

Employee Disciplinary and Dismissal Policy and Procedure

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1 INTRODUCTION

This document outlines the College Disciplinary and Dismissal policy and procedure. The College recognises the importance of attempting to resolve discipline issues, and welcomes the opportunity to address these matters informally wherever possible.

In particular this document details:

- Some examples of when these procedures will apply
- The steps involved in dealing with disciplinary issues
- The appeal process

The College processes personal data collected during the investigation stage and any subsequent stages of disciplinary action in accordance with our data protection policy and procedures. The Data Protection Act 2018 states that personal data should be processed in line with six 'Principles':

1. Lawfulness, fairness and transparency
2. Purpose limitation
3. Data minimisation
4. Accuracy
5. Storage limitation
6. Integrity and confidentiality

In particular, data collected as part of the investigation stage and any subsequent stages of disciplinary action is held securely and accessed by, and disclosed to, individuals only for the purposes of completing the disciplinary procedure. Inappropriate access or disclosure of employee data constitutes a data breach and should be reported in accordance with the organisation's data protection policy immediately. It may also constitute a disciplinary offence, which will be dealt with under this disciplinary procedure.

2 EQUALITIES IMPACT ASSESSMENT

We welcome feedback on this Policy and the way it operates. We are interested to know of any possible or actual adverse impact that this Policy may have on any groups in respect of any protected characteristic.

An Equalities Impact Assessment of this Policy has been carried out. The policy has been written to fully comply with all obligations in respect of employment law and equality legislation and to take account of recommended best practice. It is therefore not anticipated that this policy will result in a negative or adverse impact on one or more groups in respect of any protected characteristic.

POLICY

3 WHO DOES THE POLICY APPLY TO?

This policy applies to all employees of the College. For the College Principal, such issues will be dealt with in accordance with College Standing Orders (information regarding the College Standing Orders can be requested from the Executive Office).

4 WHEN DOES THE POLICY APPLY?

The College will apply the procedures set out in this policy if it proposes or contemplates taking disciplinary action against or dismissing an employee (unless in its sole discretion, it decides

that it is inappropriate to do so).

Some examples of the circumstances that these procedures would normally be applied to are:

- suspension with pay (pending an investigation)
- disciplinary action (including demotion or dismissal) for a reason related to an employee's conduct, e.g. misconduct or gross misconduct
- disciplinary action (including demotion or dismissal) for a reason related to capability (relating to work performance or absence)
- dismissal for some other substantial reason

This list is not exhaustive.

Where an employee's fixed term contract is not to be renewed, the procedure set out under the Fixed Term Contracts Policy and Procedure will be followed.

Where an employee's post is to be made redundant, the procedure set out in the Redeployment and Redundancy Policy and Procedure will be followed.

It may not be appropriate to apply these procedures if:

- an employee's actions were related to industrial action
- a party who would be involved in the procedures reasonably believes that following them would result in a significant threat to a person or to property or his further harassment
- the case meets the criteria of any other lawful exemption

If an employee believes that the particular circumstances are such that one of these exclusions applies they should explain this to a Human Resources Business Manager.

Misconduct related to work will normally lead to disciplinary action being taken. The type of action that will be taken will be decided in accordance with individual circumstances, including the seriousness of the misconduct and whether it is a first occurrence of unacceptable conduct. Examples of what would be classed as misconduct and gross misconduct can be found in APPENDIX 1.

PROCEDURE

5 INVESTIGATION

Before any form of disciplinary action is taken or dismissal occurs the College will normally undertake an investigation. In certain circumstances the College may consider that it is not appropriate to carry out an investigation, for example:

- where the issue is relatively minor; or
- the employee has been caught in the act and there are no mitigating circumstances;
- he/she has admitted that they were in the wrong.

In circumstances where an investigation is not considered necessary, the employee's line manager will normally conduct a fact-finding meeting and any subsequent disciplinary hearing where appropriate.

