

# **Disciplinary Procedure (Teachers)**



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**DISCIPLINARY PROCEDURE**

**(TEACHERS)**

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## **DISCIPLINARY PROCEDURE**

### **(TEACHERS)**

#### **1. INTRODUCTION**

- 1.1 The council and trade unions agree that discipline is essential for the conduct of the council's affairs and for the safety and well-being of all teachers. It is also agreed that disciplinary rules and procedures are necessary for promoting fairness and order in the treatment of individuals and conduct of industrial relations.
- 1.2 This procedure takes full account of the revised disciplinary framework produced by the Scottish Negotiating Committee for teachers (SNCT). The procedure also reflects the guidance contained within the [ACAS Code of Practice on Disciplinary Practice and Procedures in Employment](#). Where concerns relate to the performance of an individual's teaching, the procedures must comply with the [General Teaching Council Scotland Code of Practice on Competence](#).
- 1.3 Within the limitation of powers delegated by the council, the Depute Chief Executive of Education is responsible for the management and discipline of Education Services. The Depute Chief Executive may delegate authority within the terms of this procedure to nominated Education officers. These officers may issue oral or written warnings or take punitive disciplinary action as defined in section 7 of this procedure. A list of authorised officers (by designation) will be produced and made available to the trade unions.

#### **2. COUNSELLING**

- 2.1 The council and trade unions accept that this procedure should be viewed as a means of encouraging improvement in an individual's conduct or performance and not merely as a method of applying sanctions. Head Teachers play an important role in the day-to-day management of teachers. They should seek to deal with minor lapses in conduct or performance through informal counselling in the first instance.
- 2.2 Counselling is normally a one-to-one discussion between teacher and their Head Teacher (Education officer), who should:
  - discuss with the teacher, the required standards and how he/she has failed to meet those standards;
  - the possible reasons for that failure;
  - indicate clearly the improvement required; and
  - consider taking other action which might assist the teacher to achieve this improvement. For example, closer supervision, additional training etc.

Counselling does not form part of the formal disciplinary procedure and NO formal warnings can be given.

- 2.3 The Head Teacher will complete a Record of Counselling form. The form will be treated as confidential and kept in a secure place outwith the teacher's personal file. The teacher will also be given a copy of the form.

The teacher will be given the opportunity to record their dissent. This will be retained in the teacher's personal file.

- 2.4 Where counselling does not produce the required improvement, or where the alleged failure to meet the required standards is considered to be of a more serious nature, the formal procedure should be followed.

### **3. DISCIPLINARY PROCEDURE - GENERAL**

- 3.1 The Depute Chief Executive of Education or other officer delegated by the Depute Chief Executive, will nominate an officer to carry out formal disciplinary action in accordance with the points set down in sections 3.2 - 3.5 below.

#### **3.2 Investigation**

- 3.2.1 A disciplinary hearing will not be convened until the circumstances of the case have been fully investigated.
- 3.2.2 The nominated officer will appoint an Investigating Officer. The Investigating Officer will interview all relevant persons to establish facts and obtain written, signed and dated statements from witnesses. Witnesses will be advised that they may be asked to appear at any subsequent disciplinary hearing.
- 3.2.3 The teacher concerned will be informed of the investigation at the earliest practicable moment and of their entitlement to be represented at ALL hearings and meetings.
- 3.2.4 Teachers must be given:
- advance notice of any meeting with the Investigating Officer;
  - a clear indication of the nature and purpose of the investigation; and
  - the procedures to be followed at the interview.
- 3.2.5 The investigation must be carried out as quickly as possible and should, in most cases, take no longer than 15 working days.
- 3.2.6 Where, following investigation, a disciplinary hearing is considered to be unjustified, all written statements and other documents relating to the investigation will be destroyed.
- 3.2.7 Where the Depute Chief Executive of Education and/or Senior Education officer considers that the investigations relate to the safety and well-being of children or protected adults, the documents will be retained in a separate record. These documents will be available for inspection by the teacher concerned, who may add a personal note to the record.
- 3.2.8 Where, following investigation, the accusation is considered to be unfounded and malicious, the council will take appropriate action within its disciplinary procedures for pupils and staff. A statement by the Education officer indicating that the accusation was considered to be malicious will be included.

