

1. Purpose

- 1.1 A disciplinary procedure is designed to encourage an improvement in an individual's conduct where this is necessary and is not merely a method of applying punitive measures. Disciplinary rules and procedures promote orderly employment relations as well as fairness and consistency in the treatment of individuals. 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.
- 1.2 All teachers shall be made aware of the standards of conduct and performance expected of them. All problems involving minor misconduct should be dealt with, at least in the early stages, through the use of informal advice, guidance and counselling. It is, however, accepted by the Council and the Teaching trade unions that there will be occasions where it will be necessary to use the formal procedure to assist in maintaining standards of behaviour. It is also 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 procedure.
- 1.3 Appendix I to the procedure gives examples of breaches of discipline that may result in disciplinary action short of dismissal and those that may result in dismissal for gross misconduct. The procedure has been designed to ensure that all those involved are aware of their rights and obligations. The procedure also takes account of the recommendations of the ACAS Code of Practice and the Scottish Negotiating Committee for Teachers Disciplinary Framework as contained in the SNCT Handbook of Conditions of Service.

2. Guiding Principles

- (a) No disciplinary action will be taken until the matter has been fully investigated. Any decision to impose a disciplinary sanction must not be taken by the person who conducted the initial investigation. Any appeal should not be heard by the same person who issued the disciplinary sanction.
- (b) When the disciplinary procedure has been invoked the teacher will be advised of the nature of the complaint and will be given the opportunity to state his/her case before disciplinary action is taken.
- (c) A teacher will have the right to be represented at all stages of the formal disciplinary process, and to be represented or accompanied at investigatory meetings.
- (d) There shall be a right of appeal against all formal disciplinary sanctions.

- (e) No teacher shall be dismissed for the first breach of discipline except in the case of gross misconduct
- (f) The employer should take all reasonable steps to ensure that witnesses attend a disciplinary hearing. In cases where this is not possible all reasonable steps should be taken to ensure that the witness' evidence is subject to examination.
- (g) If the employee is a trade union representative the relevant full-time trade union official will be informed of the nature of the case before disciplinary action is taken.
- (h) The initiation of disciplinary sanctions should be accompanied by appropriate support mechanisms.

3. Scope

This procedure applies to all staff employed under the terms of the Scottish Negotiating Committee for Teaching Staff.

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1. Investigation

- 1.1 In situations where either a complaint has been received or where a teacher's conduct has given cause for concern, the employer shall appoint an investigating officer. The matter should be investigated promptly and thoroughly.

In addition, in most cases, the teacher must be given, in reasonable advance notice, a clear indication of the nature and purpose of the investigation and the procedures that will be followed at the interview.

The teacher should also be advised of the right to be represented/accompanied.

The teacher will be interviewed and will be informed at the outset what the purpose of the interview is i.e. that it is part of a disciplinary investigation which may or may not lead to the convening of a formal disciplinary hearing. The investigating officer should, also if possible, interview all the parties involved and, if appropriate, prepare signed and dated statements from all these witnesses.

The investigating officer should then produce a report which will enable another representative of the employer to decide whether the matter should be further progressed through the formal disciplinary process.

- 1.2 The investigatory process should be conducted as speedily as possible consistent with the principles of fairness and natural justice. Investigations should normally be concluded within 15 working days but where the investigating officer requires more time, for example where the case is complex, the employee should be informed of this and given an estimated timescale for the conclusion of the investigation.
- 1.3 Once the investigation is completed the teacher should be advised of the outcome of the investigation. Where following an investigation no further action is to be taken in terms of the disciplinary procedure then all references to the investigation should be removed from the teacher's personal file and destroyed.

1.4 Covert Recording of Meetings

It is generally not permissible for the employee, or any person acting on their behalf, to electronically record any meeting or hearing without agreement with all parties.

Should either party wish to electronically record proceedings then they should discuss this request with the other party in advance of the meeting/hearing. It will be expected that the party making the request will provide a full transcript of the recording to all parties. .

Any breach of this provision may be viewed as gross misconduct and lead to disciplinary action against the employee, up to and including dismissal. In these circumstances, advice should be sought from HR.