The College will endeavour to ensure that investigations are completed in the shortest time consistent with the necessity for a full and thorough examination of the facts. If an employee's actions are subject to investigation they will be informed of this prior to the commencement of

the investigation. Although each incident will require different forms of investigation, the process should allow for:

- appropriate enquiry into the background of the alleged misconduct
- an opportunity for employees to offer an explanation
- a balanced view to be taken on all of the facts and recommendations on how to proceed

Where relevant an Investigating Officer will be appointed, normally the Investigating Officer would be a manager from another department. The HR Department will provide advice and support to the Investigating Officer, as necessary, throughout the process. A note taker may be present at investigatory meetings to support the Investigating Officer.

In the paragraph below, 'a witness' refers to any employee who is involved in the investigation, including the employee who is subject to investigation.

Where the Investigating Officer requires to interview a witness who is absent from work due to sickness, the witness will be contacted to state that they are required to participate in the investigation. Usually the witness statement from the sick witness will be taken on their return to work, or sooner where the witness feels able to participate in the investigation before this time.

Where relevant the Investigating Officer may write to any witness who remains unfit for work to ask for written responses to their questions to allow them to conclude their investigation. However, where a witness' absence is prolonged they may be asked to attend the College's occupational health service for an independent medical opinion. This is primarily to support the management of the witness' sickness absence case (in line with the Absence Management Policy) but also to determine when the witness will reasonably be able to participate in the investigation in order that the investigation can be concluded as quickly as possible to the benefit of all parties concerned. Remote meetings may take place where face to face meetings are not practical or support the progress of the investigation.

Once the investigation is complete, the Investigating Officer will prepare a written report on the basis of the available information and make recommendations on how to progress the case. The report will be made available to the employee under investigation if the matter progresses to a formal hearing.

The appropriate Manager will take the decision if a disciplinary hearing is appropriate in the circumstances. Before a hearing is convened, the Manager, who would normally be the chair of the potential hearing, will review the investigatory report and associated evidence where appropriate. The manager will then decide whether they consider the alleged misconduct serious enough, and if there is sufficient evidence to take the case forward to a formal hearing.

The employee, or any person acting on their behalf, is not permitted to record electronically any meeting held by the organisation as part of the disciplinary process. This is to encourage openness and full participation by all parties during meetings. Any breach of this provision may lead to disciplinary action against the employee, up to and including dismissal.

In certain limited circumstances, the college may permit the meeting to be recorded electronically. For example where the employee has a disability, it may be appropriate as a reasonable adjustment under the Equality Act 2010. Where the college permits the meeting to be recorded electronically, it will take responsibility for making the recording.

Where the grounds are not deemed serious enough and / or there is not sufficient evidence to warrant a formal disciplinary hearing, the Manager may choose to either progress informal

action (see Section 7) or take no further action. Under such circumstances the employee will be contacted to confirm that no further formal action is being taken.

In the case where formal action is appropriate, the date of a disciplinary hearing will be notified to the employee as soon as reasonably possible on the completion of the investigation process and report. It may be appropriate for the Investigating Officer to attend the disciplinary hearing in order to present the findings of the investigation.

Where the allegations relate to financial irregularities or possible illegality, the Depute Principal shall be immediately informed. Further investigation by the Internal Auditors may be considered necessary.

In the event that disciplinary action is being considered against the Depute Principal, the Principal may seek independent legal advice from out with the College.

So far as is reasonable, confidentiality will be maintained throughout the processes carried out in terms of this Policy.

6 SUSPENSION

If an employee is suspended they will be given written confirmation of the reason(s) for suspension and the date from which this takes effect. The written confirmation will be issued within 5 working days of the start date of suspension.

It will be made clear to the employee that investigative, or precautionary, suspension is not a disciplinary sanction and is not in any way to be considered as a sanction in respect of any alleged misconduct.