- 3.2.9 If there is a further disciplinary investigation relating to the teacher, the documents referred to in paragraph 3.2.6 above will be examined. Where these documents are considered relevant, they may be taken into account in the current investigation. Where a previously unsubstantiated allegation is taken into account in any disciplinary decision, this (and the reasons for doing so) will be recorded.
- 3.2.10 At the conclusion of the investigation, the Investigation Officer will report the findings to the nominated officer. The Investigation Officer does not have authority to decide whether or not disciplinary action should proceed.

### **3.3 Convening a Disciplinary Hearing**

- 3.3.1 If, following investigations, a disciplinary hearing is considered necessary the teacher concerned will be given at least ten working days written notice of the hearing. The letter will advise him/her that it will be a formal disciplinary hearing, and;
- the nature of the complaints (and sufficient details);
  - the names of any witnesses who will present evidence at the hearing;
  - the right to call witnesses or submit statements/other documentation;
  - the need to provide the officer conducting the hearing with the names of those witnesses and any written statements in advance of the hearing; and
  - the right to be accompanied/represented at the hearing by a trade union official or other person of their choice.
- 3.3.2 Copies of any written statements made by individuals who are not available to give evidence in person at the disciplinary hearing will be enclosed with the letter referred to in paragraph 3.3.1 above. The nominated officer convening the hearing will consider as inadmissible, any statements NOT supplied in advance to the teacher.

### **3.4 Conducting a Disciplinary Hearing**

- 3.4.1 A nominated officer (Education officer or Head Teacher) will conduct the disciplinary hearing. The Investigation Officer must not conduct the hearing.
- 3.4.2 The nominated officer will make sure that the teacher concerned is presented with the facts gathered during the investigation. The Investigating Officer normally presents the facts and will remain in attendance at the hearing until all the evidence is presented. A Human Resources representative may advise the officer conducting the hearing.
- 3.4.3 Witnesses are called to give their evidence and, after questioning by both parties, will withdraw and be available for recall if necessary.
- 3.4.4 The teacher and their representative will be given sufficient opportunity to put forward an explanation and/or defence.
- 3.4.5 The nominated officer (assisted by any advisory staff) will consider all the evidence presented and arrive at a decision that is reasonable in all the circumstances.

### **3.5 Action following a Disciplinary Hearing**

- 3.5.1 Where the nominated officer considers that no formal disciplinary action is justified, the teacher will be informed at the meeting, if possible. All documents used at the hearing will be destroyed, unless they concern the safety and well-being of children or protected adults. In such cases, the documents will be retained in the teacher's personal file.

- 3.5.2 Except in cases of oral warnings, disciplinary action will be notified/confirmed in writing within five working days of the hearing. The letter will be handed to the teacher personally or sent by recorded delivery. The teacher may also request that a copy be sent to their representative.

#### **4. ORAL WARNINGS**

- 4.1 Minor offences relating to conduct or performance, will result in the teacher concerned being given an oral warning by the appropriate nominated officer (Education officer or Head Teacher).

- 4.2 The teacher will be advised:

- that the warning represents the first stage in the formal procedure;
- of the reasons for the warning and of the likely consequences of further offences;
- of the date from which the warning will normally be disregarded for disciplinary purposes;
- of the date the warning will be expunged if no further disciplinary action is taken; and
- of the right of appeal against an oral warning (see section 12 below).

See section 14 below for details of expiry/disregard/expunge periods for warnings.

- 4.3 The nominated officer will complete a Record of Oral Warning form (see Appendix 5). The teacher will be given a copy of the form and the original will be placed in the teacher's personal file. The form will be removed from the file after the specified period.

#### **5. WRITTEN WARNINGS**

- 5.1 A written warning may be issued where:

- a teacher who has been issued with an oral warning fails to achieve and maintain the required improvement in conduct or performance or where a further act or omission warranting disciplinary action occurs; or
- the misconduct or failure in performance is considered to be sufficiently serious to warrant this form of disciplinary action.

- 5.2 A letter of formal warning will be issued in the name of the nominated officer who conducted the disciplinary hearing and will state:

- that a formal written warning is being given;
- the nature of the unsatisfactory matters dealt with at the hearing;
- the date of any previous oral warning where appropriate;
- the action required by the teacher to remedy the matter;
- that subsequent failure in conduct or performance will normally result in more serious disciplinary action;
- that a copy of the warning letter will be placed on the teacher's personal file;
- the date from which the warning will normally be disregarded for disciplinary purposes;
- the date the warning will be expunged if no further disciplinary action is taken; and
- the teacher's right of appeal (see section 13 below).

