

REPORT TO: Cabinet

MEETING DATE: 16 January 2018

BY: Depute Chief Executive (Resources and People Services)

SUBJECT: Amendments to Disciplinary Procedures (Teaching and Associated SNCT posts)

1 PURPOSE

- 1.1 To seek approval from Cabinet for proposed amendments to the Disciplinary Procedure covering all teaching staff, and other posts whose terms and conditions are regulated by the Scottish Negotiating Committee for Teachers (SNCT). These amendments have been agreed with the Teachers' Trades Unions through the Local Negotiating Committee for Teachers (LNCT), but still require to be formally approved at Cabinet.

2 RECOMMENDATIONS

That Cabinet approve the proposed changes to the Disciplinary Procedure covering Teachers and associated SNCT posts.

3 BACKGROUND

- 3.1 The Council has two Disciplinary Procedures. One covers teaching staff and all other posts regulated by the SNCT such as music instructors, educational psychologists, education support officers, quality improvement officers and the quality improvement manager. The other procedure covers all other employee groups i.e. local government employees, chief officials and craft operatives. Both procedures are collective agreements and any changes have to be agreed with the relevant Trades Unions.
- 3.2 There have been meetings with the Joint Trades Unions Side Secretary and LNCT Side Secretary for over a year and a half to discuss proposed changes to both Disciplinary Procedures. Whilst the Procedures are separate and different they are also similar in structure and the proposed changes were applicable to both. The proposed changes were to clarify issues that had been raised by both employees and from managers and related to the role of witnesses at hearings and covert recording.

- 3.3 The opportunity was also taken to update post titles, improve some wording, and reflect updated standing orders regarding the composition of the Appeals Sub Committee.
- 3.4 It was also agreed at the Trades Union Side request that Investigating Officers will not normally be present when the outcome of a disciplinary hearing is shared with the employee.
- 3.5 Whilst the Teachers Trades Unions have now agreed the proposed changes, the Joint Trades Union Side Secretary has been unable to confirm agreement from his constituent Trades Unions and discussions will continue in the New Year.

4 POLICY IMPLICATIONS

- 4.1 Providing the amendments are approved by Cabinet, the updated Procedure will be put on Elnet and appropriate communication re the changes issued through both HR and the Corporate Communication Team. The changes would be effective from 29th January 2018.

5 INTEGRATED IMPACT ASSESSMENT

- 5.1 The subject of this report does not affect the wellbeing of the community or have a significant impact on equality, the environment or economy.

6 RESOURCE IMPLICATIONS

- 6.1 Financial - no immediate associated costs.
- 6.2 Personnel - no immediate impact.
- 6.3 Other – None

7 BACKGROUND PAPERS

- 7.1 Revised Disciplinary Procedure attached with proposed amendments highlighted as track changes.

AUTHOR'S NAME	Zoe McFadzean
DESIGNATION	HR Business Partner
CONTACT INFO	01620 828772 zmcfadzean@eastlothian.gov.uk
DATE	8 th January 2018

DISCIPLINARY PROCEDURE

[COVERING ALL TEACHING STAFF [AND OTHER STAFF WHOSE TERMS AND CONDITIONS ARE REGULATED BY THE SNCT](#)]

SECTION

- 1 INTRODUCTION
- 2 SUPPORT
- 3 DISCIPLINARY PROCEDURE – GENERAL
- 4 VERBAL WARNINGS
- 5 WRITTEN WARNINGS
- 6 FINAL WRITTEN WARNINGS
- 7 PUNITIVE SANCTIONS
- 8 GROSS MISCONDUCT
- 9 FINANCIAL IRREGULARITIES
- 10 CRIMINAL OFFENCES
- 11 APPEALS AGAINST DISCIPLINARY ACTION
- 12 EXPIRY OF WARNINGS
- 13 TRADE UNION OFFICIALS
- 14 REFERRAL TO THE GENERAL TEACHING COUNCIL
(GTC) FOR SCOTLAND
- 15 REFERRAL TO DISQUALIFIED FROM WORKING WITH
CHILDREN LIST
- 16 TIME LIMITS

Disciplinary Procedure

APPENDIX A APPEALS COMMITTEE PROCEDURE FOR
CONSIDERATION OF APPEALS AGAINST
DISCIPLINARY ACTION
APPENDIX B GTCS CODE OF PRACTICE ON COMPETENCE

