

# JOINT NEGOTIATING COUNCIL FOR THE EDUCATION AND LIBRARY BOARDS

21 February 2013

**To: Chief Executives  
Council Members  
MSO/TUSO**

**Joint Negotiating Council Circular No. 200**

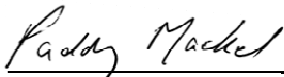
## **Disciplinary Procedure for Non-Teaching Staff In Grant-Aided Schools with Fully Delegated Budgets**

The Joint Negotiating Council has agreed the Disciplinary Procedure for Non-Teaching Staff in Grant-Aided Schools with Fully Delegated Budgets.

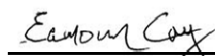
The Procedures and accompanying Notes of Guidance will take effect from 23 January 2013 and have been attached as Addendum 1 to this Circular.



**Management Side Secretary**  
J Curran



**Trade Union Side Secretary**  
P Mackel



**Trade Union Side Secretary**  
E Coy



**Trade Union Secretary**  
A Speed



**Trade Union Secretary**  
T Trainor

**SUSPENDED PENDING REVIEW**

## DISCIPLINARY PROCEDURE FOR NON-TEACHING STAFF IN GRANT-AIDED SCHOOLS WITH FULLY DELEGATED BUDGETS

### 1. PURPOSE AND PRINCIPLES

- 1.1 The procedure is concerned with supporting and maintaining high standards of conduct and discipline. It has been drawn up to provide a fair and consistent way of dealing with alleged misconduct.
- 1.2 The advice and guidance of the Head of Human Resources or nominee should be sought when any disciplinary action is being considered and at each stage of the operation of the disciplinary procedure.
- 1.3 The procedure should be invoked at a stage appropriate to the degree of seriousness of the alleged offence. If appropriate, the Officer shall be reminded of the provisions available under the employing authority's welfare arrangements.
- 1.4 When appropriate, this procedure must be read in conjunction with the guidance to schools: "Pastoral Care in Schools : Child Protection."
- 1.5 The Officer is entitled to be accompanied at all stages of the formal procedure and supported or assisted in presenting the case by a recognised trade union representative or a work colleague. Legal representation is not permitted.
- 1.6 In considering the disciplinary action to be taken, any mitigating circumstances and the previous record of service of the Officer concerned shall be taken into account to establish a view of the Officer's overall employment record and credibility.
- 1.7 If the staff member is an accredited trade union representative, no disciplinary action shall normally be taken until the circumstances of the case have been discussed with the full-time official.
- 1.8 The operation of the procedure shall comply with the provisions of the Equal Opportunities Statement for Non-Teaching Staff and may not be construed as diminishing an Officer's rights in law.

### 2. DEFINITIONS

#### **Officer**

For the purpose of this procedure, "Officer" means a non-teaching employee of a grant-aided school.

#### **Colleague**

Means an Officer from the same school who has no compromising interest in the case.

#### **Trade Union Representative**

Means an accredited representative of the organisation of which the Officer is a member.

#### **Disciplinary Authority**

The Disciplinary Authority is the duly authorised level of management to which disciplinary powers have been delegated, as set out in Appendix 1.

#### **Relevant Body**

Means the Board of Governors.

**Relevant Officer**

Means the Chief Executive of the Board or another Officer of the Board nominated by the Chief Executive.

**3. PRELIMINARY STEPS**

- 3.1** Before considering disciplinary action the Principal or nominee or a sub committee of the Board of Governors shall carry out a preliminary investigation (Investigatory Body) into any allegations of misconduct and seek the advice and guidance of the Board.
- 3.2** However, in the case of an allegation relating to a matter of child protection the Guidance referred to at paragraph 1.4 must be followed. No disciplinary investigation shall commence and there must be no interference with evidence.
- 3.3** Any investigation carried out under a harassment, grievance, child protection or performance management policy shall be accepted as the preliminary investigation at paragraph 3.1.
- 3.4** The nature of the allegations of misconduct may be such that it is considered appropriate to impose a period of precautionary suspension pending the outcome of criminal or disciplinary investigations or proceedings. In such cases the provisions of paragraph 5 "Precautionary Suspension" shall apply.
- 3.5** Where witness statements are to be provided, the statements should be signed and dated. If this is not possible the witness statements should be certified as a true and accurate record, signed and dated by the witness and countersigned and dated by the person who prepared the statement.
- 3.6** On completion of the investigations the Investigatory Body will advise on appropriate action including referral to the Disciplinary Authority.
- 3.7** If the decision is that formal disciplinary action is not appropriate and that it is sufficient to talk the matter over informally with the Officer, the difference between informal discussion of this kind and a verbal warning issued as part of the formal procedure shall be made clear. The Officer shall be left in no doubt about which sort of action has been taken. The aim of such discussion is to review the issues involved and to seek ways of improving the situation, without recourse to the formal procedure. A brief record of the discussion shall be taken and a copy given to the Officer.

**4. FORMAL DISCIPLINARY PROCEDURE**

- 4.1** Where, following investigation, it is considered that there is a case to be answered the Disciplinary Authority shall invoke the formal procedure and shall obtain the advice and guidance of the Head of Human Resources or nominee. If the nature of an offence is such that it may lead to the dismissal of the Officer, the Relevant Officer of the Board is entitled to attend all proceedings for the purpose of giving advice and such advice must be considered before a decision to dismiss is made.
- 4.2** The Officer shall be:-
  - a.** told clearly in writing what is being alleged, provided with a copy of the disciplinary procedure and any documentary evidence to be considered by the Disciplinary Authority, advised of all rights under the procedure, including the right to make oral or written submissions, and advised of the right to be accompanied by a trade union representative or a colleague from work.
  - b.** given reasonable time to prepare his or her case in conjunction with ; the chosen representative and

- c. given the opportunity at a disciplinary hearing to state his or her case fully before a decision is reached. Where practicable, such a hearing shall be held within 10 working days of the alleged offence. If more time is needed to consider the matter or further investigations are necessary, the hearing shall be adjourned.

