

EAST RENFREWSHIRE LNCT AGREEMENT

REVISED DISCIPLINARY PROCEDURE FOR TEACHING STAFF,
MUSIC INSTRUCTORS, EDUCATIONAL PSYCHOLOGISTS AND
STAFF EMPLOYED IN THE QUALITY IMPROVEMENT SERVICE

January 2006



Education Department

EAST RENFREWSHIRE COUNCIL

REVISED DISCIPLINARY PROCEDURE FOR TEACHING STAFF, MUSIC INSTRUCTORS, EDUCATIONAL PSYCHOLOGISTS AND STAFF EMPLOYED IN THE QUALITY IMPROVEMENT SERVICE

1. INTRODUCTION

- 1.1 Where a teacher's performance or conduct is such as to give rise to serious concern, disciplinary action may be taken by the authority. The disciplinary policy is designed to help and encourage teachers who are not achieving and maintaining professional standards of conduct and job performance.
- 1.2 Disciplinary rules and procedures are necessary for promoting effective employment relations as well as fairness and consistency in the treatment of individuals. They enable organisations to influence the conduct of workers and deal with problems of poor performance and attendance. 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 All teachers should be aware of the standards of conduct and performance expected of them. In this regard, teachers should refer to the council's Code of Conduct for Employees and to the GTCS Code of Practice on Competence. (attached as an appendix to these procedures). This disciplinary code for teachers also includes specific reference to what constitutes gross misconduct.
- 1.4 All problems involving minor misconduct and poor performance should be dealt with, in the early stages, through the use of informal advice, guidance and counselling. It is essential that all problems of this nature are fully discussed and that support is provided with the objective of encouraging and helping teachers to improve. It is essential also that teachers are aware that support and counselling are available at all times even where it has been necessary to take disciplinary action under the procedures.
- 1.5 The disciplinary procedures comply with the ACAS Code of Practice "Disciplinary and Grievance Procedures". In cases involving performance issues, the GTCS Code of Practice on Competence will be followed at all times.

2. PRINCIPLES

- 2.1 The initiation of disciplinary actions/sanctions should be accompanied by appropriate support mechanisms.
- 2.2 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. An appeal should not be heard by the same person who issued the disciplinary sanction.
- 2.3 Apart from gross misconduct, no teacher shall be dismissed for the first breach of discipline.
- 2.4 There shall be a right of appeal against all disciplinary sanctions.
- 2.5 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.

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

3. GROSS MISCONDUCT

Although not exhaustive, the following are examples of gross misconduct. The decision as to whether a teacher's conduct can be construed as gross misconduct will be dependent on full consideration of all the facts and circumstances.

- (a) Fraudulent salary/wage claims and falsification of official documents
- (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 a racial or sexual nature
- (e) Serious offences against the interests of the council, including willful injury to others and willful damage to council property
- (f) Gross 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 (eg fire evacuation procedures)
- (k) Serious breaches of the council's child protection policies

4. UNSATISFACTORY CONDUCT

Instances of failure to observe and maintain departmental discipline, which are less serious than offences constituting gross misconduct as described above, 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 or order

THE FORMAL PROCEDURE

5. THE INVESTIGATORY STAGE

- 5.1 In situations where either a complaint has been received or where a teacher's conduct or performance has given cause for concern, an investigating officer will be appointed. This will normally be a member of the senior management team of the school, other than the head teacher. The investigating officer should, if possible, interview all of the parties involved (including the teacher in question) and, if appropriate, prepare signed and dated statements from all of these witnesses. The investigating officer should then produce a report which will enable the head teacher 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.
- 5.2 The teacher involved must be advised at an early stage that a complaint or concern has been lodged; of the nature of any complaint; of the process which will be followed; and of the right to be represented.
- 5.3 The investigatory process should be conducted as speedily as possible consistent with the principles of fairness and natural justice. In most cases, the investigation should take no longer than 15 working days.
- 5.4 Consideration may be given to the precautionary suspension of a teacher where this is considered appropriate in order to conduct an investigation. 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 teacher's presence at the normal place of work could prejudice the investigation. Consideration could be given to a temporary transfer pending the conclusion of the investigation and any subsequent disciplinary process.
 - c) All precautionary suspensions should be reviewed at agreed regular intervals (normally on a two weekly basis – section 10 refers)
- 5.5 Once the investigation is completed the teacher should be advised of the outcome of the investigation. Where, following an investigation, no further action is to be taken in terms of the disciplinary procedures then all references to the investigation should be removed from the teacher's personal file and destroyed.

