

ANGUS JOINT NEGOTIATING COMMITTEE FOR TEACHERS

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DM/CB

Dear Colleague

AJNCT/11(AMENDED) DISCIPLINARY PROCEDURES FOR ANGUS TEACHERS

The Scottish Negotiating Committee for Teachers issued Circular SNCT/18 on a revised disciplinary framework to replace Section 15.2 in the Scheme of Salaries and Conditions of Service.

Following discussions, agreement has been reached on amended disciplinary procedures. These are attached as an **Appendix** to this Circular.

This Appendix was discussed at the Angus Joint Negotiating Committee for Teachers at its meeting on 26 September 2005 and has been changed to take into account representations made by the Teacher's side. This was subsequently ratified by the Staffing Sub-Committee at its meeting on 27 October 2005.

Yours sincerely

**CATHERINE A COULL
PHILIP JACKSON**

Joint Secretaries

cc Chief Executive
Director of Education
Acting Director of Finance
Personnel Services Manager

DISCIPLINARY PROCEDURES FOR ANGUS TEACHERS

1. Introduction

- 1.1 Where a teacher's performance or conduct is such as to give rise to serious concern, disciplinary action may be taken by the authority in accordance with the undernoted agreed disciplinary procedures. As the aim of the disciplinary process is to seek improvement in performance or conduct, assistance to enable improvement to occur is essential.

2. Principles

- 2.1 Disciplinary rules and procedures are necessary for promoting orderly employment relations as well as fairness and consistency in the treatment of individuals. They enable organisations to influence the conduct of workers and deal with problems of poor performance and attendance, thereby assisting organisations to operate effectively. Rules set standards of conduct and performance at work; procedures help ensure that the standards are adhered to and also provide a fair method of dealing with alleged failures to observe them.
- 2.2 All teachers will be made aware of the standards of conduct and performance expected of them. In particular teachers will be made aware of what constitutes gross misconduct (see appendix 1). All problems involving minor misconduct and poor performance should be dealt with, at least in the early stages, through the use of informal advice, guidance and counselling. It is essential that all problems of this nature are fully discussed and that support is provided with the objective of encouraging and helping teachers to improve. It is essential also that teachers are aware that support and counselling are available at all times even where it has been necessary to take disciplinary action under the procedures.
- 2.3 Disciplinary procedures must comply with ACAS Code of Practice (No 1) "Disciplinary and Grievance Procedures". Where the concern relates to the performance of an individual's teaching the procedures must comply with the General Teaching Council Scotland Code of Practice on Competence. Where the concern relates to the performance of an administrative or managerial function of a promoted post the procedures must comply with similar principles and processes as contained in the current GTCS Code of Practice of Teacher Competence.
- 2.4 If formal disciplinary process is considered necessary, the agreed procedure will comply with the following principles.
- (a) The initiation of disciplinary actions/sanctions will be accompanied by appropriate support mechanisms
 - (b) No disciplinary action will be taken until the matter has been fully investigated and any decision, thereafter, to impose a disciplinary sanction must not be taken by the person who conducted the initial investigation. In addition any appeal will not be heard by the same person who issued the disciplinary sanction.
 - (c) Apart from gross misconduct, no teacher will be dismissed for the first breach of discipline.
 - (d) There will be a right of appeal against all disciplinary sanctions.
 - (e) No disciplinary action will be initiated against a trade union representative until the matter has been discussed with a full-time official of the union concerned.
 - (f) A teacher will have the right to be represented at all stages of the disciplinary process, including investigatory meetings.

