

Grievance and Discipline Procedures

**For Employees in
Voluntary Aided and
Foundation Schools**

The National Society

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This guidance is one of a series produced by a working party representing The National Society, London Diocesan Board for Schools, Southwark Diocesan Board of Education and several other dioceses. It is designed for use in Church of England and Church in Wales schools. Advice should be sought on the application of the procedures from the Diocesan Board of Education.

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Preface

1 Governing bodies are required to adopt formal policies and procedures for staff grievance and discipline. This document addresses the particular circumstances of Voluntary Aided and Foundation schools. It is recommended to the governing bodies of those schools that they adopt the policies and procedures contained in this document.

2 It is essential that the policy and procedures recommended here are adhered to closely and advice sought at an early stage on how to implement them. This will help to avoid the possibility of time-consuming and expensive problems.

3 Governing bodies have considerable responsibilities for the staff they employ. It is hoped that this document will enable governors to have an accessible point of reference to guide them through the stages of any grievance or disciplinary procedure. **The need to seek professional advice at an early stage cannot be overemphasized.**

4 **It is important that schools contact Diocesan Boards and LEAs at an early stage in order to ensure that legal cover (if provided through the LEA under a service level agreement or generally) or insurance cover, which many Dioceses arrange is not being invalidated in any way.**

5 Because of the complexities of clerking disciplinary committees and appeals, a summary of the **role of the clerk** has been included in Annex B.

6 These procedures are based on the *ACAS Code of Practice on Discipline and Grievance at Work*. Eight **trade unions and professional associations** have also been consulted.

7 The **legislation** relating to staff discipline can be found in the Education Act 2002, the School Staffing (England) Regulations 2003 and the Teaching and Higher Education Act 1998 and relevant employment law.

8 It is hoped that governing bodies of Voluntary Aided schools, Diocesan Boards and LEAs will work in close **partnership** on these procedures. Foundation schools may wish to consult with Diocesan Boards and LEAs as well as with independent advisers.

9 A comprehensive set of **contracts** to meet the different needs of staff in Voluntary Aided schools has been produced by the same working party which produced these procedures. These contracts contain summaries of the procedures included in this book. As with the procedures, the trade unions and professional organisations have been consulted. Copies of contracts are available from the National Society and dioceses and on the National Society web site.

10 Throughout this document **bold type** is used to provide the reader with a quick point of reference to the subject of the paragraph.

11 This document has been produced by The National Society, the London Diocesan Board for Schools and the Southwark Diocesan Board of Education, in consultation with their legal advisers, Winckworth Sherwood.

Definitions

Committee A body formally appointed by the governing body and given delegated powers of decision on behalf of the governing body.

Companion A companion may be:

- another employee
- a full time official employed by a trade union, or lay trade union official, as long as they have been reasonably certified in writing by their union as having experience of, or having received training in, acting as a worker's companion at hearings. Certification may take the form of a card or letter
- a legal representative

Complaint In the context of these procedures, a complaint is an allegation made in writing that a named employee has behaved in an unacceptable way, which might justify disciplinary action being taken against her/him (see *grievance* below). If the complaint is upheld, it could result in the employee being disciplined (see para. B.1.3, p. 6). (For parental complaints separate procedures apply.)

Counselling Within these procedures means a confidential discussion in a one-to-one situation.

Diocesan Boards of Education (in London, Diocesan Board for Schools) Those bodies which, under the Diocesan Boards of Education Measure 1991 as amended, exercise statutory functions in relation to church schools. In the Church in Wales the Diocesan Boards exercise non-statutory but similar functions.

Designated governor A governor who has taken on the role of the chair of the governing body when the chair, for any reason, is unable to fulfil his/her role.

Grievance This is usually a complaint against a management decision, made by a Line Manager, the Headteacher, the governing body or the LEA but can include any concern, problem or complaint that an employee raises with his or her employer.

Grievant An employee or former employee¹ who places a grievance.

Gross Misconduct Misconduct so deliberate and serious that it could justify dismissal without previous warnings and without notice.

Hearing A meeting to hear representations

Line Manager An individual within the school staffing structure who has delegated responsibility, under the control of the headteacher, from the governing body for the day to day management of an identified group of staff members. This would normally be a member of the school leadership team.

¹ There is no set time limit for raising a grievance after leaving employment, but it should be borne in mind that if the matter is likely to go to employment tribunal, the limit is three months

Misconduct An act or omission, or series of acts or omissions, which are considered to be improper or unacceptable behaviour and which contravene school policies, rules and guidance, or professional conduct or behaviour.

Must Indicates something which is required by law or formal procedures.

On duty Refers to a member of staff on duty on or off school premises.

On file This means placing a record in an employee's personnel file. Employees have access to their file through the headteacher, but do not have access to confidential matters relating to other people.

Parent A parent, carer or guardian who has *"All the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to a child and his property."* (The Children Act 1989, Section 3)

Shall This has the same meaning as that given above for *must*.

Should Describes something which is generally accepted as good practice and is recommended.

Staff committee Comprises a group of governors appointed by the governing body to consider grievance and disciplinary matters, sometimes referred to as the first committee (see Annex A, pp.25-26).

Untainted governor One whose ability to act fairly is not impaired by previous direct involvement in the subject matter or by discussion with the governing body.

Abbreviations

ACAS Advisory Conciliation and Arbitration Service

DB Diocesan Board

GB governing body

HT headteacher

LEA Local Education Authority

LM Line Manager

NATSOC The National Society

SD school days

PART A: Introduction

A.1 Aims of these procedures

1.1 Governing bodies of all maintained schools² with delegated budgets are required to adopt formal procedures relating to staff grievance and discipline. The aim of these procedures is to provide governing bodies with:

- (a) fair, consistent and objective procedures for responding to problems of grievance, work performance or conduct;
- (b) procedures that will help and encourage all employees to achieve and maintain a high standard of performance and conduct.

A.2 Contracts

2.1 Governing bodies of Voluntary Aided and Foundation schools must provide all employees with **contracts of employment**. Governing bodies are advised to adopt the policy and procedures described in this document as part of each employee's contract. Employees should have easy access to a copy of these procedures. Where governors use contracts provided by the LEA they should satisfy themselves that such contracts correctly identify, and reflect, their role as employers of staff of the school.

A.3 General policy and principles

3.1 The governing body is responsible for ensuring that fair, consistent and objective procedures exist for matters relating to staff grievance and discipline.

3.1.1 The headteacher is responsible for the internal organization, management and control of the school. Under the School Staffing Regulations 2003 the Governing Body may delegate their responsibilities, other than the hearing of appeals to

- a. the headteacher
- b. one or more governors
- c. one or more governors and the headteacher.

The headteacher, with the agreement of the Governing Body, may delegate responsibility for matters up to final warning to the relevant line manager. In most cases this would be a member of the leadership team.

3.1.2 For matters of grievance that involve the actions of the line manager these will need to be dealt with by at least the headteacher. Where the matters involve the actions of the headteacher these will need to be dealt with by one or more governors.

3.1.3 If the headteacher feels that it is inappropriate for the matter to be dealt with within the terms of the delegation from the governing body s/he may request that the matter is dealt with by one or more governors.

² There are six types of maintained school: Community, Voluntary Controlled, Voluntary Aided, Special Community, Foundation and Foundation Special

3.1.4 The range of actual delegation within a particular school is for the governing body to determine and they should agree a formal policy on these matters annually. The relevant diocese or LEA may provide guidance on this.

3.2 It is essential that governing bodies, headteachers and line managers seek advice from relevant professionals such as Diocesan Boards and LEAs before initiating any procedures described in this document. ***Failure to do this may result in the governing body facing financial liabilities.***

3.3 The **discipline procedures** should not be thought of simply as a means of imposing sanctions or as necessarily leading to dismissal. The intention of the policy and procedures is that they should encourage all employees to achieve and maintain high standards of conduct.

3.4 Governing bodies should ensure that, in all matters relating to grievance and discipline, particular attention is paid to providing **equal opportunities** for all participants.³

3.5 Headteachers, line managers and governors involved in applying the procedures should undertake appropriate **training**. This can be obtained and/or requested through the diocese or LEA, or purchased from private consultants. It is important to ensure that the providers of the training are aware of the particular procedures applicable to Voluntary Aided and Foundation schools.

3.6 All **line managers** are responsible for ensuring that employees understand the standards of work and conduct that are expected of them. It is advisable for the headteacher to ensure that staff in a supervisory position are aware of the procedures adopted by the governing body.

3.7 Well-planned **support and/or counselling** should, whenever possible, precede informal or formal procedures. The employee should be helped to improve or resolve the situation as soon as it becomes apparent. Counselling may often be the most satisfactory method of resolving problems relating to a grievance or disciplinary matter. It should take the form of a discussion with the objective of encouraging and helping the employee. This should be documented and time limited.

3.8 At any stage of a formal grievance or discipline procedure, employees will always have the right to be **accompanied or represented by a companion**.

3.9 It should be borne in mind that when employees are choosing a companion that it would not be reasonable to insist on being accompanied by a colleague whose presence would prejudice the hearing or who might have a conflict of interest. Nor would it be reasonable for an employee to ask to be accompanied by a colleague from a geographically remote location when someone suitably qualified was available on site. The request to be accompanied does not have to be in writing.