6. THE DISCIPLINARY HEARING

- 6.1 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.
- 6.2 Once a decision has been taken to proceed to a disciplinary hearing, the teacher should be so informed in writing. The letter calling the teacher to the meeting should contain the following:

- (a) The fact that the hearing is being held within the conditions of service of teachers in day schools
- (b) The date, location and time of the hearing
- (c) The allegations regarding work conduct, performance or attendance of the teacher
- (d) A clear invitation to the teacher to be accompanied by a representative

The letter should be issued sufficiently far in advance to allow the teacher the opportunity to be accompanied by an appropriate representative.

- 6.3 Head teachers should provide the teacher and/or representative with written evidence obtained during the investigation. The teacher should provide the head teacher with any evidence to be led in his or her defence within a reasonable time before the hearing.
- 6.4 A disciplinary hearing should take place in a room suitable for the purpose. Telephone calls should not disrupt the proceedings and provision should be made for note taking. The head teacher should be accompanied by a member of staff senior in status to the teacher involved. In the case of a disciplinary hearing involving a depute head teacher, the head teacher should be accompanied by a personnel officer or other senior officer.
- 6.5 The senior member of staff accompanying the head teacher should make a careful record of the proceedings.
- 6.6 The format of the hearing will vary according to the circumstances but every hearing should include:
 - (a) A formal reading of the allegations
 - (b) Evidence led to substantiate the allegations
 - (c) The opportunity for cross examination by the teacher or representative
 - (d) The opportunity to provide counter evidence by the teacher or representative
 - (e) The opportunity to cross examine this by the head teacher
 - (f) The facility to call witnesses
- 6.7 At the conclusion of the hearing, the head teacher 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.
- 6.8 In the event of a disciplinary warning being issued the teacher should be informed of the right of appeal to the director of education within 10 working days of receipt of the written notice of disciplinary action. (See section 9 – time limits)
- 6.9 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.

7. DISCIPLINARY SANCTIONS

- 7.1 All disciplinary sanctions shall be recorded in writing and shall remain in the teacher's personal file during the period of currency of the warning. In being advised of the disciplinary sanction which is being applied, the teacher should be advised also of the improvements which will be expected of them and the availability of appropriate support to allow them to achieve and maintain the improvement.

7.2 The following disciplinary sanctions shall be available.

- a) Formal Oral Warning – For minor breaches of discipline, misconduct or continued poor performance. The warning must include reference to the fact that any further breach may render the teacher open to further disciplinary action.
- b) Written Warning – For more serious breaches of discipline, misconduct or continued poor performance or a failure to improve conduct or performance following receipt of a formal oral warning. The teacher must be informed that a further breach may result in further disciplinary action being taken.
- c) Final Written Warning – For serious breaches of discipline, misconduct or continued poor performance or a failure to improve conduct or performance following receipt of a written warning. The teacher must be warned that any further breach may result in dismissal.
- d) Dismissal
 - i. For serious repeated misconduct or poor performance during the currency of a final written warning or for gross misconduct for which no previous warning exists. The teacher must be informed in writing of the effective date of dismissal and whether the dismissal is summary or with notice.
 - ii. The following punitive sanctions are available in conjunction with a final written warning as an alternative to dismissal: demotion, transfer, or suspension of an increment. Where a teacher does not agree to the application of the punitive sanction then the council will have no alternative but to dismiss the teacher.

7.3 Head teachers have overall responsibility for the management of teachers within their schools and they have the devolved responsibility for issuing warnings up to and including the level of final written warning.

7.4 The director of education or nominee has the power to apply all forms of disciplinary sanction described in this section and to dismiss a teacher under the agreed disciplinary procedures of the authority.

7.5 In cases involving performance issues the GTCS Code of Practice on Competence will be followed at all times. Before taking action for dismissal the director of education or nominee will ensure that the Code has been followed.

