

**EAST RENFREWSHIRE LNCT AGREEMENT**

**DISCIPLINARY PROCEDURE FOR ALL STAFF COVERED BY SNCT**

**CONDITIONS OF SERVICE**

October 2021



*Education Department*

# **EAST RENFREWSHIRE COUNCIL**

## **DISCIPLINARY PROCEDURE FOR ALL STAFF COVERED BY SNCT CONDITIONS OF SERVICE**

### **1. INTRODUCTION**

- 1.1 This agreement is informed by the Disciplinary Framework as contained in The SNCT Handbook of Conditions of Service. Disciplinary procedures must follow the provisions of the Employment Act 2008 and must comply with the ACAS Code of Practice Disciplinary and Grievance Procedures.
- 1.2 Disciplinary procedures are necessary for promoting effective employment relations as well as fairness and consistency in the treatment of individuals. They enable organisations to deal with problems of misconduct or poor performance. 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.
- 1.3 Where an employee's performance or conduct causes serious concern, disciplinary action may be taken by the authority. The disciplinary policy is designed to help and encourage employees who need to take action to ensure they are maintaining standards of conduct and job performance.
- 1.4 Wherever possible all matters should be dealt with on an informal basis, however, all employees should be made aware of the standards of conduct and performance expected of them. All problems involving minor misconduct and poor performance should be dealt with, in the early stages, through the use of informal advice and guidance. Employees may wish to be accompanied to any discussions regarding their conduct by a representative. It is essential that all problems of this nature are fully discussed and that support is provided with the objective of encouraging and helping employees to improve.
- 1.5 Employees should be made aware of what constitutes gross misconduct; see section 4 for further detailed explanation.
- 1.6 It is essential that employees are aware that support and counselling are available at all times, even where it has been necessary to take disciplinary action under the procedures.
- 1.7 In a case where it is suspected or known that defalcation has occurred (i.e. the misappropriation or embezzlement of monies or materials, etc., placed in an employee's charge), the matter shall be reported immediately to the Director or a nominated Senior Officer. The defalcation procedures must be applied as per the Anti-Fraud and Bribery Strategy of the Council.
- 1.8 Where a concern relates to an individual's teaching competence, this should be reported to the Education Senior Manager (Developing People). The procedure to be applied must comply with the guidance detailed in LNCT 34.

## **2. PRINCIPLES**

If a formal disciplinary process is considered necessary, it will comply with the following agreed principles:

- 2.1 The initiation of disciplinary procedures should be accompanied by appropriate support mechanisms.
- 2.2 An employee has the right to be represented at all stages of the disciplinary process, including any informal and formal investigatory meetings and any meeting advising an employee of a decision to precautionarily suspend.
- 2.3 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.
- 2.4 Where a concern relates to an individual's teaching competence, no proceedings under LNCT 22 will be instigated until Stages 1 and 2 of LNCT 34 have been undertaken. The Disciplining Officer in any subsequent proceedings under LNCT 22 will not previously have participated in the LNCT 34 process to which the proceedings relate.
- 2.5 Apart from gross misconduct no employee shall be dismissed for the first breach of discipline.
- 2.6 There shall be a right of appeal against all disciplinary sanctions.
- 2.7 An appeal should not be heard by the same person who issued the disciplinary sanction.
- 2.8 No disciplinary action will be initiated against a trade union representative until the matter has been raised with a full-time official of the union concerned by a member of the Education Leadership Team or HR.
- 2.9 The use of recording equipment, either audio or video, by any party during meetings or hearings held in terms of this agreement and LNCT 34 is strictly prohibited. Should recording equipment be discovered to have been so used, such action will be deemed gross misconduct and potentially subject to disciplinary action and possible dismissal. All employees and their representatives are permitted to take their own written notes at such meetings/hearings. A copy of meeting/hearing records taken by the employer will be given to the employee for review.

