

EAST RENFREWSHIRE LNCT AGREEMENT

**AGREED PROCEDURES FOR DEALING WITH THE UNDERPERFORMANCE OF
EMPLOYEES COVERED BY SNCT CONDITIONS OF SERVICE**

November 2021



EAST RENFREWSHIRE LNCT AGREEMENT

AGREED PROCEDURES FOR DEALING WITH THE UNDERPERFORMANCE OF EMPLOYEES COVERED BY SNCT CONDITIONS OF SERVICE

1. CONTEXT

- 1.1 East Renfrewshire Council recognises the value of supporting staff and ensuring consistent quality experiences within the classroom are provided for our children and young people. It is therefore important that a formal framework is provided for our employees and managers when dealing with under performance in the workplace.
- 1.2 Guidance in the form of the General Teaching Council Scotland (GTCS) Framework on Teacher Competence which replaces the Code of Practice on Teacher Competence, has been available for dealing with under achievement with a context of supporting employees to improve the quality of teaching since April 2012.
- 1.3 This policy formalises the GTCS guidance into a set of processes and procedures pertinent to the East Renfrewshire context.

2. INTRODUCTION

- 2.1 The vision statement of “Everyone Attaining, Everyone Achieving through Excellent Experiences” sets the benchmark for ensuring that every child/young person has consistent access to and experience of the highest quality of education which will enable him/her to achieve their maximum potential. It is essential therefore that all employees covered by SNCT conditions of service are able to provide those quality experiences and have access to appropriate training and continuous professional development opportunities in order to support them to do so.
- 2.2 In East Renfrewshire Education Department the majority of employees provide excellent service supporting children and young people in the teaching and learning process. However, there may be employees whose performance falls below that which is expected by the Department or the GTCS Standards for Registered Teachers. Employees whose performance is not at the expected level can have a negative impact on both the short term and long term learning potential of children and young people. Failure to maintain GTCS Professional Standards can demotivate children and young people often resulting in reduced enthusiasm for the overall learning process and, on occasion, have resultant indirect implications for discipline and for attendance at schools and ELC settings. East Renfrewshire Council has a key role in ensuring that the provision of education is managed effectively and in monitoring the quality of that education provision.
- 2.3 Failure to maintain GTCS Professional Standards can also have a negative effect on colleagues who may be required to provide additional support to children and young people to ensure they are not at a detriment as a result of under-performance of another teacher or employee covered by SNCT conditions of service. This can lead to overwork, stress and fractious working relations between employees.

3. IMPROVING THE QUALITY OF TEACHING AND LEARNING

- 3.1 It is essential that all employees understand what is expected of them in their respective roles. All Head Teachers and Managers should use the PRD and Quality Conversation process to promote self-evaluation and reflection against agreed sections of the appropriate GTCS Professional Standard. Continuous professional development opportunities should be made available to ensure skills and knowledge are kept up to date and relevant.
- 3.2 It is appropriate, as part of East Renfrewshire Education Department's commitment towards excellent experiences for all children and young people, to re-emphasise the procedures and practices which underpin the overall quality of teaching and learning process and the contribution each employee has in ensuring this is maintained in our schools and early learning and childcare (ELC) settings. In this there is a key role for Head Teachers and Managers in identifying appropriate continuous professional development opportunities for individual employees through each establishment's improvement planning process and in engaging with the GTCS Standards where appropriate.
- 3.3 In the circumstances provided for in terms of paragraph 8.8, Head Teachers and/or Managers may need to instigate LNCT 22 disciplinary procedures where, in spite of appropriate internal and external support, an employee continues to underperform. In such circumstances the primary concern must be for the quality of educational experience for our children and young people.

4. DEFINITION OF TEACHER COMPETENCE

- 4.1 The GTCS Framework on Teacher Competence provides the definition of competence in terms of the GTCS Standard for Full Registration (Appendix 1) and explains the steps in the process for dealing with cases of short-lived under-performance and long-running under-performance. This framework helps to inform the Education Department's procedures for maintaining standards of professional conduct and competence in teaching.
- 4.2 **Definition of Teacher Competence**
Teacher competence is described in terms of the Standard for Full Registration (SFR) and applies to teachers who have gained full registration with the GTCS. The SFR describes the:
- professional knowledge and understanding
 - professional skills and abilities
 - professional values and personal commitment

which all fully registered teachers should be able to demonstrate in their professional activities. Underperformance is therefore defined as a failure to maintain the level defined in the SFR.

