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# **Disciplinary Policy & Procedure**

Version: 1

## **1 Introduction**

- 1.1 This procedure applies to all members of staff other than 'holders of senior posts' as defined in the College's Articles of Government.
- 1.2 The procedures will be applied in accordance with the Articles of Government of the Corporation and in accordance with the Advisory, Conciliation and Arbitration Services Code of Practice on Disciplinary and Grievance Procedures (May 2000).
- 1.3 The purpose of the procedure is to help and encourage employees to achieve and monitor acceptable standards of conduct at work.
- 1.4 To ensure consistent and fair treatment for all in relation to disciplinary action taken in response to allegations of unacceptable conduct.

## **2 GENERAL PRINCIPLES**

- 2.1 Every effort will be made to avoid the use of disciplinary action where alternatives are appropriate. A separate procedure will be used to address issues of professional capability and competence.
- 2.2 An employee has the right to be present and accompanied and represented by a representative of a trade union or workplace colleague at any stage of the formal disciplinary procedure.
- 2.3 In the interest of ensuring that disciplinary matters are resolved as speedily as possible, time limits are given for appropriate stages in this procedure. These are for guidance. If it is not practicable to adhere to these time limits, they may be amended, ideally by mutual agreement. Due regard will be given to the personal circumstances of all parties involved in the procedure.
- 2.4 It is recognised that disciplinary action against a trade union officer could be seen as an attack on the union's functions. Although normal disciplinary standards will apply to their conduct as employees, no disciplinary action should be taken until the circumstances of the case have been discussed with a full-time official.

NB Employees have the statutory right to be accompanied by a fellow worker or trade union representative, where they are required or invited by the employer to attend a formal disciplinary hearing and when they make a reasonable request to be so accompanied.

The trade union representative can be a full-time officer employed by a trade union, or a lay trade union officer, so long as they have been reasonably certified in writing by their union as having experience of, or as having received training in, acting as an employee's companion at disciplinary hearings.

A fellow worker or trade union representative who is to accompany the employee at the disciplinary hearing should be permitted to take a reasonable amount of paid time off to fulfil this.

### **3 INVESTIGATIONS**

- 3.1 No disciplinary action will be taken against an employee until the College has fully investigated the circumstances of the matter complained of, having regard to the employee's response to allegations. If appropriate, the College may suspend the employee, in accordance with Section 11 below, whilst the investigation is carried out.

### **4 PENALTY**

- 4.1 No formal disciplinary penalty will be imposed without a disciplinary hearing. Other than in cases of gross misconduct or gross negligence, when the penalty may be dismissal without notice or payment in lieu of notice, no employee will be dismissed for a first offence. An employee will have the right to appeal against any disciplinary penalty imposed.

### **5 THE PROCEDURE**

- 5.1 Normally, the procedure will be followed in the order of the stages set out in Section 6 below. However, offences of a serious nature may be brought into the procedure at any stage, if any earlier stage would not be severe enough or appropriate to deal with it. For example, there may be occasions when misconduct is considered not to be so serious as to justify dismissal, but serious enough to warrant only one written warning which will be both the first and final written warning. At every stage of the procedure, the employee will be advised of the nature of the complaint against them and will be given the opportunity to state their case before any decision is made.

### **6 THE PROCEDURE**

#### **Informal**

- 6.1 Before taking formal disciplinary action, every effort will be made by the line manager to resolve the matter by informal discussion with the employee, if appropriate.
- 6.2 Minor lapses from acceptable standards of conduct or work performance will usually be dealt with by the employee's immediate line manager giving

informal oral warnings or reprimands, which will not be recorded on the Personnel Department's file relating to the employee.

- 6.3 If, despite informal discussions (or if informal discussions are not appropriate) the employee's conduct does not meet acceptable standards, the following formal procedure should be used.