See section 13 below for details of expiry/disregard/expunge periods for warnings.

## **6. FINAL WRITTEN WARNINGS**

6.1 A final written warning may be issued where:

- a teacher, who has been issued with a written warning, fails to achieve and maintain the required improvement in conduct or performance or where a further act or omission warranting disciplinary action occurs; or
- the misconduct or failure in performance is of a sufficiently serious nature to warrant it.

6.2 The nominated officer who conducted the disciplinary hearing will issue a final written warning. The letter will contain all information described in paragraph 5.2 above. It will also state that any subsequent failure in conduct or performance will normally result in dismissal.

## **7. PUNITIVE DISCIPLINARY ACTION**

7.1 Punitive disciplinary action may be taken where:

- following a final warning, the teacher fails to achieve and maintain the required improvement in conduct or performance or a further act or omission warranting disciplinary action occurs; or
- failure in conduct or performance occurs of a sufficiently serious nature to justify such disciplinary action without prior warning.

7.2 Punitive disciplinary action refers to:

- withholding an annual increment in conjunction with a final written warning;
- suspension without pay (for a period normally not exceeding three working days), in conjunction with a final written warning;
- demotion and/or transfer to another job, place of work or service, in conjunction with a final written warning;
- dismissal with due notice; or
- summary dismissal i.e. dismissal without notice, only in cases of gross misconduct (see section 8 below).

7.3 The nominated officer (Depute Chief Executive of Education or senior Education officer) will hold a disciplinary hearing with the teacher concerned. Following consultation with the Head of Corporate Services, the hearing will be convened and conducted in accordance with the procedure set down in sections 3.3 – 3.5. The Head of Corporate Services may, with the agreement of the Depute Chief Executive, attend or be represented at the hearing in an advisory capacity.

7.4 The decision of the nominated officer conducting the disciplinary hearing will be notified to the teacher and confirmed in writing. Where it has been decided that punitive action is to be taken, the letter will:

- refer to previous warnings (if appropriate);
- state clearly the punitive disciplinary action taken and the effective date;
- specify the reasons for the action;
- advise of the right to appeal to the Education Executive's Appeals Committee and the date by which notice of appeal should be received; and
- where appropriate, advise of the right to submit a claim of unfair dismissal to an Employment Tribunal and the time limit for submission of such a claim.

7.5 Where a teacher does not agree to the application of the punitive disciplinary action, it should be made clear to them that the council will have no alternative but to proceed to dismiss.

## **8. GROSS MISCONDUCT**

8.1 Teachers will normally be given a final written warning regarding their conduct or performance before dismissal is considered. It is recognised however that teachers may be dismissed without previous warning where gross misconduct is deemed to have occurred.

8.2 For the purpose of this procedure gross misconduct is behaviour of such a nature that the council is unable to tolerate the continued employment of the individual concerned.

8.3 Where gross misconduct is alleged, the Depute Chief Executive of Education (or other nominated senior Education officer), in consultation with the Head of Corporate Services, may suspend the teacher on full pay:

- pending further investigations into the circumstances of the case, and/or
- when it is considered to be undesirable for the teacher to remain at work prior to the disciplinary hearing.

Written confirmation of the suspension will be forwarded to the teacher by recorded delivery within three working days and will state the reasons for the suspension.

Suspension in these circumstances will not be regarded as a form of disciplinary action.

8.4 Teachers suspended in the circumstances described in paragraph 8.3 will receive full pay during the period of suspension.

8.5 In certain circumstances (e.g. where an incident occurs in an isolated location) it may be necessary for a supervisor who has not been delegated formal powers of suspension to effectively suspend a teacher on full pay by sending him/her home or removing the teacher from duty without consulting an authorised senior officer. In such circumstances the Depute Chief Executive of Education (or other nominated senior Education officer) will be informed as soon as possible and will consult the Head of Corporate Services before deciding whether or not to formally suspend the teacher concerned on full pay.

## **9. DISCIPLINARY ACTION IN RELATION TO HEAD TEACHERS**

9.1 Head Teachers have authority to warn teachers where their work, conduct or omission justifies disciplinary action.

9.2 The Depute Chief Executive of Education and Head of Service have authority to warn Head Teachers where their work, conduct or omission justifies disciplinary action.