## **3. UNSATISFACTORY CONDUCT**

Instances of failure to observe and maintain discipline may lead to formal warnings. Repeated misconduct may result in action up to and including dismissal, depending on the employee's disciplinary record. Although not an exhaustive list, the following are examples of unsatisfactory conduct:

- a) poor time-keeping;
- b) unacceptable levels of attendance;
- c) unauthorised absence;
- d) short-term unacceptable standard of work performance;
- e) negligence;
- f) refusal to carry out a reasonable instruction and,

- g) surreptitious recording of another person within the working environment.

#### **4. GROSS MISCONDUCT**

A decision on whether gross misconduct has occurred will be dependent on full consideration of all the facts and circumstances. Gross misconduct may lead to summary dismissal. Although not exhaustive, the following are examples of gross misconduct:

- a) fraudulent salary/wage claims and falsification of official documents, including falsifying any pupil assessment information;
- b) theft from employer, fellow employees or pupils;
- c) physical violence;
- d) serious bullying, harassment or abusive behaviour towards colleagues, pupils and/or the public or customers of the Council, including matters of an equalities nature;
- e) serious offences against the interests of the council, including willful injury to others and willful damage to council property;
- f) serious insubordination / persistent refusal to comply with a reasonable instruction or order;
- g) serious misuse or abuse of e-mail and/or internet facilities provided by the council;
- h) criminal convictions having a material bearing on employment and in particular, any which result in a teacher being placed on the sex offenders' list;
- i) incapacity on duty due to the effect of alcohol or illegal drugs (See section 8 – Addiction Related Problems);
- j) neglect of duty resulting in serious consequences or failure to obey critical safety rules (e.g. fire evacuation procedures);
- k) serious breaches of the Council's child protection policies;
- l) long running underperformance as determined under LNCT 34; and,
- m) the use of recording equipment during meetings/hearings held in terms of this agreement and LNCT 34.

#### **5. THE COMPLAINT AND FORMAL DISCIPLINARY PROCEDURE**

##### **POSSIBLE GROSS MISCONDUCT**

- 5.1 Where either a complaint has been received which, if upheld, could constitute gross misconduct or where an employee's conduct is considered possible gross misconduct there may be a requirement for the precautionary suspension of an employee.

Where a precautionary suspension is used, this must comply with the following:

- 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 employee'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) The precautionary suspension will be confirmed in writing and the letter will state when the employee will next be contacted.
  - d) All precautionary suspensions should be reviewed at agreed regular intervals (normally every 10 working days).
- 5.2 An employee should be advised immediately by the Head Teacher of a decision to precautionarily suspend. Any such decision should be authorised by the Education Senior Manager (Developing People) before being communicated to the employee.
- 5.3 The Head Teacher will inform an employee of a decision to precautionarily suspend in accordance with paragraph 5.4
- 5.4 The employee will be called to a formal meeting with the Head Teacher who will be supported by a HR representative. At this meeting the employee will be advised of the alleged misconduct or poor performance being deemed possible gross misconduct and of the decision to precautionarily suspend.
- 5.5 The employee has the right to be represented at this meeting by a trade union representative or work colleague of their choice and will be advised of this right prior to the meeting commencing. Should it not be possible to advise the employee of this right prior to the meeting commencing, every effort will be made to contact the employee's trade union representative, if known, at the earliest opportunity to advise him/her of the intention to hold the meeting. It will be the responsibility of the employee to ensure the availability of their chosen representative.
- 5.6 Immediately following a precautionary suspension the employee will be asked to collect their belongings and leave the premises immediately in order to facilitate a speedy investigation.

## **PRELIMINARY INVESTIGATION**

- 5.7 Except in cases of possible gross misconduct where there is a requirement for the precautionary suspension of an employee under paragraph 5.1 where either a complaint has been received or where an employee's conduct or performance has given cause for concern, a brief, preliminary investigation should take place to determine whether or not the formal procedure should be instigated. This preliminary investigation should take place as soon as the incident is brought to the attention of the manager or Head Teacher and should be conducted by a member of the senior management team, other than the Head Teacher, or an appropriate nominee. The employee should be advised of the nature of the complaint and of the preliminary investigation. The preliminary investigation should be concluded within a few working days unless there are exceptional circumstances. Care should be taken not to prejudice any formal investigation which may follow pursuant to this agreement. Following this preliminary investigation the Head Teacher may:

- Take no further action
- Have a management discussion with the teacher
- Initiate the formal procedure as outlined in 5.9

## **MANAGEMENT DISCUSSION**

5.8 Where, following the preliminary investigation, the Head Teacher decides to have a management discussion rather than initiate a formal disciplinary investigation the Head Teacher and employee should discuss any possible shortcomings in conduct or performance and encourage improvement or discuss any possible change in practice. It is essential that all problems of this nature are fully discussed and that support is provided with the objective of enabling teachers to improve. The Head Teacher and / or employee may keep brief notes of this discussion for reference purposes. Confirmation of this discussion, and agreed outcomes, should be given in writing by the Head Teacher within a reasonable time frame of the management discussion, confirming details of the discussion and outlining any agreed action to be taken by the employee to improve. The primary focus of a management discussion is to support the employee and as such is not part of the formal disciplinary procedures under this agreement. Care should be taken that informal action does not turn into formal disciplinary action as this may unintentionally deny the employee certain rights.

## **THE FORMAL PROCEDURE: THE COMPLAINT AND INVESTIGATORY STAGE**

- 5.9 In situations where either a complaint has been received or where an employee's conduct or performance has given cause for concern, subject to 5.7, an investigating officer will be appointed. This will normally be a member of the school senior management team other than the Head Teacher, or an appropriate nominee in an equivalent post.
- 5.10 The Head Teacher or Senior Manager must advise the employee in writing within 5 days of any complaint, detailing the allegations made, the appointment of an investigating officer, of the process that will be followed, and the right of the employee to be represented at all stages of the process.
- 5.11 The investigating officer should, if possible, interview all of the parties involved (including the employee in question) and prepare signed and dated statements from all of these witnesses. In interviews, all parties will be entitled to be represented.
- 5.12 All parties should seek permission from line managers where they require time to prepare for or attend meetings in relation to an investigation or disciplinary hearing. Reasonable time off will be granted at the exigencies of the service.
- 5.13 The investigating officer should then produce a report which will enable the Head Teacher/or other nominated officer (known as the Disciplining Officer) to decide whether the matter should be further progressed through the formal disciplinary process. The decision on the appropriate course of action is not taken by the investigating officer. The investigating officer does not have any function at a future disciplinary hearing other than presenting the facts of the investigation to that hearing.
- 5.14 Where the Disciplining Officer considers the complaint, if upheld, could constitute gross misconduct, as defined in paragraph 4, she/he should seek advice from the appropriate Human Resources Officer. If the advice from the Human Resources Officer is that the complaint could constitute gross misconduct and could lead to dismissal the Human

Resources Officer will refer the findings of the Investigating Officer to the Director of Education.

- 5.15 The investigatory process should be conducted as speedily as possible, consistent with the principles of fairness and natural justice. In most cases of unsatisfactory conduct or misconduct where few witnesses require to be interviewed, the investigation should take no longer than 25 working days. However, in more complex cases which require an investigating officer to interview multiple witnesses, the process may require to be extended. Where delay or an extension occurs, communication will take place with the employee and/or his or her trade union representative to advise of the reason for the delay or extension and the revised timeframe.
- 5.16 Once the investigation is complete the employee 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, all references to the investigation should be removed from the employee's personal file and destroyed.
- 5.17 In line with LNCT 34, where a case of potential long running underperformance has been progressed to Stage 3, the documentation and subsequent findings report from Stages 1 and 2 will form the investigatory report with such cases.