When a police investigation is taking place into either different or related matters at the same time as an internal school-based investigation, the latter investigation may be deferred pending the outcome of the police enquiry.

- 4.3** The Disciplinary Authority shall inform the Officer, in writing, of its decision as expeditiously as possible, having given proper consideration to all the matters raised. A copy shall be provided to the Board.

**4.4 Verbal Warning**

In the case of a minor breach of discipline where, following the disciplinary hearing, the Disciplinary Authority is not satisfied with the explanation given a verbal warning will be issued and the Officer informed, in writing, of the consequences of a recurrence of a similar offence or a further breach of conduct. A verbal warning will be disregarded for disciplinary purposes on completion of 6 months' satisfactory conduct.

**4.5 Written Warning**

Where a disciplinary warning is current and there is a further breach of discipline, or in the case of serious misconduct the Disciplinary Authority, if not satisfied with the explanation given at a hearing, will issue a written warning. The Officer shall be informed, in writing, of the consequences of further misconduct. A written warning will be disregarded for disciplinary purposes on completion of one year's satisfactory conduct.

**4.6 Final Written Warning**

In those cases where a written warning is current and there is further misconduct, or in the case of very serious misconduct, the Disciplinary Authority, if not satisfied with the explanation given at a hearing, will issue a final written warning. The Officer shall be informed, in writing, of the consequences of further misconduct. A final written warning will normally be disregarded on completion of one year's satisfactory conduct.

**4.7 Further Disciplinary Action**

When there is a failure to respond appropriately to a final written warning or in the case of gross misconduct, the Disciplinary Authority, if not satisfied with the explanation given at a hearing, will impose such further disciplinary measures as it deems appropriate. While not a complete list, such action may include withholding future pay progression, demotion, suspension without pay normally not exceeding a maximum of 4 weeks, dismissal or a combination of measures. The decision of the Disciplinary Authority shall be notified to the Officer in writing and, where action short of dismissal is taken, the Officer shall be advised of the consequences of any further disciplinary offence occurring during the one year currency of the warning.

- 4.8** Records of the disciplinary investigation or action taken in the context of child protection shall be maintained on the Officer's file for a period of 5 years. Where a formal referral is made to Police or Social Services, the record of the complaint and action taken shall be retained on the Officer's file indefinitely unless the Officer is totally exonerated by a civil court in which case the record will be expunged.

- 4.9** Where the Disciplinary Authority determines that an Officer is to be dismissed and this decision is upheld following the appeal process, the Board will issue the formal notice of dismissal terminating the contract of employment.

**4.10** Where, after investigation and a disciplinary hearing, an Officer is considered to have committed gross misconduct, the Board of Governors has the right to dismiss the Officer summarily. Summary Dismissal means dismissal without notice and without payment in lieu of notice. Examples of gross misconduct include offences such as theft, physically violent behaviour, obscene behaviour and fraud. Summary Dismissal shall take effect from the date of notification from the Independent Appeals Panel that the appeal has not been upheld. The Board must be consulted before the Officer is summarily dismissed.

**4.11** Officers shall not be dismissed solely because a charge is pending or because the Officer is absent through having been held in custody. Nor shall a criminal conviction outside employment be treated as an automatic reason for dismissal regardless of whether the offence has any relevance to the duties of the individual as an employee. The main considerations shall be whether the offence is one that makes the individual unsuitable for continuing employment.

**4.12** Where appeal is upheld it will be a matter for the Board of Governors to manage the outcome in accordance with this and other relevant procedures.

**4.13** A copy of the *Disciplinary Rules* is appended to this Procedure as Appendix 3.

## **5. PRECAUTIONARY SUSPENSION**

**5.1** An Officer may be suspended from duty if, in the opinion of the Board of Governors, the Chairperson or Principal, such a course of action is necessary pending the outcome of criminal investigations or proceedings or disciplinary investigations. In any cases in which consideration is being given to the suspension of an individual Officer, the Board shall be consulted immediately.

**5.2** When a suspension is imposed by the Chairperson of the Board of Governors, the remaining members of the Board of Governors must be informed of such action as soon as practicable. When the suspension is imposed by the Principal the Chairperson, or in his or her absence, the Vice-Chairperson, shall be informed of such action as soon as is practicable. The Officer shall be given written confirmation of the suspension and the reason for it. The suspension may only be ended by the Board of Governors.

**5.3** Precautionary suspension in these circumstances, as distinct from suspension as a disciplinary penalty (see paragraph 4.7), does not imply any decisions about the case. This important distinction shall be kept in mind whenever any record or report of the period of absence is necessary.

**5.4** Such suspension shall be with full pay.

## **6. REPRESENTATIONS IN RELATION TO A DETERMINATION TO DISMISS**

**6.1** Schedule 2 of the Education (NI) Order 1998 provides that a Board of Governors shall afford an Officer, whom it proposes to dismiss, an opportunity of making representations either orally or in writing with respect to the proposal and have regard to any representations made. Such representations shall not constitute an appeal. The appeal in the case of dismissal is to the Independent Appeals Panel as detailed in paragraph 8.