## **7 DISCIPLINARY HEARINGS**

### **Formal**

- 7.1 If the College decides to hold a disciplinary hearing relating to the matter complained of, the employee will be advised of the nature of the complaint against him or her at least 2 working days before such hearing. Documentation to be used at the hearing should be exchanged by the employer and the employee at least 1 working day before such hearing.
- 7.2 At any disciplinary hearing, the employee will be given an opportunity to state his or her case and will have the right to be accompanied and represented by the trade union representative or workplace colleague of his or her choice.
- 7.3 If the employee fails, without good reason, to attend a disciplinary hearing which the College has instructed him or her to attend, the hearing will take place, and a decision will be made, in his or her absence.
- 7.4 However if the chosen representative of the employee is unavailable on the date of the initial hearing, the employee may delay the date of that hearing once up to 10 working days to enable the chosen representative to attend. The location and timing of any alternative hearing should be convenient to both the employer and the employee.
- 7.5 The employee's salary will be frozen during the active period of any formal written disciplinary warning. No salary increase will be considered until the review meeting at the end of the disciplinary warning period. This review will be subject to satisfactory performance and conduct having been consistently re-established. Upon satisfactory completion of the disciplinary period the employee's salary will continue at the current band and point.
- 7.6 **Stage 1 – Oral Warning (Recorded)**

If conduct or work performance does not meet acceptable standards, the employee will normally be given a formal ORAL WARNING by his or her immediate line manager/Head of School. The employee will be advised of the reason for the warning, that it is the first stage of the formal disciplinary procedure, that he or she has a right to appeal against it in accordance with Section 9 below. A brief note of the oral warning will be placed on the Personnel Department's file relating to the employee. After 6 months, the warning will be spent and the note thereof will be removed from the Personnel Department's file, subject to the employee's conduct and work performance having been satisfactory throughout that period.

## **Stage 2 – Written Warning**

- 7.7 A WRITTEN WARNING will be given to the employee by a line manager/Head of School/Cross College Manager if:
- i. the employee commits a serious offence of misconduct or the standard of his or her work performance is seriously inadequate;
  - ii. the employee fails to comply with a formal oral warning given under Stage 1;
  - iii. or despite having been given, under Stage 1, a formal oral warning as the result of either misconduct or unsatisfactory work performance, the employee commits a further offence of misconduct, or his or her work performance continues to be unsatisfactory.
- 7.8 This written warning will give details of the complaint against the employee, the improvement required and time limit within which such improvement must be achieved. In the case of misconduct, the warning will state that, if the employee commits a further offence of misconduct during the period specified in the warning, action under Stage 3 will be considered. In the case of unsatisfactory work performance, the warning will advise the employee as to what steps he or she should take to improve and will state that, unless such improvement is achieved within the period specified in the warning, action under Stage 3 will be considered. The written warning will also advise the employee of the right of appeal in accordance with Section 9 below. A copy of the written warning will be placed on the Personnel Department's file relating to the employee. The warning will be spent, and will be removed from the Personnel Department's file, after 12 months, subject to the employee's conduct and work performance having been satisfactory throughout that period.

## **Stage 3 – Final Written Warning**

- 7.9 A FINAL WRITTEN WARNING will normally be given to the employee by a manager within the Senior Management Team if:
- i. the employee fails to comply with a first written warning given under Stage 2;
  - ii. despite having been given, under Stage 2, a first written warning as the result of either misconduct or unsatisfactory work performance, the employee commits a further offence of misconduct, or his or her work performance continues to be unsatisfactory;

- iii. or the employee's misconduct or unsatisfactory work performance, although not considered to be serious enough to justify summary dismissal, is sufficiently serious to warrant only one written warning (in effect both the first and a final written warning).

7.10 The final written warning will give details of the complaint, the improvement required and the time limit within which such improvement must be achieved. In the case of misconduct, the warning will state that, if the employee commits a further offence of misconduct, during the time limit specified in the warning, his or her employment will be terminated. In the case of unsatisfactory work performance, the warning will advise the employee as to what steps he or she should take to improve and state that, if such improvement is not achieved within the period specified in the warning, his or her employment will be terminated. The final written warning will also advise the employee of the right of appeal in accordance with Section 9 below. A copy of the final written warning will be placed on the Personnel Department's file relating to the employee. The warning will be spent and will be removed from the Personnel Department's file after 18 months (although in exceptional cases, the period may be longer), subject to the employee's conduct and work performance having been satisfactory throughout that period.

#### **Stage 4 – Dismissal**

7.11 The Principal or member of the Executive, (having had regard for mitigating factors presented by the employee, representative of trade union or workplace colleague) may give notice of dismissal to the employee if:

- i. the employee fails to comply with a final written warning given under Stage 3;
- ii. or despite having been given, under Stage 3, a final written warning as the result of either misconduct or unsatisfactory work performance, the employee commits a further offence of misconduct or his or her work performance continues to be unsatisfactory.

