

**DISCIPLINE POLICY  
(TEACHING STAFF)  
Amended October 2009 (LNCT agreed)**

**1. Scope**

- 1.1 This document sets out the Council's Discipline Policy as it applies to Teaching Staff and those retaining teaching conditions of service in Dumfries and Galloway Council. It also applies to probationer/trainee teachers.
- 1.2 The procedural notes are for guidance only. Both the policy and the notes take account of the Disciplinary Framework for Teachers, SNCT Handbook (Part 2, Appendix 2.11) which replaced section 15.1 in the scheme of salaries and conditions of service for teaching staff.
- 1.3 These procedural notes are for discipline issues. If the issue is one of competency the matter should be considered in conjunction with the '*Code of Practice for Teacher Competence: Procedures for Dealing with Underperformance (2009)*'.

**2. Principles**

- 2.1 Good discipline is essential to the operation of Dumfries and Galloway Council.
- 2.2 The disciplinary process is intended as a positive means of emphasising and encouraging changes required in conduct and performance, rather than a means of imposing sanctions or as necessarily leading to dismissal.
- 2.3 Where appropriate, alternatives to disciplinary action will be considered. In particular individual advice, counselling and training should be considered before disciplinary action.
- 2.4 Disciplinary action will be applied equitably and fairly after proper investigation. Each case will be considered on its merits.
- 2.5 Those conducting investigations or disciplinary hearings must familiarise themselves with Appendix 2 attached – Guidance on the conduct of Disciplinary Investigations
- 2.6 The detail of the disciplinary process and any of its outcomes will be confidential.

**3. Delegation**

- 3.1 The following levels of officer are authorised to take the forms of action detailed below:-
  - (a) Guidance and counselling may be given by the teacher's immediate line manager

- (b) Spoken warnings may be given by the Headteacher or his/her nominee (see 1.3 above)
- (c) Written warnings may be given by the Headteacher or his/her nominee (see 1.3 above)
- (d) Final Written warnings may be issued by the Head of Service. Final Written Warnings which include an additional punitive sanction may be affected by the Service Director as soon as possible thereafter
- (e) Dismissal may be effected by the Service Director (Schools Services)
- (f) Suspension may be effected in the first instance by the appropriate Headteacher or his/her Nominee but should be confirmed by the Service Director or his/her nominee as soon as possible thereafter
- (g) Nominees referred to above at Department level must not be below the level of Quality Improvement Managers. At school level, nominees would include Depute Headteachers.
- (h) Where a punitive sanction is contemplated, the Operations Manager - Human Resources must be consulted and will be present or represented at such disciplinary proceedings.

#### **4. Disciplinary Process**

- 4.1 Where, after investigation, a teacher's work or conduct is considered so unsatisfactory as to warrant formal consideration, the teacher will be called to a formal disciplinary hearing (See 1.3).
- 4.2 Disciplinary hearings will be held as soon as possible after the events concerned, subject to the teacher having a minimum of 10 working days' notice although this can be shorter with agreement
- 4.3 Disciplinary matters will be dealt with in private.
- 4.4 At the time of notification of the Hearing, the teacher will be advised of the nature of the complaint and given copies of available papers.
- 4.5 The teacher will be advised that he/she is entitled to explain any alleged acts or omissions and that he/she may be represented at the hearing by his/her Trade Union or other appropriate work colleague. Teachers have a right to request postponement of a Hearing for up to 5 working days to accommodate attendance of their chosen representative.
- 4.6 New matters arising at a disciplinary hearing will not be excluded from consideration. However, these may require the hearing to be adjourned at the discretion of the chair.
- 4.7 The Operations Manager – Human Resources or his/her nominee, where requested, will give advice and assistance to those conducting a disciplinary hearing.

