

Staff Disciplinary Procedure

POLICY STATEMENT

The Colleges expects exemplary standards of behaviour, conduct and attendance from all its employees. The disciplinary procedure provides a framework for dealing with instances where employees are alleged not to have met the required standards of conduct. The aim is to ensure prompt, consistent and fair treatment of all employees and to assist in enabling both the employee and the Colleges to be clear about the expectations of both parties.

This procedure applies to all employees other than “designated senior post holders” as defined in the College’s Articles of Government or the Clerk to the Corporation to whom the College’s disciplinary procedure for senior post-holders will apply.

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 (ACAS) Code of Practice, ‘Disciplinary and Grievance Procedures’, dated March 2015.

This procedure applies to issues of alleged misconduct. The “Support for Improvement” procedure will be used to address issues of professional capability and competence. However if a warning has been given for poor performance and during the currency of that warning a conduct issue arises, the next stage of the disciplinary procedure may follow and vice versa. In other words the two procedures whilst separate are cumulative.

Trade Union Representatives – Where disciplinary action is being considered against an employee who is a trade union representative the normal disciplinary procedure will be followed. Depending on the circumstances, however, and after obtaining the employee’s consent, at an early stage the circumstances of the case will be discussed with an official employed by the union. As this will normally involve contact with the Regional Union Office this will be dealt with by Human Resources.

Criminal Offences – If an employee is charged with, or convicted of, a criminal offence (outside of employment) this will not normally in itself be considered a reason for disciplinary action. Consideration will be given to the relevance and effect the charge or conviction has to or on the employee’s suitability to do their job and their relationship with the College, work colleagues and students including the impact it may have or has had on the reputation of a College or any of its employees.

PROCEDURE

1.0 INTRODUCTION

- 1.1 An employee has the right to be accompanied by a representative of a trade union or a fellow worker (a direct employee of the College) at formal disciplinary hearings. (Please refer to the Notes Section for guidance on the role of the companion). The College should remind the employee of the right to be accompanied prior to a disciplinary hearing.
- 1.2 In all cases of potential child or adult protection, the College’s child protection lead and the Head of HR should be contacted. Advice will be sought from the Local Area Designated Officer or Senior Duty Social Worker before any course of action is considered
- 1.3 In the interest of ensuring that disciplinary matters are resolved as speedily as possible, time limits normally applied are given for appropriate stages in this procedure. These are for guidance only and may be expanded if the circumstances warrant it in the opinion of the College. It may not always be practicable to adhere to these time limits.. Due regard will be given to the personal circumstances of all parties involved in the procedure.

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- 1.4 The employee will be advised of the nature of the complaint against them in writing and will be given the opportunity to state his or her case at a disciplinary hearing, following an investigation, before any decision is made.
- 1.5 Employees will be provided with a copy of any evidence and relevant witness statements in advance and at least five days prior (to be amended in exceptional circumstances) to a formal disciplinary hearing.
- 1.6 For reasons of good practice we may audio record any meetings to ensure accuracy of records and that these are verbatim. Transcripts are produced as reasonably after a meeting as is practicable if required. Those attending any meetings will be made aware that the proceedings are being recorded and will receive a typed transcript.
- 1.7 All witness statements and investigation notes will be signed by the relevant party as a true reflection of their statement or the meeting held. Any statements or notes taken from the employee under investigation will be made available to them as part of the investigation.
- 1.8 Due to the importance of fairness and maintaining the integrity of the investigation all parties interviewed or providing evidence within the process must sign a confidentiality agreement
- 1.9 No employee will be dismissed for a first breach of discipline except in the case of gross misconduct or gross negligence/dereliction of duty, when the penalty may be summary dismissal without notice or payment in lieu of notice.
- 1.10 An employee will have the right to appeal against any formal disciplinary action.