3. The Investigatory Stage

- 3.1 In situations where either a complaint has been received or where a teacher's conduct or performance has given cause for concern, the employer will appoint an investigating officer. The investigating officer will, if possible, interview all of the parties involved (including the teacher in question) and, if appropriate, prepare signed and dated statements from all of these witnesses. The investigating officer will 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. It is preferable that this decision is not taken by the investigating officer and the investigating officer should not, as far as possible, have any function at a future disciplinary hearing other than presenting the facts of the investigation to that hearing. The teacher involved must be advised immediately that a complaint or concern has been lodged, of the nature of any complaint, of the process which will be followed and of the right to be represented.
- 3.2 The investigatory process will be conducted as speedily as possible consistent with the principles of fairness and natural justice and every effort will be made to ensure that, in most cases, the investigation takes no longer than 15 working days, as far as possible.
- 3.3 All teachers will be entitled to be represented at all hearings and meetings as part of the disciplinary process including investigatory hearings. In addition, in most cases, the teacher whose conduct or performance has given rise to the investigation will be interviewed and must be given a clear indication of the nature and purpose of the investigation and the procedures that will be followed at the interview well in advance of any meeting with the investigating officer
- 3.4 Once the investigation is completed the teacher will be advised of the outcome of the investigation. Where following an investigation no further action is to be taken in terms of the disciplinary procedures then all references to the investigation should be removed from the teacher's personal file and destroyed.
- 3.5 Any use of "precautionary suspension" as part of the disciplinary procedure must comply with the principles and procedures set out below.

3.5.1 Principles Underpinning Precautionary Suspension

- precautionary suspension must not be associated with any presumption of guilt (and must therefore be on full pay)
- precautionary suspension must only be used in the most serious cases of misconduct or poor performance or where the teacher's presence at her/his normal place of work could prejudice the investigation
- when the allegations against a teacher relate to possible abuse of children, the initial procedures set out by the Council's Child Protection Guidelines will apply – specifically in terms of whether or not precautionary suspension is appropriate.

3.5.2 Procedures to be Followed when a Precautionary Suspension is Effected

- an agreed "script" should be followed by whoever conveys the initial decision about suspension to the teacher concerned (usually the Head Teacher). That script should include reference to:
 - the nature of the complaint, without normally sharing the identity of the complainant
 - assistance should be offered to the teacher to leave the premises and get home
 - advice should be given on how to go about picking up any personal possessions left behind on the day

- emphasis should be laid on the precautionary nature of the suspension (including a clear statement – that suspension does not carry any presumption of guilt, and – if appropriate – that the suspension may be necessary at least partly to protect the teacher)
 - the teacher should be told that he/she will be able to maintain social contact with his/her colleagues, who will be urged to refrain from discussing any aspects of the allegation
 - reference should be made to the likelihood of a further meeting being arranged within two weeks (see below), and the teacher should be strongly advised to contact her/his Trade Union representative
- the Head Teacher should brief orally all school staff either on the day of the suspension or (at the latest) on the working day following the suspension. This briefing will enable the staff to be advised by the Head Teacher:
 - that an allegation has been made
 - of the name of the member of staff involved, and an explanation given that leave of absence has been granted in accordance with agreed procedures
 - that no member of staff is authorised to discuss any matter relevant to the allegation with any other individual or corporate body (eg the Press); staff should also be urged to refrain from discussing these matters amongst themselves
 - that the teacher concerned has been advised that she/he can maintain normal social contact with colleagues on the staff and that staff are urged to refrain from discussing the specific allegations with the teacher
- if a school produces a Daily Information Sheet which routinely lists staff absences, then the suspended teacher's name should appear on that list; only if that list routinely gives a cause of absence should any such cause be listed for the suspended teacher and – in these circumstances – the cause of absence given should be "leave of absence"
 - the formal letter of suspension should be signed by the Director of Education, or Head of Educational Services, or – if absolutely necessary – by another senior officer of the Council; that letter will be sent to the teacher's home address on the same day as the teacher is suspended.
 - the formal letter of suspension should include advice to the suspended teacher that she/he ought to be in touch with her/his Trade Union representative
 - the formal letter of suspension should remind the teacher of the Council's agreement with *Care First*, a free Counselling service (Helpline 0800 174319)
 - the formal letter of suspension should indicate that a meeting involving the teacher, her/his Trade Union representative and the Director of Education (or Head of Educational Services) will be arranged within 10 working days of the date of the suspension
 - a meeting should be arranged within 10 working days of the suspension having been given initial effect, the purpose of which should be simply to reiterate the contents of the original suspension letter, to emphasise the precautionary nature of the suspension, to provide an understanding of the way the legal system operates (if a police investigation is underway), to reiterate the availability of *Care First*, and to provide an opportunity for the

teacher to seek clarification of procedural matters. This meeting cannot address any specific aspects of the allegations which are being investigated but it can and should provide an opportunity to set out, as unambiguously as possible, ways in which contact can be maintained between a teacher and her/his representative and the Director of Education/Head of Educational Services

- thereafter, the suspension will be kept under continuous Review, and the Director of Education/Head of Service will write within 20 working days of the formal meeting (and – if necessary – every 20 working days thereafter) to make the teacher aware of the position at that time.

