

Code of Discipline for Teachers: Disciplinary and Appeals Procedure

I. INTRODUCTION

- 1.1 Where a teacher's performance or conduct is such as to give rise to serious concern, disciplinary action may be taken by Glasgow City Council, Education Services. A Code of Practice is necessary for the fair and consistent treatment of all employees and the following proposals seek to ensure that satisfactory standards are maintained and provide a fair method of dealing with any shortcomings. As the aim of the disciplinary process is to seek improvement in performance, attendance or conduct, assistance to enable improvement to occur is essential.
- 1.2 Copies of this document will be made available to all teachers employed by Glasgow City Council.

2. AIMS

- 2.1 The purpose of the Code is to provide:
 - a sound basis for the maintenance of appropriate conduct, performance throughout the education authority
 - a clear understanding between the employee and the employer of the need for a code of discipline
 - a mutually acceptable and well-publicised procedure for dealing with breaches of discipline.

3. PRINCIPLES

- 3.1 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 help ensure that the standards are adhered to and also provide a fair method of dealing with alleged failures to observe them.
- 3.2 This Code of Discipline and Disciplinary Appeals Procedures are designed to promote fairness and consistency in the treatment of individuals in conjunction with the Council's Equal Opportunities Policy and other relevant Glasgow City Council management circulars and policies, without prejudice to provisions outlined in SNCT Conditions of Service. All teachers must familiarise themselves with the standards of conduct and performance expected of them. In this regard teachers should refer, in particular, but not exclusively to:
 - Glasgow City Council's (GCC) Code of Conduct
 - General Teaching Council Scotland (GTCS) Code of Professionalism and Conduct
 - GTCS Framework on Teacher Competence
 - All GCC Management Circulars
 - All GCC LNCT Agreements
 - GCC Social Media - Guide on Expected Standards of Conduct

- 3.3 These disciplinary procedures comply with ACAS Code of Practice Disciplinary and Grievance Procedures.
- 3.4 This Code of Discipline includes specific reference to what constitutes gross misconduct and where support should be provided as per LNCT Circular 11.
- 3.5 All problems involving minor misconduct and poor performance should be dealt with, at least in the early stages, through the use of informal advice, guidance and counselling. Problems of this nature should be discussed and support provided with the objective of encouraging and helping teachers to improve. It is essential 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.
- 3.6 Where poor performance is identified then this should be managed as per LNCT Circular 11 and the GTCS Framework on Teacher Competence. Where the concern relates to the performance of an administrative or managerial function of a promoted teacher, the procedures comply with the same principles and processes as contained in the current GTCS Code of Practice of Teacher Competence.
- 3.7 Apart from gross misconduct or chronic incompetence, no teacher shall be dismissed for the first breach of discipline. Dismissal for chronic incompetence will only take place after the Authority's agreed support programme as detailed in LNCT Circular 11 has been put in place for the teacher.
- Whilst disciplinary investigations and hearings should be undertaken promptly at all stages, it should be noted that on occasion the timescales will require to be operated flexibly by the parties concerned. Investigating officers should take the time necessary to conduct a reasonable investigation and teachers should be given reasonable time to prepare for an investigation or disciplinary hearing within normal working hours.
- 3.9 The teacher should be informed at the earliest possible stage if it is considered that any complaint or allegation being investigated may have disciplinary consequences. Whilst this may initially be done verbally, this will always be followed up in writing.
- 3.10 Teachers will have the right, at any stage of the procedure, to be represented by a Trade Union representative or fellow employee of Glasgow City Council. It will be the responsibility of the employee to ensure that their representative is present at any stage of the procedure. The Council will facilitate the release of any representative chosen who is an employee of the Council. This will include reasonable time off with pay to represent the employee and prepare for such representation.
- 3.11 Teachers will have the right of appeal against disciplinary action. Teachers must always be informed in writing of any disciplinary action and the reason for it, their right of appeal and how to lodge an appeal.
- 3.12 At the employee's request, the representative will be informed and given a copy of the notification of any disciplinary action, if the employee so wishes. The employee should indicate their wishes clearly.
- 3.13 No disciplinary action will be taken until the matter has been fully investigated. Where absence has been processed as per Management Circular No. 73 and GCC absence management procedures the employee should be provided with all relevant paperwork and a summary report. The relevant report and paperwork will be subject to review and investigation as part of the disciplinary procedures described at Part 4 and Part 5 of this agreement. Review and investigation of summary report will be without prejudice to provisions outlined in SNCT Conditions of Service.
- 3.14 If a disciplinary hearing is convened, with reference to section 4 and 5 of this policy, the chairperson should independently review all relevant paperwork. A summary report should be provided by the line manager. The employee and representative should have all relevant paperwork in advance of the hearing.
- 3.15 Any decision, to impose a disciplinary sanction must not be taken by the person who conducted the investigation. Any appeal should not be heard by the same person who issued the disciplinary sanction.
- 3.16 No disciplinary action will be initiated against a trade union representative until the matter has been discussed with a full-time official of the union concerned.

