



SOUTH AYRSHIRE COUNCIL

JOINT NEGOTIATING COMMITTEE
FOR TEACHERS

Disciplinary Procedures
(JNCT1.16)

(Under Review)

DISCIPLINARY PROCEDURES FOR TEACHING STAFF

(For the purposes of these procedures 'Teaching Staff' refers to all staff on SNCT terms and conditions i.e. all teachers, educational psychologists, quality improvement officers, education support officers and instrumental music teachers)

1. Introduction

- a. **The following procedures are based on the Disciplinary Framework contained in the SNCT Handbook**
- b. 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 locally agreed disciplinary procedures outlined below. 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

- a. 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.
- b. All teachers employed by South Ayrshire Council should be made aware of the standards of conduct and performance expected of them. In particular teachers should be made aware of what constitutes gross misconduct: **for example** sexual offences, assault or dishonesty. 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.
- c. 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 GTCS Code of Practice on Teacher Competence, (*App 1*) which is defined in terms of the Standard for Full Registration. 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 on Teacher Competence with reference to the Standard for Headship where appropriate. See *ALSO App 2* for advice on the application of the Code of Practice.
- d. The South Ayrshire Joint Negotiating Committee for Teachers (JNCT) has agreed principles and procedures for 'Investigations by Management' and these should be applied in the investigation of complaints of alleged

misconduct. These procedures are incorporated in section 3, The Investigatory Stage.

- e. If formal disciplinary process is considered necessary, the procedure will comply with the following principles.
 - ii. The initiation of disciplinary actions/sanctions should be accompanied by appropriate support mechanisms.
 - iii. 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 should not be heard by the same person who issued the disciplinary sanction.
 - iv. Apart from gross misconduct, no teacher shall be dismissed for the first breach of discipline.
 - v. There shall be a right of appeal against all disciplinary sanctions.
 - vi. No disciplinary action will be initiated against a trade union representative until the matter has been discussed with the local secretary or full-time official of the union concerned.
 - vii. A teacher shall have the right to be represented at all stages of the disciplinary process, including investigatory meetings.

3. THE INVESTIGATORY STAGE

PREAMBLE

(a) Investigations by management can arise as a result of a number of possible reasons including:

Teacher conduct
Teacher competence
Parental complaint
Pupil complaint.

Regardless of the reason for the initiation of a formal investigation, there are a number of basic principles with which all investigatory processes should comply.

(b) The ACAS Code of Practice (1) (2009) "Disciplinary and Grievance Procedures" outlines the main features which should characterise all investigatory processes.

2 CODE OF PRACTICE 1 – DISCIPLINARY AND GRIEVANCE PROCEDURES

'Many potential disciplinary or grievance issues can be resolved informally. A quiet word is often all that is required to resolve an issue. However, where an issue cannot be resolved informally then it may be pursued formally. This Code sets out the basic requirements of fairness that will be applicable in most cases; it is intended to provide the standard of reasonable behaviour in most instances. Employers would be well advised to keep a written record of any disciplinary or grievance cases they deal with.' *'Copies of meeting records should be given to the employee including copies of any formal minutes that may have been taken. In certain circumstances (for example to protect a witness) the employer might withhold some information.'*

Clearly the above advice is more relevant to teacher conduct or parental/pupil complaint than to teacher competence although an investigation about competence might result from such a complaint.

Separate advice has been agreed on Investigations into teacher competence. This advice is based on the GTCS Code of Practice on Teacher Competence and the procedures on discipline and grievance outlined in the SNCT Handbook Part 2: Appendices 2.11, 2.12 and 2.13

PRINCIPLES OF A FAIR INVESTIGATORY PROCESS.

- i. In situations where a serious complaint has been received or where a teacher's conduct has given cause for concern, the employer should appoint an investigating officer.
- ii. If the complaint has been received by the Head Teacher, then he/she should appoint the investigating officer from the Senior Management Team (not normally the Head himself/herself.) In smaller establishments the investigating officer should be an appropriate member of the senior staff from South Ayrshire Council (Educational Services).
- iii. If the complaint has been received by the Educational Services Directorate then the Head of the establishment or section in which the teacher is employed should be instructed to appoint an appropriate investigating officer. If, however, the complaint relates to a Head Teacher then an appropriate member of the senior staff from South Ayrshire (Educational Services) should appoint an investigating officer.
- iv. The investigating officer may first wish to establish informally whether or not the complaint merits further formal investigation.
- v. Having established the need for formal investigation the investigating officer should, 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. It would be appropriate in most cases to take such statements from pupils. Where an incident occurs in a class it would be appropriate to take statements from a wide selection of pupils.
- vi. The investigating officer should then produce a report which will enable the Head Teacher or another representative of the employer to decide : whether the matter can be resolved internally; or whether the matter can be resolved by informal counselling or appropriate CPD; or whether the matter should be further progressed through the formal disciplinary process. It is important that this decision is not taken by the investigating officer. The investigating officer must have no other function at a disciplinary hearing other than presenting the facts of the investigation to that hearing. Where a Head Teacher or a member of the senior staff from South Ayrshire (Educational Services) requires additional support they should note the section on 'further advice' below.
- vii. The investigatory process should be conducted as speedily as possible consistent with the principles of natural justice. The investigation should normally take no longer than 15 working days. Both parties shall be able to request an extension of that period if there are extenuating circumstances.

