

INTERIM DISCIPLINARY PROCEDURES BOARD OFFICERS WEF APRIL 2016 PENDING REVIEW OF JNC CIRCULAR NOS 199 AND 200

DISCIPLINARY PROCEDURES FOR BOARD OFFICERS

1. INTRODUCTION

The purpose of this procedure is to provide a fair, equitable and consistent arrangement for the handling of situations where disciplinary action against an officer of a Board is considered necessary.

Nothing in this agreement may be construed as diminishing an employee's rights in law.

2. OBJECTIVE

- 2.1 The main objective is to give officers every opportunity to improve their performance or conduct. The procedure will not be invoked until an officer has been advised of any allegation of unsatisfactory performance or conduct and has been given every reasonable assistance by way of advice, information, guidance or training to achieve the desired standards.
- 2.2 The procedure identifies who has authority to take disciplinary action and aims to ensure that officers are protected against unreasonable or inconsistent disciplinary action.
- 2.3 Where a Head of Department or Deputy Chief Executive is the subject of disciplinary action the principles enshrined in this procedure shall be adopted.

3. SCOPE

This procedure applies to all officers of the Boards with the exception of:

- those categories of schools staff which are subject to Article 88 of the Education and Libraries (Northern Ireland) Order 1986;
- Chief Executives.

4. GENERAL PRINCIPLES

- 4.1 Prior to taking any formal disciplinary action there will be a preliminary investigation into any allegation of misconduct or poor performance.
- 4.2 In the operation of the formal procedure officers should:-
 - be made fully aware of the circumstances giving rise to the question of disciplinary action (including a copy of any report giving rise to a disciplinary charge); and be given a copy of this procedure;

- be given a fair hearing, with the opportunity to state their case. Such a hearing should, wherever practicable, be completed within 3 working days of the alleged offence;
 - be given the right to be represented, at each stage of the procedure, by their trade union representative or a fellow officer.
- 4.3 If the officer subject to disciplinary action is a trade union representative no action beyond a verbal warning will be initiated until the full-time official has been notified and given a reasonable opportunity to discuss the circumstances of the case.
- 4.4 Any disciplinary action taken shall be appropriate to the degree of seriousness of the offence.
- 4.5 Any mitigating circumstances, including the previous record of service of the officer concerned, shall be taken into account when taking disciplinary action.
- 4.6 There shall be the right of appeal against disciplinary action (see Section 11).

5. DISCIPLINARY AUTHORITY

- 5.1 Disciplinary action shall be the responsibility of the duly authorised level of management to which disciplinary powers have been delegated (hereinafter referred to collectively as 'The Disciplinary Authority').
- 5.2 The Disciplinary Authority responsible for disciplinary action is as follows:-

<u>Disciplinary Authority</u>	<u>Disciplinary Action</u>
<i>Supervisory Officer</i>	<i>Verbal Warning</i>
<i>Head of Section after consultation with the Human Resources Manager</i>	<i>Written Warning</i>
<i>Head of Department¹ after consultation with the Human Resources Manager</i>	<i>Final Written Warning</i>
<i>Head of Department¹ and Human Resources Manager</i>	<i>Further Disciplinary Action</i>

- 5.3 The disciplinary action shown against each disciplinary authority is the maximum action permissible to that Authority; it does not preclude the possibility of a lesser penalty being imposed.

¹ With effect from April 2016, agreed by JNC [Joint Secretaries] that the definition of Head of Department be amended to refer to: 'posts at Assistant Senior Education Officer level or above'.

6. INFORMAL PROCEDURE

- 6.1 Prior to the invoking of the formal procedure set out below minor failings should be dealt with by means of an informal meeting with the Supervisory Officer. The object of such a meeting will be to discuss the issues involved and to seek ways of improving the situation.
- 6.2 Should such discussions fail to resolve the matter it will be necessary to involve the formal procedure as follows.

7. FORMAL PROCEDURE

7.1 Verbal Warning

Where it is considered that an officer's conduct or performance is unsatisfactory an interview will be arranged by the Supervisory Officer who shall make the officer aware of the nature of the alleged offence. The officer shall be given a copy of any report giving rise to disciplinary charges. At this interview the officer will be given the opportunity to offer an explanation. The Human Resources Branch shall be given advance notice of any disciplinary hearing and shall, if it so desires, be represented at the hearing by the Human Resources Manager or nominee from the Human Resources Branch. If the officer fails to give a satisfactory explanation the Supervisory Officer shall issue a verbal warning and shall advise the officer of the consequences of any further similar offence. A report shall be sent to the Human Resources Manager.