Employees may only be suspended on the authority of the responsible SMT member following consultation with the Depute Principal or nominated representative. Where the employee is a member of SMT, suspension can only be approved on the authority of the Principal (or in his/her absence by the Chair of the HR Committee) following consultation with the Depute Principal or their nominated representative. The period of suspension will be as short as possible.

The College recognises that if employees are placed on suspension they have a right of confidentiality and that publicity can cause unnecessary embarrassment and suffering. So far as is reasonable, there will be no disclosure of allegations other than to those who may be professionally involved or require to be consulted as part of the investigation.

The Investigating Officer will remind all those involved in the investigation of their obligation to maintain confidentiality. However employees should be aware that it may be necessary to disclose certain information so that the College can fully investigate the circumstances of the allegation(s).

7 INFORMAL ACTION

When an instance of unsatisfactory conduct occurs, line managers must assess whether it is appropriate for them to deal with the matter through informal discussion, or whether the evidence is such that a formal disciplinary investigation should take place.

Line managers should informally discuss the matter with the employee. They should explain their issue, complaint, or concern and provide advice and guidance to the individual on what improvements are expected. Managers taking prompt action when minor lapses from acceptable standards of conduct occur may prevent a recurrence.

The purpose of taking informal action is so that an employee is made aware of any concerns that the college may have and what is expected in the future. This will also give the employee the opportunity to raise any issues or provide any information to the college at an early stage that assists all parties in ensuring that we are working towards the common goal of providing excellent service.

Formal disciplinary action will be considered:

- If an informal discussion has taken place and has not resolved the problem
- If the behaviour covered by a previous informal discussion has been repeated
- If the behaviour in question is sufficiently serious that informal discussion is not appropriate

If it is decided that informal action is appropriate then the employee's line manager or nominee will hold a meeting with the employee to explain this, discuss any issues, listen to their point of view, and provide them with feedback.

A note of this conversation will be kept, which will remain on the employee's personnel file for 6 months. This note will not form part of the employee's disciplinary record and the employee will not receive any written record of the conversation however for the purposes of clarification they may receive a written detail of the actions required by them and any support offered.

8 FORMAL DISCIPLINARY ACTION

8.1 Convening a Hearing

When it appears that an employee's work, behaviour, conduct, omission or capability is such as to warrant formal disciplinary action, the employee concerned will be invited to a disciplinary hearing.

The employee will be given at least 5 working days' notice of the disciplinary hearing, they will be advised of the allegations against them, and / or the circumstances surrounding their case, and that the outcome of the hearing may include disciplinary action, up to and including dismissal. During the course of the investigation, further or different allegations may arise and these will be outlined in the notice of a disciplinary hearing.

The employee will be provided with a copy of any investigatory report and all other associated evidence.

Where the employee wishes to call or obtain statements from witnesses other than those carried out by the Investigating Officer (internal or external to the College), this must be discussed and agreed with the appropriate Human Resources Business Manager prior to any contact being made.

All contact with witnesses and external people/organisations must be carried out on a professional basis and maintain the confidentiality of the process for both the employee and the College. It is the responsibility of the employee and/or their representative to make any necessary arrangements in respect of taking statements and arranging for their witnesses to attend the hearing if required.

Where the employee intends to call witnesses, refer to witness statements or other documentation, the names of the witnesses and copies of all statements/documents must be provided to the Chair of the hearing no later than 3 working days in advance of the hearing.

Failure to submit this information could result in the information being unable to be considered at the hearing. Employees working patterns will be taken into account when arranging the Disciplinary Hearing, this may be out with the relevant timescales.

Where the employee is absent from work due to sickness, they will be asked if they are fit to attend the hearing. Where the employee considers themselves unfit to attend the hearing, they will be asked to attend an appointment with the College's occupational health provider. Where an employee refuses to attend an occupational health appointment it is likely that the disciplinary hearing will be convened in their absence.