## **7. APPEALS**

**7.1** There is a right of appeal against any disciplinary action. An appeal, setting out the grounds, must be made in writing to the appropriate appeals body listed in Appendix 2 within 10 working days of the date of receipt of the disciplinary decision.

- 7.2** Appeals shall be heard as soon as practicable and no later than 20 working days from the receipt of the appeal, unless extended by mutual agreement.
- 7.3** The Chairperson or other relevant person shall fix a date for the hearing of an appeal and shall notify the parties as early as possible. Both parties should ensure that arrangements have been put in place for the submission and exchange of documentation which is to be relied on at the Hearing, and not later than 5 working days before the date of the hearing.
- 7.4** The result of an appeal should be notified in writing to the Officer within 10 working days of the appeal hearing.
- 7.5** The body considering the appeal, (as set out in Appendix 2), may:-
- a.** dismiss the appeal;
  - b.** uphold the appeal; or
  - c.** substitute a lesser penalty.
- 8. INDEPENDENT APPEALS PANEL: LABOUR RELATIONS AGENCY [LRA] - IN THE CASE OF DISMISSAL**
- 8.1** The Appeals Panel shall comprise an independent chairperson and two panel members, one nominated by Trade Union Side and one by Management Side of the Education and Library Boards.
- 8.2** The LRA shall appoint a Secretary to the Appeals Panel.
- 8.3** The Secretary, in conjunction with the Chairperson, shall fix a date for the hearing of the appeal, inform the parties accordingly and invite nominations to the Panel.
- 8.4** The Secretary shall also invite the parties to make written submissions to the Panel, such submissions to be received not later than 10 days before the date of the hearing. The Secretary shall distribute copies of the submissions to the Panel members and to the other party not later than 5 days before the date of the hearing.
- 8.5** The Panel shall, where practicable, meet the parties to hear the appeal within 20 working days of the matter being referred.
- 8.6** Neither party to the independent appeal is entitled to have representation by legal or professional industrial relations consultants.
- 8.7** The work of the Appeals Panel shall not be invalidated by the absence of one or other of the parties.
- 8.8** The decision of the Appeals Panel shall be given in writing to both parties within 10 working days of the hearing.
- 8.9** The decision of the Appeals Panel will be final and binding on both parties.

**DISCIPLINARY AUTHORITY - NON-TEACHING STAFF**

The responsibility for disciplinary action is as follows:-

	<b>DISCIPLINARY ACTION</b>	<b>DISCIPLINARY AUTHORITY</b>
<b><u>Disciplinary Level</u></b>		
i.	Verbal Warning	Principal
ii.	Written Warning	Principal
iii.	Final Written Warning	Sub-committee of Board of Governors after consultation with Principal and Head of Human Resources
iv.	Further Disciplinary Action	Sub-committee of Board of Governors after consultation with Principal and Head of Human Resources
<p><b>Note:</b> The disciplinary action shown at each level is the maximum permitted to the Disciplinary Authority. It does not preclude the possibility of a lesser penalty being imposed.</p>		

**APPEALS BODY - NON-TEACHING STAFF**

	<b>DISCIPLINARY ACTION</b>	<b>APPEALS BODY</b>
<b><u>Disciplinary Level</u></b>		
i.	Verbal Warning	Sub-committee of Board of Governors
ii.	Written Warning	Sub-committee of Board of Governors
iii.	Final Written Warning	Board of Governors
iv.	Further Disciplinary Action excluding dismissal	Board of Governors
v.	Dismissal STAGE 1: Representation to	Board of Governors
	STAGE 2: Appeal to	Independent Appeals Panel [LRA]

SUSPENDED PENDING REVIEW

## DISCIPLINARY PROCEDURE FOR NON-TEACHING STAFF IN SCHOOLS

### DISCIPLINARY RULES

#### 1. DEFINITIONS

##### 1.1 Misconduct

Misconduct is an offence for which a warning shall normally be the appropriate disciplinary action.

##### 1.2 Serious Misconduct

Can be repeated offences of the nature normally dealt with under 1.1 or an offence of a more serious nature but not regarded as gross misconduct.

##### 1.3 Gross Misconduct

Is an offence so serious it would normally warrant dismissal [with or without notice].

##### 1.4 Summary Dismissal

Is the termination of the contract of employment without notice where the offence committed has been established, after investigation and disciplinary hearing, as gross misconduct.

##### 1.5 Precautionary Suspension

Is with full pay pending investigation. It shall not be seen as a penalty, but a precautionary action.

#### 2. DISCIPLINARY RULES/OFFENCES

It is not possible to define every circumstance which shall constitute misconduct and these disciplinary rules are provided as guidance only.

In considering the level of warning or other disciplinary action to be taken, the Disciplinary Authority shall consider the previous record of the officer, any pattern of misconduct, the currency of any previous disciplinary warning, the recurrence of a similar or further breach of discipline within the specified time period.

The following are examples of situations which constitute an offence under the rules and shall lead to disciplinary action. The list is not exhaustive and the degree of seriousness of the offence shall determine the category under which it shall be considered.

#### 3. MISCONDUCT

Minor incidents of the following offences shall normally warrant a verbal or written warning or other disciplinary action short of dismissal. However, the degree of seriousness of the offence may warrant consideration under "serious or gross misconduct".

##### Examples of Misconduct

- Unsatisfactory timekeeping - arriving late or leaving early without permission.
- Unauthorised absence from place of work - misuse of the school's time.
- Sickness absence - persistent failure to give proper notice in accordance with school instructions.

