

## Employment law

The Employment Act 2008 introduced new procedures for disciplinary matters and grievances which took effect in April this year. These new procedures are less rigid than the previous model and based on a new ACAS Code of Practice on Disciplinary and Grievance Procedures. Whilst it will not be mandatory for employers to follow this Code, the tribunals will want to see a very good reason if the Code is not followed. The new Act will give tribunals the power to adjust awards by up to 25% for unreasonable failure by either the employer or the employee to comply with the Code. Schools should therefore review their employee handbooks to ensure that their disciplinary procedures fall in line with the new ACAS code. Most school GBs adopt both a disciplinary and grievance policy so it is important that they are reviewed. It is expected that a greater emphasis on resolving disputes early on, particularly with regard to problems such as poor performance and attendance, will be addressed more robustly as a part of a disciplinary process with the hope that the matter will not finish up at the employment tribunal. It is important when the policies are being reviewed to expand on exactly how poor performance, attendance and conduct will be handled. Where an employee is unhappy employers will be encouraged to deal with the causes at an earlier stage than currently and to use a third party mediator if necessary. GBs should not rely on their local authority to do this work for them. The law and guidance on these issues is very clear as the NGA Guide Support and Challenge shows:

### Extract from 'Support and Challenge' - Staff Discipline and Capability

The GB **must** establish procedures for the regulation of the conduct and discipline of staff at the school ( Regulation 6 & 7 of the School Staffing England Regulations 2003 – to be replaced by the Regulation 7 & 8 of the School Staffing (England) (Consolidation) Regulations 2009 ) The GB **must** also have regard to the staffing guidance under sections 35(8) and 36(8) of the Education Act 2002 – issued by the DCSF

### Delegation

The GB can delegate this task to a committee, an individual governor or the Headteacher. It would not be good practice to delegate such an important responsibility to an individual governor.

### Challenge - questions

- Does your GB have a discipline and grievance procedure in place?
- If you have adopted the local authority or diocesan procedures, are you sure that these are fit for purpose in your school? Do they, for example, cite the GB as the authority that would hear an appeal, or deal with a grievance or disciplinary matter involving the Head?
- Have you consulted with your staff about the procedures you have in place?
- How do your procedures compare with DCSF guidance and model procedures on the ACAS website?

### Notes:

The School Staffing Regulations place a responsibility on GBs to adopt relevant employment policies and it is a decision for the GB as to how they approach this duty. Most local authorities (and sometimes the other bodies) draw up model policies, rules and procedures and these are incredibly valuable to governors and prevent each GB from having to start from scratch.

Local authority (LA) procedures have the advantage of being drawn up with the benefit of the professional expertise and experience of the LA and in consultation with representatives of staff unions and associations.

But GBs should not simply adopt any model policy as drafted – each GB needs to ensure that the model policy is properly tailored to its particular circumstances. GBs need to make sure that such policies refer explicitly to the GB's staffing responsibilities, particularly in relation to any disciplinary/grievance matters relating to the Headteacher.

Specifically, the Staffing Guidance states that: *'In adopting or reviewing any such models the GB should ensure that its ultimate responsibility for the regulation of staff conduct and discipline is not overridden by another body or authority'* and *'GBs are not required to adopt the model policy drawn up by any particular body.'*

GBs are allowed to draw up their own procedures. Any GB that follows this route must consult with employees before implementing the new procedures. Such consultation is good practice even if the GB is adopting model procedures.

(extract from the NGA Guide 'Support and Challenge')