Oct 2011
Revised
xxx2017

TEACHING STAFF

1. INTRODUCTION

- 1.1 Disciplinary rules and procedures are necessary for promoting orderly employment relations as well as fairness and consistency in the treatment of individuals and in the conduct of good employment relations. They enable organisations to influence the conduct of employees and deal with problems of poor performance and attendance thereby assisting organisations to operate effectively. Rules set standards of conduct and performance at work; procedures help to ensure that the standards are adhered to and also provide a fair method of dealing with alleged failures to observe them. The aim of the disciplinary process is to encourage improved performance and conduct.
- 1.2 Where a teacher's performance or conduct is such as to give rise to serious concern, the Council has agreed the following disciplinary procedures with the relevant Trade Unions.
- 1.3 This procedure takes full account of the provisions contained within the Scottish Negotiating Committee for Teachers Disciplinary Framework as contained in the SNCT Handbook of Conditions of Service. The procedure also reflects best employment practice, observes employment legislation requirements and complies with the ACAS Code of Practice 1: Disciplinary and Grievance Procedures.
- 1.4 Whenever formal disciplinary action is being contemplated, the points of procedure set down in this document will be followed to. Any reference to "teacher" within the context of this procedure includes all employees whose terms and conditions of employment are regulated by the SNCT.
- 1.5 All teachers should be made aware of the standards of conduct and performance expected of them. In particular teachers should be made aware of what constitutes gross misconduct, for example sexual offences, assault or dishonesty. In recognition of its responsibility as an employer to determine standards of conduct required by all its employees the Council has drawn up a Disciplinary Code which details the types of misconduct which are considered to be in breach of this Code and will normally result in disciplinary action as indicated. All employees should be familiar with the Disciplinary Code applying to their employment which is available on ELNet, from Human Resources or from your Trade Union.

1.6 Principles of Application

- 1.6.1 This procedure will operate in accordance with the following principals:
 - a) The initiation of disciplinary actions/sanctions should be accompanied by appropriate support mechanisms.
 - b) No disciplinary action will be taken until the matter has been fully investigated and any decision to impose a disciplinary sanction must not be taken by the person who conducted the initial investigation. In addition any appeal should not be heard by the same person who issued the disciplinary sanction.

- c) Apart from gross misconduct, no teacher will be dismissed for the first breach of discipline.
- d) There will be a right of appeal against all disciplinary sanctions.
- e) 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.
- f) A teacher will have the right to be represented at all stages of the disciplinary process, including the investigatory meetings.
- g) In cases involving all performance issues [of teachers](#) the GTCS Code of Practice on Competence should be followed at all times. Where the concern relates to the performance of an administrative or managerial function of a promoted [teaching](#) post, similar principals and processes as contained in the GTCS Code of Practice on Competence (Appendix B) should be followed. Before taking action for dismissal, the [Head of Education](#), must ensure that the Code has been followed.

Deleted: Executive Director of
Deleted: & Children's Services

2. SUPPORT

- 2.1 Minor misconduct and poor performance should be dealt with, at least in the early stages, through the use of informal advice, guidance and support. 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 is available at all times even when it has been necessary to take disciplinary action under the procedures. If an improvement is required in a teacher's performance, the Informal Stage and the Support Stage of the GTCS Code (Appendix B) will replace the Support stage of this procedure.
- 2.2 Advice and guidance should be given in a one-to-one discussion between a teacher and their line manager. No record of such interviews will be kept on the teacher's personal file. The appropriate manager will however keep brief notes of any informal advice or support for reference purposes, including details of any agreed action or improvement required. The teacher will be informed accordingly and given a copy of the notes. A reasonable review period must be set with the teacher and the consequences of failing to meet the appropriate improvements explained.
- 2.3 If following the review period the required improvement or standards have been met, no further action will be taken. The teacher must be notified of this in writing. Following a further period of 6 months from the date of the review, all notes associated with the Support meeting(s) must be destroyed.
- 2.4 If following the review period the required improvement or standards are not fully met, the appropriate manager has the discretion to extend the review period.
- 2.5 If following the review period, [support](#) does not result in the required improvement or if the alleged failure is considered to be of a more serious nature, the formal disciplinary procedure should be followed.

Deleted: S

3.0 DISCIPLINARY PROCEDURE – GENERAL

Responsibility For Conducting Disciplinary Procedures

- 3.1 Within the limitation of powers delegated by the Council, the head teachers will be responsible for the management and discipline of the school and have the power to issue verbal and written warnings. Head teachers must take reasonable steps to ensure that all teachers are made aware of the standards of conduct, safety and job performance required of them and of any disciplinary rules applying to them. The Head of Education will have the power to apply all forms of disciplinary sanction, including the dismissal of a teacher subject to the correct application of these procedures. Head teachers and the Head of Education may delegate authority within the terms of this procedure to other Nominated Officers who may issue the appropriate level of warning or take disciplinary action as defined in paragraph 7.2 of this procedure.
- 3.2 Whenever formal disciplinary action is being contemplated the points of procedure set down in paragraphs 3.3 – 3.20 will be followed.

