



## **Association of Teachers and Lecturers (ATL Cymru's) and ACM/AMiE response to the disciplinary and dismissal procedure for school staff: revised guidance for the governing body**

**The Association of Teachers and Lecturers** represents over 160,000 education professionals across the four constituent parts of the United Kingdom. It draws its membership from teachers and lecturers, leaders and support staff in maintained and independent schools, and Further Education Colleges. As well as campaigning vigorously to protect and enhance members' pay and conditions ATL also believes that the education profession has a key role in developing education strategy and policy. ATL Cymru represents over 6,500 education professionals in colleges and schools across the whole of Wales.

**The Association for College Management** is the TUC affiliated trade union and professional association that champions, represents and supports managers in the post-16 education and training sector throughout the United Kingdom. Our membership embraces academic and business managers at all levels up to and including college principals. In Wales the Association is governed by the ACM Wales Committee, an autonomous committee of the ACM National Executive Council. There are over four hundred further education college managers in membership of ACM in Wales.

In 2008, realising the common shared values and commitments of Associations, ACM and ATL joined together to form AMiE – the Association of Managers in Education. AMiE represents managers across the spectrum of colleges and secondary and primary schools. As an organisation that crosses the traditional divide between schools and colleges it is thus uniquely placed to voice concerns and provide innovative solutions to the challenges of post-16 education. The formal merger of the two organizations took place on the 1<sup>st</sup> January 2011.

We welcome the opportunity to respond to this consultation and have the following comments to make:

## **1. Section 5: The staff disciplinary and dismissal and disciplinary and dismissal appeals committees**

- Paragraph 5.2 – we consider that if there are reasonable doubts about the impartiality of a member of either committee, the governing body should replace the governor in all circumstances.
- We make our detailed comments against a growing conviction born out of experience that Governors are often ill-equipped to deal with disciplinary matters. This lack of capacity cannot be addressed by training alone. The calibre of governors gives rise to serious concerns. In very small schools and small communities governors may often be unable to fulfil these roles without fear of favour or prejudice. We also note that some schools have difficulty recruiting governors who will be able to undertake these duties in any meaningful way. All too often governors' views are simply those of the Head Teacher. We appreciate that this Guidance is to be issued in regard to current policy and practice but we would not want our detailed comments to be construed as an endorsement of a system that is now in need of drastic overhaul

## **2. Section 7: Lesser misconduct**

- Paragraphs 7.4 and 7.5 - to make it clear that these paragraphs refer to the informal stage and are not part of the formal procedure, we suggest that paragraphs 7.4 and 7.5 are headed: informal stage.
- We are not clear why the heading above paragraph 7.6 refers to 'informal procedure'. Reference is made in paragraphs 7.6 – 7.9 to a formal investigation and the outcome of the investigation could result in formal disciplinary action following a disciplinary hearing.
- We are not clear why the heading above paragraph 7.6 refers to first stage and the heading above paragraph 7.14 refers to second stage.
- Paragraphs 7.12 – 7.17 - if paragraphs 7.12 – 7.17 are intended to summarise the possible outcomes following the hearing referred to in paragraph 7.11, we consider it would be helpful if the possible outcomes were summarised before dealing in turn with each possible outcome. The model staff disciplinary procedure for maintained schools in Annex I does this.
- Paragraphs 7.14 and 7.16 – paragraph 7.14 indicates that allegations can usually be dealt with by means of a formal warning. We are unclear how the first sentence of paragraph 7.16 fits in with this. Is the formal warning referred to in paragraph 7.14 a formal oral warning or first written warning

(depending on the circumstances), with paragraph 7.16 providing for a more severe warning in the situations outlined?

### **3. Section 8: Gross misconduct and Section 9: Stages of the procedure for considering allegations of gross misconduct**

- Paragraph 8.5 – this paragraph refers to the headteacher and chair of governors, in discussion with the local authority and diocesan authority where appropriate, determining ‘whether the member of staff’s conduct and behaviour amounts to gross misconduct’. There is a similar reference in paragraph 9.3. We should be grateful if consideration could be given to phrasing along the lines of determining ‘whether, if proved, the alleged conduct could reasonably fall within the category of gross misconduct’.
- Paragraph 9.11 – this paragraph refers to the member of staff at the start of the investigation interview being informed of the allegation(s). In cases of lesser misconduct, paragraph 7.7 advises that the member of staff should be informed in writing of the nature of the allegation(s) together with any supporting documents. We suggest the same should apply to cases of possible gross misconduct. This could be dealt with in paragraph 9.9.
- Paragraph 9.15 – reference is made in the final sentence of this paragraph to what happens if agreement cannot be reached. It would be helpful if this was more specific. It may be helpful to consider paragraphs 9.23 and 9.24 as these are more detailed on the matter.

### **4. Section 11: Disciplinary hearing**

- Paragraph 11.12 – it would be helpful if the guidance could provide that the letter from the clerk notifying the member of staff of the outcome of the hearing, would also remind the member of staff of their right of appeal.
- Paragraph 11.16:
  - we consider that one of the outcomes could also be that the alleged behaviour constitutes lesser misconduct and a formal oral warning should be issued;
  - we consider there may be an error in the draft guidance where reference is made to ‘or loss of salary’.

### **5. Section 12: Suspension**

- Paragraph 12.1- we believe that this statement is naïve. Suspension is often construed as judgment. Suspension should only be in the most extreme circumstances.
- Paragraph 12.4- This statement is not strong enough. The matter must be more than 'discussed' , governors should be required to pay very careful attention to the advice given, and only disregard it if they can prove that it is wrong

## **6. Annex B2: Examples of gross misconduct behaviour**

- Fifth bullet point: not all cases of bullying will constitute gross misconduct.
- Sixth bullet point: not all cases of harassment or discrimination will constitute gross misconduct.
- Final bullet point: we do not consider that 'some other substantial reason' is an example of gross misconduct behaviour.

## **7. Annex I: Model staff disciplinary procedure for maintained schools**

- Paragraph 11 (g) – this paragraph refers to two possible situations where there is a possibility of a member of staff being dismissed for a first breach of discipline. The first is cases of gross misconduct. The second situation referred to is 'in rare cases where the misconduct is considered to be sufficiently serious in all the circumstances to justify dismissal'. We consider that a member of staff should not be dismissed for a first breach of discipline for misconduct in situations where their conduct does not amount to gross misconduct.
- The model procedure deals with three main situations:
  - informal procedure;
  - formal procedure – lesser misconduct;
  - formal procedure – gross misconduct.

It would be helpful if the headings to these could stand out in the model procedure, to avoid confusion with headings within each of the three sections.

- Paragraphs 25 and 28 – paragraph 25 provides that the Headteacher/Chair of governors will issue an oral warning and paragraph 28 provides that they will issue a first written warning. As there are a number of possible outcomes following a disciplinary hearing, we should be grateful if consideration could be given to rephrasing these paragraphs to reflect that.

- Paragraph 36 – we are unclear of the scope of this paragraph. We consider that suspension should normally only be used in cases where, if proven, the alleged conduct could reasonably fall within the category of gross misconduct.
- Paragraph 46 – please see comments on paragraph 9.15 above.
- Paragraph 78 – we consider that one of the outcomes could also be that the alleged behaviour constitutes lesser misconduct and a formal oral warning should be issued.
- Paragraphs 79 and 80 – paragraph 21 of the model procedure provides that informal action or an oral warning are also possible outcomes following conduct which constitutes lesser misconduct. In view of the contents of paragraph 80, please consider whether paragraph 79 should refer to informal action and a formal oral warning.

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