

HR & OD POLICIES

HUMAN RESOURCES AND ORGANISATIONAL DEVELOPMENT

Disciplinary Procedure Teachers and Associated Professionals

Aberdeenshire
COUNCIL



www.aberdeenshire.gov.uk



1. INTRODUCTION

The aim of the disciplinary process is to seek improvement in an employee's conduct. The operation of the procedure in a satisfactory manner will depend upon the adoption of certain principles, which are in accordance with recognised good HR practice.

Except in the case of serious or gross misconduct, the principal purpose of disciplinary action should be to counsel the employee and to provide appropriate assistance to enable improvement to occur.

This Procedure has been prepared to assist all parties involved to deal with disciplinary issues and should be read in conjunction with Aberdeenshire Council's Disciplinary Policy. This Disciplinary Procedure takes account of the ACAS Disciplinary and Grievance Procedures Code of Practice 2009.

Under the Disciplinary Framework for Scottish Teachers (SNCT Handbook Appendix 2.11) teachers have the right to be represented at all stages of the procedure, including investigatory meetings.

Any request for legal representation at a disciplinary hearing must be passed to HR&OD and Legal Services for determination on a case by case basis.

Anyone using the Disciplinary Policy and Procedure should contact **the Mediation and Employee Relations team in HR** for support and assistance. How to Guides and documents to assist Investigating Officers and Chairs of Hearings are contained in the **Disciplinary Guidance Document**.

The procedure allows for a series of stages, ranging from counselling through to dismissal. Frequently, a counselling session or the issue of a warning will resolve the problem. In other circumstances it may be necessary over a period of time to pursue

several or all of the stages of the procedure in order to resolve the matter. On other occasions, an instance of serious or gross misconduct will require the immediate application of an advanced stage of the procedure including at times dismissal, which may be with or without notice as appropriate.

2. EMPLOYEE ASSISTANCE PROGRAMME

It is recognised by Aberdeenshire Council that it can be stressful for an employee to be investigated under the Disciplinary Policy and Procedure. Therefore, it is recommended that the Investigating Officer confirms to the employee that an investigation, suspension and/or disciplinary hearing are in no way an assumption of guilt. The details of the **Employee Assistance Programme** should be provided to any employee subject to the Disciplinary Procedure.

3. UNDER PERFORMANCE DUE TO WORK CAPABILITY

Cases of under performance should be dealt with in a supportive and equitable manner. Such cases should also be dealt with in accordance with any related procedures agreed by the Council. For teachers the agreed procedure is the **GTCS Framework on Teacher Competence**.

Underperformance should be addressed at an early stage by management in a supportive and equitable manner. Managers should refer to other Council policies such as the Work Performance Ability Policy or contact the **Mediation and Employee Relations team in HR**.

4. INFORMAL STAGES

Advice, Guidance & Counselling
Counselling of employees is the responsibility

of line managers/head teachers and should be a regular feature of the employee and line manager/head teacher relationship. For teachers this should be within a supportive quality assurance framework. Under performance will be addressed at an early stage.

A commitment to establishing effective working relationships should be demonstrated. This commitment should be shown throughout the process of advice, support, and implementation of improvement. Wherever possible, problems should be resolved without recourse to the formal procedure.

Please also refer to the **Disciplinary Guidance for Managers** for further information.

Notes should be retained by the line manager of any agreed action points.

Employees have the right to be represented at all stages.

5. FORMAL STAGES

No disciplinary action will be taken until the matter has been fully investigated. The aim of the investigation is to establish whether there is a basis for considering disciplinary action. It is vital that confidentiality is maintained at all times and investigations should be carried out as discreetly and sensitively as possible

Line managers must notify the **Mediation and Employee Relations team** in HR&OD prior to investigating an allegation.

6. COOLING OFF PERIOD

In some cases of alleged misconduct it may be appropriate to send the employee home. A cooling off period does not imply any assumption of guilt. Alternatives to a cooling off period such as a temporary transfer should

be considered wherever possible.