3.17 **Gross Misconduct**

3.17.1 Although not exhaustive, the following are examples of Gross Misconduct:

- Serious offences against the interests of the Council, including wilful injury to others and wilful damage to Council property;
- Incapacity on duty due to the effect of intoxicating liquor or drugs (see also section 9);
- Fraudulent salary/wage claims and falsification of official documents.
- Gross insubordination and persistent refusal to comply with a reasonable instruction.
- Neglect of duty resulting in serious consequences and failure to obey critical safety rules (e.g fire evacuation procedures).
- Fighting in the workplace.
- Theft from employer, fellow employees or pupils.
- False particulars given to secure employment with the Council (which could have affected the decision).
- Criminal charges or convictions having a material bearing on employment and in particular any which result in a teacher being placed on the sex offenders register or listed as unsuitable to work with children
- Breaches of the Council's child protection policies.
- Serious breaches of GCC Social Media – Guide on Expected Standards of Conduct Abusive behaviour towards colleagues, pupils and/or the public or customers of the Council, including matters of a racial or sexual nature.

The decision as to whether the teacher's conduct can be construed as Gross Misconduct will be dependent on full consideration of all the facts and circumstances. If it is found that an offence comes under the heading of one of these examples, the extent and degree of the offence must be considered before the severity of disciplinary action is determined. The list of offences here is necessary to ensure that the relevant seriousness of breaches of the Code are recognised, and in keeping with the SNCT framework.

3.18 **Unsatisfactory Conduct**

3.18.1 Less serious offences, which do not constitute gross misconduct as outlined in 3.16, are termed unsatisfactory Conduct and may lead to warnings. Dependent upon the employee's disciplinary record, action up to and including dismissal may be taken.

Offences under this heading include:

- Poor time-keeping;
- Unacceptable levels of attendance;
- Unauthorised absence;
- Negligence;
- Refusal to carry out a reasonable instruction.

This list is not exhaustive.

4. DISCIPLINARY AND APPEALS PROCEDURE

4.1 **Aims**

The purpose of the Disciplinary Procedures is to ensure that the Code of Discipline is adhered to and to provide a fair method of dealing with alleged failures to observe the Code of Discipline.

4.2 **Responsibilities**

4.2.1 **Headteacher/Manager**

The Headteacher will have overall responsibility for the management of teachers within their school. Headteachers or other nominated senior managers will have the authority to appoint appropriate investigating officers, chair disciplinary hearings and issue oral, written and final written warnings. The chairperson of any disciplinary hearing can only issue a sanction within their delegated authority.

In normal circumstances the Headteacher will chair the Disciplinary Hearing and be responsible for appropriate and timely application of this procedure within the establishment. For peripatetic staff, it would normally be the appointed line manager is responsible for the application of this procedure.

Appeals against warnings will be heard by an Education Senior Manager who has had no prior involvement in the matter.

The Executive Director of Education and Assistant Director of Education, will have the power to apply all forms of disciplinary

sanction described in the procedure and to dismiss a teacher.