- viii. All teachers under investigation should be entitled to be represented at all hearings and meetings at which they are present as part of the disciplinary process including investigatory meetings. It may be appropriate, on some occasions, for teachers who are attending investigatory meetings as witnesses to request that a trade union representative accompany them at such meetings. The role of the trade union representative in such circumstances would be restricted to providing support and he/she would have no right to question the investigating officer or the witness.
- ix. In addition, in most cases, the teacher whose conduct has given rise to the investigation will be interviewed last and must be given a clear indication of the nature and purpose of the investigation well in advance (at least 3 days) of any meeting with the investigating officer.
- x. The interview with the teacher may reveal information which requires further investigation and there might, therefore, be a need to re-interview some or all of the relevant parties.
- xi. Once the investigation is complete, and a decision has been taken to move to formal disciplinary procedures, the teacher must be given copies of all witness statements well in advance (at least 5 working days) of the disciplinary hearing along with a copy of the full Investigating Officer's report. However, should it be decided that no further action is to be taken, all documentation associated with the investigation should be expunged from the teacher's personal file and should be destroyed after an agreed period of time.

PRECAUTIONARY SUSPENSION

In considering 'precautionary suspension' from duty arising from the initiation of a formal investigation the following principles should apply :

- (a) Any suspension must be on full pay and must not be associated with any assumption of guilt.
- (b) Precautionary suspension should only be used in the most serious cases of misconduct or incompetence.
- (c) Where suspension is being considered because the teacher's presence at his/her normal place of work could contaminate the investigation it may be possible to change the teacher's place of employment on a temporary basis. Such an action should only be taken with the consent of the teacher.
- (d) All precautionary suspensions should be reviewed at agreed regular intervals.
- (e) *An appeals mechanism against suspension should be introduced to enable an inappropriate suspension to be challenged and to allow for compliance with the agreed time limits for the investigatory stage of the disciplinary procedure.*

FURTHER ADVICE

South Ayrshire Council (Educational Services) shall identify appropriate personnel to offer advice to Head Teachers and Investigating Officers on the procedures for Investigations by Management. Such personnel should have no potential involvement in any subsequent disciplinary procedure. In the first instance, assistance should be sought from the Senior Education Manager (Staffing)

4. **The Disciplinary Hearing**

- 4.1 A decision to proceed with a disciplinary hearing should be based on the evidence secured during the investigatory stage but should not be taken by the person who conducted the investigation.
- 4.2 Once a decision has been taken to proceed to a disciplinary hearing, the teacher should be informed, in writing, about:
- details of the allegations
 - the date for the hearing,
 - the procedures to be followed at the hearing
 - any rights under the disciplinary procedure, 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) must 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) shall 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 shall be removed from the teacher's personal file and destroyed.

5. **Disciplinary Sanctions**

- 5.1 All disciplinary sanctions shall be recorded in writing and shall 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 the improvements which will be expected of them and the availability of appropriate support to allow them to achieve and maintain the improvement. Those improvements and sanctions must be pertinent to the subject of the investigation.
- 5.2 The following disciplinary sanctions shall 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, suspension of an increment *and/or the extension of the time limit on the final written warning*. 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 their school and will have the power to issue oral and written warnings.

5.4 The Director of Educational Services will have the power to apply all forms of disciplinary sanction described in this section and to dismiss a teacher under the agreed disciplinary procedures of the authority.

5.5 In cases involving performance issues the GTCS Code of Practice on Teacher Competence should be followed at all times. Before taking action for dismissal the *Director of Educational Services* must ensure that the Code has been followed. *Where the informal stages of the Code have been exhausted and a decision to proceed to Disciplinary Action has been taken such disciplinary hearings should be conducted by the Director of Educational Services or his/her representative. Only a Final Written Warning or Dismissal would be applicable in such cases. (See 5.2 (d) above and Appendices 2 and 3)*

6. Appeals

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

Nature of Warning	Issued by	Appeal Heard By
Oral warning	Head Teacher or Authority Representative	Director or nominee
Written warning	Head Teacher or Authority Representative	Director or nominee
Final written warning	Director C&C or Authority Representative	Appeals Panel