3.10 **Meetings** to hear grievance and disciplinary matters are private meetings and are strictly confidential to those attending. They should normally be held during the employee's working hours. If the companion cannot attend on a proposed date, the employee can suggest another date that must suit everybody involved and must not be more than five working days after the original date.

³ Codes of Practice are available from the Commission for Racial Equality, St Dunstan's House, 201-211 Borough High Street, London SE1 1GZ Tel: (020) 7939 0000 and the Equal Opportunities Commission, Arndale House, Arndale Centre, Manchester M4 3EQ Tel: 0845 601 5901

3.11 **Periods of notice** of meetings or required action defined in the procedures may be extended or reduced in exceptional circumstances, provided that such an extension or reduction is mutually agreed.

3.12 Any of the parties may request in writing the **postponement of a hearing**; such a request should be given serious consideration. Only in exceptional circumstances should there be more than one postponement of a meeting. Documentation relating to any postponement should be kept on file. There is a statutory right to postpone where an employee's representative or colleague is unavailable to attend.

3.13 **All employees** at the school, whether full-time or part-time, temporary or permanent, teachers or support staff, use the same grievance and discipline procedures, unless stated otherwise in their contract.

3.14 Where the **headteacher is the subject** of any procedure, the procedures described in this document are modified so that the chair of the governing body, or other designated governor, replaces the headteacher in initiating any action which has to be taken. References in this document to the chair of the governing body could, in this context, include another designated governor in place of the chair, if for any reason the chair were unavailable. Where a **line manager** is the subject of any procedure, the headteacher or designated governor, depending on who has delegated authority will initiate the action.

3.15 All forms of **publicity**, both internal and external, should be avoided while a grievance or disciplinary case is being considered, as it might prejudice the final outcome (see Annex E regarding responding to the media, p.35-36).

3.16 Governing bodies of Voluntary Aided and Foundation schools should ask the **Diocesan Board** and the **LEA** to provide advice on all formal procedures. *It is important that all those involved closely follow every applicable stage of the procedure.* Employees are normally represented by their professional association, who will expect the procedures to be adhered to.

3.17 When a registered teacher is dismissed as a result of the disciplinary procedures, or might have been dismissed, but has resigned, during disciplinary procedures, **the employer must report the case to the DfES**, who will retain the case where it raises questions relating to the ability of teachers to work with children and young people for reasons relating to safety and welfare. Cases of misconduct which do not fall into this category are referred by the DfES to the **General Teaching Council for England or Wales** for consideration.

A.4 Importance of following procedures

4.1 The importance of closely following the procedures in this document cannot be overemphasized. Once adopted these procedures form part of the contractual relationship between the governing body and its employees. *Failure to adhere to these procedures can result in a decision being overturned on technical grounds.* This may also prejudice Diocesan Board and LEA support, should a disciplinary matter go to an employment tribunal, and jeopardize any legal expenses insurance protection.

A.5 Governing body committees

5.1 At the **beginning of the school year** the governing body should appoint a committee with delegated powers to consider staff grievance and disciplinary/dismissal matters. Alternatively

it may decide to delegate some of these responsibilities to the headteacher. It must appoint governors to hear appeals on these matters. (See Annex A for details, pp. 25-26)

5.2 The headteacher, line managers and governing body should be aware of the need to appoint someone to **clerk** any formal hearing. (See Annex B, pp. 27-30)

5.3 **Notes should be kept** of all hearings and a copy of these notes, together with any documents made available to the committee, should be retained by the clerk to the governing body for future reference. Although these documents are technically the property of the governing body, governors who are not members of the committee should not have access to the papers (see A.6 below). However, these documents would have to be made available if ordered by a court or tribunal or an investigating committee of the General Teaching Council.

5.4 At the end of the hearing all copies of papers should be given to the clerk to the meeting. S/he will then arrange for the **retention** of a set of papers and all notes for future reference and dispose of the remainder.

A.6 Protection from prejudice

6.1 To ensure that governors who may have to be on disciplinary or appeal committees are not tainted, **reports to the governing body** of any matters relating to grievance and discipline should be general and brief. Such reports must be in the confidential section of the meeting and only give brief notice in very general terms that an incident is being investigated.

6.2 Where a governor has knowledge of any incident, particularly the Chair, they are precluded from taking part in the formal processes

6.3 At the end of the procedure, including any appeal, the chair of the committee may provide a short written report to the next meeting of the governing body. This report should summarize briefly the nature of the incident and the outcome of the procedure.

6.4 The length of time a warning is in the file depends upon the stage reached (see Table 4, p. 21). While the warning is in the file the governing body should not discuss the matter relating to the warning as this could taint a possible future hearing.

6.5 **No one who has been involved in the initial investigation** of the case can be on the disciplinary/dismissal committee. Similarly, no one who has been in any way involved with the case, or taken part in discussions relating to it, may hear an appeal. If an employee is the subject of more than one hearing, governors who served on a previous disciplinary committee concerning that employee may serve on any subsequent committee, dealing with fresh allegations against the same employee, where no alternatives are possible.

A.7 Natural justice

7.1 In order to comply with the **principles** of natural justice the following should be observed:

(a) a person is entitled to an **unbiased** hearing;

(b) **no one person** can be both the bringer of a complaint and an arbiter of the complaint;

- (c) there must be **adequate time** for the employee to prepare and to consult with their **companion**;
- (d) the case must be thoroughly investigated, clearly written and be supported by evidence. Care must be taken not to allow assumptions, prejudices or stereotypes to influence decisions;
- (e) the employee has the right to be accompanied by a **companion** at any hearing;
- (f) the employer or representative has the right to be accompanied by a **companion** at any hearing;
- (g) both sides have the **right of reply**;
- (h) both sides may call **witnesses** and produce written evidence. There will normally be no restriction on witnesses, but the hearing reserves the right not to hear witnesses whose evidence it decides is not relevant. There must be a right of cross-examination by both sides (see para. C.1.2.7, p. 12, regarding pupils);
- (i) there is a **right of appeal**. The Appeals Committee is empowered to confirm the decision of the headteacher, line manager or the disciplinary committee, impose a lesser penalty or order that no action be taken. They are not empowered to impose a more severe penalty than that originally imposed.
- (j) **no one who has been involved** in the initial investigation of the case can be on the disciplinary or appeal committee.

PART B:

Grievance procedures

B.1 General guidance

1.1 Grievances can only be invoked by an employee or former employee of the governing body. Grievances usually relate to the administration or management of the school and to decisions reached by the governing body, the head or a member of staff with management responsibility but may relate to other concerns, problems or complaints that an employee has. Grievances might relate to:

- Terms and conditions of employment
- Health and safety (but see 1.6 below)
- Work relations
- Bullying and harassment
- New working practices
- Working environment
- Organisational change
- Equal opportunities

1.2 A grievance procedure is different from a disciplinary procedure and the two should not be confused. If in the course of a disciplinary case a member of staff raises a grievance that is directly related to the case it may be appropriate to suspend the disciplinary procedure for a short period until the grievance can be considered.

1.3 Where allegations are made against a named employee, they would normally be treated as a complaint and be referred for investigation under the disciplinary procedure. A complaint, in the context of these procedures, is an allegation made in writing that a named employee has behaved in an unacceptable way connected with their employment, which might justify disciplinary action being taken against her/him (see Part C, Disciplinary Procedures, pp. 11-22). If the complaint is upheld, it could result in the employee being disciplined.

1.4 Where the headteacher, line manager or chair of the governing body receives a complaint, it is important that a full investigation is carried out as described in the disciplinary procedure (see para. C.1.2, p. 12) prior to any further action. When the investigation has been completed a decision must be reached as to what, if any, part of the disciplinary procedure should be followed.

1.5 Grievances can be of a relatively simple nature or of fundamental importance. To meet these different situations the procedure provides:

- an informal procedure without recourse to subsequent stages (see para. B.2 below); and
- a formal procedure for use when the informal procedure has failed or is inappropriate. (see. B.3, pp. 7-9).

1.6 Every effort should be made to resolve the grievance as quickly and amicably as possible. Normal working practices should be maintained until all stages of the procedure have been exhausted.

1.7 This procedure is not intended for use with collective grievances which would more appropriately be dealt with through normal employer/union negotiation.

1.8 A person against whom a grievance is made must be informed of the nature of the grievance and have an opportunity to respond; this will normally be done once the person investigating the grievance is clear about the nature of the grievance.

1.9 Procedures for responding to **complaints relating to pay** should be considered within the school's Whole School Pay Policy.

B.2 Informal stage

2.1 Where an employee has a grievance resulting from a management decision, s/he should discuss the matter with her/his line manager or the headteacher. Efforts should be made to resolve the matter by making a direct approach to the member of staff concerned. Where such a discussion does not settle the matter, the employee should bring the matter to the line manager or to another senior member of staff.

2.2 Where an employee requests a **personal interview** with their line manager or with the headteacher, it shall be granted within 5 school days.

2.3 The headteacher, or line manager, should **seek to resolve the problem personally** or by mutual agreement with other member(s) of staff.

2.4 Where the headteacher has a grievance with the governing body, s/he should first try to resolve the matter by a direct approach. If this does not settle the problem, s/he should discuss the matter with the diocese or LEA. Where actions of the chair have provoked the grievance and this cannot be resolved by a personal approach, s/he should discuss the matter with the vice-chair of the governing body, the Diocesan Board and the LEA.

