

## **DISCIPLINARY PROCEDURE**

### **POLICY STATEMENT & SCOPE**

1. The College aims wherever possible to resolve informally matters of potentially unsatisfactory conduct, attendance or poor performance, without resorting to formal procedures. Recognising however, that this is not always possible, the purpose of this procedure is to provide a formal means of helping and encouraging employees to achieve and maintain acceptable standards.
2. The procedure is designed to enable individual cases to be resolved fairly, consistently and in a timely manner. Wherever possible and reasonable, help and encouragement, including formal training, will be provided to allow staff to meet standards specified as a result of disciplinary action taken against them.
3. This procedure is not contractual, does not form part of any employee's contract of employment and may, after consultation with the recognised trade unions, be amended at any time by the College.
4. Once this procedure has been instigated, the employee will have the right to be accompanied by an official of a trade union or work colleague at any meeting held in connection with it. Consistent with the fact that disciplinary meetings and hearings are internal proceedings, external representatives such as solicitors or family members will not be permitted to attend.
5. Employees who are subject to disciplinary proceedings will be provided with a copy of this procedure at the outset. It is the responsibility of managers using this procedure to be acquainted with its provisions, and to be aware of their responsibilities within it. For the avoidance of doubt, no member of staff shall be required shall be required to chair a disciplinary hearing if they are unwilling to do so.
6. No disciplinary action (up to and including dismissal) will be taken against employees without their first being:-
  - advised, where appropriate, that an investigation is to be carried out to establish the facts;
  - provided with a written statement of the allegations against them and copies of any documents to be considered at the disciplinary hearing;
  - informed of their right to be accompanied at the disciplinary hearing; and

- given an opportunity to put their case in a fair hearing before any decision is reached.
7. The definition of a manager for the purposes of this procedure is any officer of the College, including Service Directors and Heads of Academic Departments, with line management responsibility for one or more members of staff.
  8. This procedure applies to all full time and part time staff.
  9. The procedure does not apply to non-academic employees in their probationary period of employment with the College, or extension thereof.
  10. This Procedure follows the principles set out in the ACAS Statutory Code of Practice '*Disciplinary and Grievance Procedures*' 2009.
  11. For academic staff, this procedure constitutes the relevant Regulations in respect of disciplinary matters under paragraph 2 of Statute 18 of the College's Charter and Statutes.

## **PART ONE – BASIC PRINCIPLES**

### **1. STEPS TO AVOID FORMAL ACTION**

12. Where possible, cases of unsatisfactory conduct or work performance will be raised with employees by their manager as part of the normal management process. If appropriate, informal support will be provided in order to help resolve the problem without recourse to disciplinary action.
13. If informal support is not appropriate, or if following informal support, an employee fails to improve, or to sustain an improvement in his or her conduct, attendance or performance, the disciplinary procedure will be applied.

### **2. CASES OF POOR PERFORMANCE**

14. The College recognises that in respect of poor performance, it may, in the first instance, be advantageous to seek to resolve potential disciplinary problems informally.
15. In such circumstances, particular attention will be paid to agreeing defined and measurable performance improvements with the employee. Timescales appropriate to the objectives set will be agreed. Any necessary learning opportunities will be provided to help the employee reach the standard(s) specified. Consideration will also be given to factors inside and outside of work that may be affecting the employee's ability to perform their duties to a satisfactory standard.
16. At the end of the agreed timescales, or earlier if it is apparent that the improvements required cannot be achieved, the employee's performance will be reviewed, and a decision taken as to whether any further action is necessary. If the employee's performance has not fully improved, the action will be either to extend the review period or to initiate the disciplinary procedure.

### **3. HR MANAGEMENT ADVICE**

17. Managers are responsible for ensuring that disciplinary decisions are consistently applied in accordance with this disciplinary procedure.
18. Human Resources staff are responsible for advising managers on all disciplinary matters and for helping maintain consistency. The appropriate members of the HR Team must be consulted at all stages under the formal procedure.
19. HR can also advise on the application of this procedure in the context of the College's statutory and other obligations in respect of equality of opportunity. For example, making reasonable adjustments in the case of disability.