9.3 Oral or written warnings may be given, depending on the circumstances (in accordance with sections 4 and 5 above).

9.4 Where a written warning has been received, committing a similar act or subsequent offence may result in the teacher receiving another warning. This may be a final warning (depending on the circumstances) and will be in accordance with section 6 above.

9.5 The Chair of the Education Executive will be informed of all decisions to dismiss.



## **10. PRECAUTIONARY SUSPENSION**

- 10.1 Where there is an allegation of gross misconduct, the Depute Chief Executive of Education (or Head of Education), in consultation with a nominated Human Resources representative may place the teacher on precautionary suspension.
- 10.2 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,
- 10.3 Consideration could be given to a temporary transfer pending the conclusion of the investigation and any subsequent disciplinary process.
- 10.4 Precautionary suspensions are on full pay (teacher's normal salary, including any appropriate contractual pay elements), and must not be associated with any assumption of guilt. All precautionary suspensions should be reviewed at agreed regular intervals (e.g. 10 days).
- 10.5 The teacher will receive written confirmation of the suspension within three working days. The letter will be sent by recorded delivery and will advise the teacher of the reasons for suspension. Such suspension will not be regarded as a form of disciplinary action.

## **11. DISMISSAL**

- 11.1 The Depute Chief Executive of Education may proceed with dismissal for:
- serious repeated misconduct or poor performance within the 'live' period of a previous final written warning; or
  - gross misconduct for which no previous warning exists.
- 11.2 The teacher must be given written notice of the effective date of dismissal and advised:
- whether the dismissal is summary or with notice; and
  - of the right to request that the appropriate professional association be formally notified.

## **12. PVG REFERRAL**

- 12.1 Where, as a result of disciplinary action, a decision is taken to either dismiss an employee in a regulated position or take action short of dismissal that involves the employee being transferred to a non-regulated position; the Nominated Officer must consult the HR Services Manager on whether it is appropriate to convene a PVG referral panel in accordance with section 6 of the [Policy and Procedure on Protection of Children and Protected Adults](#)
- 12.2 Where it is determined that a PVG panel should be convened, the Nominated Officer is responsible for requesting that the Head of Corporate Services arranges a meeting of the PVG Referral Panel.

## **13. CRIMINAL OFFENCES**

- 13.1 Teachers are required to disclose details of any criminal convictions or charges, police cautions, involvement in any police investigation or disciplinary action taken by the General Teaching Council for Scotland (GTCS) occurring either prior to commencing, or during employment with the council. Failure to do so may be dealt with under the terms of this Disciplinary Procedure.
- 13.2 Teachers will not be disciplined solely because they have been charged with or convicted of a criminal offence. In all such cases, consideration will be given to the nature of the alleged or proven offence, and the relevance of the offence to the employment relationship between the council and the teacher.

- 13.3 Where disciplinary action is being considered due to an alleged or proven criminal offence, the council's Education officers will thoroughly investigate the matter.
- 13.4 In cases of any suspected financial irregularities, the Head of Finance will be informed and, if appropriate, an audit investigation will be carried out. The Depute Chief Executive of Education or Head of Education may suspend the teacher on full pay.
- 13.5 Following investigations, the nominated senior Education officer may determine that the available evidence is sufficient to justify holding a disciplinary hearing prior to the outcome of any criminal proceedings.

#### **14. APPEALS AGAINST DISCIPLINARY ACTION Appeals Against Warnings**

- 14.1 Appeal hearings are conducted in accordance with the procedural rules governing the operation of the Appeals Committee.
- 14.2 The Depute Chief Executive of Education (or nominated Education officer more senior than the officer who issued the original warning) will hear these appeals. The officer who considered the case at the first-level hearing will present the case for the council.
- 14.3 The Depute Chief Executive of Education will hear appeals against final warnings.
- 14.4 Teachers may appeal against oral or written warnings, by writing to the Depute Chief Executive of Education, indicating the grounds of appeal. This must be done within ten working days of receipt of confirmation of the warning.
- 14.5 Appeals against warnings will be heard as soon as possible, normally within ten working days of receiving the written notice of appeal.
- 14.6 Teachers will receive at least five working days written notice of their appeal hearing. They will also be advised of their right to be accompanied at the hearing by a trade union official or other person of their choice.
- 14.7 The officer hearing the appeal may confirm, amend or withdraw the disciplinary action. The officer may not substitute the original sanction imposed with a more serious form.
- 14.8 The teacher will, if possible, be advised of the decision at the end of the appeal hearing. The decision will also be confirmed in writing within five working days. There is no further right of appeal.
- 14.9 Where the Depute Chief Executive of Education issues a warning in person, any appeal will be referred to the Appeals Committee for consideration.