7.12 Prior to being given such notice of dismissal, the employee shall have the right to make representations, (including oral representation, in mitigation, for which purpose he or she may be accompanied and represented by the trade union representative, or workplace colleague) to the Principal or to any person appointed to investigate the matter and to make recommendations, as the Corporation may decide. The notice of dismissal will be in writing and will specify the reasons for dismissal, the date on which the employment will end and the right of appeal against the dismissal or the notice of dismissal in accordance with Section 9 below. If the employee appeals against the notice of dismissal, the dismissal shall not take effect until the appeal has been determined.

### **8 GROSS MISCONDUCT OR GROSS NEGLIGENCE**

8.1 An employee who is accused of gross misconduct, or gross negligence may be suspended from work, in accordance with the provisions of Section 11

below, whilst the College investigates the alleged offence. The Principal may summarily dismiss the employee if, on completion of the investigation and a disciplinary hearing in accordance with Section 7.10 above, it is established that the employee has been guilty of gross misconduct or gross negligence. Such dismissal will be without notice or payment in lieu of notice and will be confirmed to the employee in writing, specifying the reasons for the dismissal and the right of appeal against it in accordance with Section 10 below.

8.2 The following offences are examples of offences which are normally regarded as grounds for summary dismissal:

- Theft or unauthorised possession of any property or facilities belonging to the College, or to any employee or student.
- Serious damage deliberately sustained to College property.
- Deliberate falsification of College registers, reports, accounts, expense claims or self-certification forms.
- Bribery or corruption.
- Refusal to carry out duties or reasonable instructions or to comply with College rules.
- Serious acts of insubordination.
- Serious negligence/incompetence which causes unacceptable loss, damage or injury.
- Serious incapability as a result of being intoxicated by reason of alcohol or illegal drugs.
- Violent, dangerous or intimidatory conduct.
- Violation of the College's rules and procedures concerning health and safety at work.
- Sexual, racial or other harassment of another employee or a student.
- A criminal offence, which may (whether it is committed during or outside the employee's hours of work for the College) adversely affect the College's reputation, the employee's suitability for the type of work he or she is employed by the College to perform or his or her acceptability to other employees or to students.

8.3 The above examples are not exhaustive or exclusive and offences of a similar nature will be dealt with under this procedure.

## **9 APPEALS AGAINST DISCIPLINARY PENALTIES OTHER THAN DISMISSAL**

9.1 An employee who wishes to appeal against a formal oral warning, a written warning or a final written warning (or a disciplinary suspension) should inform the Head of the Personnel Department within 2 working days of the date of the decision which forms the subject of the appeal. The appeal will be heard by:

- i. A Senior Manager in the case of a disciplinary penalty imposed by the employee's immediate line manager/supervisor; or  
  
the Head of the Personnel Department in the case of a disciplinary penalty imposed by a Senior Manager;
  - ii. or the Principal, if the above were directly involved in the procedure when the disciplinary penalty complained of was imposed; or
  - iii. a Disciplinary Panel of the Governing Body, if the Principal was directly involved in the procedure when the disciplinary penalty complained of was imposed.
- 9.2 The Head of the Personnel Department, or Principal, or disciplinary panel as appropriate, will conduct an appeal hearing as soon as possible (not later than 5 working days) after the notice to appeal has been received. At the hearing of the appeal, the employee will be given an opportunity to state his or her case and will be entitled to be accompanied and represented by the trade union representative or work place colleague.
- 9.3 However, if the employee's representative is unavailable on the date of the initial appeal, the employee may delay the date of the appeal once, up to 10 days to enable the chosen representative to attend.
- 9.4 At the appeal, the disciplinary penalty imposed will be reviewed, but it cannot be increased. The decision of the Head of the Personnel Department or Principal, or disciplinary panel, as appropriate, will be notified to the employee in writing within 10 working days of the appeal hearing and will be **final** and binding.

## **10 APPEALS AGAINST DISMISSAL OR NOTICE OF DISMISSAL**

- 10.1 An employee who wishes to appeal against dismissal or notice of dismissal should inform the Head of the Department in writing within 5 working days of the date of the decision which forms the subject of the appeal. The appeal will be heard by the Principal (if the right to hear appeals has been delegated by the Corporation) or by a committee established by the Corporation and consisting of 3 members of the Corporation, excluding the Principal, the staff members and the student member. The Principal should not hear the appeal if he/she has been involved in the detail of the investigation or the decision to dismiss. The appeal hearing will take place not later than 10 working days after the notice to appeal has been received by the Head of the Personnel Department. The employee will be given at least 4 working days' notice of the date, time and place fixed for the appeal hearing (unless an earlier date has been mutually agreed). At the appeal hearing, the employee will be given an opportunity to state his or her case and will be entitled to be accompanied and represented by the trade union representative or workplace colleague of his or her choice. The decision of the Principal or Corporation's committee appointed to hear the appeal will be notified or confirmed to the

employee in writing within 5 working days of the appeal hearing and will be **final** and binding.

