

Education Services
Policy, Procedure and Guidance

**DISCIPLINARY POLICY, PROCEDURE AND GUIDANCE
(TEACHERS & ASSOCIATED PROFESSIONALS)**

2015

POLICY

1 POLICY STATEMENT

- 1.1 This document sets out the Council's Disciplinary Policy on conduct or long-running under-performance and the procedure to be applied where a member of teaching staff or associated professionals' conduct or long-running under-performance falls below the normal or acceptable standards. Its aim is to help, support and encourage teaching staff to achieve and maintain acceptable standards of conduct.
- 1.2 This Policy is for discipline issues. If the issue is one of competence then the matter should be considered in conjunction with the relevant Code of Practice for Competence in the first instance: Code of Practice for Schools on Teacher Competence; Procedures for Dealing with Underperformance; Code of Practice for Schools on Principal Teacher and Depute Headteacher Competence; Code of Practice on Headteacher Competence.
- 1.3 Further Management information in relation to this policy can be found in the Disciplinary Management Procedure on page 4 together with template letters for use in disciplinary matters in the [Resource Pack](#), published separately.
- 1.4 The Policy complies with the '[Disciplinary Framework for Teachers](#)', SNCT Handbook (Part 2, Appendix 2.11) and the '[Framework on Teacher Competence](#)' GTCS (2012). This Policy also complies with relevant employment legislation and the ACAS code of practice.

2 SCOPE

- 2.1 This Policy sets out the Council's Discipline Policy as it applies to all registered teaching staff and those retaining SNCT conditions of service in Dumfries and Galloway Council.

3 PRINCIPLES

- 3.1 Good discipline is essential to the operation of Dumfries and Galloway Council.
- 3.2 The disciplinary process is intended as a positive means of emphasising and encouraging changes required in conduct or long-running under-performance, rather than simply a means of imposing sanctions or as necessarily leading to dismissal.
- 3.3 Where appropriate, alternatives to formal disciplinary action will be considered in the first instance. In particular individual advice, support, counselling and/or training may be appropriate.
- 3.4 Disciplinary action will be applied equitably and fairly after proper investigation. Where a formal process takes place the employee will be advised of the nature of the complaint against him or her and will be given the opportunity to present their case before any decision is made at a Disciplinary Hearing.
- 3.5 Disciplinary matters will be dealt with in the strictest confidence. All parties, including witnesses, must ensure that privacy and confidentiality are maintained at all times. Any person who fails to abide by the rules of confidentiality may also find themselves subject to the disciplinary process.
- 3.6 Those conducting investigations or Disciplinary Hearings must familiarise themselves with the Council's Guidance on the Conduct or long-running under-performance of Disciplinary Investigations. This can be found in the associated [Resource Pack](#).

3.7 Disciplinary matters must be dealt with promptly and must not be unreasonably delayed. The timescales involved in completing an investigation will vary based on the nature and complexity of the investigation and advice on such matters should be taken from Human Resources.

4. **MONITORING & REVIEW**

4.1 This Council Policy has been agreed with the teachers' unions through the Local Negotiating Committee for Teachers (LNCT). This Policy is subject to regular revision.

PROCEDURE

1 INTRODUCTION

- 1.1 This document comprises the Council's formal Disciplinary Procedure. This process should be used when a teacher or associated professional's covered by SNCT terms and conditions conduct falls below the [GTCS Code of Professionalism and Conduct](#).
- 1.2 This disciplinary process will also apply to matters of long-running under performance in conjunction with the [GTCS Framework on Teacher Competence \(2012\)](#) and Dumfries and Galloway Codes of Competence:
 - [Headteacher Competence](#)
 - [Principal Teacher and Depute Headteacher Competence](#)
 - [Teacher competence](#)
- 1.3 All disciplinary matters will be dealt with in a private and confidential manner.

2. ROLES AND RESPONSIBILITIES

- 2.1 The Director is responsible for the overall management of conduct or long-running under-performance standards within Education Services. On a day to day basis it is the responsibility of the teacher's immediate line manager to provide guidance and counselling where appropriate.
- 2.2 The authority to take disciplinary action rests with the Director, however the Director is able to delegate authority to appropriate managers within the Service subject to the following minimum standards:
 - a) Spoken warnings may be issued by the Headteacher, Depute Headteacher or a more Senior Officer;
 - b) Written warnings may be issued by the Headteacher, Depute Headteacher or a more Senior Officer;
 - c) Final Written warnings (including those with additional punitive sanctions) may be issued by a Head of Service or the Director;
 - d) Dismissal may be effected by a Head of Service or the Director.
- 2.3 If a formal conduct or long-running under-performance issue is identified, a Nominated Officer will be responsible for overseeing the disciplinary process. The Nominated Officer will:
 - Appoint an Investigating Officer;
 - Consider the need for suspension or alternatives;
 - Consider the completed investigation report and if appropriate, refer the case to a hearing. The Nominated Officer will normally become the Disciplining Officer at any subsequent hearing.
- 2.4 The appointed Investigation Officer has responsibility for compiling and presenting an Investigation Report (template found in the [Resource Pack](#)) to the Nominated Officer within the identified time-scales set out by the Nominated Officer. Additional guidance for Investigating Officers is available in the Investigating Officers Guidance Pack, see page 14.
- 2.5 The Investigating Officer is likely to be required to present their report at a Disciplinary Hearing.

