

## **GRIEVANCE AND DISCIPLINE**

**Supply teachers have a vital role in raising and maintaining high educational standards in schools. Campaigning to secure professional entitlements for supply teachers is a key priority of the NASUWT, together with securing decent pay and working conditions for all supply teachers.**

This guidance sets out generic principles which govern grievance and discipline. Employers will have their own procedures and it may be that separate procedures have been agreed with the NASUWT. As a general rule, the grievance procedure is the appropriate procedure to be used by a supply teacher to make a complaint about treatment by an employer, a manager or another worker. The disciplinary procedure is used by an employer to address alleged misconduct. Capability procedures are generally a type of disciplinary policy.

An employer's grievance and disciplinary procedures should be consistent with the relevant ACAS Codes of Practice. The procedures should therefore ensure that employees have the right to defend themselves if they are subject to a disciplinary allegation, and the right to complain about their employer or a colleague, and to be represented by a trade union official, when doing so.

### **The Employment Relationship**

Members are strongly advised to contact the NASUWT for advice and assistance when informed that they will be subject to a disciplinary procedure, or where they have cause to complain about the way they have been treated. It will be important to establish the employment relationship that exists between the teacher and the employer so that the most appropriate processes can be followed.

The main supply teacher employment relationships include:

1. employment directly by a local authority;
2. employment directly by a school maintained by a local authority (i.e. community schools, foundation schools, foundation trusts and voluntary aided schools);
3. employment directly by a school which is not maintained by a local authority (e.g. academies, free schools, independent schools);
4. employment directly by an employment agency or umbrella company;
5. employment as a 'contractor' or on a self-employed basis.

Generally speaking, an employer would carry out the disciplinary function. Where supply teachers are employed directly by schools or local authorities, the school or local authority procedures will apply. However, the situation is not as clear where teachers are placed in schools through supply agencies.

The disciplinary function is not always carried out by an employment agency for an agency teacher. In practical terms, in England, aspects of the employer function may be carried out by a school in which the supply teacher is working, even if that school is not the employer. For example, it may be a school where a supply teacher has been placed which suspends a teacher from work following an allegation. This would then be confirmed later by the employment agency. However, in Wales in the same circumstances, an agency teacher can only be disciplined by an employment agency and not by the school.

It would be unusual for a school to permit an agency teacher to lodge a grievance against a manager or other worker in a school where a supply teacher has been placed. However, in all cases where supply teacher members are subject to disciplinary investigation or action, whether this is carried out by a school, local authority or an employment agency, members are advised to contact the Union for assistance.

Where a supply teacher is subject to an employer's grievance and disciplinary procedures, they have an entitlement to be represented by a trade union official at grievance and disciplinary hearings. A supply teacher member who is subject to a disciplinary allegation is strongly advised to contact the NASUWT to secure representation without delay. Similarly, a supply teacher who wishes to lodge a grievance is also entitled to representation. The NASUWT strongly advises that members should discuss any potential grievance issues with the NASUWT before lodging the grievance.

The NASUWT is committed to ensuring that all supply teachers have access to fair and just treatment in the workplace. The NASUWT deplores the practice followed by some employers whereby supply teachers who are subject to disciplinary allegations are summarily dismissed from their employment or 'blacklisted' by an employer who refuses to engage the teacher in future. Regrettably, many agencies or umbrella companies do not have established grievance procedures and supply teachers who are subject to disciplinary allegations, complaints or grievances often find themselves just 'taken off the books'. The NASUWT advises members to contact the Union where they believe they have been subject to such treatment.

## **Discrimination**

Supply teachers have the right not to be subject to unlawful discrimination. This is a right from the first day of employment.

Supply teachers are entitled to the same protections from discrimination as any other employee. The Equality Act (2010) places a responsibility on all schools to have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation;
- advance equality of opportunity; and
- foster good relations.

As employees, supply teachers and other members of staff are legally protected from discrimination on the following grounds:

- age;
- disability;
- gender reassignment;
- marriage or civil partnership;
- pregnancy (including maternity leave<sup>1</sup>);
- race;
- religion or belief;
- gender;
- sexual orientation.

In addition, bullying and harassment of staff is also unlawful under the Protection from Harassment Act (1997). This legislation makes unlawful any behaviour, regardless of its intent, that causes another person personal harm or distress. This will include threatening, abusive or insulting/disorderly behaviour. Where such harassment takes place, a record of the incident should be kept.

Members should contact the NASUWT immediately if they believe that they have been a victim of unlawful discrimination or bullying/harassment.

### **Misconduct**

ACAS recommends that employers clarify what would amount to misconduct, including gross misconduct, in staff disciplinary policies. Gross misconduct could lead to summary dismissal, which is without notice, and ACAS recommends that workers should know whether a particular allegation, if proved, amounts to gross misconduct. Many employers therefore list misconduct and gross misconduct offences in disciplinary policies.

In addition, the Teachers' Standards in England, as published by the Department for Education (DfE), set out a capability and disciplinary framework for teachers. The NASUWT is not in agreement with the Teachers' Standards, which are vague and open to abuse. In Wales, teachers are subject to the Practising Teacher Standards. The NASUWT has issued advice on the standards for teachers in England and Wales which are available on the NASUWT website.

If a supply teacher is informed that they will be subject to a disciplinary or capability investigation, they should immediately contact the NASUWT for assistance.

### **Allegations**

Supply teachers are particularly vulnerable to allegations made against them. Nevertheless, research indicates over 97% of allegations against teachers are unsubstantiated.

Allegations against teachers which relate to child protection are investigated under a series of local authority procedures known as 'strategy procedures.' Strategy procedures often involve several agencies, including the Police, and can be extremely time-consuming.

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<sup>1</sup> This does not necessarily mean that all teachers have to be paid teachers' maternity pay.

Frequently, teachers are suspended whilst an investigation is being carried out. As suspension is defined as a 'neutral act' and is not a disciplinary sanction, suspension must always be on full pay.

If a complaint or allegation is made against a supply teacher, however, they are often sent away by the school and simply asked not to return whilst a strategy procedure investigation is carried out. As this is frequently not deemed a suspension on full pay, supply teachers in this position are often not paid, but are also unable to work until they have been investigated and exonerated.

Being subject to a strategy procedure is frequently extremely stressful for a teacher, even if they remain on full pay for the period of any suspension. For a supply teacher who may find themselves unable to seek employment during the period of any investigation, but may receive no pay, it may lead to real hardship. Supply teachers in this position may be able to receive assistance from the NASUWT Benevolent Fund and are invited to contact the NASUWT to make an application.

### **Protection from Victimisation**

Victimisation occurs when an employer takes detrimental action against a worker because they have previously made a complaint about that employer, for example by lodging a grievance or making a complaint to an employment tribunal. This is unlawful and if a supply teacher considers that they are subject to victimisation, they should contact the NASUWT immediately.



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