- Absence - unacceptably high levels and frequencies.
- Insubordination - bad language, bad behaviour, insolence or refusal to carry out reasonable and legitimate instructions.
- Being an accessory to a disciplinary offence.
- Unsafe working – refusal or neglect to observe security and safety regulations, including the proper use of safety clothing and equipment issued by the school/employing authority, breaches of statutory requirements under the Health and Safety Order.
- Carelessness - resulting in loss or damage to, or waste of, property entrusted to his/her care, including misuse of telephone or other unauthorised use of equipment including electronic communications media.
- Unprofessional behaviour involving pupils, staff, parents or visitors.
- Vexatious use of the Grievance or other Procedures, ie wilful or frequent pursuit of issues of no real substance.
- Confidentiality - unauthorised disclosure of school information which might prejudice the school's interests.
- Unauthorised collections of money.

### **Examples of Gross Misconduct**

The following acts, and offences of a similar nature, will be regarded as gross misconduct. Gross misconduct is an act or omission that is of such a nature or so serious that, if proven, the continued presence of the employee at work cannot be tolerated, and which could lead to summary dismissal (dismissal with or without notice.)

### **Breach of Trust**

- Omission or conduct liable to lead to serious loss of confidence in the public service.
- Criminal offences committed at work.
- Conduct that is a serious abuse of position – eg entering into a personal relationship with a vulnerable service user.

### **Misuse of Property**

- Theft, or attempted theft, from the board, its employees, partner organisations or service users, or from premises being visited during the course of employment.
- Unauthorised possession and/or misuse of the board's property, or misuse of board vehicles.
- Malicious damage to, or any other unlawful act which involves, the property of the board or its employees.
- Unauthorised entry to board premises outside of normal hours of use.

### **Dishonesty and Fraud**

- Failure to disclose material information (eg convictions) or knowingly making a false statement or omission when applying for an appointment.
- Falsification of time sheets, flexi sheets, expense claim forms, car allowance claims etc.

## **Addendum 1 to JNC Circular No 200 w.e.f. 23 January 2013**

- Deliberate disregard of the Board's Financial Procedures and Rules or Contracting Procedures or general instructions concerning the collection, transfer, security and paying in of monies and the completion and submission of associated documents.
- Undertaking other paid employment whilst receiving sick pay or other benefits from the board during a period of sickness or unauthorised absence, without prior management agreement.
- Abuse of the Sick Pay Scheme.

### **Health and Safety**

- Deliberate action or omission which endangers life or limb including deliberate damage to, neglect of, or inappropriate use of, safety equipment and any violations of safety rules and codes of practice which could give rise to serious consequences.

### **Unacceptable Behaviour at Work**

- Physical violence (eg fighting), whether actual or threatened.
- Sexual misconduct.
- Deliberate harassment or bullying including inciting racial hatred.
- Indecent conduct or obscene behaviour at work.
- Corrupt or improper practice.
- Behaviour that brings the board into disrepute.
- Serious insubordination.
- Consumption of alcohol while in charge of driving a board vehicle and/or while in charge of a group of young people.

### **Alcohol and Drug Use**

- Attending work under the influence of alcohol or proscribed drugs.
- Consuming intoxicants during working hours or bringing intoxicants into the premises without permission.
- Alcohol/drug abuse – being in an unfit mental and/or physical state induced by these substances.

In considering a case of misconduct under any of the above, the employee shall be advised of the provision available under the Employing Authority's welfare arrangements.

### **Confidentiality**

- Unauthorised disclosure of confidential and personal information including that which may be of use to a competitor within a tendering situation or quotation procedure.

### **Use of Information Technology Systems**

- Serious breach of the board's Internet Policy eg accessing internet sites containing pornographic material.
- Loss of confidential or sensitive data through negligence.
- Loss of expensive equipment through negligence.

**Conduct Outside of Work**

- Criminal offences and other conduct outside employment which would prevent an employee from continuing to do his/her job or which affects his/her suitability to perform his/her work, makes him/her liable to be unacceptable to other employees or management, or is liable to damage the board's business.

Again this list is neither exclusive nor exhaustive, and in addition there may be other offences of a similar gravity, which would constitute gross misconduct.

**SUSPENDED PENDING REVIEW**

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## **NOTES OF GUIDANCE ON DISCIPLINARY PROCEDURE FOR NON-TEACHING STAFF IN GRANT AIDED SCHOOLS WITH FULLY DELEGATED BUDGETS**

### **1. PURPOSES AND PRINCIPLES**

#### **General Principles**

It is essential that the Disciplinary Procedure is adhered to and written records kept during the process.

The conduct of disciplinary proceedings must be fair, transparent and appropriate in all the circumstances.

The Disciplinary Procedure and notes of guidance reflect the recommendations of the Labour Relations Agency's Code of Practice No 2 "Disciplinary Practice and Procedures in Employment".

#### **Point 1.2 of the Procedure**

The advice and guidance of the Head of Human Resources or nominee must be sought when any disciplinary action is being considered and at each stage of the operation of the disciplinary procedure. In accordance with Schedule 2 where the nature of an offence is such that it may lead to the dismissal of the officer, the relevant officer of the Board is entitled to attend all proceedings for the purpose of giving advice and such advice must be considered before a decision to dismiss is made.