A cooling off period should not last longer than 3 working days. The employee will be paid during the cooling off period if the employee normally would have worked on these days. During the cooling off period the line manager should contact **The Mediation and Employee Relations team** in HR for advice and consider if suspension is appropriate.

7. PRECAUTIONARY SUSPENSION/ALTERNATIVE DUTIES

In certain cases, it may be necessary to suspend the employee on full pay pending the completion of investigations into the facts surrounding the complaint. The employee must be advised of the reasons for his/her suspension and the decision to suspend must be communicated or confirmed to the employee in writing. **Model Letter Suspension TAP.**

Suspension is not considered a disciplinary action and does not imply an assumption of the employee's guilt.

Alternatives to suspension may be put in place to support the employee, this may include consideration of a temporary transfer wherever possible. This will be looked at on a case by case basis. Such a suspension will reflect the severity of the allegation, permit enquiries to proceed unhindered by the continued presence of the employee at his workplace and enable the employee to arrange representation if he/she so wishes. This will be confirmed in writing.

The serious nature of a decision to suspend or undertake alternative duties is fully acknowledged and should only be taken to protect the employee and the Council whilst matters are investigated. Any suspension will be reviewed within 21 days. If the suspension is extended beyond

the initial 21 day period it will be reviewed every 14 calendar days thereafter. Model Letter Suspension Extension. This will include details of the employee's rights and obligations and who their point of contact will be during the period of suspension.

If, during a period of suspension or transfer to alternative duties an employee provides a medical certificate, the suspension will cease and, if necessary, recommence following the completion of the certified period of absence. During the certified period of absence the employee will receive the appropriate sickness allowance. The employee will require to be notified in writing if they are moving to sick pay rather than full pay.

An appropriate officer who is not involved with the investigation and/or suspension will be nominated as a contact for support for the employee. It is the line manager's responsibility to ensure that the suspended employee receives any work-related information which he or she would normally receive (for example, team brief minutes, newsletters, vacancy adverts).

8. INVESTIGATION

The purpose of an investigation is for the Council to establish a fair and balanced view of the facts relating to any allegations against an employee, before deciding whether to proceed with a disciplinary hearing.

An employee under investigation is required to respond within the agreed deadlines. This will include disclosing any relevant documents and attending investigatory interviews as required.

The line manager will appoint an Investigating Officer who must be at least the level of seniority as the line manager. The Investigating Officer should contact **The Mediation and Employee Relations team** in HR&OD for support.

The investigating officer must notify the employee involved in writing at an early stage that a complaint or concern has been lodged and is being investigated under the Council's Disciplinary Policy and Procedure. **Model Letter Inform Employee of an Investigation.** The investigating officer must indicate details of the complaint including dates and locations where relevant, the process which will be followed and the right to be accompanied / represented. The investigating officer should, if possible interview all relevant parties (including the employee in question). The investigating officer should prepare signed and dated statements from all parties interviewed.

Model Letter Witness Statement.

Model Letter Invite Person who made Allegation,

Model Letter Invite Witness to Investigation

and

Model Letter Invite Employee to Investigation Meeting.

Where the investigating officer is required to inform a specialist officer (e.g. Child Protection Officer, Chief Internal Auditor, Information Security Officer) of the Council, the investigation procedure for that area should be instigated. That investigation should be concluded and reported back to the investigating officer.

Investigations into a disciplinary matter should be undertaken as quickly as possible – and should take no longer than 21 days. If there are difficulties with timescales the employee and their representative should be notified of the reasons for the delay within the original timescale, consistent with the principles of fairness and natural justice.

After having received signed statements from all relevant parties and any reports from any specialist officers, the investigating

officer should hold an investigatory meeting with the employee concerned to discuss the matter and prepare a signed and dated statement. Investigatory interviews are solely for the purpose of fact-finding.

On conclusion of the investigation, the investigating officer will submit a brief written report of his/her findings along with all witness statements to the appropriate line manager/head teacher. The report should also outline the investigating officer's recommendations as to whether or not the matter should proceed to a disciplinary hearing. The same person who issued the disciplinary action should not hear any appeal.

