



LANCASHIRE County Council

SCHOOL SUPPORT STAFF DISCIPLINARY AND DISMISSAL PROCEDURE

1. PURPOSE

- 1.1 This procedure is intended to clarify the rights and responsibilities of management, trade unions and employees. It sets out the course of action that will be followed in the event of disciplinary action being considered necessary.
- 1.2 This procedure is published as part of the staffing policies for the Governing Board of Elm Tree Community Primary School.
- 1.3 **In this school, the decision to dismiss an employee under the Disciplinary and Dismissal Procedure has been delegated to the Headteacher.**

2. SCOPE

- 2.1 This procedure applies to all permanent and temporary, full and part-time employees, excluding those under School Teachers Pay and Conditions, who are employed by the Governing Board or otherwise subject to the disciplinary powers of the Governing Board.

3. CONTEXT

- (i) This procedure does not apply where notice is given during probationary service and dismissal arises from unsuitability for confirmation of appointment (or during any period of extension of any probationary period).
- (ii) This procedure does not apply on the termination of a fixed term or temporary contract of employment where the term of that contract expires without being renewed, or where the contract specifies an event which terminates the contract and the event has occurred.
- (iii) This procedure does not apply in relation to competency issues due to a lack of capability where the Governing Board has adopted a separate Capability Procedure.

4. GENERAL PRINCIPLES

- 4.1 Part 3 of the Education Act 2002 and its associated School Staffing (England) Regulations 2003 contains provisions relating to disciplinary and dismissal procedures. These are incorporated in these procedures.

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- 4.2 In many cases the right word at the right time and in the right way may be all that is needed and will often be a more satisfactory method of dealing with a breach of discipline or unsatisfactory conduct than taking action via a formal investigation and a formal hearing and this procedure should not be used in these circumstances.
- 4.3 No disciplinary action will be taken against an employee until the matter has been investigated. Details will be gathered promptly and will include any comments the employee concerned wishes to make at this stage. During the course of the investigation the right to be accompanied applies to the employee concerned whenever they are interviewed or is involved in any meetings arising therefrom. The employee concerned must be kept informed of progress with the investigation in all instances. Where the employee is suspended from duty the arrangements set out in Paragraph 6 must be followed.
- 4.4 This procedure has been written on the understanding that the disciplinary investigation is undertaken by the Headteacher, and dismissal decisions are taken by the Disciplinary and Dismissal Committee of the Governing Board. However, in accordance with the provisions of the Education Act 2002 and it's associated School Staffing (England) Regulations 2003, the Governing Board may elect to delegate the power to make dismissal decisions to the Headteacher. If this is the case, there will be no Disciplinary and Dismissal Committee. Instead the dismissal decision will be taken by the Headteacher, and the appeal referred to the Appeals Committee of the Governing Board. For further details, see Annex 4.
- 4.5 In these circumstances, to preserve the integrity of the process, the Governing Board should delegate the responsibility for the disciplinary investigation to another member of the School Management Team, thereby leaving the Headteacher available to consider what action should be taken at the end of the formal procedure, including dismissal.
- 4.6 In such cases, any reference to the role of the Headteacher within this procedure should be taken to mean the member of the school management team responsible for the disciplinary investigation.
- 4.7 The Education (School Government) (England) Regulations 1999 contain provisions relating to withdrawal from the governing board or committee meetings of persons normally entitled to attend these meetings. The general principle is that where there is a conflict between the interests of such a person and the interests of the governing board, or where the principles of natural justice require a fair hearing and there is reasonable doubt about the person's ability to act impartially, they should withdraw from the meeting and not vote.
- 4.8 The Employment Relations Act 1999 and the Employment Act 2008 provide the right for employees to be accompanied by a chosen companion who may be a fellow worker, a trade union representative, or an official employed by a trade union. A trade union representative who is not an employed official must have been certified by their union as being competent to accompany a worker. The 'companion' can address the meeting/hearing. If the fellow worker or trade union representative is not available on the initial date set for a hearing, the employee has a right for the

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hearing to be postponed for up to five working days to allow a reasonable alternative time within this five day period to be identified.