Deleted: Executive Director

Deleted: and Children's Services

Deleted: Executive Director

Deleted: & Children's Services

Investigation

- 3.3 A disciplinary hearing will not be convened until the circumstances of the case have been fully investigated. All investigations must be completed as quickly as possible and should, in most cases, take no longer than 15 working days. When the investigation has been completed the teacher will be advised accordingly.
- 3.4 The Head of Education (or nominee), in consultation with the Service Manager – HR & Payroll, may suspend a teacher on full pay as a precautionary measure where it is considered necessary to enable a full investigation to take place (see also section 8.3)
- 3.5 The teacher involved must be advised at an early stage that a complaint or concern has been lodged, of the nature of the complaint and of the process which will be followed
- 3.6 The teacher must be advised of the right to be represented at all stages of the disciplinary process, including at investigatory meetings.
- 3.7 In situations where either a complaint has been received or where a teacher's conduct or performance has given cause for concern, the Council should appoint an investigating officer. The investigating officer should, if possible, interview all of the parties involved (including the teacher in question) and, prepare signed and dated statements from all witnesses.
- 3.8 The Investigating Officer should then produce a report which will enable another representative of the employer (Nominated Officer) to decide whether the matter should be progressed further through the formal disciplinary process. This decision is not taken by the Investigating Officer. The investigating officer has no further role at a future disciplinary hearing other than presenting the facts of the investigation to that hearing, and will not normally be present for the outcome.
- 3.9 If following an investigation, a disciplinary hearing is deemed to be unjustified, any written statements obtained and other documents relating to the investigation will, subject to 3.10 below, be destroyed.

Deleted: Executive Director

Deleted: Head of Human Resources

Deleted: i

Deleted: o

3.10 If a disciplinary investigation, involving matters likely to put at risk the safety and wellbeing of young and / or vulnerable people in receipt of Council Services, does not lead to a hearing, consideration will be given by the [Head of Education](#), (or their designated representative) to retaining the investigatory documentation and associated appendices. They could review this evidence in the event of any alleged repetition of the conduct by Investigating Officers. In these circumstances the following will apply:

Deleted: Executive Director of Education and Children's Services

a) This documentation would only be retained in instances where the evidence did not fully allay the concerns about the alleged conduct of the individual/s involved and there was potentially, a continuing risk to young and/or vulnerable people in receipt of Council Services.

b) A decision by the [Head of Education](#), (or their designated representative) to retain the evidence gathered will be confirmed to the individual/s in writing, along with an explanation of the circumstances in which that documentation may be used in the future.

Deleted: Executive Director

c) The documentation would always be available to the individual who could add a personal note to the record of the investigation.

d) The documentation would be held confidentially in the teacher's personal file by the [Service Manager – HR & Payroll](#), with access limited to the [Head of Education](#), (or their designated representative) and the [Service Manager – HR & Payroll](#), (or representative).

Deleted: Head of Human Resources

Deleted: Executive Director of

Deleted: and Children's Services

Deleted: Head of Human Resources

e) A separate right of appeal to a more senior officer will be available to the individual/s concerned should they wish to challenge the decision to retain the investigation documentation.

f) The individual/s concerned would have the right to object to the inclusion of the retained documentation being used inappropriately to supplement any subsequent Investigatory Report.

3.11 If there is a new disciplinary investigation relating to the teacher, the documents referred to in paragraph 3.10 above will be examined by the [Head of Education](#), (or their designated representative) if relevant, and may be taken into account according to the circumstances of the case.

Deleted: Executive Director

Convening a Disciplinary Hearing

3.12 If, following consideration of the investigation report, a disciplinary hearing is deemed necessary, the teacher concerned will be given at least five working days notice in writing of the hearing and will also be informed in the same letter of:-

a) the fact that it will be a formal disciplinary hearing including; the date, time and venue and the procedures which will be followed at the hearing;

b) the nature of the complaint(s) with copies of all of the documentation to be presented at the hearing;

c) the name(s) of any witness(es) who will present evidence at the hearing;

- d) the right to call witnesses or submit statements or other documentation subject to the names of any such witnesses and / or any written submissions being provided in advance to the Nominated Officer conducting the hearing; and
 - e) the right to be accompanied / represented at the hearing by a trade union official or other person of their choice.
- 3.13 Documentation not submitted in accordance with 3.12 above may only be presented at the hearing with the agreement of the teacher and the Head Teacher / Officer conducting the hearing otherwise the hearing will be adjourned and reconvened at later date.

Conducting a Disciplinary Hearing

- 3.14 The Investigating Officer who conducted the investigation will not conduct the disciplinary hearing.
- 3.15 The Nominated Officer conducting the hearing will ensure that the facts gathered during the investigation are presented to the teacher. These facts may be presented by the Investigating Officer who will remain in attendance at the hearing until the presentation of evidence is completed. A Human Resource representative (or other appropriate officer) may advise the Nominated Officer conducting the hearing.
- 3.16 Witnesses, if any, will be called to give their evidence and, after questioning by both parties, will withdraw but will be subject to re-call.

~~Attending a hearing as a witness for the appellant is voluntary. Attending the hearing as a witness for the Nominated or Investigating Officer is mandatory.~~

~~Time off to act as a witness, will not be unreasonably refused but service provision must not be compromised.~~

~~Where there is an issue relating to a witness's participation at the hearing, the appellant/Trades Union representative should discuss this with the Nominated Officer to find a resolution.~~

- 3.17 The teacher (and/or representative) must be given every opportunity to present their case, to provide additional documents in advance of the hearing, to call witnesses and to sum up their case.

- 3.18 The Nominated Officer, will consider all the evidence presented with a view to arriving at a decision which is reasonable in all the circumstances.

