

10. Staffing

This chapter explains the staffing powers and employment law responsibilities of the governing body. Most of these powers and responsibilities are lost if a school's delegated budget is suspended.

For ease of reference this Chapter has the following sections, in addition to the general background below. The general background provides a brief overview.

- A. Appointments;
- B. Teacher Qualifications;
- C. Induction of Newly Qualified Teachers;
- D. The General Teaching Council for Wales (GTCW);
- E. Pay and Conditions of Service;
- F. Performance Management;
- G. Staff Discipline and Dismissal, Grievance Procedures and Suspending Staff; and
- H. Related Staffing Issues.

Background

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1. The LA is the employer of staff in community, voluntary controlled, community special and maintained nursery schools. The governing body is usually the employer of the staff in foundation, voluntary aided and foundation special schools other than for staff who are employed to work at more than one school, in which case the LA is likely to be the employer.
 2. The governing body and head teacher have separate and particular responsibilities for selecting and managing staff. The extensive responsibilities of governing bodies arise from paragraph 55 of the Government of Maintained Schools (Wales) Regulations 2005 and the Staffing of Maintained Schools (Wales) Regulations 2006, as amended by the Staffing of Maintained Schools (Miscellaneous Amendments) (Wales) Regulations 2007, the Staffing of Maintained Schools (Wales) (Amendment) Regulations 2009, and the Staffing of Maintained Schools (Wales) (Amendment No 2) (Wales) Regulations 2009. Hereafter in this chapter these are collectively referred to as 'The Staffing Regulations'. There are differences in the law depending on the category of a school.
 3. The governing body also has responsibilities under employment legislation and it must take account of and adhere to obligations placed on it by The School Teachers' Pay and Conditions Document which is published annually.

4. The Staffing Regulations determine the role and responsibilities of governors in respect of:

- the appointment of head teachers and deputy head teachers;
- the appointment of teaching and support staff;
- the regulation of conduct and discipline of staff;
- the suspension and dismissal of staff;
- the role of the head teacher in staffing matters;
- the right of the LA and the head teacher to advise the governing body about appointments and dismissals;
- the right of a diocesan authority, where applicable, at voluntary or foundation schools, to advise the governing body about appointments and dismissals; and
- the duty on governors to ensure that the head teacher complies with and benefits from the provisions of the School Teachers' Pay and Conditions Document.

5. The governing body must ensure that sufficient, suitable staff are employed or engaged to work at the school, to provide education appropriate for the ages, aptitudes, abilities and needs of the pupils.

6. The governing body decides the staff structure for the school, determining the number of teacher and support staff posts, their grade and responsibilities. When a member of staff leaves, the governing body is required to review the post and decide whether or not to re-appoint.

7. The governing body may delegate specific staffing functions to the head teacher; or one or more governors; or one or more governors working with the head teacher. Where the governing body has made such a delegation to one or more governors, the head teacher may attend and offer advice at all relevant proceedings and such advice must be considered by the governor(s) to whom the delegation has been made.

8. The governing body is responsible for the regulation of conduct and discipline in relation to staff of the school and any procedures for giving members of staff the opportunity to seek redress of any grievances relating to their employment. The governing body must establish a staff disciplinary/dismissal committee and a staff disciplinary/dismissal appeals committee. For further information about the establishment of committees and delegation of functions see Chapter 4 entitled Governing Body Procedures and Meetings.

9. The governing body always leads the process of making appointments to head teacher or deputy head teacher posts. The governing body may decide to delegate to the head teacher making other staff appointments.

VA 10. The governing body of a voluntary aided school, which has a religious character, may have a policy which takes account of that character in staff appointments.

11. The Chief Education Officer of the LA, or his or her representative, is entitled to give advice and attend the following proceedings. The governing body must consider this advice before making a decision:

- all proceedings, including interviews, held by the governing body and any selection panel, relating to the permanent or temporary appointment of a head teacher or deputy head teacher;
- all proceedings, including interviews, relating to the appointment of other teachers; and
- all proceedings relating to any decision to dismiss/discipline a member of staff.

VA 12. In the case of a foundation or voluntary aided school, the appropriate diocesan officer has the same advisory rights as detailed in the above paragraph.

A. Appointments

1. At the time of production of this guide, work is ongoing to produce guidance on safer recruitment procedures. Governors should ensure that they operate within relevant legislation and guidance when involved in staff appointments.

Appointing a Head Teacher or Deputy Head Teacher

2. If the head teacher or deputy head teacher post is, or will become, vacant the governing body must notify the LA in writing before commencing the appointment process.

3. Regulation 33, of the Staffing Regulations, requires that the governing body of a voluntary aided school, where the trustees under a trust deed relating to the school are also trustees of a Roman Catholic religious order, must notify the Major Superior of the vacancy in writing.

4. The governing body must advertise vacancies in publications circulating throughout England and Wales that it considers appropriate. This includes newspapers, periodicals, journals or by internet advertisement. However, under the Staffing Regulations governing bodies may choose whether to advertise a head teacher or deputy head teacher vacancy if it arises in these circumstances:

- (i) the vacancy arises in a school ("new school"), which is named in statutory proposals published under Part II of the School Standards and Framework Act 1998, as one which pupils may attend following the closure of their existing school; and
- (ii) a person employed at the new school or the school which is to be discontinued, pursuant to statutory proposals has expressed the wish in writing to the governing body to apply for that post.

5. However, if there are other statutory proposals that will come into effect at the same time or similar times, creating or amalgamating other schools maintained by the same local authority, a governing body which has no eligible candidates of its own may consider applicants (without national advertisement) who are eligible for such posts in other newly formed or amalgamated schools. These candidates must write to the governing body of the new school expressing a wish to apply for that post. If the circumstances set out in this paragraph do not apply, a governing body will still have to advertise in publications circulating in England and Wales.

6. For all head teacher and deputy head teacher appointments the governing body must establish a selection panel of three to seven persons. The selection panel may include persons who are not governors and it is for the governing body to determine whether those persons may vote. The majority of members must be governors. VA schools may choose to have the whole governing body as the selection panel for headteacher and deputy headteacher appointment.

7. Governors who form the selection panel and take part in the selection of candidates for interview must also form the interview panel. If a governor is present at the short listing but subsequently is unable to attend the interview, the governing body may not select a substitute governor for the interview. If a governor is aware at the start of the process that they will not or may not be able to participate in all of it, they should declare that before the process commences so that a replacement may take their place.

8. The selection panel, or governing body, is required to:

- select a chairperson from amongst the panel membership. This person cannot be paid to work at the school or a pupil. The governing body can remove the chair to any selection panel from office at any time;
- select applicants for interview (shortlist);
- notify the LA in writing of the details of the candidates selected for interview (for head teacher appointments);
- interview applicants; and
- recommend one of the people interviewed to the governing body for appointment.

9. If the LA writes to the selection panel about the unsuitability of any candidate within fourteen days from the date it received the notification of the names of the short listed candidates, the selection panel must consider the LA's views. If that candidate is still interviewed and recommended for appointment by the panel to the governing body, the selection panel must respond to the LA in writing and make the LA's correspondence and the panel's reply available to the governing body.

10. The recommendation of the selection panel must be reported to the governing body for approval. If the governing body endorses the recommendation of the panel it will:

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S | <ul style="list-style-type: none"> • in the case of community, voluntary controlled and community special schools – recommend that person to the LA for appointment; or |
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FS | <ul style="list-style-type: none"> • in the case of voluntary aided, foundation or foundation special schools – appoint the person recommended to the post, subject to that person meeting all relevant staff qualification requirements. |

VC S	<p>11. For community, voluntary controlled and community special schools, the LA must appoint a candidate recommended by the panel if the recommendation is approved by the governing body, unless the candidate does not meet the staff qualification requirements as described in the paragraphs below dealing with teacher qualifications and the General Teaching Council for Wales (GTCW).</p>
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12. If the selection panel makes no recommendation, or the governing body does not approve a recommendation, or the LA declines to appoint the recommended candidate, the governing body may re-advertise the vacancy.

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F 13. At foundation and voluntary controlled schools with a religious character, the governing body may take into account any candidate's suitability and ability to preserve and develop the religious character of the school.