2.5 Where the informal steps described above do not resolve the matter, the employee may proceed to make a formal notice of grievance.

2.6 Notes should be kept by the person investigating the grievance of all informal discussions. These notes should be placed on file and be available to all parties.

B.3 Formal stage

3.1 Where the grievance has not been resolved under the informal procedure described in paragraph B.2 above, the grievant may invoke the formal grievance procedure. This may be in writing to the headteacher or line manager, together with any relevant documents. Such formal notice should be submitted as soon as possible after the conclusion of the informal stage. If the grievance involves other employees, copies of any papers given to the headteacher or line manager should also be sent to them.

3.1.1 Where the headteacher wishes to make a formal grievance, s/he must give notice to the clerk of the governing body.

3.2 The headteacher or line manager **should seek to settle an employee's grievance**. Much of the procedure given below may have taken place during the informal stage, but once the grievance has been formalized the steps must be repeated, with written records being agreed between the parties concerned, at each stage. The headteacher or line manager must:

- (a) arrange to meet the grievant within 5 school days of receipt of the formal grievance;
- (b) explore with the grievant the nature of the grievance and any action that s/he wishes to have taken to resolve it;
- (c) undertake an investigation involving all relevant parties both on the side of the grievant and the person against whom the grievance was made;
- (d) determine whether the grievance is justified and, if so, what action can be taken/recommended to resolve it;
- (e) write a letter to the grievant as soon as possible, saying:
 - what is understood to be the nature of the grievance;
 - whether the grievance is considered justified and, if so,
 - what action is to be taken or recommended to resolve it;
 - if the grievance is considered not justified, the reasons for arriving at this conclusion;
 - that a committee of the governing body would be ready to consider the grievance if asked to do so;
- (f) put on file a full written record of the grievance, including the facts established, the decision taken and the reason for it, together with the dates upon which the grievance was heard and responded to;
- (g) send a confidential report of the grievance and action taken to the chair of the governing body or any other person appointed by the governing body to receive such reports.
- (h) The grievant and the headteacher or line manager may each be accompanied by a **companion** throughout the above process.
- (i) The grievant should be aware that if their grievance is not presented in writing, they will not subsequently be able to take the case to an employment tribunal.

3.3 If the grievant is not satisfied with the outcome of the action taken by the line manager or headteacher s/he should send a written request to the clerk to the governing body within 10 school days of the date of the letter notifying her/him of the line manager or headteacher's determination, asking for a **committee of the governing body** to consider the grievance. The clerk then notifies the governors appointed to hear grievances and arranges a date for them to consider the grievance.

3.4 Copies of relevant documents should be sent to the Diocesan Board and LEA. They should also be informed of the date of the meeting (see Annex B, pp. 27-30).

3.5 The **meeting of the governors' committee** to hear the grievance shall take place within 15 school days of the receipt of the written request by the clerk. The parties involved shall be given not less than 10 school days' notice of the time and place of the meeting. The clerk

should receive papers for distribution at least 7 school days before the date of the hearing. Copies of documents to be placed before the committee should be given to all those attending the committee not less than 5 school days before the meeting and earlier if possible.

3.6 Where a headteacher considers that her/his grievance has not been satisfactorily settled through an informal process, s/he should give notice to the clerk of the governing body asking for the grievance to be considered by a committee of the governing body.

3.7 The procedures to be followed by the governors' committee are described in Part D of this document (pp. 23-24).

B.4 Appeal

4.1 If the grievant wishes to appeal against the decision of the governors' committee, s/he should send a written notice of appeal to the clerk of the governing body within 10 school days of the date of the letter notifying her/him of the decision of the committee. The notice of appeal must include the grounds on which the appeal is being made. For details of appeal procedure see paragraph D.1 (pp. 23-24).

B.5 Timescales

5.1 In the following summary the numbers in the 'Time' column in Table 1 indicate the number of clear school days by which the action should have taken place.

5.2 In exceptional circumstances it may become necessary to adjust the timescales given; all parties should agree any adjustments.

Table 1: **Summary of stages and timescales for grievance procedure**

Stage	Description of action	Time
1 Informal	Informal meeting of line manager or HT with grievant after meeting requested by grievant.	5 SD
2 Formal	HT or LM meets grievant after receipt of notice of grievance or complaint.	5 SD
3 Formal	If grievance is continued after the meeting with the HT or LM, grievant writes to clerk to the GB asking for a GB committee to hear the grievance.	10 SD
4 Formal	The GB committee meets to hear the grievance after formal request received by the clerk. Notice given to parties involved in GB committee hearing. Copies of documents sent before the meeting to parties involved in hearing.	15 SD 10 SD 5 SD
1 Appeal	If the employee wishes to appeal s/he sends written notice to the clerk to the GB.	10 SD from date of meeting
2 Appeal	The clerk to the GB arranges for a meeting of the Appeal Committee. Meeting to be held within 15 SD of receipt of written appeal. Parties involved shall be given not less than 10 SD notice of meeting.	15 SD 10 SD
3 Appeal	Copies of documents to be placed before committee should be given to all parties not less than 5 SD before the hearing.	5 SD

PART C:

Disciplinary procedures

C.1 General guidance

1.1 General guidance

1.1.1 A disciplinary procedure is different from a grievance procedure and the two should not be confused.

1.1.2 *Disciplinary rules* tell employees what behaviour and performance is expected of them. If an employee breaks specific rules about behaviour, this is often called *misconduct*. If an employer's expectations about the way they do their job are not met, this is *poor performance* (or *capability*).

1.1.3 When **starting a procedure**, it should be noted that there is nothing in these procedures that prevents any one or more levels of disciplinary action being omitted, should it appear that allegations made against the employee justify such action. However headteachers, line managers and governors must be ready to explain in writing why this course of action has been taken.

1.1.4 The level at which the procedure is being implemented should be made clear to the employee, so that s/he is aware at the outset of the potential seriousness of the case and what possible sanctions may follow. This should be put into writing for the employee.

1.1.5 Where the headteacher is the subject of any procedure, the procedures described in this document are modified so that the chair of the governing body, or other designated governor, replaces the headteacher in initiating any action that has to be taken.

1.1.6 The law on unfair dismissal requires employers to act *reasonably* when dealing with disciplinary issues. What is classed as reasonable behaviour will depend on the circumstances of each case, and is ultimately for employment tribunals to decide.

1.1.7 References in this document to the chair of the governing body could, in this context, include another designated governor in place of the chair, if for any reason the chair were unavailable. The full extent to which governors may delegate these matters is described on page 1 Section A3 para 3.1.1 above.

1.1.8 The headteacher is responsible for keeping up-to-date and accurate records on file for each employee. Employees have the right to examine their personnel records if they ask to do so, but they do not have access to confidential matters relating to other people or to confidential references which may be in their file. This should always be arranged through the headteacher.

1.2 Investigation

1.2.1 In matters other than those described in paragraph C.1.2.8 below, the headteacher or line manager undertakes or arranges for a full investigation of matters relating to an instance of misconduct or a complaint relating to an employee. This should be carried out as soon as possible after allegations have been made. If it is not appropriate for the head-teacher to undertake or arrange the investigation, the chair of the governing body must appoint someone else to fulfil this function or undertake it him/herself.

1.2.2 The employee will normally be informed of the nature of the allegation and that an investigation is taking place. If the employee is interviewed during the course of the investigation s/he must be informed that s/he may be accompanied by a **companion**. When employees are choosing a companion, it should be borne in mind that it would not be reasonable to insist on being accompanied by a colleague whose presence would prejudice the hearing or who might have a conflict of interest. Nor would it be reasonable for an employee to ask to be accompanied by a colleague from a geographically remote location when someone suitably qualified was available on site. The request to be accompanied does not have to be in writing.

1.2.3 The aim of the investigation is to establish the facts of the case and the people affected by the problem. Any witnesses to alleged offences should be asked to make **written statements** and to sign and date their statements. The headteacher or line manager should sign and date the statements as evidence of receipt.

1.2.4 The employee should be invited to identify any persons who may have information relevant to the investigation.

1.2.5 The headteacher or line manager should **include in her/his report** of the investigation:

- a list of names of people spoken with during the investigation, giving dates and times;
- a list of written, signed and dated statements attached;
- a chronological summary of incident(s) giving rise to the investigation and the stages of the investigation;
- the conclusions drawn from the investigation;
- a decision of what step to take next, for example:
 - a) to take no further action;
 - b) to deal with the matter him/herself;
 - c) to give First/Final written warning;
 - d) to refer the matter to the Disciplinary Committee.

1.2.6 Documents relating to an investigation must be **retained on file**, together with a written record of the outcome of the investigation for the same length of time as any subsequent warning on the file (see Table 3, p. 17). Where an investigation does not result in a formal procedure, papers relating to an investigation should be kept for a maximum of 3 months.

1.2.7 If, during the formal investigation, pupils are involved, especially young pupils, they can be asked to make an oral statement, which will then be written and witnessed on their behalf. The headteacher or line manager should always seek permission from the parent(s) to take a formal statement from their child and invite them to be present. It will very rarely be

desirable for young pupils to attend a hearing but, in certain cases, it may be appropriate for older pupils to attend.

1.2.8 If an allegation relates to **physical or sexual abuse** of a child, it is essential that the person investigating contacts the LEA's Child Protection Officer **BEFORE** taking any further action to discuss how to proceed. The outcome of the discussion may be that an investigation by the Child Protection Team is appropriate, in which case any investigation by the school must be held in abeyance (see Annex D, pp. 33-34). It may be appropriate to suspend the member of staff until the outcome of the LEA investigation is known.