6.2 Appeals against dismissal will be to the Appeals Panel of the Council set up for that purpose.

7. Time Limits

7.1 Time limits covering the following aspects of the disciplinary procedure have been agreed. 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	Suggested Time Limit (Working Days)
Precautionary suspension	At agreed regular intervals
Notification of decision to proceed to disciplinary hearing	10 days notice (minimum) but could be shorter by agreement in individual cases
Notification of decision of disciplinary hearing	5 days (maximum)
Time limit to lodge appeal	10 days (maximum) from date of notification of decision of disciplinary hearing
Date of notification of appeal hearing	No later than 20 days from receipt of notice of appeal
Notification of outcome of appeal hearing	5 days (maximum)

7.2 Time limits for the duration of warnings should be as indicated in the table below. Warnings should be expunged (i.e. removed from the teacher's personal file and destroyed) after the appropriate length of time. *The only exceptions to these time limits will be in cases where the misconduct is so serious – verging on gross misconduct – that it cannot be realistically disregarded for future disciplinary purposes. In such cases the time limit on the Final Written warning can be extended at the Disciplinary Hearing. Any such extension of the time limit will be subject to possible appeal as well as the decision of the hearing. An extension of time limits might also be appropriate in cases of under-performance where a Final Written Warning, with punitive sanctions, is given as an alternative to Dismissal.*

<u>Warning</u>	<u>Time Limit (Months)</u>
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 shall be expunged from the teacher's personal file and the teacher notified accordingly.**

APPENDIX 1

ATTACH GTCS CODE OF PRACTICE ON TEACHER COMPETENCE

APPENDIX 2

GUIDANCE TO HEAD TEACHERS ON THE USE OF THE GTC CODE OF PRACTICE ON TEACHER COMPETENCE

PREAMBLE

Allegations of under-performance by teachers can arise as a result of a number of reasons including:

- Parental complaint
- Pupil complaint
- Principal Teacher concerns
- Senior Management concerns
- HMIE reports
- Quality and Standards reports

1. Regardless of the reason for the investigation of alleged under-performance Senior Managers must strictly adhere to the GTCS Code of Teacher Practice.
2. The teacher should be made aware of the Code and the Standard for Full Registration on which the Code is based and, if necessary, provided with copies of both documents.
3. At Stage 1 a written record of actions taken should be kept by the Head Teacher in the event that these may be necessary for a subsequent disciplinary hearing.

If, however, no further action is necessary all records should be destroyed.

4. The teacher's Trade Union representative (or other appropriate representative) should be informed that an allegation of under-performance has been made and that Stage 1 informal discussions have been initiated. They should also be informed of the outcome of Stage 1 procedures.
5. At Stage 2 written records should be kept of all actions taken by the Head Teacher in the event of these being necessary for a subsequent disciplinary hearing. The Head Teacher must ensure that the teacher is informed in writing of :
 - The improvements to be made
 - The support mechanisms and professional development package to be provided
 - The dates for the interim and final review meetings

If, however, no further action is deemed necessary all written records should be destroyed.

6. The teacher should be entitled to be accompanied by their trade union representative or other supporter at Stage 2 meetings.
7. If the decision is taken to move to Stage 3 the agreed disciplinary procedures will apply. The comprehensive statement prepared by the Head Teacher, referred to in Stage 3 of the Code of Teacher Practice, will form the Investigatory Report and the Head Teacher (or his/her representative) will be responsible for presenting that in evidence at the disciplinary hearing.
8. That report and any other evidence (including any witness statements) must be made available to the teacher and his/her representative at least 5 working days prior to the disciplinary hearing in accordance with the agreed disciplinary procedures.

GUIDANCE ON ALLEGATIONS OF UNDER-PERFORMANCE RELATING TO ADMINISTRATIVE OR MANAGERIAL DUTIES OF A PROMOTED TEACHER

PREAMBLE

Allegations of under-performance by promoted staff can arise as a result of a number of reasons including:

- Parental complaint
- Pupil complaint
- Teacher complaint
- Trade Union or Professional Association complaint
- Senior Management concerns
- HMIE reports
- Quality and Standards reports

Regardless of the reason for investigation of the alleged under-performance a process similar to that outlined in the GTCS Code of Practice on Teacher Competence should be followed. For Head Teachers reference may be made to the GTCS Standard for Headship.

FOR PRINCIPAL TEACHERS, DEPUTE HEAD TEACHERS AND HEAD TEACHERS

Stage 1: Informal

- ❖ The informal stage does not form part of the formal disciplinary procedures
- ❖ It is assumed, at this stage, that the problem is one of temporary under-performance
- ❖ If the allegation refers to a Principal Teacher or a Depute Head, informal discussions should be initiated by the Head Teacher to explore perceived under-performance. Advice and guidance should be offered from the Head and other senior colleagues to support improved performance
- ❖ Where the allegation refers to a Head Teacher, the appropriate Authority representative shall initiate informal discussions to explore perceived under-performance. Advice and support should be offered to support improved performance.