VA 14. At voluntary aided schools with a religious character, the governing body may give preference to any candidate whose religious opinions and worship are in accordance with the tenets of the religious denomination of the school. At voluntary aided schools whose trustees are trustees of a Roman Catholic religious order, the governing body may appoint as head teacher a candidate proposed by the Major Superior of the order without going through the usual procedures for appointing a head teacher, including setting up a selection panel. The governing body may not appoint a candidate who fails to meet the qualification requirements.

15. A head teacher is barred by the regulations from participating in the appointment of their successor. However, the head teacher has the right to attend meetings of the governing body to discuss the appointment of a deputy head teacher and to offer advice. The governing body decides how many, if any, deputy head teacher posts a school should have.

16. If the head teacher or a deputy head teacher post is not filled, or cannot be filled, prior to the date it becomes vacant the governing body must:

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- in a community, voluntary controlled, community special and maintained nursery school, recommend to the LA a person to act in that position; or
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- if a foundation, voluntary aided or foundation special school, appoint a person to act.

Appointing Teaching Staff

17. It is for the governing body to decide whether or not to fill a teaching post when it becomes vacant or to create a new post.

18. The governing body of all maintained schools must draw up a specification for any full time or part time post and send it to the LA. The post must be advertised unless the governing body decide to appoint a teacher nominated by the local authority or accepts a teacher already working at the school, who has been recommended to the local authority by the governing body. The LA, where it is the employer, must appoint the teacher selected unless the candidate fails to meet all the relevant staff qualification requirements. For VA and Foundation schools the governing body will make the appointment. The LA and the head teacher (if not already involved in the selection) have the right to attend selection meetings and to offer any advice they think appropriate. Where the vacancy will be, or is likely to be, a

temporary appointment of less than four months duration, the governing body may engage or make arrangements for the engagement of any person as long as s/he meets all the relevant staff qualification requirements.

19. The LA cannot insist on moving in a teacher from one of its other schools, but it can put forward qualified candidates for the governing body to consider alongside other applicants.

20. The governing body may delegate the appointment of staff to the head teacher, to one or more governors, or to one or more governors and the head teacher jointly.

Further Considerations in Appointing Teachers at Denominational Schools

VA 21. In a Church in Wales or Roman Catholic voluntary aided school, the appropriate diocesan authority has the same rights to attend proceedings and offer advice as the LA.

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F 22. In a Church in Wales or Roman Catholic Church foundation or voluntary controlled school the governing body may extend advisory rights over teacher appointments and dismissals to the appropriate diocesan authority. These diocesan advisory rights can apply to all or some teachers. Where such advisory rights have been accorded, they will apply in the same way as the LA's advisory rights.

VA 23. In voluntary aided schools which have a religious character, the governing body has extra rights with respect to employing, appointing or dismissing teachers. In appointing, paying or promoting teachers, the governing body may give preference to persons:

- whose religious opinions are in accordance with the tenets of the religion of the school;
- who attend religious worship in accordance with those tenets; or
- who give, or are willing to give, religious education in accordance with those tenets.

Reserved Teachers at Voluntary Controlled and Foundation Schools with a Religious Character

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F 24. At voluntary controlled schools and foundation schools which have a religious character, the foundation governors have to be satisfied about the fitness of reserved teachers and can give directions about their dismissal. These teachers give religious instruction and must not be appointed unless the foundation governors are satisfied that they are suitable and competent to do this. The foundation governors can insist on dismissing from employment as a 'reserved teacher', a teacher who fails to give suitable and efficient religious education.

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F 25. Such a school must include reserved teachers where the number of teaching staff is more than two. The number of reserved teachers must not exceed one-fifth of the teaching staff (including the head teacher), but where the number of teaching staff is not a multiple of five, it shall be treated as if it were the next higher multiple of five.

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F 26. The head teacher and/or the deputy head teacher may be a reserved teacher.

Appointing Support Staff

27. Where the governing body of a community, voluntary controlled, community special or maintained nursery school identifies a support staff post (other than school meals staff) to be filled, it may recommend a person to the LA. Any such recommendation must include a job specification and information relating to duties, hours of work, duration of appointment, grade and remuneration. The grade should be that considered appropriate by the governing body, but must also be on the scale of grades applicable in relation to employment with the LA.

28. The LA must appoint a person chosen by the governing body to fill a support post, unless that person does not meet the staff qualification requirements for support staff.

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F 29. In a voluntary aided or foundation school the governing body is responsible for appointing support staff, unless the governing body has agreed with the LA that the LA can do so.

30. It is for the governing body to agree the process for the selection of support staff. It would normally be delegated to the head teacher, sometimes with the support of governors. Where the head teacher does not exercise delegated responsibility for support staff appointments, the governing body must consult the head teacher before making a recommendation, and in either case must consult the LA. All persons appointed must meet all staff qualification requirements.

School Meal Staff

31. Where a LA appoints school meal staff in a primary school the LA is responsible for the appointment, discipline, suspension and dismissal of those staff.

32. Before exercising any function in relation to such staff, the LA must consult the school's governing body to such extent as the authority thinks fit.

33. LA functions relating to school lunches have been transferred to the governing bodies of secondary schools. It is for the governing body to agree how it then provides the service. This may be by means of a contract of service with an outside provider. The party providing the service and/or who

employs the staff is responsible for the appointment, discipline, suspension and dismissal of those staff.

Checking Applicants

34. When the governing body (or head teacher) has chosen to appoint a teacher, the LA must check that the person meets the staff qualification requirements. The GTCW should be contacted to make these enquiries. The contact details of the Council are given in Section D of Chapter 10.

35. The Education (Health Standards) (Wales) Regulations 2004 set out the teaching activities a person can carry out only if he or she has the health or physical capacity to do so. They also set out the procedures to be followed where it appears to the person's employer that he or she may no longer have the health or physical capacity to carry out an activity.

36. The 2004 Regulations apply to a person providing education at a school, at a further education institution or elsewhere under a contract with a LA (or with a person exercising functions on behalf of a LA). They also apply where a person is working under a contract for a LA or governing body of a school or further education institution, other than in the provision of education, but in work which brings the person regularly into contact with children.

37. The health standards regulations only cover specified activities (as set out in regulation 5). They make no requirements for checks before employment, or for employers to be satisfied that either candidates or employees have the health or physical capacity to teach but do provide that certain activities can only be carried out by people who have the health or physical capacity to do so; and set out procedures for what should happen when a question about their ability to do so arises.

38. The LA must be satisfied that the candidate has the appropriate teaching qualifications, which in the case of teachers almost invariably will include Qualified Teacher Status (QTS).

Safeguarding Children and Registration in the Vetting and Barring Scheme

39. The Safeguarding Vulnerable Groups Act 2006 (the SVG Act) introduced the Independent Safeguarding Authority who along with the CRB jointly administers a new Vetting and Barring Scheme (VBS). The scheme is designed to improve practices for vetting people who come into contact with children (and vulnerable adults). The VBS scheme has been operational since 12 October 2009.

40. As amended in June 2010, the Home Office has indicated its intention to review the Vetting and Barring Scheme. The information contained under this section on checking applicants is therefore subject to that review. The SVG

Act also states that teaching is classed as a regulated activity. This means that anyone working in the teaching profession will be required to register with the ISA, obtain an enhanced CRB disclosure and be subject to continuous monitoring by the ISA. This requirement is also extended to non teaching members of staff in schools.

41. The current List 99, the Protection of Children Act (PoCA) and the Protection of Vulnerable Adults (PoVA) lists have been replaced by two new lists; one for those barred from working with children, the other for those barred from working with vulnerable adults. Individuals may be placed on one or other list or both lists. The ISA holds the new lists and since January 2009 have been making decisions, based on information held by various agencies, government departments and the CRB, to decide who should be placed on the barred lists. These decisions had previously been made by the Secretary of State.

42. From July 2010, registrations with the ISA will be phased in over a five year period. From 1 November 2010 registration with the ISA is mandatory for all staff moving to a post with a new provider and newly appointed staff. This means anyone who in the three months prior to appointment has not worked in:

- a school in Wales in a post which involved regular contact with children, or any post they were appointed to since 29 March 2007; or
- a Further Education College in Wales in a position which involved the provision of education and regularly caring for, training, supervising or being in sole charge of children or young people under the age of 18.

43. All members of staff will be required to join the scheme by 31 July 2015. Members of the workforce who have never had a CRB Disclosure or have not had one for a number of years and who do not change posts, will eventually be required to join the scheme within the five year phasing period up to July 2015.