2.0 INFORMAL PROCEDURE

- 2.1 It is part of the supervisory process that managers bring to the attention of the employees the standards required and any failure to meet those standards.
- 2.2 Cases of minor misconduct should be dealt with by the employee's line manager informally and without delay. The manager must speak to the employee, in private and should encourage them to conduct themselves in accordance with the required standards.
- 2.3 The purpose of these discussions is to ensure that the employee understands the nature of the concerns, expectations of improvements in conduct and where appropriate timescales and the nature of any support available.
- 2.4 The outcomes of any discussions will be noted and retained on the employee's HR record as a point of reference and should remain there for a maximum of one year. A copy of any such file note will be given to the employee.
- 2.5 Following a satisfactory outcome to the use of the informal procedure, the matter will be considered resolved. The note will be placed in a separate folder entitled resolved and may be referred to where the same or similar issue arises in the future.
- 2.6 However, where an issue has been discussed with an employee informally and if:
 - the issue has not been resolved and the problem persists and/or
 - the required improvements in conduct are not achieved and/or
 - further information becomes available during discussions which make the matter sufficiently seriousthe formal procedure should be invoked.

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3.0 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.
- 3.2 The College will inform the employee as soon as possible that an investigation is to be conducted and once the investigation has been concluded will advise the employee in writing if the formal procedure is implemented. If the investigation is on-going for more than four weeks, the employee will be advised in writing that the investigation has not yet been concluded.
- 3.3 The purpose of the investigation is to:
- Establish the nature of the allegations
 - Gather evidence to enable a decision to be taken on whether there is a disciplinary case to answer
 - Consider if the matter should proceed to a formal hearing
- 3.4 The colleges offer the employee the opportunity to be accompanied by a fellow worker or trade union representative at an investigation meeting.
- 3.5 Depending on the circumstances of the allegations, it may not always be necessary to conduct an investigation meeting with the employee. If a meeting is held, the College will give the employee advance warning and reasonable time to prepare.
- 3.6 Either a Manager or Director will conduct an investigation with HR support, or this will be delegated to a duly authorised person. If a senior manager's conduct is being investigated, this will be carried out by an external person/body. The College should ensure that the person conducting the investigation is different to the person chairing any subsequent disciplinary hearing and that peers are not permitted to investigate each other.
- 3.7 All personnel carrying out an investigation and/or presenting a case at disciplinary hearing will be trained and competent to do so.
- 3.8 The outcomes of an investigation may be:
- There is no case to answer and therefore no disciplinary action is taken
 - The matter is dealt with informally, if appropriate with support and or training to resolve the matter
 - Recommendation that there is a disciplinary case to answer and a disciplinary hearing should be arranged.
- 3.9 If appropriate, the College may suspend the employee, in accordance with Section 4 below, whilst the investigation is carried out.

4.0 SUSPENSION

- 4.1 There may be circumstances during an investigation where suspension from duty pending the holding of a formal disciplinary hearing may be appropriate. Examples of circumstances in which suspension may be appropriate, depending on the facts of the situation, include allegations of serious misconduct cases, where there are risks to an employee's or to students property or to property belonging to a third party; or where there are reasonable grounds for concern that evidence may be or has been tampered with, destroyed or witnesses pressurised or otherwise intimidated or where there is serious concern that this may occur.
- 4.2 The decision to suspend can be made by the Group Principal, Group Deputy Principal, College Principal (Deputy Principal or Assistant Principal if the Principal is not available) or relevant Director.

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- 4.2 Suspension should only be imposed after careful consideration and it should be made clear to the employee that it is not considered a disciplinary sanction rather a neutral act to safeguard the employee or others.
- 4.3 If a decision is made to to suspend an employee from duty, the College will:
 - a) confirm the suspension in writing to the employee without unreasonable delay; and
 - b) inform the employee in writing of the reasons for the suspension, without unreasonable delay.
- 4.4 A period of suspension pending a disciplinary hearing should be kept as brief as possible and will be kept under regular review
- 4.5 An employee who is suspended from duty shall, throughout the period of suspension, continue to be entitled to their normal pay.