The employee should be notified in writing of the decision to proceed or otherwise to a disciplinary hearing no later than 14 calendar days following the conclusion of the investigation. **Model Letter Conclusion of the Investigation.**

Where on conclusion of an investigation it is decided that no further action is to be taken in terms of the disciplinary procedure no reference to the investigation should be placed on the employee's personal file. **Model Letter No Further Action.**

Where on conclusion of an investigation it is decided to proceed to a disciplinary hearing, the employee should be invited to a disciplinary hearing and should at that time be provided with copies of the evidence that will be used during the disciplinary hearing, including all signed and dated statements taken as part of the investigation. The employee should be informed of the following in writing:

- Details of the specific allegations
- Date of the hearing
- The procedure to be followed at the hearing
- Any rights under the disciplinary procedure (particularly the rights to be

accompanied/represented).

- Names of witnesses being called.
- The potential consequences of the hearing, including the risk of dismissal where appropriate.

The employee should submit evidence that will be used in his/her defence to the Chair of the hearing at least three calendar days prior to the date of the disciplinary hearing. This includes any witnesses they wish to call including from those who have provided statements. **Model Letter Invite Employee to a Disciplinary Hearing.**

9. DISCIPLINARY HEARING

Please also refer to **Guide to Convening a Disciplinary Hearing.**

The employee should be given a fair hearing and have the opportunity to explain the reasons for his/ her alleged failure to meet the required standards or misconduct, call and question witnesses, and to sum up his/ her case. A warning should never be given without a hearing being held. A disciplinary hearing should take place no later than 14 calendar days following the conclusion of a disciplinary investigation.

The Council recognises that there may be very sensitive issues raised. Accordingly at all stages, information discussed will be held in the strictest confidence and the Council will deal with any malicious disclosure, by any party, under the Disciplinary Procedure. Where the concern relates to performance and competence of a teacher, procedure must comply with the revised **Disciplinary Framework for Scottish Teachers and the GTCS Framework on Teacher Competence SNCT 12/33.**

An accurate note of any disciplinary hearing and sanction taken should be recorded (subject to the provision of Section 11 relating to The Life of Warnings). A dedicated note taker should be made available.

All time scales are defined in calendar days to avoid confusion for employees who work part-time. Any related correspondence indicating time scales must be defined in calendar days.

Sample Letter No Further Action Following Hearing.

Formal Disciplinary Sanctions

Head teachers will have overall responsibility for the management of teachers within the school and will have the power to issue initial and written warnings. The Director of Education, Learning & Leisure or their nominee will have the power to apply all forms of disciplinary action described in this section and to dismiss a teacher/ associated professional under this disciplinary procedure.

In each case, the employee should be made fully aware of the reasons for the warning and of the consequences of a repetition. In being advised of the disciplinary sanction which is being applied, the employee should be advised also of the improvements which should be expected of them and the availability of appropriate support to allow them to achieve and maintain the improvement.

Written confirmation of the aforementioned warnings must be marked private and confidential and sent by recorded delivery post.

Initial Warning

An initial warning is given for minor breaches of discipline and/or misconduct, and should

be issued orally and confirmed in writing within seven calendar days. The warning will set out the nature of the misconduct. The warning must also include reference to the fact that any further breach during the life of the warning may render the employee subject to further disciplinary action. Employees should also be advised at this stage of any appropriate support mechanisms, their right of appeal and when the warning will expire. An initial warning will be live for 6 months. **Model Letter Initial Warning.**

Written Warning

A written warning is given for more serious breaches of discipline, misconduct or a failure to improve conduct following receipt of an initial warning. The warning will set out the nature of the misconduct. The warning should be issued orally and confirmed in writing within seven calendar days. The employee must also be informed that a further breach during the life of the warning may result in further disciplinary action being taken. Employees should also be advised at this stage of any appropriate support mechanisms, their right of appeal and when the warning will expire. A written warning will be live for 9 months. **Model Letter Written Warning.**

Final Written Warning

A final written warning is given for serious breaches of discipline, misconduct or a failure to improve conduct following receipt of an initial or written warning. The warning should be issued orally and confirmed in writing within seven calendar days. The warning will set out the nature of the misconduct or failure to improve. The employee must also be informed that any further breach during the life of the warning may result in dismissal. Employees should also be advised at this stage of any appropriate support mechanisms, their right of appeal and when

the warning will expire. A final written warning will be live for 12 months. [Model Letter final Written Warning.](#)

Serious Action, Including Dismissal

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.