44. If an individual is already ISA-registered and moves jobs, they will be able to take their registration with them. Employers can register an interest in an individual's ISA-registration status to be continuously informed of changes in an employee's registration status (Further information, including the requirements that the scheme places on employers and employees, is available from the ISA website at www.isa-gov.org).

45. Disclosures contain details of any convictions and cautions that a person may have, as well as details of whether they are included on the barred list or have been disqualified from working with children by the Court. Detailed guidance on pre-employment checks, including disclosures, is contained in WAG Guidance 'Child Protection: Preventing Unsuitable People from Working with Children and Young Persons in the Education Service'. If a person's

disclosure reveals information that raises doubts about the person's suitability, the governing body may want to consider this in reaching its final recruitment decision. LAs will also need to check whether teachers are registered with the GTCW and whether any restrictions are in force against them. The GTCW will advise LAs and schools about how they can access the register of teachers and check that the teachers whom they employ, or intend to employ, are registered. An LA must not appoint a person who fails to meet any staff qualification requirement. Further information about the ISA is available at: www.isa-gov.org.uk.

46. Newly appointed staff who have lived outside of the United Kingdom must undergo the same checks as for all other staff in schools. This includes an Enhanced CRB disclosure and checking the barred lists held by the Independent Safeguarding Authority (ISA). As these checks may not be sufficient to establish suitability to work with children, schools must ensure they carry out the full range of other checks. Further information about the criminal record information which may be obtained from overseas police forces and countries, is available from the CRB at www.crb.gov.uk.

Discrimination in Appointments and During Service

47. Applicants for posts at the school must be judged on their merits against the objective requirements for the job. It is unlawful to give one candidate a better chance than another. Allegations that candidates have been given preferential or unfair treatment, or similar, may lead to an Employment Tribunal.

48. Under the Disability Discrimination Act 1995 (at the time of writing this Act has been repealed by the Equality Act 2010 but that repeal has not yet been commenced), employers (governing bodies and LAs) must not discriminate against current or prospective employees with disabilities, or those who have had disabilities in the past. Governors and LAs must make reasonable changes to their employment arrangements or premises if they disadvantage a disabled employee compared with a person who is not disabled. For prospective employees, they must consider whether there is any "reasonable adjustment" which would overcome a disadvantage to a disabled applicant before deciding whether they are the best person for the job. Less favourable treatment will only be justified if an adjustment to enable a disabled person to do the job is not reasonable, or their disability would place pupils or staff at risk (Chapter 9 entitled Equal Opportunities and School Governors, covers governing bodies' responsibilities on discrimination in more detail).

B. Teacher Qualifications

1. Teachers employed at maintained schools and non-maintained special schools in Wales are normally required to be qualified teachers and have Qualified Teacher Status (QTS). The requirements for persons to be recognised as qualified teachers are set out in the Education (School Teachers' Qualifications) (Wales) Regulations 2004, as amended by [the Education \(Amendments to Regulations regarding the Recognition of Professional Qualifications\) \(Wales\) Regulations 2007](#) and the Education (School Teachers' Qualifications) (Amendment) (Wales) Regulations 2008. QTS can be gained in Wales either through an undergraduate or postgraduate training programme offered by an accredited Initial Teacher Training (ITT) provider, or by following an employment-based teacher training programme such as the Graduate Teacher Programme which is currently administered by the WAG.
2. Teachers from England who have gained QTS there are recognised as qualified teachers in Wales and do not require any additional confirmation from the WAG or the General Teaching Council for Wales (GTCW). The gaining of QTS in England is dependent on skills tests being passed.
3. The GTCW can advise on teaching qualifications and whether a teacher has QTS. (This can be done by contacting the Qualifications and Registration Team for contact details see following paragraph). Teachers with relevant professional recognition from Scotland, Northern Ireland, Guernsey, or Member States within the European Economic Area (currently the member states of the European Union and, in addition, Norway, Iceland and Liechtenstein) and Switzerland may be recognised as having QTS without further training. They must have notification from the GTCW that they have QTS. They can apply for this by contacting the GTCW's Qualifications and Registration Team at Southgate House, Wood Street, Cardiff, CF10 1EW - telephone 029 2055 0350 or e-mail registration@gtcw.org.uk. Not all persons who have a teaching reference number will necessarily have QTS, or be eligible for it without further training.

Teachers without QTS

4. A number of categories of people, other than teachers with QTS, can undertake 'specified work' (the way that the law describes usual teaching activity) in maintained schools or non-maintained special schools in Wales, under the provisions of the Education (Specified Work and Registration) (Wales) Regulations 2004 ("Specified Work Regulations"). They are listed in the Specified Work Regulations as people who are not qualified teachers but who can carry out 'specified work'. The main categories are:

- **Instructors with special qualifications or special experience:** Schools may employ teachers without QTS as instructors if they have special qualifications or special experience needed for the post, and where no suitable qualified teacher, graduate teacher, registered teacher or teacher on the employment-based teacher

training scheme is available for appointment or to give instruction. They can only be so employed for such period of time as no suitable qualified teachers, graduate teachers, registered teachers or teachers on the employment-based teacher training scheme are available for appointment or to give instruction. This restriction on the length of employment does not apply in the case of anyone appointed before 8 April 1982 where either the appointment was for a specified period, if, and so long as, that period has not expired; or the appointment was for an unspecified period, if it was not otherwise expressed to be temporary only.

- **Overseas Trained Teachers:** A person who has successfully completed a programme of professional training for teachers in a country outside the European Economic Area or Switzerland, and which is recognised as a programme of training by the competent authority in that country, may work as a teacher in Wales for two years. If an overseas trained teacher wishes to continue to work in maintained schools for longer than two years they must gain QTS via an appropriate approved route such as the Graduate Teacher Programme. The two-year period runs continuously from the first day that the person was employed as a teacher, regardless of whether the teacher has been employed as a teacher for the whole of the two-year period.
- **Persons who are undertaking training for the purposes of the employment-based teacher training scheme:** Someone who has been granted an authorisation to undertake training for the purposes of the employment-based teacher training scheme, for example on the Graduate Teacher Programme, may be employed as a teacher in a school until they successfully complete or cease to undertake that training.
- **Other persons, not in specified categories:** Head teachers also appoint other teachers without QTS, outside of persons in the specific categories listed in the Specified Work Regulations, to carry out 'specified work'. These are usually, but not exclusively, Teaching Assistants and Higher Level Teaching Assistants. There is no limit to the length of time they can teach. However:
 - they can only do so to assist or support the work of qualified teachers or 'nominated teachers' in the school;
 - they can only do so under the direction and supervision of a qualified teacher or 'nominated teacher' in the school; and
 - the head teacher must be satisfied that they have skills, qualifications and experience required to carry out 'specified work'.

5. 'Nominated teachers' are teachers without QTS but who are in the specific categories listed in the Specified Work Regulations (such as instructors or Overseas Trained Teachers) who have been nominated by a

head teacher as a teacher who can give direction and supervision to, and be supported by, a teacher in the 'other persons' category.

6. Teachers without QTS but who are in the specific categories listed in the Specified Work Regulations are not allowed to teach under the 'other persons' category (so an Overseas Trained Teacher, for example, is limited to two years' teaching by the Overseas Trained Teachers category and cannot work under the provisions of the 'other persons' category).

Teachers of Children and Young People with Sensory Impairments

7. Under the Education (Teachers' Qualifications and Health Standards) (Wales) Regulations 1999 (as amended), where a teacher is employed in a school for the purpose of teaching a class of pupils who are hearing impaired, visually impaired or both hearing and visually (multi-sensory) impaired, in addition to being a qualified teacher he or she is required to possess an additional Mandatory Qualification (MQ) as approved by the WAG.