8.2 Right to be Accompanied

The written statement inviting the employee to attend the disciplinary hearing will remind the employee of their right to be accompanied at the disciplinary hearing by a companion who is either:

- a colleague who works for the College; or
- a trade union representative; or
- an official employed by the Trade Union

If the employee reasonably requests that such a person attends a formal hearing with them but that companion cannot attend, the College will postpone the hearing once, to give the employee the opportunity to make alternative arrangements. Normally the postponement will not be any longer than 5 working days. If the employee wishes a longer postponement they must explain this to the Chair of the hearing who will consider the reasonableness of the request with the relevant line manager and HR.

A companion may not answer questions on the employee's behalf.

8.3 Disciplinary Hearing Panel

The hearing will be convened as soon as practicable. An HR representative shall be present at all hearings and act as professional adviser to the Chair of the hearing. An appropriate Chairperson will be appointed, this will usually be the employee's line manager or another manager, where appropriate.

8.4 Conducting the Hearing

The Chair of the hearing will outline the format of the disciplinary hearing. The Investigating Officer will usually present the facts found during the investigation. However, if the Investigating Officer is not present, the Chair will present the facts on behalf of the Investigating Officer. The employee will then be given the opportunity to reply to the allegations against them, if any, or to the circumstances surrounding their case, present a defence and / or put forward mitigating circumstances which are relevant to their case.

During the hearing either party may request a brief adjournment to enable private discussion. In exceptional circumstances, the College may wish to adjourn the hearing to allow for further investigation or gather further evidence. In such circumstances, it may be necessary to reconvene the hearing on a later date.

Prior to the conclusion of the hearing the employee will be given the opportunity to make a final statement. Thereafter the Chair shall adjourn the hearing and consider the matter in private; an HR representative will be available to advise on policy, procedure and precedent. The Chair's role is to determine whether or not it is reasonable, given all the evidence and circumstances, to impose a disciplinary sanction and the level of sanction. The Chair will either recall the employee

and any representative and give the decision verbally, or advise that the outcome will be confirmed in writing normally within 10 working days.

At the conclusion of any hearing resulting in disciplinary action, the employee will be advised of the right of appeal.

The employee will be issued with written confirmation of any disciplinary action resulting from a disciplinary hearing within 10 working days of the conclusion of the hearing. This will include, where relevant, details of any previous issues relating to them, details of any timescales within which improvement is to be achieved and the likely consequences if there is no improvement. A copy of the written confirmation will be retained in their personnel file.

Should an outcome not be available within this timescale, the employee will be notified of this, with an explanation provided.

8.5 DISCIPLINARY ACTION

In cases where there is a reasonable belief of the employee's guilt of the alleged misconduct the following disciplinary action may be taken:

8.5.1 DISCIPLINARY SANCTIONS

- a) For minor offences, a formal **warning** will be issued making it clear that further misconduct and / or failure to improve will render the employee liable to further disciplinary action. They will be told the reason for the warning and what action they need to take to reach an acceptable standard of conduct. If appropriate, they will be offered extra training and/or counselling and given a time limit for improvement.
- b) For a more serious offence, or further misconduct following a lesser warning, or where the employee has failed to respond satisfactorily to earlier warnings a **written warning** will be issued making it clear that further misconduct and / or failure to improve will render the employee liable to further disciplinary action. They will be told the reason for the warning and what action they need to take to reach an acceptable standard of conduct. If appropriate, they will be offered extra training and/or counselling and given a time limit for improvement.
- c) Where the severity of misconduct merits it, or further misconduct following a lesser warning happens, or where the employee has failed to respond satisfactorily to earlier warnings where the warning is extant/live, a **final written warning** will be issued making it clear that further misconduct and / or failure to improve will render the employee liable to further disciplinary action and could result in their dismissal. They will be told the reason for the warning and what action they need to take to reach an acceptable standard of conduct. If appropriate, they will be offered extra training and/or counselling and given a time limit for improvement.
- d) For an act or acts of further misconduct, other than gross misconduct, and / or failure to improve when still subject to a previous warning, the employee may be liable to **dismissal** with notice or with pay in lieu of notice.
- e) In cases where gross misconduct is alleged and is established on the balance of probabilities, the employee will be liable to **summary dismissal** and have no entitlement to notice or pay in lieu of notice.

