

Scottish Negotiating Committee for Teachers

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Dear Colleague

SNCT/18

REVISED DISCIPLINARY FRAMEWORK

1. The Scottish Negotiating Committee for Teachers (SNCT) has reached agreement on a revised disciplinary framework to replace section 15.1 in the scheme of salaries and conditions of service.
2. The revised framework is set out in the annex to this circular.

Yours sincerely

Dan Brown (Employers' Side)
Ken Wimbor (Teachers' Panel)
John Swift (Scottish Executive)

Joint Secretaries

To: Chief Executives
Directors of Education
Directors of Personnel

Copy: Directors of Finance

DISCIPLINARY FRAMEWORK FOR SCOTTISH 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 its locally 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. These procedures should conform with the framework set out below.

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 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.
- 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 (copy attached as an appendix to this framework).
- 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 should 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 should not be heard by the same person who issued the disciplinary sanction.
- (c) Apart from gross misconduct, no teacher shall be dismissed for the first breach of discipline.
- (d) There shall 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 shall 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 should appoint an investigating officer. 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. The investigating officer should 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 must not 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 at an early stage 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 should be conducted as speedily as possible consistent with the principles of fairness and natural justice and time limits should be incorporated into the terms of the disciplinary procedure to ensure that, in most cases, the investigation takes no longer than, e.g. 15 working days.
- 3.3 All teachers should 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 should be advised of the outcome of the investigation. Where following an investigation no further action is to be taken in terms of the disciplinary procedures then all references to the investigation should be removed from the teacher's personal file and destroyed.

- 3.5 Any procedure which includes “precautionary suspension” as part of the disciplinary procedure must also comply with the following principles.
- (a) The precautionary suspension must be on full pay and must not be associated with any assumption of guilt.
 - (b) Precautionary suspensions should only be used in the most serious cases of misconduct or poor performance or where the teacher’s presence at the normal place of work could prejudice the investigation. Consideration could be given to a temporary transfer pending the conclusion of the investigation and any subsequent disciplinary process.
 - (c) All precautionary suspensions should be reviewed at agreed regular intervals.

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.
- 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 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 their school and will have the power to issue oral and written warnings.
- 5.4 The Director of Education 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 Competence should be followed at all times. Before taking action for dismissal a 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 authority. 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 | Appeals Sub-Committee or other appropriate sub-committee |

6.2 Appeals procedures are devolved for determination to local negotiating committees. Appeals against dismissal will be to an appropriate sub-committee (or equivalent) of the Council set up for that purpose.

7. **Time Limits**

7.1 Appropriate time limits should be agreed within the local negotiating committee covering the following aspects of the disciplinary procedure. The suggestions included are for illustrative purposes only and refer to working days and must be agreed at local level. 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 | 10 days until each review |
| 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 will have to be agreed as will what is to happen to warnings at the end of the agreed period of time. Warnings can either be expunged (i.e. removed from the teacher's personal file and destroyed) or disregarded after the appropriate length of time. The following suggested time limits must be agreed at local level.

| 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 shall 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.