C. Induction of Newly Qualified Teachers (NQTs)

1. The requirement for Newly Qualified Teachers (NQTs) in Wales to complete a period of statutory induction is set out in the Education (Induction Arrangements for School Teachers) (Wales) Regulations 2005. Guidance Circular 15/2008 – Induction and Early Professional Development for Newly Qualified Teachers in Wales (revised June 2008) summarises the statutory Induction arrangements.
2. Teachers who obtain QTS after 1 April 2003 must successfully complete an induction period of three school terms (or equivalent) in order to remain eligible for employment as a teacher in maintained schools and non-maintained special schools in Wales.
3. Subject to a list of specific exemptions, no one who has gained QTS after 1 April 2003 should be employed in a maintained school or a non-maintained special school in Wales unless they have satisfactorily completed, or are working towards completion of, a statutory induction period. Any newly qualified teacher (NQT) working in a maintained school or non-maintained special school for at least one full term or the equivalent (i.e. two consecutive half terms; or a period of employment that the Appropriate Body (usually the LA) considers to be appropriate (though it is recommended that only periods of approximately ten consecutive weeks (disregarding holidays) should count as one term for the purposes of statutory induction) should be provided with an induction programme and appropriate arrangements for this should be made. NQTs are also able to complete their induction through periods of employment as a supply teacher, providing that it is known at the outset that the period of employment will count towards their statutory induction.
4. If a period of employment of one school term (or the equivalent) or more is offered to a teacher to whom induction applies, and who has not yet completed their induction period, that period of employment counts towards induction and appropriate arrangements for this must be made. NQTs must have a 10 per cent reduction to their timetable to allow their induction programme to take place (NB. this is in addition to planning, preparation and assessment time. Under the terms of the STPCD, the professional duties of head teachers include ensuring that teachers serving induction periods receive the 10 per cent reduction to their timetable in relation to a classroom teacher at that school who does not receive a management allowance or a teaching and learning responsibility payment).
5. When appointing NQTs, the governing body should take into account the school's responsibility to provide the necessary monitoring, support and assessment for the induction period. Careful consideration should be given to the appointment of the NQTs' induction tutor, and especially to ensuring the tutor has the time and skills to fulfil their role effectively.

6. Funding for the induction of NQTs in maintained and non-maintained special schools is administered by the GTCW. Additionally, independent schools or further education institutions choosing to offer induction to NQTs should ensure that appropriate resources are deployed.
7. At the end of the induction period the appropriate body (i.e. the LA) is responsible for deciding whether the NQT has met the End of Induction Standard on the basis of the head teacher's recommendation.
8. The statutory requirements allowing a teacher, who has failed to complete his or her induction period satisfactorily, to appeal are contained in the Education (Induction Arrangements for School Teachers) (Wales) Regulations 2005 ("Induction Arrangements Regulations"). If an NQT has failed to complete his or her induction satisfactorily, or has been granted an extension to his or her induction period, the Induction Arrangements Regulations provide that the GTCW is the body for hearing such appeals. The Induction Arrangements Regulations provide that the Appeals Committee may allow the appeal, dismiss the appeal or extend the appellant's induction for such duration as it thinks fit. The Appeals Committee considers every appeal in relation to all the evidence, acting in an independent and impartial manner, being objective and favouring neither party. The decision of the Appeals Committee is final, although appellants may seek a judicial review of their case.
9. Those teachers trained in other Member States within the European Economic Area or Switzerland, whose teaching qualifications are recognised in Wales are exempt from completing induction.
10. Any teacher who has successfully complete their induction in England, or who is exempt from the requirement to complete Induction in England under the English arrangements, is exempt from the requirement to complete induction in Wales.
11. Any teacher who has successfully completed their induction period in Scotland is exempt from the requirement to complete induction in schools in Wales.
12. Northern Ireland has an induction stage in their teacher education, so teachers who have completed that stage are exempt from the requirement to complete induction in schools in Wales.

D. The General Teaching Council for Wales (GTCW)

1. Under section 134 of The Education Act 2002 and Regulation 7 of the Education (Specified Work and Registration) (Wales) Regulations 2004 every qualified teacher who carries out the “specified work” of a teacher in a maintained school **must be registered** with the General Teaching Council for Wales (GTCW).

Registration with the GTCW

2. When making appointments, including the appointment of supply teachers and newly qualified teachers, LAs and schools must ensure that a teacher with Qualified Teacher Status (QTS) is registered with the GTCW. If schools wish to appoint teachers with QTS who have not yet registered, they should inform them that they must apply for registration before they take up their posts. The GTCW will advise LAs and schools about how they can access the register of teachers and check that the teachers whom they employ, or intend to employ, are registered.

Registration Fee

3. Since April 2002 the GTCW has charged an annual registration fee to support its core activities. In accordance with the General Teaching Council for Wales (Fees) Regulations 2002, the council will issue an annual payment notice to employers requiring them to deduct the fee from a teacher’s salary and remit it to the Council. Supply teachers will need to make their own arrangements with the Council for paying the registration fee.

4. The registration fee is currently £45 and will remain at this level until 31 March 2011. As set out in The School Teachers’ Pay and Conditions Document teachers receive a £33 allowance towards the cost of the registration fee.

The Role of the GTCW and its Disciplinary Powers

5. From 1 June 2001, the GTCW has held responsibility for investigating and hearing cases against a registered teacher where it is alleged that a teacher is guilty of unacceptable professional conduct, serious professional incompetence or where a teacher has been convicted (at any time) of a relevant offence. The GTCW has this power, except where the case involves the safety and welfare of children. Such cases were dealt with by the Secretary of State for Children, Schools and Families until 20 January 2009, but since then they have been dealt with by the Independent Safeguarding Authority.

6. Details of the GTCW’s disciplinary powers and procedures are available from the Council’s professional standards team or via the GTCW’s website: www.gtcw.org.uk. The outcome of the GTCW’s disciplinary proceedings will determine whether the teacher is eligible to remain on the

Council's Register. The GTCW has the power to make disciplinary orders against registered teachers which can range from a reprimand to the removal of a teacher from the GTCW's register.

7. The GTCW's role does not replace the existing disciplinary powers of governing bodies and LAs in relation to the staff that they employ. The GTCW's role will begin only when a school has ceased to use a registered teacher's services, regardless of whether the person's services are terminated, or he or she leaves voluntarily.

Reporting Cases to the GTCW

8 Cases relating to the misconduct, conviction of a relevant offence within the meaning of paragraph 8 of Schedule 2 to the Teaching and Higher Education Act 1998, or incompetence of a registered teacher that do not involve child protection issues should continue to be referred to the GTCW. However, from **12 October 2009** employers are required to report cases of misconduct that involve the safety and welfare of children directly to the Independent Safeguarding Authority (ISA).

9 Revised WAG guidance explaining the changes in more detail was issued on 25 September 2009 in Circular 18/2009 '[Reporting Cases of Misconduct or Professional Incompetence in the Education Service](#)'. This Circular replaces National Assembly for Wales Circular 33/2005 '[Reporting Cases of Misconduct or Professional Incompetence in the Education Service](#)'.

Incompetence

10. Cases of **professional incompetence** in respect of teachers registered with the Council should be reported directly to the GTCW when an **employer**:

- has ceased to use the services of a person who is a registered teacher on a ground relating to his or her professional incompetence, or
- might have ceased to use the services of a person who is a registered teacher had he or she not ceased to provide those services.

11. A report must also be made to the GTCW where an **agent**:

- has terminated arrangements for a worker who is a registered teacher to carry out work on a ground relating to his or her professional incompetence,
- might have terminated arrangements on a ground relating to his or her professional incompetence if the worker had not terminated them; or

- might have refrained from making new arrangements for a worker who is a registered teacher on a ground relating to his or her professional incompetence if the worker had not ceased to make himself/herself available for work.

Compromise Agreements

12. If an employer reaches a compromise agreement about the termination of a teacher's employment, this does not affect the employer's statutory duty to report the case to the ISA or the GTCW. This should be made clear to the teacher. Compromise agreements must not be used in cases where the termination of employment is as a result of allegations that a member of staff has:

- behaved in a way that may have harmed a child;
- possibly committed a criminal offence against a child; or
- behaved in a way towards a child that indicates they are unsuitable to work with children.