- 10.2 In the case of an appeal against a notice of dismissal, the dismissal shall not take effect before the appeal has been determined.

## **11 SUSPENSION PENDING DISCIPLINARY HEARING**

- i. When the Principal or a nominated Senior Manager is of the view that an employee may have been guilty of gross misconduct, or that because of some other good and urgent cause, the continuing attendance of the employee at the College cannot be permitted, the Principal may suspend the employee from duty pending an investigation and the holding of a formal disciplinary hearing.
- ii. Such a suspension should only be imposed after careful consideration and it should be made clear to the employee that it is not considered a disciplinary act.
- iii. If the Principal decides to suspend an employee from duty, he/she shall:
  - a. confirm the suspension in writing to the employee immediately; and
  - b. inform the employee in writing of the reasons for the suspension, within 5 working days.
- iv. An employee who is suspended from duty shall, throughout the period of suspension, continue to be entitled to his/her full pay unless there is a provision in the contract to the contrary.
- v. An employee who has been under suspension for 3 weeks or more may appeal in writing to the Corporation against the suspension. Notice of such appeal shall be given in writing by the employee to the Clerk to the Corporation and the appeal shall be heard as soon as practicable by a committee consisting of three members of the Corporation, excluding the Principal, the staff members and the student member.
- vi. A suspension against which an appeal by an employee is made shall continue to operate pending the determination of the appeal.
- vii. Where an appeal against suspension is made by an employee to the Corporation, the employee shall be given at least 5 working days' notice of the date, time and place fixed for the hearing, unless an earlier date has been mutually agreed.

- viii. At the hearing of an appeal against suspension, the employee may be accompanied and represented by the recognised trade union representative or workplace colleague of his or her choice.
- ix. Following the hearing on an appeal against suspension, the Corporation's committee appointed to hear the appeal may either confirm the suspension or lift the suspension. The decision of the Corporation, and the reasons for the same, shall be confirmed by the Clerk to the Corporation in writing to the employee within 5 working days of the hearing of the appeal.

# **AoC NOTES RELATING TO MODEL DISCIPLINARY PROCEDURE**

## **Section 7**

The person authorised to issue informal warnings, or formal warnings under Stages 1,2 and 3, may vary from college to college. In a large college, it may be appropriate for warnings to be given by the immediate 'line manager', even though he or she may not be as senior as Head of Department. However, in a smaller college, it is probably more suitable for the appropriate Head of Department to give the warning. The job title of the person authorised to give warnings may also vary from college to college.

The period during which warnings should be kept on the Personnel Department's file might, for example, be as follows:

Oral warning	6 months
Written warning	12 months
Final written warning	18 months

The dismissal provisions in Stage 4 reflect those in Article 13(2), (3) and (4) of the Articles of Government. It should be noted that, where the dismissal is not summary dismissal by reason of gross misconduct, the employee may appeal against the notice of dismissal and, in such event, the dismissal is not to take effect until the appeal has been determined. Thus, there may be circumstances when because of the timing of an unsuccessful appeal against dismissal, the taking effect of the dismissal is delayed until some time after the expiry of the contractual notice.

## **Section 9**

Appeals against disciplinary penalties other than dismissal, should be heard by someone who was not involved in the procedural stages, which resulted in those penalties being imposed. For example, if an immediate 'line manager' or a Head of Department gave a formal warning, it might be appropriate for the Head of the Personnel Department to hear the appeal against such warning.

## **Sections 9 and 10**

A college may wish its procedure to stipulate that an appeal hearing may take place either as soon as possible after, or within a certain time limit from, the date when the notice to appeal has been received. The former option would not allow the College more flexibility. If too short a time limit is stipulated, it may not be easy to adhere to where the case is a complex one requiring a lot of preparation and/or, in the case of an appeal against dismissal or notice of dismissal, there are other difficulties in finding 3 Corporation members who are available at short notice to hear the appeal. A period of 10 or 15 working days might be appropriate, if a time limit is to be stipulated, or indeed Corporations may wish to consider delegating the right to hear the Appeal to the Principal.