5. PROVIDING SUPPORT FOR TEACHING STAFF

- 5.1 The teaching profession consistently strives to improve itself to meet the challenges presented by the wider social, political and economic changes which have all significantly impacted upon the education agenda in recent times. Within East

Renfrewshire's Education Department, teachers have embraced the educational challenge of raising levels of attainment and achievement for all through high quality excellent learning experiences

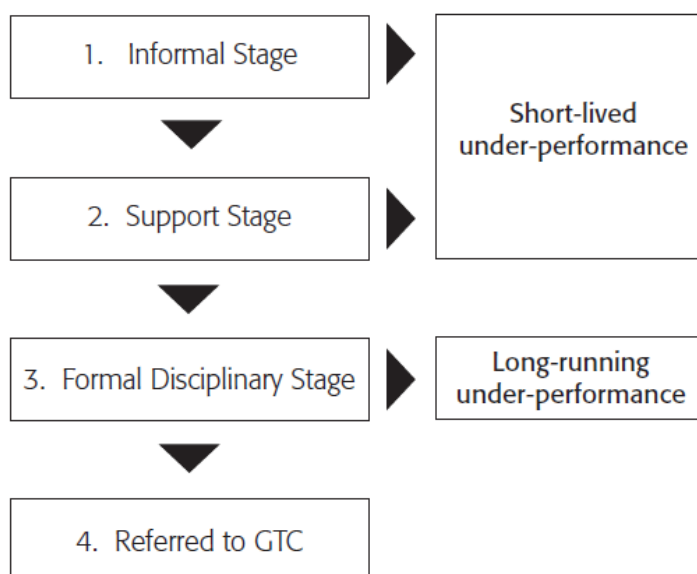
- 5.2 The School Improvement Plan for each establishment describes both the priority areas which the ELC setting / school will improve and also indicates how other areas of work and life within the establishment will be maintained. The personal development needs of individual employees and wider groups will be identified and incorporated into the school improvement agenda for the forthcoming academic session.
- 5.3 Each ELC setting / school will also have in place policies and procedures for supporting continuing professional development of all staff, including supply teachers and those involved in Initial Teacher Education such as probation teachers and students.
- 5.4 Induction for new members of staff is critically important and each establishment should have in place a clear induction policy which dovetails the departmental Probationer Induction Programme introduced in August 2018.
- 5.5 The Professional Review and Development (PRD) process for individual teachers is an important element in defining the particular development needs of individuals, not only as they relate to the School Improvement Plan of the establishment, but also in continuing personal and career development. In planning for this review employees covered by SNCT conditions of service should give consideration to using the appropriate GTCS standards to inform their self-evaluation (see LNCT/05).
- 5.6 To support the staff development function in individual schools, the Education Department's Quality Improvement Officers (QIOs) have a pastoral link with individual schools. QIO's will liaise with Head Teachers and Managers to determine whether staff development needs can be more appropriately supported at the individual school level or in a wider context. To that end the service has developed a Career Long Professional Learning Framework which ELC settings / schools may wish to access for teachers. In addition to the curriculum related provision of courses, there are training and staff development opportunities for groups of staff such as aspiring leaders, probationer teachers, teachers returning to the profession and for teachers who hold senior posts of responsibility within schools.
- 5.7 All teachers have a personal responsibility for their own professional development and must maintain a record of all CLPL activity undertaken in any one academic session. This record will be required as evidence at the time of Professional Update.