- 2.6 Human Resources are available to support and advise on serious disciplinary matters and must be present in any process involving allegations of potential gross misconduct.
- 2.7 Where a grievance is raised during a disciplinary process, the Nominated Officer must take advice from Human Resources. In some instances the disciplinary process may be temporarily suspended.

3. THE RIGHT TO BE ACCOMPANIED

- 3.1 Teachers should be advised of their rights to be accompanied by a Trade Union representative or other appropriate work colleague at formal meetings.
- 3.2 The Trade Union representative or work colleague can address any formal meeting (Investigation Interview / Hearing), present and summarise the employee's case, respond on behalf of the employee to any views expressed at the meeting and confer with the employee during the meeting. The companion does not have the right to answer direct questions on the employee's behalf.
- 3.3 Where there are concerns raised about representation from teachers then a request may also be made for a support worker or interpreter to be present during the process.

4. INFORMAL CONSIDERATION

- 4.1 In the course of normal day-to-day management it is expected that teachers will be advised of any conduct issues by their manager, who will provide support and guidance on how to make the necessary improvements.
- 4.2 Normally this step will be regarded as the first step in addressing conduct concerns and represents informal action out-with the disciplinary process. Informal action is appropriate for low-level misconduct which has the possibility of straightforward remedy. Where informal action fails to achieve the required improvement, further misconduct concerns will be considered as part of the formal disciplinary process.
- 4.3 Teachers should be advised that informal warnings do not form part of the formal disciplinary procedure although further occurrences may result in the commencement of formal action.

5. DEALING WITH COMPLAINTS/ALLEGATIONS AGAINST TEACHERS BY PUPILS OR CARERS

- 5.1 As soon as a member of staff is made aware of an allegation against another member of staff by a pupil or a parent/guardian they must report the matter immediately to the Headteacher or their representative without delay. The member of staff must hear the allegation in full but must not attempt to interview the person making the complaint. The staff member must consider whether there may be a child protection issue.
- 5.2 On receipt of the allegation there must be a preliminary investigation to determine whether there is substance to the allegation. If appropriate, this account should be recorded in writing and a list should also be made of all witnesses to any allegation. This information, depending upon the decision taken, may be used in future action. There may be a decision re Police involvement required at this stage.
- 5.3 If the decision taken is that the allegation is serious and may have substance the Formal Disciplinary Process should be followed.

6. CRIMINAL OFFENCES ASSOCIATED WITH EMPLOYMENT

- 6.1 The Disciplinary Procedure is only concerned with criminal offences which have a bearing on employment and/or which affect the teacher's suitability for the post. This Procedure covers offences whether committed during working hours or not.
- 6.2 Teachers must conduct themselves as appropriate in line with the [GTCS Code of Professionalism and Conduct](#), including notifying the Council at the earliest opportunity of any criminal offence which may impact upon their employment.
- 6.3 If a criminal offence at work is discovered, it must be reported immediately to the Director, who must immediately consult with Human Resources to decide what requires to be done. Where the Police are involved, it is not always necessary to wait for criminal proceedings to be determined before addressing the matter. However, where the Police so request because of possible impediment to Police Investigation, the Disciplinary Investigation may be delayed. In the absence of suitable alternatives, suspension with pay may be used pending further disciplinary proceedings. After full Police Investigation, disciplinary action appropriate to the offence may be taken.

7 FORMAL DISCIPLINARY PROCESS

- 7.1 No disciplinary action against a Trade Union representative shall commence until the Head of Organisational Development and Human Resources and the appropriate full time Trade Union Official have been consulted.
- 7.2 Consideration of Suspension
- 7.2.1 The appropriate Headteacher/Depute Headteacher may consider suspending an employee whose alleged conduct appears to be so serious that it could constitute Gross Misconduct (See [Examples of Gross Misconduct](#)). When suspension (or alternatives to suspension) is being considered, consultation with Education Services Senior Management Team and Human Resources must take place as soon as possible. Suspension is also appropriate in cases where it is deemed necessary to facilitate the investigation process by minimising the risk of prejudice. Suspension must always be confirmed in writing, a template Notification of Suspension from Work, can be found in the [Resource Pack](#).
- 7.2.2 Where the proposed suspension involves a Trade Union representative, before any action is taken, the Head of Human Resources must be consulted as well as the appropriate full time Trade Union Official.
- 7.2.3 Alternatives to suspension should be considered first. This can include working at an alternative location and/or in an alternative role, on a temporary basis whilst the investigation process is ongoing.
- 7.2.4 Periods of suspension must be kept as short as practicable and must be reviewed regularly. Managers are required to consider what support arrangements need to be put in place during the period of suspension and must keep evidence of the ongoing suspension review process. A nominated person should be appointed to liaise with the suspended employee and to act as their point of contact with the organisation for the period of the suspension. There must be regular contact with the employee and employee representative (if appropriate) to confirm the status of the suspension.
- 7.2.5 Suspension is without prejudice and will be with normal pay. It should be made clear to the employee that suspension is not an assumption of guilt and is not considered a disciplinary sanction.