2. Suspension with pay

- 2.1 If the matter to be investigated is thought to involve serious or gross misconduct, or where the teachers presence at the normal place of work could prejudice the investigation, the employee may be suspended from work on full

pay while the investigation takes place. Suspension in these circumstances is not a form of disciplinary action and does not imply that the teacher is responsible for the alleged act or acts of misconduct. All suspensions on full pay should be reviewed as soon as possible (where possible within 3 working days but no later than within 10 working days) of the suspension and at regular intervals thereafter.

- 2.2 Where possible the employee's line manager will consult with HR prior to suspension. If this is not possible consultation should take place as soon as possible following the suspension. The suspension letter will be copied to the Human Resources Section. Further guidance on disciplinary suspension is detailed in Appendix 2.
- 2.3 If suspension of an employee coincides with a period of planned leave or extended periods of closure, the suspension should be temporarily lifted to allow the period to go ahead.

The suspension will resume again after the periods of planned leave. This will be confirmed to the employee in writing.

3. Calling a disciplinary hearing

- 3.1 A decision to proceed with a disciplinary hearing will be taken by the nominated officer and should be based on the evidence secured during the investigatory stage i.e. the Investigating Officers report.
- 3.2 Once a decision has been taken to proceed to a disciplinary hearing, the teacher should be informed in writing about :
 - details of the allegations
 - the date for the hearing
 - the procedures to be followed at the hearing
 - any rights under the disciplinary procedure

The teacher should be provided with copies of the evidence that will be used during the disciplinary hearing including any written evidence and the names of any witnesses that will be called. The teacher should also provide the employer with similar evidence that will be led in his or her defence and the names of witnesses, within a reasonable time before any hearing.

4. Conducting the disciplinary hearing

- 4.1 The hearing will be conducted by the nominated officer, accompanied by a representative of the Human Resources Service, where appropriate. The investigating officer will present the evidence gathered calling any witnesses and presenting signed statements, if necessary. The teacher and/or representative will be given the opportunity to question the investigating officer and any witnesses. The nominated officer and/or Human Resources representative may question the investigating officer and any witnesses.

In normal circumstances witnesses should be available to the Hearing. In exceptional cases e.g. harassment, bullying, intimidation signed statements may be presented and the witness need not attend.

- 4.2 The teacher and/or representative will then have the opportunity to respond, calling any witnesses, if required, followed by any questions from the investigating officer, the nominated officer and/or Human Resources representative.
- 4.3 The investigating officer will then sum up, followed by the teacher or representative.
- 4.4 The nominated officer will adjourn the meeting in order to consider the case and consult with the Human Resources representative, if present.
- 4.5 The nominated officer will recall the parties together to announce the decision and the disciplinary action, if any, to be taken. The teacher shall be given an explanation for that action and informed of the right of appeal.
- 4.6 Where the nominated officer needs further time to reach a conclusion on the evidence presented he/she should advise the teacher that the decision will be communicated in writing within the agreed time limits.
- 4.7 The nominated officer should arrange for a note of the disciplinary hearing to be taken, a copy of which will be forwarded to the teacher with the letter informing him/her of the outcome of the hearing. A copy will also be sent to the Human Resources Section and representative if appropriate.
- 4.8 When the teacher and/or representative disputes the accuracy of the note then a request should be made to the nominated officer to amend it accordingly. When the request is denied, the teacher and/or representative may request that their version of the record is appended to the original note.
- 4.9 If it is decided that no disciplinary action is to be taken, all references to the case shall be removed from the teachers personal file and destroyed.

5. Disciplinary Sanctions

- 5.1 Examples of breaches of discipline which may lead to disciplinary sanctions are detailed in Appendix I. All disciplinary sanctions beyond verbal warnings will be confirmed in writing and will remain in the teacher's personal file during the period of the currency of the warning.
- 5.2 The following disciplinary sanctions shall be available:

- (a) **Verbal Warning**

For minor breaches of discipline a verbal warning may be issued advising what action is necessary in order for the employee to avoid being liable to further disciplinary action.

A verbal warning will be recorded on the appropriate form and placed in the teacher's personal file and a copy given to the employee. A copy will be sent to the representative, if applicable, unless the employee requests otherwise.

A verbal warning will be disregarded after a period of six months.

- (b) **Written Warning**

For a more serious offence, or the commission of a lesser offence after a verbal warning has previously been issued and remains in force, a written

warning may be issued. A written warning will advise what action is necessary for the employee to take in order to avoid being liable to further disciplinary action.