8. ADDICTION RELATED PROBLEMS

In accordance with the terms of the council's Addiction Policy for Employees, an employee with such a problem should be given the opportunity of accepting referral to the counselling services arranged by the council. If the Employee Counselling Service, or other agreed agency, and the employee, accepts that an alcohol, drug or gambling problem exists and providing the employee undertakes to co-operate and successfully undertakes the recovery programme, disciplinary action will be suspended in respect of the offence which led to the referral. Offences which are either not related to the reason for referral, or offences which are considered to be of such a serious nature, will be dealt with in the normal way. If the employee is not accepted by the counselling service as having an alcohol, drug or gambling 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 Teachers have the right of appeal against all disciplinary sanctions imposed by the authority.

Nature of Warning	Issued by	Appeal Heard by
Oral warning	Head teacher or nominee	Director of Education or Head of Service
Written warning	Head teacher or nominee	Director of Education or Head of Service
Final Written Warning	Head teacher or nominee	Director of Education or Head of Service
Final Written Warning (or any other level of warning)	Director of Education or nominee	Teaching Staff Appeals Committee

9.2 All appeals against warnings, except a warning signed by the director of education, end at department level. Appeals against dismissal will be to the Teaching Staff Appeals Committee. (As agreed at the 21/12/05 meeting of the Council)

9.3 The Appeals Procedure

At any appeal the appellant can be represented by their trade union representative or other person of their choice.

The procedure at the Appeal Hearing will be as follows:

- a) The management representative shall put the case in the presence of the appellant and the appellant's representative.
- b) The appellant and/or the appellant's representative shall have the opportunity to ask questions of management and any witness called by the management.
- c) The appellant and/or the appellant's representative shall put the appellant's case in the presence of the management representative.
- d) 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.
- e) The officer hearing the appeal / Appeals Committee 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 / Appeals Committee and will then retire. If necessary, the officer hearing the appeal / Appeals Sub-Committee can recall a witness to clarify any point in question.

- g) The management representative followed by the appellant and/or the appellant's representative shall have the opportunity if they so wish to sum up their 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) If practicable, the officer hearing the appeal / Chair of the Appeals Committee shall announce the decision to both parties at the conclusion of the meeting. In any event, the decision shall be confirmed in writing to the Appellant, normally within 5 days.

10. TIME LIMITS COVERING VARIOUS ASPECTS OF THE DISCIPLINARY PROCEDURE

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

Aspects of Disciplinary Procedure	Time Limits (Working Days)
Precautionary suspension	10 days until each review
Notification of decision to proceed to disciplinary hearing	10 days notice
Notification of decision of disciplinary hearing	5 days (maximum)
Time limit to lodge appeal	10 days (maximum) from date of notification of decision of disciplinary hearing
Date of notification of appeal hearing	No later than 20 days from receipt of notice of appeal
Notification of outcome of appeal hearing	5 days (maximum)

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.

Level of Warning	Time Limit (Months)
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 (ie removed from the teacher'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 can remain on a teacher's file for a longer period of time than specified above. This decision, and the timescale for review 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 teacher's personal file and the teacher notified accordingly.

LNCT
18 January 2006

1. Introduction

The Code of Practice on Teacher Competence provides the definition of competence in terms of the Standard for Full Registration (SFR) and explains the steps in the process for dealing with cases of short-lived under-performance and long running under-performance. This Code is part of the Council's procedures for maintaining standards of professional conduct and competence in teaching.

It is important to note that this Code will be kept under continuous review and will be updated regularly.

It should be noted that where the alleged under-performance relates to administrative/managerial duties of a promoted teacher, similar procedures may be applied, but in the knowledge that the power of the Council, at the end of the day, to remove the name of a teacher from the register for long-running under-performance relates to teaching competence not administrative/managerial competence.

2. Definition of Teacher Competence

Teacher competence is described in terms of the SFR and applies to teachers who have gained full registration with the General Teaching Council for Scotland.

The Standard 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.

Professional Knowledge and Understanding

Registered teachers:

- a) have detailed knowledge and understanding of the relevant areas of the pre-school, primary or secondary school curriculum;
- b) have sufficient knowledge and understanding to fulfil their responsibilities for literacy and numeracy; personal, social and health education; and ICT. (As appropriate to the sector and stage of development.);
- c) understand the nature of the curriculum and its development;
- d) have sufficient knowledge and understanding to meet their responsibilities to teach cross-curricular aspects;
- e) have a broad, critical understanding of the principal features of the education system, educational policy and practice, and of their part in it;
- f) have detailed working knowledge of their sector, of the school(s) in which they teach, and of their professional responsibilities within them;

- g) can articulate their professional values and practices and relate them to theoretical principles and perspectives;
- h) have research-based knowledge relating to learning and teaching and a critical appreciation of the contribution of research to education in general.