- 7.2.6 Following investigation, if it is decided not to proceed to a Disciplinary Hearing, the suspension will cease and the employee will be notified in writing. The employee will be expected to return to their normal work arrangements and appropriate support for the employee offered.
- 7.3 Disciplinary Investigation
- 7.3.1 A [Notification of Investigation](#) letter will be sent to the teacher by the Nominated Officer. This will detail the allegation(s), the Investigating Officer and any other relevant conditions pertaining to the investigation process.
- 7.3.2 The teacher will be invited to attend relevant investigatory interviews by the Investigating Officer ([Investigatory Interview](#) letter).
- 7.3.3 The Investigating Officer should determine which witnesses need to be interviewed. Refer to section 6 of Investigating Officers Guidance Pack on page 15.
- 7.3.4 An accurate note should be taken of all investigatory interviews and all participants will sign and date their agreement. These notes will form part of the [Investigation Report](#).
- 7.3.5 It may be necessary for a pupil to be interviewed as part of the investigatory process. In such cases pupils must be interviewed individually and in the presence of an appropriate adult who is not themselves a potential witness. It is critical that any such witness is bound by the strictest level of confidentiality. The Investigating Officers Guidance must be followed, see page 14.
- 7.3.6 If, during the course of an investigation, further related allegations come to light then the employee should be notified immediately ([Further Allegation\(s\) Arising](#) letter). These further allegations should then be incorporated and investigated as per normal procedure.
- 7.3.7 If, following investigation, it is decided by the Nominated Officer not to proceed to a Disciplinary Hearing the employee will be notified in writing that there is no case to answer ([Outcome of Investigation - No Case to Answer](#) letter). In some cases alternative action may be required for example, facilities open to the teacher to improve their conduct or long-running under performance.
- 7.4 Disciplinary Hearing
- 7.4.1 Where, after investigation, a teacher's conduct or long-running under-performance is considered so unsatisfactory as to warrant formal consideration, the teacher will be called to a formal Disciplinary Hearing.
- 7.4.2 A [Notification of Disciplinary Hearing](#) letter will be sent to the employee detailing the allegation(s) which have been investigated and any other related allegations which have come to light. In cases of potential gross misconduct, this letter must clearly state to the employee that the allegations potentially constitute gross misconduct. The notification should also provide details of the time, venue and all attendees for the Disciplinary Hearing. A copy of the completed [Investigation Report](#) must also be sent to the teacher and teacher's representative (if appropriate).
- 7.4.3 Disciplinary Hearings will be held as soon as possible after the events concerned, subject to the teacher having a minimum of 10 working days' notice, although this can be shorter with agreement.

- 7.4.4 Teachers have a right to request a postponement of up to 5 working days in order to accommodate the attendance of their chosen representative. The revised arrangements should be communicated in writing to the Teacher.
- 7.4.5 There may be occasions when a teacher is persistently unable or unwilling to attend a Hearing. This may be for various reasons including illness or a refusal to face up to the issue. The Nominated Officer will need to consider the facts and make a decision on how to proceed. Considerations may include:
- a) No obvious reasons;
 - b) Medical opinion on whether the employee is fit to attend the meeting;
 - c) How previous cases in the past have been dealt with;
 - d) The seriousness of the disciplinary issue under consideration.

Where a teacher persistently continues to be unavailable to attend a Hearing, the Nominated Officer can hold the Hearing and make a decision based on the evidence available in the absence of the teacher. The teacher should be informed this is the case. In such circumstances advice must be sought from Human Resources by the Nominated Officer.