A copy of the letter will be placed in the teacher's personal file. A copy will be sent to the representative, if applicable, unless the employee requests otherwise.

A written warning will be disregarded after a period of nine months.

(c) **Final Written Warning**

For other more serious offences or for a less serious offence if a written warning remains unspent, a final warning may be issued. A final written warning will advise what action is necessary for the teacher to take in order to avoid being liable to further disciplinary action, possibly resulting in dismissal.

A copy of the letter will be placed in the teacher's personal file and a copy forwarded to the Human Resources Service and, if the employee has no objections, to the appropriate full time trade union official or representative of the teacher's choice.

A final written warning will be disregarded after a period of twelve months.

(d) **Dismissal**

After concluding that the misconduct or gross misconduct warrants dismissal the nominated officer should consider whether there are any mitigating circumstances. If there are, then the nominated officer should use his/her discretion to decide whether the mitigating circumstances are strong enough to warrant the substitution of dismissal by the issuing of a final written warning. This may be accompanied by a transfer and/or demotion of the employee where it is considered inappropriate for the teacher to remain at his/her location and/or in his/her post.

(i) **Dismissal With Notice**

For an act or acts of further misconduct by a teacher who has an unspent final written warning on record, the teacher may be liable to dismissal with notice or with pay in lieu of notice following consultation with the Human Resources Service. The teacher will be informed of the reasons for dismissal and of the right of appeal.

A copy of the letter of dismissal will be forwarded to the Human Resources Service and, if the teacher has no objections, to the appropriate full-time trade union official or representative of the teacher's choice.

(ii) **Dismissal Without Notice**

Where an act of gross misconduct is committed the teacher may be dismissed with effect from the date of the disciplinary hearing and following consultation with the Human Resources Service. This will be without notice or pay in lieu of notice.

The teacher will be informed of the reasons for dismissal and of the right of appeal.

A copy of the letter of dismissal will be forwarded to the Human Resources Service and, if the teacher has no objections, to the appropriate full-time trade union official or representative of the teacher's choice.

- 5.3 The following punitive sanctions are available in conjunction with a final written warning as an alternative to dismissal: demotion, transfer or suspension of an increment.
- 5.4 The Headteacher will have overall responsibility for the management of teachers within his/her school and will have the power to issued verbal and written warnings.
- 5.5 The Executive Director of Education and Children's Services will have the power to apply all forms of disciplinary sanction describe in this section and to dismiss a teacher under the agreed disciplinary procedures of the authority.
- 5.6 In cases involving performance issues agreed competence procedures should be followed at all times.

6. Appeals

- 6.1 An appeal can be made in relation to any disciplinary sanction imposed and must be made in writing within 10 working days of receipt of written confirmation of the disciplinary action. The written notice of appeal should be to the teacher's Executive Director of Education and Children's Services in relation to disciplinary warnings (and to the Head of Finance and Corporate Services regarding appeals against dismissal).
- 6.2 The table below outlines the appropriate level at which appeals should be heard

<u>Nature of Warning</u>	<u>Issued By</u>	<u>Appeal Heard By</u>
Verbal Warning	Headteacher or Nominee	Executive Director of Education and Children's Services or Nominee
Written Warning	Headteacher or Nominee	Executive Director of Education and Children's Services or Nominee
Final Written Warning	Executive Director of Education and Children's Services or Nominee	Appeals Sub-Committee
Final Written Warning + Punitive action	Executive Director of Education and Children's Services or Nominee	Appeals Sub-Committee

Dismissal

Executive Director of
Education and Children's
Services

Appeals Sub-Committee

6.3 Appeals against decisions taken by the Executive Director of Education and Children's Services (except dismissal, final written warnings and final written warning + punitive action) will be heard by another Executive Director.

7. Expiry of warnings

7.1 At the end of the disciplinary warning period, all references to the teacher's disciplinary record will be removed from the personal file and destroyed. In cases of further misconduct by the same teacher during the unspent period, which results in the imposition of disciplinary measures, the previous records will remain on file until the expiry of the subsequent warning.

7.2 Where a subsequent warning expires and no further disciplinary warnings have been issued all previous disciplinary records will be removed and destroyed.

7.3 Where a teacher has been disciplined on a number of occasions but the misconduct has occurred outwith the previous unspent disciplinary periods, the Executive Director of Education and Children's Services, in consultation with the Human Resources Service, and trade union representative where appropriate, may keep future warnings on file after the normal expiry period. These warnings may be referred to subsequently if further disciplinary action is being considered.