- 4.8 No disciplinary action will be taken against a Trade Union representative prior to consultation with the Operations Manager – Human Resources or his/her nominee and the appropriate full time Trade Union official concerned.
- 4.9 Disciplinary action will only be taken following a disciplinary hearing.
- 4.10 At the conclusion of a disciplinary hearing, the action to be taken, if any, will normally be verbally notified to the teacher and his/her representative.
- 4.11 The Service Director (Schools Services) must be informed of any disciplinary action taken and he/she must inform the Operations Manager – Human Resources or his/her nominee. The Service Director (Schools Services) must also keep records of review and expiry dates for warnings or sanctions.
- 4.12 The outcome of a disciplinary hearing will be confirmed in writing to the teacher within five working days of the disciplinary hearing being concluded. If the decision of the Hearing is that a warning be given, the letter will specify:
- i) the nature of the complaint;
  - ii) that a warning has been given and the type of warning;
  - iii) the facilities open to the teacher to improve his or her conduct or performance;
  - iv) that the facts have been entered on the teacher's record and the length of time during which the facts will be retained on his/her record.
  - v) the likely consequences of any further unsatisfactory work or conduct or performance; and
  - vi) the teacher's right of appeal.
- 4.13 Where a teacher is represented at a Hearing, he/she should be asked for permission to send a copy of any warning letter to that representative.
- 4.14 These disciplinary principles and arrangements will also apply to matters of capability and performance in conjunction with the GTC Code of Practice on Teacher Competence and the GTC code of Professionalism and Conduct).

## **5. Warnings (Also See 1.3**

5.1 Following a disciplinary hearing, if the officer chairing the hearing is satisfied that an offence has occurred, he/she will issue a warning (except in the case of gross misconduct or discipline of a teacher already subject to a final written warning). Depending on the circumstances and the gravity of the misconduct, and taking into account the disciplinary record of the teacher, the warning will be one of the following:-

### **5.2 Spoken Warning**

If the occurrence is considered to be of a minor or less serious nature, a spoken warning will be given. The teacher will be left in no doubt as to the reason or grounds for the warning and the likely consequences of repetition or further disciplinary offences. Where a spoken warning is issued, it will be confirmed in writing to the teacher normally within 5 working days of the hearing. A copy will be retained on the

teacher's record for a period of six months and will be referred to at any subsequent disciplinary hearing in that period. Subject to satisfactory conduct and performance, spoken warnings will expire after a discipline free period of six (calendar) months unless otherwise specified.

### 5.3 Written Warning

If the offence is a serious one, or if a further offence occurs whilst a teacher is subject to a current spoken warning, a written warning will normally be given and confirmed in writing normally within 5 working days of the hearing. A copy of the written warning will be retained on the teacher's record for a period of nine months from the date of hearing and will be referred to at any subsequent disciplinary hearing in that period. Subject to satisfactory conduct and performance, the warning will expire after a discipline free period of nine months unless otherwise specified.

### 5.4 Final Written Warning

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

## 6. **Suspension**

6.1 The appropriate Headteacher or his/her nominee may suspend any teacher whose alleged conduct appears to involve a danger to other employees, to members of the public, clients or himself/herself, (e.g. where under the influence of alcohol, fighting, etc). Suspension is also appropriate in cases where management judges it necessary in order to conduct proper investigation without prejudice, but periods of suspension should be kept as short as practicable and alternatives should be considered.

6.2 Any suspension must be notified to the Service Director (Schools Services) as soon as possible who, in turn, will inform the Operations Manager – Human Resources as soon as possible.

6.3 Suspension pending disciplinary hearing will be with full pay.

6.4 If, following investigation, it is decided not to proceed to a disciplinary hearing, the suspension will cease to apply and the employee will be notified in writing accordingly.

## 7. **Punitive Sanctions**

7.1 The following punitive sanctions are available in conjunction with a final written warning as an alternative to dismissal, **except in cases of Gross Misconduct:** demotion, compulsory transfer, withholding of an increment.

