

DISCIPLINARY PROCEDURE

(covering all teaching staff)

Approved by:	Joint Negotiating Committee for Teaching Staff Executive of the Council
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Key Notes:

1. On 23 March 2004 the Joint Negotiating Committee for Teaching Staff approved the Disciplinary Procedure covering all Teaching Staff.
2. On the 4 May 2004 the Executive of the Council approved the Disciplinary Procedure covering all Teaching Staff.
3. 24 April 2018: This Procedure will be being reviewed.

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1. INTRODUCTION

- 1.1 Where a teacher's performance or conduct is such as to give rise to concern, disciplinary action may be taken by the authority in accordance with this locally agreed disciplinary procedure. The aim of the disciplinary process is to seek improvement in performance or conduct, and assistance to enable improvement to occur is essential.
- 1.2 This procedure takes full account of the provisions contained within the Scheme of Salaries and Conditions of Service for Teaching Staff as applied to appropriate staff of the Council and incorporates all of the principles and provisions of the disciplinary framework issued by the Scottish Negotiating Committee for Teachers (SNCT) in Circular SNCT 18. The procedure also reflects good employment practice, observes employment legislation requirements, and complies with the ACAS Code of Practice (No1) "Disciplinary and Grievance Procedures".
- 1.3 Whenever formal disciplinary action is being contemplated the points of procedure set down in paragraphs 4.1- 4.7 shall be adhered to. Any reference to 'teacher' includes all employees such as music instructors, quality improvement officers etc. whose terms and conditions of employment are regulated by the SNCT.

2. PRINCIPLES

- 2.1 Disciplinary rules and procedures are necessary for promoting orderly employment relations as well as fairness and consistency in the treatment of individuals. They enable organisations to influence the conduct of workers and deal with problems of poor performance and attendance thereby assisting organisations to operate effectively. Rules set standards of conduct and performance at work: procedures ensure that that the standards are adhered to and also provide a fair method of dealing with alleged failures to observe them.
- 2.2 The Council and the Trade Unions accept that this procedure should be viewed as a means of encouraging and supporting an improvement where an individual's conduct or performance is causing concern and not as merely a method of applying sanctions. All teachers should be made aware of the standards of conduct and performance expected of them. In particular teachers should be made aware of what constitutes gross misconduct e.g. sexual offences, assault or dishonesty.
- 2.3 Where the concern relates to the performance of an individual's teaching, the GTCS Code of Practice on Competence should be followed at all times. The Code is attached as Appendix A to this procedure.
- 2.4 Where the concern relates to the performance of an administrative or managerial function of a promoted post the procedures will mirror the arrangements laid out in the above GTCS Code, especially in respect of support offered.
- 2.5 All problems involving minor misconduct and/or poor performance should be dealt with, at least in the early stages, through the use of informal advice, guidance and/or counselling. It is essential that all problems of this nature are fully discussed and that support is provided with the objective of encouraging and helping teachers to improve. It is essential also that teachers are aware that support and counselling are available at all times even where it has been necessary to take disciplinary action under the procedures

2.6 Within the limitation of powers delegated by the Council, the Director of Education shall be responsible for the management and discipline of the Department. He/she may delegate authority within the terms of this procedure to nominated officers who may issue oral or written warnings or take punitive disciplinary action as defined in paragraph 8 of this procedure. A list of officers (by designation) so authorised shall be agreed with the Trade Unions and attached as Appendix B

2.7 Apart from gross misconduct, no teacher shall be dismissed for the first breach of discipline.

2.8 There is a right of appeal against all disciplinary sanctions

3. SUPPORT AND COUNSELLING

3.1 Minor cases of misconduct and most cases of poor performance may be best dealt with by informal advice, coaching and counselling rather than through the disciplinary procedure. Line managers need to ensure that problems are discussed with the objective of encouraging and helping staff to improve. It is important that staff understand what has to be done, how performance and conduct will be reviewed and over what period. Staff should be made aware of what action will be taken if their performance or conduct does not improve.