- 7.4.6 During the Disciplinary Hearing the teacher will be advised that they are entitled to explain any alleged acts or omissions.
- 7.4.7 Any written evidence to be considered as part of the Hearing requires to be submitted to the Nominated Officer or teacher a minimum of three working days prior to the Hearing.
- 7.4.8 Both parties may wish to bring witnesses to a Hearing. It is the responsibility of each party to make their own arrangements for witnesses to attend. Where a witness is a Council employee, permission must be sought from the appropriate manager. The Disciplining Officer must be notified of witnesses to be called by either party prior to the commencement of the Hearing. It may be necessary for a pupil to be called as a witness to a formal Hearing however this should be avoided wherever possible ([Invite to Witness to Attend Disciplinary Hearing](#) letter).
- 7.4.9 New matters arising at a Disciplinary Hearing will not be excluded from consideration. However, these may require the Hearing to be adjourned at the discretion of the Chair.
- 7.4.10 A representative from Organisational Development and Human Resources will give advice and assistance to those conducting a Disciplinary Hearing as appropriate but would not normally attend a Hearing. Where allegations are identified as potential gross misconduct a representative from Organisational Development and Human Resources must be present at the Hearing.
- 7.4.11 Further guidance on the format and conducting a Disciplinary Hearing is outlined within the Disciplinary Hearing Process document within the [Resource Pack](#).
- 7.4.12 Disciplinary action will only be taken following a Disciplinary Hearing.
- 7.4.13 The Disciplining Officer, at their discretion, will announce the decision after the Hearing or in writing to both parties within 5 working days.

Where action is to be taken, the letter will specify:

- a) the nature of the complaint;
- b) that a sanction has been given and the type of warning;
- c) the facilities open to the teacher to improve his or her conduct or long-running under-performance or performance;
- d) that the facts have been entered on the teacher's record and the length of time during which the facts will be retained on his/her record;
- e) the likely consequences of any further unsatisfactory work or conduct or long-running under-performance or performance;
- f) the teacher's right of appeal.

Template Letters:

[Disciplinary Hearing Decision - Dismissal Without Notice \(Gross Misconduct\)](#)

[Disciplinary Hearing Decision - Dismissal](#)

[Disciplinary Hearing Decision - Final Written Warning \(12 months\)](#)

[Disciplinary Hearing Decision - First Written Warning \(9 months\)](#)

[Disciplinary Hearing Decision - Spoken Warning \(6 months\)](#)

7.4.14 Where no action is to be taken, this must also be communicated in writing to the Teacher ([Disciplinary Hearing Decision - No Action to be Taken](#) letter) and any relevant support/follow-up arrangements put in place (e.g. to support their return to work if suspended from duty).

7.4.15 Where a teacher is represented at a Hearing, they should be asked for permission to send a copy of any warning letter to that representative.

7.4.16 The Director must be informed of any disciplinary action taken. Relevant managers must also keep records of review and expiry dates for warnings or sanctions.

8 WARNINGS

8.1 Following a Disciplinary Hearing, if the Chairperson is satisfied that misconduct or long-running under-performance an offence has occurred, he/she will issue a warning (except in the case of potential gross misconduct or discipline of a teacher already subject to a Final Written Warning). Depending on the circumstances and the gravity of the misconduct or long-running under-performance, and taking into account the disciplinary record of the teacher, the warning will be one of the following:-

Spoken Warning

If the occurrence is considered to be of a minor or less serious nature, a Spoken Warning will be given. The teacher will be left in no doubt as to the reason or grounds for the Warning and the likely consequences of repetition or further disciplinary offences. Where a Spoken Warning is issued, it will be confirmed in writing to the teacher normally within 5 working days of the Hearing. A copy will be retained on the teacher's record for a period of six months and will be referred to at any subsequent Disciplinary Hearing in that period. Subject to satisfactory conduct and/or performance, Spoken Warnings will expire after a discipline free period of six (calendar) months unless otherwise specified.

Written Warning

If the offence is a serious one or if a further offence occurs whilst a teacher is subject to a current Spoken/Oral Warning, a Written Warning will normally be given and confirmed in writing normally within 5 working days of the Hearing. The teacher will be left in no doubt as to the reason or grounds for the Warning and that a further breach may result in further disciplinary action being taken. A copy of the Written Warning will be retained on the teacher's record for a period of nine calendar months from the date of Hearing and will be referred to at any subsequent disciplinary hearing in that period. Subject to satisfactory conduct and/ or performance, the Warning will expire after a discipline-free period of nine months unless otherwise specified.

Final Written Warning

If an offence is sufficiently serious to warrant only one written warning but is insufficiently serious to justify dismissal, or if a further offence occurs after the issue of a Written Warning, a Final Written Warning will normally be given and confirmed in writing, normally within 5 working days of the Hearing. The teacher will be left in no doubt as to the reason and grounds for the Warning and the likely consequences of any repetition or further disciplinary offences. A copy of the Final Written Warning will be retained on the teacher's record for a period of twelve months from the date of the Hearing and will be referred to at any subsequent Disciplinary Hearing in that period. Subject to satisfactory conduct and/or performance, the Warning will expire after a discipline-free period of twelve months unless otherwise specified.

Punitive Sanctions

In addition to a Final Written Warning, an appropriate Punitive Sanction may be imposed as an alternative to dismissal. Where a Punitive Sanction is contemplated, the Head of Organisational Development and Human Resources must be consulted and will be present or represented at such disciplinary proceedings.