6. PROCEDURES FOR DEALING WITH UNDER-PERFORMANCE

- 6.1 Some employees may require dedicated support from senior management both in schools and the wider department in identifying where improvements require to be made, for example, planning for lessons, classroom organisation and management, delivering lessons, organising work for pupils of different levels of ability within the class and in other areas of teaching and learning, and in aspects of the roles defined for support staff.
- 6.2 As detailed in Section 4 above, the Framework on Teacher Competence, produced by the GTCS provides the definition of competence in terms of the SFR (Section 4.2 above and Appendix 1). The framework also provides guidance in dealing with cases

of short lived under-performance and long running underperformance and the framework has informed the detail within this policy.

6.3 There are four stages in the process;



6.4 Short-lived under-performance may be caused by a range of factors such as illness, personal circumstances, lack of understanding of current methodology, or external factors beyond the control of the teacher. At all stages outlined in this agreement, an employee should be advised that they can seek additional confidential support through the Council's employee counselling service provider. In stages 1 (Informal Stage) and Stage 2 (Support Stage) it is assumed that the teacher's problem is one of short-lived underperformance.

7. STAGE 1: THE INFORMAL STAGE

- 7.1 The informal stage does not form part of the Education Department's formal disciplinary procedures. Senior Management has responsibility for improvement planning and quality assurance. Prior to instigation of the Stage 1 process, any issues of underperformance should be brought to the attention of an employee at the earliest possible opportunity and subsequent support provided to facilitate a move to an acceptable level of performance. Matters of under-performance which require to be addressed as part of the Stage 1 process should not come as a surprise to an employee.
- 7.2 If improvement following the initial support described above is not evident or it is evident that there is a lack of engagement with it, managers may then choose to instigate procedures under this policy.
- 7.3 The employee will be invited, in writing with at least a calendar weeks' notice, to an informal meeting to be held between the employee and senior colleague(s) with the Head Teacher or other appropriate Senior Manager acting as chair to retain objectivity. The invitation will advise the employee of their right to be accompanied at this meeting by a trade union representative or work colleague of their choice. It will be the responsibility of the employee to ensure the availability of their chosen representative. At this meeting, the employee should be encouraged to address the areas of concern in performance openly in order to agree;

- the specific aspects of underperformance as compiled by the Line Manager that are causing concern (see Appendix 2);
- the specific areas of the SFR which are to be addressed linked to these concerns;
- the proposed mechanisms which will be put in place to support the employee to address the aspects of under-performance as outlined above;
- appropriate professional development opportunities which can be accessed.

The meeting should be as open as possible and the atmosphere should be one of support and encouragement.

- 7.4 Sympathetic consideration should be given to all reasonable requests made by the employee.
- 7.5 At all stages it is important that an accurate and full record is maintained of all meetings.
- 7.6 At the conclusion of the first informal meeting a date should be agreed to review performance. The length of time to be given for the employee to reach the required standard will depend on the context of the situation. It should not be unduly long but also constitute a reasonable length of time for the employee to reach the required standard.
- 7.7 A letter should be issued confirming the date of Stage 1 review, details of the areas of underperformance agreed and details of when the support plan will be finalised. It is important to note that this Stage assumes the under-performance is short lived as such the period of support should be no longer than 12 working weeks. The Head Teacher or an appropriate Senior Manager should chair this meeting to ensure objectivity.
- 7.8 At the Stage 1 review meeting each area of underperformance will be discussed including support provided, engagement by the employee and any progress made and a decision will be made by the Chair for each area as to whether the required standard has now been met.
- 7.9 At the conclusion of the Stage 1 review meeting, the Chair will provide an oral report to the employee indicating the outcome. Two outcomes are possible:
- Outcome 1:**
Where improvements have been made to the required standard in all areas of under-performance, no further action will be taken.
- Outcome 2:**
Where improvements have not been achieved to the required standard, the Chair will instigate procedures for Stage 2, the Support Stage, explaining the reasons for this decision.
- 7.10 Where improvements have not been achieved to the required standard and the employee is to move to Stage 2, the Head Teacher will at conclusion of the stage 1 review meeting give a broad indication of the support mechanisms and professional development opportunities which will be made available. Dates will also be agreed for a Stage 2 meeting, an Interim Review meeting and a Final Review meeting for

Stage 2. Information about any structured observations to assess the performance of the teacher will also be confirmed.