## **8. Gross Misconduct**

- 8.1 Gross misconduct is behaviour of such a nature that the Council cannot tolerate continued employment of the teacher.
- 8.2 Where a teacher faces allegations which, if upheld, could result in a finding of gross misconduct, he or she may be suspended on full pay during investigations prior to a disciplinary hearing.
- 8.3 If an accusation of gross misconduct is upheld by a disciplinary hearing, it will lead to the dismissal of the employee without the need for prior warnings to be issued and without notice or payment in lieu of notice

## **9. Dismissal**

- 9.1 Disciplining officers must consult Human Resources before dismissing any teacher. Dismissal will result in cases where any further offence is committed during the currency of a final written warning or a Final Written Warning with punitive sanctions. Dismissal will also result where the disciplining officer, having taken account of the relevant facts of the case, determines that gross misconduct has taken place.
- 9.2 Dismissals will be confirmed in writing to the teacher, with the reasons for dismissal being stated. The written confirmation will normally be issued within five working days of the decision, a copy lodged on the file and a copy sent to the teacher's representative, if any, providing permission is given.

## **10. Criminal Offences Associated with Employment**

- 10.1 The disciplinary procedure is only concerned with criminal offences which have a bearing on employment and/or which affect the teacher's suitability for the post. This procedure covers offences whether committed during working hours or not.
- 10.2 If a criminal offence at work is discovered, it must be reported immediately to the Service Director (Schools Services), who must immediately inform the Operations Manager – Human Resources to decide what requires to be done. Where the police are involved, it is not necessary to wait for criminal proceedings to be determined before addressing the matter. However, where the police so request because of possible impediment to police investigation, the disciplinary investigation may be delayed. In the absence of suitable alternatives, suspension with pay may be used pending further disciplinary proceedings. After full investigation, disciplinary action appropriate to the offence may be taken

## **11. Appeals**

- 11.1 A teacher is entitled to appeal against any disciplinary action taken against him/her.
- 11.2 Appeals must be lodged with the Service Director (Schools Services) within ten working days of receipt of the letter confirming disciplinary action and must state the grounds for appeal.

- 11.3 Appeals against spoken, written or final written warnings will normally be heard by the Service Director or Nominee, unless the Service Director, or his/her nominee, issued the warning. The hearing should normally be arranged within ten working days of receipt of the letter of appeal.
- 11.4 Appeals against all warnings will end at Service Director level. Where the warning was issued by the Head of Service, the appeal will be heard by the Service Director (Schools Services).
- 11.5 Appeals against dismissal, or final written warnings with punitive sanction, will be acknowledged by the Service Director (Schools Services). He/she will forward the letter to the Operations Manager – Human Resources who will arrange for the appeal to be heard by the appropriate Committee of the Council.

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

<b>Level of Warning</b>	<b>Issued By</b>	<b>Appeal Heard By</b>
Spoken Warning	Headteacher or Nominee	Service Director or Nominee
Written Warning	Headteacher or Nominee	Service Director or Nominee
Final Written Warning	Head of Service	Service Director
FWW/Punitive Sanction	Service Director	Appeals sub-committee
Dismissal	Service Director	Appeals sub-committee

\*Nominees referred to above at Departmental Level must not be below the level of Quality Improvement Manager. At school level, nominees would include Depute Headteachers.

- 11.6 Within fifteen working days of receiving written details of appeal, the Operations Manager – Human Resources will arrange for the appeal to be heard within two months of receipt of the letter by the Operations Manager – Human Resources.
- 11.7 A teacher will be given written confirmation of the date and time of the hearing at least seven working days in advance.