- 4.9 There will be cases where an employee may have a disability that has a serious impact on their ability to respond during the investigation meeting or disciplinary hearing. If this is the case, whatever reasonable adjustments are practicable will be made to ensure that such disadvantages are overcome.
- 4.10 Employees with other physical impairments will also be offered reasonable adjustments such as frequent breaks, a separate room and adjournments.
- 4.11 Anyone with a depressive illness, anxiety state or "stress-related" illness will be offered at least one postponement of the hearing where appropriate and where this can be accommodated within a reasonable timescale.
- 4.12 Other than in circumstances where the employee provides expert medical evidence that they are unable to understand what is being said and cannot give instructions to their representative, the hearing will take place. Headteachers/Governors may consider holding the hearing at a neutral venue if this is practicable to assist the employee, if medical advice recommends this. Other alternatives may be offered for the employee to be offered the opportunity to send in written representations or send a representative in their place.
- 4.13 All requests for reasonable adjustments will be sympathetically considered on a case-by-case basis, in light of medical evidence.

5. SHOP STEWARDS/TRADES UNION REPRESENTATIVES

- 5.1 No formal disciplinary proceedings will be taken against a shop steward/trade union representative until the circumstances of the case have been discussed with a full time official of the Union concerned (unless the individual concerned chooses to waive that right).

6. SUSPENSION

- 6.1 Where a Headteacher or, where appropriate another senior member of staff, considers that suspension may be appropriate in circumstances of alleged, suspected or known misconduct (including where considered appropriate to facilitate investigation), s/he may suspend an employee with pay (ie. pay inclusive of all those payments which would have been made in respect of normal working arrangements).
- 6.2 Suspension with pay is not a disciplinary measure and must not be viewed as a judgement upon alleged, suspected or known misconduct. If practicable, provision will be made for the employee to choose to be accompanied. An employee shall be informed of the reason for suspension at the time and will be given confirmation of the suspension in writing.
- 6.3 The employee will not return to the school premises without invitation or permission of the Headteacher during a period of suspension

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6.4 A school 'Contact Officer' will be nominated to keep the employee informed of progress on a regular basis and to act as a liaison between the employee and the school. For further details see Annex 3.

6.5 The need to continue with the suspension of an employee will be kept under review by the Headteacher and the employee will be informed of progress.

7 DISCIPLINARY MISCONDUCT

7.1 CONSIDERATION OF DISCIPLINARY ACTION

On completion of the investigation, the Headteacher will determine whether, on the basis of the evidence, arrangements should be made for a formal Disciplinary hearing to proceed. Where the alleged misconduct is gross misconduct following a "live" final written warning, or where the circumstances of the case otherwise justify it, a Disciplinary Hearing will be arranged before the Headteacher (if the responsibility for dismissal decisions has been delegated to them by the Governing Board) or Disciplinary and Dismissal Committee. In other cases of misconduct the Hearing will be arranged before the Headteacher.

The Headteacher may, with the agreement of the employee and/or their representative issue a disciplinary warning at the conclusion of an investigative meeting without convening a separate formal hearing.

7.2 LEVELS OF DISCIPLINARY MISCONDUCT

It is not the purpose of this procedure to classify all levels of misconduct. Each incident which may give rise to the consideration of disciplinary action will be judged independently according to the particular circumstances of the case including the previous conduct of the particular employee. However, a general guide is attached as Annex 1. Attention is specifically drawn to the fact that any act of gross misconduct, as listed, could result in dismissal with or without notice.

8 THE PROCEDURE

8.1 NOTICE OF THE HEARING/RIGHTS TO REPRESENTATION

The employee will be given written advance notice of the Hearing, the purpose of it (with the nature of their alleged misconduct being outlined), any relevant documentation, including a copy of the Disciplinary Procedure and be invited to attend together with their fellow worker or Trade Union representative. A mutually convenient date should be agreed with the employee and their representative if possible, and the Hearing can be postponed for up to five working days if the Trade Union representative or fellow worker is not available (Please refer to Section 4 for further information on the right to be accompanied).

Where the employee fails to attend or to be represented at a disciplinary hearing involving the Headteacher, Disciplinary and Dismissal Committee, or at the Appeals

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Committee, the matter may be considered in their absence if it is considered appropriate in all the circumstances.

8.2 THE HEARING

The procedure to be followed at any Disciplinary Hearing (or any Disciplinary Appeals Hearing) is as set out in Annex 2.

