

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 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, with 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 always available, 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 allegation and will be given the opportunity to state their 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 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 if they are required. In cases where this is not required, all reasonable steps should be taken to ensure that the witness' evidence is given consideration.
- (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 an allegation 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 the nominated officer 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 30 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 express consent of 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 teacher's 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 at regular intervals during the suspension period. . Alternatives to suspension will also be considered and may involve removing the individual from their current position and placing them on alternative duties

- 2.2 Managers need to consult with HR and the Head of Service, prior to any suspension taking place. If this is not possible consultation should take place as soon as possible following the suspension. 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 in the suspension letter.

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 expect to receive:
 - details of the allegations
 - copy of the disciplinary investigation report
 - the date for the hearing with a minimum of 10 working days' notice, though this right can be waived if all parties agree.
 - 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 their 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 department, 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 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 their right of appeal.
- 4.6 Where the nominated officer needs further time to reach a conclusion on the evidence presented, they 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 them of the outcome of the hearing. A copy will also be sent to the Human Resources department 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, unless the matter relates to child protection.

5. Disciplinary Sanctions

- 5.1 Examples of breaches of discipline which may lead to disciplinary sanctions are detailed in Appendix I. All disciplinary sanctions will be confirmed in writing and will remain in the teacher's personal file during the period of the warning. Refer to 7.4
- 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 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 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 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 department 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 their 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 their current location and 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 department. 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 department 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 their school and will have the power to issue verbal and written warnings.
- 5.5 The Heads of Education & Children's Services along with the Executive Director of Education and Children's Services will have the power to apply all forms of disciplinary sanction described 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 directed to the Executive Director of Education & Children's Services who will direct it to the relevant independent manager who can hear the appeal based on the table outlined below.
- 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 Education Manager	Education Manager or Head of Service
Written Warning	Headteacher or Education Manager	Education Manager or Head of Service
Final Written Warning	Head of Service or Executive Director of Education & Children's Services	Appeals Sub-Committee
Final Written Warning + Punitive action	Head of Service or Executive Director of Education & Children's Services	Appeals Sub-Committee
Dismissal	Head of Service or Executive Director of Education & Children's Services	Appeals Sub-Committee

6.3 Appeals against decisions taken by a Head of Service or Executive Director of Education and Children's Services (except dismissal, final written warnings and final written warning + punitive action) will be heard by another Head of Service or 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 several occasions, but the misconduct has occurred out with the previous unspent disciplinary periods, the nominated officer, in consultation with the Human Resources department, 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 child protection matters, abuse or harassment where it is relevant for the Council to retain disciplinary records for future reference in accordance with the Council's retention schedule. 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 25 years.

8. Time limits

<u>Aspects of Disciplinary Procedure</u>	<u>Time Limits (Working Days)</u>
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Precautionary Suspension/Alternative to 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 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)

- Harming a child or placing them at risk of harm
- Crossing professional boundaries by forming inappropriate relationships with children, young people (including relationships via social media or other platforms)
- Failure to follow the child protection protocols in place to safeguard children
- 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 or staff
- 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.
- Wilful provision of false or misleading information or non-disclosure of relevant information. This could include non-disclosure of an arrest, charge or conviction in line with contractual obligations.

- 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 timekeeping.
- 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 their normal place of work could prejudice the investigation. Note - Normal teacher/pupil interaction will not necessarily be prejudicial to an investigation.

If the conduct is of a serious nature or relates to a child protection matter, a discretionary referral to the GTCS will be actioned before the investigation is concluded.

Procedure to be Followed

Suspension of teacher

The decision to suspend a teacher on full pay will normally be made by a Head of Service following consultation with the HR Business Partner 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 their 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 and reviewed regularly throughout the suspension period. If continued there should be further reviews of the suspension at regular intervals thereafter. Investigations should normally be concluded within a reasonable timeframe. Where the investigating officer requires more time, for example where the case is complex, or involves multiple

Managing People

people, 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 of planned leave to go ahead.

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

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 Suspension Letter
PRIVATE AND CONFIDENTIAL

NAME
ADDRESS

Direct Line:

E.mail:

Our ref:

Your ref:

Date:

Dear

Suspension from Work

I am writing to confirm that we are carrying out an investigation into allegations that you [details]. In view of the nature of the complaint/allegation* I confirm that you were suspended on full pay from [date suspension began]. An investigation will be carried out which may or may not lead to a disciplinary hearing being convened. This suspension is not a disciplinary act and is in no way a presumption of guilt.

Whilst on suspension, you should not visit your place of work and 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 be required to make yourself available to assist with the investigation. << Name >> has been appointed to carry out the investigation and he/she* will contact you in due course to arrange an investigatory interview.

The investigation will be conducted and concluded as soon as possible and within a reasonable timeframe. [Name] will keep you informed of his/her* progress.

If, due to the role you carry out, you are registered with one of the regulatory bodies or are a member of the PVG scheme, we may be required to make a referral to them. If we are required to make a referral, the information gathered during this disciplinary investigation and any subsequent hearing will be shared with the regulator. Regulatory bodies include SSSC, Disclosure Scotland and GTCS.

You are required to return any keys you may hold for Council vehicles or premises. You must also return any paper files and Council IT equipment, including data storage devices, you have been issued with as part of your job.

If at any time during your suspension you become unfit to 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 a statement of fitness for work (fit note) 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 matter has been resolved. If your suspension coincides with a period of planned leave or extended period of closure, the suspension will be temporarily lifted to allow the period of leave to go ahead. The suspension will resume after the period of planned leave.

The investigation process will be put on hold whilst you are on leave and there is no requirement for you to have any contact with the Service during this time. [Contact Name] will contact you following your leave term in relation to the investigation.

It is recognised that this may be a stressful time for you, and you may wish to speak to someone out-with your work or family. The Council can provide counselling to support you at this time. This can be accessed via a self-referral or a management referral with an independent counselling service www.timefortalking.co.uk.

If you require assistance, please let me/your line manager* know so I/they* can arrange this for you. You can find further information about the discipline policy and procedure on the employee intranet – see HR Online/Discipline & Grievance/Discipline/Accused of Misconduct.

If you are a member of a trade union, I would encourage you to contact them for support and advice.

Please do not hesitate to contact me if you have any queries regarding this letter.

Yours sincerely

[Name]

[Designation]

* Delete as appropriate