

MIDLOTHIAN NEGOTIATING COMMITTEE FOR TEACHERS

Revised Disciplinary Procedure for Teachers, Music Instructors and other Associated Professionals (SNCT)

1 INTRODUCTION

- 1.1 The Council and the Trade Unions agree that discipline is essential for the conduct of the Council's affairs and for the safety and well being of all employees. It is further agreed that disciplinary rules and procedures are necessary for promoting orderly employment relations as well as fairness and consistency in the treatment of individuals.
- 1.2 Rules and procedures enable the Council to influence the conduct of workers and deal with poor performance and attendance, thereby assisting the Council to operate effectively.
- 1.3 This MNCT procedure takes full account of the provisions contained within the *Scheme of Salaries and Conditions of Service* relating to Teaching Staff as applied to employees of the Council and incorporates the principles and provisions of the Disciplinary Framework issued by the Scottish Negotiating Committee for Teachers (Part 2, Appendix 2.11, including the requirements of the General Teaching Council for Scotland's *Framework on Teacher Competence* (see Appendix 1). The procedure also reflects the guidance contained within the *ACAS Code of Practice, Disciplinary and Grievance Procedures*.
- 1.4 Within the limitation of powers delegated by the Council, the Director, Education and Children's Services, shall be responsible for the management and discipline of the Education Division. The Director, Education and Children's Services, will have the power to apply all forms of disciplinary sanctions including dismissal and other serious disciplinary action as defined in Section 8 of this procedure. The Director shall delegate authority within the terms of this procedure to nominated officers as follows:
 - (a) The Head Teacher will have overall responsibility for the management of teachers within their school and will have the power to issue first and second level warnings; and
 - (b) The Director will delegate powers to other divisional management staff to issue written warnings, which for some posts will include final written warnings. A list of such posts, showing the specific disciplinary powers delegated to each post, will be provided to the Trade Unions and will be updated as necessary.

- 1.5 In recognition of its responsibility as an employer to determine standards of conduct expected of all employees, the Council has approved a Disciplinary Code which details the types of misconduct that will normally result in disciplinary action as indicated in the Code. All employees are expected to be familiar with the Code which is available in establishments and on the Intranet. New employees will be issued with a copy of the Code along with this procedure. (The Disciplinary Code has not been agreed with the Trade Unions but see the section below in this agreement on 'gross misconduct').

2. INFORMAL COUNSELLING

- 2.1 It is accepted by the Council and the Trade Unions that disciplinary measures should be viewed as a means of encouraging an improvement in an individual's conduct or performance and not as merely a method of applying sanctions. It is further accepted that line managers play an important role in the day-to-day management of employees and should seek to deal with minor lapses in conduct or performance of duties through informal advice, guidance and counselling in the first instance.
- 2.2 It is essential that, where problems relating to conduct or performance are established, they are fully discussed and that thereafter support and assistance are provided with the objective of encouraging and helping employees to improve. It is essential also that employees are aware that advice and support are available at all times.
- 2.3 Counselling is a planned process that involves a one-to-one discussion between an employee and her/his line manager aimed at achieving an improvement in the employee's conduct or performance of duties to the required standards. In a school setting, a Principal Teacher, Depute Head Teacher or Head Teacher may be involved in counselling a teacher in relation to conduct. Where issues of performance are raised, a Head Teacher should be involved at the Support Stage of the GTC Scotland's *Framework on Teacher Competence* but may not be involved in the Preliminary Stage other than where there is no other promoted postholder in the school. In that circumstance the Head Teacher will also be involved at the Preliminary Stage. In most circumstances a Principal Teacher or Depute Head Teacher will be involved at the Preliminary Stage.
- 2.4 Where an employee so requests, he/she may be accompanied to a counselling meeting by a work colleague or trade union official who will act as an observer only. This shall be arranged without delaying the process.
- 2.5. Counselling does not form part of the formal disciplinary procedure and therefore no formal warnings can be given. No record of counselling interviews will be kept on the employee's personal file. The line manager shall, however, make a personal record, including the date of counselling, the reason(s) why the employee was counselled and any support measures that are to be implemented to encourage an improvement in conduct or performance. A copy will be given to the employee. A form for this purpose is attached as Appendix 2.
- 2.6. In a case relating to the performance of a teacher, Stages 1 and 2 of the GTC Scotland's *Framework on Teacher Competence* shall be considered to be informal stages of this disciplinary procedure. Support and guidance and professional development opportunities must be offered to the teacher from the start, initially by a senior or appropriate colleague and at Stage 2 by the Head Teacher. Teachers should be advised that evidence gathered at Stages 1 and 2 may be considered at any subsequent stage.

- 2.7. Where the concern relates to the performance of an administrative or managerial function by a promoted teacher a similar process may be applied. However, it should be noted that GTC Scotland's procedures can only relate to teaching competence and not to administrative/managerial competence. In both cases, however, the outcomes will be formally recorded in writing in accordance with Stages 1 and 2 of the GTCS's *Framework*.
- 2.8. Where counselling does not result in the required improvement or where the alleged failure to meet the required standards of conduct is considered to be of a more serious nature, the formal procedure should be followed.

In a case relating to the performance of a teacher, the formal procedure, including an investigation, should be adopted where Stages 1 and 2 of the GTC Scotland's *Framework* have been implemented but improvement in performance to the required standard has not been achieved. This formal procedure should be implemented in accordance with Stage 3 of the *Framework*.

3. DISCIPLINARY PROCEDURE – GENERAL

- 3.1 Whenever formal disciplinary action is being contemplated, the points of procedure set down in paragraphs 3.2-3.5 shall be adhered to. The initiation of disciplinary action should be accompanied by appropriate support mechanisms.