## **Section 11**

This section sets out rules for the suspension of staff, pursuant to Article 11(4) of the statutory Articles.

### **Note**

Definition of Joint Agreement: The Agreement on these guidelines is intended to be a recommendation to colleges as to how to deal with issues relating to discipline. Adoption will ensure that colleges meet the requirements of ACAS guidelines 2000.

## **APPENDIX A**

### **RECOMMENDED PROCEDURE FOR DISCIPLINARY HEARING**

1. During the hearing, adjournments may be requested by either party or by the Manager conducting the hearing and will not be refused unreasonably. Where such a request is denied, an explanation will be given.
2. The Manager conducting the hearing will ask whether any new evidence has been made available that could not be circulated prior to the hearing and will make a judgement as to whether an adjournment is necessary to allow consideration of such evidence.
3. The Manager conducting the hearing will introduce all those present.

### **ORDER OF HEARING**

- a. The Investigating Officer (IO) will present the detail of the allegation and a report on the investigation undertaken.
- b. The member of staff and his/her representative may question the IO.
- c. The Manager conducting the hearing or panel members may question the IO.
- d. The IO may call witnesses and ask questions of them.
- e. The employee or representative may question the witness.
- f. The Manager or panel members may question the witness.
- g. The employee and/or representative will present the case against the allegations and explain any special circumstances which may exist and the precise nature of the remedy sought.
- h. The IO may question the employee.

- j. The Manager may question the employee.
- k. The IO may question the witnesses.
- l. The Manager may question the witnesses.
- m. Should the Manager conducting the hearing wish to clarify any issue with either the employee, IO, or of the witness, they will do so at this point.
- n. The IO will summarise the case against the employee without introducing any new factors.
- o. The employee and/or representative will summarise the case against the allegation.
- p. The employee, representative, IO and any other management representative will withdraw and the Manager conducting the hearing will decide whether or not an offence has been committed. The Manager may seek guidance from a member from Personnel on procedural matters.
- q. If, in the opinion of the Manager conducting the hearing an offence has been committed, that Manager will take into account the following before deciding upon an appropriate disciplinary sanction:
  - any mitigating factors, eg health, domestic, bereavement;
  - current disciplinary record of the employee;
  - length of service at the College;
  - nature of the offence;
  - evidence produced by either party at the hearing;
  - statements and answers provided by witnesses;
  - any sanctions imposed in the past for similar offences;
- r. Once that decision is made, the two parties will be recalled and advised of the decision.
- s. The employee will be advised of their right to appeal against the decision and informed who that appeal should be lodged with and in what time-scale.
- t. Written confirmation of the decision will be sent to both parties within 3 working days of the hearing.

## **APPENDIX B**

### **RECOMMENDED PROCEDURE FOR APPEALS**

Generally, the Appeal may be heard by the Principal (if he/she has not been involved in the disciplinary hearing) or an Appeals Committee of the Corporation.

#### **Order of Business**

- a. If an Appeals Committee is used, then the Chair should introduce those present.
- b. Principal (or Chair of Appeals Committee) to clarify if notes will be taken at the meeting and to whom they shall be made available. It is standard practice for both sides to take their own notes.
- c. The management representative to give a short résumé of the Appellant's post within the College and place in the organisational structure.
- d. The Appellant/representative to state their case and explain any special circumstances which may exist and the precise nature of the remedy sought.
- e. The Appellant/representative to introduce any witnesses.
- f. The management representative to ask questions of the witnesses and Appellant as appropriate.
- g. The Principal (or Committee) to question the witnesses.
- h. Appellant's witnesses to withdraw.
- i. The Management representative to state the management case with the assistance of relevant members of management.
- j. Management representative to introduce any witnesses to give evidence.
- k. The Appellant/representative to ask questions of the witnesses and management representative as appropriate.
- l. The Principal (or Committee) to question the witnesses.
- m. Management representative's witnesses to withdraw.
- n. Management representative to summarise the College's case; no new factors to be introduced.
- o. The Appellant/representative to summarise the appeal; no new factors to be introduced.

- p. Principal (or Committee) to review case and make decision.
- q. Management representative, Appellant and advisers to be recalled and informed of the decision by the Principal (or Chair of Appeals Committee).

## **Reference Other Documents**

Capability