#### **Appeals Against Punitive Disciplinary Action**

- 14.10 Appeals against punitive disciplinary action or dismissal must be made in writing to the Head of Corporate Services, indicating the grounds of the appeal. This must be done within ten working days of receipt of written notification of the disciplinary action or dismissal. A copy of the letter should also be sent to the Depute Chief Executive of Education.
- 14.11 The Head of Corporate Services will arrange for appeals to be heard by the council's Appeals Committee. Hearings will be within twenty working days of receipt of the letter of appeal, or as soon as possible after that. See Appendix 3 for the Appeals Procedure.

## Effect of Appeals on Disciplinary Record

- 14.12 Where a disciplinary action is withdrawn or modified, the written reference on the teacher's personal file will be expunged or amended as appropriate. The teacher's representative, if any, will also be notified.
- 14.13 Teachers have a right of access to their personal file to ensure that the written reference has been removed or appropriately amended.

## 15. EXPIRY OF WARNINGS

- 15.1 Warnings, and other formal disciplinary action short of dismissal, will normally be disregarded for disciplinary purposes after a period of satisfactory employment as indicated below:

Type of Warning	Disregard Period
Oral	after six months
Written	after nine months
Final Written	after twelve months
Punitive Disciplinary action short of dismissal in conjunction with a final warning	after eighteen months

- 15.2 Warnings for disciplinary purposes may not be disregarded where:
- a teacher's persistent misconduct warrants such action;
  - the misconduct for which the warning was issued related to the safety and well-being of young and/or vulnerable people in receipt of client services from the council and is considered to be relevant to the individual circumstances under consideration; or
  - the nominated officer (following consultation with the Head of Corporate Services), considers that the sensitivity of the misconduct, combined with the nature of the teacher's current post and foreseeable future employment with the council, justifies the warning to be available for future consideration.
- 15.3 All written reference to a formal warning will be expunged from the teacher's personal file after the following periods:

Type of Warning	Expunge Period
Oral	after twelve months
Written	after eighteen months
Final Written	after twenty four months
Punitive disciplinary action short of dismissal	<b>will NOT be expunged</b>

- 15.4 A warning will not be expunged:
- if another disciplinary action is taken against a teacher before the date the warning is due to be expunged. The warning will remain on the teacher's record for an additional period in accordance with the above provisions commencing from the date of the recent disciplinary action; or
  - for the reasons indicated in section 14.2 above.
- 15.5 A decision not to disregard or expunge a warning (and the reasons why) will be notified to the teacher at the time the warning is issued. This will also be confirmed to the teacher in writing.

The teacher has a right of appeal against this decision in accordance with the arrangements set out in section 13 above.

- 15.6 In cases of performance, the [GTCS Code of Practice on Competence](#) should be followed at all times. Before taking action for dismissal, the Depute Chief Executive of Education must make sure that the Code has been followed.

## **16. TRADE UNION OFFICIALS**

- 16.1 Disciplinary hearings involving teachers, who are accredited trade union representatives, will not be convened until the circumstances have been discussed with a full-time official of the trade union concerned. Where there is the possibility of disciplinary action being taken against a trade union representative, the Head of Corporate Services will be consulted at the earliest opportunity.

- 16.2 Where there is alleged gross misconduct of an accredited trade union representative, he/she will be suspended on full pay following consultation with the Head of Corporate Services. The teacher will receive written confirmation of the suspension within three working days. A full-time official of the trade union concerned will be informed of the suspension at the earliest opportunity and sent a copy of the letter to the teacher. The Head of Corporate Services will be also be given a copy of the letter.

## **17. TIME LIMITS**

The time limits contained within this procedure may be varied by mutual agreement.

## DISCIPLINARY PROCEDURE (TEACHERS)

### INVESTIGATORY PROCESS

Employment Tribunals and the courts have stressed that disciplinary decisions must be based on 'reasonable' investigation of the facts. It is essential, therefore, that a thorough fact-gathering process be followed in ALL cases.

