTER INVITING A MEMBER OF STAFF**  
**TO A HEARING UNDER SECTION 14**  
**OF THE DISCIPLINARY PROCEDURE – DISMISSAL PROCEDURES**

Dear

I write to ask you to attend a hearing to be held before [ \*\*\* ] under the provisions of Section 14 of the Disciplinary Procedure, a copy of which is enclosed.

This hearing will be held at [**location**] on [**date**] at [**time**].

You have a right to be accompanied by a colleague or trade union representative at this hearing and you also have a right to call witnesses if you wish. Please note that details of any witnesses together with copies of any documentation you wish to submit at this hearing must be provided to the Headteacher not later than 5 working days before the hearing.

The matter to be considered at this hearing is [**details of case/allegation; give the name of the person making the allegation if it is someone other than the Headteacher**].

I enclose the following documents which will be considered at the hearing:

[**list of documents**].

You should be aware that the consequences of this hearing could be very serious and may include your dismissal. It is therefore very important that you make every attempt to attend and I must advise you that, if you do not attend, the hearing may take place in your absence.

If either you or your colleague or representative are unclear about the procedures being followed please contact me as soon as possible. Please also advise me if you intend to be accompanied.

Yours sincerely,

**Headteacher.**

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\*\*\* This will depend upon who has the delegated power to dismiss.

This may be:

- (a) a nominated Governor (or Governors); and/or
- (b) the Headteacher.

**MODEL LETTER G**  
**LETTER ISSUED UNDER PARAGRAPH 17**  
**OF THE DISCIPLINARY PROCEDURE – DISMISSAL PROCEDURES**

Dear

Following the hearing held before [ \*\*\* ] at [ **location** ] on [ **date** ] at [ **time** ], I have to inform you that having regard to all the circumstances, [ \*\*\* ] has decided that you should cease to be employed at [ **name of school** ] with effect from [ **date of termination** ].

The reason for this decision is [ **details of unsatisfactory conduct** ].

You have the right to appeal against this decision and if you wish to do so, you should lodge it in writing on the enclosed Appeal Form, within 10 working days of receipt of this letter. You have the right to representation, by a colleague or trade union representative at such an appeal and I enclose a copy of the relevant procedures. (If you choose to appeal and your appeal is successful, you would be reinstated with effect from the date of dismissal.)

\* { [ \*\*\* ] will inform the Local Authority of their decision that you should cease to work at the school, and the Local Authority as your employer, will then take the necessary steps to terminate your employment, with [ **insert relevant notice period** ] weeks notice. }

Yours sincerely,

**Headteacher or  
Chair of Panel (as appropriate).**

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\* Voluntary-Aided/Foundation Schools replace paragraph with:  
"As a result of this decision your employment with this school will terminate on [ **date** ]."

\*\*\* Those with the delegated power to dismiss.  
This may be:  
(a) a nominated Governor (or Governors); and/or  
(b) the Headteacher.

## MODEL LETTER H

### LETTER INVITING A MEMBER OF STAFF TO A HEARING UNDER PARAGRAPH 13 OF THE DISCIPLINARY PROCEDURE - GROSS MISCONDUCT

Dear

I write to ask you to attend a hearing to be held before [ \*\*\* ] under the provisions of Section 13 of the Disciplinary Procedures, a copy of which is enclosed.

This hearing will be held at [**location**] on [**date**] at [**time**].

You have the right to be accompanied by a colleague or trade union representative and you also have a right to call witnesses if you wish. Please note that details of any witnesses together with copies of any documentation you wish to submit at this hearing must be provided to the Headteacher not less than 5 working days before the hearing.

The matter to be considered at this hearing is [**details of case/allegation; give the name of the person making the allegation if relevant, i.e. if other than the Headteacher**].

I enclose the following documents which will be considered at the hearing:

[**list of documents**].

You should be aware that if the allegation is substantiated it will constitute gross misconduct and you may be dismissed from your employment without the benefit of a notice period or payment in lieu of notice. It is therefore very important that you make every attempt to attend and I must advise you that, if you do not attend, the hearing may take place in your absence.

If either you or your colleague or trade union representative are unclear about the procedures being followed please contact me as soon as possible. Please also advise me if you intend to be accompanied.

Yours sincerely,

**Headteacher.**

---

\*\*\* This will depend upon who has the delegated power to dismiss.

This may be:

- (a) a nominated Governor (or Governors); and/or
- (b) the Headteacher.

**MODEL LETTER I**  
**LETTER ISSUED UNDER PARAGRAPH 17**  
**DISMISSAL FOR GROSS MISCONDUCT**

Dear

Following the hearing held before [ \*\*\* ] at [ **location** ] on [ **date** ] at [ **time** ], I have to inform you that having regard to all the circumstances, [ \*\*\* ] has decided that you should cease to be employed at [ **name of school** ] with immediate effect.

The reason for this decision is [ **details of unsatisfactory conduct** ]. This was found to constitute gross misconduct and, consequently, your contract is to be terminated without notice.