3.2 Investigation

- 3.2.1 In situations where either a complaint has been received and initial fact-finding demonstrates that there is a case to be investigated or where an employee's conduct or performance has given, or continues to give, cause for concern, the Head Teacher will seek advice from Human Resources. Should it be agreed that a formal investigation is required, an appropriate manager will be determined as the nominated officer and s/he will initiate the formal investigation by appointing, following discussion with Human Resources, an investigating officer.
- 3.2.2 In the case of alleged teacher incompetence which has proceeded beyond Stage 2 an investigating officer will be appointed by the Director, Education and Children's Services. The Head Teacher will provide that investigating officer with a comprehensive overview report. (see Stage 3 of the GTCS *Framework*)
- 3.2.3 Where an allegation of emotional, physical or sexual abuse is made by or on behalf of a child in receipt of client services against an employee of the Council, the investigation shall be undertaken within the terms of the Child Protection Guidelines adopted by the Council. If after the initial assessment the matter is deemed not to fall within the terms of the Child Protection Guidelines, the investigation process described below shall be followed.
- 3.2.4 The nominated officer will write to the employee whose conduct or performance is to be investigated to advise at an early stage, and well in advance of any meeting with the investigating officer, that a complaint or concern has been lodged, the nature of the allegations, the process that will be followed, the name of the investigating officer, and the right of the employee to be represented at the investigatory interview by a trade union representative or some other person of her/his choice

- 3.2.5 The investigating officer shall seek to establish the facts whilst events are still fresh in the minds of those involved. S/he shall carry out investigatory interviews with relevant persons. A record will be taken of the responses during any investigatory interview and will be produced as a typed document of questions asked and answers given and will be sent electronically or in hard copy to the employee or witness for checking. The employee or witness may append to the record information which provides clarification.
- 3.2.6 Agreed (or with areas of dispute indicated) written, signed and dated statements, along with any additional comments and clarifications, will be returned to the investigating officer from the employee and any witnesses. If communication has been by e-mail, the statement can be returned with a covering e-mail from the employee's or witness's e-mail account or from the e-mail account of someone acting with the express permission of the employee or witness. Such an e-mail audit trail will constitute an acceptable alternative to a signature.
- 3.2.7 Witnesses will be advised that they may be required to appear at any subsequent disciplinary hearing.
- 3.2.8 The employee should be advised to retain a copy of her/his final statement, maintaining confidentiality in respect of its contents.
- 3.2.9 Other relevant documented evidence may be gathered as part of the investigation.
- 3.2.10 In most cases the investigation should normally take no longer than 20 working days. Where an investigation cannot be completed within 20 working days, the investigating officer shall inform the employee concerned and, if appropriate her/his representative, accordingly as early as possible in writing indicating the reasons why a longer period is required.
- 3.2.11 The investigating officer shall produce a written report presenting the findings of the investigation, including all witness statements (and in the case of a performance concern the HT's overview document), and submit this report of the facts to the appropriate nominated officer who will determine whether or not a disciplinary hearing is required. (The investigating officer will not take this decision nor make any recommendations in relation to whether the matter should be further progressed through the formal disciplinary process or not.)
- 3.2.12 Once the investigation is completed the employee should be advised of the outcome of the investigation.
- 3.2.13 A disciplinary hearing shall not be convened until the circumstances of the case have been fully investigated.

3.3 Retaining Documents on Investigations

- 3.3.1 If, following investigations, a disciplinary hearing is deemed to be unjustified, the employee shall be informed accordingly. No documents relating to the investigation shall be placed on the employee's personal file. All documents relating to the investigation shall be destroyed.

3.4 Convening a Disciplinary Hearing

3.4.1 If, following investigations, a disciplinary hearing is deemed necessary, the employee concerned shall be given at least ten working days' notice in writing of the hearing and shall also be informed in the same letter of:

- (a) the date, time and venue of the hearing;
- (b) the fact that it will be a formal disciplinary hearing;
- (c) the details of the allegation(s), including the provision of statements by witnesses and the investigating officer's report; in cases involving the performance of a Teacher the documentation will include the overview report by the Head Teacher as referred to at Stage 3, paragraph (d) of the *GTCS Framework on Teacher Competence*;
- (d) the names of any witnesses who will present evidence at the hearing in support of the allegations;
- (e) the right to call witnesses or submit statements or other documentation in response to the allegations subject to the names of any such witnesses being provided at 2 working days in advance and any written submissions normally at least 3 working days in advance to the officer conducting the hearing (in certain circumstances the nominated officer may agree to accept written submissions or names of witnesses at shorter notice); and
- (f) the right to be represented at the hearing by a trade union official or some other person of her/his choice and that s/he is advised to exercise this right.

A copy of the MNCT's Disciplinary Procedure for Teachers, Music Instructors and Associated Professionals will be issued with this letter.

3.5 Conducting a Disciplinary Hearing

3.5.1 The investigating officer shall not also conduct the disciplinary hearing.

3.5.2 The nominated officer conducting the hearing shall ensure that the facts gathered during the investigation are presented to the employee. These facts shall be presented by the officer who conducted the investigation and, if so, this officer may remain in attendance at the hearing until the presentation of evidence is completed. However, her/his role is only to present the facts of her/his investigation to the hearing. S/he may be questioned by those present for clarification. The nominated officer conducting the hearing shall be advised by an officer of the Human Resources Unit.

3.5.3 Witnesses, if any, shall be called to give their evidence and, after questioning by both parties, shall withdraw but shall be subject to re-call.

3.5.4 The employee (and/or representative) shall be given every opportunity to put forward an explanation and/or defence, to provide additional documents for the hearing, to call and question witnesses and to sum up her/his case.

3.5.5 The officer conducting the hearing, assisted by any advisory staff, shall consider all the evidence presented with a view to arriving at a decision which is reasonable in all the circumstances.

- 3.5.6 At the conclusion of the hearing, the nominated officer shall either announce her/his decision (to be confirmed in writing thereafter) or indicate that the decision will be communicated in writing within the agreed time limit.
- 3.5.7 A model procedure for conducting a disciplinary hearing is contained in Appendix 3 to this procedure.