## **5. POLICE OR OTHER LEGAL PROCEEDINGS**

20. The College will consider if it is appropriate to continue with disciplinary action in circumstances where the Police are investigating. It may be necessary to take such disciplinary action before the outcome of a Police investigation or other legal proceedings is known. Alternatively, it may be appropriate to suspend them until the conclusion of such proceedings.

## **6. GROSS MISCONDUCT**

21. Gross misconduct is conduct serious enough to warrant dismissal of the employee without prior disciplinary warning. If on completion of a disciplinary investigation and hearing, the College is satisfied that gross misconduct has occurred, the result will normally be summary dismissal without notice or pay in lieu of notice.
22. Examples of the kind of conduct normally regarded by the College as gross misconduct are set out in Appendix 1. It should be noted that the list is for illustrative purposes and is not intended to be exhaustive or exclusive.

## **PART 2 – DISCIPLINARY PROCEDURE**

### **7. DISCIPLINARY INVESTIGATIONS**

23. Where an employee's line manager feels that an act of misconduct has taken place, or there is evidence of poor performance, s/he will advise the employee and begin an investigation. The investigation will normally comprise of discussions with the employee and any relevant witnesses about the matters under consideration. Written records of the discussions will be taken and any necessary documentation gathered together.
24. In certain cases, it may be appropriate for a manager other than the immediate line manager to undertake the disciplinary investigation. In such circumstances, the employee will be advised why this is the case.
25. Disciplinary investigations will be completed as soon as reasonably practicable, given all the circumstances of the case. It will sometimes be necessary for a disciplinary investigation to be conducted over a protracted period. In such circumstances the employee will be advised of the reasons why, and the likely timescale for the completion of the investigation.
26. On completion of the investigation, the line manager will submit a report of his/her findings to the manager who is to hear the case, and all supporting documentation will be appended to the report. A recommendation will be made as to whether the case should proceed to a formal hearing. Alternatively, the manager may recommend that no further action is taken against the employee.
27. If no action is to be taken, the employee will be notified of this in writing, and provided with a copy of the investigating manager's report. If disciplinary action is recommended, a disciplinary hearing will be convened (see Section 9 below).

### **8. SUSPENSION FROM WORK**

28. Suspension is not a disciplinary sanction or act. It does not imply that there has been any misconduct, or that any decision has already been made about the outcome of the disciplinary investigation or any hearing (see section 9 below). Suspension is a neutral act to allow, in the interest of all or any of the parties concerned, an effective investigation to take place.
29. Suspension will be on full pay until either the outcome of any disciplinary hearing is known, or the disciplinary investigation is discontinued. It will normally occur within *one working day* of the start of a disciplinary investigation, and be for as short a period as possible. Suspension will usually only be considered in cases of very serious allegations, for example, those constituting gross misconduct.
30. However, the College reserves the right to suspend an employee at any stage of a disciplinary investigation, where it emerges that the case is potentially one of gross misconduct, or where it becomes apparent that the conduct of the investigation is being

affected by the presence at work of the employee. Suspension may also be considered in circumstances where the disciplinary investigation is causing distress to the employee.

31. When suspension of an employee is being considered, their line manager will meet the employee and explain the reasons for the suspension. The employee will have an opportunity to make observations on the manager's reasons for suspending him/her. The suspension will subsequently be confirmed, in writing, within three working days of the meeting. If the employee is a member, the relevant trade union will also be informed as soon as reasonably practicable.
32. During the period of the suspension, the employee will be required to seek prior authorisation from their line manager before contacting any other member of staff, any student or supplier (whether connected or not to the matter under investigation). The employee must also seek prior authorisation from their manager before entering College premises.
33. In accordance with section 7 above, the employee will be kept appropriately informed whilst suspended, of the progress of the disciplinary investigation. The necessity of continued suspension will be kept under review by the College as the investigation develops. If it is deemed appropriate, the suspension will be ended and the employee invited to return to work before the investigation is completed or any hearing convened<sup>1</sup>.