3.2 Advice and guidance should be given in a one-to-one discussion between a teacher and her/his line manager. A request to attend such a meeting should not be unreasonably refused by the employee. Similarly, any request from the teacher to be accompanied at such a meeting should not unreasonably be refused. An appropriate line manager will be determined at school or establishment level. In the course of giving advice and guidance, the line manager should discuss with the teacher the required standards, the manner in which the teacher has not met existing standards and the possible reasons for this including the identification of any underlying problems within or outwith the workplace. No record will be kept of such informal meetings in the personal record of the teacher.

4. DISCIPLINARY PROCEDURE - GENERAL

4.1 The teacher involved must be advised of the right of representation at all stages of the process including investigatory meetings.

4.2 The teacher involved must be advised at an early stage that a complaint or concern has been lodged, of the nature of the complaint and of the processes which will be followed.

4.3 Time limits contained within this procedure may be varied by mutual agreement.

4.4 Investigation Process

4.4.1 A disciplinary hearing shall not be convened until the matter has been fully investigated.

4.4.2 Management may suspend a teacher on full pay as a precautionary measure where it is considered necessary to enable a full investigation to take place. (See also section 9). However, alternatives to precautionary suspension should be considered before a final decision is made. In addition, any precautionary suspension will be reviewed each four weeks it is in place to ensure a continuing need is still in existence.

- 4.4.3 The officer appointed to conduct the investigation shall seek to establish the facts by carrying out investigatory interviews with relevant persons and, where possible, shall obtain written, signed and dated statements from witnesses who will be advised that they may be requested to appear at any subsequent disciplinary hearing
- 4.4.4 There is a right to be represented at investigatory interviews in respect of any teacher who is the subject of the investigation. Where it is considered appropriate, due to the nature of the investigation, management may also agree to requests from other witnesses in the investigatory process to be accompanied. Notice of such investigatory interviews will be required and should be at least three working days. However, a shorter notice period may be mutually agreed
- 4.4.5 The investigatory process should be conducted as speedily as possible consistent with the principles of fairness and natural justice. Normally, the investigation should take no longer than fifteen working days. However, it is acknowledged that, for example as a result of the complexity of the matters involved, insufficiency of resources available or difficulties in the availability of witnesses, a longer period of investigation will be required. Where the period of investigation is anticipated to be longer than fifteen working days then an alternative timescale will be agreed.
- 4.4.6 At the conclusion of the investigation the Investigating Officer should prepare a report that will enable another officer, nominated for the purpose, to decide whether the matter should be further progressed through the formal disciplinary process. This decision should not be taken by the investigating officer and the investigating officer must not have any function at a future disciplinary hearing other than presenting the facts of the investigation to that hearing or if necessary any subsequent appeal
- 4.4.7 If following consideration of the investigation report, the nominated officer decides a disciplinary hearing to be unjustified then all references to the investigation shall be removed from the teacher's file and destroyed.

4.5 **Convening a Disciplinary Hearing.**

- 4.5.1 If, following consideration of the investigation report, a disciplinary hearing is deemed necessary, the teacher concerned shall normally be given no less than ten working days' notice in writing of the hearing and shall be informed in the same letter of:
- (a) the fact that it will be a formal disciplinary hearing; the date, time and venue of that meeting; and the procedures which will be followed at the hearing
 - (b) the details of the allegation(s) together with the relevant supporting documentation, and the range of sanctions which may be applied
 - (c) the names of the nominated officer, investigating officer, department adviser, and of any witness(es) who will present evidence at the hearing, and copies of their written statements. Copies of any written statements made by individuals who are not available to give evidence in person at the disciplinary hearing will also be enclosed;
 - (d) the right to call witnesses or submit statements or other documentation subject to the names of any such witnesses and/or any written submissions being provided in advance to the officer conducting the hearing; and

- (e) the right to be accompanied/represented at the hearing by a trade union official or some other person of her/his choice.