3.6 Action following a Disciplinary Hearing

- 3.6.1 Any disciplinary action shall be notified or confirmed in writing within five working days of the hearing and the letter notifying or confirming such action shall be handed to the employee personally or sent by recorded delivery, whichever is agreed. This letter should also refer to any support or other measures that are to be implemented in addition to the disciplinary action. The employee should be made aware that support and counselling will be available at all times. A copy of this letter shall be sent to the employee's representative, if any.
- 3.6.2 Apart from gross misconduct, no employee may be dismissed for the first breach of discipline.
- 3.6.3 If, following a disciplinary hearing, the nominated officer considers that no formal disciplinary action is justified, he/she shall inform the employee accordingly. In these circumstances all references to the case shall be removed from the employee's personal file and destroyed.

4. FIRST LEVEL WARNINGS

- 4.1 In the case of a minor offence relating to an employee's conduct or performance of duties, the appropriate nominated officer shall give a first level warning to the employee and inform her/him that this warning constitutes the first stage in the formal procedure.
- 4.2 A first level warning letter shall be issued by the officer who conducted the disciplinary hearing to confirm: -
- (a) that a formal first level warning is being given;
 - (b) the nature of the unsatisfactory matter(s) dealt with at the hearing;
 - (c) the action required by the employee to remedy the matter;
 - (d) the additional support measures that will be implemented to promote and maintain an improvement in the employee's conduct or performance
 - (e) that subsequent failure(s) in conduct or performance of duties will normally result in more serious disciplinary action;
 - (f) that a copy of the warning letter will be placed on the employee's personal file;
 - (g) the date from which the warning will normally be disregarded for disciplinary purposes (see paragraph 11.1); and
 - (h) the employee's right of appeal to the Director (see paragraph 10.1).

5. SECOND LEVEL WARNINGS

5.1 A second level warning may be issued: -

- (a) where an employee who has been issued with a first level warning fails to achieve and maintain the required improvement in conduct or performance of duties or where a further act or omission warranting disciplinary action occurs within the relevant period of that warning, or
- (b) where the misconduct or failure in performance is considered to be sufficiently serious to warrant this form of disciplinary action.

5.2 The nominated officer who conducted the disciplinary hearing shall issue the second level warning letter. The letter shall contain all the information described in paragraph 4.2. Where the warning has been issued under paragraph 5.1(a), i.e. taking into account a first level warning, the date of that warning shall also be included.

6. FINAL WARNINGS

6.1 A final written warning may be issued: -

- (a) where an employee who has been issued with a second level warning fails to achieve and maintain the required improvement in conduct or performance of duties or where a further act or omission warranting disciplinary action occurs within the relevant period of that warning; or
- (b) where the misconduct or failure in performance is of a serious nature warranting this form of disciplinary action.

6.2 The nominated officer who conducted the disciplinary hearing shall issue the letter of final warning. The letter shall contain all the information described in paragraph 5.2. In addition, the letter shall state that any subsequent failure in conduct or performance will normally result in dismissal. Where the warning has been issued under paragraph 6.1(a), i.e. taking into account a second level warning, the dates of previous relevant warnings shall also be included.

6.3 Appeals for Final Warnings will be to the Appeals Committee of the Council.

7. GROSS MISCONDUCT

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

7.2 For the purpose of this procedure gross misconduct is behaviour of such a nature that the Council is unable to tolerate the continued employment of the individual concerned. Examples of gross misconduct are sexual offences, assault, fraud or deliberate cheating.

- 7.3 Where gross misconduct is alleged, the Director, Education and Children's Services, in consultation with the Corporate HR and Strategy Manager, may suspend the employee on full pay but only where the allegations are serious or where the employee's presence at the normal place of work could prejudice the investigation. In these circumstances alternatives to precautionary suspension should be considered e.g. temporary transfer to another workplace pending the conclusion of the investigation and any subsequent disciplinary process.
- 7.4 Written confirmation of the suspension shall be forwarded to the employee by recorded delivery within three working days and shall state the reason(s) for the suspension. Suspension in these circumstances shall not be regarded as a form of disciplinary action and must not be associated with any assumption of guilt.
- 7.5 Suspension should be reviewed every fifteen working days except in circumstances where a criminal investigation is taking place. In all circumstances suspension will be lifted where continued suspension is considered to be inappropriate in the light of available information.
- 7.6 In certain circumstances (e.g. where an incident occurs on a residential trip), it may be necessary for a manager who has not been delegated formal powers of suspension to effectively suspend an employee on full pay by removing her/him from duty without consulting an authorised senior officer. In such circumstances the Director shall be informed as soon as possible and shall consult the Corporate HR and Strategy Manager before deciding whether or not to formally suspend the employee concerned.
- 7.7 An employee suspended in the circumstances described in paragraph 7.3 shall receive full pay during the period of suspension. For this purpose full pay shall consist of an employee's normal salary.

8. DISMISSAL AND OTHER SERIOUS DISCIPLINARY ACTION

- 8.1 A decision to dismiss may be taken where: -
- (a) following a final warning, the employee fails to achieve and maintain the required improvement in conduct or performance or a further act or omission warranting disciplinary action occurs within the relevant period of that warning, or
 - (b) a failure in conduct or performance occurs of a sufficiently serious nature to justify such disciplinary action without prior warning(s).
- 8.2 Where the dismissal takes into account an earlier final warning, dismissal will be with due contractual notice. Dismissal without due contractual notice will apply only in cases of gross misconduct (see Section 7).
- 8.3 Where appropriate, one of the following sanctions may be applied as an alternative to dismissal in conjunction with a final written warning:
- (a) the suspension of an annual increment for one salary year; or
 - (b) demotion or transfer to another appropriate post or place of work.

Where the employee does not agree to the application of the punitive sanction then the Council will have no alternative but to dismiss the employee with due notice.