***(October 2009)***



**DISCIPLINARY PROCEDURE - GROSS MISCONDUCT**

***The following list, which is not exhaustive, provides examples of offences which are normally regarded by the Council as Gross Misconduct***

- Theft, fraud, deliberate falsification of records
- Abuse of employment by Council for personal advantage
- Breach of safety rules
- Fighting, physical violence
- Sexual assault/misconduct
- Deliberate damage to Council property
- Incapability through alcohol or drugs
- Negligence causing unacceptable loss, damage or injury
- Insubordination/refusal to obey legitimate instruction
- Unauthorised entry to computer or other private records
- Sustained bullying/harassment
- Engaging in a sexual relationship or sexual activity with a young person under 18 in relation to whom the teacher is in a position of trust

## GUIDANCE ON THE CONDUCT OF DISCIPLINARY INVESTIGATIONS

1. The Disciplinary Procedure is a means of modifying inappropriate behaviours, and properly used, can reduce the incidence of events culminating in dismissal. Investigations can lead to identification of training needs, confidential counselling, warnings and termination of contracts.
2. Line managers have to deal with 'discipline' all the time, advising and leading staff to acceptable standards by acting on matters which they observe from day to day. They may seldom experience situations where they receive complaints or encounter some conduct or failure which appears so serious as to require formal handling.
3. Implementing the formal Disciplinary Procedure is not a comfortable situation for any supervisor, but it is an essential part of the role and need not be intimidating if the machinery is operated correctly. There are certain fundamental principles which apply to the Disciplinary Procedure – including the Investigation stage – chiefly objectivity, fairness, thorough examination of evidence and the right of accused persons to defend their position.
- 4 a) At the investigatory stage, a teacher should be made aware of his/her right to be accompanied by a colleague or union representative, if he/she so chooses. (The right to full *representation* applies only at any subsequent hearing/appeal)
- b) Where a teacher whose conduct or performance has given rise to the investigation is to be interviewed, he/she must be given a reasonable indication of the nature and purpose of the investigation and the procedures that will be followed at the investigatory interview, in advance of this meeting with the investigatory officer.
5. No matter how compelling information may seem at first sight, no assumptions should be made, because assumptions can influence the conduct of the process, and lead to the early formation of opinions which become hard to shift. All investigating Officers have to be aware of their own feelings about individuals involved in the issue, and also try to eliminate the effect of any personal views of the world which are irrelevant to the work environment. An unsociable person or one with an unconventional lifestyle may be a model employee if his/her activities do not damage work behaviour or the Council's reputation.
6. Wherever, practicable, persons making allegations should be asked to put their concerns in writing. Hearsay and anonymous reports require very careful handling as they often involve hidden agenda or person malice against employees. The local 'grapevine' is much more efficient (and potentially more harmful) than official channels. Despite the best endeavours of more enlightened people, mud sticks and 'there's no smoke without fire'. It is therefore in everyone's interest for problem issues to be addressed competently. Human Resources advice should be sought.

7. Where more commonly a direct line manager discovers an apparent breach of legitimate expectation which is not of a very serious nature, that line manager will normally deal with the matter as a local issue. Where the matter seems to be of a more serious type, reference will often be made to more senior management. A decision will be taken at that point as to who will conduct the investigative part of the process. This decision must take account of the protocol that (except where it cannot reasonable be avoided) the Disciplining Manager will not conduct an investigation in order to preserve objectivity in weighing the evidence.
8. In some serious cases it will be necessary to suspend an employee to allow investigation which is free of prejudice: the employee will be debarred from the workplace and from contact with witnesses to the events. Management should interview witnesses individually and in private as soon as possible after the problem arises, before recollections begin to fade. Witnesses should be advised not to discuss the matter with colleagues.
9. Especially where suspension is involved, investigations should be commenced as early as possible, in order to minimise the timescale. Suspension on full pay is not a sanction but it is still a very stressful experience for the individual and a significant cost for the service
10. Where financial impropriety is alleged, the services of Internal Audit should be requested as they have specialist skills in investigating such cases.
11. Matters of a criminal nature may also have to be referred to the Chief Constable: discipline in relation to criminal acts should not go ahead until the implications for any Police proceedings have been fully considered.
12. When interviewing witnesses, Investigating Officers' questions should be as open as possible (eg "Do you recall anything unusual about Mr Smith's behaviour yesterday?"). Written Statements should be taken, even if they merely amount to confirmation that the interviewee has no information to contribute. All Statements should be signed as a correct record by the interviewees.
13. Any written statements should be made available to the representative of the accused person in good time before any Disciplinary Hearing takes place, so that it is possible for an explanation or defence to be prepared. There is nothing to be gained by producing surprise evidence at a Hearing, and in fact this action would be likely to be criticised at Appeal or Employment Tribunal.
14. The fact that an Investigation has been conducted does not mean that a Disciplinary Hearing will follow. It is an evidence-gathering exercise and may lead management to decide that formal action or any action at all, is unnecessary. In any cases of doubt, Human Resources will be pleased to advise.
15. Where a Disciplinary Hearing will follow, the person representing a suspended employee may be allowed to visit the workplace and interview colleagues of his/her client. However, it is up to each witness to decide whether or not to speak to the representative. Whilst making the position clear, management should not influence employees either way.