- 7.11 The outcome of the Stage 1 review meeting will be followed up in writing to the employee within 10 working days of the meeting, detailing the outcome as discussed. The employee should also be informed that this process may now lead to possible disciplinary action being taken if at the end of Stage 2 the employee's performance remains below that defined in the SFR.

8. STAGE 2 SUPPORT STAGE

8.1 In circumstances where:

- the level of underperformance is considered to be serious and having a significant detrimental impact on learning and teaching, and
- it can be demonstrated that the issue of underperformance has previously been brought to the attention of the employee, that subsequent support has been provided and that the employee has already been afforded, but without formal reference to LNCT 34, a reasonable length of time (comparable to that provided at stage 1) to facilitate a move to an acceptable level of performance

stage 1 and stage 2 may be combined into a single stage of informal support. The expectation remains however, that this is short lived underperformance and as such any period of support should not be unduly long and at most should not exceed 12 working weeks.

Combination of stages 1 and 2 would only be considered in the above circumstances and not routinely, for example such as in the circumstances set out in paragraphs 7.1 and 7.2.

8.2 As with Stage 1, Stage 2, does not form part of the Education Department's formal disciplinary procedures. It is assumed, at this stage, that the concern is still one of short-lived under-performance.

8.3 At Stage 2 the employee will be invited, in writing with at least a weeks' calendar notice, to an informal meeting to be held between the employee and senior colleague(s) with the Head Teacher or other appropriate Senior Manager acting as chair to retain objectivity. Where Stage 1 and Stage 2 are combined the same process will be followed however it must be clear that these two stages are combined. The invitation will advise the employee of their right to be accompanied at this meeting by a trade union representative or work colleague of their choice. It will be the responsibility of the employee to ensure the availability of their chosen representative. At this meeting, the employee should be encouraged to address the areas of concern in performance openly in order to agree;

- the specific aspects of underperformance as compiled by the Line Manager that are causing concern (see Appendix 2);
- the specific areas of the SFR which remain to be addressed;
- the proposed mechanisms which will be put in place to support the employee to address the aspects of under-performance as outlined above;
- appropriate professional development opportunities which can be accessed.

The meeting should be as open as possible and the atmosphere should be one of support and encouragement.

8.4 Sympathetic consideration should be given to all reasonable requests made by the teacher.

8.5 At the conclusion of these discussions the Head Teacher should give 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. The length of time to be given for the employee to reach the required standard will depend on the context of the situation. It should not be unduly long but also constitute a reasonable length of time for the employee to reach the required standard. Information about any structured observations to assess the performance of the teacher will also be provided.

8.6 Within 10 working days of the Stage 2 meeting the Chair will confirm in writing:

- the improvements to be made;
- the support mechanisms and professional development package to be provided;
- confirmation of the review dates

8.7 At the Final Review meeting each area of underperformance will be discussed including support provided, engagement by the employee and any progress made and a decision will be made by the Chair for each area as to whether the required standard has now been met. At conclusion of the Final Review meeting the employee should be informed of the outcome. There are three possible outcomes;

Outcome 1:

Where improvements have been made to the required standard in all areas of under-performance, no further action will be taken.

Outcome 2:

Where some significant improvements have been made but a number of critical areas still show under-performance and require improvement an extension to Stage 2 may be agreed. Any such extension must take into consideration that Stage 2 is still regarded as short lived under performance, should not be unduly long and be extended for no more than a further 6 working weeks.

Outcome 3:

Where improvements have not been achieved to the required standard, the Chair will instigate procedures for Stage 3, the Formal Stage, explaining the reasons for this decision.

8.8 Where improvements have not been achieved to the required standard, the Chair will inform the employee that the matter will now be progressed to Stage 3, the Formal Stage, and that proceedings under LNCT/ 22 will now be instigated.

8.9 The outcome decision and the underpinning reasons should be communicated to the employee in writing at least 10 working days following this review meeting. Any

written communication should include a copy of LNCT/22 and the employee must be advised of their statutory and contractual rights to be accompanied at Stage 3.