## **9. NOTIFICATION AND CONDUCT OF DISCIPLINARY HEARINGS**

34. When a manager receives a recommendation of disciplinary action against an employee, s/he will convene a disciplinary hearing as soon as reasonably practicable.
35. At least five working days notice of the hearing will be given to the employee. This is to allow them sufficient time to prepare a response.
36. The employee will be advised in writing of the time, date and location of the disciplinary hearing, and details of the matter to be considered, together with documentation to be used as part of the hearing. This will normally comprise the line manager's report and any response from the employee, together with any supporting information and/or witness statements provided by either party.
37. If the employee wishes to be accompanied at the hearing, they must advise HR of the name of that person no later than two working days prior to the meeting. Although the College will seek to assist where possible, it is the responsibility of the employee to ensure that the person accompanying them is provided with all and any documentation and information they consider necessary, including the date, time and location of the hearing. The person accompanying the employee at the hearing, may put the employee's case, sum up and confer with the employee, but has no right to answer questions on the employee's behalf or prevent the investigating manager from explaining his or her case. It is normally helpful to agree on the respective roles of the different parties on commencement of the hearing.

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<sup>1</sup> For example, if the investigating manager concludes that although a case for disciplinary action exists, the employee is unlikely to have committed gross misconduct

38. The College will make every effort to ensure that the date and time of the hearing is convenient to all the parties. However, delays caused by the unavailability of the employee or their chosen representative to attend on given dates will not be an acceptable ground for postponing the hearing indefinitely.
39. Where the employee's representative cannot attend on the date proposed, the College will offer an alternative date and time, but it may not be possible for this to be done more than once. In exceptional circumstances, for example if, in the opinion of the College, it is necessary to bring matters to a conclusion where one or other of the parties is behaving unreasonably, disciplinary hearings may be conducted in the absence of the employee.
40. At the hearing the line manager will present their report, calling witnesses if necessary in support of the case against the employee. The employee or their representative will then be invited to respond to the management case, again calling witnesses if necessary. The manager hearing the case may question both parties and their witnesses, after which the parties will be given the opportunity to sum up. If witnesses are called, they may only be present for the period of their statements and questioning.
41. The hearing will then be adjourned while the facts of the case are considered, and a decision made by the manager hearing the case. If deemed necessary by the manager hearing the case, the adjournment may be extended to allow further investigation to take place.
42. Normally, the hearing will be reconvened and the decision conveyed verbally to the employee and confirmed in writing. In exceptional circumstances, for example, complex cases involving the assessment of a substantial volume of evidence or information, the manager hearing the case may decide not to convey their decision to the employee verbally, and to advise him/her of it in writing only. In either case, written confirmation of the outcome of the hearing will be provided to the employee normally within five working days, and no more than ten working days of the hearing.
43. Written confirmation of the outcome of the hearing will also include confirmation of the employee's right of appeal.

## **10. TRADE UNION REPRESENTATIVES**

44. In accordance with the College's legal obligations, the circumstances of any action to be taken against a representative of a recognised trade union will be notified to a full time officer of that union.
45. The application of this policy and procedure will be monitored and reported on annually to Council as part of the Equality & Diversity Report.

## **PART 3 – ACTION AVAILABLE UNDER THE FORMAL PROCEDURE**

### **12. AUTHORITY TO DISCIPLINE**

46. The four stages of the disciplinary procedure are designed to allow a case to progress through the normal management chain. Action may be initiated at any stage, depending on the seriousness of the case.
47. First line managers will have the authority to discipline at stage 1 of the formal procedure. Cases involving disciplinary action at Stages 2, 3 and 4 of the procedure will be heard by another senior manager. In cases where disciplinary action escalates from one stage to the next, different managers will take action at each consecutive stage.
48. Where a manager is directly involved in the substance of an allegation, the case will be heard by another manager of the same or higher grade, from the same department or service if possible.

### **13. STAGES OF DISCIPLINARY ACTION**

49. There are four stages of disciplinary action available under the formal procedure:-
  - **Stage 1** – Oral Warning
  - **Stage 2** – Written Warning
  - **Stage 3** – Final Written Warning
  - **Stage 4** – Dismissal or Summary Dismissal
50. Examples of the kinds of misconduct and poor performance normally regarded as falling into each category are set out in Appendix 1, though these are for illustrative purposes only and are not intended to be an exhaustive list.

#### **Stage 1 - Oral Warning**

51. If, following a disciplinary investigation, a line manager finds that poor performance or minor misconduct has occurred, he/she may issue an oral warning to the employee. The employee will be advised of the reason for the warning, the improvements required, the timescales within which such improvement is required, and that action under Stage 2 will be considered if there is no satisfactory improvement.