16. Investigating Officers should keep a record of the process they implement, including names, dates, times and the sequence of events. They should also make a record of what they present at any Disciplinary Hearing, in order to produce it for any appeal level. All such records must be entirely factual and avoid any conclusions – these are the prerogative only of the Disciplinary Officer at the Hearing.
17. Flaws in the Investigatory stage can seriously undermine the Council's position in dealing with allegations and justifying any sanctions which are ultimately imposed. Current Employment case law clearly demonstrates that, irrespective of the merits of the case, procedural faults weigh very heavily against employers, no matter how well intentioned.

## **DISCIPLINARY INVESTIGATIONS KEY FEATURES**

- \* Make no assumptions.
- \* Seek any specialist advice (Personnel, Audit, Police).
- \* Suspend if necessary
- \* Gather the facts (documents, records etc).
- \* Obtain signed statements.
- \* Record the investigation process
- \* Prepare submission to the Disciplinary Hearing.

## GUIDANCE ON DEALING WITH YOUNG WITNESSES

### INTRODUCTION

1. In a school setting, witnesses in a disciplinary case can range from very young children of 4/5 years of age through to young adults of 17 or 18 years of age. Judgement and sensitivity will require to be exercised in accordance with the nature of the case. However, notification of and the involvement of parents is seen as essential. Moreover, so far as is consistent with natural justice children and young people should not be expected to face the same level of interrogation as would be applied to adult witnesses.
2. Skilful questioning can produce a 'truthful' result which safeguards both the interests of the child/young person and of the staff member faced with disciplinary action.
3. A Local Authority, unlike Courts or other similar bodies such as Employment Tribunals, cannot compel a child/young person to give evidence. On the other hand, Article 12 of the UN Convention on the Rights of a Child states "parties shall assure to children who are capable of forming their own views the right to express those views freely in all matters affecting them....the views of children being given due weight in accordance with the age and maturity of the children". In such circumstances, the interests of the child should be safeguarded by the attendance of the parent(s) and/or an 'advocate' to protect his/her interests, since the only effective way to ensure that crucial evidence from young witness is provided in a Local Authority investigatory process is to assure that their legitimate interests are safeguarded.
4. The following guidance attempts to safeguard the interests of all parties involved without prejudicing the most appropriate outcome:

### PROCEDURES

5. The current climate and recent legislation protects the primacy of the child's interest – but employment law/proper personnel practice must be observed in the interests of natural justice for the teacher facing potential disciplinary action or even the possibility of dismissal.
6. An employer only needs to act on the balance of probability and not on evidence established beyond a reasonable doubt. However, high handed or arbitrary action by management whether perceived or real, can damage staff relations beyond those involved in any immediate case.
7. It should be stressed to all staff that, if an approach from a pupil throws up an allegation against a member of staff, the Headteacher (or failing that, a member of the Senior Management Team) must be contacted immediately.