5.0 FORMAL PROCEDURE

- 5.1 **Where the informal process has not led to improved conduct, or where the alleged misconduct is of such seriousness that the manager considers informal action to be inappropriate, formal action will be initiated.**
- 5.2 **An investigation of the facts will be conducted to determine whether there is a disciplinary case to answer.**
- 5.3 If, upon completion of an investigation, there are reasonable grounds to believe that an employee has committed an act of misconduct, the College will invite the employee to attend a disciplinary hearing. The employee will be advised in writing of the nature of the alleged misconduct, the possible consequences of the hearing and provided with any relevant evidence to enable the employee to prepare for the hearing. The College will write to the employee with all the above information at least 5 working days before the hearing. The written notification should also detail the date and venue of the hearing and the employee's right to be accompanied.
- 5.4 If the employee wishes to call relevant witnesses to the hearing, they should advise the College of this at least two working days in advance of the hearing. The employee will be informed prior to the hearing if the College intends to call relevant witnesses. For reasons of Professional ethics, reliance on student witnesses will be considered by the chair responsible for the hearing on the relevance of the evidence on the particular facts of the case.
- 5.5 Before the hearing takes place (at least two days prior), the employee should inform the College who they have chosen as a companion. The college reserve the right to refuse entry to a companion who has not been notified prior to the meeting and/or it is deemed a conflict may arise by the choice of companion.
- 5.6 At any disciplinary hearing, the employee will be given an opportunity to state their case and will have the right to be accompanied by the trade union representative or fellow worker of their choice, subject to a reasonable request being made (please refer to the role of the companion Section for further guidance). However, if the chosen companion of the employee is unavailable on the date of the initial meeting, the employee may request a delay of the date of that meeting once by up to 5 working days to enable the chosen companion to attend. The location and timing of any alternative meeting should be convenient to both the employer and the employee, and every effort will be made to accommodate a request to delay however, this should not unduly delay the process. The employee may need to reconsider their choice of companion in the event of their extended unavailability causing a further delay to the meeting.

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- 5.7 Representatives of the College, the employee and the employee's companion should make every effort to attend the meeting. If the employee fails persistently (i.e. more than twice), without good reason, to attend a disciplinary meeting which the College has instructed him or her to attend, the meeting will take place, and a decision will be made, in his or her absence. In other circumstances where it seems likely that for a lengthy period, the employee will be unable to attend a disciplinary meeting, the College reserves the right to go ahead with that meeting, affording the employee the right to either attend by telephone or to submit written representations and/or to be represented by a fellow worker or trade union representative.
- 5.8 The disciplinary hearing will usually be chaired by a manager who is not connected to the employee. Where dismissal is a possible outcome, the meeting will be chaired by the College Principal or a senior post holder to whom the authority to dismiss has been delegated by the Principal.
- 5.9 The manager who conducted the investigation will normally attend in order to present the findings of the investigation and any supporting material.
- 5.10 The manager conducting and hearing the case will consider all representations then decide if on the balance of probabilities the allegation(s) are proven and if so what level of disciplinary sanction is appropriate.
- 5.11 The outcome of the disciplinary meeting will be confirmed in writing to the employee. Where disciplinary action is the outcome, the employee will be informed of the nature of the action and the right to appeal under this procedure. The chair of the hearing will establish how the employee would like to be notified of the outcome.

6.0 FORMAL LEVELS OF DISCIPLINARY SANCTIONS

- 6.1 There are three stages in the formal disciplinary procedure with various sanctions dependant on the gravity of the case and/or the on-going nature of the misconduct.
- 6.2 Normally the stages described in Section 6 will be cumulative; however, the College reserves the right to implement the procedure at stage 2 or 3 if the employee's alleged misconduct warrants this. The right will also apply in circumstances where an employee commits a further act of alleged misconduct that is sufficiently serious, whilst a formal warning is in place.

Stage 1: First written warning

- 6.3 If it is established through the disciplinary hearing that an employee's conduct does not meet the acceptable standards, the employee will normally be given a formal first written warning by the manager who chaired the hearing.
- 6.4 The written warning will give details of the employee's misconduct, the improvement required and the time limit within which such improvement must be achieved. The warning will clarify that, if the employee commits a further offence of misconduct during the period specified in the warning, action under Stage 2 will be considered. However, the employee will also be advised that if any further act of misconduct is sufficiently serious, the College reserves the right to go to a further stage in the procedure. The written warning will also advise the employee of the right of appeal in accordance with Section 8 below.
- 6.5 A copy of the written warning will be placed on the employee's HR record. The warning will be spent, and will be disregarded for disciplinary purposes after 6 months, subject to the employee's conduct having been satisfactory throughout that period. The warning will be placed in a separate folder entitled spent warnings and may be referred to in case of selection for redundancy or where the same or similar offence is committed in the future.