8.3 DISCIPLINARY ACTION

8.3.1 Headteacher Level Hearings

- (a) Where following investigation it is considered that a hearing should be convened at Headteacher (or other appropriate person) level, the arrangements set out at 8.1 and 8.2 will be followed.
- (b) The Headteacher or other appropriate person may be accompanied by a senior member of staff of the school or an officer of the Authority.
- (c) Should no acceptable explanation be given of an employee's conduct, the Headteacher may, depending on the seriousness of the conduct,
 - (i) issue a written instruction (this does not constitute a formal disciplinary penalty)
 - (ii) issue a disciplinary warning e.g. first, second or final written warning (see below)
 - (iii) refer the matter to the Disciplinary and Dismissal Committee (In cases where responsibility for dismissal decisions has not been delegated to the Headteacher)
 - (iv) Impose a transfer or demotion within the school, accompanied by a final written warning
 - (v) dismiss the employee with or without notice depending upon the circumstances of the misconduct (in circumstances where responsibility for dismissal has been delegated to the Headteacher)

8.3.2 Disciplinary Sanctions

Depending upon the seriousness of the conduct complained of, a formal disciplinary sanction (first, second, final written warning or dismissal decision), may be issued following a hearing. The person(s) authorised to issue these sanctions are set out below. Governing Bodies should have regard to the statutory guidance which accompanies the 2003 School Staffing (England) Regulations, should they wish to delegate the power to make dismissal decisions to the Headteacher.

- Written Warnings (first, second or final) – Headteacher or Disciplinary and Dismissal Committee

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- Transfer/demotion - Headteacher or Disciplinary and Dismissal Committee
- Dismissal Decision - Headteacher (where the Governing Board has delegated to the Headteacher the power to issue such a sanction) or Disciplinary and Dismissal Committee

Where the Headteacher issues a sanction, they should be accompanied by a witness at any meeting convened under this procedure. The employee has the right to be represented at any such meeting.

(i) First Written Warning

If conduct does not meet acceptable standards, the employee may be given a FIRST WRITTEN WARNING. S/he will be advised of the reason for the warning, that it is the first stage of the disciplinary procedure, of the areas in which improvement is required and of their right of appeal. A first written warning will be retained on the employee's file for a period of 6 months.

(ii) Second Written Warning

If the misconduct is more serious than would warrant a first written warning or if further misconduct occurs, whether of a similar nature to the previous misconduct or otherwise, a SECOND WRITTEN WARNING may be given to the employee. This will give details of the concerns, and the improvement required and the timescale within which it is to be achieved/reviewed. It will warn that further action will be considered if there is no satisfactory improvement and will advise of the right of appeal. A second written warning will be retained on the employee's file for a period of 1 year.

(iii) Final Written Warning

If there is still a failure to improve conduct or if conduct is still unsatisfactory, or if the misconduct is sufficiently serious to warrant only one written warning but insufficiently serious to justify dismissal (in effect both first and final warning) a FINAL WRITTEN WARNING will normally be given to the employee. This will give details of the concerns, will warn that dismissal may result if there is no satisfactory improvement and will advise of the right of appeal. A final written warning will be retained on the employee's file for a period of 2 years.

(iv) Dismissal or other sanction as an alternative to Dismissal

Where an employee:

- 1) is found to have committed an act which is considered to amount to gross misconduct, or
- 2) has failed to improve their performance as required during the period of a Final Written Warning, or

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- 3) Has committed a further act of misconduct during the period of either a Written Warning or Final Written Warning (whether or not the misconduct is of a similar type or different to the original misconduct)

then s/he may be dismissed with or without notice.

As an alternative to dismissal where action beyond a Final Written Warning is considered to be justified then a transfer or demotion may be imposed, accompanied by a Final Written Warning.