7.4 There may be other circumstances e.g. in cases involving abuse or harassment where it will be necessary for the Council to retain disciplinary records for future reference. In such circumstances, full discussions will take place between representatives from Trade Unions, Executive Director of Education and Children's Services and Human Resources. Where a warning is to be retained on file after it has expired the teacher will be advised of this when the warning is issued.

7.5 Any disciplinary sanction which has been imposed and which relates to a breach of the Council's child protection policy can remain on a teacher's file for a longer period of time than defined in section 5 above.

8. Time limits

<u>Aspects of Disciplinary Procedure</u>	<u>Time Limits (Working Days)</u>
Precautionary Suspension	10 days until each review
Notification of decision to proceed to disciplinary hearing	10 days notice (minimum)
Notification of decision of disciplinary hearing	5 days
Time Limit to log appeal	10 days from date of notification of decision of disciplinary hearing
Date of notification of appeal hearing	No later than 20 days from receipt of notice of appeal
Notification of outcome of appeal hearing	5 days

9. Follow up

- 9.1 The disciplinary hearing (or, if held appeal hearing) shall be the end of the disciplinary process regarding the matter investigated and the manager will, under no circumstances, attempt to impose any other form of disciplinary action. This would be victimisation which itself could lead to disciplinary sanction.
- 9.2 The manager or supervisor should attempt to provide support to any teacher who has undergone a disciplinary investigation whether or not this has resulted in disciplinary sanction.
- 9.3 This may be undertaken through the normal supervisor/employee relationship or through more formal supervision on counselling sessions whereby a genuine two-way communication process can take place which would lead to the development of a relationship of mutual trust.
- 9.4 Any appropriate training and development opportunities which may assist the teacher in avoiding further disciplinary action should be given serious consideration by the teacher and manager.

Appendix I - Examples of breaches of discipline

Whilst it is not possible to list all disciplinary offences or to state categorically the action which it is appropriate to take in each case the following are examples of:-

- a) breaches of discipline which may result in dismissal without notice
- b) unsatisfactory conduct which may result in disciplinary warnings, action short of dismissal.

In every case judgement must be exercised regarding the circumstances, degree of seriousness of the action and potential consequences to ensure a fair and reasonable decision is made.

Examples of breaches of discipline which may result in dismissal (i.e. gross misconduct)

- theft of Council property or theft whilst engaged or purported to be engaged on Council business.
- removal of Council property or unauthorised use of resources.
- wilful damage to Council property or resources or property or resources not belonging to the Council whilst engaged, or purporting to be engaged, on Council business.
- physical or indecent assault or violent behaviour towards any person whilst engaged or purporting to be engaged on Council business.
- wilful incapacity to carry out duties due to the effects of alcohol and/or drugs
- wilful acts of discrimination including repeated sexual, physical, psychological harassment.
- fighting at work.
- wilful breach of specified safety regulations.
- dishonest or fraudulent acts whilst carrying out work duties.
- wilful provision of false or misleading information or non- disclosure of information.
- wilful breaches of confidentiality e.g. in relation to pupils
- wilful abuse and unreasonable disregard of the authority vested in a post e.g. as indicated in the Employee Code of Conduct
- criminal conviction or conduct which renders the employee unsuitable to carry out the duties of the post, whether or not the incident occurs whilst on duty.
- wilful non-disclosure of an interest in a contract or proposed contracts, whether direct or indirect, between the Council and an outside organisation.
- acceptance of any fee or reward which may be considered to conflict with an employee's duties (bribes/incentives) including cash, gifts or free services.
- wilful refusal to fulfil contractual obligations between the employee and the Council.
- gross carelessness or negligence in performing duties

- Covert recording of meetings/hearings

Examples of breaches in discipline which may result in disciplinary action other than dismissal (i.e. misconduct)

- persistent bad time-keeping.
- absence from work without reasonable cause or authorisation.
- negligence or carelessness in carrying out duties.
- refusal to carry out reasonable instructions or orders where employee is contractually bound to undertake these.
- misuse of Council property or resources.
- minor breaches of safety regulations.