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Stage2: Final written warning

- 6.6 A final written warning will normally be given to the employee by the manager who chaired the hearing if:
- a) the employee fails to comply with a first written warning given under Stage 1;
 - b) despite having been given, under Stage 1, a first written warning as the result of misconduct, the employee commits a further offence of misconduct; or
 - c) the employee's misconduct, although not considered to be serious enough to justify summary dismissal, is sufficiently serious to warrant a final written warning.
- 6.7 The final written warning will give details of the employee's misconduct, the improvement required and the time limit within which such improvement must be achieved. The warning will state that, if the employee commits a further offence of misconduct, during the period specified, action under stage 3 will be considered.. The final written warning will also advise the employee of the right of appeal in accordance with Section 8 below.
- 6.8 A copy of the written warning will be placed on the employee's HR record. The warning will be spent, and will be disregarded for disciplinary purposes after 12 months (although, in exceptional cases, the period may be longer), subject to the employee's conduct having been satisfactory throughout that period. The warning will be placed in a separate folder entitled spent warnings and may be referred to in case of selection for redundancy or where the same or similar offence is committed in the future.

Stage 3: Dismissal

- 6.9 The Principal or a senior post holder to whom the authority to dismiss has been delegated by the Principal may, following a disciplinary hearing, give notice of dismissal to the employee if:
- a) the employee fails to comply with a final written warning given under Stage 2;
 - b) or despite having been given, under Stage 2, a final written warning as the result of misconduct, the employee commits a further offence of misconduct.
 - c) If allegations are raised which are so serious as to constitute gross misconduct, such as those in Section 7.
- 6.10 The letter requiring attendance at the formal disciplinary hearing shall include a statement of the alleged misconduct and warn the employee that one consequence of the hearing may be the termination of their employment with or without notice.
- 6.11 The Principal (or a senior post holder to whom the authority to dismiss has been delegated by the Principal) conducting and hearing the case will consider all representations then decide if on the balance of probabilities the allegation(s) are proved and if so what level of disciplinary sanction, including and up to dismissal, is appropriate. On the basis of the information presented the manager may decide:
- To dismiss the employee (without notice in the case of gross misconduct)
 - That there is insufficient grounds to dismiss the employee under this procedure;
 - On the imposition, extension or renewal of a warning or final written warning issued under this procedure or to have two warnings running concurrently;
 - On the removal of any title or office held in addition to the substantive post
 - On the transfer of an employee to an alternative post with the Colleges
 - That matters be considered under an alternative procedure

The above list is not exhaustive and the outcome may be varied according to their circumstances of the case.

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6.12 The decision will be communicated in writing to the employee and will specify the reasons for the decision and if relevant the date on which the employment will terminate. The communication must also notify the employee of their right of appeal against the decision in accordance with Section 8 below.

7.0 GROSS MISCONDUCT

7.1 The Principal or a senior post holder to whom the authority to dismiss has been delegated by the Principal may summarily dismiss the employee without notice or pay in lieu of notice if, on completion of an investigation and a disciplinary hearing, it is established that the employee has been guilty of gross misconduct.

7.2 In the event of summary dismissal the Principal or a senior post holder to whom the authority to dismiss has been delegated by the Principal shall, without unreasonable delay, provide the dismissed employee with a written statement of the alleged misconduct which has led to the dismissal and the reasons why the Principal considers that the employee was guilty of such misconduct and notifying that employee of the right to appeal against the dismissal.

7.3 The following offences are examples of offences which are normally regarded as gross misconduct:

- a) Theft or attempted theft or unauthorised possession of any property or facilities belonging to the College, or to any employee or student.
- b) Serious damage deliberately sustained to College property or 3rd party.
- c) Deliberate falsification of College registers, reports, accounts, expense claims or self-certification forms.
- d) Bribery or corruption.
- e) Deliberate refusal to carry out duties or reasonable instructions or to comply with College rules.
- f) Serious acts of insubordination.
- g) Serious negligence/incompetence which causes unacceptable loss, damage or injury.
- h) Serious incapability and/or misconduct as a result of being intoxicated by reason of alcohol or illegal drugs.
- i) Violent, dangerous or intimidatory conduct.
- j) Bullying.
- k) Violation of the College's rules and procedures concerning health and safety at work.
- l) Discrimination or harassment.
- m) 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.
- n) Deliberately accessing internet sites containing pornographic, offensive or obscene material.
- o) Breach of confidentiality including removing documents belonging to the colleges, transferring data to a personal email account or to any other external email or cloud/server without express written permission to do so; destroying data belonging to the college unless expressly authorised in writing to do so;
- p) Serious breach of Data Protection
- q) Any serious act or omission which affects to the detriment or harms or is likely to harm any student or member of staff or third party;
- r) Dishonesty of any kind including lying, deceit, fraud, forgery etc.
- s) Abuse of power
- t) Corruption or corporate fraud