## **6. THE DISCIPLINARY HEARING**

- 6.1 A decision to proceed with a disciplinary hearing should be solely based on the evidence secured during the investigatory stage but should not be taken by the person who conducted the investigation. The decision as to whether a case should proceed to a formal stage or whether no further action should be taken should be made by the Disciplining Officer within 10 working days of receiving the investigative report.
- 6.2 Once a decision has been taken to proceed to a disciplinary hearing, the employee should be informed in writing. The letter calling the employee to the meeting should contain the following:
  - a) the fact that the hearing is being held in accordance with LNCT/22;
  - b) the date, location and time of the hearing;
  - c) the allegations regarding attendance, work conduct or performance of the employee – where this matter has been previously dealt with under LNCT 34;
  - d) a clear invitation to the employee to be accompanied by a representative; and
  - e) copies of the evidence that will be used during any disciplinary hearing, including any written evidence and the names of any witnesses who will be called.
- 6.3 The letter should be issued sufficiently far in advance to allow the employee the opportunity to be accompanied by an appropriate representative and, in any event, shall be issued not less than 10 working days prior to the disciplinary hearing.
- 6.4 The employee is to 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 led in his/her defence no later than 2 working days before any hearing.

- 6.5 In cases of potential long running underperformance the employee must provide the employer with all documentation that will be used in his/her defence no later than 5 working days before any hearing in line with Section 9.6 of LNCT 34
- 6.5 A disciplinary hearing should take place in a location suitable for the purpose. Proceedings should be uninterrupted and provision made for note taking.
- 6.6 The Disciplining Officer should be accompanied by a nominated officer or member of the HR Business Support Team at any hearing.
- 6.7 A formal note of the hearing will be made by the HR representative or agreed nominee and will be sent to the individual for agreement or recording of amendment (as appropriate). In all cases a request will be made for signature.
- 6.8 The format of the hearing will vary according to the circumstances but every hearing should include:
  - a) a formal reading of the allegations;
  - b) presentation by the investigating officer of the facts as ascertained;
  - c) the opportunity for cross examination by the employee or his/her representative;
  - d) the opportunity to provide counter evidence by the employee or representative;
  - e) the opportunity to cross examine this by the Disciplining Officer; and,
  - f) the facility for the employer or the employee or his/her representative to call witnesses.
- 6.9 At the conclusion of the hearing, the Disciplining Officer 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 (Ref. Section 10).
- 6.10 In the event of a disciplinary warning being issued, the employee should be informed of the right and method of appeal and associated timescales and time limits (Ref. Section 10).
- 6.11 If it is decided that no disciplinary action is to be taken, all references to the case shall be removed from the employee's personal file and destroyed.

## 7. DISCIPLINARY SANCTIONS

- 7.1 All disciplinary sanctions shall be recorded in writing and shall remain in the employee's personal file during the period of currency of the warning. In being advised of the disciplinary sanction which is being applied, the employee should be advised also of the improvements which will be expected of him/her and the availability of appropriate support to allow him/her to achieve and maintain the improvement.
- 7.2 The following disciplinary sanctions shall be available.
  - a) Oral Warning – For minor breaches of conduct or continued poor performance. The warning must include reference to the fact that any further breach may render the employee open to further disciplinary action. This will remain on the employee's file for a period of 6 months.
  - b) Written Warning – For more serious breaches of conduct or continued poor performance or a failure to improve conduct or performance following receipt of a

formal oral warning. The employee must be informed that a further breach may result in further disciplinary action being taken. This will remain on the employee's file for a period of 9 months.

c) Final Written Warning – For serious breaches of conduct or continued poor performance or a failure to improve conduct or performance following receipt of a written warning. The employee must be warned that any further breach may result in dismissal. This will remain on the employee's file for a period of 12 months.

d) Dismissal

- i. For serious repeated misconduct during the currency of a final written warning or for gross misconduct for which no previous warning exists. The employee must be informed in writing of the effective date of dismissal and whether the dismissal is summary or with notice.
- ii. Referral to the General Teaching Council Scotland who may conduct their own investigation with regard to potential removal of a teacher's professional registration.
- iii. 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 an employee does not agree to the application of the punitive sanction, then the Council will have no alternative but to dismiss the employee.

7.3 Head Teachers as Disciplining Officers have devolved responsibility for issuing warnings up to and including the level of final written warning except in cases of gross misconduct

7.4 The Director of Education or nominated member of the Education Leadership Team has the power to apply all forms of disciplinary sanction described in this section other than dismissal. The Director of Education has the power to dismiss an employee under the agreed disciplinary procedures of the authority.