- 8.4 Where the possibility of dismissal or other serious disciplinary action (as defined in this section) arises, the Director, Education and Children's Services, shall hold a disciplinary hearing with the employee concerned. The hearing shall be convened and conducted in accordance with the procedure set down in paragraphs 3.3 - 3.5. An officer from the HR Unit shall attend the hearing in an advisory capacity.
- 8.5 Before taking action for dismissal in cases involving performance issues, the Director, Education and Children's Services must ensure that the GTCS's *Framework on Teacher Competence* has been followed.
- 8.6 Where dismissal or other serious disciplinary action is taken, the decision shall be notified or confirmed in writing by the officer who conducted the disciplinary hearing and the letter shall:
- (a) refer to previous warnings, if appropriate;
 - (b) state clearly the disciplinary action taken and the effective date;
 - (c) specify the reason(s) for this action;
 - (d) in dismissal cases, provide the relevant period of notice(or payment in lieu of notice) except in cases of dismissal for gross misconduct;
 - (e) refer to the employee's right of appeal to the Appeals Committee of the Council and indicate the date by which notice of appeal should be received; and
- 8.7 Where a decision to dismiss a teacher is taken, or where a teacher resigns in the context of a possible dismissal, the Director, Education and Children's Services shall notify in writing the General Teaching Council for Scotland. If the dismissal or resignation decision was taken because the employee harmed a child or placed a child at risk of harm (or, where a teacher resigns before the conclusion of disciplinary proceedings and there are allegations that such misconduct may have occurred), the Director, Education and Children's Services shall also refer the individual for possible inclusion on the Disqualified from Working with Children List.

9. CRIMINAL OFFENCES

- 9.1 An employee shall not be disciplined solely because he/she has been charged with or convicted of a criminal offence. In all such cases consideration shall be given to whether the alleged or proven offence is of a serious nature and the relevance of the offence to the employment relationship between the Council and the employee.
- 9.2 Information about all criminal convictions and criminal proceedings must be sent to the General Teaching Council for Scotland.
- 9.3 In all cases where disciplinary action is being contemplated due to an alleged or proven criminal offence, the matter shall be investigated by officers of the Council as thoroughly as the circumstances permit.
- 9.4 In cases of suspected irregularities relating to the finances of the Council or to any other funds managed by the Council, the Director, Corporate Resources, shall be informed and, if appropriate, an audit investigation shall be carried out.

- 9.5 Following investigations, the Director, Education and Children's Services, may determine that the available evidence is sufficient to justify holding a disciplinary hearing prior to the outcome of any criminal proceedings.
- 9.6 Where investigations reveal insufficient information to justify holding a disciplinary hearing, or where other circumstances would prevent a fair hearing, consideration of the case shall be deferred until further information is available or other difficulties are resolved. In these circumstances the employee may be suspended on full pay until further notice.
- 9.7 If it is discovered that an employee has failed to disclose a criminal conviction where such disclosure is required, the matter may be dealt with under the terms of this Disciplinary Procedure.

10. APPEALS AGAINST DISCIPLINARY ACTION

10.1 Appeals against First or Second Level Warnings

- 10.1.1 Appeals against first or second level warnings may be made to the Director, Education and Children's Services and shall be submitted in writing, indicating the grounds of the appeal, within ten working days of the employee receiving confirmation of the hearing decision.
- 10.1.2 Appeals shall be heard as soon as possible and normally within fifteen working days of receiving the written notice of appeal.
- 10.1.3 Appeals against first or second level warnings shall be heard by the Director, Education and Children's Services. The employee shall be given at least five working days' notice in writing of the appeal hearing and shall be informed of her/his right to be represented at the hearing by a trade union official or some other person of her/his choice. The appeal hearing shall be arranged and conducted in accordance with the procedural rules governing the operation of the Appeals Committee, appropriately adapted for the purpose, contained in paragraphs 5.1- 6.14 of Appendix 4 to the procedure.
- 10.1.4 The officer hearing the appeal shall confirm, amend or withdraw the original disciplinary action but shall not impose a penalty of a more severe nature.
- 10.1.5 The decision shall, if possible, be made known to the employee at the end of the appeal hearing and shall in any case be confirmed in writing within three working days. There shall be no further right of appeal.
- 10.1.6 Where the Director, Education and Children's Services in person issues a warning, an appeal shall be referred for consideration by the Appeals Committee.

10.2 Appeals against Final Warnings, Dismissals or other Serious Disciplinary Action

- 10.2.1 Notice of appeal against a final warning or dismissal or other serious disciplinary action may be submitted to the Director, Corporate Resources, with a copy to the Director, Education and Children's Services, and shall be submitted in writing, indicating the grounds of the appeal, within ten working days of the employee receiving written notification of the disciplinary action or, in the case of appeals against dismissal with due notice only, within ten working days of the effective date of dismissal.

10.2.2 The Director, Corporate Resources, shall arrange for the appeal to be considered by the Appeals Committee normally within twenty working days of receipt of the letter of appeal. The appeal shall be heard in accordance with the procedure set out in Appendix 4 to this procedure. There shall be no further right of appeal.

10.3 Effect of Appeals on Disciplinary Record

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

10.3.2 Employees will have a right of access to their personal files to ensure the written reference has been removed or appropriately amended.

11. EXPIRY OF WARNINGS

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

first level warnings	- to be disregarded after 6 months
second level warnings	- to be disregarded after 9 months
final warnings	- to be disregarded after 12 months
serious disciplinary action short of dismissal in conjunction with a final warning	- to be disregarded after 18 months

A decision not to disregard a warning for disciplinary purposes for 24 months may be taken in circumstances where the misconduct for which the warning was issued related to the safety and well-being of young and/or vulnerable people and is considered to be relevant to the circumstances giving rise to further disciplinary action.

11.2. All warning letters shall refer to the time limit for which the warning may not be disregarded in any future disciplinary proceedings.

12. TRADE UNION OFFICIALS

12.1 Where the possibility of disciplinary action against a trade union representative arises the Corporate HR and Strategy Manager shall be consulted at the earliest opportunity. A full-time official of the Trade Union concerned shall be informed as soon as possible by the Corporate HR Strategy Manager and kept informed throughout the process by him/her.

12.2 A disciplinary hearing involving an employee who is an accredited trade union representative shall not be convened until the circumstances have been discussed with a full-time official of the Trade Union concerned.