To avoid possible accusation of bias and lack of impartiality, the investigation process must be separated from the decision-making. It may be difficult to separate these two processes in smaller council areas. However, Services should, wherever possible, make sure that the officer conducting the investigation does NOT also conduct the disciplinary hearing.

Where it is not practical to separate the investigation and decision-making processes, supervisors can deal with relatively minor matters likely to involve both.

In all serious cases the officer conducting the investigation must NOT also conduct the decision-making processes.

Normally the Investigation Officer will be a line manager with responsibility for the teacher's work. However, other managers can carry out the role. Alternatively, because of their specialist knowledge and relative 'distance' from events, Human Resources could carry out or assist in the investigation. Care should be taken to make sure that another member of the HR team is available to give advice at any disciplinary hearing.

The precise nature of the investigation will vary according to the circumstances. It is important that the Investigation Officer gathers all relevant facts as quickly as possible while they are fresh in everyone's mind. The Investigation Officer should also gather any relevant background information e.g. relationships between employees, custom and practice etc.

It may be clear during the early stages of an investigation that the allegation is serious enough to justify suspending the teacher pending a full investigation. Human Resources should be consulted, where possible, before this decision is made.

If it is decided that the teacher should be suspended, the Depute Chief Executive of Education, or Head of Education should personally inform him/her.

In ALL cases, the teacher must receive written confirmation of the suspension within three working days.

## **DISCIPLINARY PROCEDURE (TEACHERS)**

### **INVESTIGATORY INTERVIEWS**

The purpose of investigatory interviews is to determine the facts relating to matters under investigation. Only after these interviews are held should it be decided if there are grounds for a formal disciplinary hearing.

The investigatory interview need not be over-formalised. However, it is important that the Investigating Officer makes the teacher aware at the outset, that the interview is part of an on - going disciplinary enquiry that could result in formal disciplinary proceedings.

Investigatory interviews must be carried out in ALL cases, with:

- the teacher concerned;
- other employees who were witnesses to events or who may have general, relevant information; and
- anyone else directly involved in the matters being investigated (e.g. clients, members of the public etc.)

The teacher concerned should be given notice of items to be discussed and given the right to be accompanied at their investigatory interview. However, as with counselling interviews, the discussion should only be between the Investigating Officer and the teacher.

On occasion it may be necessary to interview individuals who are not council employees.

Where the person making allegations against an employee is also a client of the council, the following matters will need to be considered before proceeding with the investigation e.g.:

- age of the client;
- nature of any illness, handicap or disability affecting the client; and
- possible effects of an interview on the client

This will lead to other considerations such as:

- Who the Investigation Officer should be (e.g. someone who is well known to the client).
- Who else should be present (e.g. the client's parent/guardian or social worker, management and trade union observers).
- How the interview should be recorded (e.g. a statement from longhand notes, or a transcription from shorthand notes).

As these considerations are more likely to arise in potentially serious cases, advice should be sought from Human Resources as they occur.

In cases of suspected theft, fraud, or other form of financial mismanagement in the course of a teacher's employment, an audit enquiry will be required and the investigation process dealt with under section 12 above.

**EMPLOYEE APPEALS COMMITTEE****PROCEDURE FOR CONSIDERATION OF APPEALS  
AGAINST DISCIPLINARY ACTION****1. TERMS OF REFERENCE**

- 1.1 The Employee Appeals Committee will be convened to hear an appeal against a decision to:
- (a) dismiss or take other forms of punitive disciplinary action as defined in paragraph 8 of the disciplinary procedure; or
  - (b) issue a warning, oral or written, where, exceptionally, the warning has been issued by a Depute Chief Executive in person.
- 1.2 The Employee Appeals Committee has delegated power to decide appeals and will be the council's final arbiter on such matters.

**2. CONDITIONS RELATING TO AN APPEAL**

- 2.1 For the Employee Appeals Committee to be convened notice of appeal against disciplinary action must be lodged with the Head of Corporate Services within ten working days of the appellant receiving written notification of the decision arising out of the disciplinary hearing.
- 2.2 The notice of appeal, which must be in writing, may be lodged by the appellant or their trade union or by some other person of the appellant's choice.
- 2.3 The appellant and their representative, if any, will be given a minimum of ten working days' notice in writing of the date, time and place of the appeal hearing.