~~Recording of the hearing which is done covertly, or without the consent of all other parties is not permitted and will not be admitted as evidence at any subsequent hearing or appeal.~~

Action following a Disciplinary Hearing

- 3.19 All disciplinary sanctions will be notified or confirmed in writing within five working days of the hearing and remain in the employee's personal file during the period of

Deleted: Witnesses called by the teacher can choose whether or not to act as a witness but witnesses called by the Nominated/Investigating Officer must attend the Hearing as required.

Formatted: Font: (Default) Arial, 12 pt

Deleted: for an employee

Deleted: ¶

Deleted: Any r

Deleted: ,

Deleted: , and that use of that recorded information may constitute a breach of the Data Protection Act 1998.

the warning. The letter notifying or confirming such action will be posted to the teacher's home address.

- 3.20 A copy of this letter will be sent to the teacher's representative.
- 3.21 If the Nominated Officer decides that no disciplinary action is to be taken, all references to the case will be removed from the teacher's personal file and will be destroyed subject to 3.10 above.

4.0 VERBAL WARNINGS

- 4.1 In the case of a minor breach of standards relating to a teacher's conduct or performance the appropriate Nominated Officer will give a verbal warning to the teacher.
- 4.2 A letter indicating a verbal warning will be issued in the name of the Nominated Officer who conducted the disciplinary hearing and will state:-
 - a) that a verbal warning has been given;
 - b) the nature of the unsatisfactory matter(s) dealt with at the hearing;
 - c) the date of any previous warning;
 - d) the action required by the teacher to remedy the matter;
 - e) that subsequent failure(s) in conduct or performance will normally result in more serious disciplinary action;
 - f) the appropriate support to allow them to achieve and maintain improvement;
 - g) that a copy of the warning letter will be placed on the teacher's personal file;
 - h) the date from which the warning will normally be disregarded for disciplinary purposes (see section 12);
 - i) the teacher's right of appeal (see section 11).

5.0 WRITTEN WARNING

- 5.1 A written warning may be issued when:-
 - a) a teacher who has been issued with a verbal 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
 - b) the misconduct or failure in performance is considered to be sufficiently serious to warrant this form of disciplinary action.

5.2 A letter of written warning will be issued in the name of the Nominated Officer who conducted the disciplinary hearing. The letter will contain all the appropriate information as described in paragraph 4.2.

6.0 FINAL WRITTEN WARNING

6.1 A final written warning may be issued when:-

- 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 serious nature warranting this form of disciplinary action.

6.2 A letter of final written warning will be issued in the name of the Nominated Officer who conducted the disciplinary hearing. The letter will contain all the information described in paragraph 4.2 and in particular will state that any subsequent failure in conduct or performance will normally result in dismissal.

7.0 PUNITIVE SANCTIONS

7.1 Punitive sanctions may be taken in conjunction with a final written warning as an alternative to dismissal when:-

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

7.2 Disciplinary action refers to any of the following sanctions:-

- a) suspension of an increment in conjunction with a final written warning;
- b) demotion and/or transfer to another job at the appropriate salary level or place of work, in conjunction with a final written warning;

7.3 When the teacher does not agree to the application of the sanction, the Council will have no alternative but to dismiss the teacher.

7.4 Where the possibility of disciplinary action arises, the [Head of Education](#) (or nominee) will hold a disciplinary hearing with the employee concerned. The hearing will be convened and conducted in accordance with the procedure set down in paragraphs 3.3 – 3.21 following consultation with the [Service Manager – HR & Payroll](#). The [Service Manager – HR & Payroll](#) will attend (or be represented) at the hearing in an advisory capacity.

Deleted: Executive Director

Deleted: Head of Human Resources

Deleted: Head of Human Resources

7.5 Where punitive disciplinary action is taken the decision of the Nominated Officer who conducted the disciplinary hearing will be notified or confirmed to the teacher in writing and the letter will:-

- a) refer to previous warnings;
- b) state clearly the disciplinary action taken and the effective date;
- c) specify the reason(s) for this action;
- d) refer to the teacher's right to appeal to the Appeals Sub-Committee of the Cabinet and indicate the date by which notice of appeal should be received; and
- e) where appropriate, refer to the teacher's right to submit a claim of unfair dismissal to an employment tribunal and indicate the time limit for submission of such a claim.

7.6 The teacher may be dismissed 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 Convenor of the Council Committee on Education and Children's Services will be informed when this action is taken.

8.0 GROSS MISCONDUCT

8.1 Under this disciplinary procedure, a teacher will normally be given a final written warning regarding their conduct or performance before dismissal is contemplated. It is recognised however that a teacher may be dismissed without previous warning when 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 entitled to conclude that it is unable to tolerate the continued employment of the individual concerned.

Precautionary Suspension

8.3 Where gross misconduct is alleged, the [Head of Education](#), or nominee, in consultation with the [Service Manager – HR & Payroll](#), (or nominee), may suspend the teacher:-

Deleted: Executive Director

Deleted: Head of Human Resources

- (a) pending further investigations into the circumstances of the case, and /or
- (b) when it is considered to be undesirable for the teacher to remain at work prior to the disciplinary hearing. In these circumstances consideration could be given to a temporary transfer pending the conclusion of the investigation and any subsequent disciplinary process.