4.2.2 Service Human Resources Officer

The Human Resources Officer will offer advice to Headteachers and other managers in the consideration of items under the Code of Discipline and Disciplinary Procedures. Although Headteachers are responsible for the investigation and conduct of disciplinary matters within their level of authority, the Human Resources Officer may be of assistance to them in interpreting the Code of Discipline and the Disciplinary Procedures in terms of the practice throughout the Council. A Human Resources Officer may be present at any meeting in relation to this policy and, in instances of Gross Misconduct and/or instances of potential serious misconduct, a Human Resources Officer will always be present at disciplinary hearings. The role of the Human Resources Officer is to support and offer independent advice, be aware of any conflicts of interest, and ensure fairness and consistency in proceedings. The Human Resources Officer who supported the investigation should not provide Human Resources support at disciplinary hearings.

Human Resources support will be available to assist local managers in the event of an appeal with preparation and presentation of their case to the Appeals Sub-committee and any subsequent Employment Tribunal.

Assist the Headteacher with their responsibility for ensuring that records detailing the nature of the breach of disciplinary rules, the action taken and the reasons for it, the date the action was taken and whether an appeal was lodged, its outcome etc, are maintained.

4.2.3 Teacher/Representative

The teacher will arrange their own representation should they wish to be accompanied/represented. The teacher will attend an investigation and provide details of any evidence which may support their case. They should also advise if there are any relevant witnesses.

The teacher should not do anything to prevent a thorough investigation and should co-operate fully with the process.

4.3 Preliminary Investigation

4.3.1 A brief, preliminary investigation may (but will not always) be required to determine whether or not the formal procedure should be instigated. This preliminary investigation should take place as soon as the incident is brought to the attention of the manager or Headteacher and should be concluded on the same day unless there are exceptional circumstances. Care should be taken not to prejudice any formal investigation. Following this preliminary investigation the Headteacher may:

- Take no further action
- Have an informal management discussion with the teacher
- Instigate formal proceedings.

4.3.2 Management discussion

Where it is appropriate to conclude the process with a management discussion rather than a formal warning, the teacher should be left in no doubt as to which sort of action has been taken. The Headteacher may keep a note for reference purposes that an informal discussion has taken place. The primary focus of a management discussion is to support the teacher, a management discussion is not part of any formal procedures and there is therefore no right of appeal. Any such note of outcome relating to a management discussion will be expunged from the record after a period of six months.

4.4 Suspension/Transfer

4.4.1 Senior Managers, Headteachers and Depute Headteachers shall have the necessary delegated power to recommend suspension or transfer a teacher in the following circumstances. The Department will give consideration to a temporary transfer pending the conclusion of the investigation and any subsequent disciplinary process.

- The most serious cases of alleged misconduct or poor performance
- Where the teacher's presence at the normal place of work could prejudice an investigation
- Where the teacher is creating a situation whereby he/she is a danger to him/herself or others

- The alleged misconduct has a significant bearing on the teacher's duties
- Where the teacher conduct or behaviour continuous to give serious cause for concern and when the continue to fail to follow a reasonable instruction
- As a necessary precaution in the Council's interest in circumstances which involve or may involve, criminal proceedings against the employee.
- Where they are under consideration for listing by Disclosure Scotland.

Suspension is not a punitive measure and will be with full pay.

All suspensions will be reviewed at agreed regular intervals (normally on a two-weekly basis). An officer will be appointed to maintain contact with the suspended teacher and the Headteacher will inform the suspended teacher of the reasons for the continued suspension.

The department may temporarily transfer a teacher to facilitate an investigation and will give consideration to a request for a temporary transfer pending the conclusion of an investigation and any subsequent disciplinary process.

5. THE FORMAL PROCEDURE

5.1 The Complaint and Investigatory Stage

In situations where either a complaint has been received or where a teacher's conduct has given cause for concern, an investigating officer will be appointed. This will normally be a member of the senior management team of the school, but can be another manager where this is not possible or appropriate.

Where the complaint and any subsequent investigation relate to a headteacher then the investigating officer will be a senior officer of the council.

The teacher involved must be advised at an early stage that a complaint or concern has been lodged. The investigating officer is required to advise the teacher in writing, in advance of any meeting, of the nature of any complaint, of the process that will be followed, and the right to be represented.

Where the allegations involve possible misappropriation, fraud or embezzlement, there may be a requirement to notify the Council's Internal Audit section and/or the Police. In potentially serious cases of defalcation, fraud or embezzlement the Chief Executive should be notified who will in turn inform the Audit Section and the Assistant Chief Constable (Crime) at Police Scotland (Strathclyde). Advice should be sought from the Education Human Resources Manager prior to any action being initiated.