**3. MEMBERSHIP OF THE EMPLOYEE APPEALS COMMITTEE**

- 3.1 The Employee Appeals Committee comprises a panel of eight members. Five members are called to Employee Appeals Committee meetings and three form a quorum.
- 3.2 Where a meeting of the Employee Appeals Committee is adjourned for any reason, only those members in attendance at the original hearing will be eligible to attend the reconvened hearing.

**4. REPRESENTATION AND ATTENDANCE OF OFFICERS**

- 4.1 The Depute Chief Executive of Education (or representative) will represent the council at the appeal hearing.
- 4.2 The appellant will have the right to be represented at the appeal hearing by a trade union official or officials or by some other person(s) of their choice.
- 4.3 The Committee Services Manager or representative will act as Clerk to the Employee Appeals Committee.

- 4.4 The Head of Corporate Services or representative will act as adviser to the Employee Appeals Committee.
- 4.5 If an appeal hearing is adjourned, all parties involved will ensure that, other than in exceptional circumstances, the original representatives attend the re-convened hearing for continuity purposes.
- 4.6 Where the appeal relates to disciplinary action taken in respect of inappropriate behaviour towards children or other vulnerable groups, the Chief Social Worker or their nominee will act as an adviser to the Employee Appeals Committee on child protection and related matters.

## **5. PROCEDURE PRIOR TO APPEAL HEARING**

- 5.1 Following submission of a written notice of appeal, the appellant or their representative will submit to the Committee Services Manager:
- a written statement indicating the grounds of the appeal;
  - copies of any written statements made by witnesses for the appellant which were considered at the original disciplinary hearing;
  - a copy of any other documents to be placed before the Employee Appeals Committee; and
  - the names of any witnesses to be called to give evidence on behalf of the appellant.
- 5.2 The Depute Chief Executive of Education will submit to the Committee Services Manager:
- a written statement of case against the appellant;
  - copies of any written statements made by witnesses for the council which were considered at the original disciplinary hearing;
  - a copy of any other documents to be placed before the Employee Appeals Committee; and
  - the names of any witnesses to be called to give evidence on behalf of the council.
- 5.3 In cases involving dismissal where the decision to dismiss was taken after consideration of medical evidence, whether direct or indirect, a report by the Medical Adviser will be submitted to the Employee Appeals Committee. The Medical Adviser will attend the appeal hearing as a witness on behalf of the Service. Independent medical evidence may be introduced on behalf of the appellant.
- 5.4 The Committee Services Manager will issue the agenda for the meeting of the Employee Appeals Committee, which will contain all the documents submitted under paragraphs 5.1, 5.2 and, where appropriate, 5.3 above, not less than 5 working days in advance of the appeal hearing.
- 5.5 The Employee Appeals Committee may order such other information and/or documents to be submitted as it may consider appropriate.

## **6. PROCEDURE TO BE FOLLOWED AT APPEAL HEARING**

- 6.1 Witnesses will be excluded until called unless it is agreed that they should be present from the start of the hearing.
- 6.2 The council's representatives will present the case, in the presence of the appellant and their representatives, and may call witnesses.
- 6.3 The appellant or their representatives will have the opportunity to ask questions of the council's representatives and witnesses. The Employee Appeals Committee members will have the opportunity to ask questions of the council's representatives and witnesses.



- 6.4 The council's representatives will have the opportunity to re-examine witnesses on any matter referred to in their questioning by Employee Appeals Committee members, the appellant or their representatives.
- 6.5 The appellant or their representatives will put the case in the presence of the council's representatives and may call witnesses.
- 6.6 The council's representatives will have the opportunity to ask questions of the appellant, their representatives and witnesses.
- 6.7 The Employee Appeals Committee members will have the opportunity to ask questions of the appellant, their representatives and witnesses.
- 6.8 The appellant or their representatives will have the opportunity to re-examine witnesses on any matters referred to in their questioning by the members of the Employee Appeals Committee or the council's representatives.
- 6.9 The council's representatives, then the appellant or their representatives, will have the opportunity to sum up their cases if they so wish. The summing up will not introduce any new matter.
- 6.10 If at any stage new facts are alleged or new evidence produced, the Employee Appeals Committee, either at the request of one or both parties or of its own volition, may adjourn the hearing for such period as it may deem reasonable. If any new and important medical evidence is produced, the hearing may be adjourned for a period of not more than 14 days to allow the appropriate medical reports to be submitted.
- 6.11 At the conclusion of the evidence the council's representatives, the appellant and their representatives and any witnesses will withdraw.
- 6.12 The Employee Appeals Committee, together with the officers appointed to assist the Committee, will deliberate in private, only recalling the council's representatives and the appellant and their representatives to clarify points of uncertainty on evidence already given. If recall is necessary, both parties are to return, notwithstanding only one is concerned with the point, giving rise to doubt.
- 6.13 The Employee Appeals Committee will, if practicable, announce its decision to the parties at the conclusion of the hearing. In any event the decision will be notified, in writing, to the appellant and their representatives by the Committee Services Manager within three working days of the date of the hearing.