12.3 Where gross misconduct is alleged of an accredited trade union representative, the employee may be suspended on full pay after consultation with the Corporate HR and Strategy Manager. A full-time official of the Trade Union concerned shall be informed of this action as soon as possible and written confirmation of the suspension shall be sent to the Trade Union within three working days.

13. TIME LIMITS

13.1 The time limits contained within this procedure may be varied by mutual agreement.

14. REVIEW OF PROCEDURE

14.1 This Procedure may be reviewed at the request of the Council or the Trade Unions.



DRIVING FORWARD PROFESSIONAL
STANDARDS FOR TEACHERS

Framework on Teacher Competence (FTC)

March 2012

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1 Framework on Teacher Competence (FTC)

1.1 Background

This Framework on Teacher Competence (FTC) replaces the Code of Practice on Teacher Competence issued by the General Teaching Council for Scotland (GTC Scotland) in September 2002 and comes into effect on 2 April 2012.

The FTC takes into account the legislative changes brought about by the Public Services Reform (General Teaching Council for Scotland) Order 2011, with particular reference to GTC Scotland's duty to ensure that those who are registered meet the standard of professional competence expected of a registered teacher and are fit to teach. Having attained the Standard for Full Registration (SFR) (http://www.gtcs.org.uk/web/FILES/FormUploads/standard-for-full-registration1664_226.pdf), a registered teacher must maintain that standard of professional competence throughout his/her career. Accordingly, the FTC should be read and used in conjunction with the current SFR which is the standard of professional competence expected by GTC Scotland of fully registered teachers. Both of these documents should be an integral part of the employer processes in the management of any teacher competence issue arising.

Purpose and Scope

In regard to the process for dealing with short-lived and long-running under-performance, the purpose of the FTC is to:

- ❖ set out and explain the practical steps involved;
- ❖ affirm the central role of the SFR in this process and as the baseline professional standard for teacher competence;
- ❖ encourage good and consistent practice amongst all employers;
- ❖ encourage parties to operate within procedural timescales which are efficient and reasonable, taking into account all the circumstances and complexities of the individual case, as well as the public interest;
- ❖ ensure fairness to the registered teacher and also ensure a quality educational experience for children, pupils and learners in our schools.

The FTC applies only to fully registered teachers as there are different and separate provisions to manage under-performance of provisionally registered teachers. It should be noted that where the alleged under-performance relates to administrative/managerial duties of a promoted teacher, similar procedures may be applied but always in the knowledge that GTC Scotland procedures and Fitness to Teach Panel outcomes can only relate to teaching competence and not to administrative/managerial competence.

1.2 Procedures for Dealing with Under-Performance

The procedures assume that the teacher has been performing at a competent level up to the point at which temporary under-performance enters Stage 1 of the FTC.

Short-lived under-performance is used to describe a problem which, with support and guidance, will be overcome by the teacher within a short period of time. In Stages 1 and 2 of the following procedures, it is envisaged that the teacher's problem is one of short-lived under-performance.

Long-running under-performance is the term used to describe the problem when Stage 3 of the procedures is implemented. By this Stage, although support and guidance and professional development opportunities have been offered to the teacher, this has not resulted in the teacher maintaining the level defined in the SFR.

GTC Scotland Professional Update Arrangements

Professional Update does not measure teacher competence: it will focus on continuous improvement rather than on determining whether or not a teacher is, or has remained, competent. In addition, it is hoped that the small number of cases which lead to a formal review of the competence of an individual teacher may be assisted by the improvements in professional review and development arising from the introduction of Professional Update.

Alleged competence issues will therefore continue to be handled by employers in line with this Framework on Teacher Competence, with cases referred to GTC Scotland, as required, under Stage 4 for consideration under GTC Scotland’s Fitness to Teach procedures.

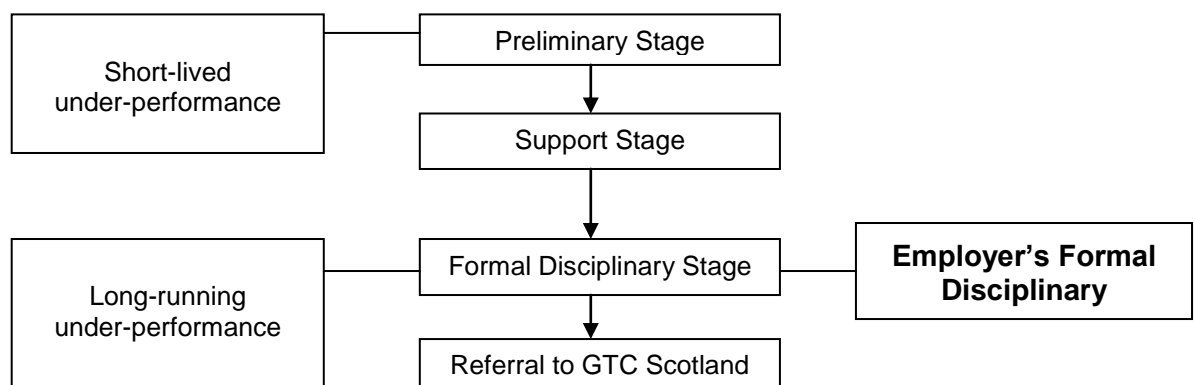
1.3 Overview

Employer procedures, operating in conjunction with the FTC procedures, must be in line with relevant provisions of the current ACAS (Advisory, Conciliation and Arbitration Service) Code of Practice on Disciplinary and Grievance Procedures.

Throughout all stages of the process GTC Scotland would expect to see evidence of:

- ❖ consistent and continuing reference to the SFR;
- ❖ a well structured and documented process which –
 - sets out and records the evidence gathered, support and development provided, and reasons for the decisions made at each Stage;
 - is fair and reasonable, with clear objectives linked to either the short-lived or long-running underperformance;
 - is aimed to improve and not punish the individual concerned, with an indication of reasonable support and professional development offered;
 - is tailored to the individual circumstances;
 - complies with the terms of the Equality Act 2010.