The punitive sanctions which are available are:

- a) Demotion;
- b) Compulsory Transfer;
- c) Suspension of pay increment.

9 GROSS MISCONDUCT

- 9.1 Gross misconduct is behaviour of such a nature that the Council cannot tolerate continued employment of the teacher. For further information see the list of Examples of Gross Misconduct in the [Resource Pack](#).
- 9.2 The General Teaching Council Scotland (GTCS) will be notified of any cases of gross misconduct involving teaching staff.
- 9.3 Where a teacher faces allegations, which if upheld, could result in the conclusion of gross misconduct, he or she may be suspended on full pay during the investigatory process and prior to any subsequent Disciplinary Hearing.
- 9.4 If an accusation of gross misconduct is upheld by a Disciplining Officer, it will normally lead to the immediate dismissal of the employee. In these circumstances advance warning of dismissal, notice periods or compensation for early termination of contract are not required. In such cases the Disciplining Officer should be able to demonstrate that they have properly considered mitigating factors before reaching that conclusion.

10 DISMISSAL

- 10.1 A Disciplining Officer cannot dismiss an employee for a first offence unless it is gross misconduct.
- 10.2 Dismissal may result in cases where any further offence is committed during the currency of a Final Written Warning or a Final Written Warning with Punitive Sanctions. Dismissal will also result where the Disciplining Officer, having taken account of the relevant facts of the case, determines that gross misconduct or long-running under-performance has taken place.
- 10.3 An Officer from Human Resources must be present where the possibility of dismissal exists.
- 10.4 Dismissals will be confirmed in writing to the teacher, stating the reasons for dismissal, the date on which employment will terminate and outlining the right of appeal. The written confirmation will normally be issued within five working days of the decision, a copy lodged on the file and a copy sent to the teacher's representative (if any) providing permission is given.

11 APPEALS

- 11.1 A Teacher is entitled to appeal against any disciplinary action taken against them.
- 11.2 Appeals must be lodged with the Director within ten working days of receipt of the letter confirming disciplinary action and must fully state the grounds for appeal.
- 11.3 Appeals against Spoken, Written or Final Written Warnings will normally be heard by a more Senior Manager than the manager who issued the Warning. The Senior Manager must not be below the level of Head of Service.
- 11.4 Appeals against all warnings will end at Director level.
- 11.5 Appeal Hearings should normally be arranged within ten working days of receipt of the letter of appeal.
- 11.6 Appeals against Dismissal, or Final Written Warnings with Punitive Sanction, will be acknowledged by the Director who will forward the letter to the Head of Human Resources. Within 15 days of the appeal letter being received, the Head of Human Resources will arrange for the Appeal to be heard by the appropriate Council Committee within two months of the receipt of the Appeal.

11.7 The following table indicates the lowest levels of authorisation in relation to the issuing of Disciplinary Sanctions and hearing of Appeals:

| Level of Warning | Issued By | Appeal Heard By |
|---|------------------------|-----------------------|
| Spoken/Oral | Headteacher or Nominee | Director or Nominee |
| Written Warning | Headteacher or Nominee | Director or Nominee |
| Final Written Warning (FWW) | Director or Nominee | Director or Nominee |
| Final Written Warning (FWW) / Punitive Sanction | Director or Nominee | Appeals Sub Committee |

| | | |
|---|---------------------|-----------------------|
| Dismissal | Director or Nominee | Appeals Sub Committee |
| * Nominees referred to above at Departmental Level must not be below the level of Head of Service. At school level, nominees would include Depute Headteachers. | | |

11.8 A teacher will be given written confirmation of the date and time of the Appeal Hearing at least seven working days in advance.

12. REFERRAL TO THE GENERAL TEACHING COUNCIL FOR SCOTLAND

12.1 A case must be referred by the employer to GTC Scotland when:

- a teacher is dismissed or;
- a teacher resigns or leaves his/her post in the context of a possible dismissal.

12.2 The employer must explain to GTC Scotland the circumstance which caused them to dismiss the registered teacher or to conclude that they would have, or might have, dismissed the registered teacher.