7.5 In cases involving long running underperformance, LNCT 34 The Agreed Procedures for Dealing with the Underperformance of Employees Covered by SNCT Conditions of Service, will be followed at all times. Before taking action for dismissal, the Director of Education will ensure that LNCT 34 has been followed.

## **8. ADDICTION RELATED PROBLEMS**

8.1 If, in the course of an investigation, it is established that an employee has an addiction problem, the employee should be given the opportunity of accepting referral to an appropriate counselling service in accordance with the Council's Alcohol and Drug Policy for Employees. Such a referral may be arranged by the Council. Where referral is made by the employee's medical practitioner, confirmation of this will be required through Occupational Health. The investigatory process will however continue to conclusion as per the normal procedure.

8.2 If Occupational Health and/or another agreed agency, and the employee, accept that an alcohol, drug or other addiction exists and providing the employee undertakes to co-operate and successfully undertakes the recovery programme, disciplinary action will be suspended in respect of the matter which led to the referral. Matters which are either not related to the reason for referral, or matters which are considered to be of such a serious nature, will be dealt with in the normal way.

- 8.3 Where the employee is not accepted by Occupational Health and/or another agreed agency as having an alcohol, drug or other addiction problem and therefore cannot be considered for the recovery programme, the appropriate disciplinary action should be taken as normal. If the employee is accepted for counselling but does not complete the recovery programme, the suspension of disciplinary action which came into effect on referral will be removed and consideration of the original break of discipline should be re-opened and the appropriate disciplinary action taken.

## **9. APPEALS**

- 9.1 Employees have the right of appeal against all disciplinary sanctions imposed by the authority. Any appeal must be submitted in writing using the appropriate form (Appendix A1) and provide full details of the grounds of appeal

| <b>Nature of Disciplinary Sanction</b>                | <b>Issued by</b>                                  | <b>Appeal heard by</b>                                       |
|---|---|--|
| Oral warning  | Head Teacher or nominee                           | Director of Education or member of Education Leadership Team |
| Written warning                                       | Head Teacher or nominee                           | Director of Education or member of Education Leadership Team |
| Final written warning                                 | Head Teacher or nominee                           | Director of Education or member of Education Leadership Team |
| Final Written Warning (or any other level of warning) | Nominated member of the Education Leadership Team | Director of Education  |
| Final written warning (or any other level of warning) | Director of Education                             | Teaching Staff Appeals Committee                             |
| Dismissal   | Director of Education                             | Teaching Staff Appeals Committee                             |

- 9.2 At any appeal the appellant can be represented by his/her trade union representative. All appeals which end at departmental level will follow the procedures below:

- a) The appellant and/or the appellant's representative shall present the appellant's case in the presence of the management representative. Witnesses may be called.
- b) The management representative shall have the opportunity to ask questions of the appellant and/or the appellant's representative and any of the witnesses called by the appellant.
- c) The management representative shall put the case in the presence of the appellant and the appellant's representative. Witnesses may be called.