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

- Demotion
- or Transfer
- or Suspension of an increment.

In cases involving performance issues for teachers the GTCS Framework on Teacher Competence SNCT 12/33 should be followed at all times. Before taking serious action including dismissal the Director of Education or his/her nominated Head of Service must ensure that the Code has been followed.

Model Letter Dismissal.

The type of serious action taken, including dismissal, will depend upon the circumstances of the case. Serious action may only be taken by the Service Director or a nominated Head of Service, following a full inquiry and hearing which shall, from the Council's side, also be attended by the Head of Service (Human Resources & Organisational Development) or his/her nominated representative and a representative from Legal & Governance.

Where an employee has had an unapproved absence from work or owes money to Aberdeenshire Council, serious action following a disciplinary hearing may if required include repaying any monies owed to the Council.

Serious action must be confirmed in writing within seven calendar days with the letter specifying the action taken, the reasons for it and the employee's right of appeal.

As an indication, the following types of misconduct could, after due investigation as detailed elsewhere in this procedure, lead to dismissal without notice:

- Theft of Aberdeenshire Council property
- Theft of property left on Council premises
- Serious Insubordination
- Physical assault on another employee or on a person in the care of the Authority
- Breach of Health and Safety regulations
- Sexual offences
- Inappropriate relationship between children to whom services are provided by Aberdeenshire Council
- Indecent behaviour
- Misuse of the internet/e-mail (refer to [Aberdeenshire Council's Acceptable Use Policy](#) and Code of Practice for Monitoring and Investigation of Employees)
- Harassment/bullying.

This list is prepared for the purposes of illustration, and is not intended to be exhaustive. Criminal offences outside employment should not be treated as automatic reasons for dismissal regardless of whether or not the offence has any relevance to the duties of the individual as an employee. The main considerations should be whether the offence is one that makes the individual unsuitable for his or her type of work (for example, a breach of child protection legislation) or which damages irreparably the relationship of trust and confidence between the employee and the employer. Employees should not be dismissed solely or automatically because a charge against them is pending or because they are absent through having been remanded in custody.

Referral to GTCS

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.

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.

Information relating to GTC Scotland's procedures for dealing with such cases can be found in the Fitness to Teach and Appeals Rules 2012.

Please refer to the **GTCS Framework on Teacher Competence SNCT 12/33**.

Protection of Vulnerable Groups

The Protection of Vulnerable Groups Act (Scotland) 2007 requires Aberdeenshire Council to refer any employee who is or has been doing regulated work with children to the Scottish Ministers for consideration for listing on the Children List, if he/she harms a child or puts a child at risk of harm and is dismissed or moved away from access to children as a consequence. This also applies to individuals who may have been disciplined but have resigned before the conclusion of the investigation.

This also applies to employees who work with protected adults. Aberdeenshire Council is also required to refer any employee who

is or has been doing regulated work with protected adults to the Scottish Ministers for inclusion in the Adult's List if he/she harms a protected adult or puts a protected adult at risk of harm and is dismissed or moved away from access to protected adults as a consequence. This also applies to individuals who may have been disciplined but have resigned before the conclusion of the investigation.

Please refer to the **Protection of Vulnerable Groups Referral Procedure** for more information.

10. INVESTIGATION - POLICE INVOLVEMENT

Where the internal investigation does not interfere with any external investigations by the police or other outside bodies (e.g. The Health and Safety Executive), the Investigating Officer should not await the outcome of the external investigation before continuing with their own investigation.