13 GLOSSARY

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|-----------------------------------|--|
| APPEAL PROCESS | Is the process carried out when an employee has submitted an appeal against disciplinary action. |
| CONDUCT | An employee’s behaviour in the workplace. |
| DISCIPLINARY ACTION | Formal action against an employee: for example issuing a first written warning for misconduct or dismissing someone for gross misconduct. |
| DISCIPLINARY HEARING | A formal meeting chaired by the Disciplining Officer to ascertain whether or not disciplinary action is required against an employee who has allegations made against them. |
| DISCIPLINARY INVESTIGATION | A formal process carried out by an appointed Investigating Officer to gather all facts relevant to the allegation(s) within a reasonable timescale, including asking the employee for their explanation and where appropriate, interviewing any witnesses whilst the memories of those involved are still clear. |
| DISCIPLINARY PROCEDURE | It is a procedure for the Council to follow to deal with cases of misconduct or unsatisfactory performance. It helps employers deal with discipline cases fairly and consistently. |
| DISCIPLINING OFFICER | A Manager within the Council who is responsible for chairing a Disciplinary Hearing. |
| GROSS MISCONDUCT | Are acts which are so serious as to justify dismissal (Examples of Gross Misconduct). |
| INVESTIGATING OFFICER | Is an employee of the Council who has been asked to carry out an investigation by the Nominated Officer. |
| INVESTIGATORY INTERVIEW | A meeting carried out by the Investigating Officer to ask questions and record responses related to allegations in an attempt to gather factual information. |
| NOMINATED OFFICER | An employee within the Council who is responsible for overseeing the disciplinary process. The Nominated Officer normally becomes |

the Disciplining Officer if there is a need for disciplinary action to be taken.

| | |
|---|---|
| NOMINATED SUPPORT CONTACT PERSON | An employee of the Council who is nominated to support an employee who has been suspended from work without prejudice. The role of the nominated support contact is to be available to speak to the employee as and when required, offering support, information and guidance as necessary. |
| PUNITIVE SANCTION | Punitive sanction can be imposed by a Disciplining Officer as an alternative to dismissal (except in cases of gross misconduct). Punitive sanctions can include demotion and compulsory transfer. |
| LONG-RUNNING UNDERPERFORMANCE | Long-running under-performance is the term used to describe the problem when Stage 3 of the GTCS Framework on Teacher Competence (2012) 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 Standard for Full Registration (SFR). |
| WITHOUT PREJUDICE | The basic meaning is without loss of any rights. When this statement is used in a disciplinary matter it often means that a decision has been made with no pre-conceived opinions or feelings, either favourable or un-favourable. |

DISCIPLINARY INVESTIGATING OFFICERS GUIDANCE PACK

1 INTRODUCTION

- 1.1 This document is intended to support anyone who has been asked to carry out a Disciplinary Investigation.
- 1.2 An investigation is fundamental as the first step toward any potential disciplinary action being taken. It is essential that the investigation is a full, fair and objective process in order to determine the facts and to support the Nominated Officer (the person who commissioned the investigation) to decide whether further action is necessary. All facts relevant to the allegation(s) should be gathered as soon as possible, including asking the teacher for their explanation and where appropriate, interviewing all witnesses whilst the memories of those involved are still clear.
- 1.3 This document is intended as a general guide to support Investigating Officers. Further advice is available from Human Resources and where appropriate and Human Resources Officer.
- 1.4 Support an Investigating Officer if the case is a matter of potential gross misconduct (see [Examples of Gross Misconduct](#)).

2 WHO INVESTIGATES

- 2.1 The Investigating Officer will have been appointed by the Nominated Officer who commissioned the investigation and will receive a copy of the letter which clearly outlines the allegations against the Teacher.
- 2.2 The Investigating Officer will seek specialist advice as required from Human Resources (and possibly other services such as Audit, Business & Technology Solutions, Police, Child Protection).

3 PREPARATION FOR INVESTIGATION

- 3.1 Investigating Officers should ensure that they are familiar with the Disciplinary Policy (Teachers & Associated Professionals), see page 2.
- 3.2 It will be necessary to secure relevant information (which may include written documentation, computer records or physical evidence) as soon as possible. In some cases, urgent priority must be given to securing relevant information before it can be deleted or destroyed.
- 3.3 In carrying out investigations, the Investigating Officer is advised to prepare thoroughly including assembling any relevant documentation, deciding which witnesses may be required and notifying individuals in advance (where possible).
- 3.4 The Investigating Officer should prepare a programme of meetings with all relevant witnesses they need to interview. Where applicable appropriate arrangements with line managers to ensure they can attend their interview should be made. Any pupil witnesses should be interviewed at the earliest possible opportunity. Where possible employees required for interview should be given reasonable notice.

3.5 The following checklist outlines the key considerations when carrying out an investigation:

Checklist for Investigation

- Establish the exact nature of the complaint and maintain focus on the specific allegations throughout the process;
- Collate all relevant information & obtain statements from all witnesses;
- Examine the teacher's personal record in relation to the allegation;
- Consider any explanations or mitigating circumstances that the Teacher may rely upon;
- Make no assumptions;
- Seek any specialist advice required;
- Ensure personal information relating to children is redacted prior to submission.

4 RECORD KEEPING

4.1 Detailed records should be kept throughout the investigation process as these may be required as part of any future Hearing, Appeal or Tribunal Process. This includes the written notes from interviews conducted, copies of letters issued and notes explaining any other specific circumstances (e.g. telephone calls (or other informal correspondence), Occupational Health advice given etc).