Notes

- (a) All formal warnings will be confirmed in writing.
- (b) A warning will not be disregarded if a subsequent warning is issued in relation to further misconduct whether of a similar nature or otherwise which occurs whilst a warning remains 'live' on file. The original warning will run concurrently with the most recent warning. It is the date of the further misconduct which determines whether an earlier warning remains "live" and not the date of the hearing in respect of further misconduct.
- (c) Records of warnings will be expunged at the end of the stated time and any note or reference should be removed from the personal file. "Keeping Children Safe in Education," however, allows for certain types of misconduct relating to the protection of children and associated warnings to remain on file for longer than the period specified. In such an event, the member of staff will be informed, in writing, and the longer period will be specified. Relevant warnings, so retained, shall be taken into account in any further disciplinary proceedings in relation to safeguarding issues.
- (d) The School processes personal data collected during the investigation stage and any subsequent stages of disciplinary action in accordance with its data protection policy. In particular, data collected as part of the investigation stage and any subsequent stages of disciplinary action is held securely and accessed by, and disclosed to, individuals only for the purposes of completing the disciplinary procedure. Inappropriate access or disclosure of employee data constitutes a data breach and should be reported in accordance with the school's data protection policy. It may also constitute a disciplinary offence, which will be dealt with under this procedure.

8.3.3 The Disciplinary and Dismissal Committee

- (a) Presentation of Report to the Disciplinary and Dismissal Committee
 - (i) Where a decision has been made under Part 3 of the Education Act 2002 or section 7.1 or 8.3.1c of this procedure to refer the matter of an employee's conduct to the Disciplinary and Dismissal Committee, the arrangements set out in 8.1 and 8.2 will apply.

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- (ii) The Headteacher or other appropriate person will inform the employee that a report is to be presented to a meeting of the Disciplinary and Dismissal Committee, for their consideration, and the reasons why this action is being taken. Thereafter the Clerk to the Governors or other appropriate person will send a notification, in writing, to the employee informing them of the date time and place of such a meeting.
- (iii) A copy of the report and papers to be submitted to the Committee by the Headteacher together with any statements will be supplied at a minimum of 10 working days prior to the hearing date. Any documentation that the employee wishes to submit directly relating to the case must be received by the Headteacher or Clerk to Governors 5 working days prior to the hearing. If the employee fails to attend the meeting without an acceptable reason, this could result in the meeting proceeding in their absence.

(b) Procedure at the Disciplinary and Dismissal Committee

The procedure to be followed at a hearing by the Disciplinary and Dismissal Committee is set out at Annex 2

Having considered the evidence the Committee will determine any appropriate action.

The options available to the Disciplinary and Dismissal Committee are as follows:

- (i) to take no further action,
- (ii) to issue a written instruction (this does not constitute a formal disciplinary penalty)
- (iii) to take disciplinary action (i.e. to issue a disciplinary sanction - first, second, final written warning; transfer/demotion; or dismissal with or without notice)

Note

In cases where it is determined that an employee shall be dismissed, the Governing Board/Headteacher (where the decision to dismiss has been delegated) must notify the Children's Services Authority (CSA) , setting out the determination together with the reasons. The responsibility for the termination of the employee's service rests with the CSA who must serve notice within fourteen days of notification being given by the Governing Board or otherwise terminate the contract without notice, where the Disciplinary and Dismissal Committee/Headteacher where authorised have so determined.

9. APPEALS AGAINST DISCIPLINARY ACTION

- 9.1 An employee will have the right of appeal against any disciplinary penalty imposed. There is no further right of appeal following an appeal hearing (this does not remove any statutory rights to appeal to an Employment Tribunal).