1.3 Criminal offences

1.3.1 When an alleged criminal offence takes place while the person is on duty, and the matter is being investigated by the police, it may be appropriate to await the outcome of these investigations before proceeding with a disciplinary hearing. Suspension of the member of staff until the outcome of the police investigation is known should be considered.

1.3.2 There might occasionally be a connection between an allegation of an employee's criminal offence committed while not on duty, and their ability or suitability for continued employment at the school, particularly if the allegation relates to abusive or immoral behaviour. Such allegations should be investigated and considered within the framework of these procedures. In cases of child abuse, LEA and inter-agency guidelines should be followed (see Annex D, pp. 33-34). Voluntary Aided and Foundation schools should seek advice from the Diocesan Board and LEA at an early stage.

1.3.3 When governors have any concerns relating to criminal offences, they should seek advice from the Diocesan Board and LEA at the earliest opportunity.

C.2 Misconduct

2.1 General guidance

2.1.1 The following are **examples of misconduct** and in severe cases could be considered as gross misconduct; this list is for guidance only and is not exhaustive:

- failure to discharge, without sufficient cause, the obligations which statute, the terms and conditions of employment and the **contract of employment** place on the employee;
- failure to remain at the place of work during normal working hours without permission;
- frequent failure to attend work punctually;
- failure to notify the school as soon as is practicable when absence is due to sickness (see separate National Society booklet, *Managing Staff Sickness Absence*);
- making unauthorized private telephone calls or sending personal mail at the school's expense or unauthorized use of the Internet;
- insubordination;

- failure to exercise proper control or supervision over pupils;
- abusive behaviour or language that is directed to staff, parents, pupils or members of the public;
- victimization and intimidation of other employees in the course of duty;
- unlawful discrimination against other employees, pupils or members of the public in the course of duty;
- dishonesty;
- a wilful attempt to mislead.

C.3 Gross misconduct

3.1 General guidance

3.1.1 The following list provides **examples of gross misconduct**; it is for guidance only and is not exhaustive:

- theft, fraud, deliberate falsification of records;
- fighting, assault on another person;
- deliberate damage to school property;
- violent and/or intimidating conduct
- serious incapability through alcohol or being under the influence of illegal drugs;
- serious breach of confidence;
- bringing shame on the employer;
- serious breach of health and safety rules;
- child abuse
- serious misuse of the internet
- serious negligence that causes unacceptable loss, damage or injury;
- serious act of insubordination;
- serious acts of unlawful discrimination against other employees, pupils or members of the public in the course of duty;
- unauthorized entry to computer records;
- continued and repeated offences.

3.1.2 Acts of gross misconduct normally lead to suspension while the alleged offence is investigated (see para. C.4.1, p. 21).

3.1.3 The procedures to be followed in cases of gross misconduct are the same as those described below for misconduct, but normally proceed directly to stage 3 with a consideration by the headteacher or disciplinary committee of the governing body.

3.1.4 If, on completion of the investigation, the headteacher or the governors' disciplinary committee is satisfied that gross misconduct has occurred, the result may be **summary dismissal** without notice or payment in lieu of notice (see para. C.3.2.2 below). In such a case a right of appeal still stands. The Diocesan Board and LEA should be consulted before this action is taken.

3.2 Stages in the disciplinary procedure

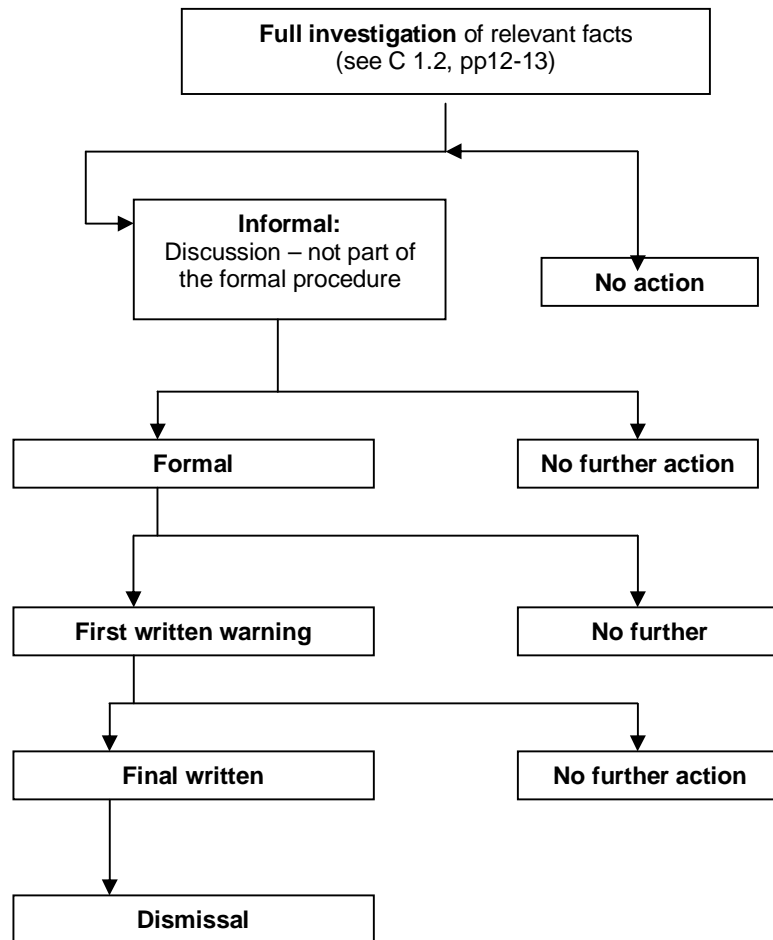
3.2.1 For the stages in a disciplinary procedure, see Table 2, page 16.

3.2.2 There is nothing in these procedures which prevents **one or more levels of disciplinary action being omitted**, should it appear that allegations made against the employee seem to justify such action. However, headteachers, line managers and governors must be ready to explain why this course of action has been taken as it may be challenged by professional associations. Advice should be sought before omitting stages in these procedures.

3.2.3 **The level at which the procedure is being implemented** must be made clear to the employee, so that s/he is aware at the outset of the perceived seriousness of the case and what possible sanctions may follow.

3.2.4 In cases of gross misconduct, procedures would normally start at stage 3 with a consideration by the headteacher or the disciplinary committee of the governing body.

Table 2: **Stages in the disciplinary procedure**



3.2.5 If, on completion of the investigation the headteacher or the governors' disciplinary committee is satisfied that gross misconduct has occurred, the result may be **summary dismissal**. Summary dismissal is where employment is terminated without pay in lieu of notice.

3.2.6 Where it becomes necessary to consider initiating a further disciplinary action while a warning for a different matter exists on record, the normal procedures should be followed. The **warning on file** does not form part of the evidence in this further disciplinary case. However, the previous warning will be brought to the headteacher's or the governors' attention when they are considering the appropriate sanction, should the allegations be proved (see Annex B, para. 6, p. 29).

3.2.7 The three stages of the formal procedure are summarized in Table 3.

3.3 Informal procedure

3.3.1 Where possible, matters relating to conduct and discipline should be resolved informally. This is an important role for the headteacher and senior members of staff or line managers. Cases of minor misconduct should be dealt with informally. An informal discussion is often all that is required to improve a worker's conduct. The informal approach may be particularly helpful in small schools, where problems can be dealt with quickly and

confidentially. There will however, be situations where matters are more serious or where an informal approach has been tried but is not working.

3.3.2 If, after having had the informal discussion, misconduct has been identified it is important that the headteacher or line manager makes clear to the employee at the meeting future expectations as to appropriate conduct. Notes of any informal meeting should be kept by the headteacher in case the informal action does not bring about an improvement and formal actions may need to be taken.

Table 3: **Summary of stages in a disciplinary procedure**

Stage	Procedure	People involved
Informal	Informal discussion(s) Notes of informal discussion kept on file for 6 months	Headteacher or line manager and employee
1 Formal	First written warning Notes of meeting and signed copy of warning placed on file Warning remains on file for 12 months	Clerk to the meeting Headteacher or line manager and companion Employee and companion LEA and DB provide advice
2 Formal	Final written warning Record of meeting and signed copy of warning placed on file Warning remains on file for 24 months ^a	Clerk to the meeting Headteacher or line manager and companion Employee and companion LEA and DB provide advice
3 Formal	Governors' disciplinary committee considers what action to take, including whether to dismiss	Clerk to the governing body Committee of governors Employee and companion Headteacher and companion LEA and DB provide advice
	Or Headteacher considers what action to take including whether to dismiss	Employee and companion Headteacher and friend Clerk to the meeting LEA and DB provide advice
Stage	Procedure	Time involved
1 Appeal	If the employee wishes to appeal s/he sends written notice to the clerk to the GB	10 SD from date of meeting
2 Appeal	The clerk to the GB arranges for a meeting of the Appeal Committee. Meeting to be held within 15 SD of receipt of written appeal. Parties involved shall be given not less than 10 SD notice of meeting Copies of documents to be placed before committee should be given to all parties not less than 5 SD before the hearing	15 SD 10 SD 5 SD

a. May remain permanently for some serious cases (see para. C.3.4.5(i)).