#### **Point 1.4 of the Procedure**

When, issues arise which relate to child protection matters the guidance contained in the booklet "Pastoral Care in Schools: Child Protection" must be followed. These notes of guidance provide supplementary advice in those cases where it is decided to invoke the Disciplinary Procedure.

### **2. DEFINITIONS**

Details of the Disciplinary Authority and the Appeal mechanism are detailed in Appendices 1 and 2 of the Disciplinary Procedure.

### **3. PRELIMINARY STEPS**

#### **Point 3.1 of the Procedure**

In considering disciplinary action a preliminary investigation shall be undertaken into any allegation of misconduct to establish if there is a case to be answered. Where the allegation is such that it may lead to formal disciplinary action, the advice and guidance of the Head of Human Resources or their nominee shall be sought. The express wish of an individual to be accompanied by a Trade Union Representative or work colleague must be facilitated.

#### **Point 3.2 of the Procedure**

In the case of an allegation relating to a matter of child protection concerning an employee in a school the guidance on Child Protection referred to in guidance notes relating to 1.4 above must be followed. No disciplinary investigation shall be commenced and there must be no interference with evidence.

#### **Point 3.4 of the Procedure**

In the case of other allegations of misconduct which may lead to a police investigation the advice and guidance of the Head of Human Resources or nominee must be sought before any action is taken, including a preliminary investigation and/or the need to impose a period of

precautionary suspension.

### **Point 3.5 of the Procedure**

- (i) At the outset of the meeting the witness will be advised:
  - that the panel is carrying out a preliminary investigation into allegations of misconduct;
  - their account of the alleged misconduct is being sought to assist the investigation;
  - that their anonymity cannot be guaranteed should the matter become the subject of appeal, further proceeding, or statutory discovery.
- (ii) The express wish of a witness to be accompanied by a Trade Union Representative or work colleague must be facilitated
- (iii) Where witness statement/s are to be provided, the witness statement should be signed and dated. If this is not possible the witness statement should be certified as a true and accurate record, signed and dated by the witness and countersigned and dated by the person who prepared the statement.
- (iv) No employee or pupil under 18 years shall be interviewed as a (potential) witness without his/her parent or guardian being given an opportunity to be present: , this does not preclude making general enquiries from pupils as to actions that may have occurred. Where a parent or guardian is present he/she should be required to give an undertaking of confidentiality.
- (v) The Procedure does not normally require witnesses to be present and cross-examined at a disciplinary hearing and this shall only be considered in exceptional circumstances. Written witness statements can be challenged by representatives and that challenge shall be recorded.

### **Point 3.6 of the Procedure**

The report prepared by the investigatory body will be forwarded to the disciplinary authority for consideration and further action if appropriate.

## **4. FORMAL DISCIPLINARY PROCEDURE**

### **Point 4.2a of the Procedure**

The officer shall be told as clearly as possible, in writing, what is being alleged, and provided with a copy of the disciplinary procedure and any documentary evidence to be considered by the Disciplinary Authority. Where further offences have come to light in the course of the disciplinary proceedings these should be included.

The officer shall be advised of all rights under the procedure including specifically the right to be accompanied or represented by a trade union representative or a work colleague . Legal representation is not permitted.

If the Officer's chosen representative is not available at the time proposed for the hearing, the hearing will normally be postponed. The officer must propose an alternative time which must be within 10 day working days beginning with the first working day after the day proposed by the employer.

### **Point 4.2b of the Procedure**

Following the investigation the investigatory panel will prepare a factual and detailed record of their findings.

Notice of the disciplinary hearing and the investigatory panel's findings and any other relevant papers will be sent to the officer at least 5 working days before the date of the hearing.

The Disciplinary Authority will also receive a copy of the investigatory panel's factual and detailed record of their findings and any other relevant papers at least 5 working days before the date of the hearing.

### **Absence of the Officer from the Disciplinary Hearing**

#### **Point 4.2c of the Procedure**

Where an officer is unable to attend the disciplinary hearing, he/she shall advise the Disciplinary Authority, in advance, indicating the reasons for non-attendance. Only if a satisfactory reason, including the unavailability of the chosen representative is provided should the Hearing be adjourned and rescheduled.

In the absence of any explanation for non-attendance, request for adjournment or when the explanation given is unsatisfactory, the Disciplinary hearing shall proceed in the Officer's absence.

If the officer subsequently satisfies the Disciplinary Authority that the failure to attend was for some unavoidable cause, the Disciplinary Authority may, at its absolute discretion, rehear the matter.

Where the officer indicates that he/she is unable to attend due to illness the disciplinary authority may obtain an independent medical report and progress the case, as appropriate.

#### **Point 4.2c of the Procedure**

The officer shall be offered the option of providing a written submission for consideration at the hearing and/or for a representative (as defined in guidance relating to Point 4.2a of Procedure, above) to attend and put forward the case.

#### **Point 4.4 of the Procedure – Verbal Warning**

Where a verbal warning is to be issued, the officer shall be informed, in writing, and advised of the consequences of a recurrence of a similar or further breach of discipline within a 6 month period. The letter shall advise the officer of the appeals process in accordance with point 7 of the Disciplinary Procedure. A disciplinary warning will normally take effect either from the date on which it is issued or, where an appeal is lodged, from the date of the notification of the appeal decision

#### **Point 4.5 of the Procedure – Written Warning**

Where a written warning is to be issued, the officer shall be informed in writing, and advised of the consequences of a further breach of discipline within a period of 1 year. The letter shall advise the officer of the appeals process in accordance with point 7 of the Disciplinary Procedure. A disciplinary warning will normally take effect either from the date on which it is issued or, where an appeal is lodged, from the date of the notification of the appeal decision.