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- 9.2 All notices of appeal must be in writing, stating the grounds of appeal, and must be submitted to the Clerk to the Governors or other appropriate person within five working days of the receipt by the employee of notification in writing of the disciplinary action. Any appeal against a decision of the Headteacher or Disciplinary and Dismissal Committee will be considered by an Appeals Committee of the Governing Board. No member of the Disciplinary and Dismissal Committee will be a member of the Appeals Committee of the Governing Board. In the exceptional event that there are insufficient numbers of Governors available to participate in a Governors' Disciplinary or Appeal Committee, the Governing Board may appoint associate members to solely participate in the appropriate Committee.
- 9.3 Where an employee lodges an appeal against the decision of the Headteacher or Disciplinary and Dismissal Committee, short of dismissal then that decision will not take effect pending the outcome of the appeal hearing.
- 9.4 Where the Headteacher or Disciplinary and Dismissal Committee decide to dismiss an employee without notice then the dismissal will take immediate effect. However, if an appeal is then lodged, and is successful, the employee will be reinstated, with full pay, retrospectively to the date of dismissal with no break in continuity of employment.
- 9.5 Where the Headteacher or Disciplinary and Dismissal Committee decide that an employee should be dismissed with notice then the date of dismissal will be the date of expiry of the notice period. If an appeal is lodged the notice period will continue to run. If the appeal hearing is after the date of dismissal and is successful, the employee will be reinstated, with full pay, retrospectively to the date of dismissal.
- 9.6 An appeal meeting will be convened, wherever practicable, within twenty working days of the receipt of the notice of appeal.
- 9.8 The appellant shall be given, in writing, not less than five working days notice of the date, time and place of the meeting.
- 9.9 The appellant will have the right to attend and be accompanied by a fellow worker or trade union representative (See Section 4 in relation to postponement rights and attendance matters).
- 9.10 All appeals shall be by way of a re-hearing.
- 9.11 The Appeals Committee will have the power to uphold the original decision, impose a lesser penalty, or reject the appeal.
- 9.12 The Procedure to be followed at a meeting of the Appeals Committee is set out at Annex 2

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ANNEX 1

LEVELS OF DISCIPLINARY MISCONDUCT

Examples of minor misconduct

Minor time wasting
Occasional lateness
Minor instances of insubordination.

Examples of serious misconduct

Persistent or serious instances of insubordination
Persistent bad timekeeping
Continued repetition of previous offences

Examples of gross misconduct

Gross misconduct, which will result in the immediate referral of an adverse report to a Disciplinary and Dismissal Committee and may result in dismissal, is regarded as misconduct of such a nature that it fundamentally breaches the contractual relationship between the employee and the employer. **Examples of gross misconduct all of which may result in dismissal include:-**

Stealing from the employer, members of staff, children or the public, other offences of dishonesty;
Sexual misconduct at work;
Wilful neglect of duty;
Misuse of the internet, email, mobile telephone or other school facilities;
Harassment of other employees, children or parents on the grounds of sex, ethnicity, sexual orientation, disability, religion or belief or age
Fighting, physical assault;
Falsification of a qualification which is a stated requirement of employment or which results in financial gain;
Deliberate damage to or misuse of the employer's property;
Drunkenness or being under the influence of drugs at work, (note - the County Council's Misuse of Drugs and Alcohol Policy needs to be considered in these cases);
Falsification of records or claims for personal gain e.g. work records, time sheets, travel expenses etc;
Wilful disregard of health and safety regulations;
Serious negligence which causes unacceptable loss, damage or injury;
Serious violation of catering hygiene regulations;
Intimidation of whistleblowers or witnesses to Hearings;
Other similar acts of misconduct may come within the general definition of gross misconduct.

It should also be noted that disciplinary action may be considered in relation to acts of misconduct which take place outside of work hours, for example, in instances of criminal prosecution and/or conviction/caution for such actions. The main considerations should be the relevance of the offence to the employee's duties and/or the effect on the contractual relationship with the employer and on clients/colleagues. Disciplinary measures will not automatically be appropriate in these instances.

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ANNEX 2

DISCIPLINARY HEARING/APPEALS PROCEDURE

1. The following procedure is appropriate for any level of hearing including appeal.

NOTE: The Executive Director Education and Children's Services or nominee must be advised of any action which may result in dismissal and will be entitled to attend any Hearing/Appeal for the purpose of giving advice. The Headteacher or Disciplinary and Dismissal Committee have a duty to consider the advice of the Executive Director Education and Children's Services or nominee before reaching a decision to dismiss.

2. **PROCEDURE AT THE HEARING**

- (a) The case against the employee will be presented by the Headteacher or other appropriate person (the presenter of the report) who will be entitled to call witnesses to support the case.