Contact details for the General Teaching Council for Wales

13. General Teaching Council for Wales
4th Floor, Southgate House
Wood Street
Cardiff
CF10 1EW

Tel: 029 2053 0350

Email: information@gtcw.org.uk

www.gtcw.org.uk

E. Pay and Conditions of Service

1. The pay and conditions of teachers and head teachers is fixed by law and contained within the School Teachers' Pay and Conditions Document (STPCD). Governing Bodies are required to ensure that the head teacher complies with the duties, and receives the benefits, under the statutory provisions of the STPCD. Though the power to set out teachers' pay and conditions is not devolved the Apprenticeships, Skills, Children and Learning Act 2009 (ASCL Act) gives the WAG the power, from January 2010, to direct local authorities to serve warning notices on schools where there is evidence of non-compliance.
2. The pay structure includes scope for annual progression for classroom teachers (except for those who have passed the threshold, where further progression is on the basis of performance), as well as scope for discretion by governing bodies in setting the pay of classroom teachers, advanced skills teachers and the leadership group. Governing bodies must review the pay of all teachers annually. In doing so they must keep within the statutory provisions set out in the annual STPCD. Governing bodies must have a clear pay policy discussed with staff.
3. When new appointments of support staff are made, the governing body decides the point on the scale to which they are appointed.
4. Under the Equal Pay Act 1970 women are entitled to the same pay as men if they are employed to do the same work or work that is of equal value. Governing bodies must ensure that this requirement is complied with when making decisions about pay.
5. All teachers employed in community schools are subject to statutory conditions relating to their professional duties and working time which are set out in the annual STPCD. These have effect as terms of their contracts of employment.
6. In addition to these statutory conditions, teachers are subject to other non-statutory conditions which are laid down in their contracts of employment, such as those that provide for sick pay and maternity leave.
7. Lastly, the terms of certain local or national agreements may be incorporated into their contracts of employment, either directly or indirectly via the STPCD.

Workload

8. The changes outlined in *Raising Standards and Tackling Workload: A National Agreement (2003)* have now been incorporated into teachers' and head teachers' contracts of employment via the STPCD and, therefore, should now be fully implemented in schools. A summary of changes is provided below and further guidance is contained within the STPCD.

9. Teachers and head teachers can no longer be routinely required to carry out administrative and clerical tasks which do not call for the exercise of their professional skills and judgement, neither can they be required to invigilate external examinations. These activities should be transferred to appropriately trained and qualified support staff.
10. From September 2009 teachers and head teachers can only be required to rarely cover for absent colleagues and only in circumstances which are not foreseeable. Schools should have robust cover arrangements in place that make use of alternative means to provide cover.
11. Teachers and head teachers are guaranteed at least 10 per cent of their timetabled teaching time for planning, preparation and assessment (PPA) which must be recorded on the school timetable.
12. All teachers and head teachers should enjoy a reasonable work-life balance. Head teachers must have regard to the desirability of teachers being able to achieve a satisfactory work-life balance when allocating duties to them. Similarly there is a duty on governors, contained within the Staffing Regulations, to have regard for the work-life balance of head teachers.
13. Teachers with leadership or management responsibilities are entitled, so far as is reasonably practicable, to a reasonable amount of time to carry out those duties.
14. Head teachers are also entitled to dedicated headship time to discharge their leadership and management responsibilities. Governing bodies should ensure appropriate time is provided.

F. Performance Management

1. Current arrangements for the performance management of teachers in Wales are contained in the School Teacher Appraisal (Wales) Regulations 2002 (as amended) and the School Government (Terms of Reference) (Wales) Regulations 2000 as amended by the School Government (Terms of Reference) (Wales) (Amendment) Regulations 2002. The regulations require the governing body of a school to establish a performance management policy and to secure that the performance of all teachers at the school is reviewed annually.

2. Guidance on the regulations is set out in four documents. These are:

- Performance Management Guidance 1 – Principles and Procedures which describes the system;
- Performance Management Guidance 2 – Schools' Performance Management Policies which includes a model policy;
- Performance Management Guidance 3 – Guidance for Governors;
- Performance Management Guidance 4 – Objective Setting.

Copies of these booklets may be obtained from the WAG's website at:

www.wales.gov.uk/topics/educationandskills/publications/guidance; or
teachingenquiries@wales.gsi.gov.uk.

3. With reference to performance management, the regulations require governing bodies to:

- determine the procedures for the performance review of the school teachers at a school and set this out in a written policy by 30 November 2002;
- review the written policy annually;
- secure that all teachers in the school are consulted prior to the establishment or amendment of the policy;
- make a copy of the policy available to all those involved in performance management;
- implement the policy;
- secure that the performance of teachers is reviewed in accordance with the Regulations (except teachers on fixed term contracts of less than one school year);
- appoint two or three governors and an external adviser to carry out the appraisal of the head teacher;
- decide on the exact timing of the performance review cycle for the head teacher;

- determine the procedures for the appraisal of the head teacher and teachers at the school;
 - appoint one or two governors as appeals officers to consider a complaint made by the head teacher about his/her performance review where the chair of governors has been involved in that performance review, and appoint an external adviser to assist them; and to
 - keep a copy of the head teacher's performance review statement for at least three years.
4. The chair of governors must:
- act as the appeals officer for appeals from the head teacher (providing he or she has not been involved in the performance review), and for teachers where the head teacher is the team leader;
 - provide any appeals officer and any external adviser appointed to assist them or new appraiser or external adviser with a copy of the performance review statement and with the objectives relating to that statement;
 - provide the person responsible for training and development within the school with the training and development annex of the head's review statement; and must
 - provide a summary of the head teacher's review statement to the Chief Education Officer (CEO), or an adviser specifically designated by the CEO, on request.
5. The governing body must appoint an external adviser to assist the appraisers. The adviser is a nationally trained expert who will advise and support the governing body on reviewing the head teacher's performance.
6. The governors appointed to appraise the performance of the head teacher must:
- meet with the head teacher and adviser at the start of the performance review cycle to plan and prepare for the performance review, and set and record head teacher objectives relating to school leadership and management and pupil progress;
 - seek to agree procedures with the head teacher for monitoring performance during the cycle;
 - meet with the head teacher and adviser at the end of the review cycle to review the head's performance and identify achievements, including assessment of achievement against objectives, and to discuss and identify professional development needs/activities;

- write a performance review statement and give a copy to the head teacher within 10 days of the review meeting, and allow 10 days for the head teacher to add written comments;
- provide the head teacher and chair of the governing body with a copy of the head teacher's performance review statement;
- on request, provide a copy of the head teacher's statement to those governors who are responsible for taking decisions in relation to promotion and pay;
- provide a copy of the head's appraisal statement to the CEO, or a designated officer, where the school does not have a delegated budget; and
- if appointed as appraisers where a new review or part review has been ordered following an appeal, must complete the procedures within 15 school days of the appeal officer's order.

7. The governors appointed to act as appeals officers for the head teacher must:

- carry out an appeal review within 10 school days of the appeal officer or officers receiving the review statement; and must
- take into account any representations made by the head teacher.

Assessment against Post-Threshold Teacher Standards

8. Any teacher with QTS whose pay and conditions are determined under the STPCD, and who is paid on point M6 of the main pay scale, may apply once in any school year to his or her head teacher for assessment against the post-threshold teacher standards (set out in Annex 1 of the STPCD).

9. In the case of a school which has a delegated budget, the governing body is legally responsible for the threshold process. However, the governing body is required to delegate the receipt and assessment of applications to the head teacher.

10. The head teacher must first be satisfied, that the teacher meets the relevant professional standards before going on to assess whether the teacher meets the post-threshold standards. If the head teacher is satisfied that the teacher meets the relevant professional standards he or she must go on to assess whether the teacher meets the post-threshold standards. Where head teachers decide that applicants have not met the relevant professional standards or have not met the post-threshold standards, they must give them their reasons for that decision. They should also handle all the practical aspects of the process.

11. In the case of unattached teachers, the authority which employs them is legally responsible for this process but is required to delegate the receipt and assessment of their applications to the person with management responsibility for them.

12. Everyone involved in the assessment process is expected to act fairly, and in particular must not discriminate unlawfully on the grounds of an applicant's sex, sexual orientation, age, ethnic origin, religious beliefs, disability or trade union activities, or because that person works part-time or is employed under a fixed-term contract. Teachers who believe that they have been discriminated against unlawfully on any of these grounds have recourse to the pay appeals process within their school in addition to other legal rights and remedies.