Where the police have indicated that an internal investigation may jeopardise their investigation the Investigating Officer should await the outcome of the police investigation and/or court proceedings before continuing with their own investigation. The employee will require to be notified in writing if the investigation is to be suspended.

In some circumstances an employee may be under investigation by the police relating to acts which, if were proven, would render him/her unable to continue in his/her post (e.g. offences involving children or vulnerable adults). In such cases it is advised that the Investigating Officer does not proceed with any internal investigations until the outcome of any police investigation and/or court proceedings.

Guidance should be sought from HR&OD and Legal Services.

11. RIGHTS OF APPEAL

Rights of appeal exist **against all disciplinary sanctions.**

The reasons for lodging an appeal should be detailed.

An appeal against an initial or a written warning (excluding a final written warning) should be made to the Director of Education, Learning & Leisure. An appeal against a final written warning should be intimated to the Head of Legal and Governance.

An appeal against serious action including dismissal should be intimated to the Head of Legal and Governance. A teacher shall have the right to be represented by a trade union representative or a work colleague at any appeals hearing.

Should any appeal against disciplinary action be successful and the action subsequently withdrawn, any written reference shall be expunged in the teacher's record and the teacher notified in writing.

Lodging of Appeals

An appeal against disciplinary action should be made by the individual or, where appropriate, by the teacher's trade union representatives in accordance with the procedure outlined in the confirmation of the warning.

An appeal should be lodged in writing within 14 calendar days of receipt of notification of the action. This should include the reasons for the appeal.

An appeal hearing shall normally be arranged within 28 calendar days of receipt of the notice of appeal.

Appeals Hearing

Appeals against initial or written warnings will be heard by the Director of Education, Learning & Leisure or his nominee. The appeal cannot be chaired by the Chair of the original disciplinary hearing.

Appeals against a final written warning will be heard by the Council's Appeals Committee.

Appeals against serious action including dismissal, will be heard by the Appeals Committee. Wherever reasonably practicable, a meeting of the Appeals Committee will be convened within 28 calendar days of the appeal being lodged. An employee shall have the right to be represented by a trade union representative or work colleague at any appeal hearing.

Following the appeal hearing, the Council may:

- Confirm the original decision;
- Revoke the original decision; or
- Substitute a different lesser sanction

Notification of the outcome of an appeal hearing should be confirmed in writing to the employee within five calendar days.

Line managers should notify Human Resources on receipt of any appeal regarding the outcome of a disciplinary hearing. This is to ensure that the Council meets the requirements for data monitoring under equal opportunities legislation.

12. THE LIFE OF WARNINGS

Records should be kept, detailing the nature of any breach of disciplinary rules, the action taken and the reasons for it, whether an appeal was lodged, its outcome and any subsequent developments. These records should be carefully safeguarded and kept confidential.

A disciplinary warning will expire at the conclusion of the warning period. This period will be clearly explained to the employee in writing.

Initial warning	6 Months
Written Warning	9 Months
Final Written Warning	12 Months

Model Letter Warning Disregarded

13. GRIEVANCE

If a grievance is raised during a disciplinary process, the disciplinary process may be temporarily suspended to deal with the grievance.

14. DISCLOSURES

Neither party should disclose details to the media, to ensure that the whole matter remains confidential with information on a need to know only basis. Any breach of this may result in disciplinary action or further disciplinary action being taken.

15. TRADE UNION REPRESENTATIVES

In all cases where an employee is a trade union representative no formal action should be taken until the circumstances of the case have been discussed with the appropriate full time trade union official.

For further advice and guidance on any of the above please contact [Human Resources and Organisational Development](#).

Procedure

Revision Date	Previous Revision Date	Summary of Changes
01-03-2006	-	Creation of all Documents
18-04-2013	01-03-2006	Revision approved by P&R Cmt

Distribution

The approved versions of these document are distributed to:

Name	Title
Arcadia	MY Job/HR Policies & Procedures/Disciplinary
Arcadia Lite	HR & OD Policies > Disciplinary

Any copies of these documents out with the distribution list above is uncontrolled.