NB Where the headteacher feels that it is inappropriate for them to act in the above one or more governors should act in their place (see page 1 A3 3.1.3).

3.4 Formal procedure

3.4.1 In order to be consistent and fair to all involved, these procedures should be strictly adhered to at every stage. Reference should be made to paragraph A.6.1, (p. 4) with regard to informing the governing body.

3.4.2 As employer, the governing body is ultimately responsible for all stages of a formal procedure. It may delegate responsibility to the headteacher, who may in turn (with the agreement of governors) delegate some responsibilities to a line manager (see Annex A, pp. 25-26).

NB Where the headteacher feels that it is inappropriate for them to act in the above governors should act in their place (A3 3.1.3. p.3).

3.4.3 The **governors' committee** taking part in stage 3 of the procedure must have a membership of at least one governor, but it is recommended that the membership should be three where possible (see Annex A, pp. 25-26).

3.4.4 Stage 1: first written warning⁴

(a) Where, after completing investigations, the headteacher or the line manager (see Annex A, pp. 25-26) consider it appropriate, they must ask the clerk to convene a meeting.

(b) Notice of the meeting must be sent to all parties at least 10 school days before the date of the meeting; in some cases and with the agreement of the employee it may be necessary to allow 15 or 20 days depending upon the complexity of the matter; the notice must include:

- the time and place of the meeting;
- the purpose of the meeting (see (c) below);
- the employee must be informed in writing: of the nature of the allegations made against him/her and be sent copies of any relevant papers;
- the employee should be informed of the time limits by which s/he should submit her/his own written evidence;
- the entitlement to be accompanied by a representative or **companion**;
- the names of any people who may be called as witnesses;
- copies of any written evidence or relevant documents currently available (see Annex F, sample letter 1, p. 38);
- details of the procedure to be followed during the meeting.

(c) The purpose of the meeting is for the headteacher, line manager or disciplinary committee to consider the allegations that have been made, to review the evidence and to decide on one of the following courses of action:

- that no further action be taken;
- that a first written warning be issued.

(d) The procedures to be followed by the disciplinary meeting are described in Part D of this document (pp. 23-24).

⁴ The Diocesan Board and LEA need to be consulted

(e) The employee must be informed in writing of the decision of the meeting as soon as possible after the meeting, and within 5 school days that any further transgression could lead to a more severe penalty, up to and including dismissal; s/he must also be informed of the right to appeal against the decision (see Annex F, sample letter 2, p. 39).

(f) A copy of the letter sent by the clerk to the employee should be sent at the same time to the Diocesan Board and LEA.

(g) In the case of a first written warning copies of the decision of the headteacher, line manager or disciplinary committee meeting and clerk's letter to the employee remain on the employee's personal records for 12 months, after which time it is removed; after such a record has been removed, it may not be referred to in any subsequent disciplinary action.

3.4.5 Stage 2: final written warning:⁵

(a)–(f) as in paragraph C.3.4.4 above, but the courses of action in (c) may be:

- that no further action be taken;
- that a first written warning is issued;
- that a final written warning is issued.

(g) In the case of a final written warning a copy of the record of the hearing and clerk's letter to the employee remain on the employee's personal records for 24 months, after which time it is removed; after such a record has been removed, it may not be referred to in any subsequent disciplinary action.

(h) A final written warning will contain a statement that any further act of misconduct could lead to dismissal. The employee must also be given the right to appeal.

(i) In extreme cases, where there could be an ongoing concern, the final written warning may remain permanently on file. When this is the case, it must be made clear, in writing, that the warning can never be removed and that any recurrence would lead to dismissal.

3.4.6 Stage 3: hearing leading to dismissal⁵

(a)–(f) as in paragraph C.3.4.4 above but dismissal may be a further course of action in (c).

(g) Where the headteacher or disciplinary committee decides to dismiss the employee, all records must be kept carefully, in case of an appeal.

3.4.7 Warnings on file:

(a) The reason for keeping a warning on file is that the headteacher or disciplinary committee will refer to it when reaching a decision on the appropriate sanction to impose (see para. D.1.8, p. 24).

(b) All warnings should include clearly stated advice that further transgression could lead to a more severe penalty, up to and including dismissal.

⁵ The Diocesan Board and LEA need to be consulted

3.5 Timescales

3.5.1 The number of days in the third column of Table 4 (p. 21) represents the maximum number of days which should be allowed before action is taken. In exceptional circumstances it may become necessary to adjust the timescales given; any adjustments should be agreed by all parties.

3.6 Appeal

3.6.1 If the employee wishes to appeal against the decision of the headteacher, line manager or disciplinary committee, s/he must send a **written notice of appeal** to the clerk of the governing body within 10 school days of the date of the letter notifying him/her of the decision of the headteacher, line manager or committee. The notice of appeal should include the grounds on which the appeal is being made. For details of appeal procedure see Part D (pp. 23-24).

3.6.2 The Appeals Committee is empowered to confirm the decision of the headteacher, line manager or the disciplinary committee, impose a lesser penalty or order that no action be taken. They are not empowered to impose a more severe penalty than that originally imposed.

3.7 Headteacher

3.7.1. Where the **headteacher is the subject of any procedure**, the procedures described in this document are modified so that the chair of the governing body, or other designated governor, replaces the headteacher in initiating any action which has to be taken. References in this document to the chair of the governing body could, in this context, include another designated governor in place of the chair, if for any reason the chair were unavailable.

3.8 Joint hearing

3.8.1 Occasionally **two or more employees may be involved** in the same disciplinary matter; where this is so, the case would be heard at one sitting. The same facts would relate to each of the employees and there would be similar charges against each employee. The procedure would be adapted to provide for:

- each employee and their companion being before the hearing at the same time; one should not be present without the other;
- each employee calling witnesses;
- each employee having the right to ask questions of the other employee(s) and their witnesses, if any, and of whoever is presenting the case to the hearing;
- the hearing may reach different decisions and impose different sanctions for each of the employees.

Table 4: **Summary of timescales for formal disciplinary procedure**

1 First written	Notice to employee to attend hearing with headteacher or line manager	10 SD
	Record of meeting sent to employee	5 SD
	From date of meeting, appeal from employee to be received by the clerk to the GB	10 SD
	Record remains on personnel file	12 months
2 Final written	Notice to employee to attend hearing with headteacher or line manager	10 SD
	Record of meeting sent to employee	5 SD
	From date of meeting, appeal from employee to be received by the clerk to the GB	10 SD
	Record remains on personnel file	24 months ^a
3 Formal	Notice of disciplinary hearing to all parties	10 + SD
1 Appeal	If the employee wishes to appeal at any stage s/he sends written notice to the clerk to the GB	10 SD from meeting
2 Appeal	The clerk to the GB arranges for a hearing with the Appeal Committee. Meeting to be held within 15 SD of receipt of written appeal. Parties involved shall be given not less than 10 SD notice of meeting	15 SD
	Copies of documents to be placed before committee should be given to all parties not less than 5 SD before the hearing	10 SD 5 SD

a. May remain permanently for some serious cases (see para. C.3.4.5(i)).

C.4 Suspension

4.1 In cases of **misconduct or gross misconduct**, it may be considered necessary to suspend an employee pending an investigation. The headteacher or the chair of the governing body may suspend an employee. In practice this should only be done following consultation with the Diocesan Board and LEA. (See para. C.1.3.2, p. 13, relating to criminal offences while not on duty.)

4.2 Suspension is a neutral act, not a disciplinary penalty, and carries no assumption of guilt, although it is seldom seen as such by onlookers. Careful consideration should be given to the case before an employee is suspended. If the alleged offence is a dismissable offence, suspension will normally apply.

4.3 Suspension should only be applied where the circumstances of the case make it unacceptable for the employee to remain in school while the facts are ascertained. Circumstances in which suspension occurs include:

- (a) where children are considered to be at risk;
- (b) where the allegations are so serious that dismissal for gross misconduct is possible;
- (c) where it is necessary for the conduct of the investigation to proceed unimpeded.

4.4 Where suspension is under consideration, an interview should be arranged. This can be at very short notice, if the situation is serious.

4.5 An employee called to such an interview must be advised that s/he may be accompanied by a **companion**. It must be made clear that the interview is not a formal disciplinary hearing but is for the purpose of putting forward a serious matter which may lead to suspension and further investigation.

4.6 The employee must be given as much information as possible about the allegation and about the reasons for the suspension. The employee must be given an opportunity to make representations concerning the suspension. A short adjournment may be considered if requested by the employee prior to response.

4.7 **Written confirmation** of the suspension must be dispatched within one working day and should include:

- the date from which suspension becomes effective;
- reasons for the suspension;
- copies of any relevant documents;
- details of the procedures which will be followed;
- a statement that full pay will be maintained during the period of suspension (see Annex F, sample letter 3, p. 40).

4.8 If the chair of the governing body or the headteacher wishes to **inform parents** of the absence of the suspended member of staff, they should seek advice from the Diocesan Board and LEA before doing so.

4.9 The **period of suspension** should be as brief as possible and investigations started immediately.

4.10 Support should be provided for the employee during the period of suspension:

(a) the suspended employee should be given the name of a responsible person at the school or LEA as an information contact. The main role of the contact person is to provide information as to the progress of the investigation.;

(b) arrangements should be made for the employee or her/his **companion** to be contacted regularly with information on progress and developments on the case. These arrangements should not preclude the employee or her/his **companion** contacting those conducting the investigation at any time;

(c) if the employee wishes, the contact person should also be in a position to provide him/her with information regarding developments at the school in general.