4.6 Conducting a Disciplinary Hearing

- 4.6.1 The officer who conducted the investigation shall not conduct the disciplinary hearing nor shall he/she take part in the decision-making process. The investigating officer has no function other than presenting the facts of the investigation to the disciplinary hearing
- 4.6.2 A Headteacher has the delegated power to issue oral and written warnings only. Otherwise, the director or agreed nominee will conduct the hearing.
- 4.6.3 The officer conducting the hearing shall ensure that the facts gathered during the investigation are presented to the teacher. These facts will normally be presented by the officer who conducted the investigation and, if so, this officer shall remain in attendance at the hearing until the presentation of evidence is completed.
- 4.6.4 The officer conducting the hearing may be advised by departmental staff
- 4.6.5 Witnesses, if any, shall be called to give their evidence and, after questioning by both parties, shall withdraw but shall be subject to re-call. In exceptional circumstances a witness may remain for the duration of the hearing with the agreement of both the other party and the officer conducting the hearing
- 4.6.6 The teacher, and her/his representative, if any, shall be given adequate opportunity to put forward an explanation and/or defence
- 4.6.7 The officer conducting the hearing shall consider all the evidence presented with a view to arriving at a decision which is reasonable in all the circumstances.

4.7 Action following a Disciplinary Hearing

- 4.7.1 Except in the case of oral warnings, any disciplinary action shall be notified or confirmed in writing within five working days of the hearing and the letter notifying or confirming such action shall be handed to the teacher personally or sent by recorded delivery.
- 4.7.2 A copy of this letter shall be sent to the teacher's representative, if any.
- 4.7.3 If, following a disciplinary hearing, the nominated officer considers that no formal disciplinary action is justified then he/she shall inform the teacher accordingly and in these circumstances all references to the investigation shall be removed from the teacher's personal file and destroyed.

5. FORMAL ORAL WARNING

- 5.1.1 The nominated officer shall give an oral warning to the teacher for minor breaches of discipline, misconduct or continued poor performance, and inform her/him that this warning constitutes the first stage in the formal procedure. The teacher shall be informed of the reason(s) for the warning, what improvement is expected of her/him and of the consequence of further offence(s) occurring while the warning is still active. The teacher shall also be informed of the date from which the warning will normally be disregarded for

disciplinary purposes, the date the warning will be expunged if no further disciplinary action is taken and the right of appeal against an oral warning

5.1.2 The nominated officer shall make a written record of the warning. A copy of this record shall be placed on the teacher's personal file and a further copy given to the teacher.

6. WRITTEN WARNING

6.1. The nominated officer shall issue a written warning to a teacher for more serious breaches of discipline, misconduct or continued poor performance or a failure to improve conduct or performance following receipt of a formal oral warning.

6.2 The written warning shall be in the form of a letter, stating:

- (a) that a formal written warning is being given;
- (b) the allegation(s) dealt with at the hearing;
- (c) the effect of any previous active warning if appropriate;
- (d) the action required by the teacher to remedy the matter and the support mechanisms available to the teacher if appropriate;
- (e) that subsequent failure(s) in conduct or performance will normally result in more serious disciplinary action;
- (f) that a copy of the warning letter will be placed on the teacher's personal file;
- (g) the date from which the warning will normally be disregarded for disciplinary purposes (see paragraph 12.1);
- (h) the date the warning will be expunged if no further disciplinary action is taken (see paragraph 12.2); and
- (i) the teacher's right of appeal (see paragraph 11).

7. FINAL WRITTEN WARNINGS

7.1 The nominated officer who conducted the disciplinary hearing shall issue a final written warning to a teacher for serious breaches of discipline, misconduct or continued poor performance or a failure to improve conduct or performance following receipt of a written warning.

7.2 This letter shall contain all the information described in paragraph 6.2 and also, in particular, shall give notice that any further breach may result in dismissal.

8. PUNITIVE DISCIPLINARY ACTION

8.1 Punitive disciplinary action may be taken where there is serious repeated misconduct or poor performance during the currency of a final written warning, or for gross misconduct for which no previous warning exists.