- 8.10 **Whilst both Stage 1 and Stage 2 are informal and supportive stages, it is appreciated that this process can be a stressful experience for employees. It is essential however that employees understand the need to engage fully in this process as improvements can only be evidenced whilst the employee is demonstrating the required change within the work environment. If employees become absent for a protracted period as a result of this process the Council may be required to consider moving the case to one of capability as the employee will have demonstrated that they are unable to render regular and efficient service as a direct result of their inability to meet the required standards of competence.**

9. STAGE 3 FORMAL STAGE - DISCIPLINARY

- 9.1 This stage introduces procedures under LNCT/22 Disciplinary Procedures for Staff Covered by SNCT Conditions of Service as these issues are now considered to be those of long running underperformance.
- 9.2 The procedures under LNCT/22 for potential gross misconduct should be followed.
- 9.3 The evidence collated as part of the support process will be used by the Chair to produce an investigatory report which will detail;
- evidence of the employee's alleged failure to achieve the relevant standards within the SFR as outlined to the employee in Stage 1 and Stage 2, with clear identification of where the employee has failed to meet the required standard;
 - details of the support mechanisms and professional development opportunities offered to the employee;
 - the duration of each Stage in the informal support process ie Stages 1 and 2 or of the single stage of support where paragraph 8.1 applies, including any extension period;
 - details of any extenuating circumstances during the period of support.
- 9.4 In line with the processes outlined in LNCT/22, the investigatory report will be forwarded to the Director of Education for consideration as to potential progress to a full disciplinary hearing.
- 9.5 The decision as to whether the case should proceed to a formal disciplinary hearing or whether no further action will be taken should be made by the Director of Education within 10 working days of receiving the investigatory report.
- 9.6 Once a decision has been taken to proceed to a disciplinary hearing, the employee should be informed in writing as per paragraph 6.2 of LNCT/ 22. The letter calling the employee to the meeting should clearly state the nature of the allegation and that a possible sanction available to the Disciplining Officer is possible dismissal from their employment. The employee should be provided with any evidence that will be used during the disciplinary hearing, including any written evidence and the

names of any witnesses who will be called. **The employee should also provide the employer with all documentation that will be used in his/her defence no later than 5 working days before any hearing.**

- 9.7 If the decision is taken to dismiss the employee from their employment an immediate referral to the GTCS will be actioned.
- 9.8 The employee will have the right to appeal the decision in line with the guidance outlined in section 9 of LNCT/22. Any appeal will be heard by the Teaching Staff Appeals Committee
- 9.9 **It should be noted that where the alleged under-performance relates to the operational and/or managerial duties of a promoted teacher or employee covered by SNCT conditions of service, similar procedures may be applied. However, the ability to remove the name of a teacher or employee from the register for long-running underperformance relates to teaching competence, not administrative/managerial competence, and any such decision rests with the GTCS. This has no influence on any other sanction at the disposal of the Department as a result of the following procedures which concludes that a case is one of professional incompetence in a promoted employee.**

10. STAGE 4: REFERRAL TO THE GENERAL TEACHING COUNCIL SCOTLAND

- 10.1 As stated in paragraph 9.7, if the decision is taken to dismiss the employee from their employment an immediate referral to the GTCS will be actioned regardless of whether the employee chooses to appeal the decision to dismiss.
- 10.2 A case is referred to the GTCS under the terms Section 9B of the Teaching Council (Scotland) Act 1965 as amended, i.e. where a case culminates in:
- the dismissal of the teacher or employee covered by SNCT conditions of service;
 - the resignation of the teacher or employee covered by SNCT conditions of service, in the context of a possible dismissal.
- 10.3 Relevant information from the disciplinary stage will be sent to the GTCS by the Authority.
- 10.4 Information relating to GTCS procedures for dealing with such cases can be found in the GTCS policy on Fitness to Teach which can be found at;

http://www.gtcs.org.uk/web/FILES/FormUploads/Fitness-to-Teach-Rules-2017357770_3259.pdf

<https://www.gtcs.org.uk/regulation/what-is-fitness-to-teach.aspx>

- 10.4 The General Teaching Council Scotland are the only body who can remove the professional registration of a teacher.

Mark Ratter
Director of Education
October 2021