#### **Stage 2 - Written Warning**

52. This stage applies to more serious acts of misconduct or poor performance, or to a repetition of misconduct or poor performance for which the employee has already received an oral warning.
53. The written warning will give details of the misconduct/poor performance, the improvements required and timescales. It will warn that action under Stage 3 will be



considered if there is no satisfactory improvement and will advise of the right to appeal (see Part 4 below).

### **Stage 3 - Final Written Warning**

54. This stage applies to acts of misconduct or poor performance so serious that the College would wish to dismiss the employee were they to be subsequently repeated.
55. Stage 3 also applies to repetition of an act of misconduct or poor performance for which the employee has previously received a written warning under Stage 2.
56. A final written warning will give details of the misconduct/poor performance, the improvements required and timescales. It will then warn that dismissal under Stage 4 of the procedure will be considered if there is no satisfactory improvement, and will advise of the right to appeal (see Part 4 below).

### **Stage 4 - Dismissal and Summary Dismissal**

57. There are two ways in which employment can be terminated under this procedure, dismissal and summary dismissal.

#### **Dismissal**

58. If conduct or performance is still unsatisfactory after a warning under Stage 3 of the procedure, a further disciplinary hearing will be held. If it is apparent that the employee has failed to meet required standards, dismissal will normally result.
59. The Principal will be advised of the decision to dismiss before it is confirmed in writing to the employee.
60. The employee will be provided with a written explanation of the reasons for dismissal, and advised of their right of appeal (see Part 4 below).
61. The employee will receive pay in lieu of their contractual notice, and any other outstanding monies due to them. For calculation purposes, the employee's last day of employment will be deemed to have been the date on which the decision to dismiss was conveyed to the employee.

#### **Summary Dismissal**

62. Summary Dismissal applies to acts of gross misconduct only.
63. Because of the nature of alleged acts of gross misconduct, the employee will normally be suspended from work on full pay, whilst their line manager completes an investigation (see section 7 above).
64. A disciplinary hearing will then be convened. If at that hearing, it is found that an act of gross misconduct has taken place, a decision to summarily dismiss the employee without notice, or pay in lieu of notice, will normally result.
65. The Principal will be advised of the decision to dismiss before it is confirmed in writing to the employee.



## **PART 4 - APPEALS AGAINST DISCIPLINARY ACTION**

### **15. THE PURPOSE OF AN APPEAL**

70. Employees are entitled to appeal against any disciplinary action taken under this disciplinary procedure, and to be represented at the appeal hearing by a trade union representative or work colleague.
71. If the appellant is able to demonstrate that the disciplinary action taken against him or her was unfair, the appeal is the means by which such disciplinary action is formally withdrawn or amended. If they are unable to do so, the fairness of the disciplinary action will be confirmed and upheld.
72. The appellant will be required to state clearly the grounds of their appeal and, if appropriate the remedial action they seek. The College reserves the right to rule the appeal out of order and not to allow it to proceed if the appellant fails to meet this requirement.
73. In reaching a decision, those hearing an appeal may consider:
  - Whether serious procedural errors have materially contributed to the outcome of the proceedings against which the appeal has been lodged.

**OR**

- The coming to light of new information, which was not available at the disciplinary hearing.

**OR**

- Whether the outcome of the disciplinary hearing was in some way perverse.
74. *The function of an appeal is not to conduct a full rehearing of the facts of the case, though it is inevitable that reference will have to be made to the earlier disciplinary hearing.*

### **16. NOTIFICATION OF APPEAL HEARINGS**

75. An employee wishing to appeal against disciplinary action taken against them should inform the Director of Human Resources in writing. They should state the full grounds of their appeal and provide all necessary supporting documentation. This should normally be done within *five working days* of receipt of written confirmation of the disciplinary action.
76. If the appellant feels it will be difficult to comply with this deadline (perhaps because of the need to gather together documentation or to contact witnesses), they should lodge a provisional notification of appeal together with an indication of the amount of time they require to fully prepare their case. If this is deemed reasonable an extension of the

deadline will be agreed. Failure to submit a provisional notification of appeal within the five day deadline may result in the appeal being disallowed.