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

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8.0 APPEAL

- 8.1 An employee who wishes to appeal against a disciplinary decision must do so within 5 working days of the date of the decision. To do so, the employee should inform the Head of HR in writing, stating the grounds for appeal.
- 8.2 Where the appeal is against a written warning, it will be heard by a senior manager who has not been involved in the disciplinary process in question so far. Wherever possible, the manager hearing the appeal will be senior to the manager who chaired the original disciplinary meeting.
- 8.3 Where the appeal is against dismissal (including summary dismissal), it will be heard by two members of the Executive team. In the event of two members of the Executive team not being able to reside on the appeal panel then Governors will join the panel (not to include Staff or Student Governors).
- 8.4 The appeal meeting will be held as soon as reasonably practicable after the notice to appeal has been received. The employee will be given at least five days' notice of the meeting date to allow him or her to prepare for the meeting.
- 8.5 At the appeal meeting the employee will be given the opportunity to state his or her case and has the right to be accompanied by a representative of a trade union or fellow worker (please see the role of the companion Section for further guidance).
- 8.6 If the chosen companion of the employee is unavailable on the date of the initial meeting, the employee may delay the date of that hearing once by up to 5 working days to enable the chosen companion to attend. The location and timing of any alternative meeting should be convenient to both the employer and the employee, and every effort will be made to accommodate a request to delay however, this should not unduly delay the process. The employee may lose the right of appeal in the event that the hearing is delayed more than once for reasons of availability of the employee or their chosen companion.
- 8.7 At the appeal, the disciplinary penalty imposed will be reviewed, i.e. confirmed or downgraded, but it cannot be increased. A further hearing of the facts can be convened but only where it is accepted that the original disciplinary hearing was unfair, prejudiced or biased. The appeal decision will be notified to the employee in writing within five working days following the appeal meeting. The appeal decision is final.

THE ROLE OF THE COMPANION

Employees have a statutory right to be accompanied by a companion where the disciplinary meeting could result in:

- A formal warning being issued; or
- The taking of some other disciplinary action; or
- The confirmation of a warning or some other disciplinary action (appeal hearings)

The statutory right is to be accompanied by a fellow worker, a trade union representative, or an official employed by the trade union. A trade union representative who is not an employed official must have been certified by their union as being competent to accompany a worker. Workers may also alter their choice of companion if they wish. Legal representation is not permitted.*

As a matter of good practice employees should bear in mind the practicalities of the arrangements. For instance an employee may choose to be accompanied by a companion who is suitable, willing and available on the site rather than someone from a geographically remote location.

To exercise the statutory right to be accompanied employees must make a reasonable request. What is reasonable will depend on the circumstances of each individual case. However, it would not normally be reasonable for an employee to insist on being accompanied by a companion whose presence would prejudice the meeting nor would it be reasonable for an employee to ask to be accompanied by a companion from a remote geographical location if someone suitable and willing was available on site. An employee may ask an official from any trade union to accompany them at a disciplinary meeting, regardless of whether or not he or she is a member of the union is recognised by the College.

A fellow worker or trade union representative who is to accompany the employee at the disciplinary meeting should be permitted to take a reasonable amount of paid time off to fulfil this. This should cover the disciplinary meeting and it is also good practice to allow time for the companion to familiarise themselves with the case and confer with the employee before and after the meeting.

The companion should be allowed to address the meeting to put and sum up the employee's case, respond on behalf of the employee to any views expressed at the meeting and confer with the employee during the meeting. The companion does not, however, have the right to answer questions on the employee's behalf, address the meeting if the employee does not wish it or prevent the employer from explaining their case.

**There may be an exceptional circumstance only where consideration will be given to permission for a legal representative to accompany a professional member of staff to a disciplinary hearing where the matter under discussion is exceptionally serious and which could lead to regulatory proceedings and being erased from the professional register ie the alleged offence may lead to the member of staff being disqualified from practising or continuing their professional role.*