Appendix 2 - Disciplinary suspension

In situations where either a complaint has been received or where a teacher's conduct has given cause for concern the Service will appoint an investigating officer. At that time a decision may need to be made on whether the teacher should be suspended on full pay during the investigation. This is sometimes referred to as precautionary suspension. Any use of suspension as part of the disciplinary procedure must comply with the principles and procedures set out below.

Principles

- Disciplinary suspension must not be associated with any presumption of guilt and must therefore be on full pay.
- Disciplinary suspension must only be used in the most serious cases of alleged misconduct (i.e. potential gross misconduct) or where the teacher's presence at his/her normal place of work could prejudice the investigation. Note - Normal teacher/pupil interaction will not necessarily be prejudicial to an investigation.

Procedure to be Followed

Suspension of teacher

The decision to suspend a teacher on full pay will normally be made by a Senior Manager following consultation with HR and the Headteacher. The decision to suspend will normally be conveyed to the teacher by the Headteacher. The content of the meeting should include reference to the following:

- the nature of the complaint
- assistance should be offered to the teacher to leave the premises and get home
- advice should be given on how to pick up any personal possessions left behind on the day
- the precautionary nature of the suspension should be emphasised
- the fact that the suspension does not carry any presumption of guilt should be emphasised and, if appropriate, that the suspension is at least partly to protect the teacher
- the teacher should be strongly advised to contact his/her trade union representative
- the teacher should also be advised of the Council's counselling service.

A standard letter confirming the suspension is attached.

Review of Suspension

All suspensions on full pay should be reviewed as soon as possible (where possible within 3 working days but no later than within 10 working days) of the suspension. If continued there should be further reviews of the suspension at regular intervals thereafter. Investigations should normally be concluded within 15 working days. Where the investigating officer requires more time, for example where the case is

complex, the teacher should be informed of this and given an estimated timescale for the conclusion of the investigation.

Normally the outcome of the review of the suspension will be conveyed to the individual by letter. However where a meeting takes place the reasons for the suspension and the nature of the procedure being followed should be reiterated.

If suspension of an employee coincides with a period of planned leave or extended periods of closure, the suspension should be temporarily lifted to allow the period to go ahead.

The suspension will resume again after the periods of planned leave. This will be confirmed to the employee in writing.

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Communication to Other Staff

Where appropriate the Headteacher should arrange, as far as possible, for all relevant school staff to be made aware of the following:

- that an allegation has been made. No details of the allegation should be revealed
- the name of the member of staff involved and that leave of absence has been granted in accordance with agreed procedures
- that no member of staff should discuss any matter relevant to the allegation with any other individual or the Press or amongst themselves
- if a member of staff meets the teacher concerned the allegations against the teacher should not be discussed.

A suspension does not necessarily prevent normal social contact between members of staff continuing.

Where a teacher is concerned about any aspect of the above process they are entitled to use the Grievance procedure.

Model Letter
PRIVATE AND CONFIDENTIAL

NAME
ADDRESS

Direct Line:
E.mail:

Our ref:
Your ref:

Date:

Dear

Suspension from Duty

I am writing to confirm that we are carrying out an investigation into allegations that you

In view of the nature of the complaint you are suspended on full pay from, until an investigation has been carried out. This suspension is a precautionary measure and is in no way a presumption of guilt.

Whilst on suspension, you should not visit your place of work and you are advised you should not contact any individual who may be involved in the investigation. A suspension does not necessarily prevent normal social contact between members of staff continuing.

You will, however, be required to make yourself available to assist with investigations. The Investigating Officer isand he/she will contact you in due course to arrange an investigatory interview.

You are required to (immediately) return any keys you may hold for Council premises.

If at any time during your suspension you become unfit for work you should follow the normal sickness absence notification and certification procedure. Where your illness lasts for more than seven days, you will be required to submit medical certificates from your GP or a hospital covering the period of your illness.

When you become fit to resume work, your suspension from duty will recommence, unless the potential disciplinary matter has been resolved. The decision to suspend you will be reviewed as soon as possible but no later than 10 days of your suspension and, if continued, at regular intervals thereafter.

It is our intention to complete the investigation within 15 working days and I will write to you again if there is a requirement to extend this period, or once the investigation is completed.

It is recognised that this is a stressful situation. The Council can provide counselling to support you at this time. This is accessed through a management referral, if you wish to use this service please let *me/your line manager** know so *they** can arrange this for you.

If you are a member of a teaching trade union you should contact your union for support and advice.

Yours sincerely