There are four stages in the procedures:



Stage 1: Preliminary

- (a) Although the Preliminary Stage does not form part of the employer's formal disciplinary procedures, the teacher should be made aware of the potential for matters to progress to formal procedures and that reliance may be placed upon evidence gathered at Stages 1 and 2.
- (b) It is assumed, at this Stage, that the problem is one of short-lived under-performance.
- (c) Teachers are encouraged to invite a colleague or a representative from their Professional Association to accompany them to any meetings.
- (d) Informal meetings should be held between the teacher and a senior or appropriate colleague to discuss identified areas of under-performance. During these informal discussions the teacher should be encouraged to participate fully in identifying the causes of the under-performance and suggesting possible remedies. Advice and guidance should be offered by the senior or appropriate colleague to support improvement.
- (e) At the conclusion of the first informal discussion a date should be agreed by the teacher and the senior or appropriate colleague concerned to review performance as soon as reasonably possible. Depending on the context of the situation a reasonable length of time should be given for the teacher to reach the required standard.
- (f) At the conclusion of the meeting to review performance, ie whether or not the required standard has been achieved, in the first instance an oral report should be given to the teacher indicating the outcome. Two outcomes are possible:

❖ Outcome 1

Where improvements have been made to the required standard, no further action will be taken. The teacher should be informed of this decision in writing.

❖ Outcome 2

Where improvements have not been achieved to the required standard, the teacher should be informed that the matter will be referred to the headteacher who will consider whether Stage 2 of the procedures should be implemented. The teacher will be informed of the headteacher's decision and the underpinning reasons in writing.

Stage 2: Support

- (a) Although the Support Stage does not form part of the employer's formal disciplinary procedures, the teacher should be made aware of the potential for matters to progress to formal procedures and that reliance may be placed upon evidence gathered at both Stages 1 and 2.
- (b) It is assumed, at this Stage, that the problem is still one of short-lived under-performance.
- (c) Teachers are encouraged to invite a colleague or a representative from their Professional Association to accompany them to any meetings.

- (d) The teacher should be informed by the headteacher of:
- ❖ the specific aspects of the SFR which are to be addressed;
 - ❖ the proposed mechanisms which will be put in place to support the teacher;
 - ❖ appropriate professional development opportunities which can be accessed.
- (e) Discussions should be held between the teacher and headteacher to agree the way ahead as soon as is reasonably possible. During these discussions the teacher should be encouraged to address the issues openly in order to:
- ❖ clarify the areas of under-performance;
 - ❖ suggest forms of support which he/she would find helpful;
 - ❖ agree appropriate professional development opportunities.

Consideration should be given to all reasonable requests made by the teacher.

At the conclusion of these discussions the headteacher should give a broad indication of the support mechanisms and professional development opportunities which will be made available. Dates for an Interim Review meeting and a Final Review meeting will be confirmed as soon as is reasonably possible.

As soon as possible after the discussion the headteacher should confirm in writing:

- ❖ the improvements to be made;
- ❖ the support mechanisms and professional development package to be provided;
- ❖ confirmation of the review dates.

In order to assist the teacher reach the required standard, a written timeframe should be agreed. This should outline the key milestones, and must be reasonable and have due regard to the circumstances of the individual case.

- (f) At the conclusion of the Final Review meeting the teacher should be informed of the outcome.

Two outcomes are possible:

❖ **Outcome 1**

Where improvements have been achieved to the required standard, no further action will be taken. The proceedings will be deemed to be complete. The teacher should be informed of this discussion in writing.

❖ **Outcome 2**

Where improvements have not been achieved to the required standard, the teacher should be informed that formal disciplinary procedures will be implemented. This decision and the underpinning reasons should be communicated to the teacher in writing.

The teacher should be advised of his/her statutory and contractual rights to be accompanied at Stage 3.

Stage 3 : Disciplinary

- (a) The Disciplinary Stage comprises the employer's formal disciplinary procedures.
- (b) The problem is now considered to be one of long-running under-performance.
- (c) The teacher should be advised of his/her statutory and contractual rights to be accompanied.
- (d) A comprehensive overview report should be produced by the headteacher evidencing:
 - the particular sections of the SFR in which he/she is alleging that the teacher is under-performing;
 - how and why it is alleged that the teacher has fallen below the required standard of performance;
 - the support mechanisms and professional development opportunities offered to the teacher;
 - the process and documentation associated with Stages 1 and 2;
 - the performance milestones during the process.
- (e) The above information:
 - may be considered at subsequent stages in the employer's formal disciplinary proceedings;
 - will be required by GTC Scotland should the case move to Stage 4.

Stage 4 : Referral to the General Teaching Council for Scotland

- (a) A case must be referred by the employer (or former employer) to GTC Scotland under the terms of Article 25 of the Public Services Reform (GTC Scotland) Order 2011 if:
 - ❖ the teacher is dismissed; or
 - ❖ the teacher resigns or leaves his/her post in the context of a possible dismissal.

Such referrals should be made to the Fitness to Teach Department at GTC Scotland.

- (b) The employer must explain to GTC Scotland the circumstances which caused them to dismiss the registered teacher or to conclude that they would have, or might have, dismissed the registered teacher.
- (c) Information relating to GTC Scotland's procedures for dealing with such cases can be found in the Fitness to Teach and Appeals Rules 2012.