4.2 Investigating Officers should find that through using the templates provided, including the template [Disciplinary Investigation Report](#) and the [Chronological Description of Events](#) that they will naturally produce and collate the records referred to above.

4.3 Data Protection rules including General Data Protection Regulation 2016 (GDPR), Data Protection Act 2018 and any other regulations made under these should be adhered to at all times when handling data as part of any investigation process.

5 TIMESCALES

5.1 Disciplinary matters must be dealt with promptly and must not be unreasonably delayed as unreasonable timescales may undermine the credibility of the investigation.

5.2 The timescales involved in completing an investigation will vary based on the subject matter and complexity of the investigation. Investigating Officers must give suitable priority to the completion of the investigation and must aim to submit their completed Investigation Report within a reasonable timescale.

5.3 In some cases, the Disciplinary Investigation may unavoidably be delayed due to reasons such as sickness absence or whilst a criminal, child protection or fraud investigation is carried out.

5.4 Teacher(s) under investigation (and their representative(s) if applicable) should be kept informed of the anticipated timescale and the reasons for any delay.

6 HOLDING INVESTIGATION MEETINGS

6.1 Principles

6.1.1 It is good practice for Investigating Officers to have another person present when taking statements and interviewing witnesses.

- 6.1.2 When talking to any witnesses, remember to focus on the incident or allegation and not on the person concerned.
- 6.1.3 When asking questions during an Investigation it is important that the Investigating Officer remembers to ask open questions to get a broad idea of what has happened; use non-biased questions; don't use leading questions; and closed questions requiring yes/no answers should only be used when specific information is required. Probing questions may be required to gain supplementary information to questions asked.
- 6.1.4 Interview notes should be typed up and sent to the interviewee as soon as possible after the interview. These notes must be an accurate record of the questions asked and the answers given, however they do not need to be verbatim.
- 6.1.5 The interviewee should be asked to sign off the note as being accurate, or to note any amendments they wish to be made. It is useful if the Investigating Officer sets a reasonable deadline for any responses to be made.
- 6.1.6 Where the interviewee identifies amendments that they wish to be made, the Investigating Officer should give consideration to these (i.e. do they fit with their recollection of the interview and the responses provided?). If agreement cannot be reached and the interviewee refuses to sign off the typed note of their interview, the Investigating Officer should include the typed note in their report as per their recollection of the interview but attach a note to document the disagreement and explain the changes which the employee wished to make.
- 6.2 Witnesses
- 6.2.1 The Investigating Officer may interview any individuals who they feel could provide any information to assist the investigation.
- 6.2.2 Witnesses may wish to request to bring along a trade union representative or support person to the meeting and this should be accommodated.
- 6.3 Young Witnesses
- 6.3.1 All witnesses identified in the preliminary investigation, reference section 5 on page 5 of the Disciplinary Procedure (Teachers & Associated Professionals), should be interviewed. Young witnesses should be accompanied by an appropriate adult. If unsure who this is consult with the Council's Child Protection Officer.
- 6.3.2 Normally young witnesses are not called to a Disciplinary Hearing. Therefore it is vital that a verbatim account is taken of an interview. A note-taker must accompany the Investigating Officer and record the interview. The note of the interview should be signed and dated by the interviewee and the appropriate adult.
- 6.4 Teacher Under Investigation
- 6.4.1 The teacher should be invited to attend relevant investigatory interviews using the [Investigatory Interview](#) letter.
- 6.4.2 The teacher may wish to request to bring along a trade union representative or support person to the meeting and this should normally be accommodated.
- 6.4.3 Teachers Suspended From Duty
In some cases Teachers will have been suspended from duty and will have received a [Notification of Suspension from Work](#) letter, detailing the terms of their suspension and any other information relevant to their suspension. It is not the responsibility of the Investigating

Officer to make decisions around suspension however it is important that Investigating Officers are familiar with section 7.2 of the Disciplinary Procedure (Teachers & Associated Professionals) on page 6 in cases where a suspension is in place.

6.4.4 Sickness Absence During Investigation

- 6.4.4.1 Where it is the Investigating Officer who is sick, it is normal that they will have an idea of how long they may be off and will be in a position to inform the Nominated Officer if they foresee any impacts on the investigation process as a result of their absence. The Nominated Officer can then make a determination on whether any delay is acceptable or whether consideration needs to be given to appointing another Investigating Officer.
- 6.4.4.2 In the event that the teacher under investigation is sick, their absence should be managed as normal by their line manager. It is important that Investigating Officers are aware that sickness absence is not an automatic reason to halt an investigation process. In such a case, the Investigating Officer should establish the circumstances around the absence in order to establish the teacher's availability to attend the meeting. It may be the case, for example, that the teacher is physically unfit for their role which involves heavy lifting, but that they are fit to attend an interview.
- 6.4.4.3 Where an teacher cites the investigation process (or related factors) as the cause of their absence (e.g. they are suffering from stress as a result of the process) then an Occupational Health referral may be appropriate in order to establish the teacher's fitness to engage in the process and to identify any support or adjustments which may be made to enable to process to move forward.