#### **Point 4.6 of the Procedure – Final Written Warning**

Where a final written warning is to be issued, the officer shall be informed in writing, and advised of the consequences of a further breach of discipline within a one year period. The letter shall advise the officer of the appeals process in accordance with point 7 of the Disciplinary Procedure. A disciplinary warning will normally take effect either from the date on which it is issued or, where an appeal is lodged, from the date of the notification of the appeal decision.

## **Further Disciplinary Action (Excluding Dismissal)**

### **Point 4.7 of the Procedure**

Where further disciplinary measures are deemed appropriate (whilst not a complete list, such action may include withholding future pay progression, demotion, suspension without pay normally not exceeding a maximum of 4 weeks, or a combination of measures) the officer shall be informed in writing and advised of the consequences of a further breach of discipline within a 1 year period. The letter shall advise the officer of the appeals process in accordance with point 7 of the Disciplinary Procedure. A disciplinary warning will normally take effect either from the date on which it is issued or, where an appeal is lodged, from the date of the notification of the appeal decision.

In the case of dismissal refer to 4.9 of the guidance notes (see Page 6).

### **Point 4.8 of the Procedure**

Written records shall be kept, detailing the nature of any breach of discipline, the action taken and the reasons for it, whether an appeal was lodged, its outcome and any subsequent development.

The currency of a warning/s shall expire as follows:

- (i)** verbal warnings on completion of 6 months satisfactory conduct
- (ii)** written warnings on completion of 1 years satisfactory conduct
- (iii)** final written warnings on completion of 1 year's satisfactory conduct
- (iv)** further disciplinary action, short of dismissal on completion of 1 year's satisfactory conduct.

The record of a disciplinary warning should be safeguarded and kept confidential. It should be disregarded for disciplinary purposes on completion of of the appropriate period as defined in the procedure. It is recommended that the record of a formal written warning and above should be forwarded for retention by the Board.

In the case of schools, access to records relating to child protection matters is governed by the provisions outlined in the booklet "Pastoral Care in Schools: Child Protection."

An officer's record may be made available for inspection by him/her or at the officer's written request by a full-time official of a recognised trade union.

The above process and procedures are governed by current legislation and are subject to change as legislation necessitates. For further guidance see Appendices i – iii attached.

## **5. PRECAUTIONARY SUSPENSION**

### **Paragraph 5.1 of the Procedure**

Due care shall be taken before deciding to suspend an officer. Precautionary suspension is appropriate where, for example:

- (i)** the continued presence of the officer would place him/her or others at risk
- (ii)** children, colleagues and members of the public on school premises are deemed to be at risk.
- (iii)** the alleged offence is of such a serious nature that it may constitute gross misconduct
- (iv)** the officer's continued presence may impede the investigation.

Where the nature of the allegation/s of misconduct is such that it is considered appropriate to impose a period of precautionary suspension, the Board of Governors or Principal when

exercising the power to suspend shall immediately inform the Employing Authority.

**Paragraph 5.2 of the Procedure**

Only the Board of Governors may end a suspension and in doing so must inform the employing authority immediately.

The officer shall be given written confirmation of the suspension, indicating that it is a precautionary measure pending criminal or disciplinary investigations or proceedings (as appropriate).

Investigation of the alleged offences may result in one of the following outcome:

- (i) It is considered that there is no case to answer in which instance the suspension shall be ended by the Board of Governors.
- (ii) There is a case to answer, and precautionary suspension is no longer necessary. The suspension shall be ended by the Board of Governors and the disciplinary procedure invoked.
- (iii) There is a case to answer and it is considered that the nature of the offence is such that precautionary suspension should continue. The suspension should continue and the disciplinary procedure invoked.

**Point 5.3 of the Procedure**

Precautionary suspension is not a disciplinary penalty and its imposition is not intended to imply any decision about the outcome of the disciplinary process.

**Point 5.4 of the Procedure**

Precautionary suspension shall be with full pay.

**Dismissal Procedure for Non-Teaching Staff in Schools**

**Point 4.9 of the Procedure**

Where the Disciplinary Authority's decision is to dismiss the officer the formal notice of dismissal terminating the contract of employment cannot be issued until the following procedure has been applied:

**6. RIGHT TO MAKE REPRESENTATIONS**

**Point 6.1 of the Procedure**

Schedule 2 of the Education (N.I.) Order 1998 provides that a Board of Governors shall afford the officer, whom it proposes to dismiss, an opportunity of making representations with respect to the proposal and have regard to any representations made. Such representations shall not constitute an appeal.

The officer shall be informed in writing of the intention to make a determination to dismiss and of the proposed effective date of dismissal taking into account entitlement to statutory notice. He/she shall be informed of the right to make representations, either in writing or orally, to the Board of Governors and of the right to appeal the decision to an Independent Appeals Committee. The time limits should where possible be adhered to, but may be extended in exceptional circumstances and with the agreement of the parties.

**Exercising Right to Make Representations**

- (i) Where the officer chooses to make representations to the Board of Governors he/she shall write to the Chairperson, within 5 working days of the date of the letter indicating the intention to dismiss being received. The Chairperson shall convene a meeting as soon as practicable and no later than 10 working days from the receipt of the request.