G. Staff Discipline and Dismissal, Grievance Procedures and Suspending Staff

1. The governing body is required to adopt rules and procedures to regulate the conduct and discipline of all the staff it employs or has day to day responsibility for (apart from certain ancillary staff). These must include rules and procedures for dealing with **staff disciplinary and dismissal matters**, and a lack of capability on the part of any member of staff. They must also have procedures for staff to follow if they have a grievance or complaint about their employment.
2. Whilst a governing body may choose to follow policies or procedures set out by its LA or relevant diocesan authority (where applicable) it **must** formally agree to adopt such procedures as its own. All these procedures should be made known to staff at the school.
3. Both the governing body and the head teacher have power to suspend on full pay anyone who works at the school, if it seems necessary. Each must inform the other, and the LA, if it takes such action. Only the governing body may end a suspension.
4. The governing body may delegate grievance procedures to one or more governors, to the head teacher or to one or more governors and the head teacher together. A grievance committee can include non governor members who can be voting members, where the governing body has agreed this. However a governing body must not allow any outside body or persons to take decisions for it.
5. Staff discipline and dismissal matters must be delegated to a committee known as the [Staff Disciplinary and Dismissal \(SD&D\) Committee](#). The hearing of any appeals must be delegated to a committee known as the Staff Disciplinary and Dismissal (SD&D) Appeal Committee.
6. The establishment and process for disciplinary committees and disciplinary appeal committees are set in [Part 9 of the Government of Maintained Schools \(Wales\) Regulations 2005](#). Under these regulations a governing body is required to agree the membership of its committees and to review the membership annually. There may be occasions where a member/s of the staff disciplinary committee is unable to act in that capacity. For example, a governor may be unavailable or may have a conflict of interest and is unable to act impartially. In these circumstances alternative governors must be identified to sit on the disciplinary committee. As it is the responsibility of the governing body to determine the membership of its committee, selection of alternative governors cannot be delegated to the chair of governors. It is sensible therefore if, at the time of agreeing the committee membership, the governing body also agrees a process for calling reserve governors. This could be by means of identifying a 'reserve list of governors in a priority order', for the chair/clerk to contact.

7. The SD&D committee must include no less than three governors and the SD&D appeal committee must include no fewer governors than the SD&D committee, the decision of which is the subject of the appeal, subject to the following paragraph. The quorum for any meeting and vote on any matter is the same as the minimum number of governors required for the committee.

8. Regulation 55 of the Government of Maintained Schools (Wales) Regulations 2005. (as amended by regulation 8(3) of the Staffing Regulations) provides that where allegations are made against a member of staff that involve issues of child protection, the SD&D committee must include not less than two governors and an independent person who is not a governor of the school. The SD&D appeal committee in such matters must include no fewer governors than the first panel and an independent person, none of which can have been involved in the first committee.

Child Protection Allegations against School Staff

9. In accordance with the Staffing Regulations, governing bodies are required to have all child protection allegations, independently investigated prior to any staff disciplinary/dismissal hearings taking place relating to those allegations. Normally for a governing body to hold a staff disciplinary/dismissal hearing an allegation must be considered to be gross misconduct (and is referred to as gross misconduct in this Guide). Governing bodies must also have an independent, non governor member with full voting rights on the staff disciplinary committee and the disciplinary appeal committee.

10. The only exception to this is where following initial consultation with the LA lead child protection officer, the head teacher/chair of governors conclude that the allegation is demonstrably false, because the circumstances of the allegation show that beyond any doubt it is not possible for it to be true, or that the allegation does not amount to gross misconduct. An example of this is where it can be proven that the person subject to the allegation was not in the same place at the same time as the victim of the allegation. In these cases the governing body does not need to put in place disciplinary proceedings and does not therefore need to appoint an independent investigator.

11. To assist governing bodies with the investigation process, the WAG has established an Independent Investigation Service to provide governing bodies with a trained and independent investigator free of charge. In law the governing body may appoint their own independent investigator, the cost of which would fall to be met from the governing body's delegated budget, but the WAG does not recommend this course of action.

12. The role of the independent investigator is to:

- consider all the evidence, including that supplied by the statutory authorities, in order to establish and explore the facts relating to an allegation. This may involve interviewing witnesses;
- produce a thorough, fair and unbiased report of the facts for the staff disciplinary and dismissal committee; and

- present the report at the disciplinary hearing and any appeal hearing. The presentation by the investigator will focus only on the facts in the report and will be presented impartially.

13. In order to preserve the investigator's independence they will not represent the views of any of the parties involved or present the case on behalf of any party.

14. The decision on what action to take, if any, based on the report's findings is for the staff disciplinary and dismissal committee to take collectively (including the non governor member). It is not the role of the investigator or any other individual or body to take this decision. In considering the investigation report, it is important for all parties to have regard to and comply with the requirements of the Freedom of Information Act 2000 and the Data Protection Act 1998.

15. Governing bodies may object to an investigator assigned by the Independent Investigation Service if they have evidence that the person is in one of the categories excluded by regulation, or is known to any member of the staff disciplinary and dismissal committee, the staff disciplinary and dismissal appeal committee, or to the staff member, or their union representative; and there is a question of their impartiality. In these circumstances the chair of the committee would need to present his/her evidence to the Independent Investigation Service Manager and ask for another investigator to be assigned.

The Non Governor Member of the Staff Disciplinary/Dismissal Committee and Staff Disciplinary/Dismissal Appeal Committees

16. The independent non governor member may take the place of one of the three governors assigned to sit on the staff disciplinary/dismissal committee and the appeal committee, or may be additional to the three governors. There must be at least two governors on each committee and the chair of the committee would have a casting vote in the event of a tie over any decisions made. The non governor member cannot be the chair of either committee.

17. A different independent non governor member is required for each committee.

18. In accordance with the Staffing Regulations the independent investigator and independent non governor member cannot be:

- a governor of the school in question (but could be a governor of another school);
- a parent of a current or former pupil at the school in question;
- a current or former member of staff at the school in question; or
- a person employed by the LA that maintains the school in question.

19. The role of the non governor member is to be present with the other governor members of the committee when they receive the report from the independent investigators, to decide what disciplinary action, if any, is required. They will also take part in discussions and offer advice and guidance to the other governors to enable them to give due regard to all the evidence that is presented at the disciplinary/dismissal hearing, so that the committee can reach fair and balanced decisions based on the evidence. One of the key skills therefore expected of a non governor member is analytical skills supported by knowledge of child protection matters.

20. There is no prescription for governing bodies as to from where they may seek appointments of their non governor member, but governing bodies may consider:

- a person from a neighbouring LA (experience has shown that people asked to investigate staff disciplinary/dismissal matters are generally from the Education, Human Resources or Legal departments) but they could be working elsewhere in the LA;
- a suitably experienced governor from another governing body;
- a suitably experienced person from a voluntary setting, such as Citizens Advice Bureau; or
- a self employed independent person with the appropriate skills, some of whom may have had previous experience working in an LA.

21. To clarify, the non governor member of the governing body does not take the place of the adviser from the LA, who has explicit rights to attend all dismissal proceedings to give advice to the governing body. However, if the LA representative is not present when the staff disciplinary committee discuss the evidence they may give advice if the committee requests it.

Process for Dealing with Child Protection Allegations

22. When a head teacher receives an allegation against a member of staff which could involve child protection issues the matter should be immediately referred to the statutory authorities which are the Police and Social Services, for their consideration. If the allegation is about the head teacher the chair of governors should receive the allegation and, if it could involve child protection issues, bring it to the attention of the statutory authorities. The statutory authorities will hold a strategy meeting to consider what action, if any, they need to take. At this time the governing body and/or head teacher should consider if the member of staff should be suspended.

23. The consideration of the allegation by the Police and Social Services takes precedence over any actions of the governing body. At this stage therefore the governing body should only identify a Link Governor (generally the head teacher or chair of governors but may be another governor) to attend the strategy meetings and confirm the membership of its staff disciplinary and

disciplinary appeal committee. **The governing body must not take any other action.**

24. The role of the 'Link Governor' is to attend the strategy meetings so that he/she can report general information to the governing body about how the case is progressing. The Link Governor **must not** divulge any details of the case to the governing body however. Furthermore, before any information is reported, the chair of governors should ensure that members of the staff disciplinary and staff disciplinary appeal committee leave the room so that they are not tainted and cannot be accused of being tainted.

25. Once the statutory authorities have completed their consideration of the allegation they will refer the matter back to the governing body to complete the disciplinary process. The governing body's role at this stage is not to consider any criminal aspects of the allegation (that is the role of the Police and Social Services) but to look at the wider behaviour of the member of staff that led to the allegation (i.e. did the member of staff fail to comply with a governing body policy or procedure).

26. As soon as the allegation is referred back to the school the head teacher or chair of governors, as applicable, must, in discussion with the LA lead child protection officer, determine whether the circumstances show the allegation is demonstrably false and no further action is required; or whether the allegation is considered to be lesser misconduct and dealt with using the school's agreed procedures; or whether the allegation needs to proceed to a disciplinary hearing.