77. An appeal hearing will normally be convened within *twenty working days* of receipt of notification by the Director of Human Resources of the appellant's decision to appeal. A copy of the appellant's written statement will be passed to the line manager who took the disciplinary action.
78. The manager will prepare a written response to the appeal, which s/he will present at the appeal hearing. A copy of this statement will be sent to the appellant, together with details of the date, time and location of the hearing, not less than *five working days* prior to the hearing.
79. If the appellant wishes to be accompanied at the appeal by a trade union representative or work colleague, it will be their responsibility to provide Human Resources with the name of their representative, and to provide that person with all information and documentation relating to their appeal. This will include the date and time of the hearing.
80. Where the appellant's representative cannot attend on the date proposed, the College will offer an alternative date and time, but it may not be possible to do this more than once. In exceptional circumstances, for example, if, in the opinion of the College, it is necessary to bring matters to a conclusion where one or other of the parties is behaving unreasonably, appeal hearings may be conducted in the absence of the appellant.

## **17. AUTHORITY TO HEAR AN APPEAL**

81. Appeals against disciplinary action *short of dismissal* will be normally heard by the line manager of the person who chaired the hearing and imposed the disciplinary action provided that person has not previously been involved in the case.
82. Where an appeal has been lodged against dismissal, a senior manager, not previously connected with disciplinary action against the appellant will be nominated by the Principal to hear the case. The Principal may at his/her absolute discretion decide to hear the appeal him/herself.
83. In cases of academic staff (as defined in Statute 18), an appeal will be heard by a panel made up of the Principal (or the Principal's nominee - see below) and a person not employed by the College holding, or having held, judicial office or being barristers or solicitors of at least 10 years' standing. In the event of disagreement between the members of the panel the Principal's decision shall be final. Where the Principal determines not to hear the appeal in person, authority to hear the appeal will normally be delegated to the Deputy Principal or appropriate Vice-Principal.

## **18. ROLES AND RESPONSIBILITIES OF THE OTHER PARTICIPANTS**

### **The Appellant**

84. Having set out the written grounds of their appeal beforehand, the Appellant must concentrate on the issue(s) that the appeal has been called to consider. They must not attempt to present all the facts of the case afresh.

#### *The Appellant's Trade Union Representative/Work Colleague*

85. If the Appellant is to be accompanied, it must be agreed before hand whether that person is to do so as a "representative", i.e. to speak for them, or as their "companion", i.e. to support them and act as witness to the proceedings (see also, paragraphs 3&4 above)

### **The Responding Manager**

86. Having set out their written response to the Appellant's case beforehand, the role of the responding manager is to summarise why the appellant was disciplined or dismissed, explaining why their decision was reasonable, given the circumstances.

### **The HR Adviser**

87. A senior member of Human Resources will advise those hearing the appeal on matters of procedure, Employment Law and best practice. HR will also provide an administrator to act as clerk to the hearing and take a record of proceedings.

## **19. CONDUCT OF APPEAL HEARINGS**

88. Those hearing the appeal will consider the written submissions of the Appellant and Responding Manager, together with any oral statement they might wish to make. Both sides may question each other and call and question witnesses in support of their case. If witnesses are called, they may only remain at the hearing for the period of their evidence and questioning. At the end of the appeal, both sides will be given the opportunity to sum up.

89. The hearing will then be adjourned while the facts of the case are considered and a decision made by the manager hearing the appeal. If deemed necessary by the manager hearing the appeal, the adjournment may be extended to allow further investigation to take place.

90. Normally, the hearing will be reconvened and the decision conveyed verbally to the Appellant and confirmed in writing. In some circumstances, for example complex cases involving the assessment of a substantial volume of evidence or information, the manager hearing the case may decide not to convey their decision to the Appellant verbally, and to advise him/her of it in writing only. In either case, written confirmation of the outcome of the hearing will be provided to the employee normally within ten working days of the hearing. He or she will also be advised that the outcome of their appeal marks the end of internal consideration of their case.

## **20. FINDINGS**

91. The available findings under this procedure are as follows:

- To allow the appeal and expunge the disciplinary action from the Appellant's record.

*OR*

- To reduce the penalty to a lower stage of disciplinary action. In cases of dismissal, this includes reinstatement.

*OR*

- To dismiss the appeal.