4. **The Disciplinary Hearing**

4.1 A decision to proceed with a disciplinary hearing will be based on the evidence secured during the investigatory stage but will not be chaired by the person who conducted the investigation.

4.2 Once a decision has been taken to proceed to a disciplinary hearing, the teacher will 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, and

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 within a reasonable time before any hearing.

4.3 The teacher (and/or representative) will be given every opportunity to present his/her case, to provide additional documents for the hearing, to call and question witnesses and to sum up his/her case.

4.4 At the conclusion of the hearing, the disciplinary officer (see 5.3 and 5.4 below) will either announce his/her decision (to be confirmed in writing thereafter) or indicate that the decision will be communicated in writing within the agreed time limits (see 7.1 below).

4.5 If it is decided that no disciplinary action is to be taken, all references to the case will be removed from the teacher's personal file and destroyed.

5. **Disciplinary Sanctions**

5.1 All disciplinary sanctions will be recorded in writing and will remain in the teacher's personal file during the period of currency of the warning (see 7.2 below). In being advised of the disciplinary sanction which is being applied, the teacher should be advised also of any improvements which will be expected of her/him and the availability of appropriate support to allow her/him to achieve and maintain these improvements.

5.2 The following disciplinary sanctions will be available.

(a) Formal Oral Warning.- For minor breaches of discipline, misconduct or continued poor performance; the warning must include reference to the fact that any further breach may render the teacher open to further disciplinary action.

(b) Written Warning.- For more serious breaches of discipline, misconduct or continued poor performance or a failure to improve conduct or performance following receipt of a formal oral warning; the teacher must be informed that a further breach may result in further disciplinary action being taken.

- (c) Final Written Warning.- For serious breaches of discipline, misconduct or continued poor performance or a failure to improve conduct or performance following receipt of a written warning. The teacher must be warned that any further breach may result in dismissal.
- (d) Dismissal.-
 - (i) For serious repeated misconduct or poor performance during the currency of a final written warning or for gross misconduct for which no previous warning exists. The teacher must be informed in writing of the effective date of dismissal and whether the dismissal is summary or with notice.
 - (ii) 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. Where a teacher does not agree to the application of the punitive sanction then the Council will have no alternative but to dismiss the teacher.

5.3 The Headteacher will have overall responsibility for the management of teachers within her/his school and will have the power to issue oral and written warnings, under the agreed disciplinary procedures of the Council.

5.4 The Director of Education (or nominated Senior Officer) 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 Council.

5.5 In cases involving performance issues the GTCS Code of Practice on Competence will be followed at all times. Before taking action for dismissal the Director of Education must ensure that the Code has been followed.

6. Appeals

6.1 Teachers will have the right of appeal against all disciplinary sanctions imposed by the Council. The table below outlines the appropriate level at which appeals should be heard.

Nature of Warning	Issued by	Appeal Heard By
Oral warning	Headteacher or nominee	Director of Education or nominee
Written warning	Headteacher or nominee	Director of Education or nominee
Final written warning	Director of Education or nominee	Staffing Sub-Committee

6.2 Appeals procedures are set out in the Appendix 2.

6.3 Appeals against dismissal will be to a Special Appeal Sub Committee of the Education Committee, comprising 5 Councillors who are members of the Education Committee (or their substitutes), one of whom will normally be either the Convener or the Vice Convener of the Education Committee

7. Time Limits

7.1 The undernoted time limits will apply. Any time limits set should not prejudice a teacher's rights in cases of dismissal to submit a claim to an Employment Tribunal.