(d) In some cases, it may be appropriate to ask the employee whether counselling would be helpful.

(e) Consideration should be given to pastoral support.

4.11 At the **end of the investigation**, a meeting should be arranged to inform the employee of the next step. The employee may be accompanied or represented by a companion at the meeting.

4.12 Only the governing body can **lift a suspension** but in practice this will normally be done by the chair of the governing body. The matter will usually be dealt with by the chair under emergency action although s/he should consult with the Diocesan Board and LEA before acting.

PART D:

Procedures for grievance, disciplinary and appeal hearings

D.1 Procedure for a hearing

1.1 Subject to the procedure outlined below, the chair of the hearing is responsible for the conduct of the proceedings and for any variance s/he considers appropriate and s/he:

- welcomes those present and makes introductions;
- stresses that hearings are private meetings and that all information is strictly confidential to the people present;
- outlines the procedure to be followed during the hearing;
- asks all attending the hearing, including witnesses, to remain available for a short period of time after they withdraw from the hearing, in case there is a need to clarify any point.

1.2 Witnesses will normally only be present during a hearing to give their evidence and be questioned by all parties, and will then withdraw.

1.3 In order to obtain clarification or to refute misinformation, it may sometimes be necessary for one of the parties to be given permission to ask further questions of a witness.

1.4 The chair of the hearing may decide to **adjourn** the meeting for a short period or for a number of days if new evidence is brought that all parties have not had time to consider, or for any other good reason. If there is an adjournment, the reconvened meeting must comprise the same membership. Either party may request an adjournment.

1.5 The chair of the hearing explains how the decision will be imparted.

1.6 The employee and witnesses withdraw (as do the headteacher and line manager if the hearing is before a disciplinary committee of the governors). They may have been asked to **remain available** for a short period of time, in order to clarify any particular point.

1.7 Consideration of the matter will take place in the presence of the clerk and any legal advisers. If any further information is required, then all parties should return. An opportunity should be given to each party to question or comment on this additional information.

1.8 In considering the matter a two-stage process should be adopted:

(a) to decide whether the allegations against the employee are proved on the balance of probabilities;

(b) to decide on the appropriate sanction, if the allegations are proved; it is at this point that any warnings remaining on file are considered (see para. C.3.4.7, p. 19 and Annex B, para. 6, p. 29).

1.9 The parties concerned are notified either by being recalled to hear the decision of the committee, or by telephone or letter.

1.10 The clerk to the hearing writes to the parties concerned confirming the decision and providing information about any right of appeal. The letter is copied to the Diocesan Board and LEA.

1.11 Reference should be made to paragraph A.6.1 (p. 4) with regard to informing the governing body.

1.12 A model agenda for grievance, discipline and appeals hearings are in Appendix G (pp. 43-44). A copy of this should be sent to all involved in a hearing.

Annex A

Appointment of governing body committees

1 Quorum

1.1 The quorum for a meeting of the governing body is one-half of the members of the governing body in post, when powers are being delegated to a committee.

2 Staff committee

2.1 The School Staffing (England) Regulations 2003 give the governing body authority to delegate many of its powers on staffing matters to

- the headteacher or
- one or more governors or
- one or more governors and the headteacher.

2.2 Although the governing body may decide to delegate some of its powers, it still has a responsibility for the procedures being adopted and for hearing any appeals against the decision of the headteacher or line manager. It may be involved in conducting other hearings in the circumstances outlined in this booklet. Therefore, each year, the governing body should appoint a group of governors to undertake the implementation of grievance and disciplinary procedures. It is recommended that there should be three governors present at any hearing or appeal. However, given the variation in the size of governing bodies it is not always possible to achieve this.

3 Pool of governors for different committees

3.1 It is imperative that such committees are seen to be impartial, and governing bodies are advised to set up panel members (excluding the head) from which they can be formed. It is suggested that a pool of members of the governing body are nominated in order that a staff committee and the related appeal committees can each consist of at least three members except in exceptional circumstances. A 'spare' governor is a reserve to be called upon if another member is ill or disqualified because they have an interest in the outcome or could not be seen to act impartially. Members will serve on the following committees as called (see para. 5 below):

- (a) First committees (recommended three, but at least two untainted governors) for:
 - capability
 - staff discipline
 - redundancy
 - grievance
 - absence (staff).

(b) Appeal committees to follow the first committee if required (recommended three, but at least two untainted governors). **The appeal committee cannot have fewer governors than the first committee.**

(c) The head cannot sit as a member of either committee because he or she is likely to have been involved earlier in the discipline process

3.2 To allow for illness, absence or previous involvement, it is prudent to have a pool of untainted governors from which to form the different committees.

4 Chair of committees

4.1 It is recommended that, at the time the governing body appoints a pool of governors from which the committees listed in paragraph 2 above are formed, it also nominates two or three of the members of that pool to serve as chairs of the committees.

5 Order of calling to serve

5.1 The order in which governors will be called to serve on the various committees listed in paragraph 2 above must be agreed at the time the pool of governors is appointed by the governing body, for example, in alphabetical order. *It is most important that the order of calling be decided at the beginning of the school year.* This is to protect the governing body against any charge of being biased in the selection of individuals to serve on particular committees. Chairs should be called in turn and other governors as agreed.

6 Untainted committees

6.1 Care must be taken to ensure that governors serving in the pool of governors listed in paragraph 3 above always withdraw from any discussion by the governing body, a committee or elsewhere, concerning staff whenever formal procedures might follow. It is unwise for the whole governing body to discuss personnel or pupil admission or exclusion matters. Governors in the pool described above must take particular care to remain untainted, otherwise a whole procedure could fail.

7 Terms of reference

7.1 It is essential that the governing body provide clear written terms of reference for the committees. Some of the following points may be included:

- full delegated powers of decision in matters relating to formal hearings dealing with staff issues;
- to treat all matters relating to a hearing as strictly confidential to the members of the committee;
- at the end of the procedure including any appeal, the chair of the committee should provide a short written report to the next meeting of the governing body. This report should summarize briefly the nature of the incident and the outcome of the procedure.

Annex B

The role of the clerk to hearings

1 General

1.1 The Diocesan Board and the LEA should be consulted on clerking and advice arrangements. The clerk takes no part in the decision-making process and therefore the same person can act as clerk to both the hearing by the disciplinary committee and any subsequent appeal hearing. The clerk to the hearing or appeal hearing may be the clerk to the governing body or another appropriate person but for the appearance of justice, it is better if an alternative person can be found to clerk any appeal.

2 Responsibilities

2.1 The role of the clerk to either a governors' disciplinary hearing or an appeal hearing is vitally important. Support may be separated into two areas of advice and clerking responsibility:

- (a) to carry out administrative responsibilities;
- (b) to provide legal and procedural advice throughout the proceedings.

2.2 One person may be appointed to assume both areas of responsibility, or two people may be appointed. The specific functions to be carried out within the two areas of responsibility and the person responsible are summarized below:

Table 5: **The role of the clerk**

	Responsibility	Person responsible
1	To ensure all concerned are properly notified of the meeting and of the procedures to be followed, and that they are sent a complete set of the documents which will be used at the meeting;	Clerk
2	To take full notes of the proceedings;	Clerk
3	To provide legal and procedural advice during the proceedings;	Diocesan Board, LEA or clerk
4	To assist in preparing the final written decision;	Clerk
5	To notify the employee of the decision of the committee; or the clerk to the hearing	Clerk
6	To keep a complete set of documents in case they are needed for an appeal or tribunal.	Clerk

3 Hearing date

3.1 The clerk's involvement will begin with arranging the hearing date. It is important to consult as widely as possible on this, taking into account the time scales provided for and the availability in particular of any representative of the employee. The employee has a statutory right to request a postponement where the colleague or union representative accompanying them is unavailable, subject to proposing a further time and date so long as it is reasonable and not more than five days after the original date.

4 Notification

4.1 The letter notifying the employee of the hearing, sent by the clerk, must include the following and should be copied to the Diocesan Board and LEA:

- date, time and place of the hearing;
- names of the members of the disciplinary or appeal committee;
- agenda for the hearing (see Annex G, pp. 43-4);
- name of the person/s presenting or answering the case and any witnesses they may call and supporting documents/evidence;
- a statement of the right to be accompanied by a **companion**
- a request that all documents to be submitted to the committee be sent to the clerk by a stated date, this date to allow for the clerk to send out copies by the required deadline;
- a request that the names of any witnesses and copies of written statements detailing their evidence to the hearing be notified to the clerk by a stated date (see Annex F, sample letter 1, p. 38).

5 Names and documentation

5.1 The names of each party's witnesses, together with their witness statements, must be supplied by the clerk to the other party and to the members of the committee as many days as possible before the hearing. Any other documentation to be submitted to the committee must be circulated in similar fashion.

5.2 The clerk should prepare an indexed bundle of papers with numbered pages running from the beginning to the end of the bundle. This saves time and confusion at the hearing, particularly if there are many documents.

5.3 It is helpful if the index is split into headed sections; for a disciplinary committee these might include:

- documents submitted by the headteacher, line manager or chair of the governing body
- documents submitted by the employee
- correspondence concerning the hearing.