Agreed 18 July 2008  
(As Amended October 2009)

## APPENDIX 1

### EXAMPLES OF MISCONDUCT LIKELY TO LEAD TO DISCIPLINARY ACTION AT DIFFERENT STAGES OF THE PROCEDURE

*NOTE: These examples are for illustrative purposes only and are not an exhaustive list. The disciplinary action taken at every stage of this procedure will be determined by the specific facts of the case in question, and thus may vary from the illustrations here.*

<b>Stage 1 Oral Warning</b>	<b>Stage 2 Written Warning</b>
<p>This Stage applies to acts of 'Minor' misconduct such as:</p> <p>Persistent lateness for work;</p> <p>Unauthorised use of College telephones, stationery, office equipment or similar property;</p> <p>Failure to conform to appropriate standards of dress or personal hygiene;</p> <p>A first failure to adhere to College health and safety procedures which has not led to injury or damage;</p> <p>Minor failure to follow other College or work related procedures e.g. sickness absence notification;</p> <p>Failure to meet reasonable standards in terms of quality or quantity of work</p>	<p>This Stage applies to repetition of an act for which an employee has previously received an Oral Warning</p> <p>OR</p> <p>To a first act of more 'Serious' misconduct, such as:</p> <p>Disruptive or abusive behaviour likely to affect the efficient working of the employee's immediate colleagues;</p> <p>Discourtesy to a student, employee, supplier, or member of the public having business with the College;</p> <p>Misconduct in relation to official documents of the College through neglect;</p> <p>Failure to follow health and safety procedures which has led to minor injury or damage;</p> <p>Failure to follow College or work related procedures, so as to incur financial loss to the College;</p> <p>Substantial failure to meet reasonable standards in terms of quality or quantity of work.</p>

<b>Stage 3 Final Written Warning</b>	<b>Stage 4 Dismissal or Summary Dismissal</b>
<p>This Stage applies to repetition of an act for which an employee has previously received a Written Warning</p> <p>OR</p> <p>To a first act of 'Major' misconduct, such as:</p> <p>Use or attempted use of position in the College for private advantage, or the advantage of another individual;</p> <p>Knowingly making a false, misleading or inaccurate entry to an official document of the College;</p> <p>Breach of confidentiality in relation to the business of the College;</p> <p>Disruptive or abusive behaviour, including insubordination, likely to affect the efficient working of the employee's work unit or the reputation of the College;</p> <p>Unauthorised or unreasonable consumption of alcohol on College premises or on College business;</p> <p>Discrimination or harassment on grounds of race, sex, sexual orientation, age, religion or disability;</p> <p>Negligent or intentional misuse of College property, resulting in financial loss;</p> <p>Failure to adhere to health and safety procedures which has led, or could have led, to significant injury or loss;</p> <p>Incompetent or serious failure to meet reasonable standards of performance in terms of quality or quantity of work.</p>	<p><u>Dismissal</u> applies to repetition of an act for which an employee has previously received a Final Written Warning</p> <p><u>Summary Dismissal</u> applies to acts of Gross Misconduct only, examples of which include:</p> <p>Acts of theft, fraud or deliberate falsification of records for personal gain;</p> <p>Fighting or assault on a colleague, student, supplier or member of the public having business with the College;</p> <p>Gambling or supporting acts of gambling on College premises which are detrimental to the good name of the College;</p> <p>The possession of illegal drugs, or being under the influence of illegal drugs on College premises or on College business;</p> <p>Being unreasonably under the influence of alcohol at work;</p> <p>Discrimination or harassment on grounds of race, sex, sexual orientation, age, religion or disability causing substantial damage to the good order or name of the College;</p> <p>Knowingly mishandling, cruelly treating or neglecting any animals in the care of the College;</p> <p>Acts of gross negligence or insubordination;</p> <p>Sexual misconduct on College premises or on College business likely to undermine the good order or good name of the College;</p> <p>Soliciting or acceptance of bribes;</p> <p>Misuse, negligent or wilful damage to College property, or the property of students or employees, causing unacceptable loss or damage;</p> <p>Prosecution for an offence outside work affecting staff or external relations, or the ability of the employee to perform effectively in their role, eg assault, theft, fraud, sexual offences, drink driving.</p>