***Other priorities must immediately take second place to dealing with such an allegation.***

8. Such allegations *may* be malicious or misplaced. However, while Headteachers have a duty to protect staff against unfounded or malicious allegations, they cannot run the risk that the allegation has substance. If this turns out to be the case, the Headteacher is then open to the charge that he/she either “covered up” or “contaminated” a proper investigation. The Headteacher must keep an entirely open mind in approaching any case,
9. If the allegation from pupil/pupils turns out to be malicious, then appropriate disciplinary action must be applied to the pupils. Parents need to be advised of this in such a way that legitimate concerns are not frustrated by what could be perceived to be a threat.
10. The potential exists that no matter the eventual outcome of the investigation of any allegation, the member of staff in question may be perceived as being involved ie “Mud Sticks”. This potential situation emphasises the need for a strict regime of confidentiality on behalf of management. However, the “Mud Sticks” syndrome must not influence the initial judgement of the need for suspension and disciplinary proceedings.

### **CONDUCT OF AN INTERNAL ENQUIRY**

11. The same rigour needs to be applied, irrespective of the nature or seriousness of an allegation.
12. Pupils should be interviewed individually in the presence of a reliable witness, preferably, but not necessarily, a senior member of staff. However, it is critical that any such witness is bound by the strictest level of confidentiality.
13. Consideration should be given to having a parent or guardian present at investigatory meetings and any subsequent disciplinary hearing, if appropriate.
14. Detailed and accurate notes of the interview should be taken by a third party, where possible, and both questions and responses should be noted. These should subsequently be made available to the witnesses.
15. It is also necessary that the teacher facing disciplinary action is able to have a representative present at any interviews to witness but not necessarily participate in the interview. Follow- up interviews of witnesses may have to be undertaken as part of the investigation process.
16. In the interests of natural justice and fairness, it may be necessary for a pupil to be called as a witness to a formal hearing. However, this will be avoided wherever possible.

**CONDUCT OF DISCIPLINARY HEARINGS**

1. The Service Director or nominated officer will be assisted by such advisers as he/she sees fit.
2. The Authority's representative (normally the investigating officer) will put the case in the presence of the teacher and the teacher's representative and may call witnesses.
3. Where witnesses are called, they will be heard separately and will withdraw when questioning is complete.
4. The teacher and representative will have the opportunity of questioning the Authority's representative and witnesses on the evidence given.
5. The Service Director or nominated officer will have the opportunity of questioning the Authority's representative and witnesses on the evidence given.
6. The teacher or his/her representative will put his/her case in the presence of the Authority's representative and call such witnesses as he/she wishes.
7. The Authority's representative will have the opportunity to question the employee and his/her witnesses relative to the case.
8. The Service Director or nominated officer will have the opportunity to question the employee and his/her witnesses.
9. The Authority's representative and subsequently the teacher or his/her representative will have the opportunity to sum up their case if they so wish but not introduce new evidence at this stage.
10. The Authority's representative, the teacher and his/her representative and any person other than the Service Director or nominated officer and his/her advisors, will then withdraw.
11. The Service Director or nominated officer with the officers appointed to advise him/her will deliberate in private, only recalling the Authority's representative or the teacher to clear points of uncertainty on the evidence already given. If such recall is necessary, both parties are to return, even if only one is concerned with the point, giving rise to doubt.
12. The Service Director, or nominated officer, at his/her discretion will reconvene the hearing to directly announce the decision or he/she may do so either in writing to both parties within 5 working days of the hearing.
13. Appeals against any disciplinary action must be lodged with the Service Director, or nominated officer, within 10 days of the letter setting out the disciplinary action.
14. If no disciplinary action is to be taken, all references to the case shall normally be removed from the teacher's personal file and destroyed.