For an appeal hearing, these documents might include documents considered by the disciplinary committee, any further documents submitted by the parties and correspondence.

5.4 If **new evidence or documentation** is presented during the hearing, the clerk or legal adviser should advise the chair of the committee as to whether or not it should be taken or whether the hearing should be adjourned.

5.5 The chair of the committee may decide to **adjourn** the hearing for a short period or for a number of days if new evidence is brought which all parties have not had time to consider, or for any other good reason. If there is an adjournment, the reconvened committee must comprise the same membership. Either party may request an adjournment.

6 Previous warnings

6.1 It is the responsibility of the clerk to ensure that any warnings remaining on the employee's file are made available to the hearing at the appropriate moment.

6.2 The reason for keeping a warning on file is that the discipline committee will refer to it when it is reaching a decision on the appropriate sanction to impose.

6.3 All warnings should include clearly stated advice that further transgression could lead to a more severe penalty, up to and including dismissal.

7 Notes of hearing

7.1 During the hearing the clerk, or someone else, takes a detailed note of the evidence presented, verbatim if possible. If the clerk wishes to record the hearing on audiotape, s/he should obtain the agreement of all parties.

8 Written statement

8.1 After the parties withdraw, the clerk, the Diocesan Board and LEA as appropriate, stay with the committee to advise on law and procedure as required. The clerk notes the committee's discussion. The clerk should draw attention to the requirement to produce a written statement which contains:

- a review of the evidence presented to them;
- their findings on that evidence;
- the reasons for reaching their decision.

8.2 It is important that the written statement following the disciplinary hearing gives the details described above, so that, if there is an appeal, the appeal committee can see clearly the evidence given to the disciplinary hearing and the reasons for the decision. The production of the written decision may be delegated to the clerk, who may wish to check the precise wording of the written decision with the person conducting the hearing, or chair of the hearing. It must then be approved and signed by the chair of the hearing, who should consult others, where appropriate, at the meeting before signing.

9 Notification of decision

9.1 As soon as possible, and within 5 days of the hearing, the signed decision must be sent to the employee by the clerk, together with a covering letter (see Annex F, sample letter 2, p. 39).

10 Retention/disposal of documents

10.1 At the end of the hearing all copies of papers should be given to the clerk. S/he will then arrange for the retention of a set of papers and all notes for future reference by the clerk to the governing body and dispose of the remainder.

Annex C

Legal expenses for Voluntary Aided school

1 General

1.1 Grievance, and particularly disciplinary matters, can be extremely complex and governors will frequently find that they need legal advice. If disciplinary action results in employment tribunal proceedings, they will undoubtedly need legal representation.

2 Employment tribunal

2.1 Provided governors have followed correct procedures and consulted with the LEA the legal costs incurred in employment tribunal proceedings, and any compensation awarded, should be met by the LEA from its reserved funds. Governors must, however, seek LEA agreement to this potential liability **at the earliest possible stage**. In the event that the LEA refuses to pay, an application can be made to the Secretary of State for Education and Skills for a determination. If governors have legal expenses insurance in place, either through the Diocesan Board or their own initiative, advice must be sought from insurers at the earliest possible stage so that cover is not invalidated.

3 Grievance and discipline

3.1 The position with regard to grievance and disciplinary proceedings is less clear. Provided governors incur any expenses 'reasonably', these should be met by the LEA as part of its responsibility to maintain the school. An application can be made to the Secretary of State for a determination if the LEA refuses to pay.

3.2 When governors require legal advice in connection with grievance and disciplinary proceedings, they should immediately approach the LEA and ask for an assurance that the LEA will meet costs reasonably incurred. This approach may be met with a refusal, or with an offer of assistance by the borough solicitor. The latter should be accepted if the LEA will not pay for independent legal advice. Governors may wish to discuss the matter with the Diocesan Board.

4 Serious offences

4.1 In disciplinary proceedings for serious offences, which may result in dismissal, governors are at a disadvantage if they do not have the assistance of a solicitor skilled in disciplinary and employment matters. For these serious cases governors should consult with the Diocesan Board regarding the appointment of the clerk, who would most probably be an experienced solicitor. The employee will probably have competent representation from his/her union or

professional organization. An unassisted disciplinary committee is at a disadvantage when faced with a skilled advocate.

4.2 If such proceedings result in a dismissal, it is most important that the written decision should be properly set out and structured in a legal way, as it may be subject to subsequent scrutiny by an employment tribunal. It is strongly recommended that the Diocesan Board and LEA be consulted on the wording of such a written decision before it is sent out.

Annex D

Employees and child protection

1 Introduction

1.1 An over-hasty or ill-judged decision immediately to suspend an employee when an allegation of abuse is made, without any initial assessment of whether there is substance in an allegation, can have a substantial detrimental effect upon an employee's career. It can, at the very least, prove to be a traumatic experience for the employee concerned, for pupils at the school and their parents, and for other staff.

1.2 An employee facing an allegation of abuse needs to have confidence that agencies will act in a careful, measured way when allegations are brought to their attention.

2 Initial urgent assessment

2.1 This assessment should be in accordance with the local child protection procedures.

2.2 The initial assessment should be undertaken immediately to check the factual details of the allegation. This assessment is not an investigation to determine guilt or innocence. It may, however, involve making enquiries of staff or pupils on a confidential basis. The child or children who may be involved must not be interviewed. The nature of the enquiries might include:

- were the child/children with the employee on that day?
- were there any witnesses?
- what were the precise times, dates, locations?

A written record should be made of these factual matters.

2.3 Where the headteacher believes that it is necessary to assess the matter further, s/he should consult with the diocese or LEA and decide whether an investigation should be undertaken:

- under local child protection procedures;
- under the governing body's disciplinary procedures.

2.4 Any investigation by the police or child protection agencies would take priority over an internal investigation by the school. An internal investigation running alongside a police or children protection agency enquiry is not normally good practice and should be held in abeyance pending the outcome of the external investigation.

2.5 Unless there is an objection by the child protection agency concerned the headteacher should inform all interested parties of the current situation and the likely course of action as appropriate.

3 Police

3.1 Where the police are involved, it would not normally be expected that police interviews would be undertaken on school premises. It is good practice for appointments to be made for such interviews to occur at reasonable times.

4 Reporting

4.1 If a teacher is dismissed, or resigns before a disciplinary process is completed, the headteacher should inform the teacher about the employer's statutory duty to report the case to the Department for Education and Skills.

5 Pupil record

5.1 Where a pupil has made an allegation, a copy of the statement, or record made of it, should be kept on the section of a pupil's personal file that is not open to disclosure, together with a written record of the outcome of the investigation.

6 Guidelines

6.1 It is strongly recommended that governors obtain a copy of *Staff facing an allegation of abuse: guidelines on practice and procedure* which can be viewed on: <http://www.lg-employers.gov.uk/conditions/education/allegations/abuse.html>

6.2 DfEE Circular 10/95 *Protecting Children from Abuse: The Role of the Education Service* also provides guidance. Some LEAs have produced helpful additional advice based on the guidelines.

Annex E

Responding to the media

1 Staffing and personnel disputes are of interest to the media because they are human stories. When such a situation is developing, it is advisable to be prepared. You should consult the LEA or diocesan press officer. It is often helpful to arrange with the press officer to deal with all media enquiries.

2 If you are caught unprepared, do your utmost to reach the press officer(s). If you cannot do so, consult with someone who can be objective but understands the issues, such as a Board of Education adviser. If you do not reach the press officer(s) in advance, please do tell them immediately afterwards what you have said and to whom, and agree with them what the procedure will be from now on.

3 With the help of the person(s) suggested, prepare a brief statement that gives your position factually and concisely, rather than trying to answer or correct a series of points (even if you have already been misrepresented). Keep to 50 words or less if possible. The more you say, the more chance there is of something being left out in a brief news report.

4 If you get a telephone call from a reporter asking about the situation, always be polite, but give nothing away until you have a written statement ready and agreed. Write down the reporter's name and phone number, and whom they are representing. They will be guarded and will usually not reveal sources, but try to discover where the information came from and glean any further background you can.

5 Do not get drawn into discussing the situation. Just say that you will give it your immediate attention and will ring back shortly. Then make sure you do so – the reporter is probably working to a tight deadline, and you need to do your best to provide your clear and factual side of the story.

6 As the story develops, it may be necessary to make supplementary statements, but stick to your original statement as long as it is relevant. You need to be as open as is necessary for public information, and to maintain confidence in your school, etc., but you need to avoid feeding the media with new angles on the story.

7 You should ensure that all those who may be contacted as representatives of the school, know the content of your press statement and how they are expected to respond. It is helpful to discuss with the Press officers of the LEA and the diocese who within their organisations might be contacted by reporters and how they can be briefed so that their response is well informed and helpful in the situation.

8 Remember that other people may be feeding the media out of disaffection or thoughtlessness. You may be asked to confirm or comment on allegations. Try to foresee these and prepare responses in consultation with the press officers. Q&A format is often useful.

9 Remember you cannot tell the media what to say or write. You can however develop professional and courteous relations with reporters, which will bear fruit in times of trouble.

10 Personnel matters are confidential between the employer and employee and you must guard against any breach of the Data Protection Act. There may, therefore, be very little or nothing that can be said without the express agreement of the employee.