27. If the matter is deemed to be lesser misconduct and not an issue of child protection that should be referred to the statutory authorities. The head teacher (or chair of governors if the allegation is about the head teacher) can deal with the matter if the governing body has delegated responsibility for such matters to the head teacher.

28. If the allegation is considered to involve issues of child protection which amount to gross misconduct behaviour, prior to any disciplinary hearings the governing body **must** arrange for the allegation to be independently investigated. Governing bodies may choose to use the WAG's Independent Investigation Services (IIS) which provides independent investigators free of charge, or they may choose their own independent investigator which must be paid for from the school's delegated budget.

Is there a need to hold a staff disciplinary/dismissal hearing for a child protection allegation where the statutory authorities have agreed that the allegation is not a child protection matter?

29. It is not the role of the Statutory Authorities' Strategy Committee to take any decisions about school staff disciplinary matters, as it has no statutory responsibility to do so. It is the statutory responsibility of the governing body. It follows therefore that the decision of the strategy committee that an allegation is not in their view a child protection matter, or that the statutory authority will

not be taking any action, does not mean that the governing body does not need to complete the staff disciplinary process against the member of staff. Nor does this mean that there is no staff disciplinary allegation for the governing body to still address.

30. It is not appropriate for the governing body to conclude that because the statutory authorities are of the view that there are no child protection issues, or there is no prosecution or a prosecution fails, consideration of disciplinary action is unnecessary. Governing bodies need to recognise:

- that a higher standard of proof is required for criminal proceedings than for disciplinary proceedings; or
- that disciplinary proceedings may well involve wider issues relating to the allegation than those considered by the statutory authorities; or
- that they have a general duty of care to pupils and others in school that goes beyond the considerations of the strategy committee.

31. The governing body should not be concerned with the criminal actions of the member of staff, as that is the role of the Police and Social Services. The governing body should be considering the wider aspects and behaviour of the member of staff in relation to the allegation, and whether that behaviour is consistent with the behaviour policy and ethos for staff in that school, and whether those policies have been breached. For example, did the member of staff disregard a school policy or an instruction from the head teacher?

32. The strategy committee's decision that there are no child protection issues or that they do not intend to take any action, does not alter or 'downgrade' the initial decision of the head teacher or chair of governors or LA lead officer that an allegation was considered to be one of gross misconduct, which was to be dealt with through the governing body's staff disciplinary procedures. In such cases independent investigation is still required and the disciplinary process properly completed.

Is independent investigation needed if an allegation is withdrawn?

33. If the person making the child protection allegation withdraws it for any reason, or at any point in the process, there is no need to appoint an independent investigator. If this should happen when the independent investigation has already commenced it should be stopped with no report going to the chair of the staff disciplinary and dismissal committee. It is however up to the governing body to decide whether there are any non child protection staff discipline matters that still need to be considered. These however do not require independent investigation and can be investigated by the school.

34. If a pupil makes an allegation it is the pupil who should withdraw it. The governing body should not accept a withdrawal of an allegation by another person on behalf of the pupil, even a parent or guardian, unless the written or

oral agreement of the child is obtained in the presence of the head teacher or chair of governors, or a member of the staff disciplinary committee.

Dismissal of Staff

35. Where a governing body of a community or voluntary controlled school determines (through its agreed process) that any person employed or engaged by the authority to work at the school should cease to work there, it must make arrangements for that person to make representations to the governing body and to have regard to those representations. See Regulation 17 of the Staffing Regulations.

36. The governing body must also make arrangements to allow the person an opportunity of appealing against the decision before it notifies the LA. The LA is responsible for terminating the contract of the member of staff.

F
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FS 37. In a foundation, voluntary aided or foundation special school, the governing body will issue the notice of termination of contract. Before doing so the governing body must allow the member of staff the right to appeal against their decision. See regulation 29 of the Staffing Regulations. This does not apply in relation to staff employed by the LA to work at the school.

38. The head teacher (except where he or she is the person concerned) and the Chief Education Officer of the LA are entitled to attend, for the purpose of giving advice, all hearings of the staff disciplinary and staff disciplinary appeal committee. The governing body must consider any advice given by such person(s) before making its decision.

39. If the person works solely at the school, the LA, as employer, must give notice of dismissal or, if the circumstances justify it, terminate the contract within 14 days. If he or she also works elsewhere for the LA, the LA just has to withdraw him or her from the school that has given notice of dismissal.

40. The governing body must give the employee a written statement of the reasons for dismissal. It would be good practice to copy the statement to the LA as employer. An employee who thinks that he or she has been unfairly dismissed can complain to an Employment Tribunal. If a governing body is in doubt about how employment law affects a particular case, it should seek further advice from the LA.

41. Employers must report all cases to the ISA where they cease (or might have ceased) to use a person's services because he or she is considered unsuitable to work with children; or as a result of misconduct; or because of a medical condition that raises an issue concerning the safety and welfare of children, regardless of whether the person's contract is terminated or he or she leaves voluntarily. See also Section D of this Chapter.

Redundancy

42. Each governing body should have its own agreed and adopted policy for the identification of posts and person(s) to be made redundant. It is important that, where a school no longer requires a post or has to reduce the staff complement, the governing body follows that policy and the procedure for meetings of the staff disciplinary and dismissal committee and its appeal committee, outlined earlier in this chapter.

43. Before any person whose contract of employment states that their place of work is the school, is dismissed on grounds of redundancy, all relevant statutory requirements, such as those concerning the selection of staff for redundancy and consultation with trade unions and others, must be observed.

44. Whenever a governing body contemplates redundancies, it should obtain advice from the LA as well as from any other professional personnel service provider that it may retain. The LA will need to consider whether there are any other suitable posts in the area.

Premature Retirement and Compensation for Redundancy

45. In considering premature retirement or redundancy, the governing body should bear in mind that section 37 of the Education Act 2002 gives LAs the power to take the costs of premature retirements (including the cost of any added years' service) from school budgets if they have not agreed to the premature retirement. Section 37(5) of the Education Act 2002 allows LAs to take the costs of discretionary compensation for redundancy from a school's budget, if they have good reason to do this (an example of a good reason might be that the LA thinks the discretionary payment in a particular case is too high in relation to its own policy). It is important, therefore, for the governing body to hold discussions with its LA about premature retirements and redundancy compensation it plans to give. Further information is given in the Teachers (Compensation for Redundancy and Premature Retirement) Regulations 1997 as amended.

46. The governing body decides whether to grant premature retirement to teachers aged between 50 and 60, and whether to award them added years' service under the Teachers (Compensation for Redundancy and Premature Retirement) Regulations 1997. The governing body can grant premature retirement either for reasons of redundancy or, if the employer terminates a teacher's employment, in the interests of the efficient management of the school.

47. If the governing body grants a teacher premature retirement, the LA, as the compensating authority, will have to pay mandatory compensation towards that teacher's annual pension and retirement lump sum (bearing in mind paragraph 37 above). The amount of mandatory compensation will reflect the cost to the pension scheme of allowing a teacher to take their pension before they reach 60. The younger the teacher when he or she is granted premature retirement, the higher the amount of mandatory compensation the LA will have to pay.

48. The governing body also decides on the level of compensation to grant a member of staff that it makes redundant. Although under the Employment Rights Act 1996 it must make a statutory compensation payment for redundancy (worked out using the number of years' service and a prescribed limit on weekly earnings which may change from time to time), it is for the governing body to decide whether further compensation on top of that should be paid. For example, under the Teachers (Compensation for Redundancy and Premature Retirement) Regulations 1997, governing bodies may have the right to base a redundancy payment on the teacher's actual salary. The governing body can also make an initial severance payment to teachers who are made redundant or whose employment is terminated on efficiency grounds, but only if the governing body has not granted premature retirement.

49. Some staff appointed some years ago may have contracts that say what payments must be made if the teacher takes early retirement. The governing body should make sure that any decision about how much the pension should be increased by takes account of these. Legal advice should be taken.

Employment Tribunals

50. Employment Tribunals (formerly known as Industrial Tribunals) hear complaints where employers have discriminated against individuals or failed to respect their rights under employment law. Examples are:

- dismissing an employee unfairly;
- refusing to allow a woman to return to work at a school after having a baby; or
- refusing to give trade unions information that they need for negotiations.