The investigating officer should, if possible, interview all of the parties involved (including the teacher in question) and, if appropriate, prepare signed and dated statements from all of these witnesses. All parties will be entitled to be represented at all meetings as part of the investigation. All parties should seek permission from line managers where they require time to prepare for or attend meetings in relation to an investigation or disciplinary hearing. Reasonable time off will be granted at the exigencies of the service.

The investigating officer should obtain any other relevant evidence. The investigation should be conducted as speedily as possible consistent with the principles of fairness and natural justice.

The investigating officer should produce a report for an appointed manager who will be the Headteacher or other senior manager.

The appointed manager will review the investigating officer's report and decide whether the matter should progress to a disciplinary hearing. This decision will never be taken by the officer who carries out the investigation.

Where the appointed manager considers the complaint, if upheld, could constitute gross misconduct, as defined in Paragraph 3.17, she/he should seek advice from the appropriate Human Resources Officer. If the advice from the Human Resources Officer is that the complaint could constitute gross misconduct and could lead to dismissal the Human Resources Officer will refer the findings of the Investigating Officer to the Executive Director or Assistant Director of Education Services to progress the matter.

When the investigation is complete the teacher should be advised of the outcome of the investigation by the appointed officer who has reviewed the investigating officer's report.

Where no further action is to be taken in terms of the disciplinary procedures then all references to the investigation should be removed from the teacher's file and destroyed, except in cases of child protection, where a confidential note of the allegation may remain for a period of five years.

5.2 Disciplinary Hearing

5.2.1 Where a decision to proceed with a disciplinary hearing is taken, then this hearing will normally be chaired by the manager who reviewed the report. The investigating officer cannot chair the disciplinary hearing. A decision to proceed with a disciplinary hearing should always be based on evidence secured during the investigatory stage.

Where the head teacher is the subject of disciplinary action or matters fall within the definition of

Gross misconduct then the Assistant Director or Executive Director will chair the disciplinary hearing.

Once a decision has been reached about the need for a disciplinary hearing the teacher concerned should be so informed in writing. If the decision is to proceed, the letter calling the teacher to the meeting should come from the manager who will Chair the disciplinary hearing and contain the following information:

- The hearing is being held in accordance with this agreed procedure (LNCT 12)
- The date, location and time of the hearing.
- The allegations regarding the conduct, performance or attendance of the teacher.
- A clear invitation to be accompanied by a trade union representative or fellow employee of Glasgow City Council
- The allegation
- List of enclosures (written evidence gathered during the investigation)
- List of witnesses
- An indication of the possible outcome

The letter should give a minimum of 10 working days notice of the date of the hearing unless otherwise agreed with the teacher concerned.

Every effort should be made to rearrange the date of the hearing if, in the view of the Chair of the Hearing, the teacher has made reasonable effort to obtain representation but has been unsuccessful.

The Chair of the Disciplinary Hearing should provide the teacher and/or representative with the investigation report and written evidence obtained during the investigation, normally enclosed with the letter inviting the teacher to attend a disciplinary hearing. This should be provided at least 10 working days prior to the disciplinary hearing unless otherwise agreed.

The teacher should have provided all relevant evidence during the investigation but, if there is anything further they wish to provide, this must be submitted to the Chair of the Hearing at least three days in advance of the hearing. The teacher may make a request for reasonable time to collect further evidence.

The teacher will be advised of any witnesses the investigating officer intends to call in relation to the report. The teacher should advise the Chair of the hearing at least three days before the hearing of any other relevant witnesses he/she would like to call. In this case, the teacher and/or his/her representative will be responsible for ensuring these witnesses attend the hearing. Reasonable time off with pay will be given to these witnesses to attend the hearing.

A disciplinary hearing should be held in a room suitable for the purpose. Telephone calls should not disrupt the proceedings and provision should be made for note taking. The Chair of the Hearing may be accompanied by a member of staff senior in status to the teacher involved or Human Resources Officer.

The format of the hearing will vary according to circumstances but every hearing should include:

- a. A formal reading of the allegations.
- b. Evidence led to substantiate the allegations.
- c. The opportunity for cross examination by the teacher or representative.

