



ADVICE FROM
THE HEADTEACHERS' ADVISORY PANEL
GUIDELINES FOR HEAD TEACHER MEMBERS

DISCIPLINARY PROCEDURES

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1. General

The purpose of this booklet is to provide guidelines for Head Teachers on how to handle complaints which could potentially lead to formal disciplinary procedures against a member of staff. While the advice given here may be interpreted by taking into account the ethos of the school and the knowledge of the person concerned, this must never be allowed to cloud the real issues, or to risk any injustice. The booklet deals with the initial decision as to whether the issue should be dealt with formally or informally, the fundamental aspects of formal procedures, the disciplinary investigation, the subsequent possible hearing and what happens after that. The Association believes that employers should provide meaningful CPD for HTs and DHTs in this area. This booklet is designed to answer basic questions they might have.

In all cases, the Head Teacher should follow the authority's agreed procedures. Advice may be sought from the Association and the Council's legal/personnel departments.

- 1.1** It is likely that most Head Teachers will at some time receive a complaint from a parent, pupil or staff member about another member of staff. An HT must be seen to deal with the complaint.
- 1.2** A Head Teacher may, of course, feel the need to take action without a complaint having been made. It may be, for example, that there is evidence available which would suggest the staff member has not been carrying out their duties to an expected standard (e.g. reports always late or some incident which has come to the attention of the HT).

- 1.3** A decision must be taken as to whether the issue should be dealt with informally or formally using disciplinary procedures. This will depend on the issue. For example hitting a pupil or being sexually involved should automatically result in formal proceedings.
- 1.4** If a child protection issue is involved, then the matter should be referred to the Child Protection Team and they will take the matter (including the investigation) forward from there. Consult the local Child Protection Guidelines to be sure that it really is a Child Protection matter. Take advice from the Child protection Team as to whether and when the teacher should be told of the complaint. The teacher must be advised of the possibility of disciplinary action.
- 1.5** It is vital that the teacher be told of a complaint which requires action, and of the possibility of disciplinary proceedings, at the earliest possible opportunity.
- 1.6** A teacher should be advised to contact their union representative immediately if a complaint has been made. If, however, the situation can be resolved informally, then this would be encouraged.

2. *The informal approach*

- 2.1 The purpose of an informal approach would be to resolve the issue satisfactorily without having to discipline the member of staff formally. This is similar to coping with a pupil in a classroom by dealing with a problem without necessarily issuing detention or a punishment.
- 2.2 An informal approach, however, must never be too informal. You should arrange a meeting with the staff member, having asked your depute to gather any required evidence (see formal section if necessary for advice on how to do this).
- 2.3 Before this meeting you must inform the staff member that he/she can bring along a representative, and explain the issue or complaint. You should also have a witness for yourself present (e.g. a DHT).
- 2.4 The issue should be discussed and suggestions offered as to how it could be resolved in a constructive way. Always allow the staff member to speak and listen to him/her. Bear in mind that such a meeting could be distressing for the staff member.
- 2.5 After the meeting, you should put in writing a note of the meeting (including time and date, who was present etc.) to the staff member in question asking him/her to agree to the accuracy of the record. Agreed alterations should be made if necessary. It might be advisable to include in the report the fact that a repetition of unacceptable behaviour might well lead to formal disciplinary action, and/or set out your expectations/instructions for the future. Keep this record of the meeting as there is always a possibility that formal proceedings could take place later, or that the staff member makes a grievance or harassment complaint against yourself.

3. *The formal approach*

- 3.1** You should be aware from the outset that in rare or extreme cases, the matter may end up in court or in an employment tribunal. It is vital, therefore, that procedures are strictly followed, as any breakdown in protocol could result in the case being lost, regardless of the issue at the centre of it.
- 3.2** You should always follow your Council Procedures of which you should have a copy. The member of staff concerned also has a right to see this and you should give him/her a copy. It is as well to be aware of the ACAS Code of Practice (available from the SSTA offices), the Human Rights Act and Primary Legislation. However, you are not expected to be a legal expert!
- 3.3** Legal advice may be obtained from the Council's legal department. Sometimes you may be given conflicting advice, but Council Procedures are the ones to follow. If a case fails because of this advice, then it is the responsibility of the Council. It is also possible that the Council might take action against you, if you have not followed their procedures.
- 3.4** Always let common sense and the idea of Natural Justice play a large part in any proceedings, not just in the case of the staff member, but also of the alleged victim (if one exists). Clarification can always be sought from your own legal services in the Council. The Association may also be approached for advice.