8.2 Punitive disciplinary action refers to any of the following sanctions:

- (a) the withholding of an annual increment in conjunction with a final written warning;
- (b) demotion and/ or transfer to another job, place of work, in conjunction with a final written warning;
- (c) dismissal with notice; or
- (d) summary dismissal i.e. dismissal without notice, only in cases of gross misconduct

8.3 Where the possibility of punitive disciplinary action arises, the Director of Education or another senior nominated officer shall hold a disciplinary hearing with the teacher concerned. The hearing shall be convened and conducted in accordance with the procedure set down in paragraphs 4.1 - 4.7.

8.4 Where punitive disciplinary action is taken, the decision shall be notified or confirmed in writing in the name of the officer who conducted the disciplinary hearing and the letter shall:

- (a) refer to previous warnings, if appropriate;
- (b) state clearly the punitive disciplinary action taken and the effective date;
- (c) specify the reason(s) for this action;
- (d) refer to the teacher's right of appeal to the Personnel Appeals Committee and indicate the date by which notice of appeal should be received; and
- (e) where appropriate, refer to the teacher's right to submit a claim of unfair dismissal to an industrial tribunal and indicate the time limit for submission of such a claim.

8.5 Where a teacher does not agree to the application of the punitive action then the Council will have no alternative but to dismiss the teacher.

9. GROSS MISCONDUCT

9.1 Under this disciplinary procedure a teacher shall normally be given a final written warning regarding her/his conduct or performance before dismissal is contemplated. It is recognised however that a teacher may be dismissed without previous warning where gross misconduct is deemed to have occurred.

9.2 For the purpose of this procedure gross misconduct is behaviour of such a nature that the Council is unable to tolerate the continued employment of the individual concerned.

9.3 **Precautionary suspension** (also see existing Departmental guidelines).

9.3.1 Precautionary suspension will be on full pay and shall not be regarded as a form of disciplinary action nor does enacting a precautionary suspension assume guilt. (Full pay shall consist of a teacher's normal salary or wage, including all contractual payments and entitlements.)

9.3.2 Precautionary suspensions should only be used in the most serious cases of misconduct or poor performance or where the teacher's presence at the normal place of work could prejudice the investigation.

9.3.3 Alternatives to precautionary suspension, e.g. temporary transfer, should be considered before a final decision is made.

9.3.4 Where a suspension is enacted, written confirmation of the suspension shall be forwarded to the teacher within three working days stating the reason(s) for the suspension. The precautionary suspension will be reviewed every four weeks it is in place to ensure a continuing need is still in existence. The suspended teacher will be apprised of the outcome of each review.

9.3.5 Where gross misconduct is alleged, the Director of Education or another senior nominated officer, in consultation with the Personnel Manager, may, where other alternatives are invalid or unavailable, suspend the teacher on full pay on the grounds that the Education department consider it to be undesirable for the teacher to remain at work prior to the disciplinary hearing.

9.4 Only in exceptional circumstances (e.g. where an incident occurs on a nightshift or in an isolated location) may a line manager who has not been delegated formal powers of suspension, effectively suspend a teacher on full pay by sending the teacher home or removing her/him from duty without consulting an authorised senior officer. In such circumstances the Director of Education or another senior nominated officer shall be informed as soon as possible and shall consult the Personnel Manager before deciding whether or not to suspend formally the teacher concerned.

10. **CRIMINAL OFFENCES**

10.1 A teacher shall not be disciplined solely because he/she has been charged with, or convicted of, a criminal offence. In all such cases consideration shall be given to whether the alleged or proven offence is of a serious nature and the relevance of the offence to the employment relationship between the Council and the teacher.