7.2 Written Warning

In the event of a recurrence of the same or a similar offence the matter shall be referred to the Head of Section who, after consultation with the Human Resources Manager, shall advise the officer, in writing, of the nature of the alleged offence. The officer shall be given a copy of any report giving rise to disciplinary charges. The officer shall be given the opportunity to explain at a disciplinary interview with the Head of Section. The Human Resources Branch shall be given advance notice of any disciplinary hearing and shall, if it so desires, be represented at the hearing by the Human Resources Manager or nominee from the Human Resources Branch. If a satisfactory explanation is not given the Head of Section shall issue a written warning and shall advise the officer of the consequences of any further similar offence.

7.3 Final Written Warning

In the event of a further recurrence of the same or a similar offence, or the occurrence of a more serious offence, the matter shall be referred to the Head of Department², who, after consultation with the Human Resources Manager, shall advise the officer, in writing, of the nature of the alleged offence. The officer shall be given a copy of any report giving rise to disciplinary charges. The officer shall be given the opportunity to explain at a disciplinary interview with the Head of Department². The Human Resources Branch shall be given advance notice of any disciplinary hearing and shall, if it so desires, be represented at the hearing by the Human Resources Manager or nominee from the Human Resources Branch who shall

² With effect from April 2016, agreed by JNC [Joint Secretaries] that the definition of Head of Department be amended to refer to: 'posts at Assistant Senior Education Officer level or above'.

be of a grade not less than Senior Executive Officer. If a satisfactory explanation is not given the Head of Department shall issue a final written warning and shall advise the officer of the consequences of any further similar offence.

7.4 Further Disciplinary Action

Should there be failure to respond to a final written warning; or should a further similar offence occur; or in the case of gross misconduct, the Head of Department² and the Human Resources Manager shall arrange a disciplinary interview as set out in Section 7.3. The officer shall be given 5 days' notice of the date of the meeting and shall be advised of the right to be accompanied by a trade union representative or a fellow officer. An officer failing to give a satisfactory explanation will be subject to further disciplinary action which may include suspension without pay for a period not exceeding 2 weeks, withholding of an increment, downgrading or dismissal.

8. PRECAUTIONARY SUSPENSION

In special circumstances a brief period of precautionary suspension may be imposed by the Head of Department³ or the Human Resources Manager pending formal investigation of an alleged offence. In such circumstances the officer should continue to receive full normal remuneration.

9. DISCIPLINARY INTERVIEWS

The Disciplinary Authority conducting a disciplinary interview shall be entitled to be accompanied by or be deputised for at such interviews by another member of management if desired. The officer shall also have the right to be represented by the appropriate trade union representative or a fellow officer.

10. DISCIPLINARY DECISIONS

10.1 Disciplinary decisions, other than verbal warnings, shall be notified by the Disciplinary Authority in writing to the officer concerned. Such communication shall also highlight the consequence of a repetition of the offence (or failure to meet the required standard).

10.2 Verbal warnings shall be expunged from an officer's personal record after a period not exceeding 6 months' satisfactory conduct, and in the case of written/final written warnings, not exceeding one year's satisfactory conduct. The officer will be advised accordingly.

10.3 When the decision is that no disciplinary action is necessary all papers relating to the alleged offence will be expunged from the officer's personal record.

11. APPEALS

³ With effect from April 2016, agreed by JNC [Joint Secretaries] that the definition of Head of Department be amended to refer to: 'posts at Assistant Senior Education Officer level or above'.

- 11.1 There shall be the right of appeal against any disciplinary action. Unless an appeal is lodged within 5 working days it will be assumed that the officer accepts the decision.
- 11.2 Appeals against verbal and written warnings shall be heard by the next level of authority.
- 11.3 Appeals against final written warnings and further disciplinary action, including dismissal, shall be heard by the Chief Executive or nominee at Assistant Senior Education Officer level or above, accompanied by a Head of Department³ not previously involved in the disciplinary action.
- 11.4 Appeals must be made in writing (setting out the grounds), within 5 working days, to the Human Resources Manager who shall make appropriate arrangements for a hearing. The Human Resources Branch shall provide an officer to act as Secretary. Appeal hearings shall be heard as soon as practicable and no later than 10 working days from receipt of request unless extended by mutual agreement. The result of an appeal shall be notified in writing to the officer within 3 working days of the hearing.