RECORD OF COUNSELLING INTERVIEW (Conduct)

DIVISION: _____

PLACE OF WORK: _____

Employee Name: _____

Job Title: _____

Manager: _____

Job Title: _____

Date of Counselling Interview: _____

Matters discussed:

Action required by employee:

Support to be provided by Line Manager:

Any other action/s required by Line Manager:

Signed

Date:

NB: THIS FORM IS TO BE RETAINED BY THE LINE MANAGER INVOLVED, IT MUST NOT BE PLACED ON THE EMPLOYEE'S PERSONAL FILE

RECORD OF COUNSELLING INTERVIEW (GTCS)

PLACE OF WORK	
EMPLOYEE NAME	
JOB TITLE	
MANAGER CHAIRING MEETING	
MANAGER'S JOB TITLE	
DATE OF COUNSELLING MEETING	
PRELIMINARY/SUPPORT STAGE? (i.e. 1/ 2)	
OTHER MEETING ATTENDEES e.g. TU, HR	

1. PERFORMANCE ISSUES IDENTIFIED AND DISCUSSED:

1a	Areas of under-performance identified (related to the Standard for Full Registration)	Evidence to support evaluation that there is under-performance
	1 Professional knowledge and understanding	
	1.1 Curriculum	
	1.2 Education systems and professional responsibilities	
	1.3 Principles and perspectives	
	2 Professional skills and abilities	
	2.1 Teaching and learning	
	2.2 Classroom organisation and management	
	2.3 Assessment of pupils	
	3 Professional values and commitment	

1b RECORD OF TEACHER RESPONSE, INCLUDING IF APPROPRIATE, MITIGATING FACTORS OR AREAS DISPUTED

1c TEACHER-LED SUGGESTIONS ON HOW IMPROVEMENT CAN BE SUPPORTED AND DELIVERED

2. ACTION REQUIRED BY EMPLOYEE:

Area/s of SfR	Specific actions for Improvement by teacher	Evidence which will be sought to indicate improvement	Timescales

3. ACTION REQUIRED BY MANAGER:

Area/s of SfR	Specific actions for Improvement by teacher (identified above)	Supports to be provided, including professional development opportunities	Timescales

4. DATE(S) OF REVIEW MEETINGS

Interim Review Meeting(s)	
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Final review meeting	
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Signature – Teacher	
Signature – Manager	
Date	

MIDLOTHIAN COUNCIL

DISCIPLINARY PROCEDURE FOR TEACHERS

MODEL PROCEDURE FOR CONDUCTING A DISCIPLINARY HEARING

- (a) The officer conducting the hearing (the "nominated officer") should introduce those present (normally the other people in attendance will be the officer who conducted the investigation, a representative of the Human Resources Unit, the employee concerned and his/her representative).
- (b) The nominated officer should explain the purpose of the disciplinary hearing and refer to the complaint(s) against the employee. The nominated officer should also explain the procedure to be followed during the hearing.
- (c) The officer who conducted the investigation (the "investigating officer") should present his/her findings to the hearing, indicating the evidence gathered and referring to any documents previously circulated.
- (d) The investigating officer should call any witnesses named in the documents previously circulated.
- (e) The employee and his/her representative should be allowed to question the investigating officer and any witnesses on the evidence presented.
- (f) The nominated officer and the HR adviser may question the investigating officer and any witnesses on the evidence presented.
- (g) The employee and/or his/her representative should present their case to the hearing, indicating the basis of their defence and referring to any documents previously circulated.
- (h) The employee or his/her representative should call any witnesses named in the documents previously circulated.
- (i) The investigating officer should be allowed to question the employee, his/her representative and any witnesses on the evidence presented.
- (j) The nominated officer and the HR adviser may question the employee, his/her representative and any witnesses on the evidence presented.
- (k) The investigating officer and then the employee and/or his/her representative should be given the opportunity to sum up if they so wish.
- (l) On completion of the presentation of the evidence, the investigating officer, the employee and his/her representative should withdraw, leaving the nominated officer to deliberate with the HR adviser. If the nominated officer considers that any points raised by either party require further clarification, both parties should be recalled even if only one of the parties is concerned with the point(s) giving rise to doubt.

- (m) If the nominated officer considers that more than a short break for deliberation is necessary, he/she should formally adjourn the hearing.
- (n) Normally the nominated officer shall call back the employee, his/her representative and the investigating officer to announce the decision (where this is not appropriate, the decision shall be notified in writing).

MIDLOTHIAN COUNCIL

APPEALS COMMITTEE

**PROCEDURE FOR HEARING APPEALS AGAINST DISCIPLINARY ACTION
(TEACHERS)**

1. TERMS OF REFERENCE

1.1 The Appeals Committee shall be convened to hear an appeal against a decision: -

- (a) to dismiss or take other forms of serious disciplinary action as defined in section 8 of the disciplinary procedure; or
- (b) to issue a warning where the warning has been issued by the Director, Education and Children's Services in person or where a final warning has been issued to a Teacher.

1.2 The Appeals Committee shall have the power to decide appeals against disciplinary action in accordance with the Scheme of Administration adopted under Section 7 of the Council's Standing Orders. The Scheme of Administration shall be made available to employees on request.

2. CONDITIONS RELATING TO AN APPEAL

2.1 For the Appeals Committee to be convened Notice of Appeal must be lodged with the Director, Corporate Resources within ten working days of the appellant receiving written notification of the decision arising out of the disciplinary hearing.

2.2 The Notice of Appeal, which must be in writing, may be lodged by the appellant or his/her trade union or by some other person of the appellant's choice.

2.3 The appellant and his/her representative, if any, will be given a minimum of ten working days notice in writing of the date, time and place of the appeal hearing.

3. MEMBERSHIP OF THE APPEALS COMMITTEE

3.1 The Appeals Committee shall be a Standing Committee of the Council and shall comprise nine members thereof and shall be supplemented by one Church representative from the Cabinet who will have full voting rights.

3.2 Three elected members and one lay member shall form a quorum at meetings of the Appeals Committee.

4. REPRESENTATION AND ATTENDANCE OF OFFICERS

4.1 The Director, Education and Children's Services or other senior nominated officer shall act as the Council's representative at the appeal hearing.

4.2 The appellant shall have the right to be represented at the appeal hearing by a Trade Union official or by some other person of his/her choice.

- 4.3 The Director, Corporate Resources or representative shall act as Clerk to the Appeals Committee.
- 4.4 The Corporate HR and Strategy Manager or representative shall act as personnel adviser to the Appeals Committee.
- 4.5 If an appeal hearing is adjourned, all parties involved shall ensure that, other than in exceptional circumstances, the original representatives attend the re-convened hearing for continuity purposes.