7 THE INVESTIGATION REPORT

- 7.1 Once the Investigating Officer is satisfied that they have gathered all available and relevant information they must complete and submit an investigation report for the consideration of the Nominated Officer.
- 7.2 Investigating Officers should refer to the [Disciplinary Investigation Report](#) template to see a generic format/layout which can act as a useful guide when producing an investigation report. Investigation reports vary widely depending on the specific nature and size of the case.
- 7.3 In cases where young witnesses have been interviewed as part of the Disciplinary Investigation individual names, addresses or personal details which would identify them should be made anonymous from the report and appendices within. Young witnesses should be referred to as Pupil A, Pupil B etc.

8 AFTER THE REPORT HAS BEEN SUBMITTED

- 8.1 The Investigating Officer submits their report to the Nominated Officer. The Nominated Officer may wish to ask clarification in relation to specific points.
- 8.2 The Investigating Officer plays no part in the subsequent decision making process, other than clarifying content within their report if requested to do so.
- 8.3 Based on the Investigation Report, the Nominated Officer will make a decision on whether or not there is a case to answer (i.e. whether or not the matter is to progress to a Disciplinary Hearing).

8.4 If a Disciplinary Hearing is to take place, the Investigating Officer will be notified by the Nominated Officer of all the relevant details. If the Nominated Officer decides that there is no case to answer then no Disciplinary Hearing would take place.

9 DISCIPLINARY HEARINGS

9.1 Where a Disciplinary Hearing is to take place, the Investigating Officer will be asked to attend in order to present their report. This includes verbally presenting the report, then taking any questions on it from the different parties attending the Hearing.

9.2 The Investigating Officer should determine whether or not they wish to call any witnesses to the Disciplinary Hearing and if so, ensure that they notify the Nominated Officer and make appropriate arrangements for any witnesses to attend the Hearing.

9.3 The [Disciplinary Hearing Process \(Teachers & Associated Professionals\)](#) outlines the process, roles and responsibilities at a Disciplinary Hearing. Investigating Officers should be aware that they are termed as the 'Authority's Representative' at any Disciplinary Hearing.

9.4 Investigating Officers should prepare in advance for the Disciplinary Hearing and whilst it is subject to personal style, it is recommended that they write down their opening presentation (as they wish to say it) in advance. In doing so, Investigating Officers should be aware that there are two separate elements to their presentation; the initial presentation of the facts of the case and then an opportunity to 'sum-up' the case (without introducing any new information). This presentation may be used in any subsequent appeal.

10. GLOSSARY OF TERMS

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| CONDUCT | An employee's behaviour in the workplace. |
| DISCIPLINARY ACTIONS | Formal action against an employee: for example issuing a first written warning for misconduct or dismissing someone for gross misconduct. |
| DISCIPLINARY HEARING | A formal meeting chaired by the Disciplining Officer to ascertain whether or not disciplinary action is required against an employee who has allegations made against them. |
| DISCIPLINARY PROCEDURE | It is a procedure for the Council to follow to deal with cases of misconduct or unsatisfactory performance. It helps employers deal with discipline cases fairly and consistently. |
| DISCIPLINARY OFFICER | A Manager within the Council who is responsible for chairing a Disciplinary Hearing. |
| GROSS MISCONDUCT | Are acts which are so serious as to justify dismissal (Examples of Gross Misconduct). |
| INVESTIGATING OFFICER | Is an employee of the Council who has been asked to carry out an investigation by the Nominated Officer. |
| INVESTIGATORY INTERVIEW | A meeting carried out by the Investigating Officer to ask questions and record responses related to allegations in an attempt to gather factual information. |
| NOMINATED SUPPORT CONTACT PERSON | An employee of the Council who is nominated to support an employee who has been suspended from work without prejudice. The role of the nominated support contact is to be available to speak to the employee as and when required, offering support, information and guidance as necessary. |
| WITHOUT PREJUDICE | The basic meaning is without loss of any rights. When this statement is used in a disciplinary matter it often means that a decision has been made with no pre-conceived opinions or feelings, either favourable or un-favourable. |

**LONG-RUNNING
UNDERPERFORMANCE**

Long-running under-performance is the term used to describe the problem when Stage 3 of the GTCS Framework on Teacher Competence (2012) 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 Standard for Full Registration (SFR).

APPRORRIATE ADULT

The Appropriate Adult role is filled by many different types of people, including:

- parents or other family members]
- friends or carers
- social workers
- health care professionals
- charity workers
- specialist appropriate adults either paid or voluntary

John Thin
Education Officer, Staffing and Resources
Education Services

AGREED by LNCT 26 May 2015