Demotion may be imposed in conjunction with a warning issued under Section 8.5.1 above, or as an alternative to dismissal. Where it is an alternative to dismissal, it will be accompanied by a final written warning. Where demotion is imposed the employee will be placed on the top spinal

column point for the grade of their new position without any salary preservation, and in no circumstances should this be on a greater salary.

Warnings may only be authorised by the person holding a hearing. If a warning is issued, that fact shall be recorded in the employee's personnel file.

8.5.2 RETENTION PERIODS

Subject to satisfactory conduct, warnings will normally be expunged from an employee's personnel file after the following period:

Formal Warning -	6 months from the date of issue
Written Warning -	12 months from the date of issue
Final Written Warning -	18 months from the date of issue

If on appeal, or any other reconsideration, any disciplinary action is effectively withdrawn, then all written reference to that action will be expunged from an employee's personnel file and they will be notified accordingly.

Where their conduct is such that a pattern of abuse of the system emerges, or that due to the nature of the offence, evidence of satisfactory conduct can only be satisfied over an extended period, warnings will remain on their record for a longer period to be determined by the Chair of the disciplinary hearing. They will be notified of the length of time for which the warning will remain extant.

The College reserves the right to omit any stage of the procedures if the College considers that it is appropriate to the individual circumstances, whilst ensuring that the procedure adopted is compliant with ACAS guidelines.

9 APPEALS

Employees may appeal against any formal disciplinary action taken under the above procedures. Appeals should be submitted in writing by the employee within 5 working days of receipt of the confirmation of a disciplinary action. The appeal should be submitted to the Depute Principal. The employee should also make clear the basis of their appeal, i.e.

- they have not committed the alleged act or acts of misconduct (if so, new evidence should be submitted); and/or
- the disciplinary sanction decided upon.

An appeal will not normally be by way of re-hearing unless the employee has additional material to introduce which was not available at the time of the disciplinary hearing. Normally, the appeal hearing will reconsider the original decision.

If the decision that the employee is appealing is a decision to dismiss them, the appeal hearing may take place after their dismissal has taken effect.

Appeal hearings will be arranged as soon as possible and normally within 4 working weeks of receipt of the appeal but this may depend on the availability of persons holding the appeal or on other factors. Reasonable notice of the date of an appeal will be given.

The College will remind the employee of their right to be accompanied at the appeal hearing.

9.1 Appeal Panel

Appeals will be heard by a manager of equal or greater seniority to the Chair of the original disciplinary hearing. Panels will comprise of one other person nominated by the appointed Chair of the Appeal Panel. Any person previously involved in the case will be excluded from membership of the panel. A note taker and HR Business Manager may also be present. All supporting papers will be issued to Panel members prior to the date of the Appeal Hearing.

9.2 SMT Appeal Panel

In the event of an appeal against any disciplinary action against a member of the SMT, the Depute Principal will liaise with the Chair of the HR Committee to form a Panel and arrange a suitable date for the Appeal Hearing. The Panel will comprise of the Chair (nominated representative from the HR Committee, excluding employees or student representatives), the Principal and the Depute Principal. Any person previously involved in the case will be excluded from membership of the panel.

9.3 Appeal Procedure

At any appeal hearing the employee will be given the opportunity to submit a case for confirmation, reduction or withdrawal of the disciplinary action taken. If the employee is appealing the decision they should submit further / new evidence for the panel's consideration.

Where the employee wishes to call or obtain statements from witnesses other than those obtained as part of the original investigation / hearing (internal or external to the College), this must be discussed and agreed with the appropriate Human Resources Business Manager prior to any contact being made. The names of the witnesses and copies of all statements must also be provided to the Chair of the appeal hearing no later than 3 working days in advance of the appeal hearing.