Aspects of Disciplinary Procedure	Time Limit (Working Days)
Precautionary suspension	Formal Meeting – within 10- working days; thereafter – a review every 20 working days
Notification of decision to proceed to disciplinary hearing	10 working days notice (minimum) but could be shorter by agreement in individual cases
Notification of decision of disciplinary hearing	5 working days (maximum)
Time limit to lodge appeal	10 working days (maximum) from date of notification of decision of disciplinary hearing
Date of notification of appeal hearing	No later than 20 working days from receipt of notice of appeal
Notification of outcome of appeal hearing	5 working days (maximum)

7.2 Time limits for the duration of warnings are set out below. Warnings will normally be disregarded after the appropriate length of time, except in cases of breaches of child protection policies (see 7.4 below).

Level of Warning	Time Limit (Months)
Oral warning	6 months
Written warning	9 months
Final written warning	12 months

7.3 If an appeal is successful and the original disciplinary sanction withdrawn, any written reference will be expunged from the teacher's personal file and the teacher notified accordingly.

7.4 Any disciplinary sanction which has been imposed and which relates to a breach of the Council's child protection policies can remain on a teacher's file for a longer period of time than defined in 7.2 above.

ANGUS COUNCIL

DISCIPLINARY PROCEDURES FOR ANGUS TEACHERS

GROSS MISCONDUCT

The ACAS Code of Practice on Disciplinary and Grievance Procedures recommends that staff should be made aware of what kinds of behaviour are likely to be construed as a gross misconduct. SNCT/18 also contains a requirement that teachers will be made aware of what constitutes gross misconduct (instancing as examples sexual offences, assault or dishonesty).

It is not possible to compile an exhaustive list of examples of gross misconduct and it should be emphasised that any individual serious disciplinary offence will be considered on the basis of the merits of the case. However, the undernoted provides an indication for teachers of the types of offence which Angus Council is likely to consider as possible gross misconduct.

- physical assault
- sexual offence
- theft
- fraud
- serious negligence
- serious insubordination
- deliberate damage to Council property
- serious breach of confidentiality

APPENDIX 2

ANGUS COUNCIL

SPECIAL APPEAL SUB-COMMITTEE OF THE EDUCATION COMMITTEE

DISCIPLINARY APPEALS - PROCEDURE

- 1 The Director of Education, or his representative, shall put the Council's case, calling any witness(es) he/she may wish, in the presence of the Appellant and the Appellant's representative.
- 2 The Appellant or Appellant's representative shall have the opportunity to ask questions of the Council's representative and of any witness(es) called by the Council.
- 3 Members of the Sub-Committee shall have the opportunity to ask questions of the Director of Education or his representative and of any witness(es) called by his or her representative.
- 4 The Appellant or Appellant's representative shall put the Appellant's case, calling any witness(es) he/she may wish, in the presence of the Director of Education or his representative.
- 5 The Director of Education or his representative shall have the opportunity to ask questions of the Appellant, Appellant's representative and of any witness(es) called by or on behalf of the Appellant.
- 6 Members of the Sub-Committee shall have the opportunity to ask questions of the Appellant, the Appellant's representative and of any witness(es) called by or on behalf of the Appellant.
- 7 The Director of Education or his representative shall have the opportunity to sum up the Council's case, but in doing so cannot introduce any new material.
- 8 The Appellant or Appellant's representative shall have the opportunity to sum up their case, but in doing so cannot introduce any new material.
- 9 The Director of Education or his representative and the Appellant and the Appellant's representative and any other parties present who are not members of the Sub-Committee or Advisers or Clerk to that Sub-Committee shall then withdraw.
- 10 The Sub-Committee (with their Clerk and up to two advisers) shall deliberate in private, only recalling the Director of Education or his representative and the Appellant and the Appellant's representative 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.
- 11 If practicable, the Sub-Committee shall announce its decision to the Director of Education or his representative and the Appellant and the Appellant's representative at the conclusion of the Hearing. In any event, the decision shall be confirmed in writing to the Appellant and/or the Appellant's representative by the Director of Law and Administration within 10 days.
- 12 The form of the decision of the Sub-Committee to be announced under 11 shall be one of the following, as appropriate:-
 - "That the grounds of the Appeal have been substantiated, and the Appeal be upheld";
 - "That the grounds of the Appeal have been substantiated in part and the Appeal be upheld to the extent that";
 - "That the grounds of the Appeal have not been substantiated and the Appeal be not upheld".