5. PROCEDURE PRIOR TO APPEAL HEARING

- 5.1 Following submission of a written Notice of Appeal, the appellant or his/her representative shall submit the following information to the Director, Corporate Resources normally within five working days (where this is not possible, the Director, Corporate Resources shall be informed that additional time is required): -
 - (a) a written statement indicating the grounds of the appeal;
 - (b) copies of any documents submitted by the appellant at the original disciplinary hearing, including any written statements by witnesses;
 - (c) a copy of any other documents to be placed before the Appeals Committee; and
 - (d) the name(s) of any witness(es) to be called to give evidence on behalf of the appellant.
- 5.2 The Director, Education shall submit the following information to the Director, Corporate Resources normally within five working days of being notified of the appeal (where this is not possible, the Director, Corporate Resources, shall be informed that additional time is required): -
 - (a) a written statement of the case against the appellant;
 - (b) copies of documents submitted by the Council to the original disciplinary hearing, including any written statements by witnesses;
 - (c) copies of any other documents to be placed before the Appeals Committee; and
 - (d) the name(s) of any witness(es) to be called to give evidence on behalf of the Council.
- 5.3 The Director, Corporate Resources shall issue the agenda for the meeting of the Appeals Committee, which shall contain all the documents submitted under paragraphs 5.1 and 5.2 above, at least five days and in any event not less than three clear days in advance of the appeal hearing.
- 5.4 The Appeals Committee may at any time order such other information and/or documents to be submitted as it may consider appropriate.

6. PROCEDURE TO BE FOLLOWED AT APPEAL HEARING

- 6.1 Witnesses shall be excluded until called unless it is agreed that they should be present from the start of the hearing.
- 6.2 The Council's representative(s) shall put the case, in the presence of the appellant and his/her representative(s), and may call witnesses.
- 6.3 The appellant or his/her representative(s) shall have the opportunity to ask questions of the Council's representative(s) and witnesses.
- 6.4 The members of the Appeals Committee shall have the opportunity to ask questions of the Council's representative(s) and witnesses.
- 6.5 The Council's representative(s) shall have the opportunity to re-examine witnesses on any matter referred to in their questioning by members of the Appeals Committee, the appellant or his/her representative(s).
- 6.6 The appellant or his/her representative(s) shall put the case in the presence of the Council's representative(s) and may call witnesses.
- 6.7 The Council's representative(s) shall have the opportunity to ask questions of the appellant, his/her representative(s) and witnesses.
- 6.8 The members of the Appeals Committee shall have the opportunity to ask questions of the appellant, his/her representative(s) and witnesses.
- 6.9 The appellant or his/her representative(s) shall have the opportunity to re-examine witnesses in any matters referred to in their questioning by the members of the Appeals Committee or the Council's representative(s).
- 6.10 Firstly, the Council's representative(s) and then the appellant or his/her representative(s) shall have the opportunity to sum up their cases if they so wish. The summing up shall not introduce any new matter.
- 6.11 If at any stage new facts are alleged or new evidence produced, the Appeals Committee, either at the request of one or both parties or of its own volition, may adjourn the hearing for such period as it may deem reasonable. If any new and important medical evidence is produced, the hearing may be adjourned for a period of not more than 14 days to allow the appropriate medical reports to be submitted.
- 6.12 At the conclusion of the evidence the Council's representative(s), the appellant and his/her representative(s) and any witnesses shall withdraw.
- 6.13 The Appeals Committee, together with the officers appointed to assist the Committee, shall deliberate in private, only recalling the Council representative(s) and the appellant and his/her representative(s) to clarify points of uncertainty on evidence already given. If recall is necessary both parties are to return, notwithstanding only one is concerned with the point giving rise to doubt.
- 6.14 The Appeals Committee shall, if practicable, announce its decision to the parties at the conclusion of the hearing. In any event the decision shall be notified, in writing, to the appellant and his/her representative(s) by the Director, Corporate Resources within three working days of the date of the hearing.

7. POWERS OF THE APPEALS COMMITTEE

- 7.1 The form of the decision of the Appeals Committee shall be announced and confirmed as one of the following as appropriate: with reasons for the Committee's decision also being given:-
- (a) "that the grounds of the appeal have been substantiated and the appeal be upheld"
 - (b) "that the grounds of the appeal have been substantiated in part and the appeal be upheld to the extent that"
 - (c) "that the grounds of the appeal have not been substantiated and the appeal be not upheld".
- 7.2 If the appeal is upheld, the disciplinary action shall be withdrawn and any monies due to the appellant shall be payable in full. Where the appeal was against a decision to dismiss, the appellant shall be reinstated to his/her former post or, exceptionally, if this is not practicable, to another similar post on terms and conditions no less favourable than those applying to the post formerly held by the appellant.
- 7.3 If the appeal is substantiated in part, the disciplinary action shall be withdrawn and an alternative, less serious form of disciplinary action substituted. Where the appeal was against a decision to dismiss, the appellant shall be either: -
- (a) reinstated to his/her former post or a similar post on no less favourable terms except that a lesser disciplinary penalty shall apply; or
 - (b) re-engaged in some other post on terms and conditions which may be determined by the Appeals Sub-Committee.
- 7.4 If the appeal is not upheld, the disciplinary action shall stand and be regarded as confirmed.
- 7.5 For the purposes of paragraphs 7.2-7.4 above, the terms "re-instatement" and "re-engagement" shall be defined as follows: -
- (a) "re-instatement" is the restoration of the contract of employment between the appellant and the Council as if the dismissal had never taken place. Thus, the outstanding salary for the period the contract ceased to operate shall be payable in full. In addition, all rights arising out of continuous employment shall be restored as necessary to ensure reinstatement is without detriment; and
 - (b) "re-engagement" is the engagement of the appellant to another post and/or in another location with effect from the date of dismissal on terms and conditions which may be less favourable than those of the appellant's former post, e.g. demotion to a lower grade post. Thus, salary for the period since the dismissal took effect may be payable in accordance with the terms and conditions of re-engagement determined by the Appeals Committee. In addition, all rights arising out of continuous employment shall be restored.

8. TIME LIMITS

- 8.1 The time limits in this procedure may be varied by mutual agreement.