- (ii) As representations are not an appeal the sub-committee, which acted as Disciplinary Authority and made the recommendation to dismiss to the Board of Governors, may be present with the remaining governors to hear and consider the representations.
- (iii) Having heard and considered the representations the determination of the Board of Governors shall be notified to the officer within 5 working days of the date of the meeting.
- (iv) Where the decision of the Board of Governors is to confirm the intention to dismiss the officer shall be advised in writing of his/her right to appeal to an Independent Appeals Committee in accordance with paragraph 8 of the Disciplinary Procedure for Non-Teaching Staff in Schools.

**8. INDEPENDENT APPEALS: LABOUR RELATIONS AGENCY [LRA] IN THE CASE OF DISMISSAL**

- (i) Where the officer chooses not to make representations but to proceed directly to Independent Appeal, he/she shall write to the Principal of the school within 10 working days of the date of receipt of the disciplinary decision, setting out the grounds of the appeal. A copy of this letter should also be sent to the Chairperson of the Board of Governors and to the Board. The Principal shall, following consultation with the Head of HR or nominee, refer the matter to the Labour Relations Agency within 5 working days of receipt of the appeal.
- (ii) **Notice of Dismissal**  
The Employing Authority must be kept informed of the progress of the case. Where the appeal is not upheld by the Independent Appeals Committee the Board of Governors will instruct the Employing Authority to issue the formal notice of dismissal terminating the officer's contract of employment.

**Summary Dismissal**

**Point 4.10 of the Procedure**

Summary Dismissal means dismissal without notice and without payment in lieu of notice. Summary Dismissal will take effect from the date on which written notice is received indicating that the appeal has not been upheld.

- (i) The Employing Authority must be consulted before an officer is summarily dismissed.
- (ii) The Board of Governors shall inform the officer in writing, of the intention to make a determination to summarily dismiss, advise of the right to make representations, either in writing or orally, to the Board of Governors and of the right of Appeal to the Independent Appeals Panel as detailed in 4.9 (see page 6).
- (iii) Following notification from the Independent Appeals Panel that the appeal has not been upheld the Board of Governors will instruct the Employing Authority to issue the formal letter of summary dismissal.
- (iv) The Employing Authority shall issue the formal letter of summary dismissal terminating the officer's contract of employment.

## DISCIPLINARY PROCEDURE FOR NON-TEACHING STAFF IN SCHOOLS

### DISCIPLINARY RULES

#### 1. DEFINITIONS

##### 1.1 Misconduct

Misconduct is an offence for which a warning shall normally be the appropriate disciplinary action.

##### 1.2 Serious Misconduct

Can be repeated offences of the nature normally dealt with under 1.1 or an offence of a more serious nature but not regarded as gross misconduct.

##### 1.3 Gross Misconduct

Is an offence so serious it would normally warrant dismissal (with notice).

##### 1.4 Summary Dismissal

Is the termination of the contract of employment without notice where the offence committed has been established, after investigation and disciplinary hearing, as gross misconduct.

##### 1.5 Precautionary Suspension

Is with full pay pending investigation. It shall not be seen as a penalty, but a precautionary action.

#### 2. DISCIPLINARY RULES/OFFENCES

It is not possible to define every circumstance which shall constitute misconduct and these disciplinary rules are provided as guidance only.

In considering the level of warning or other disciplinary action to be taken, the Disciplinary Authority shall consider the previous record of the officer, any pattern of misconduct, the currency of any previous disciplinary warning, the recurrence of a similar or further breach of discipline within the specified time period.

The following are examples of situations which constitute an offence under the rules and shall lead to disciplinary action. The list is not exhaustive and the degree of seriousness of the offence shall determine the category under which it shall be considered.

#### 3. MISCONDUCT

Minor incidents of the following offences shall normally warrant a verbal or written warning or other disciplinary action short of dismissal. However, the degree of seriousness of the offence may warrant consideration under "serious or gross misconduct".

##### Misconduct

- Unsatisfactory timekeeping - arriving late or leaving early without permission.
- Unauthorised absence from place of work - misuse of the school's time.
- Sickness absence - persistent failure to give proper notice in accordance with school instructions.

- Absence - unacceptably high levels and frequencies.
- Insubordination - bad language, bad behaviour, insolence or refusal to carry out reasonable and legitimate instructions.
- Being an accessory to a disciplinary offence.
- Unsafe working – refusal or neglect to observe security and safety regulations, including the proper use of safety clothing and equipment issued by the school/employing authority, breaches of statutory requirements under the Health and Safety Order.
- Carelessness - resulting in loss or damage to, or waste of, property entrusted to his/her care, including misuse of telephone or other unauthorised use of equipment including electronic communications media.
- Unprofessional behaviour involving pupils, staff, parents or visitors.
- Vexatious use of the Grievance or other Procedures, ie wilful or frequent pursuit of issues of no real substance.
- Confidentiality - unauthorised disclosure of school information which might prejudice the school's interests.
- Unauthorised collections of money.

### **Examples of Gross Misconduct**

The following acts, and offences of a similar nature, will be regarded as gross misconduct. Gross misconduct is an act or omission that is of such a nature or so serious that, if proven, the continued presence of the employee at work cannot be tolerated, and which could lead to summary dismissal (dismissal with or without notice.)

### **Breach of Trust**

- Omission or conduct liable to lead to serious loss of confidence in the public service.
- Criminal offences committed at work.
- Conduct that is a serious abuse of position – eg entering into a personal relationship with a vulnerable service user.

### **Misuse of Property**

- Theft, or attempted theft, from the board, its employees, partner organisations or service users, or from premises being visited during the course of employment.
- Unauthorised possession and/or misuse of the board's property, or misuse of board vehicles.
- Malicious damage to, or any other unlawful act which involves, the property of the board or its employees.
- Unauthorised entry to board premises outside of normal hours of use.