51. Tribunals can order an employee to be re-engaged or reinstated, and they can award compensation.

52. If the complaint is about a decision taken by a governing body, the governing body may have to appear before an Employment Tribunal to defend its action. The governing body must inform the LA within 14 days of being notified of the Employment Tribunal application. In cases of dismissal, the LA will pay any compensation or legal costs awarded by an Employment Tribunal, unless it can show that it has good reason to charge the school. This may happen if, for example, the LA had advised the governing body in the first place that an Employment Tribunal was likely to decide a dismissal was unfair. However, in law, the fact that a LA has a "no redundancy" policy is not reason enough to make the school pay. In cases other than dismissal (such as discrimination), any compensation or legal costs should be met by the school, or centrally by the LA in accordance with local arrangements. LAs may provide for this under their scheme under section 48 of the School Standards and Framework Act 1998.

H. Related Staffing Issues

LA Concerns about the Performance of a Head Teacher

1. The LA must send a written report to the chair of the governing body if it has serious concerns about the performance of a head teacher. At the same time the LA must send a copy of the report to the head teacher. The chair must notify the LA in writing of the action that he or she proposes to take in the light of the report.

Teachers' Pension Scheme (TPS)

2. Governors need to be aware of the flexibilities that exist within the Teachers' Pension Scheme (TPS), as these can help with the management of the workforce and succession planning. From 1 January 2007 changes introduced to the TPS have given more flexibility and greater choice over how individuals save and plan for retirement.

3. The changes have not altered the normal pension age for existing members, which remains 60. New entrants to the TPS on or after 1 January 2007, or those who have had gaps in service of more than five years, will have a normal pension age of 65 for any future service. Teachers may still retire at, before or after their normal pension age.

4. The revised arrangements allow teachers to take part of their pension benefits while remaining in employment in a reduced capacity, for example, by working part-time. In addition, the calculation of pension benefits is now based on either the member's salary in the last year or the average of the best three consecutive years' salaries in the last 10 years, supporting those who wind down to retirement by moving to a lower salary in the years leading up to retirement. Schools may find these flexibilities helpful in retaining experienced teachers who otherwise may retire fully.

5. Further detailed information is available at the Teachers' Pensions website. A DVD, *What Do You Want to Do When You Leave School? A Guide to the Teachers' Pension Scheme*, can be viewed at the Pensions area of the TeacherNet website.

Disputes with Staff: Strike Action

6. If a trade union with members in the school organises industrial action in protest against an action of the governing body, it may have "immunity" under the law. This means that the union is acting within its rights and cannot be sued in the courts for its action. Immunity will depend on whether the union has carried out the correct procedures, such as holding a secret ballot of its members, and whether the dispute is a "trade dispute" within the meaning of employment legislation. Immunity does not apply where the actions that the staff are protesting about do not affect them, for example decisions taken by the governing body of another school. However, it may apply to disputes with the LA.

Other Relevant Parts of Employment Law

7. There are other requirements of employment law that affect governing bodies as well as those already mentioned. The LA will be able to offer help and guidance. The main requirements for governing bodies and LAs are that:

- they must give the representatives of recognised independent trade unions any information that would help them in negotiations with the governing body, where this would be following good industrial relations practice. An example would be providing information about the budget;
- they must not force a member of staff to join a union or take part in union activities, or prevent him or her from doing so;
- they must respect the rights of staff to return to work after leaving to have children;
- they must respect the rights of safety representatives and officials of independent, recognised trade unions to take time off with pay for specified purposes; and
- they must respect the rights of staff to have time off, not necessarily with pay, for other purposes, such as carrying out public duties (including duties as a governor of a maintained school or a Further Education College) and receiving antenatal care.

The Law

The Equal Pay Act 1970
 The Sex Discrimination Act 1975
 The Race Relations Act 1976: Section 4
 The School Teachers' Pay and Conditions Act 1991: [Sections 1 and 2](#)
 The Trade Union and Labour Relations (Consolidation) Act 1992
 The Trade Union Reform and Employment Rights Act 1993
 The Disability Discrimination Act 1995
 The Employment Rights Act 1996
 The Teachers (Compensation for Redundancy and Premature Retirement) Regulations 1997: SI 1997/311
 The School Standards and Framework Act 1998
 The Protection of Children Act 1999
 The Employment Relations Act 1999
 The Education (Teachers' Qualifications and Health Standards) (Wales) Regulations 1999
 The Education Act 2002
 The School Teacher Appraisal (Wales) Regulations 2002
 The School Government (Terms of Reference) (Amendment) (Wales) Regulations 2002
 The General Teaching Council for Wales (Fees) Regulations 2002
 The Education (Supply of Information) (Wales) Regulations 2009
 The Education (Prohibition from Teaching or Working with Children) Regulations 2003: SI 2003/1184
 The Education (Prohibition from Teaching or Working with Children) (Amendment) Regulations 2004: SI 2004/1493
 The Education (Health Standards) (Wales) Regulations 2004
 The Education (Specified Work and Registration) (Wales) Regulations 2004
 The Education (School Teachers' Qualifications) (Wales) Regulations 2004
 The Government of Maintained Schools (Wales) Regulations 2005
 The Education (Induction Arrangements for School Teachers) (Wales) Regulations 2005.
 The Safeguarding Vulnerable Groups Act 2006
 The Staffing of Maintained Schools (Wales) Regulations 2006
 The Staffing of Maintained Schools (Wales) (Amendment) Regulations 2009
 The Staffing of Maintained Schools (Wales) (Amendment No 2) Regulations 2009
 The National Assembly for Wales Employment Based Teacher Training Scheme 2006 (2006 No. 8)
 The National Assembly for Wales Employment Based Teacher Training Scheme (Amendment) 2006 (2006 No. 74)
 The Staffing of Maintained Schools (Miscellaneous Amendments) (Wales) Regulations 2007.
[The Education \(Amendments to Regulations regarding the Recognition of Professional Qualifications\) \(Wales\) Regulations 2007](#)
 The Education (School Teachers' Qualifications) (Amendment) (Wales) Regulations 2008
 School Teachers' Pay and Conditions Document (updated annually)
 The School Teacher Appraisal (Amendments) (Wales) Regulations 2009.

The Apprenticeships, Skills, Children and Learning Act 2009 (Commencement No 1) (Wales) Order 2009

Guidance

School Teachers' Pay and Conditions Document and Guidance on School Teachers' Pay and Conditions (updated annually)

[Becoming a Qualified Teacher \(DELLS Information Document 021-06\)](#)

[Becoming a Qualified Teacher: Handbook of Guidance \(National Assembly for Wales Circular No: 41/2006\)](#).

Reporting Cases of Misconduct or Professional Incompetence in the Education Sector (National Assembly for Wales circular 33/2005).

Child Protection: Preventing Unsuitable People from Working with Children and Young Persons in the Education Service. NAFW Circular 34/2002

Induction and Early Professional Development for Newly Qualified Teachers in Wales WAG Guidance Circular 21/06

Use of Supply Teachers (DfEE Circular 7/96)

What the Disability Discrimination Act (DDA) 1995 means for schools and LAs (DfEE Circular 3/97)

Early retirement arrangements for teachers (DfEE Circular 15/97)

Performance Management Guidance, as below (Copies of the documents may be obtained from teachingenquiries@wales.gsi.gov.uk):

- Guidance 1 – Principles and Procedures which describes the system
- Guidance 2 – Schools' Performance Management Policies which includes a model policy
- Guidance 3 – Guidance for Governors
- Guidance 4 – Objective Setting.

Guidance on the Education (Health Standards) (Wales) Regulations 2004 (DfTE Information Document No: 36-04)

Raising Standards and Tackling Workload: A National Agreement 2003

Revised National Standards for Headteachers in Wales Guidance Circular NAFWC 14/06

Guidance on the Employment Based Teacher Training Scheme 2006 (Welsh Assembly Government Circular No: 035/2008).

Post-threshold standards assessment Teachernet at www.teachernet.gov.uk

Code of practice on LEA/school relations

Equal Opportunities Commission and Commission for Racial Equality: Codes of practice on eliminating discrimination and the promoting of equality of opportunity

Code of practice for the elimination of discrimination in the field of employment against disabled persons or persons who have a disability (DfEE)

Guidance on matters to be taken into account in determining questions relating to the definition of disability (DfEE and Department of Social Security)

Industrial action and the law (Department of Business, Enterprise and Regulatory Reform)

ACAS Codes of Practice:
Advisory Conciliation and
Arbitration Service (ACAS)

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