10.2 In all cases where disciplinary action is being contemplated due to an alleged or proven criminal offence, the matter shall be investigated by officers of the Council as thoroughly as the circumstances permit and in line with paragraphs 4.1 to 4.7

10.3 In cases of suspected irregularities relating to the finances of the Council or to any other funds managed by the Council, the Director of Finance shall be informed and, if appropriate, an audit investigation shall be carried out. The Director of Education or another senior nominated officer may suspend the teacher on full pay in accordance with paragraph 9.3

10.4 Following investigation, the Director of Education or another senior nominated officer may determine that the available evidence is sufficient to justify holding a disciplinary hearing prior to the outcome of any criminal proceedings.

10.5 Where investigations relating to a criminal offence reveal insufficient information to justify holding a disciplinary hearing, consideration of the case may be deferred until further information is available. In these circumstances the teacher may be suspended as a precautionary measure on full pay until further notice, notwithstanding the procedural requirement to review the need for the suspension on a four-weekly basis.

11. APPEALS AGAINST DISCIPLINARY ACTION

11.1 Appeals Against Warnings

11.1.1 Appeals against warnings, oral or written, issued by Headteachers/Head of Establishment or nominated officers, may be made to the Director of Education and shall be submitted in writing, indicating the grounds of the appeal, within ten working days of the teacher receiving confirmation of the warning.

11.1.2 Appeals against warnings shall be heard as soon as possible and normally within ten working days of receiving the written notice of appeal

11.1.3 Appeals against warnings shall be heard by the Director of Education or a nominated officer more senior than the officer who issued the original warning. In the case of appeals against final warnings, the appeal shall be heard personally by Director of Education or Head of Service. The teacher shall be given at least five working days' notice in writing of the appeal hearing and shall be informed of her/his right to be represented at the hearing by a trade union official or some other person of her/his choice. The appeal hearing shall be conducted in accordance with the procedural rules governing the operation of the Personnel Appeals Committee.

11.1.4 The officer hearing the appeal may confirm, amend or withdraw the disciplinary action but may not substitute disciplinary action of a more serious form than that originally imposed.

11.1.5 The decision shall, if possible, be made known to the teacher at the end of the appeal hearing and shall in any case be confirmed in writing within five working days. There shall be no further right of appeal.

11.1.6 Where, in exceptional circumstances, a warning is issued by the Director of Education in person, any appeal shall be referred for consideration by the Personnel Appeals Committee.

11.2 Appeals Against Punitive Disciplinary Action

11.2.1 Appeals against punitive disciplinary action may be made to the Council Secretary, with a copy to the Director of Education, and shall be submitted in writing, indicating the grounds of the appeal, within ten working days of the teacher receiving written notification of the disciplinary action or, in the case of appeals against dismissal with due notice only, within ten working days of the effective date of dismissal. In all cases the date by which the Council Secretary should receive notice of an appeal shall be included in the written notification.

11.2.2 The Council Secretary shall arrange for the appeal to be considered by the Personnel Appeals Committee within twenty working days of receipt of the letter of appeal or as soon as possible thereafter.

11.3 Effect of Appeals on Disciplinary Record

11.3.1 If as a result of an appeal any disciplinary action is withdrawn or modified, any written reference thereto on the teacher's personal file shall be expunged or appropriately amended and the teacher and her/his representative, if any, notified accordingly.

11.3.2 Teachers will have a right of access to their personal file to ensure the written reference has been removed or appropriately amended

12. EXPIRY OF WARNINGS

12.1 Warnings and other formal disciplinary action short of dismissal shall normally be disregarded for disciplinary purposes after a period of satisfactory employment. The relevant periods shall be as follows:

Oral warnings

- to be disregarded after six months written warnings
- to be disregarded after nine months final written warnings
- to be disregarded after twelve months punitive disciplinary action short
- to be disregarded after eighteen months of dismissal in conjunction with a final warning

A decision to not disregard (and consequently to not expunge) a warning for disciplinary purposes may be taken in circumstances where there has been a breach of the Council's child protection arrangements.