12. REFERENCE TO AN INDEPENDENT APPEALS COMMITTEE

- 12.1 There shall be a final right of appeal, against further disciplinary action to an Independent Appeals Committee.
- 12.2 The Appeals Committee shall consist of an Independent Chairperson appointed by the Labour Relations Agency and 2 panel members, one drawn from a list supplied by the recognised unions and the other drawn from a list supplied by the party to the appeal. The management member shall not be from the local office which is a party to the appeal. The trade union member may be from the union representing the appellant provided he/she is not an employee of, or a trade union representative for, the Education and Library Service.
- 12.3 The Agency shall also appoint a Secretary to the Appeals Committee who shall be responsible for the setting up of the Committee and for the provision of administration services.
- 12.4 The Secretary, in conjunction with the Chairperson, shall fix a date for the Committee's hearing of the appeal and shall advise the parties accordingly; and shall invite nomination to the Committee.
- 12.5 The Secretary shall also invite the parties to make written submissions to the Committee, such submissions to be received not later than 10 days before the date of the hearing. The Secretary shall distribute copies of the submissions to the Committee members and to the other party not later than 5 days before the date of the hearing.
- 12.6 The Committee shall meet the parties to hear the appeal within 20 working days of the matter being referred to the Labour Relations Agency. The Chairperson shall determine the order of the oral presentations to the Committee.

- 12.7 The decision of the Appeals Committee shall be given in writing to both parties within 10 working days of the hearing.
- 12.8 The work of the Appeals Committee shall not be invalidated by the absence of one or other of the parties.
- 12.9 The decision of the Appeals Committee will be final and binding on both parties.

This procedure shall take effect from 1 November 1989 and shall remain in force for a period of 3 years, at which time it shall be subject to review.

November 1989

1. DEFINITIONS

1.1 Misconduct

Misconduct is an offence for which a verbal or written warning shall normally be the appropriate disciplinary action.

1.2 Serious Misconduct

Serious misconduct can be repeated offences of the nature normally dealt with under 1.1 or an offence of a serious nature but which is not regarded as gross misconduct.

1.3 Gross Misconduct

Gross misconduct may be a single serious offence or repeated offences of a similar nature.

1.4 Summary Dismissal

Summary dismissal is the termination of the contract of employment **without notice** where the offence committed has been established, after investigation and disciplinary hearing, as gross misconduct.

1.5 Precautionary Suspension

Precautionary suspension is with full pay pending investigation. It shall not be seen as a penalty, but a precautionary action.

2. DISCIPLINARY RULES/OFFENCES

2.1 These Disciplinary Rules should be read in conjunction with the Disciplinary Procedure. The aim of the Disciplinary Rules and Disciplinary Procedure is to set out the standards of conduct expected of all officers.

2.2 It is not possible to define every circumstance which shall constitute misconduct and these disciplinary rules are provided as guidance only.

2.3 In considering the level of warning or other disciplinary action to be taken, the Disciplinary Authority shall consider the previous record of the Officer, any pattern of misconduct, the currency of any previous disciplinary warning, the recurrence of a similar or further breach of discipline within the specified time period.

3. MISCONDUCT

3.1 The behaviours/incidents outlined below are examples of situations which constitute an offence under the rules and shall lead to disciplinary action. The lists are not exhaustive/exclusive and the degree/ seriousness or repeated nature of the offence(s) shall determine the category under which it shall be considered.

3.2 Examples of Misconduct

- Unsatisfactory timekeeping - arriving late or leaving early without permission.
- Unauthorised absence from place of work - misuse of the employing authority's/school's time.