You have the right to appeal against this decision and if you wish to do so, you should lodge it in writing on the enclosed Appeal Form, within 10 working days of receipt of this letter. You have the right to representation, by a colleague or trade union representative at such an appeal and I enclose a copy of the relevant procedures. If you choose to appeal and your appeal is successful, you would be reinstated with effect from the date of dismissal.

\* { [ \*\*\* ] will inform the Local Authority of their decision that you should cease to work at the school, and the Local Authority as your employer, will then take the necessary steps to terminate your employment. }

Yours sincerely,

**Headteacher or  
Chair of Panel (as appropriate).**

---

\* Voluntary-Aided/Foundation Schools replace paragraph with:  
"As a result of this decision your employment with this school will terminate with effect from today's date."

\*\*\* Those with the delegated power to dismiss.  
This may be:  
(a) a nominated Governor (or Governors); and/or  
(b) the Headteacher.

## MODEL LETTER J

### NOTIFICATION OF DISMISSAL TO LA (NOT AIDED OR FOUNDATION SCHOOLS)

Operational Manager - Staffing,  
Worcestershire County Council,  
Directorate of Children's Services,  
P.O. Box 73,  
Worcester,  
WR5 2YA

Dear

**Re: [name of employee]**

A hearing was held on [**date**] before the [**Headteacher/Governor/Staff Dismissal Committee**]\* acting on behalf of the Governing Body of [**name of School**].

I write to inform you that following representations, the [**Headteacher/Governor/Staff Dismissal Committee**]\* has/have determined that the above-named employee cease to be employed at this school by reason of misconduct/gross misconduct [**delete as applicable**] with effect from [**date**].

I enclose a copy of the letter which has been sent to [**name of employee**] and which advises of the right of appeal against this decision. Should such an appeal overturn this decision, the Governing Body will notify the LA without delay.

The LA is now required to give notice of the termination of this contract of employment.

Yours sincerely,

**[Headteacher/Governor/Staff Dismissal Committee]\***

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\* Delete as appropriate.

**MODEL LETTER J(i)**

**NOTIFICATION OF DISMISSAL TO LA  
(VOLUNTARY AIDED / FOUNDATION SCHOOLS)**

Operational Manager - Staffing,  
Worcestershire County Council,  
Directorate of Children's Services,  
P.O. Box 73,  
Worcester,  
WR5 2YA

**Re: [name of employee]**

A hearing was held on **[date]** before the **[Headteacher/Governor/Staff Dismissal Committee]\*** acting on behalf of the Governing Body of **[name of School]**.

I write to inform you that following representations, the **[Headteacher/Governor/Staff Dismissal Committee]\*** has/have determined that the above-named employee has been dismissed from this school by reason of misconduct/gross misconduct **[delete as applicable]** with effect from **[date]**.

I enclose a copy of the letter which has been sent to **[name of employee]** and which advises of the right of appeal against this decision. Should such an appeal overturn this decision, the Governing Body will notify the LA without delay.

Yours sincerely,

**[Headteacher/Governor/Staff Dismissal Committee]\***

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\* Delete as appropriate.

**MODEL LETTER K**  
**LETTER INFORMING A MEMBER OF STAFF**  
**OF ARRANGEMENTS FOR AN APPEAL**

Dear

**Appeal Against Disciplinary Action**

Following your letter of **[date]** lodging your appeal against **[sanction]** I have arranged for your appeal to be heard by the (Dismissal) Appeal Panel at **[location]** on **[date]** at **[time]**.

You have the right to be represented by a colleague or trade union representative at this hearing and I enclose a copy of the procedure which will be followed at the meeting.

The Appeal Panel will be provided with the documentation which was available at the initial hearing. If you have any supplementary documentation which you wish to be submitted to the Appeal Panel it must be provided to the Headteacher, along with details of witnesses, not less than 5 working days before the hearing.

I understand that you will be represented by **[name]** at the hearing.

Yours sincerely,

**Headteacher/Clerk to Governors.**

## MODEL LETTER L

### LETTER ISSUED UNDER PARAGRAPH 24 OF THE DISCIPLINARY PROCEDURE - APPEAL

Dear

#### **Appeal Against Disciplinary Action**

Following your appeal against **[sanction]** on **[date]** at **[time]** I have to inform you that having regard to all the circumstances the Appeal Panel has decided to:

(I)

allow your appeal. The action taken against you at the **[hearing]** held on **[date]** is therefore revoked and will cease to be effective.

(II)

allow your appeal in part. The action taken against you at the **[hearing]** held on **[date]** is therefore revoked and replaced by **[sanction]** which is a lesser sanction under the terms of the disciplinary arrangements.

(III)

dismiss your appeal. The action taken against you at the **[hearing]** held on **[date]** therefore stands and **[details of sanction]**.

In reaching their decision the Appeal Panel were particularly mindful of the following points **[details]**.

Yours sincerely,

**Chair of Dismissal Appeal Panel.**

Copy to: Headteacher  
LA