Professional Skills and Abilities

Registered teachers:

- a) are able to plan coherent and progressive teaching programmes which match their pupils' needs and abilities, and they can justify what they teach;
- b) communicate clearly, making skilful use of a variety of media, and interact productively with pupils, individually and collectively;
- c) use a range of teaching strategies and resources which they can evaluate and justify in terms of curriculum requirements and of the needs and abilities of their pupils;
- d) set and maintain expectations and pace of work for all pupils;
- e) work co-operatively with other professionals and adults;
- f) organise and manage classes and resources to achieve safe, orderly and purposeful activity;
- g) manage pupil behaviour and classroom incidents fairly, sensitively and consistently, making sensible use of rewards and sanctions, and seeking and using the advice of colleagues when necessary;
- h) understand and apply the principles of assessment, recording and reporting;
- i) use the results of assessment to evaluate and improve their teaching, and the learning and attainment of the children they teach.

Professional Values and Personal Commitment

Registered teachers:

- a) learn from their experience of practice and from critical evaluation of relevant literature in their professional development;
- b) convey an understanding of practice and general educational matters in their professional dialogue and communication;
- c) reflect on and act to improve their own professional practice, contribute to their own professional development, and engage in the process of curriculum development;
- d) should show in their day-to-day practice a commitment to social justice and inclusion;
- e) take responsibility for their professional learning and development;
- f) value, respect and are active partners in the communities in which they work.

3. Procedures for Dealing with Under-Performance

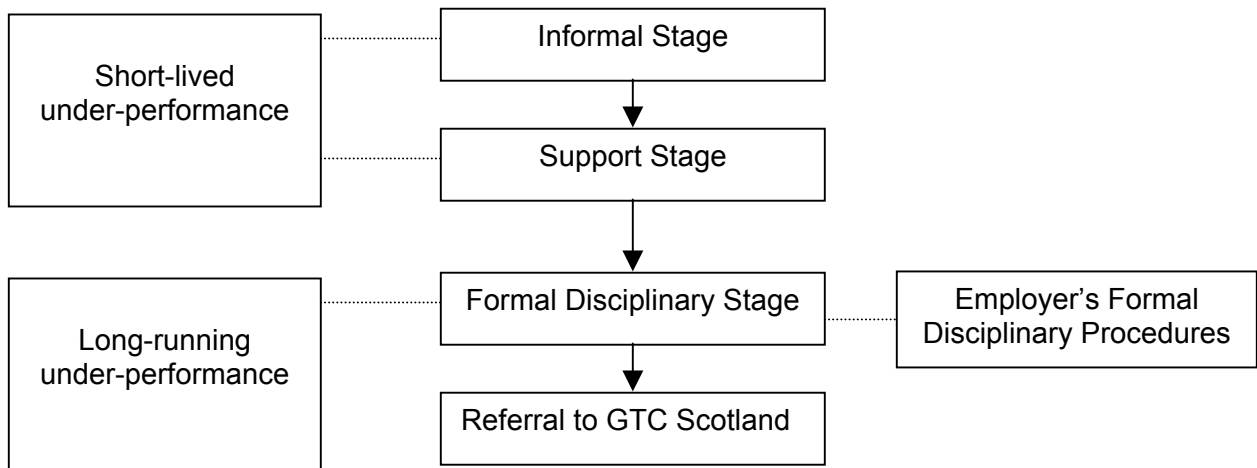
The procedures assume that the teacher has been performing at a competent level up to the point at which temporary under-performance is first identified.

Short-lived under performance may be caused by many different factors such as illness, personal circumstances, lack of understanding of current methodology, loss of confidence or external factors beyond the control of the teacher. In stages 1 and 2 of the following procedures it is assumed that the teacher's problem is one of short-lived under-performance.

Long-running under-performance is the term used to describe the problem when stage 3 of the procedures 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.