- Sickness absence - persistent failure to give proper notice in accordance with employing authority's/school's instructions.
- Absence - unacceptably high levels and frequencies.
- Insubordination - bad language, bad behaviour, insolence or refusal to carry out reasonable and legitimate instructions.
- Being an accessory to a disciplinary offence.
- Unsafe working – refusal or neglect to observe security and safety regulations, including the proper use of safety clothing and equipment issued by the employing authority/school, breaches of statutory requirements under Health and Safety Orders/Regulations.
- Carelessness - resulting in loss or damage to, or waste of property entrusted to his/her care, including misuse of telephone or other unauthorised use of equipment including electronic communication facilities.
- Unprofessional behaviour towards staff or the public.
- Vexatious use of the grievance or other procedures, ie wilful or frequent pursuit of issue(s) of no real substance.
- Breach of confidentiality through unauthorised disclosure of information which might prejudice the employing authority's/school's interests.
- Unauthorised collections of money.

This list is neither exclusive nor exhaustive.

3.3 Serious Misconduct

Repeated behaviours/incidents of the type outlined as examples of misconduct in 3.2 above may constitute serious misconduct. However, the degree or seriousness of an offence may warrant consideration under this category.

3.4 Examples of Gross Misconduct

The following acts, and repeated offences of a similar nature, will be regarded as gross misconduct. Gross misconduct is an act or omission that is of such a nature or so serious that, if proven, the continued presence of the employee at work cannot be tolerated, and which could lead to summary dismissal without notice.

Breach of Trust

- Omission or conduct liable to lead to serious loss of confidence in the public service.
- Criminal offences committed at work.
- Conduct that is a serious abuse of position – eg entering into a personal relationship with a vulnerable service user.

Child Protection

Inappropriate conduct or behaviour with a pupil, young person or vulnerable adult.

- Abuse of position of trust.

- Breach of child protection Code of Practice, Policy, Procedure or Guidelines.

Misuse of Property

- Theft, or attempted theft, from the board/school, its employees, partner organisations or service users, or from premises being visited during the course of employment.
- Unauthorised possession and/or misuse of the board's/school's property, or misuse of board/school vehicles.
- Malicious damage to, or any other unlawful act which involves, the property of the board/school or its employees.
- Unauthorised entry to board/school premises outside of normal hours of use.

Dishonesty and Fraud

- Failure to disclose material information (eg convictions) or knowingly making a false statement or omission when applying for an appointment.
- Falsification of time sheets, flexi sheets, expense claim forms, car allowance claims etc.
- Deliberate disregard of the board's/school's financial procedures and rules or contracting Procedures or general instructions concerning the collection, transfer, security and paying in of monies and the completion and submission of associated documents.
- Undertaking other paid employment whilst receiving sick pay or other benefits from the board/school during a period of sickness or unauthorised absence, without prior management agreement.
- Abuse of the Sick Pay Scheme.

Health and Safety

- Deliberate action or omission which endangers life or limb including deliberate damage to, neglect of, or inappropriate use of, safety equipment and any violations of safety rules and codes of practice which could give rise to serious consequences.

Unacceptable Behaviour at Work

- Physical violence (eg fighting), whether actual or threatened.
- Sexual misconduct.
- Deliberate harassment or bullying including inciting racial hatred.
- Indecent conduct or obscene behaviour at work.
- Corrupt or improper practice.
- Behaviour that brings the board/school into disrepute.
- Serious insubordination.
- Consumption of alcohol while in charge of driving a board/school vehicle and/or while in charge of a group of young people.

Alcohol and Drug Use

- Attending work under the influence of alcohol or proscribed drugs.
- Consuming intoxicants during working hours or bringing intoxicants into the premises without permission.
- Alcohol/drug abuse – being in an unfit mental and/or physical state induced by these substances.

In considering a case of misconduct under any of the above, the employee shall be advised of the provision available under the Employing Authority's/school's welfare arrangements.

Confidentiality

- Unauthorised disclosure of confidential and personal information including that which may be of use to a competitor within a tendering situation or quotation procedure.

Use of Information Technology Systems

- Serious breach of the board's/school's Internet Policy eg accessing internet sites containing pornographic material.
- Misuse of social media.
- Loss of confidential or sensitive data through negligence.
- Loss of expensive equipment through negligence.

Conduct Outside of Work

- Criminal offences and other conduct outside employment which would prevent an employee from continuing to do his/her job or which affects his/her suitability to perform his/her work, makes him/her liable to be unacceptable to other employees or management, or is liable to damage the board's/school's business.

Again this list is neither exclusive nor exhaustive, and in addition there may be other offences of a similar gravity, which would constitute gross misconduct.

2013