8.4 Precautionary suspension will be on full pay and will not be regarded as a form of disciplinary action and must not be associated with any assumption of guilt. (Full pay will consist of a teacher's normal salary including all contractual payments and entitlements).

8.5 Written confirmation of the suspension will be forwarded to the teacher by recorded delivery within five working days and will state the reason(s) for the suspension.

8.6 All precautionary suspensions should be reviewed at intervals of 10 working days.

9.0 FINANCIAL IRREGULARITIES

9.1 Senior Officers are responsible for dealing promptly with any financial irregularities, through normal disciplinary processes when employees are involved. In cases of exceptional complexity, Internal Audit may be able to assist in the investigation. A financial irregularity is something a Council employee has done in their work which either leads to a financial loss for the Council which should have been avoided and/or a gain for the employee which they should not have taken.

Deleted: c

9.2 Following an investigation, the Head of Education (or their designated representative) may consider that the available evidence is sufficient to justify consideration under the Disciplinary Procedure.

Deleted: Executive Director

10 CRIMINAL OFFENCES

10.1 A teacher 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 whether the alleged or proven offence is of a serious nature and the relevance of the offence to the employment relationship between the Council and the teacher.

11 APPEALS AGAINST DISCIPLINARY ACTION

Appeals Against Verbal or Written Warnings

11.1 Appeals against verbal or written warnings, may be made to the Head of Education, within ten working days of the employee receiving confirmation of the warning and will be submitted in writing, indicating the specific grounds of the appeal. The letter of appeal should be copied to the HT/line manager who made the decision being appealed in order that they can prepare a written statement of case in response to the appeal.

Deleted: Executive Director

Deleted: and Children's Services

Deleted: took

Deleted: original

Deleted: against

11.2 A teacher will have the separate right of appeal against a decision that a warning is held on a teacher's personal file for a longer period of time than defined in 12.1 where the imposed sanction is in relation to a breach of the Council's child protection policies.

11.3 Appeals against disciplinary sanctions will normally be held within fifteen working days (or as soon as possible thereafter) of receiving the written notice of appeal. The teacher will be given in writing at least five working days notice of the appeal hearing and will be informed of their right to be accompanied at the hearing by a Trade Union official or person of their choice. The written statement of case, along with the names any witnesses being called by the Management Side will be forwarded to the teacher at least five days in advance of the Hearing. Any further documentation that the teacher wishes to have considered at the Hearing, along with the names of their witnesses (if any) must be notified to the Head of Education (or nominee) at least one working day in advance of the Hearing.

Deleted: ten

Deleted: ,

Deleted: employee

Deleted: be

The appeal hearing will be conducted in accordance with the procedural rules governing the operation of the Appeals Sub-Committee, appropriately adapted for the purpose, contained in paragraphs 6.1 – 6.15 of the Appendix A to this procedure.

Deleted: 5

11.4 The Head of Education (or nominee) may confirm, amend or withdraw the disciplinary action but may not substitute it for disciplinary action of a more severe nature.

Deleted: Executive Director

Deleted: their designated representative

Deleted: hearing the appeal

11.5 The decision will normally be made known to the teacher at the end of the appeal hearing. The decision will also be confirmed in writing within five working days. There will be no further right of appeal.

Appeals Against Final Written Warning, Punitive Sanctions or Dismissal

11.6 Appeals against final written warnings, punitive sanctions administered in conjunction with a final written warning, or dismissal may be made to the Appeals Sub-Committee, and will be submitted in writing, indicating the specific grounds of the appeal. This appeal should be submitted within ten working days of the teacher receiving written notification of the disciplinary action.

11.7 The Head of Council Resources will arrange for the appeal to be considered by the Appeals Sub-Committee within twenty working days, or as soon as possible thereafter, of receipt of the letter of appeal. The appeal will be heard in accordance with the procedure set out in Appendix A to this procedure.

Deleted: Governance & Performance Management

11.8 The Appeals Sub-Committee may confirm, amend or withdraw the disciplinary action but may not substitute it for disciplinary action of a more severe nature.

Effect of Appeals on Disciplinary Record

11.9 If as a result of an appeal, any disciplinary action is withdrawn or modified, any written reference on the teacher's personal file will be expunged or appropriately amended and the teacher and their representative, notified accordingly.

11.10 Teachers have a right of access to their personal file to ensure the written reference has been removed or appropriately amended.

12 EXPIRY OF WARNINGS

12.1 Warnings and other formal disciplinary action short of dismissal will normally be disregarded for disciplinary purposes after a period of satisfactory employment. The relevant periods will be as follows:-

- Verbal warnings - to be disregarded after six months
- Written warnings - to be disregarded after nine months
- Final written warnings - to be disregarded after twelve months
- Punitive sanction in conjunction with a final warning - to be disregarded after eighteen months

12.2 Any warning relating to the safety and well being of young and /or vulnerable people in receipt of Council Services will never be disregarded should there be any similar allegation in the future.