- d. The opportunity to provide counter evidence by the teacher or representative
- e. The opportunity to cross examine this by the Chair of the Hearing
- f. The facility to call witnesses and cross examine witnesses.

The hearing should end with a summation of the evidence together with any concluding remarks. The Chair of the Hearing may reach a conclusion immediately and thereafter communicate this to the teacher. Normally however the Chair of the hearing will wish time to consider the evidence and the teacher should be informed of the likely timescale of decision making. Once a decision is reached the hearing should be reconvened and the teacher informed of the outcome. This outcome should be confirmed in writing.

Consideration

After establishing the facts and before deciding whether disciplinary action is appropriate and the form any such action should take, consideration should be given to the following:

- The employee’s disciplinary record.
- The employee’s awareness of the standard of behaviour and performance and conduct.
- The employee’s age, position, length of service and general performance and conduct.
- Any mitigating circumstances, e.g. health or domestic problems.
- The disciplinary action taken in similar cases in the past.
- Whether the proposed action is reasonable and in accordance with the Code of Discipline, giving account to all the circumstances.

In the event of a disciplinary warning being issued the teacher should be informed that an appeal against this can be made to the Executive Director of Education within 10 working days of receipt of the written advice of the disciplinary action.

If it is decided that no disciplinary action is to be taken, all references to the case shall be removed from the teacher’s personal file and destroyed, except in cases where the matter concerns child protection where a confidential note will remain for five years.

6. DISCIPLINARY SANCTIONS AND TIME LIMITS

6.1 All disciplinary sanctions shall be recorded in writing and shall remain in the teacher’s personal file during the period of the warning.

Any sanctions in relation to matters of child protection will be retained on file for a period of five years.

6.2 The following disciplinary sanctions shall be available.

6.3 Any disciplinary action with regards to attendance is governed by this policy, and without prejudice to provisions outlined in SNCT Conditions of service.

Oral Warning – retained for 6 months

For minor misconduct the warning must include reference to the fact that any further breach may render the teacher open to further disciplinary action.

Written Warning – retained for 9 months

For more serious misconduct or a failure to improve conduct or attendance following receipt of a formal oral warning: the teacher must be informed that a further breach may result in further disciplinary action being taken.

Final Written Warning – retained for 12 months

For serious misconduct or a failure to improve following receipt of a written warning. The teacher must be warned that any further breach may result in dismissal.

Dismissal

For serious repeated misconduct during the currency of a final written warning or for gross misconduct or chronic incompetence for which no previous warning exists: the teacher must be informed in writing of the effective date of dismissal and whether the dismissal is summary or with notice.

Punitive action

In cases where written or final written warnings are issued, a teacher may also be compulsory transferred to another school or establishment as an alternative to dismissal.

Alternatives to dismissal

The following punitive sanctions are available in conjunction with a final written warning as an alternative to dismissal:

- Demotion
- Compulsory Transfer
- Suspension of an increment

Where the employee does not accept an alternative to dismissal then the Council will have no alternative but to dismiss the teacher.

All matters relating to issues of child protection will be retained on the employee’s file for a period of five years.

7. TIME LIMITS

7.1 The limits on aspects of the disciplinary procedure are given below. The time limits set do not prejudice a teacher’s rights in cases of dismissal to submit a claim to an Employment Tribunal.

Precautionary suspension	Reviewed every 10 working days
Notice prior to the date of disciplinary hearing	10 working days or shorter by agreement
Notification of decision following a disciplinary hearing	5 working days (maximum)
Time limit to lodge an appeal	10 working days (maximum) from receipt of written notification of decision of disciplinary hearing
Date of notification of appeal hearing	No later than 20 working days from receipt of appeal (except in cases of appeals against dismissal heard by a sub committee)
Notification of outcome of appeal hearing	5 working days (maximum)

7.2 If an appeal is successful and the original disciplinary sanction withdrawn, any written reference shall be removed from the teacher’s

personal file and the teacher notified accordingly. In cases involving child protection a confidential note will be kept for five years.