4. *Fundamental aspects of any formal procedure*

- 4.1** The member of staff involved should be given a written statement of the complaint or allegation prior to any investigation. This should be clear and concise and issued as soon as possible after the complaint has been made (but not in the case of a Child Protection issue). Any person making a complaint should be made aware that the teacher concerned will be given a copy.
- 4.2** Identify an impartial investigating officer. This is likely to be a depute in most cases. If the complaint is about a depute, then the investigating officer should be the Head Teacher. If the complaint is about the Head Teacher, then the investigation should be carried out by his or her line manager. In the situation where an objection is made to your choice of IO, then make another choice. See details of the investigation process in section 5. The Investigating Officer would normally present the case in any hearing.
- 4.3** Identify a Presiding Officer. This would normally be the Head Teacher. It cannot be the person carrying out the investigation. If the Depute or Head Teacher is being investigated, the Presiding Officer should be a member of the Directorate.
- 4.4** Any formal proceedings should be carried out without delay, within the time frame of the local policy document and in the strictest confidence by all concerned.
- 4.5** When an investigation is complete, the Investigating Officer should hand the evidence gathered, together with a recommendation as to whether it is necessary to hold a hearing, to the Presiding Officer. It is important that the Presiding Officer remains unbiased and ensures that both the member of staff and the victim (if one exists) are treated fairly.

It is vital that the Presiding Officer comes to any possible hearing without forming a prior opinion on it, in the interests of natural justice.

- 4.6** If there are no grounds for a formal disciplinary procedure to continue, then inform the member of staff concerned and also the complainant if one exists. If, however, you need to take the case forward further, then you should convene a hearing.
- 4.7** It is important to make support, such as confidential counselling, available to any of the concerned parties who wish it. Most authorities offer a free staff welfare or counselling service, but employees may prefer to make their own arrangements.
- 4.8** The purpose of the hearing is to determine all sides of the issue and for the Presiding Officer to come to a final decision as to whether disciplinary action can be justified.
- 4.9** The staff member concerned must be invited to this hearing. He/she has a statutory right to be accompanied (usually by a union representative) and your invitation must state this. The Presiding Officer and Investigating Officer should also be at the meeting, and arrangements should be made for someone to take a record of the proceedings.
- 4.10** You must also let the staff member know that he/she has a right to call witnesses and present written evidence.
- 4.11** You should give at least 7 days' advance notice of any hearing, and set out the time-scale for the submission of evidence papers and the notification of witnesses. Any evidence you have should be made available to the staff member concerned and also to the union representative, together with the names of any witnesses to be called.

- 4.12** Ensure that sufficient time is set aside to hear the case fully. Again, follow the time-scales set out in the Council's procedures.
- 4.13** Employees who are called as witnesses will need to be released from their duties to attend, and you should plan to hear their evidence within normal working hours.
- 4.14** The Presiding Officer should check in advance whether he/she has the authority to impose the level of sanction that may be necessary.
- 4.15** After the Presiding Officer has come to a decision, he/she should intimate this as soon as possible to the staff member. If disciplinary action is considered necessary, then there are three possibilities: an oral warning, written warning or dismissal. Sometimes a final written warning is inserted between a written warning and dismissal. Where the case may warrant a final written warning or dismissal, the presiding officer should be a senior member of the Directorate empowered to impose such a sanction
- 4.16** If criminal charges have been made, then the staff member is innocent until proved guilty. You should not proceed with disciplinary procedures until this process has been completed. If the staff member is found not guilty or if the Procurator Fiscal does not take the case forward, then it is still possible that disciplinary procedures can take place.
- 4.17** In some cases, it may be necessary to suspend the teacher concerned. This decision should normally be taken at Directorate level

5. *The Investigation*

- 5.1** If due cause has been established for an investigation to be carried out, appoint the Investigating Officer as soon as possible.
- 5.2** Consideration must be given to how, when and where to inform the employee of the investigation and the reason for it.
- 5.3** The investigation should be carried out quickly to avoid unnecessary time delays and avoid collusion between possible witnesses, especially pupil witnesses. As the investigation is to gather evidence, it is important that this is done properly. The officer will wish to interview the staff member, who should be assured of his/her rights, including the right to be accompanied at the interview. It is wise to produce a written and agreed statement giving details of the interview. Such a statement should have the time and date of the interview along with details of those involved, and a note of both questions and answers. It is important to ensure that the employee is not intimidated by the presence of too many senior members of staff,
- 5.4** If pupils are to be interviewed, it is highly recommended that this is done (ensuring that collaboration is not possible) by asking them to write down their version of events. It is important that the time, date and name is on each sheet produced and that any questions asked are fair and do not specifically lead a pupil to giving a biased comment. If the alleged incident took place in a classroom with the class present, it is best to obtain statements from all the pupils in the class, taking a note of where they were sitting. This can substantially aid an investigation for all parties concerned. In serious matters, the parents of pupil witnesses should be advised, and given the opportunity to be present during any interview. It is essential to maintain confidentiality in this

instance. It may be wise to follow up pupil statements with an interview. Again, a detailed record should be kept. In all cases, it is important that any authority guidelines on interviewing pupils are followed.