Deleted: ¶
A "live" warning is one which has not yet expired.¶

Deleted:

Deleted: will not be disregarded when the misconduct for which the warning was issued related to

Deleted: from the Council unless a specific decision was made at the time disciplinary action was taken that the warning would be disregarded for disciplinary purposes.

13 TRADE UNION OFFICIALS

13.1 A disciplinary hearing involving a teacher who is a trade union representative will not be convened until the circumstances have been discussed with a full-time official of the Trade Union concerned. Where the possibility of disciplinary action against a Trade Union representative arises, the Service Manager – HR & Payroll (or nominee) will be consulted at the earliest opportunity.

Deleted: Head of Human Resources

13.2 Where gross misconduct is alleged of a Trade Union representative, the employee may be suspended on full pay after consultation with the [Service Manager – HR & Payroll](#) (or nominee). A full-time official of the Trade Union concerned will be informed of this action as soon as possible and written confirmation of the suspension will be sent to the Trade Union within five working days. A copy of this letter will be forwarded to the [Service Manager – HR & Payroll](#).

Deleted: Head of Human Resources

Deleted: Head of Human Resources

14 REFERRAL TO THE GENERAL TEACHING COUNCIL (GTC) FOR SCOTLAND

- (a) A case is referred to the GTC under the terms of Section 9B of the Teaching Council (Scotland) Act 1965 as amended, i.e. 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 procedure will be sent to the GTC.
- (c) Information relating to the GTC's procedures for dealing with such cases can be found in the GTC's Code of Practice on the Exercise of its Disciplinary Functions and in the Conduct, Competence and Disciplinary Rules.

15 REFERRAL TO DISQUALIFIED FROM WORKING WITH CHILDREN LIST

- 15.1 The Protection of Children (Scotland) Act 2003 places a legal obligation on the Council to make a referral to Scottish Ministers of any individual working in a child care position following disciplinary action, (either paid or unpaid) who:
- a) was dismissed on the ground that the individual harmed a child or placed a child at risk of harm;
- b) has been transferred to a position which is not a child care position or,
- c) would have dismissed the individual or considered dismissing the individual if they had not resigned, retired, been made redundant or left at the end of a fixed term temporary contract

16 TIME LIMITS

- 16.1 The time limits contained within this procedure may be varied after consultation with all parties involved.

APPENDIX A

EAST LoTHIAN COUNCIL APPEALS SUB-COMMITTEE

PROCEDURE FOR CONSIDERATION OF APPEALS AGAINST DISCIPLINARY ACTION

1 TERMS OF REFERENCE

- 1.1 The Appeals Sub-Committee shall be convened to hear an appeal against a decision to issue a final written warning, or to dismiss or take other forms of punitive disciplinary action as defined in paragraph 7.2 of the disciplinary procedure.
- 1.2 The Appeals Sub-Committee shall have delegated power from the Cabinet to decide appeals and shall be the Council's final arbiter on such matters.

2 CONDITIONS RELATING TO AN APPEAL

- 2.1 For the Appeals Sub-Committee to be convened notice of appeal against disciplinary action must be lodged with the Head of [Council Resources](#), 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 his / her trade union or by some other person of the appellant's choice acting as a representative.
- 2.3 The appellant and his / her 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 APPEALS SUB-COMMITTEE

The membership of the Appeals Sub-Committee shall include a Convener and, if desired, a Depute Convener. The Council shall determine the membership of the Employee Appeals Sub-Committee.

- 3.1 Members of the Appeals Sub-Committee shall be entitled to nominate substitute members to attend any meetings of the Appeals Sub-Committee.
- 3.2 Where a meeting of the Appeals Sub-Committee is adjourned for any reason, the provision in paragraph 3.2 above concerning substitutes shall not apply and only those members in attendance at the original hearing shall be eligible to attend the reconvened hearing.
- 3.3 Three members shall form a quorum at meetings of the Appeals Sub-Committee.

4 REPRESENTATION AND ATTENDANCE OF OFFICERS

- 4.1 The [Head of Education](#), or other appropriate Senior Officer (s) shall act as the Council representative(s) at the appeal hearing.

Deleted: Governance & Performance Management

Deleted: professional association or

Deleted: <#>The Appeals Sub-Committee shall be a Standing Sub-Committee of the Cabinet and shall comprise:- ¶
<#>¶
<#>The Provost¶
<#>The Depute Provost¶
<#>Convener of Cabinet¶
<#>The Convener of Council Committee on Education and Children's Services (Convener of Appeals Sub-Committee)¶
<#>Opposition Group member¶

Formatted: Indent: Left: 1.27 cm

Commented [t1]: Updated in accordance with the revised Standing Orders/Scheme of Delegation

Deleted: Where, for any other reason, a vacancy or vacancies exist in the membership of the Sub-Committee at any meeting that vacancy or those vacancies may be filled for that meeting by the substitution of another member or other members of the Council from within the same political group.

Deleted:

Deleted: Executive Director

4.2 The appellant shall 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 Chief Executive or representative may act as advisor to the Appeals Sub-Committee.

4.4 The [Service Manager – Legal and Procurement Services](#) or representative shall act as clerk to the Appeals Sub-Committee.