8. CRIMINAL OFFENCES

8.1 Where an allegation of a criminal offence arises from the employment or has a bearing on the employment, the circumstances should be ascertained from the teacher and investigated as fully as possible. Consideration should be given to all likely explanations for what has happened. The disciplinary investigation and the criminal investigation should be handled separately by the appropriate authorities since the Council’s interest and the Police interest and their consideration as to the nature of the circumstances differ

An investigating officer may, where possible, obtain information/evidence from the police or the Procurator Fiscal or from any other appropriate source. Before any decision is taken about disciplinary action, reasonable grounds must be established for believing that the individual committed the particular offence. All information received will be made available to the employee prior to the hearing.

In considering criminal offences not arising from the employment or having a direct bearing on the employment, consideration should be given to the relevance of the alleged offence to the duties of the individual as a teacher. The main consideration will be whether the alleged offence is one that makes the individual unsuitable for continuing employment in working with children. Employees should not be dismissed solely because a charge against them is pending or because they are absent through having been remanded in custody. Precautionary suspension will be considered depending upon the nature of the offence.

Following a reasonable investigation, the Chair of any disciplinary hearing is not expected to establish whether the teacher committed the offence beyond reasonable doubt but rather whether the teacher, on the balance of probability, committed the offence (reasonable belief). There is no requirement to await the outcome of a criminal charge through the Courts

8.4 The Council as an employer has an interest if any employee is alleged to have committed a

criminal offence whether the offence relates to employment with the Council or not. The employee is therefore required to advise their line manager if they are at any time charged with a criminal offence. Failure to do so is likely to result in disciplinary action.

- 8.5 When a custodial sentence is imposed and the teacher is not available for work, the Executive Director of Education (or nominated officer) will be mindful of the need to act reasonably in the light of the needs of the Council before deciding whether or not to dismiss. Where disciplinary action is not justified by the nature of the actual or alleged offence but the employee is not available for work because of the custodial sentence, or through being remanded in custody, the question to be determined is whether in the light of the needs of the Council the teacher's post can be kept open.

9. ALCOHOL, DRUG MISUSE AND GAMBLING RECOVERY PROGRAMME

- 9.1 In accordance with the terms of the Council's Policy Statement on Alcohol and Drug Misuse and Gambling Addiction, an employee with such a problem should be given the opportunity of accepting a management referral to the counselling services arranged by the Council. If the Employee Assistance Service or other agreed agency, and the employee accept that an alcohol, drug or gambling problem exists, and providing the employee undertakes to cooperate and successfully undertakes the recovery programme, disciplinary action will be suspended in respect of the offence which led to the referral.

Offences which are either not related to the reason for referral or offences which are considered to be of such a serious nature will be dealt with in the normal way. If the employee is not accepted by the counselling service as having an alcohol, drug or gambling problem and therefore cannot be considered for the recovery programme, the appropriate disciplinary action should be taken as normal.

If the employee is accepted for counselling but does not complete the recovery programme,

the suspension of disciplinary action which came into effect on referral will be removed and consideration of the original breach of discipline should be reopened and the appropriate disciplinary action taken.

Where a teacher successfully completes a recovery programme and further misconduct occurs in relation to the relevant addiction, then one further offer to support recovery will be made. This is dependent upon the nature of the misconduct.

10. APPEALS PROCEDURE

- 10.1 Teachers have the right of appeal against all disciplinary sanctions imposed by the Council. Appeals should be sent to the Executive Director of Education who will hear or appoint a senior manager to hear, the appeal.

10.1.1 Appeals against Dismissal

Where a teacher has been dismissed, the teacher shall be notified in writing of the reason for such action, and if the teacher considers the dismissal is unfair, an appeal to the Personnel and Administration (Appeals) Sub-Committee may be lodged in writing with the Head of Personnel, Chief Executive's Office either individually or through a Trade Union within 10 working days of receiving written notification of the disciplinary action.

- 10.1.2 Appeals shall be heard promptly, by the Sub-committee on Appeals, normally not later than one month after lodgement unless there are exceptional circumstances. The Appellant (and a Trade Union representative or other person of their choice) shall have the right to be heard. Details of the procedures adopted by the Sub-committee on Appeals will be supplied to Appellants.

10.2 The Appeal Procedure –

The appeal procedure attached at Appendix 1 shall be adopted in all disciplinary appeals, whether the appeal is being considered by the Service or by the Personnel and Administration Services (Appeals) Sub-Committee.