



## **DISCIPLINARY PROCEDURE**

### **Teaching Staff**

#### **1. INTRODUCTION**

- 1.1 Disciplinary rules and procedures are necessary for promoting orderly employment relations as well as fairness and consistency in the treatment of individuals. They enable organisations to influence the conduct of workers and deal with problems of poor performance thereby assisting organisations to operate effectively. Rules set standards of conduct and performance at work; procedures help ensure that the standards are adhered to and also provide a fair method of dealing with alleged failures to observe them.
- 1.2 All teachers should be made aware of the standards of conduct and performance expected of them. In particular teachers should be made aware of what constitutes gross misconduct, for example sexual offences, assault or dishonesty. All problems involving minor misconduct and poor performance should be dealt with, at least in the early stages, through the use of informal advice, guidance and counselling. It is essential that all problems of this nature are fully discussed and that support is provided with the objective of encouraging and helping teachers to improve. It is essential also that teachers are aware that support and counselling are available at all times even where it is necessary to take disciplinary action under the procedures.
- 1.3 This disciplinary procedure complies with ACAS Code of Practice (No 1) "Disciplinary and Grievance Procedures".
- 1.4 Where the concern relates to the performance of an individual's teaching the procedures must comply with the General Teaching Council Scotland Code of Practice on Competence.

#### **2. INVESTIGATION**

- 2.1 In situations where either a complaint has been received or where a teacher's conduct or performance has given cause for concern, the employer should appoint an investigating officer. The investigating officer should, if possible, interview all of the parties involved (including the teacher in question) and, if appropriate, prepare signed and dated statements from all of these witnesses. Where the witness is a pupil his/her parent should be informed. The investigating officer should then produce a standard report which will enable another representative of the employer to decide whether the matter should be further progressed through the formal disciplinary process. It is preferable that this decision is not taken by the investigating officer and the investigating officer must not have any function at a future disciplinary hearing other than presenting the facts of the investigation to that hearing. The teacher involved must be advised at an early stage that a complaint or concern has been lodged, of the nature of the complaint, of the process which will be followed and the right to be represented.

- 2.2 The investigatory process should be conducted as speedily as possible consistent with the principles of fairness and natural justice and should take no longer than 15 working days.
- 2.3 Teachers are entitled to be represented at all hearings and meetings as part of the disciplinary process including investigatory hearings. In addition, in most cases, the teacher whose conduct or performance has given rise to the investigation will be interviewed and must be given a clear indication of the nature and purpose of the investigation and the procedures that will be followed at the interview well in advance of any meeting with the investigating officer.
- 2.4 Once the investigation is complete the teacher should be advised of the outcome of the investigation. Where following an investigation no further action is to be taken in the terms of the disciplinary procedures than all reference to the investigation should be removed from the teacher's personal file and destroyed.

### **3. PRECAUTIONARY SUSPENSION**

- 3.1 Any procedure which includes "precautionary suspension" as part of the disciplinary procedure must also comply with the following principles.
- a) The precautionary suspension must be on full pay and must not be associated with any assumption of guilt.
  - b) Precautionary suspensions should only be used in the most serious cases of misconduct or poor performance or where the teacher's presence at the normal place of work could prejudice the investigation. Consideration could be given to a temporary transfer pending the conclusion of the investigation and any subsequent disciplinary process.
  - c) All precautionary suspensions should be reviewed after 10 working days.

### **4. THE DISCIPLINARY HEARING**

- 4.1 A decision to proceed with a disciplinary hearing should be based on the evidence secured during the investigatory stage but should not be taken by the person who conducted the investigation.
- 4.2 Once a decision has been taken to proceed to a disciplinary hearing, the teacher should be informed, within 15 working days and in writing, about:
- details of the allegations
  - the date of the hearing
  - the procedures to be followed at the hearing
  - any rights under the disciplinary procedure, and

provided with copies of the evidence that will be used during the disciplinary hearing including any written evidence and the names of any witnesses to be called. The teacher should also provide the employer with similar evidence that will be led in his or her defence within a reasonable time before any hearing.

- 4.3 The teacher (and/or representative) must be given every opportunity to present his/her case, to provide additional documents for the hearing, to call and question witnesses and to sum up his/her case.
- 4.4 At the conclusion of the hearing the disciplinary officer (see 5.3 and 5.4 below) shall either announce his/her decision (to be confirmed in writing thereafter) or indicate that the decision will be communicated in writing *within 5 working days*.
- 4.5 If it is decided that no disciplinary action is to be taken, all references to the case shall be removed from the teacher's personal file and destroyed.

## **5 DISCIPLINARY SANCTIONS**

- 5.1 All disciplinary sanctions shall be recorded in writing and shall remain in the teacher's personal file during the period of currency on the warning (see ...below). In being advised of the disciplinary sanction which is being applied, the teacher should be advised also of the improvements which will be expected of them and the availability of appropriate support to allow them to achieve and maintain improvement.
- 5.2 The following disciplinary sanctions shall be available:-
  - a) Formal Oral Warning – For minor breaches of discipline, misconduct or continued poor performance, the warning must include reference to the fact that any further breach may render the teacher open to further disciplinary action.
  - b) Written Warning – For more serious breaches of discipline, misconduct or continued poor performance or a failure to improve conduct or performance following receipt of a formal oral warning, the teacher must be informed that a further breach may result in further disciplinary action being taken.
  - c) Final Written Warning – For serious breaches of discipline, misconduct or continued poor performance or a failure to improve conduct of performance following the receipt of a written warning. The teacher must be warned that any further breach may result in dismissal.
  - d) Dismissal – For serious repeated misconduct or poor performance during the currency of a final written warning or for gross misconduct for which no previous warning exists. The teacher must be informed in writing of the effective date of dismissal and whether the dismissal is summary or with notice.