Where such a decision is taken, the written notification of the warning shall indicate that this has been decided and give the reasons for doing so. The teacher shall have a separate right of appeal against a decision to 'not disregard' in accordance with the arrangements for hearing appeals against the issuing of warnings.

12.2 All written reference to a formal warning on a teacher's personal file shall be expunged after the following periods:

- oral warnings - to be expunged after 12 months
- written warnings - to be expunged after 18 months
- final written warnings - to be expunged after 24 months
- punitive disciplinary action - will not be expunged short of dismissal.

A warning shall not be expunged however if further disciplinary action is taken against a teacher before the date the warning is due to be expunged. In these circumstances the original warning shall remain unexpunged on the teacher's record for an extended period in accordance with the above provision i.e. until the expungement of any new warning takes place. At that time **both** warnings would be expunged.

13. TRADE UNION OFFICIALS

13.1 Disciplinary action against a trade union official can lead to a serious dispute if it is seen as an attack on the union's functions, although normal disciplinary standards should apply to their conduct at work

13.2 Where a disciplinary investigation involves a teacher who is an accredited trade union representative, the matter must be discussed with a senior official of the appropriate Trade Union at the earliest possible time and prior to any investigation meeting with the teacher. The Personnel Manager should also be consulted at the earliest opportunity. Any subsequent disciplinary hearing involving a teacher who is an accredited trade union representative shall not be convened until the circumstances have been discussed with a senior official of the Trade Union concerned and the Personnel Manager.

13.3 Where gross misconduct of an accredited trade union representative is alleged, the teacher may be suspended on full pay after consultation with the Personnel Manager. In such circumstances a senior official of the Trade Union concerned shall be contacted as soon as possible, the matter discussed and written confirmation of the suspension shall be sent to both the individual and the Trade Union within three working days. A copy of this letter shall be forwarded to the Personnel Manager.

14. LOCAL AGREEMENT

14.1 This document is a local collective agreement between the Council and the recognised Trade Unions. Every effort will be made by both parties to ensure that this document will be maintained as a local collective agreement and adjusted by agreement to meet changing future needs. In the event of failure to reach agreement both parties reserve the right to terminate this local agreement by giving four months' notice in writing. In such circumstances the terms of the local agreement will cease to apply to existing and future teachers.

**APPENDIX A - DISCIPLINARY PROCEDURES -
LIST OF NOMINATED OFFICERS
DEPARTMENT OF CHILDREN AND FAMILIES**

Type of action	Nominated Officer	Appeals
Counselling	Immediate Line Manager or appropriate nominated officer	
Precautionary Suspension	Head of Group Tier 3 or 4 Manager (see note 1) Head of Establishment (at school/service level)	
Oral Warning	Director or nominee (see note 1) Head of Establishment (at school/service level)	Director or nominee (see note 2)
Written Warning	Director or nominee (see note 1) Head of Establishment (at school/service level)	Director or nominee (see note 2)
Final Written Warning	Director or nominee from Tier 3 or 4 Management (see note 1)	Director or nominee (see note 2)
Punitive Action (Including Dismissal)	Director or nominee from Tier 3 or 4 management (see note 1)	Personnel Appeals Committee
Any Warning issued by the Director in person		Personnel Appeals Committee

Note 1 - Tier 3 and 4 posts

“Nominees” will include post holders in Tier 3 i.e. who report directly to a Head of Group. In the **neighbourhood management structure only**, “nominees” will include Tier 4 posts which report directly to the Tier 3 post of Neighbourhood Manager i.e. Manager of School Services, Early Years and Childcare Manager, Social Work/Working Together Manager and Community Learning and Development Manager

Note 2

In practice an appeal against non-punitive warnings will be heard by a more senior manager than the Officer issuing the warning e.g.

Decision	Appeal
Head Teacher	Manager of School Services
Manager of School Services	Neighbourhood Manager
Neighbourhood Manager	Head of Group
Head of Group	Director

Disciplinary Investigation

Disciplinary investigations may be conducted by an appropriate Line Manager, HR Officer or, if necessary, any combination of the two.