- d) The appellant and/or the appellant's representative shall have the opportunity to ask questions of management and any witness called by the management.
  - e) The officer hearing the appeal shall have the opportunity to ask questions of either party and of any witnesses.
  - f) Witnesses introduced by either party may be questioned by the other party's representative and by the officer hearing the appeal. The officer hearing the appeal can recall a witness to clarify any point in question or may do so at the request of either the appellant/appellant's representative or the departmental representative.
  - g) The appellant and/or the appellant's representative followed by the management representative shall have the opportunity if he/she so wishes to sum up his/her case, introducing no new material.
  - h) There may be circumstances where it may be necessary to reconvene a meeting, for example, to clarify any areas where doubt remains. In these circumstances the management representative, the appellant and the appellant's representative will be recalled.
  - i) The officer hearing the appeal may communicate the decision to both parties at the conclusion of the meeting. The decision shall be confirmed in writing to the appellant within 5 days.
- 9.3 For the avoidance of doubt, the officer hearing the appeal must not have been involved in the original decision to initiate formal procedures under paragraph 5.9 and / or the decision to proceed with a disciplinary hearing under paragraph 6.1.
- 9.4 All appeals against dismissal will be referred to the Teaching Staff Appeals Committee and will follow the procedures below:
- a) Disciplinary appeals submitted to the Teaching Staff Appeals Committee (hereafter referred to as the Appeals Committee) are heard under SNCT Conditions of Service for Teachers. Details of the grounds for the appeal will be included in the appellant's submission for the meeting agenda which is made available to all parties.
  - b) At the hearing there may be present at all times:
    - the panel of Elected Members from the Appeals Committee;
    - officers appointed to advise the Appeals Committee, one each from Legal Services and Human Resources;
    - the appellant;
    - the appellant's representative (where there is one);
    - the department representative;
    - a person or persons acting in a supportive capacity only to the appellant, his/her representative or to the department representative, may also be permitted to be present at the hearing, at the discretion of the Chair, provided such persons are made known to the Appeals Committee prior to the case commencing;
    - witnesses shall only be present when they are called to be asked questions and following questioning, shall be asked be withdraw unless recalled for further clarification; and,
    - a clerk to the Appeals Committee.

- c) The Chair will outline the procedure, the purpose of the hearing and confirm who is presenting the case on either side.
- d) The appellant's representative and/or the appellant shall put the appellant's case in the presence of the department's representative and may call any witnesses required.
- e) The department representative shall have the opportunity to ask questions of the appellant (and/or their representative if present) and of any witnesses called by the appellant.
- f) The members of the Appeals Committee shall then have the opportunity to ask questions of the appellant's representative and/or the appellant and any witnesses called by the appellant.
- g) The department representative shall put forward the department's case in the presence of the appellant and his/her representative and call such witnesses as may be required.
- h) The appellant's representative and/or the appellant shall have the opportunity to ask questions of the department representative and of any witnesses called by the department.
- i) The members of the Appeals Committee shall then have the opportunity to ask questions of the department representative and of any witnesses called by the department.
- j) The department representative and the appellant's representative or the appellant shall have the opportunity, if they wish, to sum up their case, introducing no new material.
- k) The department representative, the appellant and their representative and any other individual formally involved in the case will then withdraw.
- l) The Appeals Committee, in the presence of the officers appointed to advise the Appeals Committee, shall then deliberate in private, only recalling the department representative the appellant and his/her representative, to clarify points of uncertainty on evidence already given. If recall is necessary, both parties are to return notwithstanding only one is concerned with any points requiring clarification.
- m) The Appeals Committee may communicate its decision to both parties at the conclusion of the hearing. In any event, the appellant will be notified in writing of its decision within 5 working days.
- n) Under the Council's Scheme of Administration, the Appeals Committee is authorised to uphold or reject appeals against disciplinary action or to order the varying of the disciplinary action taken. The form of the decision to be announced by the Appeals Committee shall be one of the following as appropriate:
  - the appeal is upheld
  - the appeal is partially upheld
  - the appeal is not upheld

- o) Where an appeal is partially upheld and the Appeals Committee vary the disciplinary action previously taken to action other than dismissal, the appellant shall be deemed to have been reinstated to the employment of the Council with effect from the date of the dismissal.

## **10. TIME LIMITS COVERING VARIOUS ASPECTS OF THE DISCIPLINARY PROCEDURE**

The following time limits have been agreed by the LNCT. The figures refer to working days. This does not prejudice an employee's right in a case of dismissal to submit a claim to an Employment Tribunal.

| <b>Aspects of Disciplinary Procedure</b>   | <b>Time Limits (Working Days)</b>   |
|--|---|
| Precautionary suspension   | 10 days between each review   |
| Time taken to undertake an investigation   | No longer than 25 working days, subject to any extension under paragraph 5.15           |
| Time taken to review the investigation evidence and agree to proceed to disciplinary hearing | 10 working days   |
| Notice of disciplinary hearing date  | 10 working days notice  |
| Written confirmation of outcome of disciplinary hearing                                      | 5 working days (maximum)  |
| Time limit to lodge appeal   | 10 working days (maximum) from date of notification of decision of disciplinary hearing |
| Date of notification of appeal hearing   | No later than 20 working days from receipt of notice of appeal                          |
| Notification of outcome of appeal hearing  | 5 working days (maximum)  |
| Notification of outcome of Teaching Staff Appeals Committee's hearing will be issued within  | 5 working days (maximum)  |

These time limits could be shorter or longer by agreement in individual cases.