### **Dishonesty and Fraud**

- Failure to disclose material information (eg convictions) or knowingly making a false statement or omission when applying for an appointment.
- Falsification of time sheets, flexi sheets, expense claim forms, car allowance claims etc.

## **Addendum 1 to JNC Circular No 200 w.e.f. 23 January 2013**

- Deliberate disregard of the Board's Financial Procedures and Rules or Contracting Procedures or general instructions concerning the collection, transfer, security and paying in of monies and the completion and submission of associated documents.
- Undertaking other paid employment whilst receiving sick pay or other benefits from the board during a period of sickness or unauthorised absence, without prior management agreement.
- Abuse of the Sick Pay Scheme.

### **Health and Safety**

- Deliberate action or omission which endangers life or limb including deliberate damage to, neglect of, or inappropriate use of, safety equipment and any violations of safety rules and codes of practice which could give rise to serious consequences.

### **Unacceptable Behaviour at Work**

- Physical violence (eg fighting), whether actual or threatened.
- Sexual misconduct.
- Deliberate harassment or bullying including inciting racial hatred.
- Indecent conduct or obscene behaviour at work.
- Corrupt or improper practice.
- Behaviour that brings the board into disrepute.
- Serious insubordination.
- Consumption of alcohol while in charge of driving a board vehicle and/or while in charge of a group of young people.

### **Alcohol and Drug Use**

- Attending work under the influence of alcohol or proscribed drugs.
- Consuming intoxicants during working hours or bringing intoxicants into the premises without permission.
- Alcohol/drug abuse – being in an unfit mental and/or physical state induced by these substances.

In considering a case of misconduct under any of the above, the employee shall be advised of the provision available under the Employing Authority's welfare arrangements.

### **Confidentiality**

- Unauthorised disclosure of confidential and personal information including that which may be of use to a competitor within a tendering situation or quotation procedure.

### **Use of Information Technology Systems**

- Serious breach of the board's Internet Policy eg accessing internet sites containing pornographic material.
- Loss of confidential or sensitive data through negligence.
- Loss of expensive equipment through negligence.

**Conduct Outside of Work**

- Criminal offences and other conduct outside employment which would prevent an employee from continuing to do his/her job or which affects his/her suitability to perform his/her work, makes him/her liable to be unacceptable to other employees or management, or is liable to damage the board's business.

Again this list is neither exclusive nor exhaustive, and in addition there may be other offences of a similar gravity, which would constitute gross misconduct.

**SUSPENDED PENDING REVIEW**

## THE DISCIPLINARY HEARING: CHECKLIST

1. Introduce the panel.
2. Explain the purpose of the meeting.
3. If officer is not represented – check if there is a problem.
4. State the allegations and invite the officer to respond.
5. Panel asks questions.
6. Invite further comment from officer.
7. Advise that decision will follow, in writing.
8. Deliberate, decide and write to officer and advise of the appeal process.
9. Copy correspondence to the Head of HR.

SUSPENDED PENDING REVIEW

## PROCEDURE AT DISCIPLINARY HEARING

The recommended procedure to be adhered to at Disciplinary Hearing is as follows:

- (i) At the start of the meeting the Chairperson shall outline the role of any other person outside of the Board of Governors present e.g. a note taker, etc.
  - (ii) The Chairperson shall explain clearly the purpose of the meeting and outline the procedure to be followed.
  - (iii) The Chairperson shall state clearly the allegations, referring, where appropriate, to any documentary evidence. Only those allegations stated in writing in advance shall be dealt with at the meeting (see also point (v) below).
  - (iv) The Chairperson, or other panel member, may ask questions of the officer or the representative to ensure the issues are fully explored and the facts established.
  - (v) The officer shall be asked if there is any further information he or she wishes to have considered.
  - (vi) Where the Disciplinary Authority considers that points raised at the meeting require further investigation or clarification, or where further offences have come to light, the meeting shall be adjourned to enable investigations to be completed before a decision is made. Where possible, the officer and representative shall be given an indication of the anticipated time required for such investigation.
  - (vii) Otherwise the Chairperson shall explain that, following the Disciplinary Authority's deliberations it will come to a decision, within the agreed timeframe and the officer advised in writing. The officer and his/her representative shall withdraw from the hearing.
  - (viii) The Disciplinary Authority shall review all the evidence and decide what are the relevant facts. The Disciplinary Authority shall satisfy itself in respect of the allegations made and determine if:
    - a the allegations have been substantiated;
    - b there are any mitigating circumstances;
    - c what if any penalty should be imposed.
- In arriving at any conclusions or in making any decision the Disciplinary Authority shall take account of relevant factors, the previous record of the officer and any admission/s made in the course of the disciplinary hearing.
- (ix) Guidance may be obtained from Appendix 1 and 2 attached. Appendix 1 - "Disciplinary procedure for Non-Teaching Staff in Schools - Disciplinary Rules." The list of examples given is not exhaustive and the degree of seriousness of the offence will determine the category under which it will be considered. Appendix II - "The Disciplinary Hearing Checklist".
  - (x) In arriving at its conclusions the Disciplinary Authority is required to act reasonably and to base its conclusions on the balance of probabilities.
  - (xi) The Disciplinary Authority shall then inform the officer in writing, of its decision as expeditiously as possible, having given proper consideration to all the matters raised. A copy shall be provided to the Head of Human Resources.