(Note: This advice is in line with relevant provisions of the ACAS Code of Practice on Disciplinary and Grievance Procedures as revised in September 2000, ref: para 8, para 22.)

There are four stages in the procedures:



Stage 1: Informal

- The informal stage does not form part of the employer's formal disciplinary procedures.
- It is assumed, at this stage, that the problem is one of short-lived under-performance.
- Teachers are encouraged to invite a colleague or a representative from their Professional Association to accompany them to any meetings.
- Informal discussions should be held between the teacher and senior colleagues to discuss identified areas of under-performance. During these informal discussions the teacher should be encouraged to participate fully in identifying the causes of the under-performance and suggesting possible remedies. Advice and guidance should be offered from senior colleagues to support improvement.

- e) At the conclusion of the first informal discussion a date should be agreed by the teacher and senior colleagues to review performance. Depending on the context of the situation a reasonable length of time should be given for the teacher to reach the required standard.
- f) At the conclusion of the meeting to review performance, ie whether or not the required standard has been achieved, an oral report should be given to the teacher indicating the outcome. Two outcomes are possible:

Outcome 1:

Where improvements have been made to the required standard, no further action will be taken. The teacher should be informed of this decision in writing.

Outcome 2:

Where improvements have not been achieved to the required standard, the teacher should be informed that the matter will be referred to the headteacher who will consider whether the second stage of the procedures should be implemented. The teacher will be informed of the headteacher's decision and the underpinning reasons in writing.

Stage 2: Support

- a) The support stage does not form part of the employer's formal disciplinary procedures.
- b) It is assumed, at this stage, that the problem is still one of short-lived under-performance.
- c) Teachers are encouraged to invite a colleague or a representative from their Professional Association to accompany them to any meetings.
- d) The teacher should be informed by the headteacher of:
 - the specific aspects of the SFR which are to be addressed;
 - the proposed mechanisms which will be put in place to support the teacher;
 - appropriate professional development opportunities which can be accessed.
- e) Discussions should be held between the teacher and headteacher to agree the way ahead. During these discussions the teacher should be encouraged to address the issues openly in order to:
 - clarify the areas of under-performance;
 - suggest forms of support which he/she would find helpful;
 - agree appropriate professional development opportunities.

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

At the conclusion of these discussions the headteacher 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.

As soon as possible after the discussion the headteacher should confirm in writing:

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

Depending on the context of the situation a reasonable length of time should be given for the teacher to reach the required standard.

- f) At the conclusion of the Final Review meeting the teacher should be informed of the outcome.

Two outcomes are possible:

Outcome 1:

Where improvements have been achieved to the required standard, no further action will be taken. The proceedings will be deemed to be complete. The teacher should be informed of this discussion in writing.

Outcome 2:

Where improvements have not been achieved to the required standard, the teacher should be informed that formal disciplinary procedures will be implemented. This decision and the underpinning reasons should be communicated to the teacher in writing.

The teacher should be advised of their statutory and contractual rights to be accompanied at stages 3 and 4.

Stage 3: Disciplinary

- a) This stage comprises the employer's formal disciplinary procedures.
- b) The problem is now considered to be one of long-running under-performance.
- c) The teacher should be advised of their statutory and contractual rights to be accompanied.
- d) A comprehensive statement should be produced by the headteacher indicating:
- details of the teacher's alleged failure to maintain the standards described in the SFR with clear identification of which aspects are alleged not to be of the required standard;
 - details of the support mechanisms and professional development opportunities offered to the teacher;
 - the duration of stages 1 and 2;
 - the teacher's performance at the start of the support stage;
 - the teacher's performance at the end of the support stage.
- e) The above information will be considered:
- at subsequent stages in the employer's formal disciplinary proceedings;
 - if the case is referred to GTC Scotland.

Stage 4 : Referral to the General Teaching Council for Scotland

- (a) A case is referred to the Council under the terms of Section 9B of the Teaching Council (Scotland) Act 1965 as amended, ie where a case culminates in:
 - the dismissal of the teacher;
 - the resignation of the teacher in the context of a possible dismissal.
- (b) Relevant information from the Disciplinary stage will be sent to the Council.
- (c) Information relating to the Council's procedures for dealing with such cases can be found in the Council's Code of Practice on the Exercise of its Disciplinary Functions and in the Conduct, Competence and Disciplinary Rules.