Witnesses will only normally be present for the period during which they are required to give evidence directly to the Hearing

- (b) The employee and/or their representative and the person/Committee hearing the case will be entitled to question the presenter of the report and any witnesses called.
- (c) The employee and/or their representative will be entitled to present a statement of case and will be entitled to call witnesses to support the case.
- (d) The presenter of the report and the person/Committee hearing the case will be entitled to question the employee and any witnesses called.
- (f) The presenter of the report will have the opportunity to make a closing statement (No new evidence may be introduced at this stage)
- (g) The employee and/or their representative shall then also have the opportunity to make a closing statement (No new evidence may be introduced at this stage)
- (h) At the conclusion, all parties will withdraw except the person/Committee conducting the hearing, and if present, the Executive Director Education and Children's Services representative and Clerk to the meeting who will deliberate in private. Should any parties need to be recalled to clarify any points of uncertainty, both sides should return notwithstanding that the point giving cause for concern relates to one party.
- (i) The parties will be informed of the decision and the employee will be given written confirmation of the decision, within 5 working days, which will also indicate any right of appeal.

ANNEX 3

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SUPPORT FOR STAFF DURING A PERIOD OF SUSPENSION – ROLE OF THE CONTACT OFFICER

The support outlined below is applicable to staff during a period of suspension or during a period of leave of absence/medical absence when these are alternatives to suspension.

It is recognised that there is a need for the school to provide some means of support to staff who are the subject of allegations of misconduct at work, or who have been suspended for alleged misconduct under the School's Disciplinary Procedure. In such circumstances, the member of staff involved may experience feelings of worry and depression; they may also feel isolated from their workplace and colleagues.

It is important that staff are made aware of what is happening in relation to the disciplinary investigation, as lack of information may also lead to further stress and ill health. In addition, it must be understood that the allegations may have placed the member of staff in a difficult situation in relation to their family.

Role of the Contact Officer

A Contact Officer should be allocated to the suspended member of staff. The Contact Officer will act as a link between the suspended member of staff and the School.

It is recommended that the Contact Officer makes regular contact with the suspended member of staff, and that the frequency of contact is outlined to the suspended member of staff at the outset.

The role of the Contact Officer is to:

- (i) Enquire as to the health and wellbeing of the suspended member of staff and where appropriate, remind the member of staff of the support available from the Employee Assistance Programme and/or Occupational Health Unit;
- (ii) Provide updates on relevant school matters;
- (iii) Seek clarity on any job-related queries that have arisen during their absence;
- (iv) Respond to any questions that the member of staff may have;
- (v) Remind the member of staff that support is also available from their Trade Union representative.

The investigation should be conducted without unnecessary delay, although it is accepted that sometimes the process can become protracted. The Contact Officer will make arrangements for the member of staff to be provided with updates on the progress of the investigation.

Nothing in this annex should preclude the member of staff, or their trade union representative contacting the Contact Officer or those conducting the investigation at any time.

ANNEX 4

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ADDENDUM TO DISCIPLINARY PROCEDURE

School Staffing (England) Regulations 2003 – Delegation to Headteacher of authority to make initial dismissal decisions.

These Regulations allow for Governing Bodies to delegate authority to make dismissal decisions to Headteachers. Therefore, the Headteacher becomes responsible for all disciplinary action up to and including dismissal.

Governing Bodies will need to take a decision as to whether they wish to delegate this responsibility. They need to bear in mind that the statutory guidance accompanying the Regulations specifies a series of circumstances where such an arrangement may not be appropriate. These are as follows

- A Headteacher who is unwilling to accept this function and who has hitherto not been required to do so. The position could be reviewed on the appointment of a successor Head.
- Where the Headteacher has been directly involved in the disciplinary process leading up to the consideration of dismissal – for example, through investigating the alleged misconduct. Experience shows that this is invariably the case and therefore, referral for consideration by the Discipline and Dismissal Committee preserves the integrity of the disciplinary process. However, in large Schools, it may be possible to delegate the responsibility for investigation to another member of the management team, thereby leaving the Headteacher available to consider, what disciplinary action, up and including dismissal, should be taken. Appeals against disciplinary action should still be considered by the Appeals Committee.
- Where the Governing Board of a school with a religious character (i.e. Voluntary Aided, Foundation and Voluntary Controlled Schools) has agreed that Governor involvement will serve to preserve this character. Therefore, advice should be sought from the relevant Diocesan Authority.
- Where the Headteacher is themselves subject to disciplinary or capability procedures.
- Where the CSA may have made representations to the Chair of Governors on grounds of serious concerns about the performance of the Headteacher.

Where a Governing Board does decide to delegate the authority to make dismissal decisions, they are strongly advised to consult with staff and their professional associations before finally confirming their decision.