## **7. POWERS OF THE APPEALS COMMITTEE IN DISCIPLINARY CASES**

- 7.1 The form of the decision of the Employee Appeals Committee will be announced and confirmed in one of the following, as appropriate:
  - "that the grounds of the appeal have been substantiated and the appeal be upheld"
  - "that the grounds of the appeal have been substantiated in part and the appeal be upheld to the extent that ....." "
  - "that the grounds of the appeal have not been substantiated and the appeal be not upheld".

- 7.2 If the appeal is upheld, the disciplinary action will be withdrawn and any monies due to the appellant will be payable in full. Where the appeal was against a decision to dismiss, the appellant will be reinstated to their former post or, exceptionally, if this is not practicable, to another similar post on terms and conditions no less favourable than those applying to the post formerly held by the appellant.
- 7.3 If the appeal is substantiated in part, the disciplinary action will be withdrawn and an alternative, less serious form of disciplinary action substituted. Where the appeal was against a decision to dismiss (disciplinary or otherwise), the appellant will be either:
- reinstated to their former post or a similar post on no less favourable terms except that a lesser disciplinary penalty will apply; or
  - re-engaged in some other post on terms and conditions which may be determined by the Employee Appeals Committee.
- 7.4 If the appeal is not upheld, the disciplinary action will stand and be regarded as confirmed.
- 7.5 Where the appeal is against a dismissal and that appeal is not upheld, the Employee Appeals Committee may decide that the appellant will be offered re-employment with the council on such terms and conditions as the Employee Appeals Committee may determine.
- 7.6 For the purposes of paragraphs 7.2 - 7.5 above the terms 'reinstatement', 're-engagement' and 'offer of re-employment' will be defined as follows:
- 'reinstatement' is the restoration of the contract of employment between the appellant and the council as if the dismissal had never taken place. Thus, the outstanding salary/wages for the period the contract ceased to operate will be payable in full unless the council impose an alternative disciplinary penalty of a financial nature i.e. a period of suspension without pay or the withholding of an annual increment. In addition, all rights arising out of continuous employment will be restored as necessary to ensure reinstatement is without detriment;
  - 're-engagement' is the engagement of the appellant to another post and/or in another location with effect from the date of dismissal on terms and conditions which may be less favourable than those of the appellant's former post e.g. demotion to a lower graded post. Thus, salary/wages for the period since the dismissal took effect may be payable in accordance with the terms and conditions of re-engagement determined by the Employee Appeals Committee. In addition, all rights arising out of continuous employment will be restored; and
  - 'an offer of re-employment' is an offer to employ the appellant under a new contract of employment from a future date which may be determined by the Employee Appeals Committee. The Employee Appeals Committee may also determine the post, its grade, location and other terms and conditions of employment. If an offer of re-employment on the specified terms is accepted, the appellant's continuity of service will be regarded as broken, and continuous employment will be calculated for future purposes from the date re-employment takes effect.

## **8. REPORTING TO THE FULL COUNCIL**

The decision of the Employee Appeals Committee will be reported to the full council at the earliest opportunity.

## **9. TIME LIMITS**

The time limits in this procedure may be varied by mutual agreement.

**RECORD OF COUNSELLING**

(Please complete in BLOCK capitals)

Teacher's Name:	
Place of Employment:	Date of meeting:
<b>Counselling</b>	
Matters Discussed:	
Action required by teacher:	
Action required by manager:	
Monitoring arrangements:	

Head Teacher's Name (please PRINT):	
Head Teacher's Signature:	Date:
Teacher's Signature:	Date:

**A copy of this record should be given to the teacher.**

In accordance with the Data Protection Act 1998, this record should be treated as confidential and kept in a secure place out with the teacher's personal file.