NB *The process for dealing with issues of under-performance for Head Teachers shall be that outlined below except that the appropriate Authority Representative shall replace the Head Teacher in the conduct of the procedures.*

- ❖ At these informal discussions a date should be agreed by the Head Teacher and the PT or Depute to review performance e.g. 3 months. The areas of perceived under-performance should be identified and targets for improvement should be set
- ❖ A review meeting should be held at the end of the agreed period. The Head should give an oral report indicating the outcome of the review. TWO outcomes are possible:
 - i. Where improvement has been made to the level required, no further action will be taken;
 - ii. Where improvement has not been sufficient to meet the level required the Head will initiate Stage 2 of the procedures.

Stage 2 Support

- ❖ The support stage does not form part of the employer's formal disciplinary procedures.
- ❖ It is assumed, at this stage, that the problem continues to be one of temporary under performance.
- ❖ The Principal Teacher or Depute Head Teacher should be informed by the Head of:
 - the specific aspects of their work which are to be addressed;
 - the proposed mechanisms which will be put in place to support the PT or Depute Head Teacher;
 - appropriate professional development opportunities which can be accessed.
- ❖ Discussions should be held between the PT or Depute and the Head Teacher to agree the way ahead. During these discussions the PT or Depute Head Teacher should be encouraged to discuss the situation fully to:
 - clarify the perceived problems;
 - suggest forms of support which he/she would find helpful;
 - agree appropriate professional development opportunities.

Sympathetic consideration should be given to all reasonable requests made by the PT or Depute Head Teacher.

- ❖ At the conclusion of these discussions the PT or Depute Head Teacher should be given 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 possible after the discussion the Head Teacher should confirm in writing:
 - the improvements to be made;
 - the support mechanisms and professional development package to be provided;
 - confirmation of the review dates.
 -
- ❖ At the conclusion of the Final Review meeting the PT or Depute Head Teacher should be informed of the outcome. TWO outcomes are possible:
 - i. Where improvements have been achieved to the required level, no further action will be taken. The proceedings will be deemed to be complete;

ii. Where improvements have not been achieved to the required level, the PT or Depute Head Teacher should be informed that formal disciplinary procedures will be implemented. The PT or Depute Head Teacher should also be advised to contact his/her professional association if he/she is a member of such an association.

Stage 3: Disciplinary

- ❖ The disciplinary stage is the employer's formal disciplinary procedures.
- ❖ The problem is now considered to be one of chronic incompetence.
- ❖ A comprehensive statement (which should form the investigatory report) should be produced by Head Teacher indicating:
 - details of the PT or Depute Head Teacher's alleged failure to maintain the standards required;
 - details of the support mechanisms and professional development opportunities offered to the PT or Depute Head Teacher;
 - the duration of the support stage;
 - the PT or Depute Head Teacher's performance at the start of the support stage;
 - the PT or Depute Head Teacher's performance at the end of the support stage.
- ❖ The above information will be considered at subsequent stages in the employer's formal disciplinary proceedings as outlined in 'South Ayrshire Council – Educational Services; Disciplinary Procedures for Teaching Staff'
- ❖ Section 5 Disciplinary Sanctions may be particularly relevant at this stage

Stage 4: Referral to the GTC Scotland

- ❖ It should be noted that the Council's power to remove the name of a teacher from the register for incompetence relates to teaching competence not administrative/managerial competence and therefore referral to the GTCS would not be appropriate unless the disciplinary findings also relate to teaching competence.

MISCELLANEOUS

1. In cases where there is **police involvement** and there is a possibility of a teacher being charged with a criminal offence, disciplinary action may be taken irrespective of any action contemplated or taken further under the Criminal Law.

2. In such cases **normal disciplinary procedures should apply**, however the following **minor variations should be considered**:

- (i) The investigatory procedure should be initiated promptly before recollections fade
 - (ii) A decision on whether or not to move to disciplinary action should be taken within the normal timescale indicated in 'South Ayrshire Council – Educational Services, Disciplinary Procedures for Teaching Staff'
 - (iii) The Disciplinary Hearing may be postponed, by agreement of both sides, pending the outcome of any police investigation or action taken under the Criminal Law
3. Cases involving allegations of sexual, racial or disability harassment should be conducted in the normal way according to 'South Ayrshire Council – Educational Services, Disciplinary Procedures for Teaching Staff'.
4. It should be noted that any such allegations might be in contravention of the Sex Discrimination Act (1975), the Race Relations Act (1976) and the Disability Discrimination Act (1995) and as such might be a criminal act which should be reported to the police. Further advice should be sought from the appropriate , Educational Services and the terms of 1 and 2 above should be applied.
- copies of any correspondence relating to the issue
 - details of any referrals to Occupational Health or any other agency
 - actions taken in response to any reports from such referrals