Deleted: Head of Law and Licensing

4.5 The [Service Manager – HR & Payroll Services](#) or representative shall act as advisor to the Appeals Sub-Committee.

Deleted: Head of Human Resources

4.6 If an appeal hearing is adjourned, all parties involved shall ensure that, other than in exceptional circumstances, the original representatives attend the reconvened hearing for continuity purposes.

5 PROCEDURE PRIOR TO APPEAL HEARING

5.1 Following submission of a written notice of appeal, the appellant or their representative shall submit to the Head of [Council Resources](#):-

Deleted: Governance & Performance Management

- (a) a written statement indicating the grounds of the appeal;
- (b) copies of any written statements made by witnesses for the appellant which were considered at the original disciplinary hearing;
- (c) a copy of any other document(s) to be placed before the Appeals Sub-Committee; and
- (d) the name(s) of any witness(es) to be called to give evidence on behalf of the appellant.

5.2 The [Head of Education](#) or other nominated senior officer shall submit to the Head of [Council Resources](#):-

Deleted: Executive Director

Deleted: Governance & Performance Management

- (a) a written statement of case against the appellant;
- (b) copies of any written statements made by witnesses for the Council which were considered at the original disciplinary hearing;
- (c) a copy of any other document(s) to be placed before the Appeals Sub-Committee; and
- (d) the name(s) of any witness(es) to be called to give evidence on behalf of the Council.

5.3 The Head of [Council Resources](#) shall issue the agenda for the meeting of the Appeals Sub-Committee, which shall contain all the documents submitted under paragraphs 5.1, 5.2, not less than five working days in advance of the appeal hearing.

Deleted: Governance & Performance Management

5.4 The Appeals Sub-Committee may order such other reference information and /or documents for clarification to be submitted as it may consider appropriate.

6 PROCEDURE TO BE FOLLOWED AT APPEAL HEARING

- 6.1 Witnesses shall be excluded until called unless it is agreed by all parties that they should be present from the start of the hearing.
- 6.2 The Council's representative(s) shall put the case, in the presence of the appellant and their representative(s), and may call witnesses.
- 6.3 The appellant or their representative(s) shall have the opportunity to ask questions of the Council's representative(s) and witnesses.
- 6.4 The members of the Appeals Sub-Committee shall have the opportunity to ask questions of the Council's representative(s) and witnesses.
- 6.5 The Council's representative(s) shall have the opportunity to re-examine witnesses on any matter referred to in their questioning by members of the Appeals Sub-Committee, the appellant or their representative(s).
- 6.6 The appellant or his/her representative(s) shall put the case in the presence of the Council's representative(s) and may call witnesses.
- 6.7 The Council's representative(s) shall have the opportunity to ask questions of the appellant, their representative(s) and witnesses.
- 6.8 The members of the Appeals Sub-Committee shall have the opportunity to ask questions of the appellant, their representative(s) and witnesses.
- 6.9 The appellant or their representative(s) shall have the opportunity to re-examine witnesses on any matters referred to in their questioning by the members of the Appeals Sub-Committee or the Council's representative(s).
- 6.10 Firstly, the Council's representative(s) and then the appellant or their representative(s) shall have the opportunity to sum up their cases if they so wish. The summing up shall not introduce any new matter.
- 6.11 If at any stage new facts are alleged or new evidence produced, the Appeals Sub-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.
- 6.12 At the conclusion of the evidence the Council's representative(s), the appellant and their representative(s) and any witnesses shall withdraw.
- 6.13 The Appeals Sub-Committee, together with the Officers appointed to assist the Sub-Committee, shall deliberate in private, only recalling the Council's representative(s) and the appellant and their representative(s) 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.
- 6.14 The Appeals Sub-Committee shall, if practicable, announce its decision to the parties at the conclusion of the hearing. In any event, the decision shall be notified, in writing, to the appellant and their representative(s) by the [Service Manager – Legal & Procurement](#) within five working days of the date of the hearing.

Deleted: Head of Law and Licensing

6.15 The Appeals Sub-Committee shall record reasons for their decision. These reasons shall be notified to the appellant and their representative(s) at the same time as written notification is given of the decision of the Appeals Sub-Committee. The reasons and the written notification shall be copied to the Head of Education,

Deleted: Executive Director of

Deleted: and Children's Services

7 POWERS OF THE APPEALS SUB-COMMITTEE IN DISCIPLINARY CASES

7.1 The form of the decision of the Appeals Sub-Committee shall 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 shall be withdrawn and any monies due to the appellant shall be payable in full. All documentation relating to the investigation and disciplinary process shall be destroyed. Where the appeal was against a decision to dismiss, the appellant shall 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 shall be withdrawn and an alternative, less serious form of disciplinary action substituted. Where the appeal was against a decision to dismiss, the appellant shall be either:-

- (a) reinstated to their former post or a similar post on no less favourable terms except that a lesser disciplinary penalty shall apply; or
- (b) re-engaged in some other post on terms and conditions which may be determined by the Appeals Sub-Committee.