All contact with witnesses and external people/organisations must be carried out on a professional basis and maintain the confidentiality of the process for both the employee and the College.

It is the responsibility of the employee and/or their representative to make any necessary arrangements in respect of taking statements and arranging for their witnesses to attend the hearing if required.

The decision of an appeal panel may be given immediately after the conclusion of the appeal hearing or in writing, within 10 working days of the appeal procedure being concluded.

The College will either:

- uphold the original disciplinary decision and confirm the original disciplinary sanction or dismissal (no change)
- confirm the original disciplinary decision and substitute a new sanction (decrease to sanction)
- overturn the disciplinary decision (remove the disciplinary sanction).

There is no right of further appeal.

MISCONDUCT

Most breaches of disciplinary rules fall within this category and would not normally result in dismissal, except in cases of repeated misconduct after a warning or warnings have been given. Examples of misconduct are given below, but are not exclusive or exhaustive:

- a) Negligence in the performance of official duties or non-compliance with College procedures;
- b) Habitual poor timekeeping or absence;
- c) Discrimination (on the basis of any of the protected characteristics i.e. age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex or sexual orientation)), harassment, bullying or intimidation of other employees or members of the public. In certain circumstances the seriousness of an offence may result in an immediate charge of Gross Misconduct;
- d) Refusal to carry out a reasonable instruction from an appropriate manager;
- e) Failure to wear protective clothing when required or not using safety equipment provided for any specific task;
- f) Undertaking any form of unauthorised private business activity which, in any way is in conflict with the interests of the College, or which relates to the nature of the duties undertaken by the individual;
- g) Misuse of College IT facilities including inappropriate use of the Internet;
- h) Disclosure of information in contravention of rules on Data Protection;
- i) Inappropriate or offensive behaviour or conduct;
- j) Careless disregard of the College's rules or a breach of its policies and procedures.

GROSS MISCONDUCT

Gross misconduct will be considered to have taken place when an employee's conduct, behaviour or omission, whether in the course of employment or otherwise, is so grave as to strike at the basis of the relationship between employer and employee.

The following list of offences arising in the course of employment are examples of incidents that may be treated as gross misconduct. Examples given below are not exclusive or exhaustive.

- a) Inability to carry out the functions of the post due to being under the influence of alcohol and/or drugs;
- b) Wilful damage to, or destruction of property or equipment;
- c) Theft or unauthorised possession of property or facilities belonging to the College or another employee or student;
- d) Fraud or deliberate falsification of official documentation for example College records, registers, reports, accounts, expenses claims or falsely awarding pass marks to students;

- e) Repeated or serious refusal to carry out any legitimate instruction from an appropriate or senior manager;
- f) Absence from work without permission or without notification or contrary to the conditions on which specific permission to be absent has been granted;
- g) Serious negligence in the performance of official duties or non-compliance with College procedures which causes or might cause unacceptable loss, damage or injury;
- h) Conduct likely to bring the College into disrepute, for example damage to college reputation, abusive language, violent behaviour, fighting, threatening violence, immoral or obscene conduct, whether within or outside the workplace;
- i) Excessive or inappropriate use of foul or abusive language or threats made to other employees, students or members of the public;
- j) Conviction of a criminal offence considered potentially damaging to the College, or preventing an individual from performing their work;
- k) Serious disregard to any safety requirement imposed by law or specified within the College Safety Policy documents;
- l) Serious discrimination (on the basis of any of the protected characteristics i.e. age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex or sexual orientation) harassment or intimidation of other employees, students or members of the public;
- m) Inappropriate relationship or behaviour with a College student;
- n) Misuse of the College's property or name or otherwise bringing the College into serious disrepute;
- o) Serious misuse of IT facilities including downloading or viewing pornographic images from the intranet;
- p) Serious breach of confidence (subject to the Public Interest Disclosure Act 1998) or serious breaches of rules on Data Protection;
- q) Serious breach of trust and confidence.