## **11. TIME LIMITS FOR THE DURATION OF WARNINGS**

- 11.1 Warnings issued under the disciplinary procedures have a specific time limit as indicated below.

| <b>Level of Warning</b> | <b>Time Limit (Months)</b> |
|-------------------------|----------------------------|
| Oral warning            | 6 months                   |
| Written warning         | 9 months                   |
| Final written warning   | 12 months                  |

- 11.2 On expiry of the time limit, any record of warning will be expunged (i.e. removed from the employee's personal file and destroyed).
- 11.3 Any disciplinary sanction which has been imposed and which relates to a breach of the Council's Child Protection policies will remain on an employee's file in line with East Renfrewshire's Council's Retention Schedule. This decision and the timescale for retention should be made clear at the time of the disciplinary action.
- 11.4 If an appeal is successful and the original disciplinary sanction withdrawn, any written reference shall be expunged from the employee's personal file and the employee notified accordingly.

## **12. CRIMINAL OFFENCES**

- 12.1 An employee should not be formally investigated, dismissed or otherwise disciplined solely because he or she has been charged with a criminal offence. Where there is an allegation of a criminal offence which has arisen from an individual's employment or has a potential bearing on an individual's employment, the circumstances should be ascertained from the employee and investigated as fully as possible in line with the procedures set out in paragraphs 5.1 to 6.11. For the avoidance of doubt such investigation may include obtaining information or evidence from any appropriate source both internal and external to the Council. In all cases where formal disciplinary action is being contemplated due to an alleged or proven criminal offence, consideration must be given to implications for the employee's continuing employment with children and to whether or not the employee has brought the Council into disrepute. The disciplinary investigation and the criminal investigation should be handled separately by the appropriate authorities since the Council's interest and the Police interest and their consideration as to the nature of the circumstances may differ.
- 12.2 The Council as an employer has an interest if any employee is alleged to have committed a criminal offence. The employee is therefore advised to have a discussion with their Line Manager if they are at any time charged with a criminal offence. Where the alleged conduct requires prompt attention of the Council, following a reasonable investigation the Council need not await the outcome of a prosecution before taking fair and reasonable action. In considering such matters a Disciplining Officer should decide, following investigation, whether sufficient information exists prior to proceeding to a disciplinary hearing. If a decision is made to progress to a disciplinary hearing the Disciplining Officer will not be expected to establish beyond reasonable doubt whether the employee committed the offence but rather whether the employee on the balance of probability committed the offence and the impact of that offence on the individual's ability to meet the requirements of the East Renfrewshire Council Code of Conduct for Employees and the GTCS Code of Professionalism and Conduct.

- 12.3 When a custodial sentence is imposed or an employee is on remand, and the employee is not available for work, the Director of Education will be mindful of the need to act reasonably in the light of the needs of the Council before deciding whether or not to dismiss. Where disciplinary action is not justified by the nature of the actual or alleged offence but the employee is not available for work because of the custodial sentence, or through being remanded in custody, the question to be determined is whether in the light of the needs of the Council the teacher's post can be kept open.

### **13. RELATED DOCUMENTS**

- 13.1 All employees should familiarise themselves with the standards of conduct and performance expected of them. In this regard SNCT staff should refer in particular, but not exclusively to the East Renfrewshire Council Code of Conduct for Employees and the GTCS Standards for Registration and the GTCS Code of Professionalism and Conduct.

Mark Ratter  
Director of Education  
October 2021