7.4 If the appeal is not upheld, the disciplinary action shall stand and be regarded as confirmed or some other form of disciplinary action taken as decided by the Appeals Sub-Committee, but may not substitute it for disciplinary action of a more serious nature.

7.5 Where the appeal is against a dismissal and that appeal is not upheld, the Appeals Sub-Committee may decide that the appellant shall be offered re-employment with the Council on such terms and conditions as the Appeals Sub-Committee may determine.

7.6 For the purpose of paragraphs 7.2 – 7.5 above the terms “reinstatement”, “re-engagement” and “offer of re-employment” shall be defined as follows:-

- (a) “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 for the period the contract ceased to operate shall 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 shall be restored as necessary to ensure reinstatement is without detriment;

- (b) "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 Appeals Sub-Committee. In addition, all rights arising out of continuous employment shall be restored; and
- (c) "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 Appeals Sub-Committee. The post, its grade, location and other terms and conditions of employment may also be determined by the Appeals Sub-Committee. If an offer of re-employment on the specified terms is accepted, the appellant's continuity of service shall be regarded as broken and continuous employment shall be calculated for future purposes from the date re-employment takes effect.

8 REPORTING TO THE CABINET

- 8.1 The decision of the Appeals Sub-Committee shall be reported to the Cabinet Committee at the earliest opportunity.

9 TIME LIMITS

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

APPENDIX B

GENERAL TEACHING COUNCIL FOR SCOTLAND - CODE OF PRACTICE ON COMPETENCE

The General Teaching Council for Scotland (“the Council”) was set up under the Teaching Council (Scotland) Act 1965. It was the first such body for teachers in the United Kingdom and, indeed, one of the first teaching councils in the world. One of the fundamental principles underlying the work of the Council is that of professional self-government.

The public interest is represented on the Council. Its membership of 50 consists of 26 elected registered teacher members; 18 appointed members representing local authorities, directors of education, directors of social work, further and higher education institutions, the churches and the Scottish Council of Independent Schools; and 6 members nominated by Scottish Ministers.

The Council is an advisory non-departmental public body (NDPB), but differs from other NDPBs in that it is funded from the annual registration fees paid by registered teachers and not from the public purse. With regard to the public interest, policy statements and general advice issued by the Council are made available to the public and Minutes of meetings of the Council are made available to the press and on the Internet, subject to confidentiality in the Council’s case work.

The Standards in Scotland’s Schools etc Act 2000 made a number of important changes to the functions of the Council. In the light of these changes this Code of Practice on Teacher Competence is intended to illustrate how the Council defines teacher competence and the proposed procedures for dealing with cases of under-performance.

The principal aims of the General Teaching Council for Scotland are to contribute to improving the quality of teaching and learning, to maintain and to enhance professional standards in schools and colleges in collaboration with partners including teachers, employing authorities, teacher education institutions, parents and the Scottish Executive Education Department, and in so doing to contribute to the development of a world-class educational system in Scotland.

The Council’s key functions are:

To maintain and enhance the quality of teaching in Scotland;

- To maintain standards of professional conduct and competence in teaching;*
- To provide advice on the entry requirements for initial teacher education and the supply of teachers;*
- To enhance the status and standing of teaching and the teaching profession;*
- To develop the strengths of Council staff;*
- To run an effective and cost-efficient organisation.*

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.

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.

2 Procedures for Dealing with Under-Performance

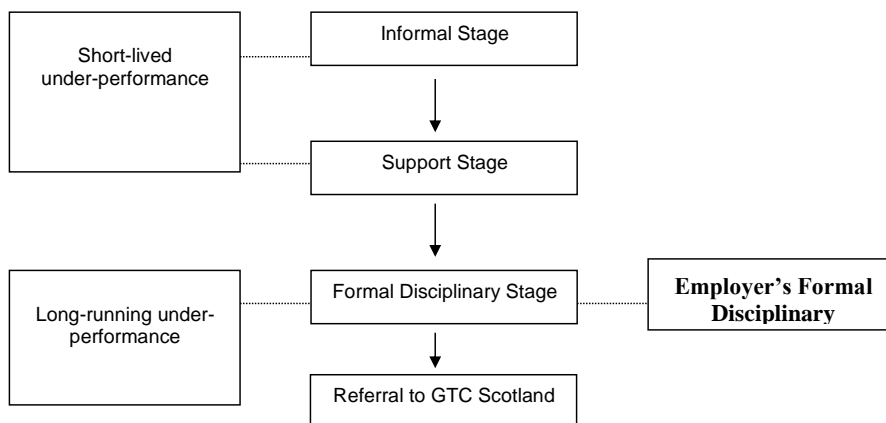
The procedures assume that the teacher has been performing at a competent level up to the point at which temporary under-performance is first identified.

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

- (a) The informal stage does not form part of the employer's formal disciplinary procedures.
- (b) It is assumed, at this stage, that the problem is 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) 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 head teacher who will consider whether the second stage of the procedures should be implemented. The teacher will be informed of the head teacher'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 head teacher 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 head teacher 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 head teacher 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 head teacher 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 head teacher 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.