Annex F

Sample letters

Misconduct

- 1 Request to attend a formal disciplinary meeting
- 2 Letter stating outcome of Stage 1, 2 or 3 formal disciplinary meeting

Suspension

- 3 Letter notifying suspension

Appeal

- 4 Letter notifying an appeal hearing
- 5 Letter notifying outcome of appeal hearing

1 Request to attend a formal disciplinary meeting

Sent in duplicate by the headteacher or the clerk to the governing body

Date (at least 5 clear school days' notice)

Dear

FORMAL (STAGE 1,2 or3) DISCIPLINARY MEETING

I am writing to advise you that as a result of my (an) investigation into allegations that (*set out summary details of the alleged misconduct*), you are required to attend a formal disciplinary hearing.

The hearing will take place on(date) at (place) at (time) am/pm. It will be conducted by me (*if headteacher, line manager*) (*a disciplinary committee of the governing body*).

You have the right to be accompanied by a companion, who may be another employee, a representative of your trade union, professional association or a legal representative. If your representative is unable to attend the hearing at the time given above, you may propose another date and time for the meeting to take place. Any alternative date must be on or before (*date of the fifth working day after the proposed meeting date*).

You also have the right to produce written statements and to invite witnesses to give evidence in support of your case. You should ensure that copies of any written statements upon which you wish to rely at the hearing are given to me 5 days before the hearing, together with the names of any witnesses that will be attending on your behalf.

I (*The headteacher/line manager if it is a governors' hearing*) will be calling the following witnesses to the hearing(names)

I enclose an indexed bundle of statements and other documents on which I (*the headteacher/line manager if a governors hearing*) will be relying at the hearing.

(Finally I wish to remind you that you are already subject to a (first/final) written warning [for a stage 3 warning only – I must inform you that the outcome of the disciplinary meeting may be that you are dismissed from your employment at the school]).

If there is any aspect of this letter, or of the disciplinary procedure, to the extent that it applies to you, that you do not understand, please contact me.

As acknowledgement of receipt of this letter, please sign and return to me the enclosed copy. Failure to return the copy does not invalidate any possible subsequent disciplinary procedures.

Yours sincerely

(typed name)

Headteacher/Line Manager/Clerk to the governing body

encl.

CC: DB

LEA

2 Letter stating outcome of formal disciplinary meeting

Sent in duplicate by the headteacher or the clerk to the governing body

Date (within 5 school days' of meeting)

Dear

OUTCOME OF STAGE (1,2 or3) FORMAL DISCIPLINARY MEETING

Following the formal disciplinary hearing held on(date), I write to confirm that (I /the committee)has determined that:

1 (One of the following:

- *the allegations against you have not been proven and no further action will be taken;*
or
- *the allegations made against you were deemed to be substantiated;*
or
- *the following allegations (give details) have been upheld against you but (I /the committee)concluded that allegations that you (give details) were not proven)*

(Record the findings of fact reached by the Headteacher/committee and the reasons for reaching the decision)

Where there has been misconduct

As a result of (my/the committee's) decision that you (give details of misconduct), (I/ the committee) have/has decided that

- *(you should receive a first/final written warning, and this letter constitutes notice of the same).*
- *(you are to be dismissed and your employment terminated with effect from (date))*
- *(no formal action will be taken on this occasion but I/ the committee requires you to (details of standards of conduct required) and remind(s) you that failure to maintain such standards may result in further disciplinary action being taken against you).*

The warning will remain on your file for (12/24 months /permanently) from this date.

You have the right to appeal against this decision. If you wish to appeal, you must submit a written statement of appeal to the Clerk to Governors by (10 school days from date of the hearing). Any appeal will be heard by (Committee of the Governing Body/the Governing Body's Appeals Committee).

If there is any aspect of this letter you do not understand or on which you require further clarification, please contact me.

As acknowledgement of receipt of this letter, please sign and return to me the enclosed copy within 5 clear school days. Failure to return the copy does not invalidate any possible subsequent disciplinary procedures.

Yours sincerely

(typed name)

Headteacher/Clerk to the governing body

encl.

CC: DB

LEA

3 Letter notifying suspension

Sent in duplicate by the chair of the governing body

Date

Dear

NOTIFICATION OF SUSPENSION

It is with regret that I write to inform you that you have been suspended from your work at the school with effect from(date). You will receive your full pay throughout the period of your suspension.

Your suspension has been occasioned by [*the need to investigate*] the following allegations made against you/incident in which you were involved

Your suspension is a neutral act and does not imply that any decisions have been taken regarding the allegations made against you. However we advise you to arrange for a member of your professional association to support you during the suspension period. I have asked (names)* to keep you informed of the general activities taking place at the school until your suspension is terminated.

I shall keep you informed of the progress of the investigations and notify you once they are completed and invite you to a meeting where you will be informed of the next steps. You may be accompanied by a companion at that meeting.

You are not permitted under any circumstances to visit the school without the prior permission of the headteacher or chair of the governing body. If any of your personal possessions still remain on the site, you should telephone the headteacher in order to make a convenient appointment to come into school to collect them.

As acknowledgement of receipt of this letter, please sign and return to me the enclosed copy within 5 clear school days. Failure to return the copy does not invalidate any possible subsequent disciplinary procedures.

Yours sincerely

(typed name)

Chair of the governing body

encl.

CC: DB

LEA

**This would normally be a colleague on the staff.*

4 Letter notifying an appeal hearing

Sent in duplicate by the clerk to the governing body

Date (at least 10 clear school days' notice)

Dear

APPEAL COMMITTEE HEARING

In response to your letter of(date) stating that you wish to appeal against the decision of the disciplinary committee of the governing body notified to you on (date), I write to inform you that the appeal hearing will be held at (time) on(date) and be in (place). (The appeal committee shall meet within 15 school days of receipt of written notice of appeal.) The procedures to be followed during the appeal hearing are the same as those used during the disciplinary hearing.

During the meeting you may be accompanied by a companion, who may be a member of a union, professional association or legal representative. The headteacher will be accompanied by (names)

I enclose an index of the documents to be presented to the appeal committee. This index lists all the documents which were considered by the disciplinary committee and new documents which the headteacher (or appropriate person) intends to present to the appeal committee. I enclose copies of all the documents.

If you wish to submit any new papers please send these to me as soon as possible.

The following information should be supplied to me as soon as possible and no later than 5 school days before the date of the hearing:

- 1 the name of any companion who will be with you during the hearing;
- 2 any new written evidence or relevant documents you wish to be considered;
- 3 the names of all witnesses you intend to call, together with copies of any new statements.

The headteacher will be calling the following witnesses to the hearing(names)

The names of the governors who will be serving on the appeal committee are(names)

As acknowledgement of receipt of this letter, please sign and return to me the enclosed copy. Failure to return the copy does not invalidate the proceedings of the appeal hearing.

Yours sincerely

(typed name)

Clerk to the governing body

encl.

CC: DB

LEA

5 Letter stating outcome of appeal hearing

Sent in duplicate by the clerk to the governing body

Date(within 5 SD of the hearing)

Dear

OUTCOME OF APPEAL HEARING

Following the appeal hearing held on (date) attended by (names), I write to inform you of the outcome of the hearing.

On the evidence presented to the Appeal Committee, it was found that(it is important to detail the findings of fact and reasons for reaching the decision).

On the evidence presented to the committee it was decided that:
(One of the following:)

- The decision made by the Disciplinary Committee is upheld and your dismissal is confirmed;
(Legal advice must be sought on the composition of this letter.)
- The decision made by the disciplinary committee is upheld but that the penalty imposed will be reduced to (state sanctions to be imposed.)
- The appeal committee decided not to uphold the decision of the Disciplinary Committee. Therefore no further action will be taken and the matter is closed.

The decision of the Appeal Committee is final.

Yours sincerely

(typed name under signature)

Chair of Appeal Committee
cc. Headteacher
Union representative
LEA
Diocesan Board

Annex G

Model agenda for a disciplinary hearing or appeal

1 Introductions

1.1 Having agreed the order of the agenda with all present, the headteacher/chair introduces her/himself and allows an opportunity for all others present to do so.

2 Nature of the complaint

2.1 The headteacher/chair checks that all parties have the relevant documents and identifies the specific complaint.

3 Presentation by management

3.1 The headteacher or line manager⁶ presents the management's case. Witnesses⁷ are called.

4 Questions by member of staff

4.1 The member of staff and/or companion may question the management and witnesses.

5 Questions by committee members/headteacher

5.1 Members of the committee/headteacher may question the headteacher or line manager representing the management and the witnesses.

6 Presentation by member of staff

6.1 The member of staff concerned and/or companion presents their case. Witnesses may be called.

⁶ Where the action of the headteacher is being considered, the presentation for the school's management would be made by the chair of the governing body

⁷ Witnesses will normally only be present during a hearing to give their evidence and will then withdraw

7 Questions by school management

7.1 The headteacher or other senior manager may question at this point in the procedure.

8 Questions by committee members

8.1 Members of the committee may question the member of staff and the witnesses.

9 Final statement by management

9.1 The headteacher or line manager may make a final statement.

10 Final statement by member of staff

10.1 The member of staff and/or companion may make a final statement.

10.2 The parties then withdraw to allow the committee to discuss the findings and come to a decision. The clerk to the committee will remain, as will any Diocesan Board or LEA representative. The parties are usually asked to remain available for a short time in case the committee needs to clarify any point (see Part D, pp. 23-4).