- 5.5** The Investigating Officer should then look at the evidence, ensuring that no source has been overlooked, hand it over to the Presiding Officer and make a recommendation as to whether it is necessary to hold a disciplinary hearing.

N.B. In a possible Child Protection matter, the investigation will be conducted by the Child Protection Team, and the teacher concerned will almost certainly be suspended.

6. *The Hearing*

- 6.1** Notice of the time and date of the hearing must be given in reasonable time-scale, according to the authority policy. The teacher must be allowed time to arrange representation. You will have called the hearing according to the advice given in section 4. The purpose is to consider all the evidence and allow the staff member present his/her side of the matter. You should follow the formal structure based on authority guidelines and ensure protocol is observed.
- 6.2** Copies of all documents should be supplied to the teacher and his/her representative in advance along with names of witnesses to be called. It is important that you listen to the comments made and give the staff member a fair hearing. If the staff member wishes to call witnesses, then this should be allowed. The witnesses may be questioned by the Presenting Officer, the teacher's representative, the teacher or the Presiding Officer. Ensure that the questioning is appropriate. Hearsay evidence is not acceptable. Again, the principles of natural justice should be paramount, as should the use of common sense.

- 6.3** If pupils are to be called as witnesses, take the authority's advice as to how this should be managed. It is likely that a parent or guardian may wish to attend, but they may not take any part in the proceedings. There is an issue of the teacher's right to confidentiality here, and he/she may object to such a person being present. Again, take legal advice from the authority.
- 6.4** The structure of the hearing should be the prosecution first (by the investigating officer), followed by the defence and then any cross-examination from either side. Both sides are given the opportunity to sum up, with the defence being heard last. No new points of evidence may be introduced at this stage.
- 6.5** The hearing may be reconvened to deliver the decision verbally, but this must always be followed by a written notification.

7. After the Hearing

- 7.1** The Presiding Officer must notify the staff member in writing of the decision taken. This decision should be taken as soon as possible to alleviate further stress for the staff member concerned, but only after due consideration of the facts.
- 7.2** If you have decided to proceed with formal disciplinary action, this should be put in writing to the staff member (even if it is an oral warning) ensuring that the following points are covered:
- Notification of the decision (i.e. oral, written etc..)
 - The disregard period (6 months = oral, 1 year = written from the date of the incident) as per Council procedures
 - The right to make an appeal within 10 working days and to whom

- A statement of reasoning
- The level of sanction and recording.

Council procedures should provide guidelines, however a typical example of such a letter is in the appendix. You should keep this letter on file until the disregard period is complete and then destroy it.

7.3 It is important that ongoing support and/or counselling is offered to the staff member. It may also be necessary to set up some form of monitoring or support for a teacher who has been disciplined.

7.4 Where a teacher has been suspended pending a hearing, consideration must be given to the process of re-integrating him/her into the school. This should involve discussion with the teachers and his/her representative.

7.5 Strictest confidentiality must be observed at all times.

8 APPEALS

8.1 Any appeal must be heard by a different Presiding Officer, who holds a more senior post.

APPENDIX

Below is a typical letter formally disciplining a staff member. It may be that your Council has a letter similar to this which you must use.

DISCIPLINARY HEARING OF NAME / DATE

FORMALLY AGREED DISCIPLINARY PROCEDURE

Present: (enter names)

I have carefully considered the complaint against you and the evidence which has been presented regarding the allegation of (enter allegation) on (enter date). On this occasion I feel your actions fell below the professional standards I would expect from a member of staff. Accordingly it is my intention to issue a formal (enter oral or written) warning to you regarding this, and this sheet should be taken as this warning.

It is my duty to inform you that this formal (enter oral or written) warning has been recorded and placed in your file and will remain on your record for a period of (enter 6 months or 1 year) backdated to (enter date of incident). I must ask that this dereliction of duty should not be repeated during the period of this warning otherwise it may be necessary to take further action.

You have the right to appeal, and should you wish to appeal, this should be received in writing by (enter agreed Council name - normally the Director and the address) within 10 working days of receiving this statement. If the appeal is not registered in time, there is no further right of appeal.

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