The following punitive sanctions are available in conjunction with a final written warning as an alternative to dismissal: demotion, transfer or suspension of an increment. Where a teacher does not agree to the application of the punitive sanction then the Comhairle will have no alternative but to dismiss the teacher.

- 5.3 The Head Teacher will have overall responsibility for the management of teachers within his or her school and will have the power to issue oral and written warnings.
- 5.4 The Director of Education will have the power to apply all forms of disciplinary sanction described in this section and to dismiss a teacher.

5.5 In cases involving performance issues the GTCS Code of Practice on Competence should be followed at all times. Before taking action for dismissal the Director of Education must ensure that the Code has been followed.

## 6 APPEALS

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

Nature of Warning	Issued By	Appeal Heard by
Oral Warning	Head Teacher or nominee	Director of Education or nominee (i.e Head of Service)
Written Warning	Head Teacher or nominee	Director of Education or nominee
Final Written Warning	Director of Education or nominee	Personnel Appeals Panel

- 6.2 The right of appeal against a recorded warning may be exercised by a teacher within 10 working days from the date he or she was notified of the decision of the disciplinary hearing. This right can be exercised in one of two ways: -
- a) Where the formal warning has been issued by the Head Teacher the request for an appeal should be made in writing to the Director of Education or nominee. The Director of Education or nominee will determine the appeal and will notify the teacher in writing of the decision within 5 working days. This decision will be final;
  - b) Where the formal warning has been issued by the Director of Education or nominee the request for an appeal should be made in writing to the Director of Corporate Services. Such appeals will be considered by the Comhairle's Personnel Appeals Panel, before which the teacher will have the right to appear in person, accompanied if he/she wishes by a representative of his/her professional association or a fellow employee of his/her choice. The Panel will determine the appeal and the Director of Corporate Services will notify the teacher in writing within 5 working days. This decision will be final.
- 6.2 The date of an appeal hearing will be no later than 15 working days from the receipt of the notice of appeal.

## 7 RIGHT TO BE ACCOMPANIED

A teacher shall have the right to be represented at all stages of the disciplinary process, including investigatory meeting.

## 8 SPECIAL CASES: VARIATION TO PROCEDURE

### 8.1 *Trade Union Representatives*

No disciplinary action will be initiated against a trade union representative until the matter has been discussed with a full-time official of the union concerned.

## 8.2 *Alcohol Problems*

In any case where disciplinary action arises due to an alcohol problem of a teacher, the Head Teacher should, after consultation with the Personnel Section, make known the Comhairle" Policy on Alcohol Related Problems and the availability of support on a confidential basis in accordance with the Policy on Alcohol Related Problems.

## 8.3 *Dealing with absence*

When dealing with absence a distinction should always be made between absences on grounds of medically certified illness, both physical and mental, and those which may call for disciplinary action. All unexpected absences should be investigated promptly and the worker asked to give an explanation. If, after the investigation, it appears that there was no acceptable reason for the absence the matter should be treated as a conduct issue and be dealt with under the disciplinary procedure. It is important that the teacher is told what improvement in attendance is expected and warned of the likely consequences if this does not happen.

When the absence is due to medically certified illness a sympathetic and considerate approach should be taken. Specialist advice may be sought from the Occupational Health Nurse.

## **9 RECORDS**

- 9.1 A copy of all disciplinary warning letters must be forwarded to the Personnel Section to be placed on the Teacher's personal file.
- 9.2 Should any disciplinary action be reconsidered and effectively withdrawn any written reference thereto shall be expunged (i.e. removed from the teacher's personal file and destroyed) from the teacher's record and the member of staff notified accordingly.
- 9.3 Warnings should be expunged after varying periods. The periods are as follows:-
  - a) Oral warning – after six months satisfactory conduct
  - b) Written warning – after nine months satisfactory conduct
  - c) Written final warnings – after twelve months satisfactory conduct.

## **10 GUIDELINES – RECORDING OF STATEMENTS**

- 10.1 The purpose of recording statements is to have available an agreed, accurate account of interview undertaken with regard to paragraph 2, investigation.
- 10.2 The agreed accounts are for the purpose of ensuring that any disciplinary action taken is in accordance with the evidence presented.
- 10.3 Witness statements should be recorded and issued to the witness for any amendments and signature. The witness should be made aware that the statement might be used as evidence at a disciplinary hearing.

10.4 With regard to the Teacher under investigation, during the interview to investigate the facts the Investigating Officer/Personnel Officer will prepare a note covering the general points of the interview. There will be no supplementary notes prepared. This note will be issued to the teacher for any amendments and signature.

## **11 APPLICATIONS TO AN EMPLOYMENT TRIBUNAL**

- 11.1 The provisions contained within this document do not preclude any teacher from making an application to an employment tribunal where such entitlement exists.

### **GROSS MISCONDUCT - EXAMPLES (THIS IS NOT AN EXHAUSTIVE LIST)**

The following are examples of conduct which may lead to dismissal. This list is not exhaustive but illustrates the most common types of gross misconduct: -

1. Theft, fraud and deliberate falsification of records;
2. Physical violence;
3. Serious bullying or harassment;
4. Deliberate damage to property;
5. Serious insubordination;
6. Misuse of the Comhairle's property or name;
7. Bringing the Comhairle into serious disrepute;
8. Serious incapability whilst on duty brought on by alcohol or illegal drugs;
9. Serious negligence which causes or might cause unacceptable loss, damage or injury;
10. Serious infringement of health and safety rules;
11. Serious breach of confidence (subject to the Public Interest (Disclosure) Act 1998)

### **MISCONDUCT**

The following are examples of misconduct which may lead to warnings:

1. Bad time keeping
2. Absenteeism
3. Minor insubordination